



LOCAL GOVERNMENT COMMISSION

Decision on proposal to transfer meshblock 0135500 from Rodney District to Kaipara District

TABLE OF CONTENTS

	Page
INTRODUCTION	3
BACKGROUND	3
THE HEARING	5
SUMMARY OF MATTERS RAISED IN SUBMISSIONS AND AT HEARING	5
STATUTORY CRITERIA	7
CONSIDERATION OF THE PROPOSAL UNDER THE STATUTORY CRITERIA	9
Clause 3 of Schedule 3 of the Act	9
Clause 4 of Schedule 3 of the Act	15
COMMISSION'S DETERMINATION	16

INTRODUCTION

- 1 This determination relates to a reorganisation proposal, initiated by Mr Michael Brassem and Mrs Noeline Calder of Rodney District. The proposal, if given effect to, would alter the boundary between the Rodney and Kaipara Districts by transferring meshblock 0135500 from the Rodney District to the Kaipara District. The proposal was referred to the Commission for determination due to the inability of a joint committee to reach a decision. The joint committee was established by the Rodney and Kaipara District Councils under clause 11 of Schedule 3 of the Local Government Act 2002 (“the Act”), and comprised two elected members from each of the Councils.

BACKGROUND

- 2 In August 2003 the Kaipara and Rodney District Councils received a reorganisation proposal (“the proposal”) initiated pursuant to clause 9 of Schedule 3 of the Act from Michael Alfred Brassem and Noeline Patricia Calder, both of 6 Cames Road, RD5, Wellsford. The proposal requested that meshblock 0135500 be transferred from Rodney District to Kaipara District.
- 3 The proposal met the requirements of clause 1(c) of Schedule 3 of the Act in that it contained the signatures of at least 10% of the electors of the area subject to the proposed reorganisation. The proposal also satisfied the statutory requirements of clause 2 of Schedule 3 of the Act.
- 4 After consultation between the Rodney and Kaipara District Councils, being the affected territorial authorities in this case, the Councils agreed that the reorganisation proposal should be dealt with by a joint committee established under clause 11 of Schedule 3 of the Act, consisting of two members of the Kaipara District Council (“KDC”) and two members of the Rodney District Council (“RDC”).

- 5 The proposal was publicly notified in December 2003. Three submissions were received in opposition to the proposal, from:
- M and S Bennett
 - Auckland Regional Council
 - Rodney District Council
- 6 The joint committee convened a meeting on 20 April 2004 for the purpose of meeting with, and hearing from, the submitters.
- 7 The joint committee was unable to reach a decision in accordance with clause 18(1) of Schedule 3 of the Act. The proposal was therefore referred to the Commission for a decision in accordance with clause 11(7) of Schedule 3 of the Act.
- 8 Clause 8 of Schedule 3 of the Act provides that, where a proposal is referred to the Commission, the Commission:
- (a) is not required to call for new submissions; but
 - (b) is required to:
 - (i) consider the submissions received by the joint committee of the affected local authorities; and
 - (ii) provide an opportunity to the persons who made those submissions to be heard by the Commission.
- 9 Clause 17 also enables the Commission to hear from all or any of the affected local authorities.
- 10 The Chief Executive Officer of the Commission arranged for the hearing of submissions on 24 August 2004 in Orewa.

HEARING

11 The Local Government Commission, comprising Linda Constable and Kerry Marshall, heard the submissions. The hearing commenced with Mr Michael Brasseem presenting his submission on behalf of the proposers. Simon Bennett then presented his submission in opposition to the boundary alteration proposal. Councillor Brian Smith and Hugh Jarvis spoke for Auckland Regional Council. Peter Vari, Malcolm Black, and Paul Garbett represented the RDC. Deputy Mayor Peter King, Councillor Noel Radds, and Claire McInnes represented the KDC. Mr Brasseem then exercised his right of reply.

SUMMARY OF MATTERS RAISED IN SUBMISSIONS AND AT HEARING

12 The information presented to the Commission in written submissions and at the hearing may be summarised as follows:

Michael Brasseem

- Presented a history of Cames Road in terms of housing development, traffic volume, and road usage since 1989, and identified key features of the area with reference to a map.
- Identified safety concerns about Cames Road and suggested that there is confusion about responsibility for the maintenance of Cames Road.
- Considered that KDC should have responsibility for all of Cames Road because:
 - (a) The majority of Cames Road residents are Kaipara District ratepayers;
 - (b) Additional housing development is planned in the Kaipara District, which will affect the use of Cames Road; and,

- (c) Developer contributions for road maintenance levied by KDC could be applied to all of Cames Road if the affected area were transferred to the Kaipara District.
- Considered that the affected area has a community of interest with Mangawai, in Kaipara District.
- Submitted that all of meshblock 0135500 falls within the catchment area located in Kaipara District.
- Tabled a GIS map of affected area.
- Tabled a 1996 joint agreement between RDC and KDC for the maintenance of Cames Road and other cross-boundary roads.

Simon Bennett

- Supported the proposers in regard to confusion about the management of Cames Road.
- Opposed the boundary alteration proposal because of a preference for existing RDC policies on subdivisions and retention of rural aspect.

Auckland Regional Council

- Discussed catchment management in the affected area. It identified areas adjoining the affected area where district boundaries do not conform with catchment boundaries.
- Considered that the cost to four affected councils of altering the boundary would exceed any benefit.
- Considered that community of interest associations in the affected area fluctuate between Rodney District and Kaipara District.
- Considered that, should the proposal proceed, it would result in Cames Road becoming the boundary, and would continue to require cooperation between RDC and KDC for the maintenance of Cames Road.

Rodney District Council

- Identified adjoining meshblocks with small populations, observing that adopting the proposal would create a precedent for similar proposals motivated by the more liberal subdivision policies in Kaipara District.
- Outlined the existing agreement between RDC and KDC for responsibility for, and maintenance standard applied to, Cames Road and other cross-boundary roads.

Kaipara District Council

- Considered that developer contributions levied by KDC could be applied to all of Cames Road if KDC had responsibility for the entire road.
- Identified covenants on land in the affected area and considered that the affected area is not amenable to further subdivision.

STATUTORY CRITERIA

- 13 The statutory provisions relating to the Commission's hearing, consideration, and determination of this boundary alteration proposal are contained in clauses 3 to 7 of Schedule 3, clauses 11 to 18 of Schedule 3, and Part 2 of the Act.
- 14 Clauses 3 to 7 of Schedule 3 of the Act detail the criteria to be applied by the Commission when considering a reorganisation scheme. The clauses relevant to this proposal are clauses 3 and 4, which state:

3 Promotion of good local government

- (1) *When considering a reorganisation proposal or scheme, the...Commission must satisfy itself that the proposal or scheme will -*
- (a) promote good local government of the districts or regions concerned; and*
 - (b) ensure that each local authority provided for under the proposal will-*
 - (i) have the resources necessary to enable it to carry out its responsibilities, duties, and powers; and*
 - (ii) have a district or region that is appropriate for the efficient and effective performance of its role as specified in section 11; and*
 - (iii) contain within its district or region a sufficiently distinct community of interest or sufficiently distinct communities of interests; and*
 - (iv) be able to meet the requirements of section 76.*
- (2) *When considering the matters specified in subclause (1) in relation to any reorganisation proposal or scheme, the...Commission must have regard to -*
- (a) the area of impact of the responsibilities, duties, and powers of the local authorities concerned; and*
 - (b) the area of benefit of services provided; and*
 - (c) the likely effects on a local authority of the exclusion of any area from its district or region; and*
 - (d) any other matters that it considers appropriate.*

15 Clause 4 details matters relating to boundary determinations under a reorganisation scheme. It states:

4 Appropriate boundaries

In determining boundaries under any reorganisation proposal or scheme, the Commission must ensure that,-

- (a) if practicable, the boundaries of regions conform with catchment boundaries; and*
- (b) if practicable, the boundaries of districts conform with the boundaries of regions; and*
- (c) the boundaries of regions and the boundaries of districts conform with the boundaries of statistical meshblock areas determined by Statistics New Zealand and used for parliamentary electoral purposes.*

- 16 The Commission is of the view that, when considering what constitutes good local government, the purposes of local government, and the principles relating to local authorities, as set out in sections 10 and 14 of the Act, should be taken into account when reaching a decision on this matter.

CONSIDERATION OF THE PROPOSAL UNDER THE STATUTORY CRITERIA

- 17 The Commission considered the proposal against the criteria prescribed in clause 3 of Schedule 3 of the Act, relating to the promotion of good local government, as follows:

Subclause 1(a) - Will the proposal promote good local government of the districts or regions concerned?

- 18 Clause 3(1)(a) of Schedule 3 of the Act requires the Commission to satisfy itself that the proposal will “promote good local government of the districts or regions concerned”. For this proposal, the districts affected are the Rodney District and the Kaipara District. If the proposal were to be adopted it would also change the boundary between Northland Region

and Auckland Region, in accordance with clause 1(3), Part 3 of Schedule 2 of the Act.

- 19 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.
- 20 After considering the information presented to it, the Commission formed the view that concern for the safety of, and perceived confusion about the maintenance responsibilities for, Cames Road were the primary reasons precipitating the initiation of this reorganisation proposal.
- 21 Cames Road, as well as several other roads in the area of the shared boundary between Rodney District and Kaipara District, is currently maintained by joint agreement between these two local authorities.
- 22 While improvements to road safety have been made since the joint committee hearing, in the form of a reduced speed limit, and the placement of reflector markers at danger spots, the Commission is concerned that the last formal agreement for the maintenance of Cames Road between the RDC and the KDC appears to have been made in 1996, and that significant change has occurred along the road since that date in terms of subdivision, resident numbers, and road usage.
- 23 The Commission notes that Cames Road is formally maintained to a standard applied to roads that experience less than 100 vehicle movements per day. Given the number of residential dwellings currently located on Cames Road it is likely that daily vehicle movements exceed this figure.

- 24 The Commission notes that the existing agreement between RDC and KDC provides for *all* of Cames Road to be maintained to the same standard. Responsibility for enforcing this standard currently rests with RDC.
- 25 The Commission also notes that altering the boundary in accordance with the proposal would result in Cames Road itself becoming the boundary. Therefore, the need for cooperation between RDC and KDC for the maintenance of Cames Road would continue irrespective of whether the proposal was adopted or not.
- 26 The Commission considers that little evidence was presented to it to suggest that adopting the boundary alteration proposal would necessarily result in improved maintenance of Cames Road.
- 27 The Commission notes that both RDC and KDC acknowledged maintenance issues associated with Cames Road in their submissions to the Commission. Importantly, at the hearing, representatives of both Councils expressed a willingness to resolve these outstanding issues.
- 28 At the hearing of this proposal the Commission was provided with a series of examples of cooperative agreements between RDC and KDC for the maintenance of cross-boundary roads.
- 29 Section 14 of the Act outlines a series of principles that local authorities must act in accordance with. In particular, the Commission notes that section 14(1)(e) provides that “a local authority should collaborate and co-operate with other local authorities and bodies as it considers appropriate to promote or achieve its priorities and desired outcomes, and make efficient use of resources”. Given the circumstances described to it, the Commission is of the view that this principle should be applied when

considering a resolution to the acknowledged maintenance issues on Cames Road.

30 Indeed, the Commission considers that the most effective and efficient means to resolve confusion over the maintenance responsibilities for Cames Road is for the two Councils involved to re-visit the joint agreement specifying maintenance responsibilities for Cames Road. In addition, the Commission suggests that it would be timely for the Councils to re-assess traffic volume along Cames Road with a view to ascertaining the appropriate maintenance standard to be applied to the road. The Commission also suggests that the affected Councils should consider whether developer contributions paid to Kaipara District Council cannot be included within a joint agreement between KDC and RDC for the maintenance of *all* of Cames Road.

31 The Commission is of the view that adopting the proposal would not promote good local government of the districts concerned.

Subclause 1(b)(i) - Will each local authority provided for under the proposal have the resources necessary to enable it to carry out its responsibilities, duties, and powers?

32 The Commission is of the view that implementation of the proposal would have a negligible impact on the resources available to the local authorities concerned to enable them to carry out their responsibilities, duties, and powers.

Subclause 1(b)(ii) - Will each local authority provided for under the proposal have a district that is appropriate for the efficient and effective performance of its role as specified in section 11?

- 33 The Commission is of the view that the transfer of meshblock 0135500 from Rodney District would have a minor effect on both Rodney District and Kaipara District.
- 34 However, the Commission notes that at least six neighbouring meshblocks in the Rodney District surrounding meshblock 0135500 also border Kaipara District, and that each meshblock contains between 60 and 100 residents.
- 35 The Commission is concerned at the potential for future similar proposals motivated by the perception of more liberal subdivision policies in Kaipara District. The Commission is of the view that boundary alteration proposals should not be seen as a means to circumvent planning provisions. Planning provisions are subject to change through the District Plan process and the public has rights under statute to participate in that process.
- 36 Having reviewed the nature and geography of the affected area, the Commission is also of the view that residents of meshblocks bordering the district boundary will continue to use resources on both sides of the boundary as a part of everyday living, regardless of whether the current, or similar boundary alteration proposals are adopted.

Subclause 1(b)(iii) - Will each local authority provided for under the proposal contain within its district a sufficiently distinct community of interest or sufficiently distinct communities of interests?

37 While the proposal was initiated by two of the seven electors on Cames Road living in the Rodney District, the Commission also heard a submission in opposition to the boundary alteration from Megan and Simon Bennett, both residents of the area proposed to be transferred. Mr Bennett told the Commission that, while he concurred with the views of the proposer regarding the safety and maintenance of Cames Road, he believed these issues would be better resolved by joint agreement between RDC and KDC. The Bennetts opposed the boundary alteration because they prefer the existing subdivision and rural retention policies of Rodney District.

38 Having viewed maps of the area surrounding meshblock 0135500, the Commission considers that, regardless of whether the boundary alteration proposal were adopted, residents of the affected area would continue to utilise services within both Rodney District and Kaipara District.

39 The Commission is of the view that the affected area does not have commonalities of interest with Kaipara District that outweigh the linkages of the affected area with the rest of Rodney District.

Will each local authority provided for under the proposal be able to meet the requirements of section 76?

40 Section 76 relates to decision-making and consultation by local authorities. The Commission is of the view that the proposal would have no impact on the ability of RDC or KDC to maintain processes that would comply with the requirements of this section.

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?*

41 The Commission is of the view that the proposed boundary alteration would give rise to a similar set of cross-boundary issues, although potentially greater in scale, when compared with the existing boundary. Implementation of the proposal would establish the centre line of Cames Road as the boundary, requiring a new joint agreement between the councils for its maintenance.

Subclause (2)(c) – *What will be the likely effects on a local authority of the exclusion of any area from its district or region?*

42 Considered in isolation, the exclusion of the affected area from Rodney District, and its inclusion in Kaipara District, would have a negligible effect on either district.

Appropriate boundaries

The Commission also considered the proposal against the requirements of clause 4 of Schedule 3 of the Act regarding appropriate local government boundaries.

43 The Commission notes that all of meshblock 0135500 falls within the catchment area located predominantly in Kaipara District. Given the regional and district boundaries in this area are coterminous, it notes that the current regional boundary, which would also be altered if the proposal were implemented, is not a catchment boundary.

- 44 However, the Commission also notes that the affected meshblock area is relatively small in scale, comprising a modest fraction of the total catchment. The area is also covered in bush, and is protected to a degree by the District Plan. The area is not a catchment subject to flooding. The Commission is satisfied with the Auckland Regional Council's assessment that, from a stormwater catchment management perspective, it is of little consequence whether the meshblock is located within the Rodney District or the Kaipara District. The Commission considers that a boundary alteration in these circumstances would serve little purpose.
- 45 The Commission is of the view that there is little reason to distinguish the affected area from adjoining areas where district boundaries do not conform with catchment boundaries. Should evidence arise of the need to review district and catchment boundaries in the area, this would be more effectively achieved on a comprehensive basis. However, no evidence was presented to the Commission to suggest that a comprehensive examination of the relationship between catchments, regional, and district boundaries in this area is warranted at this time.

COMMISSION'S DETERMINATION

46 Having considered the submissions made to it and having assessed the proposal against the criteria in the Act, the Commission is not satisfied that implementation of the proposal would promote the good local government of the Rodney District, or the Kaipara District. The Commission therefore determines that the proposal should not proceed.

LOCAL GOVERNMENT COMMISSION

Kerry Marshall (Commissioner)

Linda Constable (Commissioner)

11 October 2004