



The Northern Action Group Incorporated

Dear NAG Member/Supporter

NAG High Court Appeal hearing: Sept 30th and Oct 1st 2019

Since my last newsletter in June the NAG committee have continued with our High Court appeal against the Local Government Commission's (LGC) decision, even though the outcome, if we won, would not necessarily get us more than a new assessment process (and the associated publicity of course). However, with no other immediate avenues open to us we decided we had to proceed.

Three members of your NAG committee were able to attend the High Court in Wellington for the hearing of our appeal against the Local Government Commission decision not to adopt any reorganisation of North Rodney.

Barrister, James Gardiner-Hopkins, appeared as counsel for NAG at the hearing.

Appeals of this type can only be on points of law, must be heard by a High Court Judge and decisions are final. The merits or otherwise of any proposal are outside the scope of this appeal.

NAG's appeal was on several points of law - failure to have proper regard to the statutory reorganisation purpose; procedural errors such as failing to properly conduct "consultation" by trying to call it something else; and the unfairness of not considering the APR report (even though it was late).

- 1) The law regarding considering reorganisation proposals was completely rewritten as recently as December 2012 and the overriding purpose of the prescribed process is contained in the main body of the legislation where it mandates (section 24AA) that reorganisation proposals can be initiated by communities, that they are required to be consulted and be able to participate in considering such proposals for their area. The same section also charges the Commission to work with communities and help them achieve the best possible model of local governance for their area.

NAG's position on the Purpose Argument was that they did not do that.

The Commission's response was that they were not required to make specific reference to that Section because the requirements for considering a reorganisation proposal are set out in Schedule 3 of the Act; they met those requirements; and they have power to set their own process.

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- 2) The next limb of our appeal involved a number of procedural errors that included the Commission not even assessing NAGs proposal in its submitted form at all!

The first step in assessing a proposal, after 'alternative proposals' have been called and received, is for the Commission to determine what are reasonably practicable options (RPO's)

NAG's proposed 'community empowerment model (CEM)' proposal didn't even get considered as a RPO and so never reached the subsequent stages of evaluation. The reason given by the Commission was that the CEM model was not "typical" and NAG had specified only 3 members for each Community board (the Local Electoral Act requires a minimum of 4) and so the proposal was not considered further through the process (other than to allow for community boards as an additional cost variation). Their reason given for not factoring in the advantages of the CEM was because the Commission had no power to direct how councils spend their money and so could not be certain of any savings or other advantages, whereas additional costs were certain.

James pointed out that this was a wrong interpretation as the Act specifically requires them to have regard for "potential' benefits" (cl. 11 (3) (c) even if they could not be easily quantified.

He also made a passionate argument that LGC had a duty to do more than consider only "typical council operations" as that effectively ruled out innovative ideas (like our CEM) from ever being considered as a Reasonably Practicable Option (RPO).

Another area where we argued the Commission had erred at law was in its consultation with the community – it did not meet the requirements of consultation. The Commission argued that it was only "information gathering" but James argued that their own documentation contradicted that and it was consultation in substance even if they called it something else. (The point matters because the Commission did not describe our proposal in its "consultation" and did not ask for any comments on it in its questioning of the community.)

- 3) The third limb of our appeal was the unfairness of the Commission in refusing to accept the APR report that NAG had commissioned for the reason that it was too late.

The Commission's position was that it did not have to consider the report as it was passed its deadline for any comments on the ML report, and NAG had already provided its comments within the deadline.

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NAG's arguments were that although the comprehensive document did arrive just 5 days after the Commission had made its decision (which was not known to NAG at the time) it knew that the report was being prepared some 6 weeks before their decision and indeed were invited to contribute to its preparation (something they never even responded to). As the process had already taken some 4 years it was procedurally unfair to NAG to refuse to consider the report, and ignoring relevant information regarding the proposal is an error of law.

There were several other points made and lots of case law quoted, but suffice to say we felt our Barrister answered virtually every aspect of the Commission's reasons for declining our proposal and I felt thoroughly put them to bed .

Lets hope the judge thinks likewise although she commented that she had plenty to think about so I don't think we'll be getting an early decision.

So we can be well satisfied, regardless of the outcome, that we've given it our very best shot and you – our supporters – should be proud that the case for fair treatment of community reorganisation proposals has been well presented – thanks to your financial contributions, and James's commitment.

We are extremely fortunate indeed to have had someone as skilled as James fighting our corner as he did a magnificent job. So a big expression of gratitude also to Local solicitor (and also Barrister) Hugh Gladwell of Messrs Insight Legal for finding him for us and especially on such attractive terms.

Yours sincerely

Bill Townson
Chairman
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