



Local Government
Commission
Mana Kāwanatanga ā Rohe

**BRIEFING PAPER FOR
THE MINISTER OF LOCAL GOVERNMENT**

19 September 2014

This briefing has been proactively released by the Local Government Commission.

CONTENTS

This briefing covers:

- the Commission's membership
- the Commission's functions, and matters currently before the Commission.

THE COMMISSION'S MEMBERSHIP

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

The current Commission members are:

- Basil Morrison (Chair), appointed to 30 June 2015
- Anne Carter, appointed to 31 July 2015
- Janie Annear, appointed to 30 June 2015.

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

Temporary Commissioners

In addition Cabinet has agreed that the Minister of Local Government may appoint any of an approved panel of individuals as temporary members during the period up to 30 November 2016.

The members of the panel are:

- Harete Hipango
- Chris MacKenzie
- Pamela Peters
- Peter Winder
- Jaimes Wood.

THE COMMISSION'S FUNCTIONS AND CURRENT WORK

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

The principal functions of the Commission are to:

- respond to applications for the reorganisation of local authorities
- report to the Minister of Local Government, or to any local authority, on matters relating to local government, or on any matter arising from the performance of the Commission's functions (this may be done at the request of the Minister of Local Government or on the Commission's initiative)
- consider appeals and objections relating to a local authority's proposals for ward or constituency boundaries, community boards, and the number of members following a representation review
- consider appeals against decisions of territorial authorities not to constitute communities and community boards.

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

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

The Local Government Act provides that the Commission is to be treated as a Commission of Inquiry and has a number of the powers provided by the Commissions of Inquiry Act 1908.

LOCAL GOVERNMENT REORGANSATION

Amendments to the reorganisation provisions of the Local Government Act 2002

Amendments to local government reorganisation provisions of the Local Government Act in 2012 and 2014 have significantly changed the focus and scale of the work of the Commission.

The Local Government Act 2002 Amendment Act 2012 made changes to both the legislative framework governing the making of applications for local government reorganisation, and to the processes for the subsequent consideration of such applications by the Commission. The amendments followed the reorganisation of local government in Auckland and were intended to make it easier for reorganisation proposals to be advanced and considered in other parts of the country.

Prior to this only two substantive reorganisation (amalgamation) applications had been received (Kaikoura/Hurunui, and Nelson/Tasman) in the previous seven years, and the last successful amalgamation proposal had been in 2005 (Christchurch/Banks Peninsula).

Further amendments to the local government reorganisation provisions were enacted in August 2014 as part of the Local Government Act 2002 Amendment Act 2014. The major change made here has been to make the structural model of a unitary authority with local boards (originally designed as a bespoke solution for Auckland) available throughout the country.

The reorganisation process

Schedule 3 of Local Government Act sets out the processes that the Commission must follow in considering a reorganisation application, and the powers available to it in doing so. This is a relatively complex set of processes with multiple decision points. There are four major phases in the process. A diagram of the process which sets this out more fully (but still in simplified form) is attached as Appendix 3. These are summarised briefly below:

Application

Any person may lodge an application for local government reorganisation. The Commission receives an application, decides whether to assess it, and if it agrees to do so calls for alternative applications. The Commission may decline to assess an application on a variety of grounds including that there is no evidence of “demonstrable community support”. At this stage the Commission has to identify the “affected area” for the process. The Commission’s practice has been to conduct extensive non-statutory consultations along with information gathering and research into issues affecting local government in the affected area at this stage.

Identification of options and consultation on draft proposal

The Commission is required to consider the applications and alternatives that it has received, along with any other options for the structure it considers worthy of consideration. It is required to identify firstly, one or more “reasonably practicable options” and then from among those its “preferred option”. There are separate statutory criteria for each of these two steps.

The Commission then develops a “draft proposal” on the basis of its preferred option. The Commission notifies its draft proposal and calls for submissions. This is the formal consultation phase of the process. Hearings are held and interested parties are consulted.

Having considered the results of the submission process the Commission then reaches a major decision point. It may (in terms of clause 21 of Schedule 3):

- adopt the draft as a final proposal (with or without amendments)
- issue a new draft proposal based on another “reasonably practicable option” or
- decide to abandon the process.

Before issuing a final scheme the Commission must be satisfied that it is likely to have “demonstrable community support” in each affected district. The Commission also believes it needs to consider whether a final proposal would have a “reasonable chance of success” before proceeding to that stage. This reflects the considerable expense involved in a possible poll, which can be requested in response to a final proposal. The Commission intends arranging its own public opinion surveys in affected areas to support its making this assessment.

Final proposal and poll

If the Commission decides to issue a final proposal a poll can be requested by 10% of the electors in any one affected district. If a poll is requested the fate of the proposal is decided by the majority of votes cast across affected districts. A key feature of the 2012 amendments to the Act was that the poll is to be decided across the affected districts as a whole, rather than individually in every affected district. If the proposal is defeated at the poll the process ends. If there is no poll or the proposal is supported by the poll, an Order in Council is made giving effect to the final proposal.

Reorganisation scheme and transition process

The Order in Council giving effect to the proposal sets the start date for the new council/s and also establishes a “transition body”. The transition body is to comprise a transition board (with a majority of members to be elected members of affected local authorities) and an implementation team. The transition board appoints the interim chief executive.

From that point forward the Act provides for a two-phase transition process. In the first phase the transition body works with the Commission to develop the final reorganisation scheme which is then given effect by a second Order in Council. The reorganisation scheme contains detailed technical provisions to guide the transition process.

In the second phase the transition body develops a change management plan. At this stage the Commission ceases to have a “hands on” role. Until the date the new council/s come/s into being (following election of the new council/s) the transition board remains in place, and the Interim CE is able to make management decisions (hiring staff, entering contracts) on behalf of the new council. Once the new council comes into office it is able to make governance decisions for the new council (such as adopting statutory plans and policies and making rates).

Current reorganisation proposals

Since the 2012 amendments, the Commission has received five reorganisation applications, and three large scale reorganisation processes are currently in train. These are summarised below.

Northland

An application was presented to the Commission on 18 December 2012 from the Far North District Council. This proposed that the district become a unitary authority.

The Commission accepted the application and declared that the affected area was the whole of Northland Region. The Commission identified the reasonably practicable options and its preferred option and in November 2013 released its draft proposal. This was for a single unitary authority to be established for Northland Region. A secondary structure of community boards was proposed, and the draft also noted that if the then Local Government Amendment Bill was enacted the option would become available of local boards being established rather than community boards.

Submissions were called for and received until 21 February 2014. The Commission received 1894 submissions. During April it conducted 15 days of hearings at seven locations with a total of 198 submitters being heard. A substantial majority of submissions (90.3%) opposed reorganisation, with around 7.45% in support and 2.25% neutral or indeterminate.

The process is now at the decision point where the Commission is considering the options under clause 21 to either issue a final proposal, or issue a new draft proposal, or to not proceed with the process.

Hawke's Bay

An application was presented to the Commission on 7 February 2013 from the 'A Better Hawke's Bay Trust'. This sought the establishment of a single unitary authority covering the current Hawkes Bay Region.

The Commission accepted the application and declared that the affected area was the whole of Hawke's Bay Region. The Commission identified the reasonably practicable options and its preferred option and on 26 November 2013 released its draft proposal. The draft proposal was for a single unitary authority to be established for Hawke's Bay region. A secondary structure of community boards was proposed and the proposal also noted that if the then Local Government Amendment Bill was enacted the option would become available of local boards being established rather than community boards.

Submissions were called for and received until 7 March 2014. The Commission received 733 submissions. Two rounds of public hearings were held during May and June 2014. Approximately 82% of submissions opposed the proposal (of which 348 / 47.5% were in a standard form).

The Commission has now given preliminary consideration to the options under clause 21 as to the next steps in the Hawke's Bay process. The options are to issue a final proposal, to issue a new draft proposal, or to not proceed with the process. The Commission has also considered the option of a possible additional non-statutory step before making its final decision under clause 21.

Wellington Wairarapa

The Commission has received two reorganisation applications relating to Wellington Region. The first from the Wairarapa Governance Review Working Party was received on 21 May 2013 seeking the establishment of a unitary authority in the Wairarapa separate from Wellington Region. The second was from the Greater Wellington Regional Council. It was received on 21 June 2013 and sought the establishment of a single unitary authority across the whole of the current Wellington Region i.e. including the Wairarapa. The Commission agreed to assess both applications and on 8 July notified both and called for alternative applications. The proposals were notified jointly as the Commission felt that having two separate processes running in the region at the same time would not be conducive to successful public engagement and consultation.

A total of 21 responses were received including quite fully developed alternative proposals from several of the local authorities in the region. These have been considered and the

Commission has identified the reasonably practicable options and is at the point of finalising its preferred option and preparing to release a draft proposal.

North Rodney

A reorganisation application was received on 4 November 2013 from the 'Northern Action Group' seeking the establishment of a North Rodney unitary authority covering an area that is currently part of the Auckland Council.

On 19 June 2014 the Commission declined to assess this application on the grounds that the application did not contain all the information required and that it would not be in the public interest to assess the application. This decision rested primarily on the fact that the Auckland Council requires a longer period than the 3 years from its creation to achieve full integration, and to reap the benefits Parliament intended from the changed local government structure.

The applicant responded on 30 July 2014 by lodging an appeal to the High Court, on points of law, against the Commission's decision to decline to assess the application. A Court hearing date has not yet been set.

Nelson/Tasman

An application was lodged on 25 November 2013 by an individual seeking the amalgamation of Tasman District and Nelson City. It was essentially of the same scope as the Commission's earlier proposal which was defeated at a poll in 2012. The Commission declined to assess the application on the ground that it did not contain the information required for an application in sufficient detail for it to be assessed.

Progressing current reorganisation proposals

As noted above, the Commission is currently at key decision points in terms of each of the three substantive reorganisation processes. Commissioners are keen to meet with you and brief you on the next steps before taking further public steps in these processes.

Possible future reorganisation proposals

A key feature of the Commission's operating environment is that the workload in terms of reorganisation proposals is largely demand driven. This reflects the fact that any person can apply for a local government reorganisation, rather than processes being initiated by the Commission itself or the Government of the day. The Commission is aware of reorganisation proposals that may be lodged relating to two other regions – Waikato and the Bay of Plenty.

Waikato

The Waikato Branch of the New Zealand Property Council has foreshadowed a likely proposal for the creation of a unitary authority for a substantial part of the current Waikato Region. It is likely that consideration of any such proposal would require a process spanning the whole of the region.

It is also understood that a different proposal has been developed by the Thames Coromandel District Council that proposes separate unitary authority for the Thames Coromandel District and neighbouring parts of the Waikato, possibly including part of the current Western Bay of Plenty District. It is understood that this proposal would be likely to be put forward as an alternative proposal in the event of the Waikato Property Council application being made. While it had earlier been suggested that this would happen early in the New Year, recent reports suggest that any application may be deferred pending attempts to develop a “spatial plan” for the region. Any reorganisation process covering the Waikato Region has the potential to be larger and more complex than any of the three current processes.

Bay of Plenty

A possible application for the amalgamation of Tauranga City and Western Bay of Plenty Districts has been discussed publicly by a group of individuals within the community. It is understood that a broader discussion has emerged within the region about a possible reorganisation proposal involving the whole region.

Resourcing of the Commission

The amendments to the reorganisation provisions of the Local Government Act in 2012 had the effect of giving rise to the significant reorganisation proposals outlined above. This has resulted in a greatly increased workload for the Commission, amounting to a substantial change in the scale and complexity of its work.

Over the period the Commission has become increasingly concerned that resources have not been sufficient for it to efficiently advance the number of large and complex reorganisation proposals it has received. In response the Department of Internal Affairs engaged Martin Jenkins to undertake a review of the resources of the Commission. This concluded that significant increases to the staffing and financial resources available to the Commission are required in order for it to successfully undertake the current workload relating to reorganisation proposals.

The staffing of the Commission is currently in transition to the new and enlarged structure. Currently some of the new roles identified as being required are being filled on an acting basis by contracted external personnel with new permanent positions expected to be advertised shortly.

Reflections on Reorganisation Processes

It is now 18 months since the new reorganisation provisions were enacted, and the Commission has had the time to accumulate a degree of experience in working under them. As will be apparent from the above, the process has a number of steps and decision points, and different criteria at different stages of the process. The Commission would welcome the opportunity to share its thoughts on the process with you.

Reflections on System of Local Government

In response to the three reorganisation applications the Commission has undertaken a wide range of investigations and consultations about the system of local government in three

affected regions. Aside from the Royal Commission on Auckland Governance, these have been the most detailed of investigations of local government in particular regions undertaken for many years.

This has provided some useful insights into the issues and challenges facing the local government sector generally. On this basis the Commission considers it is able to make a positive contribution to thinking about broader policy issues in relation to the sector in general, beyond the specific question of local government structure. We would welcome the opportunity to share our observations with you.

Representation Reviews for the 2016 Local Elections

The Local Electoral Act 2001 requires local authorities to undertake a representation review at least every six years so as to achieve fair and effective representation for individuals and communities. These reviews include the number of elected members and in the case of territorial authorities, the basis of election (i.e. at large elections, wards or a mix of both) and establishment of community boards. The Commission hears and determines any appeals or objections against local authority representation proposals.

Twenty three local authorities are required to review their representation arrangements prior to the 2016 local elections. Other local authorities may undertake reviews if they wish to.

A feature of the representation review process is the “+/-10% fair representation rule” whereby the population to member ratio for wards and constituencies must (subject to certain exceptions) fall within a range of +/-10% compared to the district or region as a whole.

The legislation governing representation reviews was amended in a number of ways in 2012. The major changes were as follows -

- local authorities may make minor alterations to boundaries outside of the representation process subject to the consent of the Commission
- there is more flexibility in how the ‘+/-10% fair representation rule’ can be applied, but any proposals not complying with the rule must come to the Commission for approval.

Representation Review Guidelines

The Commission is required by section 19ZI of the Local Electoral Act 2001 to issue guidelines identifying factors and considerations for local authorities to take into account when determining their representation arrangements. The Commission has recently reviewed these guidelines and new guidelines will be issued during October 2014.

COMMISSION MEMBERS

Basil Morrison CNZM (Chair)

Basil Morrison has had considerable experience in local government having previously been Chairman of the Ohinemuri County Council, a member of the Thames Valley United Council, Mayor of Hauraki District, a member of the Waikato Regional Council, President of Local Government New Zealand and Chair of the Commonwealth Local Government Forum.

He is currently Chair of the Local Government New Zealand Superannuation Board of Trustees, a director of Civic Assurance, and a member of the Waitangi Tribunal.

Anne Carter

Anne Carter was the Deputy Secretary, Local Government and Community at the Department of Internal Affairs from 2004 to 2010. Most recently she was the Executive Director of the Pike River Royal Commission. She had previously worked at Te Puni Kokiri, the Office of the Auditor General, the Ministry of Youth Affairs (as Chief Executive) and the Ministry of Women's Affairs (as Acting Chief Executive).

Janie Annear ONZM

Janie Annear was Mayor of Timaru District between 2004 and 2013, and prior to that was a member of the Timaru District Council.

She has a background in a wide range of business and consulting roles and has served on a number of boards across the private sector, local government and central government. She also serves on the Lottery Grants Board's Lotteries Community Facilities and Significant Projects Funds Committees.

DUTIES AND FUNCTIONS OF THE LOCAL GOVERNMENT COMMISSION

Local Government Act 2002

Under this Act the Commission has a number of responsibilities. These are:

- (a) under section 16, to provide advice to the Minister of Local Government when a local authority has sought a binding ruling from the Minister on significant new activities proposed by a regional council;
- (b) under section 26, to consider, and where appropriate, make determinations amending the provisions of a final reorganisation scheme where it is satisfied that either-
 - i. some further or other provision is necessary to enable, or better enable, the intention of the scheme to be put into effect; or
 - ii. some provision of the scheme is no longer relevant or appropriate to the intention of the scheme;
- (c) under section 27, to consider and determine applications from territorial authorities wishing to be called a city council or a district council;
- (d) under section 30, if considered appropriate, to provide information about local government and to promote good practice relating to a local authority or to local government generally;
- (e) under section 31(1), of its own volition or at the request of the Minister of Local Government, to report on, and make recommendations to the Minister and any relevant local authority, on matters relating to a local authority or local government;
- (f) under section 31(1A) to report on, and make recommendations to the Minister and any relevant local authority on any matter arising from the performance of its functions.
- (g) under Schedule 3, to assess reorganisation applications for the union, constitution, and abolition of districts and regions, and creation of unitary authorities, boundary alterations, and transfers of responsibility
- (h) under Schedule 3, clause 53, to be an arbiter on the apportionment of assets and liabilities between local authorities, following implementation of a reorganisation scheme, where there is disagreement;
- (i) under Schedule 6, to consider and determine appeals where a territorial authority declines a request from a group of electors for the constitution of a community.

Local Government Act 1974

Under this Act the Commission has two responsibilities:

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

Local Government (Auckland Council) Act 2009

Section 98 provides for the Commission to determine certain disputes between the Auckland Council's governing body and local boards.

Local Electoral Act 2001

Under this Act the Commission has three responsibilities:

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

Local Authority Reorganisation (Property Transfers) Act 1990

Under this Act the Commission may investigate property dealings of any former local authority between 14 November 1988 and 31 October 1989 and, where the Commission considers it appropriate, require that those dealings be rectified.

New Zealand Public Health and Disability Act 2000

Clause 20 of the Second Schedule to this Act provides that the Minister of Health may request the Minister of Local Government to refer to the Local Government Commission for inquiry and report, any question relating to the union, reconstitution, or alteration of the boundaries of any district or constituency of a district health board.

Sale and Supply of Alcohol Act 2012

Sections 304, 337 and 363 empower the Commission to review the boundaries of licensing trust districts and wards, and of community trusts to ensure they conform with the boundaries of meshblocks.

Electoral Act 1993

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

Museum of Transport and Technology Act 2000

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