



## **LOCAL GOVERNMENT COMMISSION**

**Decision on proposal to transfer part of Rodney District  
(Okura area) to North Shore City**

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## **INTRODUCTION**

1. This decision relates to a reorganisation proposal (“the proposal”), initiated by 142 electors of the Rodney District, for the transfer of meshblocks 0176003, 0176101, 0176102, and 0175816, which are located in the Okura area in the south-east of the Rodney District, from Rodney District to North Shore City. It also relates to modifications to the proposal suggested by submitters, in particular that additional meshblocks within the Okura Catchment area also be transferred from Rodney District to North Shore City (a map of these areas is attached as Appendix One).

## **BACKGROUND**

2. On 25 October 2005 Ron Burr lodged a petition on behalf of 142 Rodney District electors requesting the transfer of meshblocks 0176003, 0176101, 0176102, and 0175816 from Rodney District to North Shore City. These meshblocks are located in the Okura area in the southeast of Rodney District. The four meshblocks comprise a total population of 740 people.
3. The proposal is valid in terms of clause 1(1)(c) of Schedule 3 of the Local Government Act 2002 (“the Act”) as it was signed by at least 10% of the electors of the area subject to the proposed reorganisation.
4. On 9 December 2005 the Rodney District Council (“the RDC”) and the North Shore City Council (“the NSCC”) notified the Commission of their decision to refer the proposal directly to it. Where such a proposal is referred to the Commission, clause 10(2) of Schedule 3 of the Act requires the proposal to be considered under Subpart 4 (excluding clauses 40 and 49 to 58) of Schedule 3.
5. Following consultation with Ron Burr and some other signatories to the proposal, the Commission appointed Mr Burr to be the representative of the electors who signed the petition. This is a requirement of clause 36 of Schedule 3.
6. The Commission initiated consultation on the proposal in accordance with clause 37 of Schedule 3. It publicly notified the proposal, and directly sought the views of affected groups, Māori organisations with interests in the area, central government agencies, the RDC, the NSCC, and the Auckland Regional Council (“the ARC”).
7. The Commission received 40 submissions in relation to the proposal. Of those, 18 submitters expressed a desire to be heard by the Commission.

## THE HEARING

8. The Commission held a hearing of submitters on 8 May 2006, at the Rodney District Council Chambers in Orewa. The Commission heard submitters in the following order: Ron Burr and Harvey Livschitz for the proposers; Mayor John Laws, Paul Garbett, and Peter Vari, on behalf of the RDC; Deputy Mayor Dianne Hale, Councillor Gary Holmes, Councillor Kevin Schwass, and Roger Matthews on behalf of the NSCC; Alex McNair and Craig Shearer on behalf of Williams Capital Limited; Dave Johnston on behalf of Keep Okura Green Incorporated; Ross Craig; Patricia Clapham; Linda Clapham on behalf of The Guardians of the Kaipara Society Incorporated; D.R. and J.M. Cowley; Colin Smith; David Thornton; Sue Courtney; Neil Courtney; Kevin and Margaret Quensell; Hugh Jarvis on behalf of the ARC; Sandi Bailey; Eileen Ann Shazell; and Keith Corbett.

## PRELIMINARY COMMENTS ON THE PROPOSAL AND SUBMISSIONS

### Proposed modifications to the initial proposal

9. Neither the representative of the 142 signatories to the proposal, nor any submitter who spoke to the Commission on 8 May 2006, supported the proposal in its initial form. Some submitters suggested that the Commission should issue a draft reorganisation scheme providing for the transfer of either additional parts of, or the whole of, the Okura Catchment area from Rodney District to North Shore City.
10. At the hearing of submitters Craig Shearer (representing Williams Capital Limited) presented a map identifying three separate catchment areas located in meshblock 0175816, these being the Okura, Karepiro, and Weiti catchments. The Commission believes that the precise identification of the Okura Catchment area would require further technical investigation if it were to proceed with a draft reorganisation scheme based on this modification.
11. Clause 39 of Schedule 3 of the Act enables the Commission, following its consultations and enquiries under clause 37 of Schedule 3, to either:
  - (a) *prepare a draft reorganisation scheme based on the proposal, or on some modification or variation of the proposal resulting from the consideration of submissions, consultations, or inquiries; or*
  - (b) *decide not to proceed with the proposal.*
12. The Act does not provide any guidance as to the scope of modifications or variations that could be included in any draft reorganisation scheme issued. Clearly, however, it does require the Commission to consider all submissions and information resulting from its enquiries before making a decision on the proposal. The Commission believes that submissions

suggesting modifications to a proposal would need to be compelling in order for it to issue a draft reorganisation scheme based on such modifications.

13. At the hearing, a number of submitters questioned the fairness of issuing a draft reorganisation scheme based on modifications to the proposal when interested parties had only been provided with the opportunity to present their views on the initial proposal. The Commission notes that the process for considering this proposal, as set out clauses 41 to 45 of Schedule 3 of the Act, requires it to publicly notify, and consult on, any draft reorganisation scheme that it issues prior to making a decision to issue a reorganisation scheme or not. There would, therefore, be opportunity for consultation on any modified proposal.

*Issues raised in submissions that are not relevant to the Commission's consideration of the proposal*

14. A number of submitters, while not supporting the proposal in its initial form, suggested that the Commission should exercise its wider powers under section 31 of the Act and conduct a broad review of the appropriateness of either the whole of the Rodney District, or, all local government boundaries in the wider Auckland Region. Clearly these matters are not relevant to, or appropriately addressed in, the context of the proposal.
15. Some submitters raised concerns regarding a perceived lack of local government representation of the Okura area. The Commission encourages these submitters to participate in the representation review process currently being undertaken by the RDC. The Commission understand that the closing date for submissions on the RDC's initial representation review proposal is 26 June 2006.
16. The Commission notes that the proposal was motivated in part by a perceived inability on the part of the RDC to provide efficient and appropriate district planning provisions in respect to the Okura area, and a perceived inability to appropriately enforce its planning requirements. The proposal expresses particular concern about the RDC's policy on cleanfills, and for the preservation of the green belt area within the Okura area.
17. The Commission is of the view that boundary alteration proposals should not be seen as a means of replacing one set of planning rules with another. Planning provisions are subject to change through the district plan process and the public has rights under the Resource Management Act 1991 ("the RMA") to participate in that process. The proposal, in itself, would not change the planning regime for the Okura area. This would require the NSCC to undertake the appropriate processes.

18. As noted above, some submitters argued that the whole Okura Catchment area should be transferred from Rodney District to North Shore City. The Commission notes that, in some situations, catchment areas provide dominant topographical features that will contribute to a range of factors that help distinguish communities of interest from each other. However, the alignment of territorial authority boundaries with catchment areas is not required under the criteria for considering the alteration of local government boundaries contained in clauses 3 and 4 of Schedule 3 of the Act.
19. Clause 4(a) of Schedule 3 of the Act requires that *'where practicable, the boundaries of regions conform with catchment boundaries'*. This requirement reflects the division of local government responsibilities and functions under the RMA between regional councils and territorial authorities. The Okura Catchment area would continue to lie within the Auckland Region regardless of whether it was transferred from Rodney District to North Shore City.
20. The Commission notes that some of the arguments presented in support of the proposal, or a modified proposal, refer to the performance and actions of local authority staff and elected members. In the Commission's view, it is inappropriate to address these matters in the context of a boundary alteration proposal. Without judging the validity of those arguments, such matters would be more appropriately referred to the Ombudsman, the Office of the Controller and Auditor-General or the Parliamentary Commissioner for the Environment. In general terms, the criteria for considering local government reorganisation relate to the structure of local authority boundaries, and the effect of these boundaries on the ability of each affected local authority to provide good local government.

## **STATUTORY CRITERIA**

21. Subpart 4 (excluding clauses 40 and 49 to 58) of Schedule 3 of the Act sets out the procedures the Commission is required to follow when considering a reorganisation proposal referred to it by local authorities under clause 10(2) of Schedule 3.
22. Clauses 3 to 7 of Schedule 3 detail the criteria to be applied by the Commission when considering a reorganisation proposal. The clauses relevant to this proposal are clauses 3 and 4. Clause 3 provides as follows:

### **3 Promotion of good local government**

- (1) *When considering a reorganisation proposal or scheme, the Commission must satisfy itself that the proposal or scheme will -*
  - (a) *promote good local government of the districts or regions concerned; and*

- (b) *ensure that each local authority provided for under the proposal will -*
  - (i) *have the resources necessary to enable it to carry out its responsibilities, duties, and powers; and*
  - (ii) *have a district or region that is appropriate for the efficient and effective performance of its role as specified in section 11; and*
  - (iii) *contain within its district or region a sufficiently distinct community of interest or sufficiently distinct communities of interests; and*
  - (iv) *be able to meet the requirements of section 76.*
  
- (2) *When considering the matters specified in subclause (1) in relation to any reorganisation proposal or scheme, the Commission must have regard to -*
  - (a) *the area of impact of the responsibilities, duties, and powers of the local authorities concerned; and*
  - (b) *the area of benefit of services provided; and*
  - (c) *the likely effects on a local authority of the exclusion of any area from its district or region; and*
  - (d) *any other matters that it considers appropriate.*

23. Clause 4 of Schedule 3 details matters relating to boundary determinations under a reorganisation scheme. It states:

#### **4 Appropriate boundaries**

*In determining boundaries under any reorganisation proposal or scheme, the Commission must ensure that,-*

- (a) *if practicable, the boundaries of regions conform with catchment boundaries; and*
- (b) *if practicable, the boundaries of districts conform with the boundaries of regions; and*
- (c) *the boundaries of regions and the boundaries of districts conform with the boundaries of statistical meshblock areas determined by Statistics New Zealand and used for parliamentary electoral purposes.*

## CONSIDERATION OF THE PROPOSAL UNDER THE STATUTORY CRITERIA

### ***Clause 3(1)(a) - Will the proposal promote good local government of the districts or regions concerned?***

24. The Commission is required to assess proposals against the criteria specified in clauses 3 and 4 of Schedule 3 of the Act. Clause 3(1)(a) requires the Commission to satisfy itself that a proposal will promote the good local government of the Rodney District and North Shore City.
25. With regard to the word “promote”, the Commission is of the view that in the context of the legislation the clear intention is that the word should have the meanings “to advance, help forward, enhance, or improve”.
26. The expression “good local government” is not defined in the Act. However, the Commission has adopted the view that the achievement of the purposes of local government, and principles relating to local authorities, contained in sections 10 and 14 of the Act, are the basis of good local government. It is therefore required to determine whether the proposal will enhance the ability of the local authorities for the Rodney District and North Shore City to achieve these purposes and principles.
27. The broad purpose of local government in New Zealand is to:
  - (a) *enable democratic local decision-making and action by, and on behalf of, communities, and*
  - (b) *promote the social, environmental, economic, and cultural well-being of present and future communities.*
28. Considering the purpose of local government contained in section 10 of the Act, and the principles relating to local authorities contained in section 14 of the Act, the Commission found it first necessary to determine whether the proposal would enhance the appropriate division of recognisably distinct communities of interest between local authority areas.
29. The term ‘community of interest’ is not defined in the local government legislation. The Commission is of the view that any definition must be broad in scope, and allow for the recognition of the diverse factors that contribute to the construction, and reconstruction over time, of communities of interest in New Zealand. In order to retain a necessarily broad definition, the Commission must consider communities of interest on a case-by-case basis, and from the evidence and submissions presented to it.
30. The Okura area is located in the south-east corner of Rodney District. It is of a rural and semi-rural nature, characterised predominantly by lifestyle subdivisions and areas of natural vegetation. A significant natural area is located in meshblock 0176003. This comprises part of a “green belt” area, which extends north within the Rodney District toward Silverdale.

31. The Okura area is separated from North Shore City to its south by a significant ridge, which provides a visual barrier between the two districts. This ridge aligns with Lonely Track Road and Albany Heights Road, which is also the existing boundary between Rodney District and North Shore City. Lonely Track Road also defines the Metropolitan Urban Limits of North Shore City.
32. As with many rural or semi-rural areas in New Zealand, the lack of facilities in the Okura area requires residents to travel to obtain basic goods and services. The Commission notes that the Okura area is within close proximity to urban centres in Rodney District and North Shore City.
33. Okura residents in support of the proposal, or in support of the transfer of additional parts of the Okura Catchment area from Rodney District to North Shore City, submitted that their primary communities of interest are located in North Shore City because almost all of the services and facilities they use, including employment, schooling, and libraries, are situated there.
34. The Commission believes that many other residents of the Rodney District would take advantage of their proximity to North Shore City to use the services, facilities, and opportunities available there on a regular basis. It is common in New Zealand, and particularly the Auckland Region, for residents of one territorial authority area to take advantage of employment opportunities, services, and facilities located in another district. In the Commission's view, this is not, in itself, a compelling reason for the alteration of local government boundaries.
35. Other residents stated that the semi-rural characteristics of the Okura area provide for a collection of shared community interests distinct from the community interests of the largely urban communities in North Shore City. These submitters conveyed a set of shared values associated with an appreciation for open, green space and relative peacefulness, and an understanding of the distinct ecology, flora, and fauna within the Okura area. From a functional perspective, these submitters considered that their community interests and priorities were distinct from North Shore City residents in respect to water and wastewater services. On the basis of these submissions, and having visited the Okura area, and some surrounding areas, the Commission believes that these values and interests would be shared by other residents in adjoining areas in the Rodney District. In broad terms, this is demonstrated by the community outcomes identified in the RDCs draft Long Term Council Community Plan 2006-2016.
36. The Commission is satisfied that the affected area does not have common interests with North Shore City that outweigh the linkages of the affected area with the rest of Rodney District. It believes that the proposal would

have a detrimental effect on the ability of the RDC and the NSCC to achieve the purpose of local government, and to act in accordance with the following fundamental principles relating to local authorities, as set out in sections 14(1)(a) and (c), these being:

- (b) *a local authority should make itself aware of, and should have regard to, the views of all of its communities; and*
- (c) *when making a decision, a local authority should take account of—*
  - (i) *the diversity of the community, and the community's interests, within its district or region; and*
  - (ii) *the interests of future as well as current communities; and*
  - (iii) *the likely impact of any decision on each aspect of well-being referred to in section 10.*

37. As noted earlier, some submitters argued that the inclusion of the whole Okura Catchment area in one territorial authority district would result in more effective environmental management of the Okura Catchment.
38. In the Commission's view, an effective approach to the sustainable environmental wellbeing of communities in the Rodney District and North Shore City would depend on cooperation and collaboration between the ARC, the RDC, and the NSCC in respect to a wider area than the Okura Catchment. Based on the submissions presented to it by the ARC, the RDC, and the NSCC, the Commission believes that a greater degree of consistency and cooperation in respect to shared areas of interest has been achieved over time by these councils. The Commission believes the proposal would contribute to uncertainty about the sustainable environmental management of the Okura Catchment and green belt areas. The proposal could undermine existing collaboration between the affected councils, and would shift, and potentially exacerbate, cross boundary issues associated with district planning.
39. In the Commission's view, the proposal would have a detrimental effect on the ability of the affected councils to act in accordance with the fundamental principle contained in section 14(1)(e) of the Act, which states:
- (e) *a local authority should collaborate and co-operate with other local authorities and bodies as it considers appropriate to promote or achieve its priorities and desired outcomes, and make efficient use of resources.*
40. Based on the above considerations, the Commission believes that the proposal, regardless of whether it was modified to include additional areas of the Okura Catchment, would not promote good local government of the Rodney District or North Shore City.

41. Having determined that the proposal fails the test of good local government required under clause 3(1)(a) of Schedule 3, the Commission believes that it need not consider the proposal and submissions relating to it any further. However, it has decided to make some observations with respect to the criteria of clauses 3(1)(b) and (2) of Schedule 3. Overall, these observations reinforce its view that the proposal, if given effect to, would not enhance the good local government of the Rodney District and North Shore City.

***Clause 3(1)(b)(i) - Will each local authority provided for under the proposal have the resources necessary to enable it to carry out its responsibilities, duties, and powers?***

42. The Commission is of the view that implementation of the proposal would have a negligible impact on the resources available to the local authorities concerned to enable them to carry out their responsibilities, duties, and powers.

***Clause 3(1)(b)(ii) - Will each local authority provided for under the proposal have a district that is appropriate for the efficient and effective performance of its role as specified in section 11?***

43. The existing southern boundary of the Rodney District, which aligns with Lonely Track Road and Albany Heights Road, is an effective and easily identifiable local government boundary. The boundary also follows a dominant ridgeline, which provides a natural barrier between Rodney District and North Shore City.
44. The initial proposal realigns the existing district boundary with Wright Road. The Commission was presented with no evidence to suggest this proposed realignment would provide an effective and easily identifiable local government boundary.
45. The Commission considered the local government boundaries that would result from the transfer of the whole Okura Catchment area from Rodney District to North Shore City. In addition to the four meshblocks identified in the initial proposal, this suggested modification would include *parts* of meshblocks 0176004, 0176005, 0176007, 0175906, and 0175816. It would also require the realignment of meshblock 0175816, which is one of the four meshblocks identified in the initial proposal. This realignment of meshblocks would require further technical examination by Statistics New Zealand. In the Commission's view, the resultant boundary would not be as easily identifiable as the existing boundary.
46. The Commission notes that portions of the RDC's planned Penlink project are located in meshblock 0175816, which is part of the area proposed to be

transferred to North Shore City. The Commission agrees with the RDC that the proposal may complicate the management of this project, which is of significance to the Auckland Region.

***Clause 3(1)(b)(iii) - Will each local authority provided for under the proposal contain within its district a sufficiently distinct community of interest or sufficiently distinct communities of interests?***

47. As previously noted, the Commission is of the view that the affected area does not have commonalities of interest with North Shore District that outweigh the linkages of the affected area with adjacent areas in the Rodney District.

***Clause 3(1)(b)(iv) - Will each local authority provided for under the proposal be able to meet the requirements of section 76?***

48. Section 76 relates to decision-making and consultation by local authorities. The Commission is of the view that the proposal would have little impact on the ability of the RDC or the NSCC to maintain processes that would comply with the requirements of this section.

***Clause 3(2)(a) and (b) – What will be the impact of the proposal on the area of impact of the responsibilities, duties, and powers of the local authorities concerned; and the area of benefit of services provided?***

49. The Commission believes that the proposed boundary alteration would give rise to a similar set of cross-boundary issues that exist at present.

***Clause 3(2)(c) – What will be the likely effects on a local authority of the exclusion of any area from its district or region?***

50. Considered in isolation, the exclusion of the affected area from Rodney District, and its inclusion in North Shore City, would have a negligible effect on the viability of either local authority.

### **Appropriate boundaries**

51. The Commission considered the proposal against the criteria for determining local government boundaries contained in clause 4 of Schedule 3 of the Act, as follows:

***Clauses 4(a) and (b) – The Commission must ensure that, where practicable, the boundaries of regions conform with catchment boundaries, and the boundaries of districts conform with the boundaries of regions.***

52. The proposal, and any modifications to the proposal suggested in submissions, would not affect the boundaries of the Auckland Region.

***Clause 4(c) – The Commission must ensure that, where practicable, the boundaries of districts conform with the boundaries of statistical meshblock areas determined by Statistics New Zealand and used for parliamentary electoral purposes.***

53. The area, comprising meshblocks 0176003, 0176101, 0176102, and 0175816, identified in the initial proposal conforms with the boundaries of statistical meshblocks.
54. The suggested transfer of the whole Okura Catchment area from Rodney District to North Shore City would require realignment of meshblocks 0176004, 0176005, 0176007, 0175906. It might also require realignment of meshblock 0175816, which is one of the four meshblocks identified in the initial proposal.
55. While the Commission is not empowered to transfer a portion of a meshblock as part of the process for altering local government boundaries, a request to Statistics New Zealand could be made on reasonable grounds for the realignment of meshblocks. Based on the considerations outlined in this determination, the Commission is of the view that such a request is not warranted at this time.

#### **COMMISSION'S DETERMINATION**

56. Having assessed the initial proposal, and all submissions made to it, including submissions suggesting modifications to the proposal, against the criteria contained in clauses 3 and 4 of Schedule 3 of the Local Government Act 2002, the Commission has decided not to proceed with the proposal. It finds that a draft reorganisation scheme based on the proposal, or on modifications to the proposal, would not promote good local government of Rodney District or North Shore City.

#### **THE LOCAL GOVERNMENT COMMISSION**

Sue Piper (Chair)

Wynne Raymond (Commissioner)

8 June 2006