



LOCAL GOVERNMENT COMMISSION
MANA KĀWANATANGA Ā ROHE

**Decision on appeals against the decision of the Joint
Boundary Committee of the Manawatu District Council and
Palmerston North City Council to adopt the Draft
Reorganisation Scheme for the alteration of the boundary
between Manawatu District and Palmerston North City**

Introduction

1. In May 2011 the Manawatu District Council (MDC) initiated a reorganisation proposal providing for the transfer of several areas from Manawatu District to Palmerston North City (called Areas A to G in the proposal).
2. In 2010 the MDC and the Palmerston North City Council (PNCC) had engaged Morrison Low to report on structural options for the district and the city. The Morrison Low report considered four options – cross boundary servicing, small scale boundary changes, a larger boundary change and amalgamation.¹ The report recommended that amalgamation be considered as the preferred option. After considering the report, the two councils agreed that a reduced version of the larger boundary change be adopted, and this formed the basis of the proposal initiated by the MDC.
3. The two councils agreed that the proposal should be dealt with by a joint committee of the two councils and they established the Joint Boundary Committee to do this. In July 2011, as required by the Local Government Act 2002 (LGA), the joint committee issued a draft reorganisation scheme to give effect to the proposal.
4. The joint committee received 212 submissions on the draft scheme. After considering the submissions the joint committee decided, in November 2011, to adopt the draft reorganisation scheme with some amendments. The main amendments were the exclusion from the scheme of some areas originally proposed to be transferred. These areas were parts of Areas A and C and all of Areas F and G.

Appeals

5. Twenty one appeals against the decision were received. Twenty of these were against the boundary alteration, in full or part, while the two councils appealed jointly against some technical aspects of the scheme.
6. Forty eight parties also submitted notices that they wished to appear and be heard at any hearing convened by the Commission. These parties were all submitters on the draft reorganisation scheme. Twenty two of these parties were also appellants (the two councils also submitted separate notices that they wished to appear and be heard).
7. The appeals received and the desired outcomes are listed below.

Appellant	Desired Outcome
Chris Teo-Sherell	Reject transfer of Areas A to D, but not F
David and Gail Morrison	Reject entire decision
Harvey Barraclough and others	Reject entire decision
Adrienne Harding	Reject entire decision
Mark Collis	Reject transfer of Areas A to D, but not F
Stewart Collis	Reject entire decision

¹ Morrison Low, *Palmerston North City Council and Manawatu District Council ABC Options – Final Report*, May 2010

Appellant	Desired Outcome
Don Wedge	Reject entire decision
Eric Constantine	Reject transfer of Areas B to F, but not A
Phil Herbert	Reject entire decision
Kim Morrison	Reject entire decision
Melvin and Jill Sanson	Reject entire decision
P A Watson	Reject entire decision
John Whitelock and others	Reject decision and adopt alternative options as follows – <ul style="list-style-type: none"> • follow an alternative boundary closer to the existing boundary • refer the matter back to the joint boundary committee • encourage the two councils to liaise with other local authorities to consider a unitary authority
Peter and Heather Davies	Reject entire decision
CJ and MG Baker	Exclude all prime agricultural land
Joanne Sandilands	Reject entire decision
Judith Milne	Reject entire decision apart from a small boundary change in the North East Industrial Zone or the implementation of cross boundary services in that area
B A Smith	Reject entire decision
Steve Gibson	Reject entire decision apart from a small boundary change in the North East Industrial Zone
Heather Outred and Jacqueline Bryant	Reject entire decision
Manawatu District Council and Palmerston North City Council	Amend – <ul style="list-style-type: none"> • clause 3 to provide for a later implementation date if necessary for the long term plan process • clause 4(a) to reinstate the boundary around Longburn originally proposed (MDC) or a smaller boundary alteration that does not separate Longburn Hall from the main Longburn community (PNCC) • clause 10 to recognise contractual arrangements between the two councils in respect of building consents

8. Parties who submitted notices that they wished to appear and be heard at the hearing are listed below.

Alan John and Jennifer Margaret Adams
 David and Robyn Adam
 C J and M G Baker *
 Harvey John Barraclough and others *
 William John Bent
 Ngaire Calder
 Robert Campbell
 Mark Collis *
 Stewart Collis *
 Eric Constantine *
 Vicki Ann and Stephen Colin Dalley
 Peter and Heather Davies *
 Tim and Julie Day
 Trevor Donaldson

Bill Evans and Karen Kaa
Steve Gibson *
Phil Herbert *
Adrienne Harding *
Fonterra Co-operative Group Ltd
Kairanga Community Centre
Ruth Kobestein
Noel John Heron
Ian McKelvie
Alison Mildon
Richard Mildon
Judy Milne *
Manawatu District Council *
Alistair David Mitchell
David and Gail Morrison *
Kim Morrison *
Dr Heather Outred and Jacqueline Bryant *
Palmerston North City Council *
Clyde Raymond Rowland
Melvin and Jill Sanson *
Benoni Nimmo Sandilands
Joanne Sandilands *
B A Smith *
Jan Sutherland
Margaret Sutherland
Richard Sanson
Fred Setter
Chris Teo-Sherrell *
P A Watson *
Don Wedge *
John Whitelock and others *
Alice and Ian Williamson
Joanna Williamson and Lyndon Land Co Ltd
G W Yeates

Those marked * also lodged appeals.

The Hearing

9. The Commission held a hearing of appellants and other parties in Feilding on 1 and 2 March 2012.
10. The following met with the Commission at the hearing:
 - Joint Boundary Committee
 - Manawatu District Council and Palmerston North City Council
 - David Morrison
 - Kim Morrison
 - Clyde Rowland
 - Trevor Donaldson
 - John Whitelock
 - Judy Milne
 - Milton Pedley
 - Stewart Collis
 - Gregor Yeates
 - Fonterra Co-operative Group Ltd
 - Kairanga Community Centre
 - Richard Mildon
 - Vicki Ann and Stephen Colin Dalley
 - Fred Setter

Joanna Sutherland
Eric Constantine
Don Wedge
P A Watson
John Hercoe
Tim and Julie Day
Adrienne Harding
Ian McKelvie
Alice and Ian Williamson
Joanna Williamson and Lyndon Land Co Ltd
Steve Gibson
Chris Teo-Sherell
Noel Heron
Alex Stewart
Harvey Barraclough
David Adam
Robert Campbell
Alan Adams
Peter and Heather Davies
Benoni Nimmo Sandilands
John Bent
Dr Heather Outred
Richard Sanson

The options open to the Commission

11. Clause 28(1) of Schedule 3 of the LGA provides that after hearing evidence and representations put to it in respect of such appeals the Commission may:
 - (a) confirm the decision of the joint committee
 - (b) vary the decision of the joint committee
 - (c) discharge the decision of the joint committee.
12. The Commission may, before determining an appeal or instead of determining an appeal, direct the joint committee to reconsider, either generally or in respect of specified matters, the whole or any specified part of the matter to which the appeal relates.
13. Clause 28(2) of Schedule 3 provides that the Commission may “generally make the decisions that it considers just and equitable in the circumstances of the case, having regard to the evidence and representations received by it”.

Criteria

14. The Commission must consider the appeals and the reorganisation scheme against the criteria listed in the LGA. Those criteria are listed below.
15. Clause 3 of Schedule 3 of the LGA provides that:
 - (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 interest; 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.*

16. The Commission has on previous occasions agreed that the main criterion – ensuring that the proposal will promote good local government – requires it to consider whether the proposal will result in *improved* local government arrangements in the area.² These arrangements will need to result in local authorities that can give *better effect* to the role and purpose of, and principles relating to, local authorities. These elements of good local government are set out in sections 10, 11 and 14 of the LGA.

Issues

Issues from the councils' perspective

17. The councils' reasons for promoting the boundary alteration were that they have been dealing with growth pressures on the current boundary largely coming from industrial growth. This gives rise to issues about land use and infrastructural planning. If growth is not addressed in a coordinated way they consider the greater Manawatu area might miss out on economic and social opportunities that might otherwise arise from this growth.
18. Specific points raised by the councils were that:
- Both councils are having to expend considerable resources in dealing with proposals for development near the boundary, there having been three private plan changes requested to rezone land in the city adjacent to the boundary.
 - The PNCC is concerned that it is not able to advance the planning, implementation and funding of road improvements adjacent to the city (the strategic roading network) as it does not control those roads. Conversely the MDC does not wish to fund infrastructure work primarily benefiting the city.

² The Commission considers that in the context of the legislation, the word “promote” should have the meaning of: to advance, enhance, or improve local government arrangements.

- A change to boundaries would bring within the city boundaries areas which already have a significant community of interest with the city, e.g. more than half of the residents in the area work in the city while 95% saw the city as their principal shopping destination.

Issues from the appellants' perspective

19. The appellants' principal concerns were that:
- The financial viability of the MDC would be threatened because of the loss of such a large area.
 - The PNCC has not demonstrated a sufficient need to expand its boundaries, some arguing that the city included sufficient land to accommodate future residential growth for the next 30 to 50 years.
 - Much of the land proposed to be transferred is unsuitable for urban development, some of it being flood prone.
 - Any urban growth over this area would involve land of high agricultural value.
 - The proposal would result in communities of interest being split, particularly Kairanga.
 - The PNCC has little understanding of rural issues.
 - There would be a loss of representation for the rural community.

Financial viability

20. A number of appellants expressed concern that the exclusion of the areas proposed from Manawatu District would affect the ongoing viability of the MDC.

21. The MDC advised that the financial impact of the boundary alterations had been assessed as follows:

Rates revenue from affected properties	\$1.5m
Fees and charges from affected area	<u>\$0.2m</u>
Total lost revenue	\$1.7m
Direct expenditure no longer to be incurred	\$0.9m
Net impact on MDC	\$0.8m

22. The MDC expressed confidence that it would remain financially viable. To assist the viability of the MDC, the reorganisation scheme provides for a transitional payment from the PNCC to the MDC for 10 years. This provides for the MDC to receive 100% compensation for the net lost revenue from PNCC for the first 5 years after the boundary alteration occurs, and 50% compensation for the following five years. Each year's payments will be adjusted to take into account changes in the Local Government Cost Index³ compared with the previous year.
23. The MDC advised that it could absorb the \$800,000 loss referred to in paragraph 21 in light of the following:

³The Local Government Cost Index (LGCI) was developed by BERL, the economics consultancy, to develop a local government cost index identifying the rate at which the costs facing local government were increasing, in other words a local government price index.

- Population growth is predicted in both the district and the city in the medium term and that growth will generate an increase in the rating base.
 - MDC will maximise revenue and look for efficiencies as part of its normal business.
 - MDC will continue to identify savings through, for example:
 - zero-based budgeting in the long term plan process
 - investigating efficiencies that can be gained through shared services
 - reviewing and re-evaluating business processes
 - MDC plans to prudently manage the compensation payments so that they can be used to smooth the financial impact over 14 years rather than the 10 years for which the PNCC will provide compensatory payments.
24. We are satisfied that the MDC has approached the issue of its viability in a realistic manner and through the mechanisms outlined above are confident that the council's viability will be maintained.
25. No evidence was presented to suggest that the PNCC would not be viable as a result of the proposed boundary alteration.

The extent of land proposed to be transferred to the city

26. Most of the appellants were concerned about the amount of land proposed to be included in the city. Although many of the concerns were generic to the entire proposal there was a focus on Area A, Area B, and Area C. Apart from the concern about the future viability of the MDC, discussed in paragraph 20 to 24 above, many of the concerns related to the characteristics and future use of the areas concerned. These are discussed below.

Land for industrial growth and the strategic roading network

27. A number of appellants argued that the PNCC has not demonstrated a sufficient need to expand its boundaries, some arguing that the city included sufficient land to accommodate future residential growth for the next 30 to 50 years. Some appellants agreed that a small additional area could be brought into the city for industrial use but not to the extent provided for in the reorganisation scheme.⁴
28. The designated industrial growth areas are at Longburn and the north east industrial area. We acknowledge that these areas make up a small proportion of the area proposed to be brought into the city. The extent of industrial development is not large but it is significant to the two councils and their districts. The councils gave examples where the current boundary acts as an impediment to industrial development taking place or where it results in planning and development taking place in a more complex manner than is desirable.

⁴ An issue raised at the hearing was the accuracy of a comment in the Morrison Low report that the Foodstuffs distribution centre in Roberts Line handles 350 "B-Truck" movements a day. Further inquiries showed that this statistic was derived from a prediction in Foodstuff's application for a resource consent. The estimate related to a two-phase development project, only one phase of which has been completed to date. Although this statistic is not based on the actual current number of B-Train movements we do not consider the matter to be fundamental to our decision-making on these appeals.

29. We note that industrial growth is not the only reason the councils initiated this proposal. Another reason is the desire to bring the strategic roading network into the city. This principally applies to Area B and Area C.
30. The PNCC is concerned that it is not able to advance the planning, implementation and funding of road improvements near the city as it does not control those roads. Conversely the MDC does not wish to fund infrastructure work primarily benefiting the city.
31. At the hearing the Joint Boundary Committee commented in respect of the strategic roading network that:

The 2010 Palmerston North-Manawatu Joint Transport Study was used to inform the regional land transport strategy 2010-2040, and identified the Kairanga-Bunnythorpe Road as an inter-regional route. Accordingly, it will be progressively upgraded to State Highway standard, thereby avoiding the need for inter-regional traffic to unnecessarily pass through the urban roading network at Palmerston North and provide direct access for heavy commercial vehicles to and from the North East Industrial Zone.
32. The joint transport study was commissioned by Horizons Regional Council, MDC, PNCC and the New Zealand Transport Agency.
33. We accept that the strategic roading network has been identified as a priority by the affected bodies and agree with the arguments put forward that the inclusion of the bulk of the network in the city would facilitate its development.
34. An issue raised at the hearing was the placement of the proposed boundary along the middle line of roads, particularly the Kairanga-Bunnythorpe Road. We were advised that there has been a joint agreement for the maintenance of boundary roads in place since 1989 and that this works well. On this basis we do not have concerns about this road being used as a boundary.

Flood prone nature of certain areas

35. A number of appellants opposed the proposal on the basis that a significant proportion of the area proposed to be included in the city is flood prone and either cannot or should not be developed for urban purposes. Some of the area is designated in Horizon Regional Council's One Plan (the council's regional plan) as a floodway.
36. Development in the floodway is restricted by the One Plan. In addition both the MDC's and the PNCC's district plans support the restrictions put in place by the One Plan. Urban expansion would not, therefore, be able to occur over the floodway.
37. The body with primary responsibility for flood control - Horizons Regional Council - advised us that, as part of its further investigations and inquiries, the location of territorial authority boundaries are not directly relevant to the regional council as far as flood control and mitigation is concerned. As noted in paragraph 36, each of the relevant planning documents restricts development in the floodway. The regional council commented that if anything the PNCC had a greater interest in mitigating flooding as the principal threat from flooding is to the city.
38. We also note that the reason for the proposed inclusion of much of the area in the city is to allow development of the strategic roading network, not urban expansion. This particularly applies to areas designated as a floodway.

Land of high agricultural value

39. A number of appellants were also concerned that a significant proportion of land affected by the scheme is of high agricultural value and that that land would be at risk of development for urban purposes if it were to be included in the city. This principally relates to Area A and Area B.
40. The MDC's district plan includes an objective, policies and rules dealing with the impact of subdivision on rural soils. These would remain in force over the affected areas until the PNCC amends its district plan to cover those areas. It would be required to do this within two years of the boundary alteration taking place, and after consulting the community.
41. The MDC district plan does not prevent subdivision on land of high agricultural value but does require the retention of larger lots where subdivision takes place. The PNCC's district plan is somewhat more liberal than the MDC's plan in this respect, permitting the creation of lots as small as 4 hectares in areas of other than poor quality soils. However, in 2010 the PNCC initiated a sectional district plan review. That review will include a review of the rural zone and supporting rural subdivision provisions. To assist this process the PNCC is currently preparing a rural residential land use strategy. The draft strategy issued in January 2012, promotes a change in approach to the PNCC's policies for dealing with the development of agricultural land. As a principle, it states that :

Rural residential development should be directed away from land with high capability for pastoral use (e.g. Class 1 and 2 land).
42. To support this it proposes increasing the minimum lot size from 4 hectares, subject to supporting research, to establish a minimum lot size that protects the rural land bank whilst also providing for entry level farming operations.
43. This indicates to us that the PNCC acknowledges the importance of high quality agricultural land and appropriate controls over its use will apply to any such land included in the city.

Kairanga

44. A number of appellants were concerned that the proposal would result in the Kairanga community being split. An issue particularly mentioned by appellants was that the Kairanga Community Centre and the adjacent Kairanga School (which could be considered to be the focal points of the community) would be placed immediately adjacent to the boundary. The rationale for placing the boundary where it is proposed in the Kairanga area is to enable the strategic roading network to be included in the city.
45. Differing views were expressed about the extent of the Kairanga community of interest, however the information presented to us by one appellant, Richard Mildon, suggested that it is primarily the area lying between the Taonui Stream in the north-west and the No 1 Line, and the existing district/city boundary in the south-east.
46. We note the joint committee's comment on the fact that the Kairanga community has not developed into a township as have Linton, Bunnythorpe and Ashhurst. This seems to have been perceived by some appellants and other parties that the joint committee considered Kairanga to be a community of interest of lesser status. We certainly consider Kairanga to be a community of interest.

47. We do, however, agree with the joint committee's view that Kairanga already has a strong association with the city – through adjacency and the linkages that creates with the city, through 50% of the Kairanga School roll residing in the city, and through the proportion of Kairanga residents working and shopping in the city. It could be considered, therefore, that Kairanga's community of interest is currently split between the district and the city. We note these comments would apply to other areas proposed to be included in the city.
48. Possible options open to the Commission are:
- leaving the boundary at or near the existing city-district boundary
 - agreeing to the boundary proposed in the draft reorganisation scheme
 - extending the area to be transferred to include the whole of Kairanga, e.g. the area described by Richard Mildon as Kairanga.
49. The issues associated with each of these options are as shown in the following table.

Option	Issues
(a) Leaving the boundary at or near the existing city/district boundary	Keeps Kairanga in one district but does not allow PNCC to coordinate the strategic roading network
(b) Agreeing to the boundary proposed in the draft reorganisation scheme	Splits Kairanga but allows PNCC to coordinate the strategic roading network
(c) Extending the area to be transferred to include the whole of Kairanga	Keeps Kairanga in one district and allows PNCC to coordinate the strategic roading network, but – <ul style="list-style-type: none"> • further reduces the rating capacity of the MDC • has not been the subject of consultation or the right of appeal • is outside the scope of the appeals brought to the Commission.

50. Realistically the choices open to us are (a) and (b).
51. On balance, we believe that the promotion of good local government would be achieved through the inclusion in the city of that part of Kairanga proposed by the reorganisation scheme. This would allow the strategic roading network to be included in the city, but would also recognise the community linkages that area has with the city as identified in paragraph 47.
52. We note that a number of communities in New Zealand are in a similar position to the one Kairanga would be in if the boundary alteration were to proceed. It is generally the case that the communities concerned and their local authorities are able to work cooperatively to meet the needs of that community.
53. Should the boundary alteration proceed we note the MDC would still be able to help fund the community centre on the basis that it would also benefit residents of its district.

Longburn

54. The joint committee's decision split the township of Longburn (proposed to be included in Palmerston North City) from the Longburn Community Centre and a small cluster of houses (which were to remain in Manawatu District). The draft reorganisation scheme had provided for a larger area to the west of Longburn to be included in the city. The joint committee excluded this western area from the area proposed to be included in the city as it is not required for the strategic roading network or industrial development, but does include soils of high agricultural value.
55. Both councils, in their joint appeal, sought the inclusion of the community centre in Palmerston North City along with the rest of Longburn. The councils differed on how that should be achieved. The MDC considered that the whole of the original area to be transferred should be included in the city. The PNCC considered that only the community centre and adjacent houses should be included.
56. Two other parties raised issues relating to the boundary at Longburn.
 - Fonterra specifically sought the inclusion of certain of its land in the city (the Longburn Dairy Factory and immediately adjacent farmland).
 - Ian and Alice Williamson agreed to the inclusion in the city of the immediate area around the community centre, but:
 - opposed the inclusion of the whole of the original Area A as proposed by the MDC
 - sought the exclusion of additional areas from Area A.
57. In relation to the land the Williamsons propose to further exclude from the reorganisation scheme:
 - some of the land Fonterra wishes to see included in the city
 - in the southern area, the land would be cut off from the rest of Manawatu District by the railway line and only be accessible by road through Palmerston North City
 - an area in the north could be excluded on the basis that it is not required for the purposes of the strategic roading network or for industrial development.
58. Inclusion of the community centre and nearby cluster of houses in Palmerston North City would require alterations to the boundaries of two meshblocks. Clause 4 of Schedule 3 of the LGA requires that the boundaries of districts conform with the boundaries of statistical meshblock areas determined by Statistics New Zealand. Agreement by Statistics New Zealand to change meshblock boundaries would result in compliance with clause 4. In this case, however, Statistics New Zealand has advised that changes to meshblock boundaries to allow these changes would not comply with its rules for altering meshblocks.
59. We have the option of extending the boundary westward to the original boundary as a means of dealing with this issue as proposed by the MDC in its appeal. We concluded, however, that doing so would result in a significant area of high agricultural value being included in Palmerston North City that is not needed for the strategic roading network or for industrial development. We do not consider that this would be consistent with the overall rationale for the proposed boundary alterations and have decided not to pursue this option.

60. We also noted that regardless of which district the community centre is included in, it would be close to the boundary between the two districts and likely to be used by residents of both districts. On balance, therefore, we have decided to retain the community centre and nearby houses in Manawatu District.
61. In relation to the appeal by Ian and Alice Williamson, we consider the proposed exclusion of additional land from Area A would not promote good local government or result in logical boundaries. In particular it would exclude from the city land that is designated for industrial development and would leave part of Manawatu District not directly accessible from the rest of the district.

Rural identity and representation

62. Some appellants were concerned about a loss of rural identity through being included in the city, and about representation on the PNCC for the areas proposed to be transferred becoming part of predominantly urban wards. Some suggested that the PNCC would not be sympathetic to rural issues.
63. We, however, note that the city has included a significant rural area since 1989 and therefore has to deal with rural issues as part of its day to day business. The changes proposed by the council to its rules for rural residential development discussed in paragraphs 41 and 42 seem to us to indicate that the PNCC has an appreciation of rural issues and needs.
64. As far as representation is concerned, we take the view that it is the job of an elected member firstly to represent the entirety of the area from which they are elected but secondly, to make decisions for the benefit of the whole of the district their council is responsible for. The additional rural areas proposed to be included in the city have the potential to make the rural voice within the city a strong one.
65. We also note that the PNCC is required to carry out a representation review this year. This gives the opportunity for outstanding representation issues to be dealt with promptly.

Conclusion and overall assessment against the criteria

66. In order to decide that the draft reorganisation scheme should be issued as a reorganisation scheme, we must be satisfied that, under clause 3(1)(a) of Schedule 3 of the LGA, that it will promote good local government of the districts concerned. To assess this, we need to consider whether the proposed boundary alteration will enable the two councils to more efficiently and effectively perform the role of a local authority and in particular have the necessary resources, have an appropriate district that contains sufficiently distinct communities of interest, and be able to meet the requirements of section 76 of the LGA relating to decision-making requirements.
67. In summary, we have found implementation of the reorganisation scheme would result in:
- (a) the councils continuing to have the resources necessary to carry out their responsibilities, duties and powers
 - (b) the councils having districts that are appropriate for the effective performance of their roles as specified in section 11 of the LGA, in particular by enabling better provision of roading through the strategic roading network and better planning and servicing of land for industrial development

- (c) districts containing sufficiently distinct communities of interest, through recognising the linkages boundary areas have with the city
- (d) the councils being able to meet the requirements of section 76 of the LGA.⁵

Ancillary issues

Building consents

- 68. The two councils sought an amendment to clause 10 of the scheme on the basis that it does not give proper effect to existing contractual arrangements between the councils relating to building service functions. These arrangements provide that all building service work (and associated liabilities) completed prior to those contracts commencing in 2007 are the responsibility of the MDC, with the PNCC assuming responsibility for works taking place after that contract was entered into.
- 69. The councils contend that this is a fair apportionment of liability and we agree with that position.

Implementation date

- 70. The scheme provides for the boundary alterations to come into effect on 1 July 2012 and it was the desire of the councils that this date is adhered to. The councils in their appeal, however, expressed concern that the time required for the Commission to hear and determine appeals might mean that this determination might not be able to be issued in time for the councils to meet the statutory deadline for adoption of their long term plans, in which case a later implementation date would be required.
- 71. We understand that the timing of this determination will not create difficulties for the long term plan process and we have decided that the implementation date should remain as 1 July 2012.
- 72. Should any difficulties relating to the implementation date, the long term plan or other processes arise, they may be able to be dealt with in the drafting of the Order in Council giving effect to the scheme⁶, or in a later determination by the Commission under section 26 of the LGA 2002.⁷

COMMISSION'S DETERMINATION

- 73. Having considered the scheme and the appeals and submissions made to it and having tested them against the criteria specified in the Local Government Act, the Commission:

⁵ Section 76 of the Local Government Act sets down requirements for decision-making by local authorities.

⁶ Section 25 of the Local Government Act provides that "if a reorganisation scheme does not specifically provide for a matter that the Secretary [for Local Government] considers to be necessary, desirable, or incidental as a consequence of the scheme ... the Secretary must consult with the Commission, or any affected local authority, about the inclusion of the matter in the Order in Council; and ... the matter may be included in the Order in Council if considered appropriate by the Governor-General in Council".

⁷ Section 26 provides that the Commission may amend a reorganisation scheme if it is satisfied that either "some further or other provision is necessary to enable, or better enable, the intention of the scheme" or "some provision of the scheme is no longer relevant or appropriate to the intention of the scheme".

- (a) considers that implementation of the draft reorganisation scheme would promote the good local government of Manawatu District and Palmerston North City
- (b) varies the draft reorganisation scheme by amending clause 10 to provide as follows:

“10. Building Consents

- (a) Since 2007 the Manawatu District Council has contracted its building services function from the Palmerston North City Council. There are two contracts in place that cover this arrangement. One contract covers the provision of technical staff for the Manawatu District Council to discharge their obligations as a building consent authority. The second contract covers the balance of the building service function.
 - (b) Issues of liability and apportionment of responsibility in terms of all building service functions are detailed in both contracts.
 - (c) Where work is carried out prior to contracts being in place that is the responsibility of the Manawatu District Council.”
- (c) determines that the draft reorganisation scheme shall become a reorganisation scheme.

74. The Commission will, therefore, refer the scheme to the Minister of Local Government for the preparation of an Order in Council to give effect to the scheme.

THE LOCAL GOVERNMENT COMMISSION



Basil Morrison, Chair



Anne Carter, Commissioner



Grant Kirby, Commissioner

17 April 2012