

**IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY**

**CIV-2014-485-**

**UNDER:** Schedule 5, clause 2(1) of the Local Government Act 2002 ("Act")

**IN THE MATTER OF:** an appeal against a decision of the Local Government Commission made under clause 6(1) of Schedule 3 of the Act to decline a reorganisation application

**BETWEEN:** **WILLIAM REID TOWNSON** of Mahurangi East, retired boat builder, and **ELIZABETH ANN FOSTER** of Warkworth, retired planner, as duly authorised representatives of all the members of **NORTHERN ACTION GROUP**, an unincorporated association, which made the application the subject of the decision under appeal

Appellants

**AND:** **THE LOCAL GOVERNMENT COMMISSION** a statutory body formed pursuant to the Act at Wellington

Respondent

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**NOTICE OF APPEAL BY APPELLANTS AGAINST DECISION OF THE  
LOCAL GOVERNMENT COMMISSION**

**DATED 30TH JULY 2014**

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Commercial & Public Law Ltd  
Level 5, Wakefield House  
90 The Terrace  
PO Box 10388  
Wellington 6140

Tel +64 4 815 8050  
Fax +64 4 815 8039

*Solicitor:* Pam McMillan  
*Counsel:* Nikki Pender

(pam.mcmillan@franksogilvie.co.nz)  
(nikki.pender@franksogilvie.co.nz)

**To: the Registrar at the High Court at Wellington**

**And to: the respondent**

**This document notifies you that -**

1. This appeal is against the decision by the Local Government Commission (“the Commission”) on 30 June 2014 (“the decision”). The decision declined to assess the application by the Northern Action Group for reorganisation lodged on 4 November 2013 (“the application”). The application proposed the constitution of a new region under section 24(1)(b) of the Act by separation of the ‘North Rodney’ portion of the Auckland region from Auckland Council and the creation of North Rodney Unitary Council.
2. The appeal is against the whole of the decision.

**QUESTIONS OF LAW**

3. The questions of law are:
  - (A) Did the Commission misinterpret and/or misapply clauses 2, 5, 6, 7 and 8 of Schedule 3 of the Act?
  - (B) Did the Commission err in law in taking into account or giving the weight it did to the impact on Auckland Council as an organisation?
  - (C) Did the Commission or any Commissioner involved in the application approach the decision without an open mind or have a conflict of interest?

#### **SPECIFIC GROUNDS OF APPEAL**

4. The Commission misinterpreted and/or misapplied clauses 2, 5, 6, 7 and 8 of Schedule 3 of the Act by:
- (a) Failing to decide whether to assess the application “as soon as practicable after receiving a reorganisation application” contrary to clause 6.
  - (b) Failing to explain why its specified grounds apply and how it weighed the factors it mentions as matters of public interest, contrary to clause 6(c).
  - (c) Going further than is authorised by clauses 6 and 7 by partially and improperly assessing the application, instead of applying the preliminary filter contemplated by clauses 6 and 7, and:
    - (i) Misapplied the test in clause 7(c) to hold that the application did not contain the information required by clause 5(1).
    - (ii) Had regard to matters addressed in clause 11(6)(c), which is relevant only after it decides to assess an application and when it is deciding on a preferred option.
  - (d) Wrongly requiring more precision and detail identifying the affected area in the application than is required under clause 5(1)(c) for the purposes of applying the preliminary filter contemplated by clause 7.
  - (e) Misinterpreting the requirement of clause 5(1)(f) that it be satisfied there is information that demonstrates that the application has community support in the district of Auckland Council, by:
    - (i) Applying the test in clause 8(1) instead of the test in clause 5(1)(f);


- (ii) Considering that support must be demonstrated from outside the area of the proposed separate district, with the result that it failed to apply correctly the definition of ‘affected area’ in clause 2.
    - (iii) Requiring a particular level of support to be demonstrated, with the result that it misapplied clause 5(1)(f).
  - (f) Misinterpreting and misapplying the ground in clause 7(1)(h) that “it is not in the public interest to assess the application”.
5. The Commission erred in law in taking into account or giving the weight to the impact on Auckland Council as an organisation as this factor had been statutorily assessed by the moratorium on reorganisation applications prescribed by section 9 of the Local Government (Auckland Transitional Provisions) Act 2010.
6. The Commission erred in law and displayed bias by their conduct in public meetings and their published statements which have exhibited a preference for local authority amalgamation and what they refer to as “single voice” representation.

#### **RELIEF SOUGHT**

7. The appeal seeks the following relief:
- (A) The decision be set aside;
  - (B) Alternatively, the Commission be directed to assess the application in accordance with the Court’s findings on questions of law;
  - (C) The Commission pay the costs of the Appellants.

8. This application is made in reliance on Schedule 5 of the Local Government Act 2002 and Part 20 of the High Court Rules.

DATED this 30<sup>th</sup> day of July 2014



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NM Pender/PE McMillan

Solicitor for the plaintiff

**THIS NOTICE OF APPEAL** is filed by Pamela Elaine McMillan solicitor for the appellant. The address for service of the appellant is at the offices of Franks & Ogilvie.

Documents for service on the above-named appellant may be left at that address for service or may be:

- (a) Posted to the solicitor at PO Box 10388, Wellington 6143; or
- (b) Transmitted to the solicitor by facsimile at 04 815 8039; or
- (c) Electronically transmitted to [pam.mcmillan@franksogilvie.co.nz](mailto:pam.mcmillan@franksogilvie.co.nz) with a copy to [info@franksogilvie.co.nz](mailto:info@franksogilvie.co.nz)