

STAFF REPORT

TO: Mayor and Councillors
FROM: Chief Executive
DATE: 11 August 2009
SUBJECT: Amalgamation Petition – Interim Report

1. PURPOSE

Mr Aldo Miccio is sponsoring a petition calling for the union of the Tasman District Council and Nelson City Council.

The petition has triggered unbudgeted cost implications and calls for information from concerned residents.

This report gives a brief overview of the present situation, the processes that will evolve, potential costs and key concerns.

2. PRESENT SITUATION

2.1 The petition relies on Section 24 of the Local Government Act 2002 ('Reorganisation Proposals') and Schedule 3 of the same Act ('Reorganisation of Local Authorities'). Section 24 lists six different types of proposals.

Section 24 Reorganisation Proposals

- (1) *A reorganisation proposal may deal with any or all of the following matters:*
- (a) *The union of districts or regions;*
 - (b) *The constitution of a new district or region including the constitution of a new local authority for that district or region;*
 - (c) *The abolition of a district or region including a dissolution or abolition of the local authority for that district or region;*
 - (d) *The alteration of the boundaries of any district or region;*
 - (e) *The transfer of a statutory obligation from a local authority to another;*
 - (f) *A proposal that a territorial authority assume the power of a regional council.*

- 2.2 It is important to note that the Miccio petition requests *“the development of an amalgamation model or the union of the Nelson City Council and the Tasman District Council by the Local Government Commissioner (sic) and the chance to vote on this model”*. This means that the Local Government Commission (not the Commissioner) is specifically requested to deal with the matter of a union of districts or regions as per Section 24(1) (a) of the Act.

If the requisite number of signatures is gained, the Local Government Commission will be obliged to proceed solely on the basis of ‘a union’.

Legally the other five possibilities are excluded.

- 2.3 As a direct consequence of the wording in the petition, many of the statements in Mr Miccio’s accompanying flyer are incorrect and misleading.

The flyer states that *“a major part of the Local Government Commissioner’s (sic) consultation and investigation would be to find the best solution for our region....”*

In fact the Commissioner’s hands will be tied to and it will be required to consideration of a full union as the only option.

- 2.4 Other possibilities such as Nelson City Council transferring its statutory obligations for regional council functions to the Tasman District Council could not be considered. Nelson City Council’s unitary status is often viewed by many as being somewhat of an anomaly given that it is a very small ‘region’ or environmental catchment. It has been argued by some that those Nelson City Council regional council functions would be handled much more efficiently and effectively if they were transferred to the Tasman District Council. In this connection it is interesting to note that the Tasman District Council already has responsibility for 97% of the region’s land mass whereas the Nelson City Council only has 2.9% of the region’s land mass (443 km² versus 14.812 km²).

If Nelson City Council was able to divest itself of its regional council responsibilities, the entire region could move to a single combined regional plan instead of the present two regional plans.

Nelson City Council would then be free to concentrate on its urban ‘city’ council community. With a sizeable population concentrated within a small land mass, it would be in an optimal position to achieve infrastructure economies of scale and to focus on those community needs which are more peculiar to urban residents.

- 2.5 The Miccio flyer is also inaccurate in terms of its description of the processes that must be followed. The flyer states the following:

“THE PROCESS IS:

Step 1: Registered voters sign the petition

Step 2: The Local Government Commissioner (sic) consults and proposes the best model for amalgamation

Step 3: Residents vote on the recommended model or the status quo”

In further explanation, the flyer states:

“All the petition needs are signatures of 10% of Nelson and 10% of Tasman registered voters, in accordance with the Local Government Act (2002), for the Local Government Commissioner (sic) to investigate and recommend the best amalgamation model fro the entire region to vote on.”

This statement is potentially misleading. Because the petition is restricted to a request for a ‘union’, it would have been helpful to have also explained that each council must independently pass the 10% threshold, or the petition

- 2.6 Even if the 10% threshold is exceeded independently in each council, it is wrong to state that *“the Local Government Commissioner (sic) consults and proposes the best model for amalgamation”*.

The petition clearly implies that 10% of the signatures will result in a poll. The flyer does not explain that the Local Government Commission can also decide not to proceed with a proposal.

Successful petitions gathered under clause 1(3)(d) of the Act trigger the process contained in subpart 4 of Schedule 3. Under that process the Commission has a wide discretion. It may decide not to proceed with the proposal at all and to give public notice accordingly (clause 39).

The Miccio flyer and petition is therefore slightly misleading in that it suggests that the Local Government Commission will definitely develop a proposal and that there definitely will be a poll after the Local Government Commission develops a scheme.

- 2.7 It may come as a surprise to some signatories to discover that a 10% plus petition will not therefore necessarily lead to the development of a scheme, and/or a poll.

However, such an outcome is a distinct possibility as recent history shows.

In May 2009 the Local Government Commission issued its determination on a proposal for the abolition of the Kaikoura District and its inclusion into the Hurunui District.

Both councils have small populations and the promoters of the original petition considered that the respective communities would be better served by a single council headquartered in Hurunui.

However, the Local Government Commission assessed the proposal and the submissions to the proposals, and in the event decided not to proceed with the proposal on the basis that it would not promote good government for either Kaikoura or Hurunui.

As a result, after considerable cost and disquiet, no poll occurred and the status quo prevails.

- 2.8 In the event that the Local Government Commission does decide to put the matter to a poll, “Step 3” in the Miccio flyer over simplifies the true situation.

Once the Local Government Commission approves a draft reorganisation scheme, that becomes the formal reorganisation scheme and the Local Government Commission must then proceed to give public notice and provide an explanatory notice. Only then does a poll occur.

If a draft organisation scheme has been approved under Clause 46 of Schedule 3, a poll of electors on the proposal that the reorganisation scheme proceed, must be held in each district or region that is directly affected by the scheme.

In the case of the Miccio petition, two separate districts are directly affected so there has to be two polls.

- 2.9 The Act is explicit in terms of what is the fate of the proposal after such a poll. Section 52 reads as follows:

“Fate of the proposal after the poll

- (1) If more than 50% of the valid votes cast in each poll are for a reorganisation scheme, that scheme must be given effect.*
- (2) In every other case, the reorganisation scheme must not proceed.”*

- 2.10 Indicative timing for all these process is estimated as follows:

The petition remains open for signatures (two months?)	September 2009
The two electoral officers then have one month to check the validity of signatures	October 2009
The Commission decides whether to proceed or not. If they do decide to proceed they will have to give public notice and this would probably close in late January or there about	January 2010

Any submissions received by the Local Government Commission are then sent to the petition organiser who is given a further month to respond	February/March 2010
The Commission holds hearings	April 2010
The Commission makes a decision on the proposal	May/June 2010
If the Commission's decision is to proceed, then a draft scheme is prepared and this is advertised for two months to allow for submissions.	July/August/September 2010
The Commission holds further hearings (note that this is very close to the elections and the Commission would have to work carefully around those events)	October 2010
Possible polls in each district	January/February 2011
Final Local Government Commission decision as a result of polls	March 2011
If polls favour union, implementation must occur within three years	

3. POTENTIAL COSTS

3.1 At this early stage, it is difficult to estimate just what costs are likely to be incurred by the Council and, to a certain extent, the community, as a result of the petition.

If the petition fails to break the 10% threshold in either district that would curtail costs significantly and be of assistance in the current year given that no provision has been made by either council to allow for the costs associated with the petition.

Initially some costs have already been incurred in staff time and legal advice. While these are relatively minimal, the cost will increase significantly;

- (a) If It is necessary to correct misleading claims and information that they have put into public circulation; and
- (b) We have to deal with the validity of the petition itself when it closes and is forwarded to the electoral officers for checking.

3.2 On the closure of the poll it will be referred to the electoral officers for each council, provided the petition organiser believes he has the necessary 10% of registered voters.

At that point, the two electoral officers will have to identify and verify every individual signature. As public petitions of this nature are often signed by underage persons or non registered voters, and in many cases it is extremely difficult to correctly identify the signatory, this is no simple task for the electoral officers.

The staff time involved will be significant and an estimate of \$10,000 in staff time alone would not be unreasonable.

- 3.3 Should the electoral officers establish that there are in fact 10% of eligible signatures on each petition; the matter is then referred to the Local Government Commission which will commence its work.

While the Local Government Commission will meet its own costs, each council will be heavily embroiled in the provision of evidence and information to both the Commission and to its respective communities, bearing in mind that this would then be a matter of high public interest.

We know from the approach taken by the Commission in its consideration of the Kaikoura/Hurunui case that the Commission will look to consider evidence and submissions along the lines of the following:

- History of local government in the areas
- Topography land used in settlement
- Population
- Promotion of good local government in the area
- Recognition of distinct communities of interest
- Sense of identity and belonging
- Requirements for services
- Representation and reconciliation of community interest
- Nature of local communities of interest
- Effective representation of communities of interest
- Effective local government
- Consultation and engagement by local government
- Governance arrangements and processes
- Tourism and local governance
- Council Maori relationships
- Effective planning for meeting community needs
- Efficient and effective service delivery
- Infrastructure services
- Financial capacity
- Potential savings
- Potential costs
- The relative financial position of each council
- Management and organisational capacity.

- 3.4 While the above list is exhaustive and in some cases Council may not wish to provide evidence, it will be important to ensure that both the Commission and the local communities are well informed with comprehensive and accurate information. The Council will need to devote significant staff resource to work on the formulation of any proposal.

It is also likely that the internal resources of the Council would be inadequate for several of these matters. Council should expect to be required to fund consultancy fees in social matters, economic matters, financial matters and legal matters.

At this early stage, all I can do is warn the Council of the nature of the risk. If things run their full course, I would expect the staff time involvement to run into six figures and that consultancy bills could also reach a similar magnitude.

This estimate is given on extremely short notice and further work needs to be undertaken before the Council can be given a more accurate budget.

4. COMMUNITY CONCERNS

- 4.1 Communities do not normally welcome change, especially when there is a perception that there are no significant problems with the status quo. It can be expected that should the petition gain momentum, it will lead to the community asking many questions across a wide range of matters.

The community has a right to an informed debate, and reasonable questions should be given reasonable answers.

The details of some of those questions could be quite time consuming but to a certain extent, concerns will converge under a limited number of headings.

- Will ratepayer representation for those ratepayers be improved or worsened under the union proposal?
- Will the cost of rates and/or fees and charges increase or decrease under the union proposal?
- Will the overall regional community benefit from the union proposal or will regional benefits depreciate?
- Could these concerns be met by improvements to the status quo model thereby avoiding all of the cost and disruption caused by a union that disestablishes the two existing councils and creates a new council and bureaucracy?

- 4.2 While I have identified that there will be some financial costs incurred in handling these concerns the disruptive impact throughout the entire region and within the councils should not be underestimated.

There will be a significant opportunity cost during this process, whatever the final outcome is.

We already know that councils are major infrastructure spenders in various forms throughout the region. The uncertainty created by a potential merger will be detrimental to the progression of a wide range of projects.

In the short term, at least, major projects which may be essential could well be further deferred, for example, traffic congestion within Nelson City. Council support for various community associations and the range of community initiatives will need to be restricted to short term commitments only.

This could prove extremely detrimental to some of these bodies who are dependent on Council support. Also, within the councils, the effect on staff moral and cooperation between the two councils in this existing form will be mosuboptimal.

- 4.3 At present the two Councils operate completely different rating systems. Tasman District Council uses capital values and target rates. Nelson City Council uses improved land values and differentials on commercial activity. History throughout New Zealand demonstrates that the 'winners and losers' created by a shift to a single system causes enormous community concerns and public consternation.
- 4.4 At present Tasman District Council has 13 Councillors and one Mayor; five wards, two community boards and ten residents associations. Nelson City Council has 12 Councillors and one Mayor, no wards and no community boards. A new council would be unlikely to have more than 15 Councillors plus one Mayor. Approximately two thirds of those Councillors would come from the urban mass, and this would be seen as a disenfranchisement of the much larger rural sector, with only five Councillors. This would inevitably lead to a call from more community boards, each with 4 – 6 members. Simple arithmetic suggests that there could be more elected officials post-union, than applies under the status quo. The actual cost of democracy would increase, rather than decrease.
- 4.5 Overall, I have concerns about the Councils' ability to continue smooth implementation of their 10 year plans if the next two years are to be disrupted and overhung by some form of union proposal.

Both councils will also suffer a significant cost during this time. Both councils have prepared 10 year plans the only thing is that is certain about the future is that things will change and as the region comes out of recession, it should be poised to move quickly into the best possible recovery mode.

With key regional leader's attention diverted to dealing with the possibility of both the councils being completely disestablished and an entirely new council formed (as per the union proposal) it is unlikely that they will be able to give

attention to the leadership required during this time. Nor will they be able to ensure the councils position themselves in a manner that is most beneficial to the wider community.

6. SUMMARY

The petition process is underway but due to the nature of the petition and some of the inaccuracies contained therein, it is likely that there will be a moderate degree of unbudgeted costs in the current financial while we wait to establish whether or not the petition is successful in achieving the 10% registered voter threshold in each district.

Should the 10% threshold be reached, the Council is likely to face ongoing costs which could reach \$200,000 over the period of consideration. At the same time both councils will face significant disruption and diversion from their core tasks. Smooth implementation that the 10 year plan is on time and within budget will be jeopardised.

Should the petition gain momentum, considerable community concern can be expected and the Council will need to ensure that acting in a proper manner ensuring the provision of accurate well informed information to its community and to the Local Government Commission.

RECOMMENDATION

THAT the Council request staff to report back as soon as possible on the likely cost that will be associated with responding to the amalgamation petition.