



**LOCAL GOVERNMENT COMMISSION**  
***MANA KĀWANATANGA Ā ROHE***

**Decision on proposal to transfer part of Clutha District  
(Mahinerangi area) to Dunedin City**

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## INTRODUCTION

1. This decision relates to a reorganisation proposal (“the proposal”), initiated by 14 electors of the Clutha District, for the transfer of the Deep Stream, Lee Stream and Waipori catchment areas (the area surrounding Lake Mahinerangi), from Clutha District to Dunedin City. The proposal includes part or all of meshblocks 3007401, 3007402, 3008201, 3008202, 3008300, 3008400 and 2987501 (it does not correspond with all meshblock boundaries). The decision also considers modifications to the proposal suggested by submitters (see paragraphs 9 to 12).

## BACKGROUND

2. On 11 October 2007, Clutha District Council received a petition for a boundary change under section 1(1)(c) of Schedule 3 of the Local Government Act 2002 (the Act). The petition was from 14 Clutha District electors, and sought the transfer of the Deep Stream, Lee Stream and Waipori catchment areas (the area surrounding Lake Mahinerangi) to Dunedin City. The affected meshblocks have a total population of 134 people (noting that 123 live in the specific area identified).
3. The petition provided the following reasons why the area should be included in Dunedin City:
  - Virtually all services (doctors, dentists, veterinarians, farm supplies and services, electricians, plumbers, mechanical and engineering etc.) are Outram/Mosgiel/Dunedin based (within Dunedin City territory)
  - Children go to school at Lee Stream (Dunedin City)
  - Children go to Playcentre at Lee Stream Hall (Dunedin City)
  - Secondary schooling is generally either Mosgiel or Dunedin
  - Mosgiel and Dunedin are the local shopping areas
  - Mail delivery comes from Outram
  - Virtually all telephones are in Dunedin free calling area
  - Water all goes into the Taieri river system
  - Library used by residents is Mosgiel/Dunedin and there is a charge for users outside Dunedin City
  - Free newspapers are delivered from Mosgiel (Taieri Herald) and Dunedin (Star Midweek) and delivery of the Clutha Leader was refused to this area.
4. The proposal is valid in terms of clause 1(1)(c) of Schedule 3 of the Act as it was signed by at least 10% of the electors of the area subject to the proposed reorganisation.
5. The proposal was referred by the Clutha District Council and the Dunedin City Council to the Local Government Commission (LGC) in

November 2007 for consideration and a decision in accordance with clause 10(2) of Schedule 3 of the Act. This clause requires the proposal to be considered under Subpart 4 (excluding clauses 40 and 49 to 58) of Schedule 3.

6. The Commission subsequently appointed a formal representative of the electors, James Reid, as required under clause 36 of Schedule 3 of the Act. A consultation process was undertaken in accordance with clause 37. The Commission sought the views of affected groups, Māori organisations identified by Te Puni Kōkiri as having interests in the area, and affected and neighbouring local authorities. Forty one public submissions were received (including one late submission). Of these, 13 expressed a desire to be heard by the Commission.
7. Following the close of submissions on 29 May 2008, a copy of all submissions was provided to the representative of the electors for the proposal, as required under section 38 of Schedule 3 of the Act.

## **THE HEARING**

8. The Commission held a hearing of submitters (which included the affected local authorities) on 3 September 2008, at the Clutha District Council Chambers in Balclutha. The Commission heard submitters in the following order: Robert Reid, for the proposers; Mayor Juno Hayes and Charles Hakkaart on behalf of Clutha District Council; Councillor Andrew Noone and Athol Stephens on behalf of Dunedin City Council; Bruce Hill on behalf of the Department of Conservation; Peter Doherty; Peter Hall; Steve Chandler on behalf of Matariki Forests Limited; Richard Reeve; Jason Welsh on behalf of TrustPower Limited; Annemarie Jutel on behalf of the Waipori Falls Body Corporate; Geoff Davidson and Geoff Blackmore on behalf of the Lawrence-Tuapeka Community Board; and John Labes, on behalf of the Tuapeka Lawrence Community Company.

## **PRELIMINARY COMMENTS ON THE PROPOSAL AND SUBMISSIONS**

### *Proposed modifications to the initial proposal*

9. Clause 39 of Schedule 3 of the Act enables the Commission, following its consultations and enquiries under clause 37 of Schedule 3, to either:
  - (a) *prepare a draft reorganisation scheme based on the proposal, or on some modification or variation of the proposal resulting from the consideration of submissions, consultations, or inquiries; or*
  - (b) *decide not to proceed with the proposal.*
10. Several modifications or variations of the proposal were presented to the Commission in submissions and at the hearing, as follows:
  - (a) Clutha District Council (CDC), although favouring the status quo, suggested that if necessary the proposal could be modified to follow

the boundaries of the identified meshblocks, with the exception of meshblock 3007401, which would be split. The justification was that the original proposal does not follow meshblock boundaries, as required by statute (see below) and includes the Beaumont area, not considered to have any community of interest relating to Dunedin City.

- (b) Dunedin City Council (DCC) proposed an alternative boundary line which first followed the Waipori River, then followed the ridge line using trig points and then rejoined the meshblock boundary at Shaw Road. The rationale for this proposal was that it would include only those residents to the north of the Waipori River (considered to have a closer affinity with Dunedin City service centres such as Mosgiel) and that it would alleviate roading and rural fire management issues which would result from the original proposal being implemented.
  - (c) Wenita Forest Products suggested “moving the boundary to encompass the northeast corner of the current Clutha District boundary (north of Lake Mahinerangi) and exclude any change to land owned by Wenita.”
  - (d) The proposer suggested another alternative at the hearing, and proposed Lake Mahinerangi be the boundary.
11. We note in relation to the latter two proposals, that the precise identification of each area would require further technical investigation if the Commission was to proceed with a draft reorganisation scheme based on either modification.
  12. We note the Act does not provide any guidance as to the scope of modifications or variations that could be included in any draft reorganisation scheme issued. Clearly, however, it does require the Commission to consider all submissions and information resulting from its inquiries before making a decision on the proposal. The Commission considers that submissions suggesting modifications to a proposal would need to be compelling in order for it to issue a draft reorganisation scheme based on such modifications.

*Issues raised in submissions that are not relevant to the Commission's consideration of the proposal*

13. Several submissions raised the issue of the CDC, together with the Otago Regional Council, having granted resource consent for a windfarm to be constructed at Mahinerangi. Other submissions suggested this was a motivating factor behind the proposal. It should be noted that issues relating to the performance of the CDC, or decisions made by it, are not directly relevant to the criteria for considering reorganisation schemes. In general terms, the criteria for considering local government reorganisation relate to the structure of the affected local authority's

boundaries, and the effect of these boundaries on the ability of each affected local authority to provide good local government.

14. We are of the view that boundary alteration proposals can not be seen as a means of replacing the planning requirements of one council with those of another council. Planning provisions are subject to change through the district plan process and the public has rights under the Resource Management Act 1991 (the RMA) to participate in that process. The proposal would also make no difference to the planning regime for the windfarm, noting that DCC has stated it would not support processes to date being negated or relitigated. Our view is that CDC's decision to grant resource consent to the Mahinerangi windfarm project is an extraneous issue.
15. It was also argued in submissions and at the hearing that the area should be transferred to Dunedin City because it forms part of the wider Taieri catchment and the proposed boundary would therefore be a more natural one. We agree that in some situations, catchment areas provide dominant topographical features that will contribute to factors distinguishing communities of interest from one another. However aligning territorial authority boundaries with catchment areas is not required under the criteria for considering local government boundary alterations.
16. Responsibility for water bodies under the RMA rests with the Otago Regional Council, and regional boundaries are not affected by the proposal. Regional boundaries are required to conform with catchment boundaries (reflecting the division of local government responsibilities between regional councils and territorial authorities). The Taieri catchment area would remain within the Otago Region regardless of whether or not the Mahinerangi area was added to Dunedin City.

## **STATUTORY CRITERIA**

17. Subpart 4 (excluding clauses 40 and 49 to 58) of Schedule 3 of the Act sets out the procedures the Commission is required to follow when considering a reorganisation proposal referred to it by local authorities under clause 10(2) of Schedule 3.
18. Clauses 3 to 7 of Schedule 3 detail the criteria to be applied by the Commission when considering a reorganisation proposal. The clauses relevant to this proposal are clauses 3 and 4. Clause 3 provides as follows:

### **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.*

19. Clause 4 of Schedule 3 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.*

## CONSIDERATION OF THE PROPOSAL UNDER THE STATUTORY CRITERIA

### ***Clause 3(1)(a) - Will the proposal promote good local government of the districts or regions concerned?***

20. The Commission is required to assess proposals against the criteria specified in clauses 3 and 4 of Schedule 3 of the Act. Clause 3(1)(a) requires the Commission to satisfy itself that a proposal will promote the good local government of the Clutha District and Dunedin City.
21. With regard to the word “promote”, the Commission believes that in the context of the legislation the clear intention is that the word should have the meanings “to advance, help forward, enhance, or improve”.
22. The expression “good local government” is not defined in the Act. However, the Commission has adopted the view that the achievement of the purposes of local government, and principles relating to local authorities, contained in sections 10 and 14 of the Act, are the basis of good local government. It is therefore required to determine whether the proposal will enhance the ability of the local authorities for Clutha District and Dunedin City to achieve these purposes and principles.
23. Section 10 of the Act states that the broad purpose of local government in New Zealand is to:
  - (a) *enable democratic local decision-making and action by, and on behalf of, communities, and*
  - (b) *promote the social, environmental, economic, and cultural well-being of present and future communities.*
24. Considering the purpose of local government contained in section 10 of the Act, and the principles relating to local authorities contained in section 14 of the Act, the Commission found it first necessary to determine whether the proposal would enhance the division of recognisable communities of interest between local authority areas. The term “community of interest” is not defined in the local government legislation. The Commission believes that any definition must be broad in scope, to allow for the recognition of the diverse factors that contribute to the formation of communities of interest in New Zealand, which may change over time. In order to retain a broad definition, the Commission has to consider communities of interest on a case-by-case basis.
25. The Mahinerangi area is located in the northeast corner of Clutha District. It has a land area of over 55,000 hectares (or 9% of the district’s land area), but is sparsely populated, with 123 living in the precise area

identified (less than 1% of the district's population). It is strongly rural in nature, with a predominance of farming and forestry. It contains significant scenic reserves and areas of public conservation land, such as the Glendhu Tussock Reserve, Waipori Falls and parts of Te Papanui Conservation Park. It includes the Lake Mahinerangi Fishing Village settlement and the Waipori Falls Village. The area has long had power generation interests, with the Waipori River hydro electric power scheme (HEPS) having been in existence for approximately 100 years. In addition to the Waipori HEPS, the area contains infrastructure associated with the Deep Stream HEPS, and the proposed Mahinerangi wind farm.

26. Communities of interest within the area include farming families and their workers, and the Mahinerangi Fishing Village and Waipori Falls residents (many of whom are semi-permanent residents owning holiday homes). Other non-residents who have significant interests within the area include forestry owners, corporate landowners and TrustPower, who own the electricity generation assets within the area.
27. As with many other rural or semi-rural areas in New Zealand, the lack of facilities in the Mahinerangi area requires residents to travel to obtain basic goods and services. Mahinerangi residents in support of the proposal submitted that their primary communities of interest are located in Dunedin City territory because almost all of the services and facilities they use, including employment, educational, recreational and cultural facilities are located there.
28. The Commission believes many other residents of Clutha District, not just those of the affected area, would take advantage of their proximity to Dunedin City to use the services, facilities and opportunities there on a regular basis. It is common in New Zealand for residents of one territorial authority area to take advantage of employment, opportunities, services and facilities located in another district. We endorse the Mayor of Clutha District's view that "a territorial authority does not create a border that requires or expects residents to obtain all their services from within the district or city in which they reside. There is not a requirement to obtain a visa to cross a line on a map". We also note the degree of individual choice involved. A number of submitters pointed out that similar services are available within Clutha District, which residents can and do make use of.
29. We believe that residents will continue to use resources on both sides of the boundary as part of their everyday lives and doubt whether altering the boundary would change the pattern of people's lives. Nor do we find the interests of the proposers to be distinctive enough from those of other rural dwellers elsewhere in Clutha District. Several submitters pointed out that while there are links outside the district, there are similar links within Clutha District, to towns such as Lawrence and Milton, in terms of services available, the business of the area, and recreational and sporting links. Not all residents of the area have towns within Dunedin City territory as their closest service centre. While those living

on the Mosgiel side of the Waipori river have Mosgiel as their closest service centre, other residents are closer to Lawrence.

30. The other significant concern of the proposers related to a perceived lack of good governance by the CDC (in relation to council communications, representation and the level of services provided). It was argued that the Council is increasingly inaccessible (Mahinerangi residents being outside the toll free area) and is not communicating adequately with residents about council or community board activities, or elections. This was refuted by the CDC, who advised that council and community board schedules, including the Lawrence-Tuapeka Community Board's public forum, are notified on the Council website and in the Otago Daily Times, a quarterly newsletter is sent out (and e-newsletters on request) and there is a toll free number listed in the telephone directory. CDC advised us that at the 2007 local elections there was no election for the Lawrence-Tuapeka Ward representative, and no contest for mayor. We note that under present representation arrangements, residents in the area are within Lawrence-Tuapeka Ward, which has a member to population ratio of 1:1260, and Lawrence-Tuapeka Community Board area (with a member to population ratio of 1:210). The Mosgiel-Taieri Ward of Dunedin City, which the affected area would move to, currently has a member to population ratio of 1:8250, and the Strath-Taieri Community Board has a member to population ratio of 1:113. We are not convinced that implementation of the proposal would improve the representation of residents of the area. We also consider that the Council's communications with its rural residents are satisfactory.
31. With regard to service levels, we note that roading is the primary service provided by Council in the area. The district as a whole has the second largest local roading network in the country, with two thirds of those roads unsealed. The proposed boundary change area has just under 4% of the district's roads. It has some of the highest land in the district, with Eldorado Road reaching 738 metres above sea level. Blockage of road access by snow can be an issue for residents in winter. Those in favour of the proposal argued that CDC's performance in terms of road maintenance is insufficient, with snow clearance being too slow and the roads in general poorly maintained, adding to discouraging distances. However on inspection the Commission found conditions were better than expected, with roads appearing in good condition (particularly as compared to rural roads around the country generally). We also found drive times not significant, with a 15 minute drive from Waipori Falls to the turnoff at Mahinerangi Road, and then a further 25-30 minutes to Lawrence, the last 2.9 kilometres being on sealed road. In relation to snow clearance, from the evidence provided we do not believe that a switch to DCC would necessarily bring any improvement in service for residents.

32. We note that the proposal would result in a number of dead-end roads ending in DCC territory, meaning DCC staff would have to travel over CDC roads to access sections of the network that DCC would become responsible for. DCC has pointed out that this has implications not only for road maintenance, but also for rural fire management, in that it would divide one forest area and isolate another from its closest source of fire management at Lawrence. Likewise, the closest service centre for civil defence management in that area is Lawrence. This is just one of several new cross-boundary impacts that the proposal would impose.
33. The Commission considers that another important factor in assessing whether the proposal would promote good local government for the districts concerned, is the extent to which it would promote the well-being of communities across each district, both now and in the future. We heard evidence that the transfer of the Deep Stream and Mahinerangi Wind Farm projects to Dunedin City would mean the loss of potential new rating income for Clutha District, with all of the associated flow-on benefits for the district that would bring. CDC noted that additional rating from the Corrections Facility at Milburn reduced rates for the remainder of the rural rating area by approximately 1%. Mahinerangi Wind Farm is similarly likely to lead to a saving for rural rates. CDC has invested considerable time and effort in developing its relationship with TrustPower and its knowledge and understanding of the projects concerned, and as it pointed out, is about to reap some reward for that work. While there might be a marginal economic benefit to Dunedin City residents, it is clearly not in the best interests of good local government overall for Clutha District residents to lose that economic benefit. It would also lead to a small increase in rates for those remaining in the Lawrence-Tuapeka ward area.
34. In summary, we believe that the case for the proposal is not sufficient and that the proposers have not demonstrated how the proposal would contribute to the improved governance of the area. We consider that the status quo still results in the best local government for the affected area and the districts concerned, and that to act otherwise will be unnecessarily disruptive and achieve little.
35. Having decided that the proposal fails the test of good local government required under clause 3(1)(a) of Schedule 3, the Commission believes it need not consider the proposal and submissions relating to it any further. However, we have decided to make some further observations with respect to the criteria of clauses 3(1)(b) and (2) of Schedule 3. Overall, these observations reinforce our view that the proposal, if given effect to, would not enhance the good local government of Clutha District or Dunedin City.

***Clause 3(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?***

36. The Commission is of the view that each of the local authorities concerned would have sufficient resources to carry out their responsibilities, duties, and powers, although CDC would lose the potential rating impact from the proposed wind farm (see above).

***Clause 3(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?***

37. The existing boundary has been in place for 130 years and has effectively stood the test of time. It follows natural boundaries of the Beaumont River to the northwest and the Lammerlaw Range on the northeast. The 1989 report on local government amalgamation in the Otago Region is silent as to any proposition that the affected area could move north to join Dunedin City territory. We note the Mayor of Clutha District's view that any alteration of the boundary in this way was not seen at the time as a viable alternative. This was reinforced by the recollections of the present Lawrence-Tuapeka Ward councillor (Geoff Blackmore) and Peter Hall (briefly a councillor under the Tuapeka County Council). It appears that very little has changed since then.
38. The Commission considered the local government boundaries that would result from the modifications suggested by the CDC and the DCC (see paragraph 10). The Commission believes that insufficient arguments were presented to demonstrate that any of these alternatives would better meet the statutory criteria than the original proposal (which is not to say that the original proposal would meet the criteria). While the DCC alternative would remove some of the cross-boundary impacts that the original proposal would impose (in terms of dead-end roads), on the other hand it would create new ones (resulting from additional properties being split between two territorial authorities).
39. Statistics New Zealand has advised that it would not support meshblocks being split where this would divide property boundaries.

***Clause 3(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?***

40. As previously noted, the Commission believes the affected area does not have commonalities of interest with Dunedin City that outweigh its linkages with adjacent areas in Clutha District. We acknowledge there is a degree of remoteness for some residents of the area, but consider they nevertheless have access to a good level of representation. We recommend residents make better use of the Lawrence-Tuapeka

Community Board, either through participation in the public forums, or by standing as candidates for one of the six positions available.

41. We also note the concerns expressed as to the level of support for the proposal and whether it accurately reflects the views of the whole affected area. Submissions received were evenly divided in their support for the proposal, with mixed views even from those within the proposers immediate area.

***Clause 3(1)(b)(iv) - Will each local authority provided for under the proposal be able to meet the requirements of section 76?***

42. Section 76 relates to decision-making and consultation by local authorities. The Commission is of the view that the proposal would have little impact on the ability of the CDC or DCC to maintain processes that would comply with the requirements of this section.

***Clause 3(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?***

43. The Commission is of the view that the proposed boundary alteration would not improve council services to residents of the area. For example, the maintenance of roads such as Mahinerangi Road, serviced by two different local authorities, is not likely to alter. On the other hand, as previously noted, should the proposal proceed it would impose a new set of cross-boundary issues that do not exist at present. For example, the division of properties between two local authorities would lead to dual rate demands and increased compliance costs for businesses such as forestry operators that would have to comply with two district plans. If the boundary did change, CDC's district plan provisions would remain in place for the area for an interim period, but DCC would become responsible for implementing those provisions and enforcing any resource consents applying to the proposal area. This could result in an inefficient and unwieldy district planning situation for the affected area.
44. DCC has pointed out the difficulties involved (see paragraph 32) in having a number of dead-end roads ending in its territory. We note it would cost more for DCC to service Mahinerangi area roads, given their Financial Assistance Rate (FAR) from the New Zealand Transport Agency is lower than that of CDC. Dunedin City is also likely to face the greater share of work in respect of a boundary alteration in terms of managing the district plan in the affected area, building up its knowledge of the electricity generation projects and managing other functions such as civil defence and rural fire.

***Clause 3(2)(c) – What will be the likely effects on a local authority of the exclusion of any area from its district or region?***

45. Clutha District Council would lose rating income from the affected area (currently around \$303,000). Because the Mahinerangi area is only a small part of the large rural rating base, the impact of losing it would be minor. However, as noted above, there would be a detrimental effect on Clutha District should it lose the potential rating income from the Mahinerangi wind farm project, once built.
46. We consider the various forms of cost to Clutha District outweigh any perceived benefits.

**Appropriate boundaries**

47. The Commission considered the proposal against the criteria for determining local government boundaries contained in clause 4 of Schedule 3 of the Act, as follows:

***Clauses 4(a) and (b) – The Commission must ensure that, where practicable, the boundaries of regions conform with catchment boundaries, and the boundaries of districts conform with the boundaries of regions.***

48. The proposal, and modifications to the proposal suggested in submissions, would not affect the boundaries of the Otago Region.

***Clause 4(c) – The Commission must ensure that, where practicable, the boundaries of districts conform with the boundaries of statistical meshblock areas determined by Statistics New Zealand and used for parliamentary electoral purposes.***

49. The proposal, and modifications to the proposal would not conform with meshblock boundaries.

## **COMMISSION'S DETERMINATION**

50. Having assessed the proposal and all submissions made to it, including suggested modifications to the proposal, against the criteria contained in clauses 3 and 4 of Schedule 3 of the Local Government Act 2002, the Commission has decided not to proceed with the proposal. It finds that a draft reorganisation scheme based on the proposal, or on modifications to the proposal, would not promote good local government of Clutha District or Dunedin City.

## **THE LOCAL GOVERNMENT COMMISSION**

Sue Piper (Chair)

Wynne Raymond (Commissioner)

Gwen Bull (Commissioner)

17 October 2008