

Appendix B

Local Government Act 2002 - Sections 76-82

76 Decision-making

- (1) Every decision made by a local authority must be made in accordance with such of the provisions of sections 77, 78, 80, 81, and 82 as are applicable.
- (2) Subsection (1) is subject, in relation to compliance with sections 77 and 78, to the judgments made by the local authority under section 79.
- (3) A local authority—
 - (a) must ensure that, subject to subsection (2), its decision-making processes promote compliance with subsection (1); and
 - (b) in the case of a significant decision, must ensure, before the decision is made, that subsection (1) has been appropriately observed.
- (4) For the avoidance of doubt, it is declared that, subject to subsection (2), subsection (1) applies to every decision made by or on behalf of a local authority, including a decision not to take any action.
- (5) Where a local authority is authorised or required to make a decision in the exercise of any power, authority, or jurisdiction given to it by this Act or any other enactment or by any bylaws, the provisions of subsections (1) to (4) and the provisions applied by those subsections, unless inconsistent with specific requirements of the Act, enactment, or bylaws under which the decision is to be made, apply in relation to the making of the decision.
- (6) This section and the sections applied by this section do not limit any duty or obligation imposed on a local authority by any other enactment.

77 Requirements in relation to decisions

- (1) A local authority must, in the course of the decision-making process,—
 - (a) seek to identify all reasonably practicable options for the achievement of the objective of a decision; and
 - (b) assess those options by considering—
 - (i) the benefits and costs of each option in terms of the present and future social, economic, environmental, and cultural well-being of the district or region; and
 - (ii) the extent to which community outcomes would be promoted or achieved in an integrated and efficient manner by each option; and
 - (iii) the impact of each option on the local authority's capacity to meet present and future needs in relation to any statutory responsibility of the local authority; and
 - (iv) any other matters that, in the opinion of the local authority, are relevant; and

- (c) if any of the options identified under paragraph (a) involves a significant decision in relation to land or a body of water, take into account the relationship of Maori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.
- (2) This section is subject to section 79.

78 Community views in relation to decisions

- (1) A local authority must, in the course of its decision-making process in relation to a matter, give consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter.
- (2) That consideration must be given at—
- (a) the stage at which the problems and objectives related to the matter are defined;
 - (b) the stage at which the options that may be reasonably practicable options of achieving an objective are identified;
 - (c) the stage at which reasonably practicable options are assessed and proposals developed;
 - (d) the stage at which proposals of the kind described in paragraph (c) are adopted.
- (3) A local authority is not required by this section alone to undertake any consultation process or procedure.
- (4) This section is subject to section 79.

79 Compliance with procedures in relation to decisions

- (1) It is the responsibility of a local authority to make, in its discretion, judgments—
- (a) about how to achieve compliance with sections 77 and 78 that is largely in proportion to the significance of the matters affected by the decision; and
 - (b) about, in particular,—
 - (i) the extent to which different options are to be identified and assessed; and
 - (ii) the degree to which benefits and costs are to be quantified; and
 - (iii) the extent and detail of the information to be considered; and
 - (iv) the extent and nature of any written record to be kept of the manner in which it has complied with those sections.
- (2) In making judgments under subsection (1), a local authority must have regard to the significance of all relevant matters and, in addition, to—
- (a) the principles set out in section 14; and
 - (b) the extent of the local authority's resources; and

- (c) the extent to which the nature of a decision, or the circumstances in which a decision is taken, allow the local authority scope and opportunity to consider a range of options or the views and preferences of other persons.
- [(3) The nature and circumstances of a decision referred to in subsection (2)(c) include the extent to which the requirements for such decision-making are prescribed in or under any other enactment (for example, the Resource Management Act 1991).]
- [(4) Subsection (3) is for the avoidance of doubt.]

80 Identification of inconsistent decisions

- (1) If a decision of a local authority is significantly inconsistent with, or is anticipated to have consequences that will be significantly inconsistent with, any policy adopted by the local authority or any plan required by this Act or any other enactment, the local authority must, when making the decision, clearly identify—
- (a) the inconsistency; and
 - (b) the reasons for the inconsistency; and
 - (c) any intention of the local authority to amend the policy or plan to accommodate the decision.
- (2) Subsection (1) does not derogate from any other provision of this Act or of any other enactment.

81 Contributions to decision-making processes by Maori

- (1) A local authority must—
- (a) establish and maintain processes to provide opportunities for Maori to contribute to the decision-making processes of the local authority; and
 - (b) consider ways in which it may foster the development of Maori capacity to contribute to the decision-making processes of the local authority; and
 - (c) provide relevant information to Maori for the purposes of paragraphs (a) and (b).
- (2) A local authority, in exercising its responsibility to make judgments about the manner in which subsection (1) is to be complied with, must have regard to—
- (a) the role of the local authority, as set out in section 11; and
 - (b) such other matters as the local authority considers on reasonable grounds to be relevant to those judgments.

82 Principles of consultation

- (1) Consultation that a local authority undertakes in relation to any decision or other matter must be undertaken, subject to subsections (3) to (5), in accordance with the following principles:

- (a) that persons who will or may be affected by, or have an interest in, the decision or matter should be provided by the local authority with reasonable access to relevant information in a manner and format that is appropriate to the preferences and needs of those persons:
 - (b) that persons who will or may be affected by, or have an interest in, the decision or matter should be encouraged by the local authority to present their views to the local authority:
 - (c) that persons who are invited or encouraged to present their views to the local authority should be given clear information by the local authority concerning the purpose of the consultation and the scope of the decisions to be taken following the consideration of views presented:
 - (d) that persons who wish to have their views on the decision or matter considered by the local authority should be provided by the local authority with a reasonable opportunity to present those views to the local authority in a manner and format that is appropriate to the preferences and needs of those persons:
 - (e) that the views presented to the local authority should be received by the local authority with an open mind and should be given by the local authority, in making a decision, due consideration:
 - (f) that persons who present views to the local authority should be provided by the local authority with information concerning both the relevant decisions and the reasons for those decisions.
- (2) A local authority must ensure that it has in place processes for consulting with Maori in accordance with subsection (1).
- (3) The principles set out in subsection (1) are, subject to subsections (4) and (5), to be observed by a local authority in such manner as the local authority considers, in its discretion, to be appropriate in any particular instance.
- (4) A local authority must, in exercising its discretion under subsection (3), have regard to—
- (a) the requirements of section 78; and
 - (b) the extent to which the current views and preferences of persons who will or may be affected by, or have an interest in, the decision or matter are known to the local authority; and
 - (c) the nature and significance of the decision or matter, including its likely impact from the perspective of the persons who will or may be affected by, or have an interest in, the decision or matter; and
 - (d) the provisions of Part 1 of the Local Government Official Information and Meetings Act 1987 (which Part, among other things, sets out the circumstances in which there is good reason for withholding local authority information); and
 - (e) the costs and benefits of any consultation process or procedure.
- (5) Where a local authority is authorised or required by this Act or any other enactment to undertake consultation in relation to any decision or matter and the procedure in respect of that consultation is prescribed by this Act or any other enactment, such of the provisions of the principles set out in subsection (1) as are inconsistent with specific requirements of the procedure so prescribed are not to be observed by the local authority in respect of that consultation.

Appendix C



LGC 106/11

LOCAL GOVERNMENT COMMISSION

NORTHLAND REGIONAL COUNCIL	
7 MAR 1994	
FILE No.	
N.R.C.	188.1

3 March 1994

The Chief Executive
Northland Regional Council
Private Bag
WHANGAREI

FAXED

Dear Madam

PROPOSAL FOR THE FAR NORTH DISTRICT COUNCIL TO BE EMPOWERED TO EXERCISE THE FUNCTIONS OF BOTH A REGIONAL AND A TERRITORIAL AUTHORITY

The Commission has considered this proposal and has resolved, pursuant to section 37ZZS of the Local Government Act, to refer it back to the Far North District Council as the proposer. I have attached a copy of the Commission's decision for your information.

Yours faithfully

W J Hudson
Chief Executive Officer

Encl.

	Action	Info
Chair		✓
G.M.		✓
Comm		
Cons		
Fin.		
Land		
Mar.		
Mon.		
Pers.		
Plan		
Sec.		✓
Supp.		



LGC 106/11

LOCAL GOVERNMENT COMMISSION

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STATE INSURANCE BUILDING
46 WARING TAYLOR STREET
WELLINGTON

STATEMENT ON THE PROCEDURE, CONSIDERATION OF, AND PRELIMINARY DECISION RELATING TO THE PROPOSAL BY THE FAR NORTH DISTRICT COUNCIL THAT IT BE EMPOWERED TO EXERCISE THE FUNCTIONS OF BOTH A REGIONAL AND A TERRITORIAL AUTHORITY

Introduction

- 1 On 8 November 1993 the Commission received from the General Manager of the Far North District Council a proposal for that Council to exercise the functions, duties, and powers of both a regional council and a territorial authority within its district. The proposal was submitted pursuant to Part IIB and IIBB of the Local Government Act 1974 ("the Act") after having been initiated by a resolution of the Far North District Council.

Statutory procedure for reorganisation schemes

- 2 As the proposal submitted is for the exercise by a territorial authority of the functions, duties and powers of a regional council it must be dealt with under the provisions of Part IIBB of the Act. Under section 37ZZR, the Commission is required, subject to sections 37ZZS to 37ZZU, to prepare a draft reorganisation scheme based on the proposal. Also the Commission, without expressing an opinion on the merits of the proposal, is required by section 37ZZW to prepare an explanatory statement of the advantages and disadvantages of the proposal which, in the Commission's opinion, should be taken into account by any person

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entitled to vote at a subsequent poll on the proposal. At this time the Commission's procedures have not, for the reasons discussed below, extended past those set out in section 37ZZS.

3 Section 37ZZS(1) requires the Commission not to proceed immediately to the preparation of a draft reorganisation scheme and explanatory statement where it "believes that implementation of a proposal will make it difficult to ensure the good local government of the district or districts affected by the proposal". In this case, the districts affected are the Whangarei and Kaipara Districts and the Northland Region. Section 2(1) of the Act defines the term "district" as inclusive of a region. Although the Whangarei and Kaipara Districts would not be directly affected there would nevertheless be consequences for their councils, residents, and ratepayers arising from the substantial reduction in the financial base of the Northland Regional Council. The Commission was advised that the Whangarei District Council did not support the proposal as such but indicated that if it did proceed it would seek unitary status for itself. The Commission was advised that the Kaipara District Council opposed the proposal.

4 Section 37ZZS requires that where the Commission comes to such a belief that implementation of a proposal will make it difficult to ensure good local government it shall either:

- "(a) After consulting with the proposer and any local authority affected amend the proposal so as to remove the difficulties; or
- "(b) Refer the proposal back to the proposer for reconsideration in light of the reasons specified by the Commission."

5 Sections 37ZZT and 37ZZU prescribe the steps that follow any amendment or referral-back under section 37ZZS. Where the Commission has amended a proposal it is required to prepare a draft reorganisation scheme and an explanatory statement based on that amended proposal. However, where the proposal is referred back, the proposer may either abandon the proposal or submit an amended proposal. If the amended proposal will, in the opinion of the Commission overcome the difficulties specified, the Commission is then required to prepare a draft reorganisation scheme and explanatory statement based on that amended proposal. It should be noted that the provisions of sections 37ZZS to 37ZZU do not permit the Commission to abandon a proposal.

6 Subsection (2) of section 37ZZS states: "In dealing with a proposal under subsection (1) of this section, the Commission shall advise the proposer and every local authority affected of the reasons for its action."

Application of Section 37ZZS

7 The Act does not give a specific definition of what constitutes "good local government" in terms of section 37ZZS. However, in the opinion of the Commission there are two sections of the Act which give some guidance on this matter. They are sections 37K and 37ZU.

8 Section 37K reads as follows:

"Purposes of local government - The purposes of local government in New Zealand are to provide, at the appropriate levels of local government, -

(a) Recognition of the existence of different communities in New Zealand:

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- (b) Recognition of the identities and values of those communities:
- (c) Definition and enforcement of appropriate rights within those communities:
- (d) Scope for communities to make choices between different kinds of local public facilities and services:
- (e) For the operation of trading undertakings of local authorities on a competitively neutral basis:
- (f) For the delivery of appropriate facilities and services on behalf of central government:
- ~~X~~(g) Recognition of communities of interest:
- ~~X~~(h) For the efficient and effective exercise of the functions, duties and powers of the components of local government:
- (i) For the effective participation of local persons in local government."

9 In the opinion of the Commission, the achievement of the purposes of local government as set out in section 37K would be the basis of good local government. Consequently, if the implementation of this proposal were to create difficulties in ensuring that those purposes could be achieved, it would in effect make it difficult to ensure the good local government of the Far North District and the Northland Region.

10 The Commission acknowledges that section 37ZU is not directly applicable to the proposal because it is in Part IIBA, which is the legislation dealing with proposals for boundary alterations and the transfer of functions. Nevertheless it does give statutory guidance to the sort of considerations which, in the Commission's opinion, should be taken into account when implementation of a proposal would lead to:

- (a) the functions of a regional council being assumed by a district council; and
- (b) a regional council losing a significant part of its region.

The Commission therefore considers it appropriate that it have regard to this section in dealing with the question of "good local government".

11 Section 37ZU reads as follows:

"Relevant criteria - The relevant criteria, in relation to any reorganisation proposal involving the alteration of boundaries or the transfer of functions of any local authority, shall be -

- (a) The area of impact of the functions, duties and powers of the local authorities concerned; and
- (b) The area of benefit of services provided; and
- (c) The likely effects on any local authority of the exclusion of any area from its district; and
- (d) In the case of a region, conformity, where practicable with catchment boundaries; and

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(e) The desirability of territorial authority boundaries conforming to the boundaries of regions."

12 The Commission is of the opinion that there is considerable significance in the matters raised under paragraphs (a), (b), and (c) of section 37ZU, particularly when considering paragraphs (g) and (h) of section 37K.

13 The Commission also believes that the separate provisions contained in the two sections referred to above will have a greater or a lesser appropriateness to different proposals and in some cases will have no relevance at all. Consequently the Commission, although continuing to have regard to all factors, will give a different level of recognition to the individual factors depending on the proposal before it.

Consultation

14 The following organisations and persons were asked for and provided written comment upon the proposal:

the Ministry for the Environment,
the Department of Conservation,
the Parliamentary Commissioner for the Environment,
the Controller and Auditor-General,
the Northland Regional Council,
the Kaipara District Council, and
the Whangarei District Council.

15 On 17 January 1994 the Commission visited Kaikohe and discussed with the Far North District Council as proposers, their proposal for the establishment of a

unitary authority. On 18 January the Commission visited Whangarei and met with the Whangarei District Council and the Northland Regional Council. On that same date the Commission visited Dargaville and met with representatives of the Kaipara District Council.

- 16 The Far North District Council was asked to state in writing how the Council would address regional responsibilities, and in particular the fact that the southern boundary of the district did not conform to catchment boundaries; the extra costs and staffing requirements; and the separation of regulatory and service delivery functions. No written information on these matters has yet been received.

Background information

A GENERAL

- 17 The Commission wishes to place on record that it has considerable doubt that this proposal has been submitted with the genuine intent that it be implemented. The wording of the resolution of the Council when it decided to submit this proposal and the information contained in the letter from the Chief Executive when he submitted the proposal to the Commission, led the Commission to believe that the proposal has been submitted only as one of a number of suggestions which it wished the Commission to consider simultaneously so that the future shape of local government for the Far North District could be determined at one time and in a way which allowed for all electors to have a say on all options.

Without in any way judging the merit of the Council's proposal, the Commission is of the opinion that under the current reorganisation legislation the Council's

objectives are unachievable and based on a misconception of the Commission's legal powers.

- 18 On the basis of the information available to it, and on the basis of the lack of commitment to implementation of the proposal by the District Council the Commission, if it had the power so to do would abandon this proposal. However, as the Commission does not have power to abandon any scheme it was obliged to consider this proposal as it would consider any other valid proposal, and the result of that consideration is set out in the latter clauses of this decision.

B REGIONAL FUNCTIONS

- 19 As this proposal is for the transfer of regional functions from a regional council to a district council which is to have both regional and district functions, the Commission considers it appropriate that some detail as to regional functions should be recorded in this decision. Consequently this background information will be divided into two parts, namely part A relating to regional council functions, and part B relating to background information on the Northland Region.

Part A - Regional Functions

In paragraphs 20 to 25 "the Act" means the Resource Management Act 1991.

- 20 The main role of regional councils is that of resource management as provided in the Act, and section 5(1) states, "The purpose of this Act is to promote the sustainable management of natural and physical resources." In carrying out its functions under the Act, a council must recognise and provide for matters of national importance such as protection of outstanding natural features and

landscapes and significant areas of indigenous forest (section 6), and must have regard to other matters including ecosystems and heritage values (section 7).

21 Specific functions that must be provided for or to which regard must be given include:

- Integrated resource management of the natural and physical resources of the region;
- Soil conservation;
- Maintenance and enhancement of water quality;
- The avoidance of mitigation of natural hazards;
- Regulation of the use, transport, storage, and disposal of hazardous substances;
- In conjunction with the Minister of Conservation, management of the coastal marine area;
- Control of the use of water, and river flows; and
- Control of pollution of land, air, and water.

22 In order to carry out these functions, a regional council is required to prepare:

- A regional policy statement (with which regional plans and district plans must not be inconsistent); and
- A regional coastal plan.

23 Regional plans may be prepared to deal with specific matters, eg rivers control. The Act requires a regional council to consider preparing a regional plan in a number of circumstances. Rules for the regulation of the environmental effects of activities must be included in regional plans. Over a period of time the Council will find it necessary to produce regional plans in order to carry out a number of its functions under the Act.

Under the Act or regional rules, resource consents may be required for particular activities. A regional council is required to monitor and enforce resource consents.

A regional council is also required to monitor the whole environment as it pertains to its functions.

24 Regional council functions under other Acts that are relevant to the Northland Region include:

- Animal pest control;
- River control works;
- Regional civil defence;
- Passenger transport services licensing;

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- Noxious plants control;
- Strategic and environmental overview of land transport, including the requirement to establish a land transport committee and to prepare a 3 to 5 year plan;
- Marine oil spill response; and
- The actual disposal of hazardous wastes.

25 The Northland Regional Council also carries out a number of activities in support of its functions which are relevant to the proposal such as:

- Possum control, related to the TB threat;
- Regional databases of geographic and socio-economic information;
- A channel of communication between outside organisations, particularly central government, and local government and other interests in Northland.
- Representation of the regional interest in terms of resource management, particularly to central government; and
- Support for the promotion of tourism on a regional basis.

C THE NORTHLAND REGION

- 26 The Northland Region, encompassing the Far North, Whangarei, and Kaipara Districts, covers most of the large peninsula to the north of the Auckland urban area that is generally known as Northland. The Region's total population was 131,620 and the usually resident population 119,214 at the 1991 census. The land area is 12,576 sq km and the length of coastline is about 1700 km.
- 27 Northland is quite distinct in terms of physical geography. The typical landscape is one of rolling hills broken by numerous rivers and streams, harbours, and tidal creeks. There are a few higher, bush-clad ranges but the highest point is only 850m. There are only a few large areas of flat land. Most of the rivers are short and drain into the harbours, several of which are very extensive. The coastline is exceptionally long in relation to the land area. The soils are of variable quality but much is poor particularly where it is volcanic in origin. Rainfall is high but periods of drought are normal, thus causing the rivers to vary from flash floods to very low flows. The indigenous ecology is distinctive, with a high degree of endemism.
- 28 The predominant land use in the Northland Region is pastoral farming, which covers 59% of the area. Most of the rest is native forest and scrub, and plantation forest. The forestry sector is growing. There is some large-scale industry located around Whangarei. Tourism is well-established, especially in the Bay of Islands, and is becoming increasingly important on a regional scale.
- 29 The pattern of settlement in the Northland Region is one of numerous small and often isolated rural communities with few towns. The larger settlements consist of six towns with populations between 1,000 and 3,000; three towns with

populations between 4,000 and 5,500 (Kaitaia, Kaikohe, Dargaville); and one large town with a population of over 40,000 (Whangarei).

- 30 The commonality of physical environment and social and economic features has given rise to common responsibilities in terms of resource management.

Consideration of the proposal under the terms of section 37ZZS

A The existing Northland Region

- 31 The Commission acknowledges that within the existing Northland Region there are a number of smaller communities of interest. However taking into account the information included under the heading of background information above, and also information supplied to the Commission during the course of its consultations, the Commission is of the opinion that there is a wider community of interest recognised by the existing Northland Regional boundaries.

- 32 The topographical and geographical features, the resources, and the resource management requirements throughout the whole of the Northland Region are similar, and the Commission believes that it is more effective and efficient for the regional functions, duties, and powers to be undertaken by one local authority rather than two. These include:

- (a) Management of the coast, including coastal waters, harbours, the shoreline, and the immediate hinterland, in order to allow use of this environment, while protecting it from the adverse effects of tourism and recreation, the threat of oil spills from ships, harbour development, sewage discharge, and residential subdivision.

- (b) Management of catchments and rivers, for purposes of soil conservation, flood protection, water supply, and nature conservation.
- (c) Control of animal pests, especially possums, and noxious plants, in order to protect agriculture and natural ecosystems.
- (d) Waste management, including disposal of sewage (including the need for upgrading of many smaller schemes), solid waste (especially the upgrading of rubbish tips), and hazardous waste from farms and industry.

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Although the Far North District Council assured the Commission verbally that it was capable of undertaking regional council functions, and had the ability to provide the necessary segregation between regulatory and service delivery functions, the Commission has not been convinced that the purpose of the proposal is to provide a fully effective and efficient reform of regional government on the best value for money possible.

On more than one occasion during the course of its consultation with the parties, the Commission was informed that, in general terms, the Northland Regional Council had derived a greater financial benefit than it was entitled to at the time of local government reform in 1989, that it was over-resourced and extravagant in its activities to the extent that there was a need for this to be corrected, and that the formation of unitary authorities would be one way of achieving this. The Commission does not accept this as an argument to support the formation of a Far North unitary authority.

B The boundary between the unitary authority and the remaining regional council district

34 The southern boundary of the proposed unitary authority would be the existing southern boundary of the Far North District. This boundary divides the catchment area of the Northern Wairoa River. The management of the northern part of the catchment which would be in the Far North unitary authority district would be of major concern to the Kaipara District Council. The flooding potential of the river is of major significance, particularly to the town of Dargaville which is the major urban area within the Kaipara District.

35 The Commission, in considering this boundary has also had regard to the provisions of section 37ZU(d) which provides that one of the relevant criteria in relation to a reorganisation proposal involving the alteration of a regional boundary is that, where practicable, regional boundaries should conform to catchment boundaries.

36 Although the present boundary is satisfactory for the purposes of dividing two district councils, it is not considered appropriate as a boundary between two local authorities undertaking regional functions.

C Political and staffing structures of the unitary authority

37 The Commission notes that section 223c of the Act requires that "so far as is practicable", a local authority's regulatory functions shall be separated from other functions at both the political and management levels. Although this is comparatively easily achieved in a city or district council undertaking only territorial local authority functions or alternatively in a regional council undertaking only regional council functions, it is significantly more difficult to

achieve the necessary separation in the political and management structures of a unitary authority undertaking both district and regional council functions.

- 38 From the information set out under the heading of background information, it is apparent that one way or another virtually all functions of the Northland Regional Council are related to resource management. This necessitates a co-ordinated input from a range of specialist staff who will need to be attracted to and also retained by, the unitary authority. The Commission is not satisfied that the Far North District Council fully appreciates the difficulties and costs which will be incurred in providing the necessary separation between regulatory and service delivery functions, not only within the elected member structure, but also within the staffing structure of the Council.

D The Far North District Council as a unitary authority

- 39 The limited information which the Far North District Council has submitted to the Commission relating to its unitary authority proposal, leaves the Commission in considerable doubt as to whether the Council fully appreciates the effect that implementation of its proposal would have upon its operations.

The Commission has a number of concerns in this regard including the following:

- (a) the Far North District Council does not appear to appreciate the nature or scope of the obligations which would be imposed upon the Council under the terms of the Resource Management Act and other legislation if the proposal were given effect to;

- (b) the Commission is not convinced from the information made available by the Far North District Council, that it appreciates the full implications of ~~the~~ having to employ on a continuing basis a number of specialist staff, not only to provide adequate advice to the Council, but also to ensure that such advice is independent as between regulatory and service delivery functions; and
- (c) the Far North District Council has not supplied any detailed information on the costing of a unitary authority and, in the opinion of the Commission, the District Council cannot automatically assume that any financial arrangements that might result from negotiations between the regional and district councils, if the proposal were given effect to, would necessarily provide sufficient continuing income to meet the cost of all regional functions.

E Viability of the Northland Regional Council

40 On the basis of the information available to the Commission, the Northland Regional Council has a very sound financial base and, in the opinion of the Commission, it should have no difficulty in continuing to undertake the regional functions, duties, and powers in the remainder of its region if this proposal were given effect to.

41 Notwithstanding the comments in clause 40 above, the Commission draws attention to the fact that, although the financial viability of the Regional Council may not be in question, its ability to provide full-time employment to very ~~the~~ specialised staff such as it employs at present, would be at least questionable.

In the opinion of the Commission both the Far North District Council and the Regional Council could have difficulty providing full-time employment to highly specialised staff and, rather than enhancing the present situation, it could mean that at least some of the expertise within the existing Northland Regional Council could be lost to Northland completely if the only alternative was that staff be employed on a part-time basis by each of the two councils.

Decision

42 Having considered the information and views made available to it, particularly the matters referred to in paragraphs 17 to 41 above, the Commission has come to the belief that implementation of the proposal would make it difficult to ensure ~~the good local government of the Northland Region~~. Consequently it has decided that, pursuant to paragraph (b) of section 37ZZS(1) of the Act, the proposal be referred back to the proposers for reconsideration in the light of the following reasons:

- (a) the Northland Region is recognised as one distinct region in terms of its physical geography, economy, history, and resource management requirements. It would be detrimental to providing for the effective and efficient exercise of regional council functions, duties, and powers to remove from that region a part with characteristics and resource management requirements not significantly different from those of the remaining part of the region;
- (b) the southern boundary of the proposed unitary authority district is not appropriate as a boundary between authorities undertaking regional council functions, as it divides a significant river catchment;

- (c) the Commission considers that, if the proposal were implemented, the employment and utilisation of the necessary specialist staff for the performance of statutory regional functions could not be achieved in an effective and efficient manner.

The Local Government Commission



Ian Lawrence, Chairman



Douglas Pearson, Member



Date

Appendix D

EXTRACT

Section 24A RMA Investigation of the consent processing performance of the Far North District Council.

Prepared for the Minister for the Environment

February 2010

By Cowie Resource Manager Ltd and Hill Young Cooper Ltd

Section 6.1.1, page 17: The Political Relationship

“As with any relationship between a regional and territorial authority good collaboration is necessary on some matters – such as land use consents for earthworks where both councils can exercise controls but for different reasons, and in the preparation of regional and district plans. Inevitable also are tensions – district councils are major resource users in any region in relation to matters such as discharges from community wastewater schemes and landfills, and the taking of water for community supply – and the regional council is the regulatory authority for discharges to the environment and water takes and use.

There is political tension between FNDC and NRC. There are several reasons for this, the primary one being that FNDC do not regard NRC decisions on wastewater discharges to be affordable. We understand FNDC believes that it should be a unitary authority, which would exercise both regional and district council functions under sections 30 and 31 of the RMA.

While it is beyond the scope of this investigation to examine the merits or otherwise of such a governance arrangement in the Far North, we note that the FNDC has much work to do to get its own house in order. Examples include improvements to the District Plan and the provision of infrastructure, particularly as it relates to wastewater treatment and disposal. In the latter instance we note that some Far North communities have only rudimentary wastewater treatment, with well documented problems such as the need for some oyster farms to close due to the risk of contamination, primarily from septic tank discharges. The Council has made 23 applications to the Ministry of Health fund known as the Sanitary Works Subsidy Scheme that provides funds towards the costs of sewage treatment for relatively poor and small communities. Of these applications however, only two are active (these are for Russell and Kawakawa), five are provisional and 16 have been put on hold by FNDC because of funding constraints and the stringent consent conditions being put on the plants.⁶

Until matters such as these are resolved, the question of whether the Council should exercise unitary functions should not be explored actively. It would not be appropriate for instance for FNDC to make decisions on standards for wastewater discharges to the coastal environment. It would also need to prepare plans for its regional functions, but at present the District Plan needs substantive work. Matters such as this should be the District Council’s priority.”

Appendix E



Radio Transcript

Morning Report – Wednesday 2 June 2010 @ 8.55am

‘Northland councils persist with doomed unitary proposal’

Report by Lois Williams

SEAN PLUNKET: The Minister of Local Government, Rodney Hide, has poured cold water on the hopes of two Northland councils pushing to become unitary authorities. The Mayors of the Far North and Whangarei District Councils are leading the charge to abolish the Northland Regional Council, take over its functions and divide its assets between them. But Radio NZ has been told the campaign is doomed and a waste of ratepayers money. Lois Williams reports.

LOIS WILLIAMS: The Whangarei and Far North Councils have spent nearly \$150,000 on their unitary dream and that's set to rise to \$200,000 next month. It hasn't been easy drumming up interest in local government reform in the North. Lois Elliott from the Russell Ratepayers Association puts it this way.

LOIS ELLIOTT: At a grassroots level I don't think there's a lot of appetite for it because I don't even hear conversation with ordinary people that this is actually of importance to them.

LOIS WILLIAMS: But by close of play on Monday, the Far North and Whangarei District Councils had received 900 submissions on their proposal to become unitary authorities. The Whangarei Council officer managing the process is Paul Dell.

PAUL DELL: I think that there's been a lot of interest from people and I think that's a good number of submissions so I'm pleased with those.

LOIS WILLIAMS: But two of Northland's councils want nothing to do with the reform process. The asset rich Regional Council says the McKinlay Report which

recommended first one, then two unitary authorities, was tailored to fit the agendas of the Far North and Whangarei Councils who paid for it. And the Kaipara District which has low debt levels, unlike Whangarei and the Far North, has pulled out as well. Here's the Mayor, Neil Tiller.

NEIL TILLER: Our Council's adamant that there's no benefits in Kaipara joining up with the Whangarei Council and or having two unitary councils for Northland. We're quite happy to get on with the job with what we've got.

LOIS WILLIAMS: And that presents a problem for Whangarei and the Far North. Without regional consensus they can't put a case themselves to the Local Government Commission for a unitary scheme. They need 10% of ratepayers to petition the Commission and ask for reform. And that's where the saga's heading. A hearing by independent commissioners, a report and a ratepayer poll. The Minister of Local Government Rodney Hide says it's an odd way for councils to go about things and he doesn't rate their chances.

RODNEY HIDE: The 10% one really is a citizens-initiated process and councils they normally have to initiate it, they get all the councils concerned to agree. Local councils can spend ratepayer's money as they choose but clearly they're going to struggle with the Local Government Commission when they can't get all the Councils of the region to agree.

LOIS WILLIAMS: Other Government sources who asked not to be named say the Councils have been warned that without unity their campaign is a waste of ratepayers money but they've boxed on regardless. Lois Elliott is one of a number of ratepayers hoping for a knockout.

LOIS ELLIOTT: Well we don't actually have a belief that these things are going to happen because we can't see our leaders agreeing on the idea and we're not ready for a battle over it so we're just hoping the whole thing will go away.

LOIS WILLIAMS: Paul Dell of the Whangarei District Council says no ones told him the unitary scheme won't fly and the hearing of submissions is set down for month. For Morning Report, Lois Williams.

INTRODUCTION

The debate about the future of local government in Northland has been hotting up in recent months.

An expensive report and a series of publications and advertisements has put forward the case for two unitary authorities, favoured by the Far North and Whāngārei District Councils. However, they are just two of four local government bodies representing Northland ratepayers.

Northland Regional Council agrees that we should always be striving to improve local government service delivery within the present structure. However, we believe a lot of misinformation has been circulated about this and that the current drive for unitary authorities simply isn't in the best interests of ordinary Northlanders.

In fact all four local authorities in Northland already work closely together across numerous areas, including infrastructure and transport. We agree there are other ways in which we could work even more closely together, but it doesn't need a costly reorganisation of local government. We could do more now for little extra cost.

All that's really required is a shared desire to work together for everyone's benefit and the benefit of Northland as a whole.

Local government reorganisation – the costs?

FACT

There are no known examples worldwide where services have been delivered more cheaply when Councils have been merged. No real work has been done on the cost of any changes to local government in Northland.

How would my rates be affected?

FACT

Northland Regional Council rates are among the lowest in New Zealand and we are debt-free. Any transfer of ratepayer assets away from the Regional Council will almost certainly result in an increase in rates, due to the roughly quarter billion dollars debt collectively owed already by the Far North and Whāngārei District Councils.

The future of local government in Northland – THE FACTS

What about the Councils' assets – would combining them save me money?

FACT

As a ratepayer, you already own the assets of all four Councils. However, some Councils are better at looking after these assets for you than others. The Regional Council has cautiously and prudently maintained – and grown – your assets over many years. Your current Regional Council rates bills would be about 30 percent higher without the returns from these investments.

What about the environment? Can a unitary authority successfully be both 'poacher' and 'gamekeeper'?

FACT

In Northland, the Far North and Whāngārei District Councils have commented publicly about the value the Regional Council places on Northland's environment and have complained that our standards are too high. They suggest independent commissioners could be used to issue resource consents. **Question:** Who will monitor resource consents to make sure the environment is protected if a unitary authority structure is adopted? District Councils have been prosecuted in the past for repeatedly allowing raw sewage to flow into Northland harbours – will they prosecute themselves?

Wouldn't planning be simpler under unitary authorities?

FACT

Rather than simplifying planning, the two unitary authorities model currently being promoted by the Far North and Whāngārei District Councils will lead to duplication of all the documents the Regional Council is legally required to produce.

Question: How much confusion will be caused – and money wasted – by having two Regional Policy Statements, two Coastal Plans or two Water and Soil Plans?

Auckland is being restructured. Shouldn't we be prepared?

FACT

Central Government has repeatedly stressed it's not interested in even considering pushes by other Councils for unitary authorities until the Auckland SuperCity is up and running.

Central Government has also indicated it plans to reform (next year) the Local Government Act, under which all Councils operate. Existing Councils will be consulted.

Wasn't the Regional Council initially in favour of reviewing the way local government services are delivered in Northland?

FACT

Yes. In fact, we suggested it. However, it quickly became clear the Far North and Whāngārei District Councils were directing the authors of the *McKinlay Douglas Report on Local Government Options for Northland* to achieve the results those Councils wanted.

We withdrew at an early stage because we believed the resulting report would not be independent or based on what's best for Northland and its people.

Were the consultants influenced to come up with the results they did?

FACT

Report author Peter McKinlay publicly acknowledged "the process had been complicated by Whangarei Mayor Stan Semenovff and Far North Mayor Wayne Brown saying from the beginning there should be two unitary authorities". Information we received under the Local Government Official Information and Meetings Act shows Peter McKinlay saying the two unitary authorities option his report ultimately recommended was, in fact, the "least favoured" and he questions whether a Far North unitary authority is likely to be financially viable.

What's in Northland's best interests?

FACT

Northland Regional Council believes all four Councils should put aside their differences and work together to 'put Northland first'. A costly reorganisation is not needed – just the will to work together for the benefit of Northland ratepayers. Any change should be about what's best for Northland. We need to be united as a region – not divided.

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