



LOCAL GOVERNMENT COMMISSION

Decision on appeals against the decision of the Wairoa District Council to not proceed to issue a reorganisation scheme

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INTRODUCTION

- 1 This decision relates to appeals lodged by the South of the Mohaka River Ratepayers Proposer Group and Mr Wayne Taylor against the decision of the Wairoa District Council (“the WDC”), as the principal local authority, on 4 December 2001 to not proceed with the Local Government (South of the Mohaka River) Reorganisation Scheme 2001. The draft reorganisation scheme, if given effect to, would alter the boundary between the Wairoa and Hastings Districts by transferring the area of the Wairoa District south of the Mohaka River to the Hastings District.
- 2 The appeal was heard in Wairoa on 2 May 2002.

BACKGROUND

- 3 In January 2001 the South of the Mohaka River Ratepayers Proposer Group (“the proposers”) initiated a proposal, in accordance with the provisions of Part IIB of the Local Government Act 1974 (“the Act”), for the boundary between the Wairoa and Hastings Districts to transfer from the Waikari River to the Mohaka River.
- 4 The current proposal is similar to an earlier proposal initiated by the proposers in July 1998. That proposal was rejected by the WDC and was considered by the Commission on appeal. The Commission, in July 1999, issued its determination upholding the WDC’s decision.
- 5 After consultation between the WDC and Hastings District Council it was agreed that the WDC should be the principal local authority in respect of the current reorganisation proposal.
- 6 The draft reorganisation scheme was publicly notified on 10 July 2001. Eleven submissions were received. The WDC considered the submissions at a meeting held on 23 November 2001. On 4 December 2001 the Council met to determine whether the draft reorganisation scheme should be given effect to. It resolved that the draft reorganisation scheme should not proceed.
- 7 On 13 December 2001 the proposers gave notice of appeal against the decision.

- 8 On 21 December 2001 Mr Wayne Taylor gave notice of appeal against the decision.
- 9 Following receipt of the appeals the Chief Executive Officer of the Commission arranged for the hearing of the appeals on 2 May 2002 in Wairoa.

ASSESSMENT OF FINANCIAL EFFECTS OF THE PROPOSAL

- 10 In its initial consideration of this matter the Commission noted that the proposers' earlier proposal had been declined by the then Commission principally because the Commission had insufficient information to satisfy itself as to the viability of the Wairoa District if the proposal were to proceed. The Commission decided to initiate an independent financial assessment of the effect of the current proposal on the Wairoa District. The report was provided to the appellants and the WDC before the hearing.
- 11 The Commission considered that the independent assessment provided some useful information to assist its consideration of the proposal. Bearing in mind the nature of the study and the limited timeframe in which it had to be undertaken, the Commission considered that the conclusions of the report are not definitive, but that they form part of the information available to assist the Commission in determining the matter before it.

THE HEARING

- 12 The hearing commenced with Mr Tony East and Mr Ian Blair presenting submissions on behalf of the proposers. Mr Wayne Taylor then made a submission in support of his appeal. WDC's submissions were made by Mr Les Probert (Mayor) and Mr Matthew Lawson (solicitor acting for the WDC). Mr East, Mr Blair, Mr Probert and Mr Lawson exercised rights of reply.

STATUTORY PROVISIONS RELATING TO THE DETERMINATION OF THE APPEALS

- 13 The statutory provisions relating to the Commission's hearing, consideration, and determination of this appeal are contained in sections 37ZQA, 37ZR and 37ZZK of the Act.

- 14 37ZQA details the criteria to be applied by the Commission when considering a reorganisation scheme. It states:

37ZQA. Criteria - (1) *The principal local authority or the Commission, as the case may be, shall, when considering any reorganisation proposal or any reorganisation scheme, satisfy itself that the proposal or scheme -*

(a) Will promote the good local government of the districts concerned; and

(b) Will, in particular, ensure that each proposed local authority and each local authority continued in existence under the proposal -

(i) Will have the resources necessary to enable it to carry out its functions, duties and powers; and

(ii) Will have a district that is appropriate for the efficient and effective exercise of its functions, duties and powers; and

(iii) Will contain within its district a sufficiently distinct community of interest or sufficiently distinct communities of interests; and

(iv) Will be able to meet the requirements of section 223C of this Act.

(2) The principal local authority or the Commission, as the case may be, shall, when considering the matters specified in subsection (1) of this section in relation to any reorganisation proposal or any reorganisation scheme, consider -

(a) The area of impact of the functions, duties, and powers of the local authorities concerned; and

(b) The area of benefit of services provided; and

(c) The likely effects on any local authority of the exclusion of any area from its district; and

(d) Such other matters as it considers appropriate.

- 15 Section 37ZR details matters relating to boundary determinations under a reorganisation scheme. It states:

37ZR. Boundaries – *The principal local authority or the Commission, as the case may be, shall, in determining boundaries under any reorganisation proposal or reorganisation scheme, ensure that -*

(a) The boundaries of regions conform, where practicable, with catchment boundaries; and

- (b) The boundaries of territorial authority districts conform, where practicable, with the boundaries of regions; and*
- (c) 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.*

16 Section 37ZZK details matters relating to the hearing and determination of the appeals. It states:

37ZZK. Hearing and determination of appeal - (1) *At the hearing of any appeal under section 37ZZC of this Act, the Commission shall hear and consider all evidence tendered and representations made by or on behalf of the appellant and any other party to the proceedings.*

(2) After hearing the evidence and representations as aforesaid, the Commission may confirm, discharge, or vary the decision of the principal local authority and generally make such decisions as it considers just and equitable in the circumstances of the case having regard to the evidence and representations received by it. Every such decision shall take effect from the date thereof or from such later date as may be specified therein.

17 The Commission is also of the view that the purposes of local government set out in section 37K of the Act should be considered in reaching a decision on this matter. Section 37K states:

37K. Purposes of local government – *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:*
- (i) *For the effective participation of local persons in local government.*

CONSIDERATION OF THE APPEALS UNDER THE STATUTORY PROVISIONS

Section 37ZQA

- 18 As noted above, 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 Wairoa District and the Hastings District.
- 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 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 sets out the purposes of local government, that the achievement of those purposes would be the basis of good local government.
- 21 In the context of the proposal 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 Wairoa and Hastings Districts to achieve the purposes of local government as set out in section 37K.
- 22 The proposal under appeal was assessed by the Commission against the criteria specified in section 37ZQA as follows:

Subsection (1)(a) - Whether the proposal will promote the good local government of the districts concerned.

- 23 This is the principal criterion that the Commission must satisfy itself would be complied with if a proposal were given effect to.

- 24 As discussed above, the Commission decided that consideration of the proposal in the context of the matters specified in section 37K of the Act was necessary to enable the Commission to determine whether the proposal would promote the good local government of the Wairoa District and the Hastings District. In giving consideration to the matters outlined in section 37K, the Commission found it first necessary to consider whether the area affected by the proposal, i.e. the area of Wairoa District located south of the Mohaka River (“the affected area”), is a recognisably distinct community of interest. Such a consideration is important, because in the Commission’s view the division of a recognised community of interest would not accord with the principles of section 37K.
- 25 The affected area is rural in nature, principally comprising farming properties and forestry blocks. It is hilly country, which in some areas is subject to erosion. The geographic features of the affected area are generally similar to other parts of the Wairoa District and the adjoining areas of Hastings District.
- 26 The main village in the affected area is Kotemaori, which comprises a number of residences, a primary school and local hall. There are no significant retail facilities in the affected area, the nearest significant groupings of retailers being located in the Wairoa township and Napier City.
- 27 From the submissions made to the Commission, it is clear that the residents of the affected area have well developed linkages to the north (principally to Wairoa township) and to the south (locally to Putorino in Hastings District and the Napier and Hastings Central Business Districts). Because of the lack of facilities in the affected area, residents need to travel outside the affected area for essential supplies, medical treatment, professional services and secondary schooling. This is typical of rural areas throughout New Zealand. It is to be expected that the reasonable access that is available to the business services and social opportunities available in the urban centres of Napier and Hastings would provide a strong incentive for the residents of the affected area and other parts of the Wairoa District to utilise the services available in those centres from time to time.
- 28 The Commission noted that, for the most part, the residents of the affected area have better State Highway access to Wairoa township than to the south.

The State Highway in the northern part of the Hastings District traverses difficult terrain, imposing considerable challenges to improving the road. Also, the residents of the affected area have less distance travelling by road to Wairoa township than travelling to the central business districts of Hastings and Napier.

- 29 The Commission considers that there is little to distinguish the affected area from the adjoining rural areas of Wairoa District, or the adjoining rural areas of Hastings District. The affected area shares a common geography, land use and lack of significant facilities with those other rural areas. The residents of the affected area rely on services and facilities available in areas both to the north and south for their business and recreational interests.
- 30 Taking the above considerations into account, the Commission is of the view that the affected area, while having a localised community of interest to some degree, does not have a distinct community of interest in the local government context. It considers that the affected area does not have commonalities of interest with Hastings District that outweigh the linkages of the affected area with the rest of the Wairoa District. In this regard, the Commission notes that Ngati Pahauwera, whose traditional boundaries extend south to the Waikari River, have a strong relationship with the Wairoa District. The Commission is satisfied that if the proposal were to proceed it would split the recognised community of interest of Ngati Pahauwera.
- 31 The Commission also considers that the fact that some facilities situated in the Hastings District, such as the Putorino recreational and social facilities, are closer for the residents of the affected area than similar facilities in other parts of the Wairoa District is an advantage for those residents. Residents of one local government area utilising facilities located in other local government areas commonly occurs throughout New Zealand – it is not necessarily a reason for changing local government boundaries.
- 32 In assessing its community of interest findings against the provisions of section 37K, the Commission is satisfied that the proposal would not promote the good local government of the Wairoa District and the Hastings District. It considers that the proposal would not appropriately recognise:
- the existence of different communities
 - the identities of the different communities

- established communities of interest.

33 Having determined that the proposal fails the test of good local government required under section 37ZQA(1)(a) of the Act, the Commission is of the view that it need not consider the proposal any further. However, it has decided to make some observations with respect to the criteria of subsections (1)(b) and (2) of section 37ZQA. The observations reinforce its view that the proposal, if given effect to, would not enhance the good local government of the Wairoa and Hastings Districts.

Subsection 1 (b)

(i) Whether the authorities continued in existence would have the resources necessary to enable them to carry out their functions, duties and powers.

34 The WDC is currently able to fund its functions, duties and powers. The District, however, has a small population of approximately 8900 people and a limited rating base of approximately 6300 rateable properties. In the intercensal period 1996-2001 the usually-resident population of the Wairoa District decreased by almost 10%, from 9900 persons in 1996 to 8916 persons in 2001. On a population basis the Wairoa District is ranked 64th in size out of the 74 territorial authority districts in New Zealand.

35 The ongoing population decrease, combined with limited employment opportunities in the district and household incomes which are well below the New Zealand median impose significant constraints on the ability of the WDC to increase its rating income to continue to meet its obligations for the provision of essential services, and to provide other services considered desirable by the Wairoa community.

36 The Commission is in no doubt that if the proposal were to proceed, further resource pressures would be placed on the residual area of the WDC. The Commission is satisfied that reducing operating costs for the Council would not offset the reduction in rates income from the affected area.

37 If the proposal proceeded the principal reduction in Council operating costs would be derived through no longer having to service local roads in the affected area. However, most of the Council's operating costs relate to

activities which have a district-wide benefit or relevance. The Commission is of the view that those costs would generally remain unchanged if the proposal proceeded. Given that the number of rateable assessments in the district would reduce, each WDC ratepayer would face a rates increase to enable the WDC to maintain its current service levels.

38 The financial assessment undertaken for the Commission suggests that, if the proposal were to proceed, the Council would lose 6% of its existing rating revenue, while operating expenditure would decrease by 4.4%. As a result, the Council's operating deficit would likely increase by approximately \$232000 (GST exclusive), or approximately 4% of the total rates levied on the reduced District. While these amounts are not definitive, the Commission is of the view that any increase in the Council's operating deficit would be detrimental to the Council's ability to carry out its functions, duties and powers.

39 Implementation of the proposal would increase the area of Hastings District by approximately 6% - 31018 hectares. Hastings District would have to extend the area over which it carries out its functions, duties and powers, at an additional cost. No evidence was presented to the Commission to suggest that the Hastings District Council would not have the resources necessary to adequately service the affected area. The Hastings District already has a large rural hinterland. The services that the Hastings District Council would need to provide to the affected area would be similar to those that it already provides in its existing rural area.

40 The Commission is of the view that the proposal would have a negative impact on the resources available to the WDC to enable it to carry out its functions, duties and powers.

(ii) Whether for each of the affected local authorities there will be a district which would be appropriate for the efficient and effective exercise of local government functions, duties and powers.

41 The Mohaka River, proposed as the boundary between the Wairoa and Hastings Districts, is a distinctive geographic feature. The Mohaka River would be an easily recognised boundary, enabling appropriate local authority service delivery in the area of the proposed boundary.

- 42 The Commission notes that the existing boundary between the two districts – the Waikari River - is a longstanding local government boundary, which also serves as an effective local government boundary.
- 43 The Commission notes that if the proposal proceeded, there would be an area in the south-western part of Wairoa District that could only be accessed from Hastings District. The Commission considers that the WDC could still effectively ensure appropriate service delivery to this area, with an option being to contract out the provision of some or all of the Council’s services in that area.
- 44 Wairoa District would continue to comprise the significant urban area of Wairoa township, a number of small townships and a large rural hinterland. The proposal would have no impact on the range of services that the WDC would be required to provide.
- 45 The Commission did not receive any evidence relating to the impact of the proposal on the effective and efficient exercise by the Hastings District Council of local government functions. The Hastings District Council already services a large rural area. While additional costs would be incurred through the addition of some 31018 hectares to its land area, the Commission is of the view that this would have a minimal impact on the efficiency and effectiveness of the Hastings District Council.

(iii) Whether the proposal will ensure that each authority continued under the proposal would contain within its district sufficiently distinct communities of interest.

- 46 As discussed above, the Commission is of the view that the affected area does not comprise a distinct community of interest in the broader local government context. It also considers that the proposal would split the recognised community of interest of Ngati Pahauwera.

(iv) Whether each authority continued in existence would be able to meet the requirements of section 223C of the Act.

47 Section 223C relates to the way in which local authorities are to conduct their affairs. The Commission is of the view that the proposal would have a minimal impact on the ability of the WDC to maintain governing and administrative structures which would comply with the requirements of this section.

Subsection 2

(a) area of impact of the functions, duties, and powers of the proposed local authority; and

(b) area of benefit of services provided.

48 As mentioned above, the Mohaka River would provide an effective boundary for the provision of local authority services. In the Commission's view this boundary would not create any cross-boundary issues for the WDC or the Hastings District Council in addition to those currently addressed at the present boundary - the Waikari River.

Subsection 2

(c) Likely effects of the exclusion of any area from the proposed district.

49 If the proposal proceeded, information provided by the WDC indicates that the Wairoa District would lose 2% of its population, 7.5% of its land area, 11.3% of its land value and 7.3% of its General Rate income. As stated above, the Commission considers that the reduction in the costs of service delivery would not offset the loss of rating income. The loss to the WDC of the affected area would mean that district-wide administrative and overhead costs would have to be allocated over a smaller number of ratepayers. In the opinion of the Commission, this would have a significant detrimental effect on the ability of the WDC to carry out its functions, duties and powers.

Section 37ZR

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

(a) The boundaries of regions conform, where practicable, with catchment boundaries.

51 This proposal would not affect the existing regional boundaries.

(b) The boundaries of territorial districts conform, where practicable, with the boundaries of regions.

52 This proposal is not relevant to the existing regional boundaries.

(c) 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.

53 The Mohaka River is currently used as a boundary for statistical meshblock purposes. The proposal would not require a change to the existing meshblocks.

GENERAL COMMENT

54 The Commission notes that subsequent to the Commission's 1999 determination of the earlier proposal initiated by the proposers, the WDC undertook a rates review, which attempted to move towards a more user-pays environment. At the hearing the WDC's Mayor acknowledged that it was not possible to significantly reduce the rates levies in the affected area, as a significant reduction would have a severe impact on the rest of the District. He also advised that the Council would undertake a further rates review this year.

55 Proposals for the transfer of the affected area have now come before the Commission on two occasions. Having heard and considered the representations of the various parties the Commission is of the view that the proposers are primarily motivated to seek a transfer of the affected area to the Hastings District because of the lower level of rates that would be levied if the affected properties were in the Hastings District. While the Commission understands the concerns of the proposers, the incidence of rating levels between the two districts is not a matter that the Commission may take into account in terms of the statutory criteria. The rates levied on properties are subject to change through the Annual Plan process and the public has rights under statute to participate in that process. It would be appropriate for the proposers to continue to utilise the Annual Plan consultation process or to participate in any rates review to ensure that the WDC is apprised of their

concerns and to put forward their ideas for rating systems that address their concerns.

COMMISSION'S DETERMINATION

56 Having considered the appeals and submissions made to it and having tested them against the criteria specified in the Act, the Commission dismisses the appeals and confirms the decision of the WDC (as Principal Local Authority) to not proceed with the Local Government (South of the Mohaka River) Reorganisation Scheme 2001. The Commission is satisfied that implementation of the proposal would not promote the good local government of the Wairoa District.

LOCAL GOVERNMENT COMMISSION

Grant Kirby, Chairman
Linda Constable, Commissioner
Kerry Marshall, Commissioner

13 June 2002