



LOCAL GOVERNMENT COMMISSION

BRIEFING PAPER FOR THE MINISTER OF LOCAL GOVERNMENT

20 OCTOBER 2005

COMMISSION MEMBERSHIP

The Local Government Commission is constituted under Subpart 3 of Part 3 of the Local Government Act 2002. The Act provides that the Commission shall consist of three members appointed by the Minister of Local Government.

The current Commission members are:

- Grant Kirby (Chairman), appointed to 30 June 2005¹
- Gwen Bull, appointed to 30 June 2008
- Sue Piper, appointed to 30 June 2008.

Brief biographies of the Commission members are attached as **Appendix 1**.

THE COMMISSION'S FUNCTIONS

The broad purpose of the Commission could be described as being to consider proposals or adjudicate on matters relating to the structure of local government and electoral arrangements of local authorities.

In addition, under section 32 of the Local Government Act 2002 (the LGA) it is required to review the operation of the LGA and the Local Electoral Act 2001 (the LEA). It must report to the Minister of Local Government on its review, as soon as practicable after the 2007 triennial local elections.

¹ At the time of preparing this report Mr Kirby continues in office. Under clause 3 of Schedule 4 of the Local Government Act 2002, each member whose term has expired continues in office until that member is either reappointed or resigns, or a successor is appointed, or the Minister of Local Government informs the member that he or she is not to be reappointed.

The principal ongoing functions of the Commission are:

- to report on, and make recommendations to the Minister of Local Government on matters relating to local government. (This may be done at the request of the Minister of Local Government or on the Commission's initiative):
- to hear and determine appeals against decisions made by local authorities on proposals for the alteration of boundaries of local authority districts or the transfer of functions between local authorities:
- to consider proposals for the constitution, union or abolition of territorial authority districts or regions, or for the establishment of unitary authorities:
- to consider appeals and objections relating to a local authority's proposals for ward or constituency boundaries, community boards, and the number of members following a representation review:
- to consider appeals against decisions of territorial authorities not to constitute communities.

The Electoral Act 1993 also provides that the Chairperson of the Commission is a member of the Representation Commission.

A full list of the Commission's functions is included as **Appendix 2**.

MATTERS CURRENTLY BEFORE THE COMMISSION

Proposal for the abolition of Banks Peninsula District and its inclusion in Christchurch City

On 19 August 2005 the Commission issued a final reorganisation scheme for the abolition of Banks Peninsula District and its inclusion in Christchurch City. The reorganisation scheme provides for the area of the Banks Peninsula District to form the Banks Peninsula Ward of an enlarged Christchurch City. Two community boards would be established in the Banks Peninsula Ward.

The proposal was initiated in November 2003 by a petition of electors of Banks Peninsula District. The issue of a draft reorganisation scheme followed consideration of 142 written submissions relating to the proposal, the hearing of submissions in Lyttelton, Christchurch and Akaroa in September 2004, meetings with the affected and adjoining local authorities, hui with local rūnanga, and the commissioning and consideration of reports on communities of interest and financial matters relating to the proposal.

The Commission issued the final reorganisation scheme after hearing submissions on the draft scheme in Akaroa, Lyttelton and Christchurch on 21 and 22 July 2005.

A poll of electors of Banks Peninsula District to determine the outcome of the final scheme will be held on 19 November 2005. The LGA provides that the reorganisation scheme must be put into effect if more than 50% of the votes cast in the poll are in favour of the proposal contained in the scheme. A reorganisation scheme is put into effect by Order in Council.

Subject to the outcome of the poll, the first election of the member for the Banks Peninsula Ward and members of the Akaroa-Wairewa and Lyttelton-Mount Herbert Community Boards is scheduled for 25 February 2006. To achieve this election date, public notice of the election would need to be given on 9 December 2005.

There will be a relatively tight timeframe for an Order in Council to be issued, between the declaration of the result of the poll, and the date of the public notice of the election. Therefore the Commission wrote to the previous Minister of Local Government on 29 August 2005, outlining the process and recommending that he arrange for a draft Order in Council to be prepared, so that it can be promptly finalised if the poll outcome favours the reorganisation scheme.

Proposed boundary alteration: Tararua District / Palmerston North City

In April 2005 the Tararua District Council and the Palmerston North City Council both resolved to transfer a boundary alteration proposal to the Commission for a decision.

The proposal was initiated by electors of the Woodville area of Tararua District, and proposed the transfer of an area covering the Woodville township and an area of land to the north and west of the township.

On 25 May 2005 the Commission invited submissions on the proposal and received 588 responses. It met with the affected local authorities on 20 September, and the proposers on 21 September. A hearing of submitters was also held on 21 September 2005.

The Commission will announce its decision on 28 October 2005 at a public meeting in Woodville. A copy of the decision will be forwarded to you.

Representation reviews for the 2007 local elections

The LEA requires a local authority to undertake a representation review at least once every six years. 28 local authorities undertook their first review under the new Act for the 2004 local elections, and have the option of doing their next review for the 2007 local elections. A summary of the Commission's involvement in the 2004 process is contained in the Commission's Annual Report for 2003/04.

The 58 local authorities that did not carry out reviews prior to the 2004 elections are required to undertake their first review for the 2007 local elections. If the same proportion of these reviews is appealed against as in 2004, the Commission would have to deal with appeals against 48 reviews. If any of the 28 local authorities that carried out reviews in 2004 decided to carry out reviews prior to the 2007 election this would potentially increase the workload of the Commission further.

The Commission's staff are monitoring the progress of local authorities to help plan for the Commission's workload, so that appeals can be dealt with in the most efficient manner. The Chairman has written to all local authorities urging that they get their reviews underway as soon as possible. If, however, the volume, location and timing of appeals becomes an insurmountable problem, one possible solution would be for the Commission to request the Minister of Local Government to appoint temporary Commissioners under clause 5, Schedule 4 of the LGA. The Commission will further consider its workload early next year and will write to you further on this matter.

To date two local authorities (North Shore and Hamilton City Councils) have resolved their initial representation proposals for the 2007 local elections. Two local authorities (Grey District Council and West Coast Regional Council) have determined their final proposals. It is probable, however, that the bulk of reviews will be completed in the second half of 2006.

Review of the Local Government Act 2002 and the Local Electoral Act 2001

Section 32 of the Local Government Act 2002 (the LGA) requires the Commission to review the operation of this Act and the Local Electoral Act 2001 (the LEA). It must report to the Minister of Local Government on its review as soon as practicable after the 2007 triennial local elections.

The scope of the review is not further specified by the LGA. The review does, however, have to determine and assess –

- *the impact of conferring on local authorities full capacity, rights, powers and privileges;*
- *the cost-effectiveness of consultation and planning procedures; and*
- *the impact of increasing participation in local government and improving representation on local authorities.*

As part of the overall review, the Commission was also required, under section 32(4) of the LGA, to report to the Minister by 1 July 2005, if it considered that any amendments should be made to the LGA or the LEA before the 2007 triennial local elections. As well as identifying issues arising from its own application of relevant provisions of both Acts, the Commission invited local authorities and sector organisations to bring forward any issues that they considered should give rise to amendments to the legislation, prior to the 2007 local elections.

The Commission provided this initial report to your predecessor on 1 July 2005.

The Commission has recommended 8 changes to the LEA and 3 changes to the associated Local Electoral Regulations 2001. These cover matters relating to local elections, including electoral processes and representation reviews.

It has also recommended two amendments to the LGA, relating to the power of local authorities to make amendments to bylaws, and to make donations for purposes outside their district.

Licensing Trust District Boundaries

The Commission has resolved under Section 31(1) of the Local Government Act 2002 to consider the issue of licensing trust boundaries, their relationship with meshblock boundaries, and their impact on the administration of local elections.

Submissions were received for the Commission's *Initial Review of the Local Government Act 2002 and the Local Electoral Act 2001* which highlighted concerns from the local government sector that the boundaries of a number of licensing trust districts do not coincide with meshblocks. A practical consequence of this is that electoral officers need to manually, rather than electronically, check and allocate electors from split meshblocks onto the electoral roll for licensing trusts. The exercise is costly, time consuming and open to error. Further, a number of licensing trust ward boundaries do not comply with meshblocks and a similar checking exercise is required to allocate electors to the correct licensing trust ward.

The Ministry of Justice administers the Sale of Liquor Act 1989 which is the legislation governing licensing trusts. Elections for licensing trusts take place at the same time as the triennial local elections and are conducted by the territorial authority electoral officers under the provisions of the Local Electoral Act. Any change to the external boundaries of licensing trusts could only be made through amendment to the Sale of Liquor Act and any change to licensing trust ward boundaries requires an Order in Council on the advice of the Minister of Justice.

The Commission has now produced a draft report, which considers these issues. Before addressing these matters further, the draft report has been sent out to affected organisations, including licensing trusts, in order to seek their views. Comment is expected back in early December.

LOOKING AHEAD

As well as advancing to a conclusion the various reorganisation proposals already before it, and any other matters that may come to it, the Commission will:

- monitor local authority progress with representative reviews for the 2007 local elections;
- develop a work plan to deal with appeals and objections that may arise relating to local authority representation proposals for the 2007 local elections; and
- continue its review of the operation of the Local Government Act 2002 and the Local Electoral Act 2001.

REPRESENTATION COMMISSION

The Chairperson of the Local Government Commission is a non-voting member of the Representation Commission, established to determine Parliamentary electoral boundaries.

The Representation Commission is likely to meet in late 2006 to appoint a Chairperson. It will then convene after the provision of the 2006 census population statistics. The current draft timetable for the Commission indicates that it will meet to consider boundaries between 26 March and 19 April 2007.

Local authority representation reviews are being carried out concurrently, from late 2006 until April 2007. There may be some timetabling issues for the Chairperson of the Local Government Commission to resolve, in terms of meeting commitments to both the Local Government Commission and the Representation Commission. However should the schedule of commitments prove too heavy, it is possible for you to appoint a Deputy Member of the Representation Commission (who shall be another member of the Local Government Commission), as provided for under section 33 of the Electoral Act 1993.²

ANNUAL REPORTS

The Commission's annual reports for the 2002/2003 and the 2003/2004 financial years are attached for your information.

The annual report for the 2004/2005 financial year has been completed, and forwarded to your predecessor's office for tabling in the House of Representatives.

² For example, in 1998 Barbara Durbin was appointed as Deputy Member, as the position of Chairperson of the Local Government Commission was vacant. In 2001/2002 Kerry Marshall was appointed as a Deputy Member, as the Chairperson of the Commission was not available to serve on the Representation Commission.

APPENDIX 1

Grant Kirby ONZM (Chairman)

Grant Kirby is a consultant specialising in the local government sector. He has held a number of senior positions within local government, including Associate Town Clerk of Auckland City Council between 1983 and 1989, and Director of Area Operations for the Council between 1989 and 1993. Since 1993 he has operated his own consulting business, focusing on a number of complex local government related projects in the Auckland Region.

In April 2000 Mr Kirby was appointed by the then Minister of Local Government, Hon Sandra Lee, as the Commissioner of the Rodney District Council. In that capacity he acted in the place of the elected Council until a newly elected Council came into office in April 2001.

Mr Kirby's term as Chairman expired on 30 June 2005. He remains in office until reappointed, or a new appointment is made.

Sue Piper

Sue Piper is Executive Director of the Wellington Community Foundation and a member of the board of Quotable Value New Zealand. She was a member of the Wellington City Council from 1995 to 2004 and has been a member of the National Council of Local Government New Zealand. Between 1989 and 1992 she was President of the Public Service Association.

Gwen Bull JP

Gwen Bull was a member of the Auckland Regional Council from 1995 to 2004, and Chairperson of the Council from 2002 to 2004. She also chaired the Auckland Regional Growth Forum between 2002 and 2004.

APPENDIX 2

DUTIES AND FUNCTIONS OF THE LOCAL GOVERNMENT COMMISSION

Local Government Act 2002

Under the Local Government Act 2002 the Commission has a number of responsibilities. These are:

- (a) under section 16, to provide advice to the Minister of Local Government when a local authority has sought a binding ruling from the Minister on significant new activities proposed by a regional council;
- (b) under section 26, to consider, and where appropriate, make determinations amending the provisions of a final reorganisation scheme where it is satisfied that either-
 - i. some further or other provision is necessary to enable, or better enable, the intention of the scheme to be put into effect; or
 - ii. some provision of the scheme is no longer relevant or appropriate to the intention of the scheme;
- (c) under section 27, to consider and determine applications from territorial authorities wishing to be called a city council or a district council;
- (d) under section 30, if considered appropriate, to provide information about local government and to promote good practice relating to a local authority or to local government generally;
- (e) under section 31, of its own volition or at the request of the Minister of Local Government, to report on, and make recommendations to the Minister and any relevant local authority, on matters relating to a local authority or local government;
- (f) under section 32, to review the operation of the Local Government Act 2002 and the Local Electoral Act 2001, and to report to the Minister of Local Government as soon as practicable after the 2007 triennial local elections, and to separately report by 1 July 2005 if it considers that amendments should be made to one or both Acts before the 2007 triennial local elections;
- (g) under Schedule 3, Part 1, Subpart 3-
 - i. to consider and determine proposals for boundary alterations or transfer of responsibilities, where the affected local authorities have agreed to refer the proposal to the Commission or where they have been unable to agree on which of them should process the application; or

- ii. to hear and determine appeals in relation to the decision of an appointed local authority or joint committee of the affected local authorities regarding a draft reorganisation scheme to give effect to a proposal for the alteration of boundaries or the transfer of responsibilities;
- (h) under Schedule 3, Part 1, Subpart 4, to consider and determine proposals for the union, constitution, and abolition of districts and regions, and creation of unitary authorities;
- (i) under Schedule 3, clause 69, to be an arbiter on the apportionment of assets and liabilities between local authorities, following implementation of a reorganisation scheme, where there is disagreement;
- (j) under Schedule 6, to consider and determine appeals where a territorial authority declines a request from a group of electors for the constitution of a community; and
- (k) under Schedule 15, to undertake a review of a local authority where it is appointed as a review authority by the Minister of Local Government.

Local Government Act 1974

The Commission has two responsibilities under the Local Government Act 1974:

- (a) under section 318, where requested, to determine the vesting, control, construction, and maintenance of a road which forms the boundary between districts; and
- (b) under section 517T, to hear and determine objections regarding proposals for the transfer of ownership and administration of local authority land drainage and water race schemes.

Local Electoral Act 2001

The Commission has two responsibilities under the Local Electoral Act 2001:

- (a) under section 19R, to consider and determine appeals and objections relating to a local authority's representation proposals for the next triennial local elections; and
- (b) under section 19ZI, to issue guidelines identifying factors and considerations for local authorities to take into account when undertaking their reviews of representation.

Local Authority Reorganisation (Property Transfers) Act 1990

Under the Local Authority Reorganisation (Property Transfers) Act 1990 the Commission may investigate property dealings of any former local authority between 14 November 1988 and 31 October 1989 and, where the Commission considers it appropriate, require that those dealings be rectified.

New Zealand Public Health and Disability Act 2000

Clause 20 of the Second Schedule to the New Zealand Public Health and Disability Act 2000 provides that the Minister of Health may request the Minister of Local Government to refer to the Local Government Commission for inquiry and report any question relating to the union, reconstitution, or alteration of the boundaries of any district or constituency of a District Health Board.

Electoral Act 1993

Section 28 of the Electoral Act 1993 provides that the Chairperson of the Local Government Commission is to be a member of the Representation Commission.

Museum of Transport and Technology Act 2000

Section 20(10) of the Museum of Transport and Technology Act 2000 provides that where the Museum Board and the Museum's Electoral College cannot agree on an arbitrator to determine the amount of the Museum's levy the arbitrator is to be appointed by the Local Government Commission.

Auckland War Memorial Museum Act 1996

Section 23(6) of the Auckland War Memorial Museum Act 1996 provides that if the district of a contributing authority is altered or incorporated into the district of an adjoining authority, the Local Government Commission, in the exercise of its jurisdiction in regard to the constitution, alteration, union or abolition of the district of a territorial authority, is empowered to review the effect of levies on local authorities upon the matter before it, and to make such other provision in that behalf and for such period as it may consider appropriate.

Auckland Metropolitan Drainage Act 1960

Section 8(3) of the Auckland Metropolitan Drainage Act 1960 provides that if objections are received to proposals for the alteration of the boundaries of the Auckland Metropolitan Drainage District or the District's Inner Area, then the Governor-General may direct the Local Government Commission to inquire into and report on the proposals.