

CENTRAL HAWKE'S BAY DISTRICT COUNCIL

Background

- 1 The Central Hawke's Bay District Council (hereafter referred to as "the Council"), as required by section 101H of the Local Government Act (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 October 1998 and resolved to radically restructure the district wards and reduce the total number of members to be elected. At present the Council comprises in addition to the Mayor, 12 members elected as follows:

Tikokino Ward	2 members
Takapau Ward	2 members
Waipukurau Ward	4 members
Waipawa Ward	2 members
Aramoana Ward	2 members.

- 2 The Council received two appeals and a number of submissions against its proposals.

Council's Consideration

- 3 Councillors attended two workshops and studied two reports prepared by officers, giving options. The first workshop was in May 1997, the second in July. Following the second workshop the Council formally resolved that its preference was for a 3 ward structure for the district, one urban and two rural; with representation to be 4 elected members from the urban ward and 2 from each of the rural wards. The Council also resolved that it would consult with the public before coming to a firm proposal.
- 4 All ratepayers of the district were sent a notice detailing the six options which the Council had identified during the workshops. These options were as follows:
 - (a) the status quo;
 - (b) six councillors elected from 5 wards;
 - (c) eight councillors elected from 3 wards;
 - (d) eight councillors elected from 2 wards;
 - (e) eight councillors elected at large; and
 - (f) nine councillors elected from 3 wards.
- 5 The Council received 222 responses and of those, 100 or 45% were in favour of the Council's own preferred option; 61 or 27% supported 6 councillors elected from the existing 5 wards; 28 or 13% supported a 9 councillor 3 ward option. None of three other options received more than

10% support. The 9 councillors from 3 wards option proposed that 3 councillors be elected from a single urban ward, and 6 from the 2 rural wards.

6 One councillor, following the workshops, had proposed yet another option. This option, which was not submitted for public consideration or comment, was that there be 9 councillors elected as follows:

- | | | |
|-----|----------------------|-----------|
| (a) | Eastern Ward | 2 members |
| (b) | Western Ward | 3 members |
| (c) | Central Ward (urban) | 4 members |

This proposal involved some alterations to the proposed ward boundaries and also proposed taking use of the factors of land value and area in addition to population. The proposed ratios were - population 90: land value 5: area 5.

7 The Council, at its meeting on 21 August resolved to adopt this new option as its proposal. The Council's proposals attracted 12 submissions of which 7 supported its proposals and 5 were opposed. The Council considered the objections and, at its meeting on 13 November rejected those objections which were opposed to its proposal. The Western Ward became the Ruahine Ward and the Eastern Ward became the Aramoana Ward, the name "Central Ward" was unchanged. Two of the objectors appealed against the Council's decision. In addition, the Council accepted a number of submissions from people and organisations who had not made an original objection.

Subject Matter of Appeals

8 Mr G B Stephenson sought a name change for the Central Ward to "Ruataniwha". The Waipukurau Chamber of Commerce sought the original Council preference of 8 councillors elected from 3 wards, as described above in paragraph 3.

Preliminary Matter for Determination

9 The Commission resolved to receive the appeals. It also considered the circumstances under which public submissions had been accepted by the Council after its second decision. In view of the procedure followed by the Council, the Commission resolved that in this case, when meeting the Council and appellants (such meeting being fixed in Waipawa on 3 February) it would allow those persons and organisations who had made submissions to speak at this meeting.

10 The Commission also resolved, pursuant to clause 2 of Schedule IIA of the Act, to appoint a committee (hereafter referred to as "the

Committee”), comprising Commissioners Durbin (Chairman), and Wilkins to hear, consider, and determine the appeals.

The Hearing

- 11 The Council was represented by the Mayor, Mr Hamish Kinnoch; Crs Hunter and Jull; and Mr Warwick Lampp, the Administration Manager. The Waipukurau Chamber of Commerce was represented by Mr Ives. Mr Stephenson was also present.
- 12 Presenters of submissions who also attended were:

Mrs Chatfield, Mrs Petersen, Mr Dresel, Mr Shand, Mr Nisbet, and Mr Para Miha on behalf of the Maori Consultative Committee.

The Council. Mr Lampp explained the process followed by the Council including the workshops and the pre-consultation undertaken by the Council. He explained that the boundary alterations between the two proposed rural wards were intended to take account of the community of interest of the areas affected. In response to a question about why there had not been much in the way of public objection from Waipawa or Waipukurau to the Council’s advertised proposals, he said that the public may have thought its input into the earlier consultation was the only opportunity it had for comment on the proposals.

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

- the study of local government in Hawke’s Bay convinced the Council that it must change its membership and ward representation at this time;
- there was no support within Council, and very little support from the public for an at large system of representation;
- the constitution of a single ward for Waipawa and Waipukurau had been considered for the previous triennium but had not proceeded at that time;
- it would not be appropriate to have a single rural ward because the communities of interest for the east and west of the district are significantly different and therefore require separate wards for effective representation;
- the decision to include Otane in the Ruahine Ward corrected an anomaly which had existed for some time, and the residents felt more of a sense of identity with the Ruahine Ward than with the Aramoana Ward;
- the proposal to increase Ruahine representation from 2 to 3 was because of the Council’s belief that a larger number of councillors were needed for that ward to give effective representation;

- he rejected any suggestion that a majority of members from rural wards would lead to rural domination;
- he said the Council had never split on rural urban lines during the whole of its existence;
- the Council had no problem with the suggestion to rename the Central Ward as the Ruataniwha Ward;
- while believing that 9 elected representatives would be sufficient for the affairs of the district, admitted that there could be some problems in setting up a satisfactory committee structure to adequately separate regulatory matters from service delivery matters;
- the district had a small population increase of about 2% between the 1991 and 1996 censuses;
- most of this increase was in the smaller urban centres and on rural land particularly in the north of the district; and
- if roading were to cease to be a local government function the principal impact on the Council could be a need to reduce its staff by about one and a half.

Cr Hunter said he resides in the area which will become the Aramoana Ward. He supported the 3 ward proposal, and was happy to see that Otane is now to be included in the Ruahine Ward. He also said that 60% of the roads in the Aramoana Ward are unsealed and that 2 members would be the minimum who could properly serve the interests of the residents in the Ward. The exclusion of the area around Flemington and the Otane change has made it more reasonable for 2 councillors. He also said that the new boundaries give more effective representation to district communities of interest.

Cr Jull said that the area of the proposed Ruahine Ward covers most of the old Waipawa and Waipukurau Districts plus a significant proportion of the old Patangata County. He said that Otane should never have been in Patangata County in the first place. He also said that the area needs 3 members because of the significant issues which the Council must deal with.

He said he promoted the proposal which the Council adopted because it would give better representation. The Act provides for other factors in arriving at an appropriate number of members, therefore he thought: Why not use them?

Mrs Chatfield made an oral submission. Her comments and responses may be summarised as follows:

- the major objection is that the Council's advertised option which had most support was for 8 members elected from 3 wards;
- is not satisfied that 9 members would be better;
- equality of urban and rural representation is a safeguard to ensure that relations between the two groups remained amicable;

- she was unaware that factors other than population had been used by the Council in coming to its proposal; and
- in any event the Council's resolution for a 9 member 3 ward split was not open for the first public consultation.

Mr Ives on behalf of the Waipukurau Chamber of Commerce and also as an individual submitter. His comments and responses may be summarised as follows:

- there is equality on the Council now because both urban and rural interests are each represented by 6 members: so why change?
- Believed that had the Council proposed 5 urban and 4 rural members, there would have been a rural outcry;
- he has no idea what the Council's reason for change was, nor why rural people feel they need a safeguard;
- the public notice did not give any reason for the proposed change;
- he had seen one councillor quoted saying there was a need for a stronger rural voice on the Council; and
- has no view on an appropriate size of Council so long as representation is kept even.

Maori Consultative Committee. Mr Para Miha said the name Ruataniwha is recognised in both Waipawa and Waipukurau as both townships have streets of that name. He also said that the iwi in the district have agreed that this would be a suitable name for the proposed Central Ward.

Mrs Di Petersen is a councillor who lives in the present Takapau Ward and represents Waipukurau. She said that Mr Shand who was also a councillor, would be making a presentation on her behalf and that of two other councillors. However she thought that to some extent, there was confusion generated in the minds of residents of the district with the early consultation which took place. People had assumed that that was their only opportunity for input, and had therefore not been aware of the right to make objections.

Mr Shand read a statement, which as noted was on behalf of his fellow councillors: Di Petersen, John Hands, Walter Scott, and Glen Lee. The content of the statement may be summarised as follows:

- he is unaware of any reason why any factor other than population needed to be used in arriving at representation;
- there is a natural balance and interdependence between the urban centres of Waipukurau and Waipawa and the remote rural townships with their surrounding farmland;

- the needs and views of two distinctly different communities of interest bring a tension that maintains the balance so essential to good government;
- believes the Council's proposal is driven by the desire of rural members to have a greater say because of the percentage of rates which come from their areas;
- he observed that the Commission had not been supplied with copies of the 222 questionnaires returned to the Council;
- the request by the residents of Otane to be placed in the Ruahine, rather than the Aramoana, Ward appears to be a reflection upon their regard for their existing ward councillors, rather than their true community of interest;
- the ward boundaries proposed originally to the Council by its officers were the best;
- the Council is continually moving to collect a greater percentage of its rates from the areas of benefit, this has seen a shift towards an increase of rates from Waipukurau and a lessening of the percentage of rates collected in rural areas;
- both the Council's proposal, and the original 3 ward proposal provide effective representation to communities of interest but the proposed number of members does not ensure fair representation for the electors of the Central Ward;
- no documents were tabled at the Council meeting to record or support its decision to change to a formula which included land value and area;
- other councils (Hastings District Council was cited), have used a formula in order to achieve fair representation, but the Council has used it to achieve a political outcome; the lack of a split between urban and rural on the Council is not the issue; it is the public perception of the likelihood of such a split which is the major issue; and
- the original proposal for 3 wards and 8 councillors was fair, would provide good government, and is appropriate for the circumstances of the Central Hawke's Bay District.

Mr Dresel said he opposed the Council's proposal. He said that the retention of local democracy is important and this would be best achieved with an equal number of urban and rural representatives.

Mr Stephenson's submission and responses may be summarised as follows:

- he fully supports the Council's proposal;
- in his opinion, rural people are much more open-minded than urban people and therefore more capable of understanding the issues relating to effective local government;
- he supports the change of name for the proposed Central Ward to Ruataniwha;

- he believes that Otane would be better placed in the Ruahine rather than the Aramoana Ward;
- agreed that the district has a very good roading network; and
- would have preferred the existing ward structure with only half the present number of members.

Mr Nisbet's comments and responses may be summarised as follows:

- an even split between urban and rural councillors would lead to better government;
- a maximum of 8 councillors would be sufficient because he believes the Council does not have very much to do;
- although he cannot foresee a reason for an urban-rural split, a situation with uneven representation could raise this issue;
- he does not think that urban and rural people do think differently; and
- would be quite happy to see the Council comprised of small committees.

For the Council in Reply:

Mr Lampp said that he drew the ward boundaries and the options first considered by the Council at its workshops. He also redesigned the ward boundaries to coincide with the Council's own proposal. The boundary line around Flemington follows meshblocks.

Mr Kinnoch said that much of the opposition was based upon a fear of rural domination. In fact he said the Council's proposals were based upon the need for service delivery to all areas of the district.

He said that this review marked the first occasion when there had been any request from the Council for public input. Other points may be summarised as follows:

- a membership of 8 is the lowest possible number for this Council;
- the decision to relocate Otane in the Ruahine Ward was in response to a request from the Otane people;
- his personal view was that there should be an even number of representatives from urban and rural; and
- the rural community in particular expects councillors to be readily available.

- 13 At the conclusion of the Council's response the Chairman said the Committee reserved its decision and declared the meeting closed.

Matters for Determination

- 14 The legislation relating to the determination of appeals and counter-objections, is contained in sections 101K and 101L(2) and (3) 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”.*

- 15 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 Committee

- 16 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) is the provision of effective representation of the various communities of interest within the district. This can be achieved by any ward encompassing one or more communities of interest.

- 17 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.
- 18 The evidence from the Council, and from public submissions, is that the district needs to be divided into wards to provide the various communities of interest in the district with effective representation. The Committee was satisfied that effective representation is best provided by the division of the district into the three proposed wards for electoral purposes. The only debate was whether the boundaries were completely appropriate.
- 19 The Council had reconsidered its original boundary proposals, and in the case of Otane, has proposed a change to accord with the wishes of the local residents. The Committee was told that the change for the Flemington area was to take account of the particular community of interest in that area, and to accommodate the existing meshblocks. Following the hearing, the Committee visited Otane, and traversed a significant area of the proposed Aramoana Ward. Following this it formed the view that the proposals are reasonable, and the Committee therefore resolved that the Central Hawke's Bay District will be divided into 3 wards for electoral purposes, and that these 3 wards shall be the wards proposed by the Council, save that the Central Ward shall be known as the Ruataniwha Ward.
- 20 The Council proposed that, in addition to the Mayor, it shall comprise 9 members of whom:

three shall be elected from the Ruahine Ward;
two shall be elected from the Aramoana Ward; and
four shall be elected from the Ruataniwha Ward.

The Council argued that the reason for increasing representation from the Ruahine Ward was because of the representational requirements of that ward. One obvious effect of this decision has been to convert a council which, at present, comprises an equal number of representatives from urban and rural wards to one with a majority of members elected from rural wards.

- 21 The Council justified its proposed representational makeup by the use of the factors of capital value and area. In other words, the Council resolved to increase representation from a rural ward, and then made use of a formula which, on a statistical basis, indicates some equality of representation. The Council did not apparently come to a finding that fairness of representation between the electors of the several wards was not obtainable by taking account only of their populations.
- 22 In fact, as the following table indicates, there is little difficulty in achieving fairness between the electors of the various wards by taking account of population alone.

Wards	Population	%	Members		
			8	9	10
Ruahine	4,468	34.3	2.7	3.1	3.4
Aramoana	2,043	15.7	1.3	1.4	1.6
Ruataniwha	6,526	50.0	4.0	4.5	5.0
Totals	13,037	100	8	9	10

On a purely statistical basis, it could be said that some form of “fairness” can be achieved with a Council comprising 9 members but, by the margin of a percentage point, this would require the allocation of 5 members to the urban Ruataniwha Ward, and only 1 to the Aramoana Ward.

- 23 The most statistically pure allocation would be for a council comprising 8 members with 3 representing the Ruahine Ward, 1 the Aramoana Ward, and 4 the Ruataniwha Ward. The Committee notes that a total representation of 8 was the Council’s preferred option following its first two workshops, and the option supported by the greater number of submissions the Council received at that stage.

- 24 The Council itself identified a need for 2 members to represent the Aramoana Ward as well as 3 to represent the Ruahine Ward. This appears to relate more to representational and constituency needs than to the minimum number of councillors needed for the administration of the district. If the Council sees that level of representation for the Aramoana Ward to be necessary, the Committee sees no problem in agreeing to preserving it.
- 25 The Committee believes that what may have been lost sight of by the Council in its endeavours to maintain adequate representation for rural electors is the key question of fairness which is fundamental, in the Committee's opinion, to section 101L(3) of the Act. This subsection states quite categorically that the Council and, where appropriate, the Commission shall ensure that the electors of the ward receive fair representation having regard to the population of every ward within the district and, if the circumstances, so require, the rateable values, areas, or other relevant characteristics of the various wards. In a number of previous determinations, the Commission has consistently maintained that the first endeavour shall be to obtain fair representation between electors by considering population. It is only where fairness cannot be achieved by using only population that other characteristics can appropriately be considered. The Commission would consider the use of other characteristics to be appropriate in cases where a predominant urban population would, without any alleviating factor, be able to elect such an overwhelming number of members of the Council as to effectively disenfranchise the electors of a more sparsely populated rural area.
- 26 What is proposed in the Central Hawke's Bay District is a turning of this principle upon its head. The Council proposes that a ward representing 50% of the residents of the district shall elect fewer than 50% of the total Council members. The Committee does not consider that this is fair. However, given the almost equal parity of populations between the urban and rural sectors, the Committee does not think there should be a majority of members elected from the Ruataniwha Ward.
- 27 Therefore, given the Council's wish to maintain a fairly high level of rural representation, and the Council and the Committee's duty to ensure fairness between the electors of the various wards, the Committee does not consider that a council comprising 8 or 9 members is possible. It has come to the view, despite the expressed wishes of the Council, and of a significant number of residents in the district, that fairness can only be achieved with a council comprising 10 members plus the Mayor. Its allocation of membership therefore will be:

Ruahine Ward	3 members
Aramoana Ward	2 members
Ruataniwha Ward	<u>5 members</u>
Total	10 members

This will be a significant reduction from the present Council membership of 12, while continuing to allow for an adequate separation within the Council for regulatory and service delivery matters.

Determination

- 28 Pursuant to section 101K of the Act the Commission determines that for the triennial general election in 1998:
- (1) the Central Hawke's Bay District as delineated on S.O. Plan No. 9834 deposited with the Chief Surveyor of the Hawke's Bay Land District shall be divided into 3 wards:
 - (2) those 3 wards shall be:
 - (a) the Ruahine Ward, comprising the area delineated on S.O. Plan No. 10850 deposited with the Chief Surveyor of the Hawke's Bay Land District:
 - (b) the Aramoana Ward, comprising the area delineated on S.O. Plan No 10852 deposited with the Chief Surveyor of the Hawke's Bay Land District:
 - (c) the Ruataniwha Ward, comprising the area delineated on S.O. Plan No. 10851 deposited with the Chief Surveyor of the Hawke's Bay Land District.
 - (3) The Council shall comprise a Mayor and 10 members of whom:
 - (a) three members shall be elected by the electors of the Ruahine Ward; and
 - (b) two members shall be elected by the electors of the Aramoana Ward; and
 - (c) five members shall be elected by the electors of the Ruataniwha Ward.
- 38 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 Statistics New Zealand and used for Parliamentary electoral purposes.
- 39 As required by section 101M(3) of the Act, plans of all wards have been sent to the Chief Surveyor of the Hawke's Bay Land District, and the Chief Surveyor has certified that those plans are sufficient to render the boundaries of the wards capable of identification.

The Committee of the Commission

Barbara Durbin (Chairman)

Robin Wilkins (Member)

27 March 1998