



LOCAL GOVERNMENT COMMISSION

**Report to the
Minister of Local Government
on the draft Request for Proposal
for the delivery of regional council services
for the Chatham Islands Council**

October 2003

INTRODUCTION

- 1 In a letter dated 25 July 2003 the Minister of Local Government requested the Local Government Commission, pursuant to section 31(2) of the Local Government Act 2002, to consider and report on the Chatham Islands Council's draft Request For Proposal (RFP) for the delivery of regional council services and the Council's decision on the preferred tender.
- 2 On 11 August 2003 the Chairman of the Commission wrote to the Minister, seeking clarification regarding the terms of reference for the Commission's task. On 10 September 2003 the Minister replied, advising that the RFP was for the delivery of regional council services, and that the Chatham Islands Council would retain its regional council decision-making powers and overall control of works.
- 3 The Commission received the draft RFP on 19 September 2003. In accordance with the Minister's terms of reference the Commission was required to report back to the Minister by 3 October 2003. On 26 September 2003 the Chairman of the Commission wrote to the Minister advising that the Commission would be unable to meet the 3 October deadline and that it expected to be able to report by 17 October 2003.
- 4 To get a better understanding of the situation, the Commission and its officers visited Chatham Island from 24 to 26 September 2003. The Commission held discussions with the Chatham Islands Council, the Chatham Islands Enterprise Trust, the Area Manager of the Department of Conservation and representatives of the Hokotehi Moriori Trust. The Commission also sought the opportunity to meet with representatives of Ngati Mutanga, however the representatives were not available during the period of the Commission's visit.
- 5 While on Chatham Island the Commission visited a landfill near Te One and viewed the dilapidated sewage facility at Waitangi.
- 6 The Commission has also considered various background papers related to the situation on the Chatham Islands and has taken a particular interest in identifying the range of services that should be covered in the draft RFP.

THE IMPORTANT ISSUES

- 7 As a result of its investigations the Commission has reached the following key conclusions:
 - The position of the Chatham Islands Council as the only decision maker on regional and territorial local government issues on the Chatham Islands should be reinforced.
 - The performance standards set for key regional and territorial local government services on the Chatham Islands should be the same as those applying to the rest of New Zealand.

- The role of any other local authority providing regional or territorial local government services for the Chatham Islands Council must clearly be in the role of a contractor/service provider to the Chatham Islands Council.
- Given the joint role of the Chatham Islands Council in providing both regional and territorial local government services and the geographic isolation of the Chatham Islands, it is difficult in some cases to separate regional from territorial local government services, particularly when it comes to implementing the various statutory requirements in a practical sense.
- Any Government resources to the Chatham Islands Council should be provided on an enduring basis, otherwise there is a significant risk of the current unsatisfactory resourcing situation reoccurring.
- Issues relating to biosecurity are critical, and future resources must be available to improve the performance of the Council in this area.

8 In reaching the above conclusions, the Commission has taken into account the following matters:

Infrastructure

The Commission notes that infrastructure projects, including potable water, treatment of sewage and wastewater, and remedying the current unsatisfactory landfill situation (requiring remediation of the three existing landfill sites and the establishment of a new sanitary landfill), have been recognised by Government as urgent matters requiring a capital contribution from Government. The Commission applauds the action of Government in this regard. However, it is conscious that the capital expenditure to upgrade and remedy these basic services will need to be supplemented by a monitoring programme to ensure that output qualities are maintained over time. There will also need to be resources available to remedy any environmental or other defects detected as a result of this monitoring. This is a good example of complementary regional and territorial local government functions that are beyond the current resources of the Chatham Islands Council to deliver.

Biosecurity

The Commission regards the provision of adequate biosecurity protection (including active measures to prevent the introduction of new pests to the Chatham Islands, monitoring, control and eradication programmes) as a key issue for the Chatham Islands, given their isolation from mainland New Zealand and the unique environment of the Chatham Islands. Given the separation of the Chatham Islands from New Zealand (750km) and the fact that several pests and environmental problems that exist in mainland New Zealand are not present on the Chatham Islands, it is imperative that biosecurity measures are appropriately defined and enforced. In this regard, it may not be appropriate that the Chatham Islands be treated by central government agencies having biosecurity powers and responsibilities as if it were part of mainland New Zealand. Any plan to contract services should include provisions to implement appropriate biosecurity measures, and for an effective and complementary relationship to be developed with relevant central government agencies.

Service Levels

The levels of service that need to be provided to the Chatham Islands must recognise that certain services are required to protect the delicate and unique environment of the Chatham Islands, which is of national and international importance. It would not be appropriate to consider the cost of services on the Chatham Islands only on the basis of the current population and existing commercial activities. In the view of the Commission it would not be reasonable to expect the Chatham Islands community to fund the protection of environmental features which have such national significance.

- 9 With regard to the Council's regional resource management and biosecurity responsibilities the Commission recommends that the RFP should provide for the following:
- A comprehensive review of the Chatham Islands Pest Management Strategy, ensuring that the Council's responsibilities link in appropriately with those central government agencies having responsibilities and powers under the Biosecurity Act.
 - A requirement for the successful tenderer to provide the necessary resources to enable effective inspection and enforcement action to be taken in respect of the Chatham Islands Pest Management Strategy.
 - A specific monitoring regime to be established, for the purpose of regular testing, and if necessary, addressing the quality of discharges from items of infrastructure (such as sewage discharge, waste water treatment and landfill) and to more generally monitor water qualities, both fresh and salt, on the Chatham Islands.
 - Provisions within the evaluation criteria for an assessment of the compatibility of tenderers to work with the Chatham Islands Council.
 - A requirement that the successful tenderer would be expected to train Chatham Islands' people in resource management and biosecurity enforcement, and monitoring of the environment, and provide relevant education initiatives to the community.
- 10 The resource that is made available to the Chatham Islands should be sufficient to enable an ongoing and efficient operation at both regional and local service levels and in line with the concepts and requirements identified in this report. It would be important that no artificial separation is drawn between the Council's regional and territorial responsibilities. Any initiatives to deal with the Council's regional responsibilities must take account of its territorial responsibilities.

STATUS OF THE CHATHAM ISLANDS COUNCIL

- 11 The Chatham Islands Council Act 1995 gives the Chatham Islands Council the functions, duties and powers of a territorial authority and certain regional resource management responsibilities. The Council also has certain regional council responsibilities under the Biosecurity Act 1993, the Local Government Act 1974 (navigation aids, harbourmasters, and navigation bylaws), Transit Act

1989 (regional roading programmes), Land Transport Act 1989 (regional land transport strategy) and the Maritime Transport Act 1974 (oil spill contingency plans and other matters).

- 12 The Council does not have all the functions of a regional council. The Commission considers that it would be appropriate to review the Council's current regional responsibilities to ensure that the scope of those responsibilities remains appropriate for the long-term sustainable good local government of the Chatham Islands. Such a review falls outside the terms of reference set for the Commission by the Minister of Local Government.
- 13 Any review of the Council's functions should, in the view of the Commission, pay particular attention to the Council's resource management responsibilities, as prescribed in sections 26 to 28 of the Chatham Islands Council Act. Consideration should be given to whether those provisions remain appropriate, or whether the Council should be granted the general powers of a regional Council for the purposes of the Resource Management Act.
- 14 It is important that any review takes account of the role of the Chatham Islands Council as the only decision maker on regional and territorial local government issues on the Chatham Islands. Following any review of the Council's functions, as suggested above, consideration should be given to the name of the Council – in the Commission's meeting with the Council it was suggested to the Commission that redesignating the Chatham Islands Council as a unitary authority would place the Council on a sounder footing within its community and nationally.
- 15 Also, the Commission considers that the Council's regional responsibilities should be appropriately referenced in the Chatham Islands Council Act. Currently, the Chatham Islands Council Act only refers to the Council's regional resource management responsibilities. To gauge the scope of the Council's other regional responsibilities it is necessary to search through other statutes to ascertain whether the Council is granted particular regional council responsibilities. There would be benefits for the Council, its staff, and others with an interest in the affairs of the Chatham Islands, for the full scope of the Council's regional responsibilities to be appropriately referenced in the Chatham Islands Council Act.

SPECIFIC COMMENTS ON THE DRAFT REQUEST FOR PROPOSAL

Coverage

- 16 The scope of the draft Request for Proposal (RFP) is limited to the delivery of services in terms of the Chatham Islands Council's regional resource management responsibilities (as they are defined by section 26 of the Chatham Islands Council Act 1995) and the Biosecurity Act.
- 17 As noted in paragraph 11, the Council is granted the powers of a regional council under a number of other statutes.

- 18 The Commission has discussed the range of the Council's regional powers with the Council, and is satisfied that the focus of the draft RFP on the Council's regional resource management and biosecurity responsibilities is appropriate at this time. The Council has well established links with other agencies in terms of its other statutory regional responsibilities and it wishes to maintain day-to-day responsibility for the performance of those other statutory functions.
- 19 Enforcement of the regional services to be tendered out will be required to be done on the Chatham Islands. The Chatham Islands Council and the local authority entering into the contract will need to ensure that enforcement and other activities can be appropriately delivered on the Chatham Islands.

The Detail of the Draft RFP

- 20 In simple terms, the RFP will be inviting tenders for the provision of professional services to the Council.
- 21 As a professional services tender the Commission considers that the draft RFP requires additional content to ensure that an effective tender process can be undertaken. The Commission considers that the Council should obtain legal advice on the detailed revision of the draft RFP to ensure that it provides the basis for a robust contractual working relationship between the Council and the service provider. Comments on each section of the draft RFP follow.

Section 1: Introduction

- 22 Paragraph 1: In accordance with the Minister's letter of 10 June 2003 to the Council, it will be important that unitary authorities, as well as regional councils, have the opportunity to tender for the delivery of professional services.
- 23 Paragraph 2: This paragraph should be reworded to refer to the Council's regional resource management responsibilities as defined by section 26 of the Chatham Islands Council Act 1995.

Section 2: Background

- 24 Paragraph 7: This paragraph should be reworded to make it clear that the Council is tendering for the **delivery** of some elements of its regional functions, but that responsibility for those functions and all regional decision making remains with the Council.

Section 5: Terms of contract

- 25 This section should specify when the contract period would commence. It should also state whether there would be a right of renewal and any terms and conditions that would attach to such a renewal. (The Commission is of the view that the RFP should provide the opportunity for a right of renewal. There would likely be advantages to both the Chatham Islands Council and the tenderer in developing a long-term professional relationship.)

Section 7.5: Tender Evaluation

- 26 This section should specify the processes for the evaluation of the tenders. This would include:
- details of who will be doing the evaluation (the Commission considers that it would be advisable for the Council to involve an independent outside expert as part of a team of evaluators),
 - the ability of the Council to seek clarifying or supplementary information from any tenderers to assist the evaluation,
 - the ability of the Council to enter into pre-contract negotiations with the preferred tenderer to finalise the details of the services to be provided,
 - the ability of the Council to terminate negotiations with a preferred tenderer if it considers that satisfactory agreement cannot be reached on any outstanding issues, and to enter into subsequent negotiations with any other tenderer.
- 27 Evaluation criteria should also be specified in this section. The Commission is of the view that the attributes described in section 7.3 currently lack sufficient detail for evaluation purposes. The Council may wish to consider whether any criteria are more important than others, and therefore whether weightings should be applied to the evaluation criteria.

Additional elements of the RFP

- 28 In its discussions with the Council, the Commission was informed that the Council considers that there would be benefits in the RFP being expanded so that the selected tenderer would be expected to:
- work with the Council in educating the community on the Council's regional responsibilities and the part that communities should play in helping achieve positive regional outcomes
 - provide support to the Council in meeting its statutory planning and reporting responsibilities, e.g. policy support for the preparation of the Long Term Council Community Plan, Annual Report and other statutory documents.
- The Commission is of the view that it would be desirable for the Council to be able to draw on the resources of the successful tendering local authority in respect of these matters.
- 29 The RFP should also include a confidentiality clause, to the effect the Council will use reasonable efforts to maintain the confidentiality of information supplied in the proposal, subject to the statutory disclosure requirements of the Local Government Official Information and Meetings Act (tenderers should be asked to clearly indicate the parts of their proposals that they consider to be commercially sensitive and confidential).
- 30 The Commission considers that there would be benefits to the tender process if the RFP were accompanied by a draft contract, which would form the basis for the legal agreement between the Council and the successful tenderer. Making such a document available with the RFP allows tenders to get a clear idea of the legal responsibilities of each party, enables legal issues to be identified before

any negotiation process gets underway, and should assist with the speedy conclusion of the process. The draft contract should, inter alia, include:

- details of performance standards that the successful tenderer would be expected to meet, and the sanctions that would apply to any failure to meet the standards; and
- a process for dealing with issues or disputes that arise between the Council and the successful tenderer.

GOOD LOCAL GOVERNMENT

- 31 The Commission considers that the draft RFP, if modified taking into account the comments made in this report, would enable an effective tender process to be undertaken, which would contribute to the sustainable good local government of the Chatham Islands.

LOCAL GOVERNMENT COMMISSION

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Linda Constable, Commissioner
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17 October 2003