

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY – I TE KOTI MATUA O
AOTEAROA TE WHANGANUI -A-TARA

CIV-2018-485-008

UNDER THE:

Local Government Act 2002.

IN THE MATTER OF

An appeal under Section 37 and the
5th Schedule, in relation to a decision
to refuse reorganisation as a unitary
authority in regard to Waiheke Island.

BETWEEN

Our Waiheke, a currently
unincorporated community of people,
of Waiheke Island, 54 Hekerua Road,
Waiheke Island, 1081

Appellant

AND

The Local Government Commission
PO Box 5362, Wellington 6140
NEW ZEALAND

**Administrative body -
Decision maker.**

**NOTICE OF APPEAL BY OUR WAIHEKE IN THE MATTER OF A DECISION TO
MAINTAIN THE STATUS – QUO FOR THE AUCKLAND COUNCIL IN RESPONSE TO
THE COMMUNITY OF WAIHEKE ISLAND SEEKING TO BE A UNITARY
AUTHORITY.**

Judicial Officer:

Registrar:

Nest Event Date:

Dated: 28th December 2017

THIS DOCUMENT IS FILED by John P. Meeuwsen of 54 Hekerua Road, Waiheke Island, 1081,
Auckland New Zealand. The person acting is John P. Meeuwsen. Phone 021 2424925

THE ADDRESS FOR SERVICE is by mail to John P. Meeuwsen of 54 Hekerua Road, Waiheke Island, 1081,
Auckland, New Zealand.

J. No:0032

To: the Registrar at the High Court at Wellington

And to: the Administrative Body and decisionmaker, the Local Government Commission.

This document notifies you that -

1. This appeal is against the decision by the Local Government Commission ("the Commission") on 30 November 2017 ("the decision"). The decision determined that the preferred option for Auckland reorganization was the status quo in response to the application by Our Waiheke for reorganisation lodged on 30 November 2015 ("the application") and which the Commission agreed to assess on 10 March 2016. The Our Waiheke application proposed the constitution of a new region under section 24(l)(b) of the Local Government Act 2002 (the Act) by establishing a new Unitary Council in specified parts of the current Waiheke Local Board area of Auckland Council.
2. The appeal is against the whole of the decision.

QUESTIONS OF LAW

3. The questions of law are:
 - (A) Did the Commission misinterpret and/or misapply sections 10 and 24AA and/or clauses 2, 10, 11, and 12 of Schedule 3 of the Act?
 - (B) Did the Commission err in law in taking into account or giving the weight it did to the impact on Auckland Council as an organisation?
 - (C) Did the Commission or any Commissioner involved in the application approach the decision without an open mind or have an element of Bias in processing the application?

SPECIFIC GROUNDS OF APPEAL

4. The Commission misinterpreted and/or misapplied Sections 10 and 24AA and clauses 2, 10, 11, and 12 of Schedule 3 of the Act by:
 - (a) Failing to follow the purpose of local government as required by Section 10 of the act
 - (b) Wrongly declaring that the 'affected area' for the purpose of the application would be the whole of the Auckland Council area contrary to Schedule 3 clause 2 'affected area' subclause (c) which requires the operational scale, scope, or capability of the whole of Auckland Council to be materially affected for it to be an affected area
 - (c) Wrongly classifying Our Waiheke's proposal as an 'alternative application' for the affected area determined for the North Rodney reorganisation application [i.e. the whole of the Auckland Council area] when it was separate and independent of any other proposal, resulting in diminishing the acceptance of a proposal strongly supported by the Waiheke community and thereby restricting the matters that would be considered.

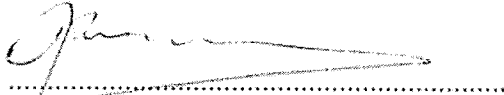
- (d) Failing to improve the effectiveness and efficiency of Local Government of Waiheke contrary to Section 24AA of the act
- (e) Failing to take into account the considerable amount of evidence provided to the Commission by Our Waiheke during the course of its decision making process or to adequately allow the Waiheke community the opportunity to participate in considering alternative local government arrangements for their area contrary to Section 24AA of the act
- (f) Failing to engage with the community in the manner expected by the act when determining all the reasonably practicable options for local governance in their area, and particularly in respect of a possible District Council, contrary to Section 24AA
- (g) Wrongly allowing submissions received under clause 9 of Schedule 3 which did not comply with the requirements of Clause 5 of Schedule 3 to be considered as 'alternative proposals' contrary to clause 10 of Schedule 3
- (h) Failing to identify all the reasonably practical options for local governance in the proposed new Waiheke area contrary to clause 11 (2) of Schedule 3 by
 - (i) failing to properly assess the options that were reasonably practical by making its decisions on the financial viability of options in reliance on questionable information from Auckland Council and assumptions made without empirical or authoritative supporting evidence
- (i) Failing to properly apply clause 11 (5) of Schedule 3 by:
 - (i) Failing to properly determine under subclause (a) if a Waiheke Unitary or District Council would have sufficient resources by narrowly confining its investigations to only the Auckland Council experience, relying too heavily on in-house opinion, and explicitly rejecting resource sharing and different service preferences as possibilities
 - (ii) Failing to properly apply subclause (b) by adopting a conception that size alone is the determining factor for the efficient performance of the role of a Unitary or District Council without providing any supporting or empirical evidence
 - (iii) Failing to recognise under subclause (d) that a Waiheke Unitary or District Council could effectively deal with catchment based flooding and water management in its area.
- (j) Failing to apply Clause 12 requiring the preferred option to promote good local Governance by improving efficiency, productivity and simplified planning.

5. The Commission erred in law in taking into account or giving the weight it did to the impact on Auckland Council as an organisation as this factor had been statutorily assessed by the moratorium on reorganisation applications prescribed by section 9 of the Local Government (Auckland Transitional Provisions) Act 2010.
6. The Commission erred in law and displayed bias by their conduct in public meetings and their published statements which have exhibited a strong preference for local authority amalgamation and what they refer to as "single voice" representation.

RELIEF SOUGHT

7. The appeal seeks the following relief:
 - (A) The decision be set aside;
 - (B) The Commission be directed to assess the application in accordance with the Court's findings on questions of law;
 - (C) The Commission pay the costs of the Appellants.
8. This application is made in reliance on Schedule 5 of the Local Government Act 2002 and Part 20 of the High Court Rules.

DATED this 28th day of December 2017



John P Meeuwsen, spokes person Our Waiheke.

THIS NOTICE OF APPEAL is filed by John P Meeuwsen, spokesperson for the appellant. The address for service of the appellant is 54 Hekerua Rd., Oneroa, Waiheke Island, 1081. Documents for service on the above-named appellant may be left at or posted to that address for service and/or may be electronically transmitted to:- John.meeuwsen39@gmail.com