



## **LOCAL GOVERNMENT COMMISSION**

### **Canterbury - Otago regional boundary**

**Decision on appeals under sections 37ZZC and 37ZZH  
of the Local Government Act 1974 against the decision  
of the Canterbury Regional Council to not proceed with  
a reorganisation scheme**

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## **INTRODUCTION**

- 1 This decision relates to appeals lodged pursuant to sections 37ZZC and 37ZZH of the Local Government Act 1974 (the Act) against the decision of the Canterbury Regional Council (CRC), as the principal local authority, on 17 December 1998 to not proceed with a reorganisation scheme. The reorganisation scheme would alter the boundary between the Otago and Canterbury Regions by transferring the area of the Waitaki District falling within the Canterbury Region to the Otago Region. This appeal was heard in Oamaru over the periods 23 to 25 March 1999 and 10 to 13 May 1999, and in Wellington on 23 June 1999.

## **BACKGROUND**

- 2 In September 1996 Messrs K J Anderson, T P Gilchrist, C R Halstead, R G Patterson and T J Wardell (the proposers) initiated a proposal, in accordance with section 37ZO of the Local Government Act, that the boundary between the Canterbury and Otago Regions be altered (the proposal).
- 3 In November 1996 the Commission, in accordance with section 37ZV of the Act, appointed the CRC as the principal local authority. In its turn the CRC resolved, pursuant to section 37ZY of the Act, to appoint a committee (the Committee) to prepare and process a draft reorganisation scheme.
- 4 The draft reorganisation scheme was issued in December 1996. Following the consideration of submissions the Committee reported to CRC in July 1997 with a recommendation that the reorganisation

scheme not proceed. The CRC adopted the recommendations on 29 July 1997 and gave public notice of its decision.

- 5 The proposers, the Ahuriri District Ratepayers and Householders Association, the Waitaki District Council and the Otago Regional Council (ORC) gave notice of appeal against this decision. The CRC then gave notice of a cross-appeal relating to the adequacy of the description of the area affected and other matters contained in the draft reorganisation scheme.
- 6 On 14 November 1997 the Commission heard arguments relating to matters contained in the cross-appeal.
- 7 On 11 December 1997 the Commission issued its decision relating to the cross-appeal. The Commission:
  - found that the reorganisation proposal presented to the CRC and other affected authorities within the Canterbury and Otago Regions contained a sufficient description of the area affected by the proposal;
  - upheld, with the assent of the appellants, that the draft reorganisation scheme contained little detail as to how the proposal could be implemented had the same been approved;
  - upheld, with the consent of the appellants, that because of lack of detail, the notification of the scheme did not comply with section 37ZW(3) of the Act;
  - in accordance with section 37ZZL of the Act, directed the CRC to reconsider the content of a draft reorganisation scheme, and prepare and publicly notify an appropriate document which could give effect to the original proposal; and
  - in accordance with the provisions of section 37ZZL(4) of the Act, directed that all proceedings on the appeal and cross-appeal be stayed until the CRC's consideration of the reorganisation proposal was completed.

- 8 On 13 June 1998 the CRC issued public notice of the new draft reorganisation scheme. Hearings on this scheme were held during the period 2 September to 1 October 1998 by a newly established Committee appointed by the CRC.
- 9 On 7 December 1998 the Committee reported to the CRC recommending:
- that the draft reorganisation scheme not proceed; and
  - that the CRC, as principal local authority, establish a working party with the proposers, ORC, Waitaki District Council and any affected parties, to consider how the Otago community of interest in the affected area can be recognised in the integrated management of the natural and physical resources within the Waitaki River catchment as a whole.

(The Committee recommended that an independent facilitator be appointed to facilitate the later process.)

- 10 On 17 December 1998 the CRC resolved that the draft reorganisation scheme not proceed. The Committee's recommendation regarding the establishment of a working party was received and left to lie on the table.
- 11 Following the CRC decision the Commission received pursuant to section 37ZZC of the Act:
- an appeal from the proposers jointly with the Ahuriri Ratepayers and Householders Association, the Ahuriri Community Board, the Waihemo Community Board, the Waitaki District Council and the ORC on 14 January 1999; and
  - an appeal from Arthur E Budd on 15 January 1999.

- 12 Pursuant to section 37ZZH of the Act the Commission received from CRC an appeal in respect of additional matters on 10 February 1999.
- 13 Pursuant to section 37ZZE of the Act, the following persons and organisations gave notice of their intention to appear and be heard at the hearing of the appeals:

***Local Authorities***

Dunedin City Council

Waimate District Council

Mackenzie District Council

***Persons and Organisations***

S Ross

A E Budd

G & E Blanchard

R M & C W Blackstock

A Simpson

R K Watson

W, J & D Simpson

R M Williamson

J S Hore

D & P Cox

W Penno

P J Patterson

H L Brown

A J Gloag

S Munro

D W Ross

South Island High Country  
Committee, Federated

Electricity Corporation of New  
Zealand

Farmers of New Zealand

(The Electricity Corporation of New Zealand later advised the Commission of its withdrawal from the appeal proceedings. D W Ross and R K Watson also later advised the Commission that they no longer wished to be heard. H L Brown was not available for the hearing.)

- 14 Following receipt of the appeals the Chief Executive Officer of the Commission arranged for the hearing of the appeal.

- 15 On 26 February 1999 the Commission received a formal request from legal counsel for the CRC for an adjournment of the hearing. This request followed the resolution of the CRC on 25 February 1999 to initiate a reorganisation proposal to alter the boundary between the Canterbury and Otago Regions to a river catchment boundary based on the former Waitaki Catchment Commission's southern boundary.
- 16 After consideration of submissions from legal counsel for the proposers and those joining them in their appeal ("the appellants"), and the CRC, the Commission on 15 March 1999 advised that it was not persuaded that it was in the interests of justice to grant the adjournment.

## **THE HEARING**

### **Day 1 - Tuesday, 23 March 1999**

- 17 In declaring the hearing open the Chairman advised that Commissioner Bruce Anderson would be unable to take part in the hearing of the appeal due to illness. The Chairman also advised that Commissioner Barbara Durbin and the Commission's Senior Advisor had on the previous day accompanied him, together with a senior officer from each of the ORC and CRC in a flight over the affected area. The Chairman then invited Mr Alistair Logan, legal counsel for the appellants, to present his arguments, noting that the Commission had read the submissions previously forwarded to it by Mr Logan.
- 18 Mr Logan read his written summary of the appellants' case. Mr Logan then called the following witnesses to make their witness statements:
  - Associate Professor Tom Brooking
  - Mr Ken Anderson, proposer
  - Mr Rodney Patterson, proposer
  - Mr Richard Halstead, proposer
  - Mr Tony Gilchrist, proposer

- Mrs Pamela Firman, Waitaki District Councillor and former Chairperson of the Ahuriri Ratepayers and Householders Association
- Mr Tony Strachan, farmer in the affected area
- Mrs Val Williamson, farmer in the affected area
- Mr Peter Casseley, publican in the affected area
- Mrs Judy Piner, Chairperson of the Ahuriri Ratepayers and Householders Association
- Mr David Kay, member of the Ahuriri Community Board
- Mr Wayne Scott, Director Corporate Services, ORC
- Mr Tony Avery, Director Resource Management, ORC
- Mr Jack Chandra, Policy and Regulatory Manager, Waitaki District Council.

**Day 2 - Wednesday, 24 March 1999**

19 Further witness statements in support of the appeal were made by:

- Mr Mark Yaxley, Infrastructure Assets Manager, Waitaki District Council
- Mr John Cooney, Former General Manager, Waitaki District Council
- Ms Louise Rosson, Chairperson, ORC
- Mr Duncan Butcher, Deputy Chairperson, ORC
- Mr Doug Brown, ORC Councillor and President, Federated Farmers North Otago
- Mr Richard Keys, Manager Policy Development, ORC
- Mr Tony Avery, Director Resource Management, ORC
- Mr Graeme Martin, Chief Executive, ORC.

20 A separate appellant, Mr Arthur Budd, made his submissions in support of the proposed boundary change.

21 Mr Logan, legal counsel for the appellants, made his submissions on matters of law.

**Day 3 - Thursday, 25 March 1999**

22 Further witness statements in support of the appeal were made by:

- Mr Duncan Taylor, Mayor of Waitaki District
- Mr Ian Lawrence, Barrister and Solicitor
- Mr Graeme Martin, Chief Executive, ORC
- Professor Ali Memon.

23 Prior to Mr Lawrence making his witness statement, legal counsel for the CRC - Dr Ed Wylie - wished to have placed on record the CRC's concern that Mr Lawrence was appearing as a witness. He noted that Mr Lawrence had been Chairman of the Commission when it ruled on a cross-appeal relating to an earlier decision of the CRC on the boundary proposal. The Commission advised Dr Wylie that his objection was understood and noted, that the Commission was aware of the background and that Mr Lawrence would be allowed to proceed. Dr Wylie then submitted that no weight should be placed on Mr Lawrence's witness statement and this submission was noted by the Commission.

24 In his witness statement, Professor Ali Memon, made a number of comments for which the Commission sought substantiating information. Professor Memon offered to provide additional information and it was agreed that this would be provided to the Commission through Mr Logan. This information was provided to the Commission by Mr Logan on 23 June 1999.

#### **Day 4 - Monday, 10 May 1999**

- 25 Further witness statements in support of the appeal were made by:
- Sir Geoffrey Palmer
  - Professor Rex Honey
  - Mr Richard Keys, Manager Policy Development, ORC.
- 26 Dr Ed Wylie, legal counsel for the CRC, then outlined the structure of the evidence and submissions to be provided in support of the CRC's decision to not proceed with the reorganisation scheme. The structure would involve opening submissions by Dr Wylie, witness statements and submissions on matters of law. Dr Wylie advised that he would reserve comments on ORC's submissions for his right of reply.
- 27 Following Dr Wylie's opening submissions the following persons were called to make their witness statements:
- Mr Richard Johnson, Chairman, CRC
  - Mr Don Linklater, Chairman, Manawatu-Wanganui Regional Council
  - Associate Professor Kenneth Palmer
  - Mr Graeme Nahkies, Consultant
  - Mr John Glennie, Regional Policy Manager, CRC.

#### **Day 5 - Tuesday, 11 May 1999**

- 28 Further witness statements in support of the decision of the CRC to not proceed with the reorganisation scheme were made by:
- Mr John Glennie, Regional Policy Manager, CRC
  - Mr Bob Reid, Regional Engineer (Works), CRC
  - Mr Ron Paulin, Biosecurity Manager, CRC
  - Mr Ian Lucas, Bovine Tb and Contracts Manager, CRC
  - Mr Felix McGuigan, Land Sustainability Manager, CRC
  - Mr Grant Richardson, Morven Glenavy and Ikawai Irrigation Company

- Mr Kelly Davis, Te Runanga o Arowhenua/Waihao
- Mr Frank Scarf, Central South Island Fish and Game Council
- Dr Ian Cumming, Chief Executive, CRC
- Mr Malcolm Miller, Natural Resources Planner, CRC
- Mr James Baines, Consultant
- Mr Geoff Butcher, Consultant
- Dr Paul Mosley, Consultant.

**Day 6 - Wednesday, 12 May 1999**

- 29 A further witness statement in support of the CRC decision to not proceed with the reorganisation scheme was made by Dr Ian Cumming, Chief Executive of the CRC.
- 30 Dr Wylie concluded evidence on behalf of the CRC with his submissions on matters of law.
- 31 Individual submissions were made by:
- Mrs Sukhi Turner, Mayor of Dunedin City - in support of the proposal
  - Ms Anne Turvey - in support of the Dunedin City Council submission
  - Mr Tony Gloag - in support of the proposal
  - Mr Ron Wilkinson - in support of the proposal
  - Mr Struan Munro - in support of the proposal
  - Mr Stewart Ross, on behalf of the Omarama Branch of the High Country Section of Federated Farmers - in support of the proposal
  - Mr Ron Blackstock - in support of the proposal
  - Mrs Derrice Cox - in support of the proposal
  - Mr Neil Anderson, Mayor of Mackenzie District - in support of the status quo
  - Mr Peter Patterson - in support of the proposal

### **Day 7 - Thursday, 13 May 1999**

32 Further individual submissions were made by:

- Mr Alistair Simpson - in support of the proposal
- Mr Bob Douglas, on behalf of the South Island High Country Committee of Federated Farmers - in support of the proposal
- Mrs Estelle Blanchard - in support of the proposal
- Mr Bill Penno, CRC Councillor - in support of the status quo
- Mr David Owen, Mayor of Waimate District - in support of the status quo
- Mrs Judith Simpson - in support of the proposal
- Mr John Hore - in support of the proposal.

### **Day 8 - Wednesday, 23 June 1999**

33 This final day of the hearing was reserved for the hearing of closing submissions in reply by legal counsel. Submissions were made by Mr Logan followed by Dr Wylie.

34 Prior to the commencement of Mr Logans' submissions Dr Wylie expressed concern about the inclusion of fresh material to be presented by Mr Logan - this included a memorandum from Sir Geoffrey Palmer, a letter from Professor Ali Memon and information on soil types in the Waitaki catchment. Dr Wylie submitted that it was inappropriate to include fresh material in submissions in reply.

35 The Commission advised that the matters raised by Dr Wylie were noted and that the Commission would seek legal advice on the admissibility of the new material.

36 Dr Wylie and Mr Logan then each made their submissions in reply. At the conclusion of Mr Logan's submissions Mr Ken Anderson and Mrs Pam Firman made brief comments on behalf of the appellants.

## STATUTORY PROVISIONS RELATING TO THE DETERMINATION OF THE APPEAL

37 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.

38 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 sufficient distinct communities of interest; 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.*

39 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.*

40 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**

- 41 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. 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. Section 37ZQA(1) itself also lists various requirements which must be met. When considering the various criteria set out in subparagraphs (i) to (iv) of paragraph (b) of 37ZQA(1), the Commission must consider also the factors in subsection (2) of that section.
- 42 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 regions concerned to achieve the purposes of local government as set out in section 37K. It is the duty of Regional Councils to achieve the purposes of local government from a regional perspective.

- 43 The proposal was required to be assessed by the Commission against the criteria specified in section 37ZQA of the Act.
- 44 The Commission notes that the eastern section of the regional boundary, from the vicinity of Georgetown to the coast, generally follows the southern bank of the Waitaki River. This portion of the regional boundary is unaffected by the proposal. The comments that follow, in terms of the assessment of the proposal against the criteria, relate only to the area affected by the proposal.

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

- 45 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.***

- 46 Both Regional Councils are currently able to fund their functions, duties and powers.
- 47 The Commission noted that, if the proposal were given effect to, the ORC would extend the area over which it carries out its functions, duties and powers at an additional cost. The ORC would have the ability to offset the cost through the additional revenue it would gain from the extended area.

48 From the evidence submitted to it, the Commission formed the opinion that both affected Regional Councils have the necessary resources to enable them to carry out their functions, duties and powers and would continue to possess them whether or not the reorganisation proposal was implemented.

***(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.***

49 Under this criterion the Commission has considered the proposal in terms of the functions of Regional Councils, which are set out in section 37S of the Act. The Commission notes that the ORC and CRC have inter-regional arrangements in place for civil defence and land transport, which would be largely unaffected by the proposal. The main functions affected by the proposal are Regional Council functions relating to pest management, resource management, soil conservation and rivers control.

**Pest Management**

50 Submissions were made by the appellants and the CRC regarding the respective comparative advantages of the proposed river boundary and the current boundary. Having considered the submissions the Commission considers that both the Waitaki catchment and the Waitaki River could serve as a boundary for management of animal and plant pests. However, a river boundary would likely require more complex common arrangements in both regions for it to be an effective boundary.

51 From the submissions made to it, and its own observations, the Commission is satisfied that the ecological community is more diverse in the Waitaki river bed and adjacent areas than along the higher altitude segments of the current boundary. The high altitude areas of the

current boundary provide an inhospitable habitat for pests. For a river boundary to be effective as a barrier to pests it would likely require both Councils to have common strategies and practices for the management of pests in the river system and in adjacent areas. Without a common, or similar, approach there would be potential for infestation of pests from one side of the boundary to the other. Such arrangements are not of such importance with the existing boundary as the Waitaki River and adjacent areas fall within the jurisdiction of the Canterbury Regional Council. These arrangements would incur additional costs for both Councils.

#### Resource Management, Soil Conservation and Rivers Control

- 52 There are a number of resource management issues that are common to the Waitaki valley catchment as a whole - these include issues relating to pest control as discussed above, soil conservation, braided river management, water allocation (particularly for the hydro stations and irrigation) and sustainable land management.
- 53 The current regional boundary in the affected area follows generally a catchment boundary to the south of the river. While the existing boundary creates some issues for landowners whose properties straddle the border -in terms of on-site identification of the boundary and the differing policies, practices and rating regimes of the CRC and ORC - the proposed river boundary would also create a range of cross-boundary issues.
- 54 The Waitaki River and its tributaries are distinctive and prominent features of the Waitaki valley. The river system includes a number of lakes which supply the power stations on the river. Below the Waitaki Dam the river spreads out in a braided fashion over a wide river plain.
- 55 The waters of the lakes and river system have been harnessed for the Waitaki River hydro-electric generation system. The system comprises

eight power stations supplied with water from a series of natural and constructed lakes and canals. These stations currently meet about 22% of New Zealand's annual electricity demand. The Commission considers the Waitaki River to be a resource of very considerable local, regional and national significance in terms of its hydro-generation capacity and potential. If the proposal proceeded the hydro-electric stations would straddle the regional boundary.

- 56 In its flight over the affected area the Commission noted the accelerated erosion in parts of the catchment and the drought conditions that prevailed in the area at that time. The Commission is of the view that effective catchment-wide soil conservation measures are important to maintain the quality of the land and water resources in the Waitaki valley.
- 57 The Commission considers that the introduction of a second Regional Council into the management of the Waitaki catchment and the Waitaki River would not be efficient for the management of the catchment or river.
- 58 It was argued that arrangements could be put in place with a river boundary to provide for the co-ordinated planning and management of the catchment, but in the view of the Commission these would introduce costs and administrative and catchment complexities which do not exist with the current boundary. With the catchment split between two Regional Councils it would be more difficult to properly administer the resources of the Waitaki catchment in an integrated manner.
- 59 In the view of the Commission the sustainable management of the catchment and the water resource of the Waitaki valley is best maintained through one Regional Council having responsibility for the catchment and river system. A river boundary which divides the

catchment would not be appropriate for the integrated management of resources in the Waitaki River catchment.

60 Having considered all the evidence and submissions made to it, the Commission does not consider that the proposal would provide both Regional Councils with regions appropriate for the efficient and effective exercise of their functions, duties and powers. Therefore, the Commission is not 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.***

61 Detailed arguments, supported by witness statements, were put forward by both the appellants and the CRC regarding the issue of community of interest of the residents of the affected area.

62 The Commission has carefully assessed all the information provided to it on the issue of community of interest. The Commission is of the opinion that it must consider the question of community of interest principally from a local government perspective. The Commission has come to the view that there are two overlapping communities of interest in the affected area.

63 The Commission is satisfied that the residents of the affected area share a community of interest with the other residents of the Waitaki District in terms of history, cultural identity, social and business interests, and that there is a strong affinity with the residents of the Otago Region, particularly those in the northern part of the region.

64 The Commission is of the opinion that the residents of the affected area are also part of a community of interest, encompassing all residents of

the Waitaki valley, that has similar concerns regarding the sustainable management and development of the Waitaki River water resource. The Waitaki River is critical to the sustainable management and development of land on both sides of the river. In the Commission's view this embodies a community of interest based on a common interest in the management of resources in the Waitaki valley.

- 65 The overlapping communities of interest come into conflict if the Commission was to determine a boundary based on this criterion alone. It was argued that a river boundary would be the most suitable to take account of the community of interest based on cultural, historical, social and business linkages. However, in the view of the Commission, a boundary which includes the Waitaki valley catchment in one region would be best suited to a resource management based community of interest.
- 66 This matter was considered in considerable detail by the Commission before it issued its reorganisation schemes for the Canterbury Region and Otago Region (including the Waitaki District) in 1989. At that time the Commission determined that the community of interest of the residents of the affected area was best taken into account by including them in the area of the Waitaki District for the purposes of territorial local government, while including them in the area of the Canterbury Region for the Regional Council functions. The Commission is of the view that this arrangement continues to take account of the overlapping communities of interest.
- 67 The Commission considers that good local government would not be promoted by dividing what it sees to be a community of interest with common resource management concerns pertaining to the Waitaki River.

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

68 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 negligible impact on the ability of the ORC and CRC to maintain governing and administrative structures which would comply with the requirements of this section.

69 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 local authorities concerned; and***

***(b) area of benefit of services provided.***

70 The Commission heard submissions from the appellants and the CRC regarding cross-boundary impacts in the areas of carrying out the functions, duties and powers of, or delivery of services by either Regional Council. Having considered these submissions, the Commission is of the view that there would be considerable cross-boundary impacts relating to resource consents pertaining to the Waitaki River.

71 The proposal would create a range of cross boundary issues - principally relating to the damming, use and discharge of water - which do not exist at the current boundary. The Commission recognises that not all cross-boundary impacts between local authorities were removed in the 1989 reorganisation schemes. However, it believes that while their existence is something that must be accepted, every endeavour should be made to avoid adding to their number and complexity. The Commission's opinion in this instance is that good local government

would not be promoted by allowing new and significant cross-boundary impacts to occur through the implementation of this proposal.

***Subsection 2***

***(c) Likely effects on any local authority of the exclusion of any area from its district.***

- 72 The Commission is of the view that implementation of the proposal would have little significance on the rating base of the CRC, recognising that the CRC would no longer be required to provide service delivery to the affected area.
- 73 Implementation of the proposal would hinder the effective management of resource issues in the Waitaki valley on an integrated and catchment-wide basis. Problems may arise in areas adjoining the boundary where the policies and practices of the two Regional Councils differ. The Commission accepts that issues arise with the current boundary but is concerned that the issues associated with a river boundary will be of greater significance.

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

- 74 The obligations imposed by section 37ZQA will only be met if the Commission is satisfied that the proposal will promote the good local government of the Canterbury Region and the Otago Region and all the requirements of section 37ZQA(1)(b) are met.
- 75 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 regions concerned will be met. In particular, the Commission is not convinced that the proposal

would enhance the ability of the CRC or ORC to achieve the purposes of local government set out in section 37K.

### **Section 37ZR**

76 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.***

77 The existing boundary in the affected area conforms generally with the catchment boundary. The proposal is for a boundary which would in effect split the catchment. The Commission did not receive sufficient evidence to convince it that a catchment boundary between the Canterbury and Otago Regions is impracticable. The Commission is of the view that the existing catchment-based boundary is the most practicable arrangement for the affected area in terms of managing the natural and physical resources of the Waitaki catchment in an integrated manner.

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

78 This proposal does not involve a change to the boundaries of territorial districts. Implementation of the proposal would result in the regional boundary being coterminous with the boundary between territorial districts.

***(c) The boundaries of regions and the boundaries of territorial authority districts conform with the boundaries of statistical meshblock areas determined by Statistics New Zealand and used for Parliamentary electoral purposes.***

79 The proposal would meet the requirements of this paragraph.

## **OTHER MATTERS**

### **Liaison Between Local Authorities**

80 The Commission believes that the CRC should as soon as possible consider how it could enhance its linkages with the people of the area affected by this proposal. These people reside on the periphery of the largest region in New Zealand. They have raised concerns about the level of service and consultation they receive from the CRC, and the approach of the CRC in dealing with issues of concern to them .

81 In its submissions to the Commission, the CRC suggested, that regardless of the outcome of the appeal process, all parties get together with a facilitator in order to develop a good working relationship. The Commission commends this approach and recommends that the CRC expedite matters in this regard.

82 Opportunities also exist for the CRC and ORC to assist the Waitaki District Council in working with the two Regional Councils. The Commission notes that both the CRC and ORC have made offers to the Waitaki District Council to work with it in minimising its costs in dealing with the two Councils and that the CRC has offered to reimburse any identifiable costs incurred by the Waitaki District Council in this regard.

83 The Commission acknowledges that the Waitaki District Council does incur additional costs in dealing with two Regional Councils, however

believes that these costs can be minimised through having effective working arrangements with both Regional Councils. It should be noted that Waitaki District is not exceptional in falling within the jurisdiction of two Regional Councils. A total of seven territorial districts straddle regional boundaries.

### **Admissibility of Information**

84 Paragraph 23 refers to the submission of Dr Ed Wylie, legal counsel for the Canterbury Regional Council, that the Commission should place no weight on the witness statement made by Mr Ian Lawrence. Paragraph 34 refers to Dr Wylie's concern about the inclusion of fresh material by the appellants during their rights of reply on 23 June 1999.

85 After deliberation on these matters, the Commission decided to consider all information that came forward to it during the hearing. The witness statement of Mr Ian Lawrence and the fresh material presented during the rights of reply, which were considered along with all other submissions, were not sufficient to determine the issue when balanced against all other matters before the Commission.

### **Appeal by CRC in Respect of Additional Matters**

86 In its notice of appeal in respect of additional matters, the CRC contends that certain parts of its decision as principal local authority on the draft reorganisation scheme are erroneous. However, as relief, the CRC seeks a finding by the Commission that upholds its decision, as principal local authority, that the draft scheme not proceed.

87 In its report to the CRC, the committee appointed by the CRC in accordance with section 37ZY of the Act, recommended that the draft scheme not proceed. On 17 December 1998 the CRC resolved that the draft scheme not proceed.

- 88 The appeal of the CRC in respect of additional matters takes issue with a number of findings of the committee appointed by it to consider submissions on the draft reorganisation scheme, and make recommendations to it in respect of the submissions made in relation to the draft reorganisation scheme. Broadly, the findings the CRC takes issue with are ones favourable to the proposers.
- 89 Most, if not all, of the findings to which the CRC takes issue in the notice of appeal in respect of additional matters, relate to issues traversed by the CRC during the Commission hearings. The Commission has considered the underlying issues in determining the appeals. It notes that not all of those who made submissions to the CRC committee which made the findings, also participated in the hearings before the Commission.
- 90 In the circumstances, in determining the appeals, the Commission does not consider it necessary or appropriate to make findings on each of the various issues identified in the CRC's notice of appeal.

## **COMMISSION'S DETERMINATION**

- 91 Having considered the evidence, submissions and appeals made to it and having tested them against the criteria specified in the Act, the Commission confirms the decision of the CRC (as the principal local authority) to not proceed with the Local Government (Waitaki River Valley) Reorganisation Scheme 1998.
- 92 In particular, the Commission is not satisfied that the scheme, if implemented:
- a. would promote the good local government of the Otago and Canterbury Regions

- b. would provide the ORC and CRC with regions appropriate for the efficient and effective exercise of local government functions, duties and powers
- c. would adequately reflect the communities of interest of the affected area in respect of regional resource management issues.

**For the Commission**

**Sir Ross Jansen, Chairman**  
**Barbara Durbin, Commissioner**

**16 August 1999**