



## **LOCAL GOVERNMENT COMMISSION**

### **Decision on appeals against the decision of the Opotiki District Council not to proceed with the Local Government (Paparoa) Reorganisation Scheme 2003**

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## **INTRODUCTION**

- 1 This decision relates to appeals lodged by Mr John Arthur Renouf and 38 others, these being residents of Paparoa Road and Burke Road in Wainui, in the northwestern area of Opotiki District, and the Whakatane District Council (“WDC”) against the decision of the Opotiki District Council (“ODC”), as the principal local authority, on 23 March 2004, to not proceed with the Local Government (Paparoa) Draft Reorganisation Scheme 2003 (“the scheme”). The scheme would alter the boundary between the Opotiki District and the Whakatane District by transferring an area, comprising meshblocks 1338101 and 1338102, from Opotiki District to Whakatane District.
- 2 As the proposal to which the appeals relate was filed before the coming into effect of the reorganisation provisions of the Local Government Act 2002 (“the LGA 2002”), the Local Government Commission (“the Commission”) is required to determine the appeals in accordance with the provisions of the Local Government Act 1974 (“the Act”).

## **BACKGROUND**

- 3 In June 2003 the ODC and the WDC received a reorganisation proposal (“the proposal”) initiated pursuant to section 37ZP of the Act from Mr John Arthur Renouf and 38 others, these being residents of Paparoa Road and Burke Road, in the northwestern area of Opotiki District. The proposal requested the transfer of meshblocks 1338101 and 1338102 from Opotiki District to Whakatane District.
- 4 The proposal satisfied the statutory requirements of section 37ZQ.
- 5 After consultation between the two affected local authorities it was agreed that the ODC should be the principal local authority in respect of the reorganisation proposal.
- 6 The scheme was issued in September 2003. Fifty-five submissions were received. On 11 February 2004 the ODC, as principal local authority, met to hear verbal submissions. On 23 March 2004, having considered the submissions presented to it, the ODC resolved not to proceed with the scheme for the following reasons:
  - “The scheme would have a negative impact on the resources available to the ODC to enable it to carry out its functions, duties, and powers.

- The proposed boundary, through the Nukuhou wetland, would not be an easily recognised boundary while the existing boundary is an effective local authority boundary.
  - The scheme proposes to split the management of the Ohiwa harbour and would be likely to lead to a change in planning controls, which is not considered to be in the best interests of the harbour.
  - The scheme, if it were to proceed, would more closely align the community of interest of the residents while splitting the recognised hapū and iwi boundaries across two local authorities.”
- 7 On 13 April 2004 Mr John Renouf and party gave notice of appeal against the decision. The WDC gave notice of appeal against the decision on 23 April 2004.
- 8 Under section 37ZZE of the Act the Commission received notices from 7 other people of their intention to appear and be heard at the hearing of the appeals. Subsequently one of those persons, Mrs Laurie Mitchell, advised that she would be unavailable to attend the hearing.
- 9 The Commission’s Chief Executive Officer arranged for the hearing of appeals on 24 September 2004. This followed a request to delay the hearing from an earlier date due to flooding in the Opotiki and Whakatane Districts in July 2004.

## **THE HEARING**

- 10 A quorum of the Local Government Commission, comprising Grant Kirby and Kerry Marshall, heard the submissions. The hearing commenced with submissions from, and on behalf of, the ODC. The ODC was represented by Mayor John Forbes, Mr Mathew Lawson (counsel for the ODC), and Mr Vaughan Payne. The Commission then heard submissions in opposition to the scheme from: Mr Barry Marshall; Ms Jane Allen; Mr Hugh Rankin; Ms Irene Cameron; Mr Blair Wilmshurst; and Mr Charles Aramoana on behalf of Upokorehe hapū. Mayor Colin Hammond and Dave Christison spoke for the WDC in support of the scheme. Mr Tony Tweed and Mr John Renouf spoke for the local appellant group. Mr Tweed also read a submission from Don Guadagni, called Mr Ian Swan as a witness, and introduced the following speakers, each signatories to the appeal of the local appellant group: Ms Pam Morrison, Mr Sandy Cunningham, Mr Ted Gee, Mr Ian Cunningham, and Mr Dave Gee. Rights of reply were exercised by Mr Forbes and Mr Lawson for the ODC.

## SUMMARY OF MATTERS RAISED AT HEARING

11 The issues raised by those appearing before the Commission can be summarised as follows:

### OPOTIKI DISTRICT COUNCIL

*John Forbes (Mayor of Opotiki District):*

- Ohiwa Harbour is an area of particular cultural and ecological significance within Opotiki District, and one of the few areas in Opotiki District where demand for new development is high;
- the communities of Upokorehe hapū, and the district-wide community with an interest in Ohiwa Harbour, will be further fragmented by the scheme;
- communities of interest for local government purposes are not defined by where people choose to shop, attend school, participate in sport, or which newspaper they read;
- adopting the scheme would have a significant detrimental affect on the resources available to the ODC, particularly because:
  - Census 2001 statistics showed that Opotiki District had a declining population, and rated poorly in terms of socio-economic indicators, compared with national averages; and,
  - Under the Opotiki District Plan, the affected area had the potential for subdivision (a further 87 property titles); and
- better local government would be provided if the whole of Ohiwa Harbour is included in Opotiki District.

*Mathew Lawson (Counsel for the ODC):*

- section 37ZQA(1)(a) requires the appellants to demonstrate that the reorganisation scheme enhances good local government in both the Opotiki District, and the Whakatane District;
- while the ODC would continue to have the resources necessary to enable it to carry out its functions, duties, and powers, the scheme would have a detrimental affect on the resources available to the ODC, and would not promote good local government of the Opotiki District;
- with different planning provisions being applied in the areas of the Ohiwa Harbour and surrounds by the WDC and the ODC, implementation of the scheme would not promote the consistent and co-ordinated management of the Ohiwa Harbour resource;
- the residents of Paparoa Road and Burke Road share only superficial community of interest ties with Whakatane District;
- the relevant communities of interest for local government purposes affected by the reorganisation scheme are the community interested in the

- management and operation of the Ohiwa Harbour, and Upokorehe hapū, who exercise mana whenua over the affected area;
- no evidence has been presented to suggest that local government services will be better provided, or the provision of services benefited in any way, by the scheme;
  - any alteration to the district boundary through the Ohiwa Harbour will further complicate existing cross-boundary issues; and
  - there is a question of the fairness of removing a recognisably desirable part of Opotiki District and including it in Whakatane District.

*Vaughan Payne (Environment and Planning Manager of the ODC):*

- outlined the respective planning instruments applied to Ohiwa Harbour and surrounds by the ODC, the WDC, and the Bay Of Plenty Regional Council (“the BOP RC”);
- discussed the resource management implications of the scheme on the well-being of Ohiwa Harbour; and
- implementation of the scheme will not promote good local government of the significant natural and cultural values of Ohiwa Harbour.

#### SUBMITTERS IN OPPOSITION TO THE SCHEME

*Blair Wilmshurst:*

- the Ohope area should be included in Opotiki District to ensure consistent management of the Ohiwa Harbour;
- most Opotiki District residents are forced to shop in, or travel to, Whakatane District because many everyday consumer needs and essential facilities are not available in Opotiki District;
- removal of the Nukuhou North area from Opotiki District had hindered the economic development of the ODC - implementation of the Paparoa scheme would have a similarly detrimental effect; and
- an appropriate solution would be to seal Paparoa Road and Burke Road.

*Jane Allen:*

- residents of one district utilising the services of another district is common throughout New Zealand;
- the ODC will require a strong rating base to meet increasing demand on council services; and
- implementation of the scheme will exacerbate the burden placed on Opotiki District of conserving land in the national interest.

*Barry Charles Marshall:*

- tabled a WDC staff report and compared the cost quoted by the ODC and the WDC for the maintenance and sealing of Paparoa Road and Burke Road;
- the nationally important coastal environment is best protected by the Opotiki District Plan;
- there will be adverse environmental effects resulting from a minimum 2ha subdivision lot requirement under the Whakatane District Plan if the scheme is implemented; and
- there will be no tangible benefits resulting from the scheme.

*Hugh Rankin:*

- previous boundary adjustments have had an emotional impact on the surrounding communities in Opotiki District - the Paparoa scheme will have a similar effect;
- the affected area is attractive to residents because it is an outstanding natural landscape, is quiet, and is close to Whakatane township and Opotiki township; and
- the ability to retain wāhi tapu sites will be lost if the affected area is included in Whakatane District.

*Irene Cameron:*

- a large number of residents of Opotiki District are employed, or have businesses, in Whakatane District;
- a large number of residents of Opotiki District choose to shop, attend school, dine out, attend functions, and play sport in Whakatane District;
- Telecom boundaries have no relevance to district boundaries; and
- Opotiki District is equally as visible as Whakatane District from the affected area.

*Charles Aramoana:*

- outlined the historical relationship between the Whakatohea-aligned Upokorehe hapū and their rohe pōtae, which extends from Pakihi in the East, to Te Horo in the West, then runs parallel to the confiscation line and slightly beyond;
- a good working relationship has been developed between Upokorehe hapū and the ODC - this relationship is positive for tangata whenua, the ODC, Opotiki residents, and developers; and
- sites of wāhi tapu will not be as well protected if the affected area is included in Whakatane District.

## WHAKATANE DISTRICT COUNCIL

### *Colin Hammond (Mayor of Whakatane District):*

- the relationship between the WDC and the ODC is generally excellent, and includes recent efforts to establish joint initiatives between the councils;
- the WDC supports the democratic right of residents of the affected area, who wish to be included in Whakatane District;
- at present, the WDC provides almost all local government services to the affected area;
- Whakatane District has a long-established link with Ohiwa Harbour - the proposal put forth at the hearing (of the whole of Ohiwa Harbour being included in Opotiki District) is extraneous;
- iwi boundaries in Whakatane District and Opotiki District are subject to ongoing dispute;
- Upokorehe hapū could be assured of consultation with the WDC if the affected area is included in Whakatane District; and
- variation two of the Whakatane District Plan will be issued in the week following the hearing - neither the ODC or Upokorehe hapū had made submissions during the consultation process for variation two of the Whakatane District Plan.

### *David Christison (CE of the WDC):*

- the proposed alteration to the district boundary will not affect the ancestral relationship that Upokorehe hapū has with the affected area;
- all land in the affected area is held in private ownership - the affected area does not include any marae or Māori freehold land;
- consultation processes are made more complex for all parties when local government boundaries cross iwi boundaries;
- the scheme will result in considerable improvement in the quality of local government being provided to residents of the affected area, with no detracting to the quality of local government being provided to the remaining areas of Opotiki District and Whakatane District;
- the removal of a potentially disenfranchised sector of the community from the ODC's jurisdiction will likely have the effect of improving the ability of the remainder of the community to participate in local government;
- the scheme will have no effect on the ability of either the ODC or the WDC to meet the criteria specified in section 37ZQA(b); and
- the existing boundary already divides Ohiwa Harbour between Opotiki District and Whakatane District - the harbour itself will remain under the jurisdiction of the BOP RC regardless of whether the scheme is adopted or not.

## JOHN RENOUF AND OTHERS

### *John Renouf:*

- residents of the affected area have no physical, spiritual, or geographical attachment to Opotiki District;
- the distance from the affected area to Opotiki township is approximately 26 kilometres, and approximately 16 kilometres to Whakatane township;
- residents of the affected area go about their daily lives in Whakatane District, as regards employment or business, social and sporting activities, shopping, and children's schooling;
- Telecom deems the affected area to be in Whakatane District;
- residents have either Whakatane or Ohope postal addresses;
- the existing boundary is difficult to define, while the proposed boundary is clearly definable; and
- the scheme will have a negligible impact on the resources available to the ODC because additional rates revenue will soon be derived from large-scale developments elsewhere in Opotiki District.

### *Tony Tweed:*

- the affected area is historically, geographically, and socially linked with the Wainui locality (in Whakatane District);
- the intention of the scheme is to recognise that the affected area is truly part of Whakatane District;
- in order to achieve good local government, the constituent catchment must feel that it belongs - good local government could not be promoted where people are included within a district with which they have no affinity;
- while residents accepted that a subsidy provided by rural ratepayers to urban ratepayers was normal in New Zealand, residents of the affected area considered that this subsidy should be applied within their own district-wide community;
- residents of the affected area are within the Whakatane free calling area;
- residents subscribe to the *Whakatane Beacon* rather than the *Opotiki News*;
- residents of the affected area know the Whakatane District councillors, and do not know the Opotiki District councillors - residents would always feel cheated that they have been denied the opportunity to exercise their vote within their own community;
- residents wished to be laid to rest within the community to which they belong - places of burial should be administered by the authority of that community;
- there are anomalies with the existing boundary in respect to particular properties along the area of Wainui Road affected by the scheme;

- the proposed boundary will continue the general south/north direction of the whole of the boundary between Opotiki District and Whakatane District.
- the rights and responsibilities of Upokorehe hapū over the affected area will be protected by statutory provisions contained in the Resource Management Act 1991 (“the RMA”), and the LGA 2002, regardless of whether the affected area is included in Opotiki District or Whakatane District;
- the scheme will have a negligible environmental affect because Ohiwa Harbour and its margins are defined as being within the Coastal Marine Area, which is administered by the BOP RC, and the Department of Conservation;
- environmental concerns for the Ohiwa Harbour are best addressed through the consultative procedures contained in the RMA, and the district planning process.

Mr Tweed also read a submission on behalf of his family, in which he outlined his family’s historical, business, social, schooling, and sporting involvement with Whakatane District.

*Mr Tweed also read a submission from Don Guadagni. In his submission Mr Guadagni:*

- outlined the particular historical circumstances relating to his property, which is partially located in Opotiki District and partially located in Whakatane District;
- discussed his social connections with the Wainui community, and Whakatane District; and
- because the community of interest of residents of the affected area is with Whakatane District, there is no impetus for the ODC to be fair to residents of the affected area.

*Ian Swan:*

- introduced himself as a previous councillor for the Wainui area;
- discussed the history of the Wainui community, noting that, until their disestablishment, local schools had contributed significantly to community development; and
- in a geographic and social sense, Wainui remains a community, and is similar to the Nukuhou community.

*Pam Morrison:*

- discussed her social connections with the Wainui community;
- obtains goods and services from Whakatane District only;

- rubbish is collected by a Whakatane contractor, and goes to a Whakatane dump;
- residents of the affected area should be able to vote for people from their own community of interest in Whakatane District; and
- she would wish her ashes to be spread within her own community of interest in Whakatane District.

*Sandy Cunningham:*

- discussed his social connections with Wainui, and Whakatane District;
- described how Paparoa Road was once known as “Bell’s Holdings”;
- many Opotiki District residents considered him a ‘foreigner’ due to the location of his residential address in Wainui; and
- he, and other residents, gave their address as ‘Wainui, Whakatane’.

*Ted Gee:*

- the affected area is zoned for schooling in Whakatane District - this has tended to lead to residents of the affected area developing business ties with the Whakatane District;
- the Wainui area is a close community, with a range of opportunities to participate in local social groups and events - implementation of the scheme would unite the community within one district;
- is employed by the WDC as a harbour warden;
- residents of the affected area should contribute to the cost of services and facilities in Whakatane District, as these are the services and facilities that they use on a day-to-day basis;
- the WDC will provide local government services to the affected area more effectively than the ODC because all land surrounding the affected area is included in Whakatane District; and
- the BOP RC has strict rules in place for the management of Ohiwa Harbour.

*Ian Cunningham:*

- discussed his sense of belonging to, and involvement with, Wainui, and Whakatane District;
- is employed by the WDC as a harbour warden; and
- gives his address as ‘Paparoa Road, Wainui, Whakatane’.

*Dave Gee:*

- discussed his sense of belonging to, and involvement with, Wainui, and Whakatane District; and

- residents felt frustrated at not being able to vote within their own community of interest in Whakatane District.

## OPOTIKI DISTRICT COUNCIL RIGHT OF REPLY

*John Forbes (Mayor of Opotiki District):*

- all Opotiki District residents have a similar association with the Whakatane District as the residents of the affected area;
- some residents of the affected area have interests in Opotiki District;
- had been made aware that some families in the affected area had felt under duress to sign the petition seeking a boundary alteration; and
- in the past, the WDC had not consulted with Upokorehe hapū to the extent that the ODC had.

*Mathew Lawson (Counsel for the ODC):*

- reiterated that it was very common in New Zealand for residents of one district to travel to another district for the purposes of schooling, business, shopping and sporting activities. Whakatane District residents travelled to Rotorua and Tauranga in much the same way as Opotiki District residents travelled to Whakatane District;
- Telecom toll calling areas are irrelevant to district boundaries;
- Upokorehe hapū exercising kaitiakitanga responsibilities over the affected area does not depend on private ownership of the affected area;
- section 37ZQA(1)(a) requires mutual benefit to the affected districts;
- there are many opportunities to choose to participate in local government decision-making aside from the opportunity to vote in local body elections;
- the loss of 1.5% of the total ODC rate take would be significant because:
  - recent flooding damage had eroded the ODC financial base;
  - Opotiki District ratepayers would struggle to meet any additional rating burden; and,
  - it is expected that the rate take from the affected area will increase; and
- the negative effects of the scheme on Opotiki District, which has a small population and rating base, would outweigh the positive effects of the scheme on Whakatane District, which has a larger population and rating base.

## **STATUTORY CRITERIA RELATING TO THE DETERMINATION OF THE APPEALS**

- 12 The statutory criteria relating to the Commission's hearing, consideration, and determination of appeals are contained in sections 37ZQA, 37ZR, and 37ZZK of the Act.

## CONSIDERATION OF APPEALS AGAINST THE STATUTORY CRITERIA

- 13 The Commission is required to assess proposals against the criteria specified in section 37ZQA of the Act. Section 37ZQA(1)(a) requires the Commission to satisfy itself that a proposal or scheme will “promote the good local government” of the districts concerned. For this proposal, the districts affected are the Opotiki District and the Whakatane District.
- 14 With regard to the word “promote”, the Commission notes that it has various meanings, but is satisfied that in the context of the legislation, the clear intention was that the word have the meanings: to advance, help forward, enhance, or improve.
- 15 The expression “good local government” is not defined in the Act. However, the Commission has adopted a view, based on section 37K of the Act, which set out the purposes of local government, that the achievement of those purposes would be the basis of good local government.
- 16 At the hearing of appeals, different interpretations were offered to the Commission about the intended meaning of the criteria contained in section 37ZQA by Mr Mathew Lawson, counsel for the ODC, and Mr Tony Tweed, on behalf of Paparoa Road and Burke Road residents.
- 17 In clause 13 of his submission, Mr Lawson states “...section 37ZQA is clear that it is the promotion of good local government of the districts, plural, which must be advanced. It is insufficient to meet the criteria of section 37ZQA(1)(a) if only part of a district is advanced or for that matter, if the interests of only one of the districts concerned is advanced.”
- 18 Mr Tweed disputed this definition and told the Commission that in his opinion the promotion of the good local government of the districts, plural, meant an improvement in the overall local government of the combined districts, rather than an improvement in each of them.
- 19 The Commission is of the view that each proposal or scheme needs to be considered on its merits. Clearly, there must be an overall benefit to local government as an outcome of the proposal. In some circumstances, a proposal having some small detrimental consequences for one district might promote good local government if the benefits of the proposal to another district were comparatively significant. In cases where there are negative factors, or where a district will be unaffected by the implementation of a scheme, it becomes a matter of judgement by the Commission whether those factors create a situation where the criteria in section 37ZQA(1)(a) is not met.

- 20 In the context of the scheme before it, the Commission interprets the expression “promote good local government” as meaning to improve or enhance the ability of the local authorities for the Opotiki and Whakatane Districts to achieve the purposes of local government as set out in section 37K.
- 21 In considering the appeals and submissions made to it, the Commission decided that it could only determine whether the scheme promotes the good local government of Opotiki District and Whakatane District once the criteria in section 37ZQA(1)(b), and section 37ZQA(2) have been considered.

***37ZQA(b)(i) – Will each of the local authorities have the resources necessary to enable them to carry out their functions, duties, and powers?***

- 22 The Opotiki District comprises a total area of 304,654ha, of which 92,435ha is rateable area. At the 2001 census the total population of Opotiki District was 9,201, which was a decrease of 1.9% since the 1996 census. This compares with a national increase of 3.3% during the same period. Further, at the time of the 2001 census, the rate of unemployment in Opotiki District was 16.1%, compared with 7.5% nationally, and the medium income in Opotiki District was \$12,900, compared with a national average income of \$18,500. The Commission notes that, in comparison to most other districts in New Zealand, Opotiki District is a large district with a high proportion of unrateable land. The Commission also accepts that, for socio-economic reasons, Opotiki District ratepayers will have greater difficulty in meeting any additional rates burden than ratepayers of most other districts.
- 23 The affected area comprises 0.23% of the total area of Opotiki District, 0.55% of the total population of Opotiki District, and 1.54% of the total rates income of the ODC.
- 24 The Commission accepts that the reduction to the ODC’s operating costs from no longer having to service Paparoa Road and Burke Road would not offset the reduction in rates income from the affected area. The Commission further accepts that, should the scheme be implemented, the fixed costs to the ODC, which are independent of population and district size, would remain unaffected and would continue to have to be met by the remaining population of Opotiki District. In the Commission’s view, implementation of the scheme would result in a small net deficit to the resources available to the ODC.
- 25 The Commission has considered the impact of this small probable deficit within the context of the 2001 census statistics, and the district profile,

above, and is satisfied that, should the scheme be implemented, the net effect on the resources available to the ODC would not be prohibitive. Further, the Commission notes that, at the hearing of appeals, the ODC stated that, should the scheme be implemented, it would continue to have the resources necessary to enable it to carry out its functions, duties, and powers. The Commission agrees.

- 26 Whakatane District comprises an area of 444,755ha, of which approximately 423,793ha is rateable area. Statistics obtained from the 2001 census show that the total Whakatane District population is 32,814, which represents a 0.9% decrease since the 1996 census. At the time of the 2001 census the average income in Whakatane District was \$15,900. The rate of unemployment was 12.2%. The Commission notes that inclusion of the affected area in Whakatane District would have a negligible affect on the total area and rates income of Whakatane District. It is satisfied that the WDC would continue to have the resources necessary to enable it to carry out its functions, duties, and powers should the scheme be implemented.

**Subclause 37ZQA(1)(b)(ii) – Will each local authority continued in existence under the proposal have a district that is appropriate for the efficient and effective exercise of its functions, duties, and powers?**

- 27 The proposed boundary would follow the existing boundary along Wainui Road from the south until it meets the point where the Nukuhou river joins the Ohiwa Harbour. A new boundary would then see the boundary line extend directly through the Nukuhou wetland to the mouth of the Ohiwa Harbour. The Commission is of the view that this proposed boundary would be easily recognisable, and notes its consistency with the general south/north direction of the whole of the district boundary between Opotiki District and Whakatane District. The Commission considers that the proposed boundary would enable appropriate local authority service delivery in the area of the proposed boundary.
- 28 The Commission considers that the existing boundary between Opotiki District and Whakatane District – which departs from Wainui Road at a point beyond the distinct area jutting into the Ohiwa Harbour known as Paparoa, and follows a line from this point through the centre of Ohiwa Harbour until it reaches the harbour mouth - is a longstanding local government boundary, which also serves as an effective boundary. However, the Commission also notes that the inclusion of the affected area in Opotiki District requires that the district boundary follow Wainui Road sharply to the west for a distance, travel in a loop around the affected area, and return east toward the Ohiwa Harbour.

- 29 The Commission considered submissions identifying cross-boundary impacts that could result if the scheme were implemented. Primarily, these submissions focused on the inconsistency of planning provisions across the Ohiwa Harbour and surrounds should the affected area be included in Whakatane District. Particular concern was expressed about the fact that the Whakatane District Plan would allow a 2ha subdivision in the affected area, compared with a 4ha requirement under the Opotiki District Plan.
- 30 The Commission notes that, regardless of whether the scheme is adopted or not, some part of Ohiwa Harbour and surrounds will be included in Opotiki District, while some part will be included in Whakatane District. The Commission further notes that the BOP RC has jurisdictional responsibility for the harbour basin to the mean high water mark under the RMA, and that a number of protective zoning provisions have been applied to areas of the harbour and surrounds. The Commission also considers that long-standing cooperation between the WDC, the ODC, the BOP RC, tangata whenua, and the community has been, and will continue to be, a feature of the management of Ohiwa Harbour and surrounds. The Commission considers that planning provisions are subject to change through the district plan process, and notes that the public has rights under statute to participate in that process. The Commission is satisfied that any cross-boundary impacts resulting from implementation of the scheme would be similar to existing ones.
- 31 The Commission considered whether implementation of the scheme would remove any cross-boundary impacts resulting from the existing boundary. The Commission heard submissions about the confusing nature of the district boundary in respect to individual properties along the stretch of Wainui Road affected by the scheme. The Commission notes that implementation of the scheme would result in one local authority exercising maintenance responsibilities for this stretch of Wainui Road, compared with the current joint agreement arrangements. The Commission notes that implementation of the scheme would remove these minor cross-boundary impacts.
- 32 Having considered the submissions and appeals presented to it, the Commission is satisfied that, regardless of whether the scheme is adopted or not, both the WDC and the ODC will continue to have a district that is appropriate for the efficient and effective exercise of their functions, duties, and powers.

***37ZQA(b)(iii) Will the scheme ensure that each local authority contains within its district sufficiently distinct communities of interest?***

- 33 Neither the Act, nor the LGA 2002, contain any specific definition of community of interest. In paragraph 28 of his submission on behalf of the

ODC, Mr Lawson states: *“...For the purposes of any reorganisation scheme, the community of interest must be determined from a Local Government perspective. Issues of schooling, employment and business interests, and where people travel to play sport, dine out, shop, attend functions, go to the movies or pursue activities are irrelevant. While these elements may represent a particular interest of a group of people, they are not relevant communities of interest for the purposes of the LGA.”*

34 The Commission is not persuaded by restrictive or prescriptive definitions of community of interest. Rather, it is of the view that any definition must be broad in scope, and allow for the recognition of the diverse factors that contribute to the construction, and reconstruction over time, of communities of interest in New Zealand. In order to retain a necessarily broad definition, the Commission must consider communities of interest on a case-by-case basis, and from the evidence and submissions presented to it.

35 The Commission has considered other definitions of community of interest in terms of their application to local government boundaries. It considers the following definitions useful:

*“In broad terms a community of interest will be the collection of people in an area where the level of social and economic interaction and shared interest and identity are greater within the area than outside the area.”*  
*(From a report prepared for the Commission by Martin Ward in September 1988)*

*“The concept of community of interest in the context of local government applies to a group of people in a residential locality having one or more of the following three dimensions:*

1. *Perceptual. A sense of belonging to an area or locality, which can be clearly defined.*
2. *Functional. The ability to meet with reasonable economy the community’s requirements for comprehensive physical and human services.*
3. *Political. The ability of the elected body to represent the interests and reconcile the conflicts of all its members.”*

*(A discussion paper prepared in January 1991 by Helen Fulcher for the South Australian Department of Local Government)*

36 In addition, it is logical that the communities of interest the Commission is required to identify cover a contiguous geographic area.

37 The submissions presented to the Commission reflect the fact that divergent and overlapping communities of interest may exist within districts and regions. Three communities were identified in submissions as being affected by the scheme. They are:

- The community of interest of residents of the affected area;
- The community of Upokorehe hapū; and,
- The district-wide community interested in the management of Ohiwa Harbour.

*The community of interest of residents of the affected area:*

38 Paparoa Road and Burke Road are located on two distinct areas of land, which jut into the southern side of the Ohiwa Harbour basin. The affected area is therefore surrounded, at almost every angle, by water. While the affected area can be observed from many parts of the Ohiwa Harbour surrounds, the Commission considers that residents of the affected area could not be said to have an immediate community of interest, in the local government context, with other communities surrounding the harbour basin, including Ohope and Ohiwa.

39 The Commission notes that all land immediately bordering the affected area is included in the Whakatane District. The Commission further notes that the affected area is separated by the Nukuhou River from its closest neighbouring land area in the Opotiki District. The Nukuhou River runs parallel with Wainui Road for a short distance, presenting a natural barrier between the affected area and the remaining Opotiki District. While the affected area will remain on the periphery of whichever district in which it is included, the Commission notes that the travelling distance to Whakatane township is approximately 16 kilometres, while the travelling distance to Opotiki township is approximately 26 kilometres. In the Commission's opinion, the affected area is geographically distinct from the adjoining rural areas in Opotiki District, or other areas within Opotiki District around the Ohiwa Harbour.

40 Inland of Paparoa Road and Burke Road is the area of Wainui, which is predominantly located in the Whakatane District. The Commission notes that Wainui has retained a sense of community through the active involvement of Wainui residents in community groups and events. The Commission accepts that many residents of Paparoa Road and Burke Road are active contributors to, and consider themselves to be a part of, the Wainui community.

41 Residents of the affected area submitted that, on a daily, or weekly basis, they travelled to Whakatane township, and, to a lesser extent, Ohope, for the purposes of schooling, business or employment, sporting activities,

shopping, and to obtain basic goods and services. In general, residents submitted that they had little or no involvement with the remainder of the Opotiki District.

- 42 The Commission has considered other submissions and accepts that the reasonable access from Opotiki District to Whakatane township, and the fact that a greater range and extent of social and business opportunities are available there, would naturally result in many other residents of Opotiki District regularly utilising the services and opportunities available in Whakatane township. In this context it is normal in New Zealand for residents of one local authority to avail themselves regularly of employment or services inside another local authority.
- 43 However, as noted above, the Commission considers that the affected area is geographically and socially unique from other areas in Opotiki District. In the Commission's view, the fact that residents of the affected area have an almost exclusive involvement with the Whakatane District has served to strengthen residents' knowledge of, and sense of belonging to, communities of interest within the Whakatane District.
- 44 The combination of these geographic, social, functional, and perceptual considerations is sufficient to satisfy the Commission that the existing boundary splits the affected area from its recognisably distinct community of interest, which, in respect of each of the perspectives above, is located in the Whakatane District.

*The community of Upokorehe hapū:*

- 45 The Commission considered how the scheme would affect the Whakatohea aligned Upokorehe hapū, which exercises kaitiaki responsibilities over the affected area. The Commission notes that the Upokorehe hapū will continue to exercise kaitiakitanga over the affected area irrespective of whether the scheme is adopted or not. Further, the Commission notes that, at present, some of the area over which the hapū has kaitiaki responsibilities is included in Opotiki District, while some is included in Whakatane District. The effect of adopting the scheme would be to include the affected area in Whakatane District, thus requiring consultation and cooperation between the WDC and the Upokorehe hapū in matters pertaining to that area. The Commission is of the view that there are sufficient provisions in both the RMA, and the LGA 2002, to ensure that the Upokorehe hapū will continue to be consulted over the affected area whether or not the affected area is included in Whakatane District or Opotiki District.

*The district-wide community interested in the management of Ohiwa Harbour:*

- 46 The Commission considered submissions identifying the community of interest encompassing all residents of Opotiki District with an interest in the sustainable management of the Ohiwa Harbour basin. These submissions assert that adopting the scheme would effectively separate this district-wide community from the area over which it has a shared interest.
- 47 The Commission is of the view that residents of both Whakatane District and Opotiki District share a common interest in the sustainable management of the Ohiwa Harbour basin. The Commission notes that, appropriately, this community of interest is encompassed within the boundary of the Bay of Plenty Region. Cooperation between the WDC, the ODC, the BOP RC, tangata whenua, and the community has been, and will continue to be, a feature of the management of Ohiwa Harbour basin regardless of whether the scheme is adopted or not. The Commission is of the view that adopting the proposal would have a negligible effect on the community interested in the sustainable management of the Ohiwa Harbour basin.
- 48 The Commission is satisfied that implementation of the scheme would result in both the Opotiki District and the Whakatane District containing sufficiently distinct communities of interest. It considers that the affected area has commonalities of interest with Whakatane District that outweigh the linkages of the affected area with the remainder of the Opotiki District. Implementation of the scheme would include the affected area with its sufficiently distinct community of interest in Whakatane District. Further, the Commission is satisfied that implementation of the scheme would have a negligible affect on the existing communities of the Upokorehe hapū, and the community interested in the Ohiwa Harbour.

**Subclause 37ZQA(1)(b)(iv) - *Will each local authority continued in existence under the proposal be able to meet the requirements of section 223c of the Act?***

- 49 Section 223C of the Act sets out issues relating to local authority conduct of affairs. The Commission is satisfied that ODC and WDC would be able to maintain governing and administrative structures that comply with the requirements of this section should the scheme be implemented.

**Subclause (2)(a) and (b) – *What will be the impact of the proposal on the area of impact of the responsibilities, duties, and powers of the local authorities concerned; and the area of benefit of services provided?***

- 50 As mentioned above, the Commission is satisfied that the proposed boundary will not create any cross-boundary issues for the ODC or the WDC in addition to those currently addressed at the present boundary. Instead, in the Commission's view, the proposed boundary will remove some minor cross-boundary impacts resulting from the existing boundary.
- 51 In considering the efficient and effective delivery of local government services to the affected area, the Commission notes that all the land area immediately surrounding the affected area is included in the Whakatane District. As the Commission has previously noted, access to the affected area from Opotiki District requires travelling along a stretch of Wainui Road that is separated from the remaining Opotiki District by the Nukuhou River. Further, as previously mentioned, the Commission considers that the affected area shares commonalities of interest with Whakatane District that outweigh the linkages of the affected area with the remainder of Opotiki District. As a consequence of these factors – proximity, ease of access, and shared community – the Commission is of the opinion that service delivery to the affected area would be more efficiently and effectively provided by the WDC in the event of the scheme being implemented.

**37ZQA(2)(c) – *Likely effects on any local authority of the exclusion of any area from its district.***

- 52 If the proposal proceeded, information provided by the ODC indicates that the Opotiki District would lose 0.55% of its total population, 0.23% of its total land area, 1.63% of its capital value, and 1.54% of its total rate income.
- 53 While a reduction in council operating costs would be derived through no longer having to service the affected area, the Commission accepts that the fixed costs to the ODC would not offset the reduction in rates income from the affected area. Implementation of the scheme would result in a small net decrease in the resources available to the ODC.
- 54 The Commission has considered the impact of this small deficit in the context of the 2001 census statistics, which show that the average income, and rate of employment, in Opotiki District is below the national average. In the Commission's view, the net affect of the small loss to the resources available to the ODC resulting from implementation of the scheme would not be prohibitive.

***Subsection (1)(a) - Will the proposal promote the good local government of the districts concerned?***

55 This is the principal criterion that the Commission must satisfy itself would be complied with if a proposal were given effect to. As discussed above, the Commission decided to consider the scheme in relation to the purposes of local government specified in section 37K of the Act in order to determine whether the proposal would promote good local government of the Opotiki District and the Whakatane District. Section 37K provides that:

*The purposes of local government in New Zealand are to provide, at the appropriate levels of local government:*

- (a) recognition of the existence of different communities in New Zealand;*
- (b) recognition of the identities and values of those communities;*
- (c) definition and enforcement of appropriate rights within those communities;*
- (d) scope for communities to make choices between different kinds of local public facilities and services;*
- (e) for the operation of trading undertakings of local authorities on a competitively neutral basis;*
- (f) for the delivery of appropriate facilities and services on behalf of central government;*
- (g) recognition of communities of interest:*
- (h) for the efficient and effective exercise of the functions, duties, and powers of the components of local government; and,*
- (i) for the effective participation of local persons in local government.*

56 In giving consideration to the matters outlined in section 37K, the Commission first considered the impact of the proposal on the communities of interest identified to it in submissions.

57 As discussed above, the Commission considers that the affected area has a recognisably distinct community of interest with Whakatane District that outweighs the commonalities of interest that it has with the remainder of the Opotiki District. Implementation of the scheme would include the affected area, with the remainder of the Wainui area, in Whakatane District. The Commission considers that the scheme would have a negligible affect on the community of interest of the Upokorehe hapū, and the district-wide community interested in Ohiwa Harbour.

- 58 In assessing its community of interest findings against the provisions of section 37K, the Commission is satisfied that the scheme appropriately recognises:
- the existence of different communities; and,
  - the identities of the different communities
- 59 The Commission then considered whether the scheme would promote good local government in respect to the efficient and effective exercise of the functions, duties, and powers of the ODC and the WDC.
- 60 The Commission is of the view that the proposed boundary will not create any cross-boundary issues for the ODC or the WDC in addition to those currently addressed at the present boundary. However, it does consider that implementation of the scheme would remove some minor cross-boundary impacts resulting from the existing boundary. In addition, as previously mentioned, the Commission considers that, as a consequence of proximity, ease of access, and shared community, local government services would be more efficiently and effectively provided to the affected area by the WDC.
- 61 The whole of the district boundary between Opotiki District and Whakatane District runs in a generally south to north direction. Inclusion of the affected area in the Opotiki District requires that the district boundary follow Wainui Road sharply to the west, then back east through the center of Ohiwa Harbour to the Harbour mouth. In the Commission's opinion, the proposed boundary – which continues the generally south to north direction of the whole boundary between Opotiki District and Whakatane District, from the Nukuhou river to the mouth of the Ohiwa Harbour – is more easily discernible than the existing boundary.
- 62 It is the Commission's view that implementation of the scheme will result in a slight net decrease to the resources available to the ODC. While this is a negative impact, the Commission is satisfied that, should the scheme be implemented, the ODC will continue to have the resources necessary to enable it to carry out its functions, duties, and powers.
- 63 As previously discussed, in cases where there are negative factors resulting from the implementation of a reorganisation scheme, it becomes a matter of judgement by the Commission whether those factors create a situation where the criteria in section 37ZQA(1)(a) are not met. In the case of the draft Paparoa Reorganisation Scheme, the Commission is of the opinion that the advantages of the scheme to the promotion of good local government in both the Opotiki District and the Whakatane District outweigh any negative or negligible impacts resulting from the scheme.

## SECTION 37ZR

64 Section 37ZR specifies matters to be taken into account in determining boundaries under any reorganisation scheme.

***The boundaries of regions conform, where practicable, with catchment boundaries.***

65 This proposal would not affect the existing regional boundaries.

***The boundaries of territorial districts conform, where practicable, with the boundaries of regions.***

66 This proposal does not alter territorial district boundaries in a way that would make them inconsistent with regional boundaries.

***The boundaries of regions and the boundaries of territorial authority districts conform with the boundaries of statistical meshblock areas determined by Statistics New Zealand and used for Parliamentary electoral purposes.***

67 The affected area comprises meshblock 1338101 and meshblock 1338102. The proposal would not require a change to the existing meshblocks.

## **COMMISSION'S DETERMINATION**

- 68 Having considered the scheme and the appeals and submissions made to it and having tested them against the criteria specified in the Act, the Commission:
- (a) considers that implementation of the draft Local Government (Paparoa) Reorganisation Scheme 2003 would promote the good local government of the Opotiki District and the Whakatane District;
  - (b) upholds the appeals of Mr John Renouf and 38 others, and the Whakatane District Council;
  - (c) discharges the decision of the Opotiki District Council (as principal local authority) to not proceed with the draft Paparoa Reorganisation Scheme 2003; and,
  - (d) determines that the draft Paparoa Reorganisation Scheme 2003 shall become a Reorganisation Scheme.
- 69 The Commission will, therefore, refer the Paparoa Reorganisation Scheme 2003 to the Minister of Local Government for the preparation of an Order in Council to give effect to the Reorganisation Scheme, in accordance with section 37ZZMA of the Local Government Act 1974.

## **THE LOCAL GOVERNMENT COMMISSION**

Grant Kirby (Chairman)

Kerry Marshall (Commissioner)

2 December 2004