

BANKS PENINSULA DISTRICT COUNCIL

Background

- 1 The Banks Peninsula District Council (hereafter referred to as “the Council”), as required by section 101H of the Local Government Act 1974 (hereafter referred to as “the Act”), considered its membership and the basis of election of its members prior to the local authority elections to be held in 1998, and resolved to make no change. At present the district is divided into three wards and the Council comprises, in addition to the Mayor, 9 members elected as follows:

Akaroa Ward	3 members
Wairewa Ward	1 member
Lyttelton/Mt Herbert Ward	<u>5 members</u>
Total	9 members

Council’s Consideration

- 2 The Council considered an officer’s report at its meeting on 23 July which covered the issues to be taken into account and explained the history of reviews since the district was established in 1989. The Council’s resolution to retain its existing structure and method of election attracted one objection.
- 3 The objector was of the opinion that the Akaroa Ward is and would be heavily over-represented in comparison to the Wairewa and Lyttelton/Mt Herbert Wards. He noted that Akaroa currently has one member to 576 residents, compared to 878 and 999 for Wairewa and Lyttelton/Mt Herbert respectively. The Council considered the objection and resolved to continue with the existing structure. The reasons the Council gave in its notice for this decision were that the membership ratios were affected by characteristics other than population, and because there is an impending review of the district to be carried out by the Commission.
- 4 The objector then appealed.

Subject of the Appeal

- 5 The matters raised by the appellant, Mr Tony Aitken, may be summarised as follows:
- in relation to Akaroa Ward, does not consider that factors other than population can be so important as to give the ward such a disproportionate representation;
 - the Lyttelton and Mt Herbert Wards need separate representation on the Council, and therefore that ward should be divided; and

- the boundary between the two should be that which existed between the old Lyttelton Borough and Mt Herbert County.

Preliminary Matter for Determination

- 6 The Commission received the appeal and resolved to meet the Council and the appellant in Lyttelton on 21 January 1998.

The Hearing

- 7 For the Council Noeline Allan, Mayor; Cr Stewart Miller, Deputy Mayor; Mr B P Gardiner, Council Secretary; and Sue Aitken, Acting Chief Executive Officer; Mr Aitken appeared.

For the Council Mr Gardiner spoke to his reports to the Council and summarised the Council's decision.

Mrs Allan then gave an oral presentation. Her comments and responses to questions may be summarised as follows:

- the Commission, in its 1992 determination, had stated that population is not the only criterion to be considered in relation to the district;
- the Council took into account the number of non-resident electors or those qualified to be electors, particularly in the Akaroa Ward;
- the Council recognised that a large number of these non-residents made frequent use of their properties and required a great deal of Council time;
- to accommodate them, the Council endeavours to have meetings at Akaroa on Friday nights and during long weekends;
- rural residents want to be directly involved and demand personal contact with their councillors;
- a feature of the Akaroa Ward in particular, is the requirement for councillors and others to travel a considerable distance over winding roads to get to Lyttelton;
- at some of the meetings in Akaroa it was estimated that 50% of those attending were non-residents;
- about 20% of those who voted in elections for councillors from the Akaroa Ward were non-residents, compared to 10% in the Lyttelton/Mt Herbert Ward;
- of the properties in Akaroa Ward more were owned by non-residents than residents;
- there were divisions apparent between residents of the old Borough and Mt Herbert County at the time the district was constituted, and the Council has been trying to unite the residents of these areas;
- principal growth in the Lyttelton/Mt Herbert Ward is in Governors Bay and in Diamond Harbour;

- any division of the ward would, in the Council's opinion, mean that the district community of interest would be adversely affected; and
- it could be possible to look at a merger of the Akaroa and Wairewa Wards, because the joint community board elected from those wards is working well.

Cr Miller stated that non-residents are dominant in the Wairewa Residents' Association. Other responses may be summarised as follows:

- the factors of population, rateable value and area were all given equal weighting, and the factor for non-residents, including the rates they pay, was added to this;
- if representation for the Akaroa Ward were reduced, the workload for the remaining 2 councillors would be increased significantly;
- it is still appropriate for elections for the Council to be conducted on a ward basis; and
- the present size of Council is about right.

Mr Aitken made an oral presentation. His comments and responses to questions may be summarised as follows:

- he is a life resident of Lyttelton, a member of the Volunteer Fire Brigade, and a Police Officer;
- topography is a relevant factor in determining the boundaries of wards;
- there is little commonality of interest between the residents of Lyttelton and of Akaroa;
- he has gained the impression that the present ratio of membership is protecting the interests of the people of Akaroa;
- does not consider 20% of non-residents voting in an election should be a significant factor in determining membership;
- he did not at any time suggest the size of the Council should be reduced; he would not object if in fact it were increased;
- did not consider the likelihood of a Commission review to be an appropriate factor for it not changing representation now, because anything which may happen as a result of a Commission review would not affect Council membership before 2001;
- there is significant growth within Lyttelton township;
- agreed that a union of the Wairewa and the Akaroa Wards would be appropriate, but Lyttelton and Mt Herbert should be in different wards;
- it is impossible to ignore the predominance of the population of Lyttelton/Mt Herbert, and this should lead to a larger number of members on the Council;
- there is not much community of interest between Lyttelton and areas of Mt Herbert, or even between Lyttelton and Diamond Harbour, even though Diamond Harbour used to be part of Lyttelton Borough;
- there is no community of interest between Mt Herbert and Wairewa;

- the district is even divided for the purposes of rugby - Lyttelton teams take part in the Christchurch competition, while teams from the rest of the district play in Selwyn and Lincoln;
- Lyttelton people have a different attitude to matters than people in the rest of the district; this is probably because they are more allied to Christchurch than people in the rest of the district;
- if area were to be recognised as a factor, it should not exceed about 10%;
- perhaps 10% could also be a factor for absentee owners;
- a lot of absentee owners in Lyttelton/Mt Herbert are bach owners;
- many of the properties owned by absentee owners in Akaroa and Wairewa are rented out; and
- the division of Lyttelton and Mt Herbert would enable Lyttelton residents to elect an appropriate number of members to the Council.

The Council in reply. The comments of Mrs Allan in reply may be summarised as follows:

- the Council did not give undue weight to the ongoing review of the district by the Commission;
- it is very important to retain a Lyttelton/Mt Herbert Ward because there is a close relationship between Raupaki, which is immediately adjacent to Lyttelton;
- Diamond Harbour is a residential area with more permanent residents than the Akaroa Ward;
- the residents of Lyttelton have not been disadvantaged by being included with Mt Herbert, it has always been the case that a majority of councillors for the ward have come from Lyttelton; and
- while it is true that most people in Wairewa have ready access to a good road, this does not apply to all the residents in the Akaroa Ward.

8 At the conclusion of proceedings the Chairman said that the Commission reserved its decision and declared the meeting closed.

Matters for Determination

9 The legislation relating to the determination of appeals and counter-objections, is contained in sections 101K and 101L of the Act. Section 101K(1) provides as follows:

“ (1) The Commission shall, before the 29th day of March of the year of each triennial general election, -

- (a) Consider the resolutions, objections, appeals, counter-objections, and information forwarded to it under section 101J of this Act; and*
- (b) Subject to section 101L of this Act, determine the number of wards or constituencies and their names and boundaries, and the number of members*

to be elected by the electors of each ward or constituency or, as the case may be, by the electors of the district as a whole.”

10 Section 101L(2) and (3) provides as follows:

“(2) In determining whether the council is to be elected by the electors of the district as a whole or by the electors of two or more wards and in determining (where necessary) the number and boundaries of wards, the territorial authority and, where appropriate, the Commission shall ensure-

- (a) That the election of members of the council by the electors of the district as a whole or by the electors of the two or more wards whose number and boundaries are determined will provide effective representation of communities of interest within the district; and*
- (b) That ward boundaries coincide with the boundaries of current statistical meshblock areas determined by the Department of Statistics and used for Parliamentary electoral purposes; and*
- (c) That, so far as is practicable, ward boundaries coincide with community boundaries.*

“(3) In determining the number of members to be elected by the electors of any constituency or ward, the council and, where appropriate, the Commission shall ensure that the electors of the constituency or ward receive fair representation having regard to the population of every constituency or ward within the region or district and, if the circumstances so require, the rateable values, areas, or other relevant characteristics of the various constituencies or wards.”

Consideration by the Commission

11 The Commission considers that when deciding:

- (a) whether the election of the members of a council (other than the Mayor) be by the electors of the whole district or on a ward basis; and
- (b) if on a ward basis, the number and boundaries of the wards,

the only criterion to be met within the terms of section 101L(2) of the Act is the provision of effective representation for the various communities of interest within the district. This can be achieved by any ward encompassing one or more communities of interest.

12 The Commission further considers that, when fixing the number of councillors to be elected by the electors of any ward, the sole criterion to be met under section 101L(3) is the provision of fair representation of the electors of the various wards within the district. In deciding this fairness of representation, the Commission must have regard primarily to population, but if this factor alone does not, in the opinion of the

Commission, achieve fairness then regard should be given to rateable value and area or other relevant characteristics of the various wards. In the opinion of the Commission, population must remain the predominant factor, but different weightings or even no weighting can be applied to all factors as are appropriate in any given circumstances. The Commission does not consider that any particular formula must be applied and consequently, any mathematical calculation should be seen only as a guide to a level of fairness which can be achieved on the basis of the factors required to be taken into account under the provisions of the Act. The final decision must be that which the Commission considers will, after having regard to the various factors set out in the Act, provide fair representation for the electors of any ward.

- 13 The Commission did not consider that the existence of separate communities of interest had changed drastically since it last considered this issue in 1992. The nature of the district, with its widely separated centres of population, and a mountainous terrain, means that there are a number of distinct communities of interest, and therefore effective representation requires the division of the district into wards.
- 14 Representatives of the Council themselves suggested that perhaps consideration could be given, at this time, to a union of the Akaroa and Wairewa Wards. The reason given for this was that both wards are within a single community, and there appears to be general satisfaction with the performance of the community board.
- 15 While this may be so, the Commission notes that no evidence was given that this possibility was explored with the residents of either the Akaroa or Wairewa Wards. The Council's proposals, when advertised, attracted only one objection, and this objection was manifestly not from a resident of either of those wards. The Commission therefore considers that, should the Council consider this to be an option, it could be explored as part of its consideration prior to the 2001 elections. In the meantime the Commission has determined that on balance, the communities of interest still merit the retention of the Wairewa and Akaroa Wards for their effective representation.
- 16 Mr Aitken, in both his objection and his appeal, argued that Lyttelton and Mt Herbert should be within separate wards. His reason was his belief that the residents of Lyttelton and Mt Herbert represent dissimilar communities of interest, and therefore presumably those different communities would be more effectively represented in separate wards. The Council, on the other hand, contended that there are similarities of community, and that the disparities between the areas are decreasing. One example given by the Council was the growing closeness of the association between Lyttelton town and the area of Raupaki which adjoins it.
- 17 Mr Aitken is a resident of Lyttelton, which, given its greater population, must tend to be the dominant voice when it comes to elections for members. The chances are that a majority of members for the ward will come from Lyttelton, thus ensuring the

continued effective representation of that community of interest. No residents of Mt Herbert have voiced concern that their community of interest is not effectively represented within the united area. Given this lack of evidence of dissatisfaction from what might be termed “the junior partner”, the Commission is not convinced that it should alter the existing situation. Mr Aitken’s appeal on this point is not upheld.

18 The Commission therefore has determined that the Banks Peninsula District shall continue to be divided into its existing 3 wards.

19 The second part of Mr Aitken’s appeal relates to the fairness of representation for the electors in the various wards. Using population as the sole factor, which he maintains should be the case, there is indeed a great disparity between the number of residents each member elects in the 3 wards as illustrated below:

Lyttelton/Mt Herbert Ward	5 members each representing approximately 999 residents
Akaroa Ward	3 members each representing 576 residents
Wairewa Ward	1 member representing 858 residents.

20 The Commission, in its 1992 determination, while principally taking account of the populations of the various wards, also was aware of the geographical features of the district. This year it was interested to know what factors had been considered by the Council. It was informed that the Council had taken account of population, rateable values, and areas, and also considered the number of absentee landowners to be a factor which could be applied, particularly to the Akaroa Ward.

21 The Commission understood the Council’s representatives to say that they applied equal weighting to all of the factors. The Commission has always adopted the view that population must be the dominant factor. It therefore considered that this was a case where it should apply its most common weighting formula as an aid to assessing fair representation: i.e. it considered the outcome if the factors of population, rateable value, and area were taken into account with weightings of population 80: rateable value: area 10. Because the Council’s evidence was that its present membership of 9 plus the Mayor was satisfactory, the Commission limited its consideration to that number. The situation is shown in the table overleaf.

REPRESENTATION

Ward	Population	%	Factor	Rateable Value \$mill	%	Factor	Area Ha	%	Factor	Total Factors	Members
Akaroa	1,727	22.8	18.3	351	40.3	4.0	45,407	42.2	4.2	26.5	2.4
Wairewa	858	11.3	9.0	96	11.0	1.1	44,053	40.9	4.1	14.2	1.3
Lyttelton/ Mt Herbert	4,996	65.9	52.7	423	48.6	4.9	18,137	16.9	1.7	59.3	5.3
	7,581	100.0	80.0	870	99.9	10.0	107,597	100.0	10.0	100.0	9

- 22 The Commission was interested to note that, using what may be considered to be its traditional factors, the current representation for both the Wairewa and Lyttelton/Mt Herbert Wards is about right. While the Akaroa Ward does appear to be, on a strictly mathematical basis, over-represented with its present 3 members, the Commission is prepared to accept the Council's evidence that the distance and absentee owner factors which can be applied to this ward are of sufficient weight to justify the present allocation of 3 members for that ward. The legislation requires that representation be fair, not that it be equal. Taking account of all factors, the Commission considers it fair for councillors from Lyttelton/Mt Herbert to represent more people than councillors from the other wards. This has the effect of upholding the Council's proposals in full and not allowing Mr Aitken's appeal.
- 23 The Council in both its documentation and evidence to the Commission stated that the review of the structure of the Banks Peninsula District was of major concern, and therefore no change to the Council's structure or method of election should be contemplated until the end of this review. The Commission however did not believe that it was appropriate to take this into account at all. It has based its consideration solely upon the existing district and what it considers would be an appropriate structure and method of representation for the elections to be held in October this year. Should any changes arise from the review, they will be made at the appropriate time.

Determination

- 24 Pursuant to section 101K of the Act, the Commission hereby determines that for the triennial general elections to be held on 11 October 1998:
- (1) the Banks Peninsula District, as delineated on S.O. Plan No 18084, deposited with the Chief Surveyor of the Canterbury Land District, shall continue to be divided into 3 wards;
 - (2) those 3 wards shall be:
 - (a) the Lyttelton-Mt Herbert Ward, comprising the area delineated on S.O. Plan No. 18085, deposited with the Chief Surveyor of the Canterbury Land District;
 - (b) the Wairewa Ward, comprising the area delineated on S.O. Plan No. 18086, deposited with the Chief Surveyor of the Canterbury Land District; and
 - (c) the Akaroa Ward, comprising the area delineated on S.O. Plan No. 18087 deposited with the Chief Surveyor of the Canterbury Land District:

- (3) the Council shall comprise a Mayor, who shall be elected at large, and 9 members who shall be elected as follows:
- (a) five members by the electors of the Lyttelton-Mt Herbert Ward; and
 - (b) one member by the electors of the Wairewa Ward; and
 - (c) three members by the electors of the Akaroa Ward.

25 As required by section 101L(2) of the Act, the boundaries of the above wards coincide with the boundaries of current statistical meshblock areas determined by the Statistics New Zealand and used for Parliamentary electoral purposes.

26 Because none of the ward boundaries will be changed from those which were constituted for the 1992 elections, the certificate of the Chief Surveyor of the Canterbury Land District, pursuant to section 101M(3) of the Act is not necessary.

The Local Government Commission

Ian Lawrence (Chairman)
Barbara Durbin (Commissioner)
Robin Wilkins (Commissioner)

27 March 1998