



Local Government
Commission

Mana Kāwanatanga ā Rohe

Briefing for Minister of Local Government

6 November 2017

CONTENTS

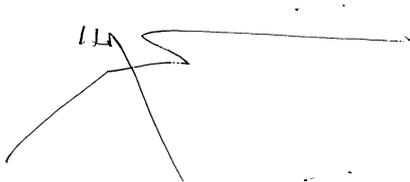
Introduction	4
The Commission's membership	5
The Commission's functions	6
The Minister and the Commission	7
Priorities and key decisions	8
The Commission's work	10
Our approach	10
Local Government Reorganisation: Overview	10
Current reorganisation applications	11
Wellington/Wairarapa	11
Auckland	13
West Coast	14
Northland	14
Representation reviews	15
Other work	16
Broader issues	17
Resourcing of the Commission	20
Appendix 1: Commission members and CEO	21
Appendix 2: Duties and functions of Local Government Commission	23
Appendix 3: Local Government Reorganisation	26
Appendix 4: Relationship between Minister, LGC and DIA	29

INTRODUCTION

Tēnā koe e te Minita

The Local Government Commission welcomes you to the Local Government portfolio and looks forward to meeting with you in the near future.

The Local Government Commission is an independent statutory body appointed by the Minister of Local Government. Its broad purpose is to consider proposals or adjudicate on matters relating to the structure of local government and the representation arrangements of local authorities. This briefing spells out the Commission's functions in more detail and discusses the current work of the Commission.

A handwritten signature in black ink, appearing to be 'Wira Gardiner', written over a faint, illegible printed name.

Sir Wira Gardiner

Chair

Local Government Commission

THE COMMISSION'S MEMBERSHIP

1. The Local Government Act provides that the Commission shall consist of three members appointed by the Minister of Local Government. One of those members must have knowledge of tikanga Māori and be appointed after consultation with the Minister of Māori Development.
2. The current Commission members, appointed on 1 August 2015, are:
 - Sir Wira Gardiner (Chair), appointed to 31 July 2018
 - Janie Annear, appointed to 31 July 2018
3. There is one vacancy on the Commission as a result of the resignation of Leigh Auton in April 2017.
4. The Local Government Act also allows for the appointment of temporary commissioners. There are currently two temporary commissioners:
 - Geoff Dangerfield was appointed on 22 August 2016 for the period until 23 February 2018, principally to assist with consideration of the Auckland reorganisation applications.
 - Brendan Duffy was appointed on 1 March 2017 for the period until 28 February 2018, principally to assist with consideration of reorganisation in the Wairarapa.
5. Brief biographies of the Commission members and the Commission's Chief Executive Officer are attached as Appendix 1.

THE COMMISSION'S FUNCTIONS

6. The Local Government Commission (the Commission) is constituted under Subpart 3 of Part 3 of the Local Government Act 2002. It does, however, have functions under a number of different Acts.
7. The principal functions of the Commission are to:
 - respond to applications for the reorganisation of local authorities
 - provide information about local government
 - promote good practice relating to a local authority or to local government generally
 - 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)
 - determine disputes between local boards and the governing bodies of unitary councils about the allocation of decision-making responsibility to local boards and local board bylaw proposals
 - 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.
8. The Electoral Act 1993 also provides that the Chairperson of the Commission is a non-voting member of the Representation Commission which is responsible for reviewing the boundaries of parliamentary electorates.
9. A full list of the Commission's functions is included as Appendix 2.
10. The process for local government reorganisation is discussed in Appendix 3.
11. 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.

THE MINISTER AND THE COMMISSION

12. The roles of the Minister of Local Government in respect of the Commission are as follows:
 - To appoint members and temporary members of the Commission
 - To determine rates of remuneration paid to members of the Commission
 - To take the lead on the Government's policy direction on local government generally, and the powers and constitution of the Commission specifically, as expressed through legislation
 - To specify measures and expectations relating to the Commission's performance of local government reorganisation responsibilities

13. The Commission's decisions do not require the Minister's approval before being implemented. Some decisions have effect as soon as made by the Commission (e.g. representation review determinations) while others are required to be implemented by Order in Council (e.g. final reorganisation proposals).

14. The ability for the Minister to specify measures and expectations relating to the Commission's performance of local government reorganisation responsibilities was introduced in 2012. The focus of this power was intended to be the time frames within which the Commission is expected to complete specified matters, and which reorganisation applications are to have a higher priority. The Minister's powers are not, however, restricted to those matters. To date this power has not been used.

15. The relationship between the Minister of Local Government, the Local Government Commission and the Department of Internal Affairs is set out in diagrammatic form in *Appendix 4*.

PRIORITIES AND KEY DECISIONS

Priorities

16. The priorities for the Commission to July 2019 are as follows:
- to complete consideration of the current reorganisation proposals
 - to maintain collaborative relationships with local government
 - to deal with the coming round of representation reviews
 - to put the Commission's funding on a sound footing
 - to continue to contribute to good practice in the delivery by councils of cost effective infrastructure and services
17. The Commissioners would appreciate a meeting with you early in 2018 to discuss the above issues and the general approach to its work.

Key decisions or actions for the Minister

18. Ministerial decisions or actions in relation to the Commission required over the next few months include the following.

Membership

19. There is currently one vacancy on the Commission and the terms of the other two commissioners end on 31 July 2018. The process for considering appointments will need to start in early 2018. The Commission is able to assist the Department of Internal Affairs to provide you with advice on the process and the obligations of commissioners and the nature of their job.

Budget

20. As noted on page 20 the Commission's budget has decreased in the current financial year and decreases further in 2018/19. A bid for additional funding from Budget 2018 is likely to be submitted via the Department of Internal Affairs and Vote Internal Affairs.

Wairarapa Reorganisation

21. As noted on page 12, if the voters of the Wairarapa agree to the merger of the three district councils, an Order in Council is required to give effect to the Commission's proposal and implement the amalgamation. This Order in Council does not require Ministerial or Cabinet approval, but must be submitted by the Minister to the Executive Council. The Order in Council is a necessary prerequisite to appointing the Transition Body to commence and oversee the transition process.

Key decisions and milestones for the Commission

22. The Commission has several major decisions and milestones over the coming months, which can be expected to attract public attention:
 - the preferred option in Auckland, in response to an application for reorganisation (de-amalgamation) for North Rodney and Waiheke Island (announcement expected late November or December 2017)
 - the preferred option on the West Coast, in response to an application for amalgamation of the four existing councils into a unitary authority for the whole region (announcement expected late November or December 2017)
 - release of a report to the Wellington councils making formal but non-binding recommendations about improvements to the way in which key metropolitan functions are delivered (mid-late November 2017)
 - voting on the amalgamation of the three Wairarapa district councils closes at noon on 12 December 2017.
23. We will arrange to brief you and/or your office on the Auckland and West Coast decisions once the Commission has reached a preferred option, before those decisions are announced.

THE COMMISSION'S WORK

Our approach

24. The appointment of a new Commission on 1 August 2015 saw a refresh in its approach. The new approach was to be more flexible and based on collaborating with local government leaders and councils across the country to facilitate conversations about challenges faced. It was designed to enable processes for identifying options to address those challenges, while retaining a sense of local identity and community.
25. In 2016, in addition to dealing with the reorganisation applications before it, the Commission laid the foundations to this approach by carrying out a series of "Regional Conversations" with local government leaders and bodies around the country. It heard from mayors, chairs and councils about how they saw local government in their area and the issues they faced, and offered to work jointly with them in exploring opportunities for local government and to assist them to overcome barriers where these existed.
26. The Commission is no longer funded to carry out our discretionary brokering work across multiple councils. However it continues to do what it can within existing funding, and to share the lessons learned from our involvement across several regions over the last 2 to 3 years. We also aim to connect councils with their peers across New Zealand, so that emerging good practice and successful innovations are shared widely.
27. This new approach has led to a generally successful reset in the Commission's relationship with the sector: its role has evolved to also include that of broker for change and collaboration alongside administering formal reorganisation applications. Examples of this work are discussed below in relation to Wellington, Northland and the West Coast. While a few in local government still hold the misapprehension that shared services are a 'back door' to amalgamation, they in fact make it less likely, as the marginal efficiency or effectiveness benefits of an amalgamation are likely to be reduced if services are already shared across councils.
28. The Commission's statutory role means that its primary interest is in the medium to long term outcomes for communities. It has little involvement, if any, in short-term performance issues within local government.

Local Government Reorganisation: Overview

29. Amendments to the local government reorganisation provisions of the Local Government Act in 2012 and 2014 were intended to make it easier for local government reorganisation proposals to be initiated and considered. They also heavily increased the workload of the Commission.
30. Between late 2012 and December 2015, the Commission received applications seeking reorganisation or amalgamation from the Far North District Council; Greater Wellington Regional Council; Carterton, Masterton and South Wairarapa district councils; A Better Hawke's Bay; two West Coast individuals; and from the Northern Action Group (North Rodney) and Our Waiheke seeking to secede from Auckland. The status of each of the current applications is outlined below.

31. There has been widespread acknowledgement of challenges facing local government throughout the country, particularly in the efficient and cost-effective delivery and provision of modern services and infrastructure. However, large-scale amalgamation proposals have proved divisive and have failed to gain the support of communities. In Northland, in the Wellington Region, and in the Hawke's Bay, the public was decisively against such change. In addition, through investigating reorganisation applications it has become apparent to the Commission that structural change may not be the only, or the best, way to achieve good local government practice and efficiency gains.
32. In Northland and Wellington the Commission took amalgamation off the table in June 2015 and went back to those communities to engage in further consultation. The focus became jointly determining the biggest challenges those regions face and exploring options for dealing with them.

Current reorganisation applications

33. The Commission is currently dealing with reorganisation issues in five areas of New Zealand. Some of the actions being taken by the Commission are complementary to, rather than a formal part of, the statutory reorganisation process.

Wellington/Wairarapa

34. In May 2013 an application was lodged by the Masterton, Carterton and South Wairarapa District Councils for the three councils to form a unitary authority separate from the Wellington Region. Subsequently, in June 2013, the Greater Wellington Regional Council lodged an application for a single unitary authority for the whole of the Wellington Region. As both applications affected the Wellington Region, the Commission decided to consider them together.
35. After undertaking consultations and inquiries the Commission issued, in December 2014, a draft proposal for one unitary authority for the Wellington Region with a system of local boards. As a result of its consultations on the draft proposal the Commission concluded that there was not demonstrable community support for the proposal in each of the affected districts for the proposal and announced in June 2015 that it had decided not to proceed with the proposal. The submissions process did however identify a significant appetite for lesser forms of change. The Commission identified that the Wellington Region and its local authorities face a number of challenges, and worked with communities and local authorities to seek consensus on the most pressing challenges and in identifying options for addressing these.

Wairarapa

36. The Commission continued to work with the three Wairarapa councils (Carterton, Masterton and South Wairarapa) and their communities, and the Greater Wellington Regional Council, on the optimal local government structure for the Wairarapa. Following a series of engagements with councils and the community on options for local government arrangements a single combined district council for the area was identified as the preferred option and a draft proposal for a combined district council was released in March 2017.

37. The draft proposal was subject to a formal round of submissions and hearings: 1191 submissions were received,¹ and a telephone opinion survey was carried out. The survey indicated 60 per cent support for a single Wairarapa District Council and 27 per cent opposition.
38. A final proposal, with some revisions, was released on 19 July 2017. A valid petition to trigger a local vote on the proposal has been received, and a poll will be conducted by postal voting with voting opening on 20 November and closing at noon on 12 December.
39. If 50 percent or more of voters oppose the proposal it will not be implemented. If a majority of those voting in the poll vote in favour, your department will prepare an Order in council for you to present to the Executive Council to give legal effect to the proposal. A transition body will be established, and a new council will be elected in October 2018 at the earliest or at the usual local government elections in October 2019 at the latest.

Wellington

40. Work in the rest of the Wellington region has been focused on improving the way in which all of Wellington's councils, especially the councils in the Wellington metropolitan area,² deliver some of the major infrastructure and strategy functions. To support these discussions among councils, the Commission (working with the councils) commissioned major reports on transport and integrated planning in 2016 and 2017 respectively.
41. At present, the Commission considers that Wellington councils are not working as well together as they could, which means that residents are not getting the best possible outcomes in some significant areas. Wellington is made up of highly interdependent districts covered by one transport network, one job market and one housing market all stretching across several council boundaries. One council's response or lack of response to a cross-boundary issue impacts on its neighbours' residents and the region's economic performance. Cross-boundary issues include housing affordability, economic growth, infrastructure resilience, climate change adaptation, transport and land-use planning. A more formalised approach to integrated planning for cross-boundary council issues would enable more comprehensive solutions, speed up joint action, save money, and reduce the social costs and productivity losses due to delayed action.
42. While Wellington's councils do some joint planning, there is considerable scope to reduce the time and cost taken to reach decisions and the increase the quality of those decisions through a genuine partnership approach across the five councils. There are significant barriers to this, but examples elsewhere in New Zealand show these barriers can be overcome. Wellington also has the example of Wellington Water (a jointly owned Council Controlled Organisation) which has improved the efficiency, effectiveness and resilience of its three waters.
43. To wrap up this work, the Commission will release a report and set of recommendations to the Wellington councils in November 2017. This report will be addressed to the councils and the Minister of Local Government under a provision of the legislation which

¹ Of these 1191 submissions, 824 (69%) opposed the proposal, 356 (30%) supported the proposal, and 11 (1%) were neutral.

² Wellington City, Hutt City, Upper Hutt City, Porirua City, Kāpiti Coast District and Greater Wellington Regional Council.

enables the Commission to issue recommendations which are non-binding, but which the councils must formally respond to. The Commission intends to continue to engage with the councils as they implement their response to our recommendations.

Auckland (North Rodney/Waiheke)

44. In November 2013, the Commission received an application from the Northern Action Group for the constitution of a North Rodney Council as a unitary authority separate from the Auckland Council. The Commission subsequently declined to assess the application on the grounds that it was not in the public interest to do so (because of the impact of assessing the application on the Auckland Council's integration process), as well as two procedural deficiencies.
45. The applicants lodged an appeal against the Commission's decision with the High Court. The High Court found that the Commission was wrong in declining to assess the application on the grounds that it was not in the public interest to do so although correct in its decisions on the procedural issues. Subsequently, the Northern Action Group resubmitted its application, correcting the procedural issues and in August 2015 the Commission agreed to assess it.
46. In December 2015 the Commission received a reorganisation application from a group called "Our Waiheke" for a unitary authority separate from Auckland Council comprising Waiheke Island and some surrounding islands. In March 2016, the Commission agreed to assess the application. The Commission decided to deal with the two applications together (as they both affected Auckland Council), rather than assessing them under two separate processes. A programme of public engagement, through both face-to-face meetings and written feedback, was held from September to December 2016.
47. The next step in the process is for the Commission to identify the reasonably practicable options (which must always include the status quo) and then choose a preferred option. The legislation sets out several sets of criteria on which to base these decisions, including the degree of community support, the desirability of early certainty, the effects on a council of excluding an area from its current territory, whether any new council would have an appropriate area and sufficient resources to meet all its obligations, and communities of interest and catchment management considerations. The preferred option must best promote the purpose of local government (including democratic considerations and meeting current and future needs for good-quality infrastructure, services and regulatory functions), and facilitate improved economic performance.
48. It is intended that a decision on the preferred option will be made in late 2017. If the preferred option is for change, the Commission will begin developing a draft reorganisation proposal before consulting further with the community and gauging public support for that option. If status quo is the preferred option, the process stops.

West Coast

49. In August 2015 the Commission agreed to assess a reorganisation application seeking the constitution of a unitary authority covering all of the West Coast.
50. In July 2016 the Commission completed an intensive community engagement programme on the West Coast seeking community views on local government arrangements. The programme involved a series of face-to-face meetings and workshops, and a widely available community survey. The Commission subsequently agreed that it was satisfied there was sufficient evidence of demonstrable community support in Buller, Grey and Westland districts for local government reorganisation on the West Coast.
51. The Commission is currently in the process of identifying the reasonably practicable options and then a preferred option for local government on the West Coast and is planning to announce its preferred option by the end of 2017. The decision-making process is the same as for the Auckland investigation (see paragraph 48).
52. In parallel with the reorganisation process, the Commission has also been working with the four West Coast councils to investigate potential efficiencies to be gained by combining services regionally. As a result of this work, two priority areas were identified by the Commission and the councils relating to resource management planning processes and regional transport arrangements. The Commission funded expert reports on these two service areas and these were provided to the councils in February 2017.
53. The reports identify challenges and opportunities for delivering more cost-effective and efficient services on the West Coast along with a range of options for change. The councils are still considering options for particular shared service arrangements including a combined district plan under the Resource Management Act. Three of the four councils (excluding Buller) have recently agreed in principle, following the receipt of the reports provided by the Commission, to progress a combined RMA district plan for the region.

Northland

54. In December 2012 the Commission received a reorganisation application from the Far North District Council for it to become a unitary authority. In November 2013 the Commission issued a draft proposal for a single Northland unitary council for the Northland Region. As a result of its statutory consultation on the draft proposal the Commission concluded that there was not demonstrable community support for the proposal and announced in June 2015 that it had decided not to proceed. The possibility of developing a new reorganisation proposal was left open at that stage, but on 11 October 2017 the Commission decided to formally close the reorganisation process. The councils were informed of this in October and the decision was publicly notified on 2 November.
55. The Commission has also continued to work with Northland councils since 2015 on the challenges it faces within the context of current local government arrangements. In

agreement with the councils, the Commission funded specialist reports of four waters³ and ICT infrastructure in September 2016. As with the Wellington region (see paragraph 43), in 2018 the Commission will develop formal but non-binding recommendations to the councils on how they might deliver better quality services to their communities through working together (including building on the progress they have made in this area since the release of the amalgamation proposal in 2013, which was a spur to greater collaboration).

Representation Reviews

Legislation

56. 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.
57. There are two aspects of local government representation in which the council's decision cannot be reviewed by the Commission: the choice between first past the post or single transferable vote as the electoral system, and the decision to introduce Māori wards (although the details of those wards then come within the Commission's scope).
58. 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 average for the district or region as a whole.
59. The Commission is required to publish representation review guidelines and issued new guidelines in June 2017 for use in reviews to be carried out in 2018.

2015/2016 reviews

60. Twenty-two local authorities reviewed their representation arrangements prior to the 2016 local elections. Of these:
 - 11 were appealed against to the Commission
 - Two, which were not appealed against, were referred to the Commission because they did not comply with the ±10% rule
 - Nine reviews were completed with either no submissions being received or no appeals lodged against the proposed arrangements.
61. Two further councils proposed minor boundary alterations which were referred to the Commission for approval.

³ Drinking water, wastewater, stormwater, and flood management

2018/2019 reviews

62. Fifty-seven councils must review their representation arrangements prior to the 2019 local elections. These include:
- Auckland Council (this being its first review since establishment in 2010)
 - Environment Canterbury (which will move at the 2019 election from the transitional governance arrangements put in place by the Environment Canterbury (Transitional Governance Arrangements) Act 2016 to a fully elected council)
 - Wairoa District Council (the district having voted in a poll in 2016 to establish a Māori ward).
 - Palmerston North City Council (which has resolved to establish a Māori ward for the 2019 local elections, subject to the outcome of a poll if one is demanded by a petition)
63. Councils will carry out the formal part of their reviews in 2018, while the Commission will be involved in considering reviews from mid-2018 through to April 2019.

Other work

64. In addition to the work outlined above the Commission will complete reviews of the boundaries of the 17 licensing trust districts over the next year to ensure those boundaries comply with meshblocks. The purpose of this is to make the compilation of electoral rolls for licensing trusts and then administration of their elections more efficient.
65. Other issues the Commission may have to deal with over the short to medium term include applications to alter the boundaries of territorial authority districts. In particular this is likely to include a proposal to transfer an area from Western Bay of Plenty District to Tauranga City to allow for urban growth in the City.
66. It is also possible that the Commission may receive new applications for local government reorganisation, particularly if the Wairarapa amalgamation receives public support (as this will demonstrate that it is possible for a proposal supported by councils and the community to succeed).

BROADER ISSUES

67. Given the breadth of the Commission's interest in local government, but the narrowness of our powers under the current legislative framework, we sometimes identify system issues that are beyond our remit but which affect the ability of the Commission to meet its statutory purpose of promoting good practice in local government.

The Commission's statutory toolkit: delivery of good-quality infrastructure and services

68. The Commission's reorganisation powers under the Local Government Act are very heavily focused on amalgamations or other major structural change; it only has powers to create shared services as a matter incidental to some form of structural reorganisation.
69. Since 2015, the Commission has been working alongside councils in a number of regions on how they might give effect to those aspects of the purpose of the Local Government Act relating to delivery of good-quality infrastructure and services, given how important these services are to community wellbeing. Many councils are finding these services harder to deliver given the cost (especially in high growth areas, or areas with a declining rating base and ageing infrastructure that needs repair or replacement), difficulties in recruiting and retaining the right staff, and increasing community and regulatory demands.
70. It is clear from our engagements that amalgamations of councils are not the only or best tool to achieve the outcome. There is considerable scope for councils to work together more collaboratively to provide better and/or cheaper infrastructure and services through efficiencies of scale and better access to specialists, without trading away the democratic representation that communities clearly value.
71. The Commission's involvement in several regions since 2012 has helped to create the impetus for initiatives such as the Northland Transportation Alliance and Wellington Water. However it is clear, in those cases, that the threat of amalgamation was one of the drivers. Our experience is that a range of barriers can get in the way of positive change, even where local willingness exists, and voluntary arrangements can be easily unpicked.
72. There would be benefit from the Commission being able to develop binding proposals (not just non-binding recommendations) covering a wider range of changes, where there is evidence of demonstrable community support, and following a robust investigation process including input from councils and the public, as is the case for reorganisations. Such proposals might include the power for the Commission to create joint committees, transfer statutory functions between councils, or form joint holdings such as CCOs.
73. Changes along these lines were proposed in the Local Government Act 2002 Amendment Bill (No. 2), which was not passed prior to the general election. While the local government sector was opposed to some aspects of these changes, it were supportive of others. We have spoken to a number of councils who see value in the Commission having stronger powers to help them to achieve these kinds of collaboration.

74. As a creature of statute exercising specific functions under the Local Government Act and other legislation, the Commission will of course implement the policy of the government of the day as expressed through any legislative amendments the government sees fit to introduce.

Auckland representation

75. As noted above the Auckland Council is required to undertake a representation review next year. Auckland's representation arrangements are, in part, covered by the Local Government (Auckland Council) Act 2009, and the council has far less discretion than any other council in New Zealand to alter its representation arrangements. Key issues are as follows:
- The council must consider changes to its ward boundaries to comply with the $\pm 10\%$ fair representation rule through the normal representation review process
 - If the council wishes to change the boundaries or numbers of its local boards, it must apply to the Commission for a formal local government reorganisation using the multi-stage statutory process that is used for council amalgamations. Councils may alter community board boundaries as part of the representation review (although any other councils with local boards would also need to change those through the reorganisation process).
 - A change to the legislation is required to alter the number of members on its governing body from the current 20 members (plus the Mayor). All other councils can change councillor numbers through the representation review process, subject to rules on maximum and minimum number of councillors, with a right of public appeal to the Commission.
76. The Commission's view is that, as the amalgamated Auckland Council is now in its third term, it is timely for it to have the same control over its representation requirements as any other council in New Zealand, with the Commission having its usual role in a representation review (see paragraphs 57-59). This would ensure decisions were made closer to the affected communities, the council would have the ability to keep ward and local board boundaries better aligned (which assists public understanding of the governance and representation system), and lessen the potential administrative burden on the Commission.
77. Auckland Council has indicated that it intends to seek an amendment to the legislation to allow for a change in numbers of councillors, to minimise the change required to the boundaries of existing wards should a Māori ward be established by the council (or should there need to be an increase in members in the future to deal with Auckland's population growth). It is also important for good local government that the legislative framework does not hamper the Auckland Council's ability to effectively implement the changes it is proposing to the relationship between the governing body and the local boards as a result of its recent Governance Framework Review.

Northland rating

78. Recently, the High Court found that aspects of the Northland Regional Council's rating arrangements contravene the Local Government (Rating) Act 2002, and that the regional council could not delegate some stages of the rates-gathering process to the Kaipara District Council.

79. While this judgment has implications for councils in other parts of the country, the Commission's particular interest is because the judgment is preventing the councils in Northland from developing shared services for the collection of rates across the region, rather than through four separate rating units within councils. The Commission therefore supports the prioritisation of a review of the relevant legislation to clarify the issue for future rating arrangements. This would give councils greater flexibility and remove impediments to councils sharing their rating services, in the interests of financial and compliance efficiencies benefiting the ratepayer.

RESOURCING OF THE COMMISSION

80. Changes to the Local Government Act in 2012 had the effect of triggering several significant reorganisation proposals (outlined above). This resulted in a greatly increased workload for the Commission, amounting to a substantial change in the scale and complexity of its work.
81. In previous Budget rounds, the Local Government Commission received some short-term funding increases to cover the increase in reorganisation investigations following 2012 amendments to the Local Government Act, and to enable the Commission to 'broker' improvements to shared services in some regions. The 'brokering' funding ended on 30 June 2017, and the additional investigations funding ends on 30 June 2018. As a result, the Commission's base appropriation drops from approximately \$3.8M in 2016/17 to \$2.3M in 2017/18, and \$1.4M in 2018/19 and out-years.
82. Funding of \$1.4M per annum is not sufficient for the Commission to meet its core statutory obligations under the current legislation: reorganisation investigations and representation reviews. The legislation gives the Commission no discretion in undertaking these functions, and there is little ability to scale the processes.
83. At these funding levels, the Commission will have no ability to support councils to develop shared services as part of its general mandate to promote good local government or to share the lessons learned from the experiences across multiple regions in the last three years. As noted above, the Commission considers this discretionary work to be some of the most valuable work we do to support better outcomes for communities.
84. A bid for Budget 2018 is therefore likely to be submitted. We understand that the Department of Internal Affairs will provide you with a full brief on budget issues across the portfolio, including the Commission's budget.

APPENDIX 1

COMMISSION MEMBERS



Sir Wira Gardiner, KNZM (Chair)

A former professional soldier, Lieutenant-Colonel (Rtd) Sir Wira Gardiner has a long and distinguished public service career, including extensive governance experience. He was the founding director of the Waitangi Tribunal and founding chief executive of the Ministry of Māori Development (Te Puni Kōkiri). He has been National Director of Civil Defence, Chair of Te Mangai Paho and deputy chair of Te Ohu Kaimoana. He was Chair of the Tertiary Education Commission between 2010 and 2012, and Chair of the Board of the Museum of New Zealand Te Papa Tongarewa between 2010 and 2013. Sir Wira was made a Knight of the New Zealand Order of Merit in 2008 for services to Māori. Sir Wira has published a number of books and is currently working on the history of B Company 28 Māori Battalion.



Janie Annear, ONZM

Janie Annear served three terms as the Mayor of Timaru from 2004 to 2013. In April 2014 she was appointed by the Minister of Local Government as a temporary member of the Local Government Commission and was made a permanent member in July 2014. Janie has experience across a wide range of private sector, local government and central government roles. She serves on the Boards of the Lottery Community Facilities and Significant Projects Funds and is also Deputy Chair of the Ara Institute of Canterbury Council.



Geoff Dangerfield, QSO

Geoff Dangerfield was CEO of the NZ Transport Agency from its inception through to late 2015; he worked closely with local government on improving the land transport planning, investment and delivery system. He was CEO of the Ministry of Economic Development from 2001 to 2008, and prior to that Deputy Secretary to the Treasury. Since the beginning of 2016, Geoff has worked as director and consultant to a range of private and public sector organisations. Geoff holds an MSc in Resource Management, is a Fellow of the Chartered Institute of Logistics and Transport, a Chartered Member of the Institute of Directors, and a Companion of the Institution of Professional Engineers of New Zealand.



Brendan Duffy, ONZM, JP

Brendan Duffy has had 21 years as an elected member of the Horowhenua District Council and 12 of these as Mayor. He chaired the Provincial Sector of Local Government NZ for 6 years and was LGNZ's Zone 3 chair for 9 years. He also held the position of Vice President of LGNZ for 3 years. Brendan is a Director on the Board of MITO (an industry training organisation). He has been appointed by the Minister of Health as Deputy Chair of Mid Central District Health Board, and by the Minister for the Environment to the Environmental Legal Assistance Panel.

CHIEF EXECUTIVE OFFICER

Dr Suzanne Doig



Suzanne Doig has had a 15-year career in the public service, and many of her previous roles have involved local government: as General Manager of Strategy and Policy at Canterbury Earthquake Recovery Authority from 2014 to 2016, and as a manager and thought leader at the Ministry for the Environment, working on major initiatives such as water reform. Early in her career, Suzanne also worked in local government in New Zealand and overseas, and as a Treaty claims researcher. She holds a PhD in New Zealand history.

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) sections 48R and 48S provide for the Commission to determine certain disputes between the governing body of unitary authorities (outside Auckland) and local boards;
- (h) 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;
- (i) 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;
- (j) 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;
- (b) under section 19V, to consider decisions of local authorities to not comply with the fair representation requirement of section 19V (2);
- (c) under sections 19JA and 19JB, to make minor alterations to the boundaries of electoral areas; and
- (d) under section 19ZI, to issue guidelines identifying factors and considerations for local authorities to take into account when undertaking their representation reviews.

Auckland Regional Amenities Funding Act 2008

Section 29 of this Act provides that if the Auckland Council does not approve a levy recommended by Auckland Regional Amenities Funding Board, and the Council and Board cannot agree on an arbitrator, the Commission must appoint an arbitrator.

Electoral Act 1993

Section 28 of this Act provides that the Chairperson of the Local Government Commission is to be a non-voting 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.

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.

Port Companies Act 1998

Section 2A of this Act provides that the Commission may determine any matter where a regional council and a territorial authority are unable to reach agreement in respect of any function, power, duty, property, right or undertaking of a former harbour board transferred to them.

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.

LOCAL GOVERNMENT REORGANISATION

Amendments to the reorganisation provisions of the Local Government Act 2002

Amendments to the local government reorganisation provisions of the Local Government Act in 2012 and 2014 significantly changed the focus and scale of the work of the Commission. Since the enactment of the 2012 amendments the Commission has received seven reorganisation applications.

Prior to this only two substantive amalgamation applications had been received in the previous seven years (Kaikoura/Hurunui, and Nelson/Tasman) and one significant boundary application (a proposal to shift Waiheke and other islands from Auckland City to Thames-Coromandel District). The last successful amalgamation proposal had been in 2005 (Christchurch/Banks Peninsula).

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. A diagram of the process is included at the end of this Appendix. There are four major phases in the process. 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 limited number 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 application 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” which must include the status quo 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 if this is not the status quo. The Commission notifies its draft proposal and calls for submissions. This is the formal consultation phase of the process. Hearings are generally 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. At its discretion the Commission may arrange its own public opinion surveys in affected areas to support it in 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 of the affected districts. 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 body 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).

Relationship between Minister, Local Government Commission and the Department of Internal Affairs

