

28 February 2014

Hawke's Bay Reorganisation Proposal  
Local Government Commission  
P O Box 5362  
**WELLINGTON 6145**

Dear Sir

**SUBMISSION ON THE HAWKE'S BAY REORGANISATION PROPOSAL**

The Hawke's Bay Regional Council (HBRC) wishes to make a submission on the Local Government proposal for Hawke's Bay. HBRC has consulted with its Regional Planning Committee and its Māori Committee in the development of this submission.

The submission is **attached**.

I would like to speak to this submission.

Yours sincerely



**FENTON WILSON**

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# Submission of the Hawke's Bay Regional Council

**To:** Local Government Commission

**Subject:** Draft Proposal for Local Government Reorganisation in Hawke's Bay

## Overview

The Hawke's Bay Regional Council (HBRC) welcomes the opportunity to submit on the Local Government Commission's draft proposal for local government reorganisation in Hawke's Bay.

HBRC requests the opportunity to be heard in support of its submission by the Commission.

HBRC seeks to assist the Local Government Commission through its submission by noting a number of matters which we consider should be given greater consideration by the Commission in its decision making on whether or not to proceed to a final proposal and, if so, what that final proposal should look like.

The Hawke's Bay Regional Council is the only local authority within the area affected by the draft proposal that represents all the communities within that area. In our view this allows the regional council to provide a greater level of independence in respect of the communities of interest.

HBRC submitted an Alternative Proposal for local government reorganisation when this was called for by the Local Government Commission in March 2013. While the structure in our alternative proposal by HBRC has not been accepted as a reasonably practicable option our submission expresses concern that the principles outlined in that alternative proposal, which are a fundamental of good local governance, have not been addressed in any sense in the draft proposal.

The basic contention of this submission is to provide solutions for the Commission to consider in addressing these fundamentals of good local governance.

## Rationale

The underlying premise of HBRC's submission is that form should follow function when it comes to determining local government structure. In HBRC's view the draft proposal has not given adequate consideration of existing local government functions but rather focuses on what local government might potentially do in a unitary authority (noting that this is set out in the draft proposal without supporting evidence).

A provincial unitary council on the scale of Hawke's Bay has not been contemplated before. The current proposals for Northland are also of a smaller scale. Two thirds of the new unitary Council's population would be based in Napier and Hastings. Six of the nine elected councillors will represent the Hastings and Napier wards. Their interests and political mandates are likely to be influenced more by urban than rural concerns, and more by matters of a territorial authority nature than those of a regional council. With only ten politicians governing the Hawke's Bay Council, the distance between them and the community, particularly in the rural area will increase. The specialist political

representation and knowledge of rural and natural resources is likely to be lost to a significant degree.

Natural resource knowledge and management, providing an integrated approach and specialist expertise to natural resource management is a core function regional councils. This is particularly essential to Hawke's Bay given the region's significant natural resource base including large areas of land suitable for intensive agriculture or horticulture and given that the region's economy is driven by primary production.

The region needs to retain a core focus on ensuring the investment funds deliver intergenerational work in the complex natural resource areas and the investment capital is used for critical regional scale infrastructure which unlocks sustainable economic opportunities. A dedicated focus on assisting the primary sector to build resilience, and if possible to expand, also needs to be retained in any future structure.

While it is accepted that any regional council regulatory functions would need to continue irrespective of structure the arguably more important contribution of the regional council is in undertaking scientific investigations of natural resources, particularly freshwater, and in adding value through the use of investment capital for critical regional scale infrastructure which unlocks sustainable economic opportunities.

## **Draft Proposal**

Key elements of the draft proposal are:

- Amalgamation of current councils into one unitary authority.
- Inclusion of small area of Rangitikei district currently within Hawke's Bay Regional Council into new council
- Exclusion of two areas of Taupo district currently within Hawke's Bay Regional Council from new council HOWEVER the new Hawke's Bay council would be responsible for regional council functions in these areas (transferred from Bay of Plenty Regional Council)
- Nine councillors would be elected from five wards. The Mayor would be elected at large
- The council would have five community boards with 37 elected members.
- A standing council committee comprising representatives of local iwi and elected members of council would hear the views of Māori
- Existing council debt and financial arrangements would be ring-fenced for at least six years to the communities which incurred them or benefit from them. Current regional assets would be transferred to Hawke's Bay Council.

## **Commentary**

### ***Regional Council functions***

The regional council is particularly focussed on the issues of environmental management, rural land use and primary production, and how this is linked to the performance of the regional economy. This is built upon a focus on freshwater management and soil/land management. The 2011 National

Policy Statement for Freshwater Management (NPS) means that regional councils are and will be busy with a number of significant issues in its implementation, including:

- Reviewing key planning documents in order to "give effect to" the NPS
- Developing freshwater objectives and quality and quantity limits
- Grappling with issues of "efficient allocation", "efficient use" and water permit transfer criteria
- Reviewing discharge permit consent conditions
- Increasing the involvement of iwi and hapū and improving the integrated management of fresh water.

This is leading to considerable policy and plan development by regional councils over the next few years on what are very contentious issues. The work required to underpin the setting of limits is complex, quite sophisticated and is going to take the best part of a decade to work through.

Of concern to HBRC in the establishment of a unitary authority is the focus on territorial authority activities. While this is understandable, and is not a criticism, it does lead to questions around the ongoing financial sustainability of the programmes required to be undertaken over long term periods to validate the policies required to be developed, not just in the area of freshwater management but in the management of other public resources such as air, land and the coast.

In recognition of the responsibilities placed on regional councils to manage the "commons" without the ability to recover costs directly, regional councils were transferred ownership of port companies in the 1989 New Zealand-wide local government reorganisation. The Hawke's Bay Regional Council relies on the dividend paid to it annually by the Port of Napier Ltd to allow it to undertake scientific investigations, environmental monitoring and land management activities that would otherwise have to be funded directly by the ratepayer. HBRC's concern is that the funding of such activities is vulnerable to the more immediate needs often associated with urban based council activities.

The tone of regional council decisions is different to that of territorial authorities. Of necessity regional councils generally take a long-term strategic look at its decisions as these involve long-term outcomes and significant, ongoing financial resourcing. In that regard HBRC believes that the formation of an elected rural and natural resources special purpose board with advisory and/or decision making functions should also be contemplated by the Commission, so that specialist governance input for regional council functions will be adequately provided to a future Hawke's Bay Council.

We request that the dividend paid by the Port of Napier Ltd be "ring-fenced" for regional council environmental management functions in the final proposal. It is the Regional Council's understanding that such "ring-fencing" can be undertaken in perpetuity and is not limited by a six-year maximum term.

*Hawke's Bay Regional Council seeks that any final proposal for local government re-organisation in Hawke's Bay that excludes the retention of a stand-alone regional council includes provision for the ring-fencing of the dividend paid to the local authority by the Port of Napier Ltd for expenditure on the following functions:*

- *Environmental air quality control*
- *Natural resource environmental monitoring*
- *Biosecurity*
- *Harbourmaster functions/navigation and safety*
- *Land management*
- *Regional resource management planning*
- *Coastal planning and management*
- *Freshwater science investigations, including water allocation and water quality monitoring*
- *Stormwater and wastewater regulations*

***Hawke's Bay Regional Council seeks that any final proposal for local government re-organisation in Hawke's Bay that excludes the retention of a stand-alone regional council includes provision for the establishment of an elected Natural Resources Board to provide specialist governance input for the regional council functions of the Hawke's Bay Council.***

### ***A stand-alone regional council***

The Draft Proposal rejects the concept of one Hawke's Bay District Council and one Hawke's Bay Regional Council on the basis that it would be seen as creating confusion in the public mind as to who had political mandate to speak for Hawke's Bay. No other considerations that are required to be assessed by the Local Government Commission are presented in the draft proposal in relation to this option e.g. whether or not this option facilitates efficiencies and cost savings; productivity improvements and simplified planning processes.

Amendments to the Local Government Act in December 2012 mandate that any proposed reorganisation must 'promote good local government' by facilitating:

- Efficiencies and cost savings;
- Productivity improvements, both within the affected local authorities and for the businesses and households that interact with those local authorities; and
- Simplified planning processes within and across the district or region through, for example, the integration of statutory plans or a reduction in the number of plans to be prepared or approved by the local authority.

In addition any proposed authority must –

- Have the resources necessary to enable it to carry out effectively its responsibilities, duties and powers;
- Contain within its district or region one or more communities of interest, but only if they are distinct communities of interest;

- Enable catchment-based flooding and water management issues to be dealt with effectively by the unitary authority.

The legislation does not specify that the issue of political mandate to speak for an area is a criterion for the promotion of good local government. The draft proposal fails to address the matters that the Local Government Act 2002 specifies must be facilitated by any proposed reorganisation and therefore fails to give the submitting public of Hawke's Bay an opportunity to explore the rationale for the rejection of a stand alone regional council.

***Hawke's Bay Regional Council recommends that the Local Government Commission seriously considers the retention of the regional council in any final reorganisation scheme; and that any final proposal for local government re-organisation in Hawke's Bay that excludes the retention of a stand-alone regional council includes a detailed analysis of the rationale for the Local Government Commission rejecting a stand- alone council in accordance with all the required provisions of the Local Government Act 2002.***

### **Community Boards**

The effectiveness of the "local voice" in the draft proposal relies to a large extent on the existence of the community boards. The draft proposal notes that it may be possible that the passing of local government legislation amendments will allow for the provision of local boards in Hawke's Bay.

A unitary authority with community boards does not guarantee the effective representation of Hawke's Bay's communities or the delivery of local services based on communities' needs. The existence of community boards is subject to a six-yearly representation review at which point the Hawke's Bay Council could form a view to abolish or reconstitute them. In addition the powers and duties of a community board are largely determined by the governing body (the Hawke's Bay Council). Such a hierarchical model does not guarantee the sustained, strong, localised governance needed in an area like Hawke's Bay, nor does it enhance the relationship of the ratepayer to the authority that sets its rates.

Should the required legislation be passed to allow for local boards the Hawke's Bay Regional Council requests that the Local Government Commission, as provided for in Clause 21 (1) C) of Schedule 3 of the Local Government Act 2002, identify another preferred option as the basis of a new draft proposal. We do not consider that the issuing of a modified draft proposal would be satisfactorily transparent. The public of Hawke's Bay need to be able to know what a local board is and what it can do on their behalf, how it and its activities are funded, and the extend of its decision making powers.

***Hawke's Bay Regional Council seeks that a revised draft proposal be issued to enable public submissions to be lodged in the event that the Local Government Commission determines that it wishes to see the establishment of local boards for Hawke's Bay, should the requisite legislation be passed.***

### **Māori representation**

Underpinning the people, the economy and the environment is the development of an appropriate co-governance model. A resilient and sustainable planning framework is coming out of the co-governance Regional Planning Committee of the Hawke's Bay Regional Council, which maintains

equal numbers of tangata whenua (represented by mandated Treaty settlement groups) and elected regional representatives at the table, debating and making recommendations for future natural resource management. Through reforms to the Resource Management Act the Government is seeking to ensure that Māori interests and values are considered earlier in resource management planning processes with solutions developed up-front.

The draft proposal provides for the establishment of a standing committee to hear the views of Māori. The Hawke's Bay Regional Planning Committee, comprising equal representation of elected representatives and mandated treaty groups, will be in place legislatively by the time the Local Government Commission issues its final proposal. HBRC considers it essential that the final proposal, or a new draft proposal, includes clarification of the relationship between the Regional Planning Committee roles and responsibilities and that of the standing committee.

The Regional Planning Committee model, being based upon Treaty settlement groups, ensures that all appropriate iwi are represented at the decision-making table through their mandate. The primary purpose of the Regional Planning Committee Bill will be to improve tāngata whenua involvement in the development and review of documents prepared in accordance with the Resource Management Act 1991 for the Hawke's Bay region. It is essential that the Local Government Commission ensures should the final proposal be for one unitary authority, that cognisance is given of the implications of meeting requirements for district and regional policy development for the Regional Planning Committee. The unitary authority will have a significant commitment to make to tangata whenua in this regard.

***Hawke's Bay Regional Council seeks that any final proposal for local government re-organisation in Hawke's Bay that excludes the retention of a stand-alone regional council includes clarification around the roles and responsibilities of the Māori Standing Committee and the legislated Regional Planning Committee. This is important as while the Māori Standing Committee will act in an advisory role only the Regional Planning Committee has a co-governance role. The expectations arising these two separate arrangements need to be made clearer to the public.***

### **Taupo**

The draft proposal creates an unacceptable level of uncertainty around the exclusion of two areas of Taupo district currently within the Hawke's Bay Regional council area from the new unitary authority. These two areas are in the headwaters of the Mohaka River, Hawke's Bay's longest river. There is a small usually resident population within these two areas (2011 est: 90) and the land is predominantly high country indigenous bush and scrub, with the balance in forestry and farming. The total area is around 78,500 ha.

It is clear that in the draft proposal the Commission considers that community of interest has primacy over catchment. It proposes that these areas remain with Taupo district, and be included in the Bay of Plenty Regional Council area, but that the regional council responsibilities in those two areas then be transferred to the Hawke's Bay Council under the final reorganisation scheme. No direction is given in the draft proposal about how such activities would be funded and by whom, whose resource management act provisions would apply and how any differences could be resolved.

We note that:

- The LGC noted that for the purposes of effective catchment management, two small areas of Taupō district and one small area of Rangitikei district are presently included in Hawke's Bay region. Following discussion with Hawkes Bay Regional Council (HBRC) officers, the LGC concluded that it would be important for these areas to remain under the authority of any new Hawke's Bay unitary authority, at least for catchment and related purposes (Clause 175).
- The LGC noted that the two small areas of Taupō district were in Hawke's Bay region, in order that the Mohaka River catchments were contained within the boundaries of one regional council, i.e. HBRC. The LGC considered that it was important that these catchments were not divided, given the national significance of the river which has a conservation order on it, and which has been the subject of a Waitangi Tribunal recommendation relating to interests of Ngāti Pahauwera (Clause 177).
- On the other hand, the LGC received correspondence from Taupō District Council opposing the separation of these two areas from Taupō district, on community of interest grounds (Clause 178). The LGC agreed there were strong community of interest arguments for these areas to be kept within the boundaries of Taupō district and also that this was likely to be supported by Ngāti Tūwharetoa (Clause 179).
- In order to meet the conflicting arguments, the LGC concluded that if one unitary authority were to be established for Hawke's Bay, the two areas of Taupō district should be excluded from the new district but that responsibility for the regional council functions presently being undertaken by HBRC, should continue to be the responsibility of the new Hawke's Bay unitary authority. This would involve including these areas in the Bay of Plenty region and transferring the regional council statutory obligations for these areas to the new Council under Section 24(1)(e) of the LGA (Clause 180).

Specifically, we are unclear how the transfer of statutory obligations from BOPRC to the Hawke's Bay Council would work in practice and seek clarification on this matter, including but not limited to:

- Funding - how the delivery of functions and services would be funded, including how rating would work practically. Our understanding is that rating functions cannot be transferred to another authority, so BOPRC would of necessity be the rating authority for these areas.
- Governance arrangements – how representation of residents and ratepayers for regional council functions would operate, i.e. which Council(s) residents would vote for, in terms of regional council functions, and whether this would be the same Council that is delivering regional council functions and services in their area.
- Resource Management Act – how roles and responsibilities under this Act would operate without creating inconsistencies and uncertainty. For example, if the two areas in question were to be covered by the Bay of Plenty Regional Policy Statement (which is currently based on entire catchments) and Bay of Plenty regional plans, while resource consenting and regulatory roles were transferred to the Hawke's Bay Council.



***Hawke's Bay Regional Council seeks that any final proposal for local government re-organisation in Hawke's Bay clarifies the transfer of statutory obligations from the Bay of Plenty Regional Council to the Hawke's Bay Council. It is extremely difficult for HBRC to determine a position of support for this aspect of the proposal until these points of clarification have been provided.***

### ***Further analysis***

In our view the draft proposal issued by the Local Government Commission in November 2013 is inadequate in terms of detail. Before the Local Government Commission issues a final proposal, or a new draft proposal, it must do much more analysis of the current functions and responsibilities of the councils, the number of FTEs associated with performing those functions and the costs of transition and integration.

Robust data and evidence must be provided in support of the preferred option so that the public can understand what the true costs and benefits of the options are.

Much has been made of the costs and benefits of the creation of the Auckland super-city, with almost as many different accounts put forward as there are commentators. It would be of huge assistance to the people of Hawke's Bay to have an assessment of the costs and benefits of the preferred option provided by the Commission to assist them make up their minds.

***Hawke's Bay Regional Council requests that if the Commission determines that local boards are to be included in the local government structure in Hawke's Bay, and include these in a re-issued draft proposal, it is critical that the cost and resources associated with local board plans and agreements and the administration and support services associated with them are quantified.***

### ***Transition arrangements***

There is very little detail about the transition phase in the draft proposal and particularly about the resourcing requirements that may be required from councils. Given that HBRC operates in as lean and efficient way as possible this is a potential concern impacting on council functions during transition and the maintenance of current levels of service to Hawke's Bay.

***Hawke's Bay Regional Council seeks that any final proposal for local government re-organisation in Hawke's Bay that excludes the retention of a stand-alone regional council includes detail on the transition phase in order to understand what impacts this phase might have.***

The draft proposal proposes that the Hawke's Bay Council's administrative headquarters would initially be located in Napier City. However if the transition board decides there is a more appropriate location it would make a recommendation to the new council on the future location of the headquarters. In our view the transition board should not be concerning itself with a recommendation to the new council on the future location of the headquarters. The transition period is brief enough as it is and it seems inefficient and not cost effective to establish the body in one location and potentially move it quickly to another. The new Council should have a period of bedding in and aligning a range of existing organisations into one body before considering the location of its headquarters.

*Hawke's Bay Regional Council seeks that any final proposal for local government re-organisation in Hawke's Bay specifies the location of the council headquarters and service centres for a period of five years and removes responsibility for making a recommendation on this from the Transition Board. This time period is in line with the Commission's proposal that Council services would continue to be provided for at least five years at service centres in existing council locations in Wairoa, Napier, Hastings, Waipawa and Waipukurau. This would allow for a comprehensive review of all physical locations of Council services at that time.*

## **Conclusion**

Hawke's Bay Regional Council is of the view that the draft proposal for local government reorganisation in Hawke's Bay does not provide sufficient certainty for the ongoing resourcing and prioritisation of natural resource management functions in Hawke's Bay. This is critical for the ongoing economic development prospects of the region. It would be helpful for the Local Government Commission to give further consideration to a number of matters raised in our submission and we are willing to provide assistance in this if asked.

Given the concerns we have raised we are unable to support the draft proposal for Local Government Reorganisation in Hawke's Bay in its present form.