



LOCAL GOVERNMENT COMMISSION

**Decision on an appeal by the
South of the Mohaka River Ratepayers Group
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 an appeal lodged by A L East, H J McLean, H J McNeil, P G Smythe, R P Brownlie, R J Byrne, I D Wilson, I D Blair - the South of the Mohaka River Ratepayers Group - against the decision of the Wairoa District Council (WDC), as the principal local authority, on 2 February 1999 to not proceed with the Local Government (South of the Mohaka River) Reorganisation Scheme 1998. The reorganisation scheme 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 17 May 1999.

BACKGROUND

- 3 In July 1998 the South of the Mohaka River Ratepayers Group (the proposers) initiated a proposal, in accordance with section 37ZO of the Local Government Act (the Act), that the boundary between the Wairoa and Hastings Districts be altered.
- 4 After consultation between the WDC and Hastings District Council it was agreed that the WDC should be the principal local authority for the reorganisation proposal.
- 5 The draft reorganisation scheme was issued in October 1998. 12 submissions were received. The WDC met on 2 February 1999 to consider the submissions and resolved to not proceed with the reorganisation scheme for the following reasons:
 - “ a. The Council considers that the impact on the remainder of the district would be unacceptable, particularly in respect of the increased rating burden.
 - b. That the remedy the petitioners are seeking is available through other means, in this case a rates review.
 - c. That the proposal to reorganise the Wairoa District in order to reduce rates in the South of the Mohaka area is not available to other communities

within Wairoa District under section 37ZN of the Local Government Act 1974 and should therefore not be utilised to the advantage of one section of the community.

- d. That the community of interest, particularly in respect to the Ngati Pahauwera and their aspirations, would not be well served. The Council noted the concerns of the Ngati Pahauwera and Ngati Kahungunu ki te Wairoa in particular as it relates to the breaking of boundaries within their rohe.
- e. Council noted that the arguments relating to communities of interest are unaffected by the current situation, that is that existing arrangements across district boundaries are in place and working, therefore fail to see how they would be improved by a boundary change.”.

6 In the record of its decision the WDC stated that it recognised that there is an anomaly in the distribution of rates within the Wairoa District and undertook to work on the development of a rating system that addresses the issues of transparency and fairer distribution of the rating burden. Specifically, the WDC resolved to undertake a core service review, a rates review, and an investigation into increasing the use of Uniform Annual Charges and direct user charges thereby reducing the overall income from the General Rate.

7 On 26 February 1999 the South of the Mohaka River Ratepayers Group gave notice of appeal against the decision.

8 Under section 37ZZE of the Act the Commission received notice that the following persons intended to appear and be heard at the hearing of the appeal:

J W Carson
JR & BB Haliburton
WDC.

J W Carson subsequently advised that he would be unavailable to attend the hearing.

9 Following receipt of the appeal the Chief Executive Officer of the Commission arranged for the hearing of the appeal on 17 May 1999 in Wairoa.

THE HEARING

- 10 The hearing commenced with Mr R L Fletcher, counsel for the appellants, presenting his submissions. Submissions were then received from Mr Tony East and Mrs Sandra McNeil for the appellants, and Mr Alistair Haliburton (on behalf of JR and BB Haliburton). Mr Derek Fox, Mayor of Wairoa, then presented WDC's submissions, with supporting evidence provided by Mr Peter Freeman, Chief Executive of the WDC. Rights of Reply were exercised by Mr Fletcher, Mr Haliburton and Mr Fox.

STATUTORY PROVISIONS RELATING TO THE DETERMINATION OF THE APPEAL

- 11 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.
- 12 37ZQA details the criteria to be applied by the Commission when considering a reorganisation scheme. It states:

37ZQA. Criteria - (1) The ... Commission ... 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 ... Commission ... 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.*

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

37ZR. Boundaries - *The ... Commission ... 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 the Department of Statistics and used for Parliamentary electoral purposes.*

- 14 Section 37ZZK details matters relating to the hearing and determination of the appeal. 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.

CONSIDERATION OF THE APPEAL UNDER THE STATUTORY PROVISIONS

Section 37ZQA

- 15 Section 37ZQA(1)(a) of the Act requires the Commission to satisfy itself that a proposal or scheme will “promote the good local government” of the districts concerned. With regard to the word “promote”, the Commission is conscious 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. 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. Section 37ZQA(1) itself also lists various requirements to be met. In the Commission’s opinion, it can be accepted as a strong indicator of matters to be taken into account in determining what may be good local government. When considering the various criteria set out in subparagraphs (i) to (iv) of paragraph (b) of section 37ZQA(1), the Commission must consider also the factors in subsection (2) of that section.
- 16 By considering all of the above factors, the Commission interprets the expression “promote good local government” as meaning to improve or enhance the ability of the local authorities for the districts concerned to achieve the purposes of local government as set out in section 37K.
- 17 The proposal under appeal was assessed by the Commission against the criteria specified in section 37ZQA of the Act.

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

- 18 This is the principal criterion which the Commission must satisfy itself would be complied with if a proposal were given effect to. Given its importance, the

Commission decided that whether the proposal promotes good local government can only be determined once the criteria in paragraph (b) of this subsection, and the additional matters for consideration in subsection (2) of this section have been considered.

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.

19 The WDC is currently able to fund its functions, duties and powers. The District, however, has a small population base of approximately 9900 people and a limited rating base of approximately 6300 rateable properties.

20 In its written evidence to the Commission the WDC stated: “It is quite clear that an authority the size of Wairoa is at the bottom of the scale in terms of viability and as such any reduction in income has the potential to push it below the line”.

21 There was a paucity of information provided to the Commission by both the WDC and the proposers to enable the Commission to make a detailed assessment of the current viability of the WDC and its ongoing viability if the proposal were to proceed. However, taking into account the limited information available to it, the Commission has reservations about the viability of the WDC to gain the necessary financial resources to undertake its functions, duties and powers if the proposal proceeded.

22 The loss of the area south of the Mohaka River would result in a reduction in rating income of the WDC of approximately \$399,000, 8.7% of the WDC General Rate. The land value in the affected area is 10.7% of the total land value in the District. The Commission considers that the evidence provided to it gave no general indication of a subsidy flowing from the ratepayers in the area south of the Mohaka River to the rest of the Wairoa District.

23 However, the reduction in rating income to the WDC if the proposal proceeded would not, in the view of the Commission, be offset by an equivalent reduction in the cost of operating the Council. The WDC has a high direct expenditure per head of population, particularly when compared to local authorities serving

populations of a similar size. Without steps being taken by the WDC to reduce its expenditure, the administrative and overhead components of the operating costs would continue at substantially the same level, while service delivery costs would somewhat reduce. The reduction in the service delivery costs would principally be derived through the WDC no longer being required to maintain Council roads in the area south of the Mohaka River. The costs of operating the Council would need to be spread across a reduced rating base.

- 24 Wairoa District is facing socio-economic problems typical of rural communities and rural service towns throughout New Zealand. These problems include high levels of unemployment and ongoing population loss. The number of people usually residing in the District has been decreasing for a number of years. Between 1991 and 1996, the District's population declined 2.2%, from 10126 to 9900. The Commission is of the view that the WDC's ability to further increase the rating burden on its ratepayers is very limited.
- 25 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.
- 26 The Commission is not convinced that the WDC would have sufficient resources available to it to carry out its functions, duties and powers if the proposal were to proceed. Therefore, the Commission is not satisfied that the criterion is met in respect of the proposal.

(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.

- 27 The Mohaka River, proposed as the boundary between the Wairoa and Hastings districts, is a distinctive geographic feature. The Mohaka River would provide a clear division for responsibility of local authority service delivery in the area of the proposed boundary.

28 Wairoa District would continue to comprise the significant urban area of Wairoa township, a number of small urban communities and a large rural hinterland. The proposal would have no impact on the range of services which the WDC would be required to provide.

29 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.

30 The Commission is satisfied that the criterion is met in respect of the proposal.

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

31 The appellants provided evidence to support their contention that the people in the area south of the Mohaka River are a distinct community of interest.

32 The evidence showed the extensive social, cultural and business interactions between those residing in the area south of the Mohaka River (and those north of the river who rely on access from the south of the river) and the Hastings District, and the Hastings and Napier urban areas.

33 The Commission considers that the differentiation between communities of interest at the boundary between districts should be readily discernible. The proposal, in the Commission's view, meets this requirement because of the geographic significance of the Mohaka River which would form the common boundary between the Wairoa and Hastings Districts.

34 The Commission's finding is that there is a strong community of interest between those living in the area of Wairoa District south of the Mohaka River and the Hastings District.

35 If the proposal proceeded the Commission is satisfied that both the Wairoa and Hastings Districts would continue to contain distinct communities of interest.

36 The Commission is satisfied that the criterion is met in respect of the proposal.

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

37 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.

38 The Commission is satisfied that the criterion is met in respect of this proposal.

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.

39 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 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.

40 If the proposal proceeded, the Wairoa District would lose 2% of its population, 7.5% of its land area, 10.7% of its land value and 8.7% of its General Rate income. The Commission considers that the reduction in the costs of service delivery may 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.

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

- 41 The obligations imposed by the section 37ZQA will only be met if the Commission is satisfied that the proposal will promote the good local government of the Wairoa District and the Hastings District and all the requirements of section 37ZQA(1)(b) are met.
- 42 The Commission is not satisfied that the proposal meets all the criteria of section 37ZQA. Neither is it satisfied that the requirement relating to the promotion of good local government of the districts concerned will be met. In particular, little evidence was adduced to the Commission showing that the proposal would enhance the ability of the WDC to achieve the purposes of local government set out in section 37K.

Section 37ZR

- 43 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.

- 44 This proposal would not affect the existing regional boundaries.

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

- 45 This proposal would not affect 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 the Department of Statistics and used for Parliamentary electoral purposes.

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

OTHER MATTERS

Decision of Principal Local Authority

- 47 The WDC, in the record of its decision, lists a number of reasons for declining the proposal. The Commission is concerned that these reasons, for the most part, do not address matters detailed in section 37ZQA of the Act. As a general comment, the Commission considers that it would be beneficial to all interested parties for local authority decisions on such matters to be recorded in a form that can be easily referenced to the relevant provisions of the Act.
- 48 In its evidence to the Commission the WDC suggested that the proposers were motivated by a wish to reduce their rating burden. The evidence presented by the proposers to the Commission included discussion of the rating burden on their properties compared with similar properties across the boundary in Hastings District. The Commission notes that the incidence of rating levels in one local authority area relative to another does not provide grounds under the Act to justify a boundary alteration.

Consultation

- 49 In its submission to the Commission the WDC advised that the proposers did not consult with the people of Ngati Pahauwera before initiating their proposal.
- 50 The Commission notes, however, that the proposers met the statutory requirements in initiating their proposal.
- 51 The Commission also received submissions that the WDC did not consult with the proposers when preparing the draft reorganisation scheme.
- 52 While the Act does not require the Principal Local Authority to consult with proposers the Commission suggests that it may be advantageous for a principal local authority to undertake some form of consultation with proposers and any other affected local authorities prior to the preparation of the required draft reorganisation scheme. The Commission is of the opinion that such discussions could be helpful in determining the appropriate content of a future

draft reorganisation scheme. This may also assist proposers and the local authority in identifying those with a specific interest in a proposal.

Rates Review

- 53 In its submissions the WDC advised that it recognised that its rating structure need to be reassessed. The WDC advised the Commission of its intention to undertake a rates review in the 1999/2000 year. Any rating changes arising from the review would be implemented in 2000/2001. The Commission suggests that the WDC develops consultation strategies that enable its communities to actively contribute to the review.

Representation of the Affected Area

- 54 The appellants advised the Commission that they did not feel that they have effective representation on the WDC, in proportion to their rating contribution to the Council.
- 55 Several options are available under the Local Government Act for either the WDC or electors to initiate steps to ensure appropriate representation.
- 56 Other mechanisms, such as the establishment of non-statutory community committees, may provide a means for local communities to develop effective linkages with the WDC.

Viability of Wairoa District

- 57 The WDC advised the Commission that it considers the District is at the bottom of the scale in terms of viability. It also advised that it favours a unitary authority encompassing the current local authorities in Hawke's Bay and the East Coast.
- 58 Options are available under the Act for the WDC or electors in the district, to initiate proposals to amalgamate the district with one or more adjoining local authorities.

COMMISSION'S DETERMINATION

- 59 Having considered the evidence, submissions and appeals made to it and having tested them against the criteria specified in the Act, the Commission dismisses the appeal 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 1998.
- 60 In particular the Commission is not satisfied that the scheme, if implemented:
- a. would promote the good local government of the Wairoa District
 - b. would provide the WDC with the resources necessary to enable it to carry out its functions, duties and powers.

For the Commission

Sir Ross Jansen, Chairman

Barbara Durbin, Commissioner

Bruce Anderson, Commissioner

9 July 1999