

## BAY OF PLENTY REGIONAL COUNCIL

### Background

1 The Bay of Plenty Regional Council (hereafter referred to as the “Council”), in accordance with section 101H of the Local Government Act 1974 (hereafter called the “Act”), carried out a review of its membership and the basis of the election of its members prior to the triennial general election to be held in October 1998.

2 The present membership is 11 members elected from the following constituencies:

<b>Constituency</b>	<b>Members</b>
Tauranga	3
Western Bay of Plenty	2
Rotorua	3
Eastern Bay of Plenty	3

3 The Council’s review commenced after consideration of a report by the Chief Executive in June 1997. The Council resolved to retain the existing membership and basis of election.

4 The Council received four objections to its proposal, as follows:

- (a) Tauranga District Council;
- (b) Tauranga Harbourwatch Incorporated;
- (c) Mount Maunganui Ratepayers and Residents Association Incorporated; and
- (d) J H Davies.

5 Each sought an additional member for the Tauranga Constituency on the grounds that the population of the constituency warranted additional representation.

6 After considering the objections, the Council declined to amend its original proposal.

### Appeal

7 The Tauranga District Council (hereafter referred as “the appellant”) appealed against the Regional Council’s decision on its objection.

## Matter for Preliminary Determination

- 8 The Commission, on receiving advice of the appeal, resolved that before making a determination of this appeal it would meet with the Council and with the appellant if they wished to heard. The date of the meeting was fixed for 3 December 1997.

## The Hearing

- 9 The Commission met with representatives of the Council and of the appellant. Appearing for the Council were the Chairman, Mr John Keaney, and the Chief Executive Mr Jeff Jones. Appearing for the appellant were the Mayor, Mr Noel Pope, and the Chief Executive, Ms Paula Thompson.
- 10 The **Council's** representatives stated that the Council considered that the current distribution of membership between constituencies was appropriate because:
- the geographic spread of some of the constituencies cover rural areas such as the western Bay of Plenty and the eastern Bay of Plenty versus the compactness of a high density urban centre such as the Tauranga constituency;
  - the fact that in the western Bay of Plenty there are two constituencies (namely Tauranga and Western Bay of Plenty) which, when combined together, give five existing constituency councillors and to some degree, adjust the perceived “imbalance” in representation;
  - the very large area of the eastern Bay of Plenty, containing as it does three different smaller communities, Whakatane, Kawerau and Opotiki, and a very large sparsely populated eastern hinterland requires a membership of three;
  - the fact that the Council is in the process of considering the establishment of a “Maori constituency”; (Council acknowledges that it has no legal mandate to do so and as such, the proposal, if it is to proceed, will require local legislation.) Part of that process would be to increase the representation from the Western Bay of Plenty by the addition of an extra councillor, no increase in the Rotorua or Eastern Bay of Plenty constituencies;
  - the Council's concern at the overall “cost of democracy” and its view that unless there were very pressing reasons to do so, it should not support an increase in the number of councillors and thereby the expense to the general ratepayers of the Bay of Plenty Region. It considered that the existing membership of 11 was adequate, having regard to the workload of the councillors and the business that it has to deal with; and

- it took into account the rate revenue from each of the constituencies and the fact that the Eastern Bay of Plenty Constituency has by far the largest rate take, inclusive of special rates, of all the constituencies of the region. This is as a result of the existence of three major flood control schemes in the eastern Bay of Plenty.
- 11 The **appellant's** representatives stated that the number of members to be elected from the Tauranga Constituency should be increased from 3 to 4 because that was warranted by the population and rateable value of the constituency, and because of other relevant characteristics, including: growth issues, Tauranga's economic impact on the Region, and natural and physical resources and rating impacts. The appellant placed particular importance on the current and projected population growth in Tauranga, with the 1996 population of 77,775 predicted to have increased by the year 2001 to 85,500. As well as considering that this population growth would result in an even greater imbalance in the distribution of membership on the Council than currently exists, the appellant pointed to the resource management issues created by this growth. The appellant also considered that the comparative economic activity of the local authorities in the Bay of Plenty Region should be taken into account. It considered that the location of the Port of Tauranga in its District was of particular significance. It stated that the primary economic and social costs of the infrastructure that service the Port lie within its district, while the benefits of the income from the Port shareholdings are distributed across the Region. It therefore considered that the significance of Tauranga in the regional economy and the impact of the Port are characteristics that should be taken into account when determining fair representation for the Tauranga Constituency on the Council.
- 12 The appellant considered that the high rate of growth and associated development activity in Tauranga makes it unique in the Bay of Plenty Region in terms of pressures being exerted on land and water resources. It argued that increased representation is vital to ensure that these matters are given increased priority; and that the strategies developed recognise and provide the needs of the area particularly as they occur on a frequent basis. Lastly the appellant argued that the proportion of the general rate paid by the Tauranga Constituency to the Council justified additional representation.
- 13 In exercising its right of reply, the Council suggested that any perceived under-representation of the Tauranga Constituency could be dealt with by including the Papamoa area in the Western Bay of Plenty Constituency as had been the situation between 1989 and 1992. This suggestion did not find favour with the appellant which argued that Papamoa's community of interest lay with the remainder of the Tauranga District.

## Matters for Determination

- 14 Section 101D(2) of the Act provides that “every region shall be divided into constituencies for electoral purposes”. That, therefore, is not a matter which must be determined by the Commission.
- 15 The statutory provisions in respect of this appeal are contained in sections 101K and 101L of the Act. Section 101K(1) states:
- “(1) The Commission shall before the 29th day of March of the year of each triennial 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.”*
- 16 The relevant provisions of Section 101L are subsections (1) and (3) which state:
- “(1) In determining the number and boundaries of constituencies, the regional council and, where appropriate, the Commission shall ensure-*
- (a) that the number and boundaries of constituencies will provide effective representation of communities of interest within the region; and*
  - (b) that constituency 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 as is practicable, constituency boundaries coincide with the boundaries of one or more territorial authority districts or the boundaries of wards.*
- “(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.”*
- 17 The Commission considers that, when deciding on the number of councillors to be elected by the electors of any constituency, the sole criterion to be met

under section 101L(3) is the provision of fair representation of the electors of the various constituencies within the region. 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 constituencies. 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 indicative as 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 constituency.

### **Consideration by the Commission**

- 18 The legislation quoted in paragraphs 15 and 16 above requires the Commission to ensure that the boundaries of constituencies will provide effective representation for communities of interest within the region. The current basis of election of the Council was fixed in 1992. The Commission, having considered the matter again has concluded that there is no evidence to show that the current constituency boundaries are inappropriate, and therefore confirms the existing boundaries of the various constituencies.
- 19 Having determined the boundaries of the various constituencies, the Commission then addressed the matter of the number of members of the various constituencies so as to ensure fair representation between those constituencies. This is the aspect of the review that was the subject of the appeal which seeks an increase in the number of members to be elected from the Tauranga Constituency.
- 20 As noted above, in determining the number of members to be elected from each constituency, the Commission is required to ensure that the electors of each constituency receive fair representation, having regard to the population of every constituency within the region and, if the circumstances so require, the rateable values, areas, or other characteristics of the various constituencies.
- 21 Both the Council and the appellant proposed a number of characteristics that they considered should be used in determining representation. Both, for instance, argued in different ways that the level of regional council activity in various constituencies should be taken into account when determining representation -
- the Council, by proposing that the proportion of separate rates paid should be taken into account; in particular the separate rates paid in respect of land drainage and flood control schemes on the Rangitaiki Plain; and

- the appellant, by proposing that the resource management implications of population and economic growth in the Tauranga District and the location of the port there, be taken into account.

- 22 The Commission did not consider that taking account of these matters at face value would be a particularly robust method of determining fair representation. The Commission also noted that separate rates contained an element of “user pays” for a service, while population per se would be taken into account to the degree the Commission considered it should be factored into the equation.
- 23 The Commission also did not consider that the appellant’s argument that the fact that the Port of Tauranga is located in its district but the Port’s profits are distributed throughout the region, had any validity in the context of this matter.
- 24 Apart from not considering it has any particular relevance to the question of membership, the Commission could not help but observe that while Tauranga District is the most direct recipient of the impacts of the Port it is also the most direct recipient of economic and employment related benefits of the Port. The Port does not exist in isolation. It is reliant on cargo being exported and imported by areas outside the immediate environs of Tauranga. Presumably a reasonable proportion of that cargo is produced or consumed by other parts of the Bay of Plenty Region.
- 25 The Commission also did not accept some of the factors proposed by the Council. For instance, it did not accept the fact that the Council is proposing separate Maori representation as a matter that is relevant to determining the membership and basis of election for the 1998 election. Separate Maori representation on the Council is something that may or may not happen in the future depending on the will of Parliament. What the Commission is required to do is determine membership of the legislative framework that currently exists.
- 26 In reaching a decision on what constitutes fair representation between the constituencies in the Bay of Plenty Region, the Commission firstly addressed the question of representation on the basis of population only. The following table sets out the situation as to the number of representatives that would be elected by the various constituencies, when the factor of population only is taken into account for a council with a membership of between 10 and 12.

**Table 1**

<b>Constituency</b>	<b>Population</b>	<b>Members</b>			
		<b>%</b>	<b>10</b>	<b>11</b>	<b>12</b>
Tauranga	77775	34.69	3.47	3.82	4.16
Rotorua	61131	27.27	2.73	3.00	3.27
West. BOP	34971	15.60	1.56	1.72	1.87
East. BOP	50329	22.45	2.24	2.47	2.69
<b>Total</b>	<b>224206</b>	<b>100.00</b>	<b>10.00</b>	<b>11.00</b>	<b>12.00</b>

- 27 As can be seen from Table 1, on the basis of population alone, on a council of 11 the Tauranga Constituency would be entitled to one additional member and the Eastern Bay of Plenty would be entitled to one less member than the current distribution. By way of contrast the following table sets out the representation which would be applicable using the three factors of population, rateable value and area with those factors weighted on the basis of population 75%, rateable land value 12.5%, and area 12.5%. These weightings have been used in other cases in determining fair representation, e.g. by the Commission in determining the membership and basis of election for the Waikato Regional Council in 1995.
- 28 The inclusion of these two additional factors enabled two measures of Council activity to be taken into account in equal proportion. The use of area as a factor enables recognition to be given to the fact that land-based activities over less densely populated areas are a significant part of the responsibilities and expenditure of the Council. The use of rateable value enables due regard to be given to people-based activities which require the regulation of development in more closely settled areas.

**Table 2**

<b>Constituency</b>	<b>Members</b>		
	<b>10</b>	<b>11</b>	<b>12</b>
Tauranga	3.10	3.41	3.72
Rotorua	2.52	2.77	3.02
West BOP	1.67	1.84	2.01
East BOP	2.71	2.98	3.26
<b>Total</b>	<b>10</b>	<b>11</b>	<b>12</b>

- 29 As can be seen from Table 2, the representation on an 11 member council would be the same as the current distribution of membership.

- 30 As previously stated the Commission does not consider that any particular formula must be applied, and any mathematical calculation should only be seen as indicative of a level of fairness which could be achieved on the basis of the factors taken into account. However, based on the factors taken into account, the Commission considers that the distribution of membership arrived at will result in fair representation for the constituencies of the Bay of Plenty Region.
- 31 In making the above decision, the Commission dismisses the appeal.
- 32 Having made this decision the Commission acknowledges that the population growth rate in the Tauranga Constituency is very high. This may justify a different distribution of representation resulting from the review held prior to the elections in 2001. The Council will no doubt consider the impact of that population growth in the context of that review. In view of the level of representation now the Regional Council will very likely at that time have to increase the number of members to be elected from that Constituency by one.

### **Determination**

- 33 Pursuant to section 101K of the Act, the Commission hereby determines that for the triennial general election in 1998:
- (1) the Bay of Plenty Region, as delineated on SO Plan No 58080 shall be divided into four constituencies:
  - (2) those four constituencies shall be:
    - (a) the Tauranga Constituency, comprising the area delineated on SO Plan No 59503 deposited with the Chief Surveyor of the South Auckland Land District:
    - (b) the Western Bay of Plenty Constituency, comprising the area delineated on SO Plan No 58081 deposited with the Chief Surveyor of the South Auckland Land District:
    - (c) the Rotorua Constituency, comprising the area delineated on SO Plan No 58083<sup>1</sup> deposited with the Chief Surveyor of the South Auckland Land District:
    - (d) the Eastern Bay of Plenty Constituency, comprising the area delineated on SO Plan No 58084 deposited with the Chief Surveyor of the South Auckland Land District;
  - (3) The Council shall comprise 11 members of whom:
    - (a) three members shall be elected by the electors of the Tauranga Constituency; and

---

<sup>1</sup> S.O. Plan No. 58083 has been superseded by S.O. Plan 61773

- (b) two members shall be elected by the electors of the Western Bay of Plenty Constituency; and
- (c) three members shall be elected by the electors of the Rotorua Constituency; and
- (d) three members shall be elected by the electors of the Eastern Bay of Plenty Constituency.

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

### **The Local Government Commission**

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

27 March 1998