

GISBORNE DISTRICT COUNCIL

Background

- 1 The Gisborne District Council (hereafter referred to as the “Council”), in accordance with section 101H of the Local Government Act 1974 (hereafter referred to as 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 a Mayor and 15 members elected from the following wards:

Ward	Members
Matakaoa	1
Waiapu	1
Waikohu	1
Uawa	1
Taruheru-Patutahi	2
Gisborne	8
Cook	1

- 3 The Council’s formal review commenced after consideration of reports by the Corporate Secretary to the Chief Executive in February and April 1997. The Council resolved to retain the existing membership and basis of election.
- 4 The Council received three objections to its proposal, as follows:
 - the Gisborne Environmental Centre Incorporated, which sought an increase in the number of members representing the Gisborne Ward to ten, and a reduction in the number of members representing the Taruheru-Patutahi Ward to one, on the basis that the present distribution resulted in over-representation of the rural part of the district;
 - Bruce Johnstone, who objected to the ward system on the basis that it resulted in over-representation of the rural part of the district; and
 - Grey Power Gisborne Inc., which sought a council of 13 members, with seven urban councillors and six rural councillors on the basis that the existing number of members is higher than necessary to carry out the responsibilities of the council.
- 5 After considering the objections, the Council declined to amend its original proposal. The reason given by the Council for declining the objection lodged by Gisborne Environmental Centre Incorporated was as follows:
 - (i) “There is no underlying principle in the relevant legislation that there should be equivalence between the ratio of population to elected

representatives in different wards such that any variation from that principle is by definition anomalous.”

- (ii) “The Council is required in determining the number of members to be elected by the electors of any ward, to ensure that the electors receive fair representation having regard to the population of these wards and, if the circumstances so require, the rateable values, areas or other relevant characteristics of the various wards.
- (iii) “The Council stands by its view that there are characteristics associated with the rural wards which suggest that the ratio of population to elected members should be lower in those wards; these including those matters mentioned in the public notice together with the fact that unlike many authorities of a similar type the Council has no community boards as a means of ensuring adequate representation for rural townships.
- (iv) “The Council does not consider on the basis of past performance of the council that an additional representative is required unless it is accepted that somehow the weighting between rural and urban membership is anomalous, which the Council does not accept.
- (v) “The Council considers the basis of election proposed strikes the right balance between an appropriate number of elected representatives, the characteristics of rural wards which suggest a lower ratio of population to elected representatives is required, and the need to ensure the urban area is not under-represented on Council.”

The reasons given by the Council for declining the other two objections were similar but not identical.

Appeal

- 6 The Gisborne Environmental Centre appealed against the decision on its objection, seeking the same relief as in its original objection.

Matter for Preliminary Determination

- 7 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 20 October 1997.

The Hearing

- 8 The Commission met with representatives the Council and of the appellant. Appearing for the Council were the Mayor, Mr John Clark; Councillor Willock, and Mr Neville Hablous, Corporate Secretary. Mr Ross Russell appeared on behalf of the appellant.
- 9 The Mayor outlined the process through which the Council had conducted its review. He then went on to state that no evidence had come before the Council justifying the increase in the number of councillors which would result from the Commission's acceptance of the appellants' requests. He also stated that as Gisborne District was a large geographic area, and the Council is a unitary authority, the rural part of the district requires adequate representation.
- 10 Mr Ross Russell on behalf of the appellant spoke to the written appeal. He stated that he agreed with the Mayor that the Matakaoa Ward required separate representation because of its isolation. He also saw no reason for the Gisborne Ward being split up. He agreed that the rural area of the district needed adequate representation but considered that this did not in itself justify other representation.
- 11 He traversed the history of the legislation in which the franchise for local authority elections was based. Originally this had been based on the rateable value of property, however the emphasis had now been completely reversed with fair representation being based on population and other factors being taken into account if required to achieve fair representation. He considered these secondary matters were a matter for fine tuning rather than determining the actual basis.
- 12 In speaking on behalf of the Council in its right of reply, Mr Hablous stated that communities of interest are the starting point for determining the basis of election and that the Taruheru-Patutahi Ward is a distinct community of interest. It was a mistake to over-emphasise the dormitory suburb nature of the ward. He considered that if one accepts the fact that there is a community of interest for the ward and that there is no case for additional members on the Council overall, then one comes to the conclusion that there is no case for change.
- 13 Cr Willock stated that local government reorganisation had seen a considerable decrease in representation of the rural part of the district. He considered that the appellants' proposal would be a continuation of that trend and representation of the rural area would suffer as a result. He also stated that the oath of office taken by councillors required all councillors to act in the best interest of the entire district and he considered that all councillors did so.

Matters for Determination

14 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."*

15 The relevant provisions of Section 101L are subsections (2) and (3) which state:

- "(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

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 deciding on 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 When the Commission considered the membership and basis of election of the Gisborne District Council in 1995 it came to the view that because of the size and diversity of the district, the only means by which the provisions of section 101L(2) of the Act could be met in providing effective representation for the various communities of interest, would be by the district being divided into two or more wards. Gisborne District covers a large area and has a number of discrete and distinct communities of interest. The Commission therefore considers that the district should continue to be divided into wards for the purposes of providing effective representation for the electors of the district. The Commission considers that the existing wards reflect distinct communities of interest and that retention of these wards will enable those communities to retain effective representation. The Commission also observes that the configuration of the wards was not disputed by the appellant.
- 19 The next issue to be addressed, and the one which is the subject of the appeal before the Commission, is the number of members to be elected by each ward. Below are two tables which set out the statistical entitlement of the existing wards to members taking into account various factors.

- 20 Table 1 shows the number of members that each ward would be entitled to taking into account population only with a total membership of 13 to 16 (excluding the Mayor).

Table 1

			Membership			
Ward	Population	%	13	14	15	16
Matakaoa	1962	4.29	0.56	0.60	0.64	0.69
Waikohu	2166	4.73	0.62	0.66	0.71	0.76
Waiapu	2468	5.39	0.70	0.75	0.81	0.86
Cook	1771	3.87	0.50	0.54	0.58	0.62
Uawa	2166	4.73	0.62	0.66	0.71	0.76
Tarheru-Patutahi	3492	7.63	0.99	1.07	1.14	1.22
Gisborne	31755	69.36	9.02	9.71	10.40	11.10
	45780	100.00	13	14	15	16

- 21 Table 2 shows the same information but takes into account the three factors of population, weighted 80%; rateable value weighted at 10%; and area, weighted at 10%.

Table 2

		Members			
Ward	13	14	15	16	
Matakaoa	0.723252	0.778887	0.834522	0.890156	
Waikohu	0.994687	1.071201	1.147715	1.22423	
Waiapu	0.855875	0.921712	0.987549	1.053385	
Cook	0.907576	0.977389	1.047203	1.117017	
Uawa	0.85824	0.924258	0.990277	1.056295	
Taraheru-Patutahi	1.034983	1.114597	1.194211	1.273825	
Gisborne	7.625387	8.211956	8.798524	9.385092	
Total	13	14	15	16	

- 22 Once it has been determined that a particular community of interest requires separate representation, implicit in that decision is the requirement that the ensuing ward be represented by at least 1 member. The appellant accepted that

each of the rural wards required separate representation and therefore 1 member each.

- 23 What then was at dispute was whether the Taruheru-Patutahi Ward was over-represented by 2 members, and whether the Gisborne Ward was under-represented with 8 members instead of the 10 members proposed by the appellant.
- 24 When the Commission considered the membership and basis of election of the Gisborne District Council prior to the 1995 elections, the Committee decided that the Taruheru-Patutahi Ward should have 2 members. This was despite the ward being entitled on a statistical basis to 1.06 members on a 14 member Council or 1.14 members on a 15 member Council when the following weightings were used - population 80%: rateable value 10%: area 10%. The Commission stated that “as the new Taruheru-Patutahi Ward would have 2 representatives if it had remained as 2 separate wards, there is some justification for this ward having 2 representatives on the Council. Also if the number of councillors was determined to be 15 and 7 of these members were to come from the wards other than the Gisborne Ward, on a population basis, the Taruheru-Patutahi Ward would be the one to justify 2 representatives”. This resulted in the Council having a total membership of 15. The Committee went on to state that “this, in the opinion of the Commission, will be sufficient for the Council to undertake its statutory functions, duties, and powers, whilst at the same time give effective representation to the various communities of interest and fair representation to the electors of the various wards”.
- 25 The Commission considering this matter in the context of the current determination, considers that the over -representation of the Taruheru-Patutahi Ward cannot continue to be sustained. While it may have been justified on a transitional basis, the Commission considers that in making this determination it must apply the requirement to achieve fair representation between wards more tightly than it had in 1995.
- 26 As noted in paragraph 12 above, the Commission does not consider that any particular formula or weightings are superior to any other, and that any mathematical calculation should only be seen as a guide to a level of fairness. The Commission therefore looked at what the allocation of membership would be on a formula using weightings of population 75%; rateable value 12.5%; and area 12.5%. This is the set of weightings the Commission has applied to both the Bay of Plenty Regional Council and the Waikato Regional Council in determining the membership of those Councils. The situation using those weightings is set out in the following table:

Table 3

Wards	Members			
	13.00	14.00	15.00	16.00
Matakaoa	0.76	0.82	0.88	0.94
Waikohu	1.09	1.17	1.26	1.34
Waiapu	0.89	0.96	1.03	1.10
Cook	1.01	1.09	1.16	1.24
Uawa	0.92	0.99	1.06	1.13
Taraheru-Patutahi	1.05	1.13	1.21	1.29
Gisborne	7.28	7.84	8.40	8.96
Total	13.00	14.00	15.00	16.00

The use of these weightings results in a minimal increase in the membership entitlement of the Taruheru-Patutahi Ward. It does however increase the membership of the Waikohu Ward so that it is greater than that of the Taruheru-Patutahi Ward. The Commission concludes from this that the arbitrary nature of any decision as to which of the rural wards should be allocated an additional member on a 15 member Council is such that it is not an approach that should be followed on any other basis than a transitional one.

- 27 The Commission has therefore decided that fair representation between wards is best achieved if the Taraheru-Patutahi Ward elects 1 member to the Council rather than 2.
- 28 The appeal is therefore upheld to the extent that the number of members to be elected from the Taraheru-Patutahi Ward is decreased from 2 to 1.

Determination

- 29 Pursuant to s 101K of the Act, the Commission hereby determines that for the triennial general election in 1998:
- (1) the Gisborne District, as delineated on SO Plan No 8378 shall be divided into 7 wards:
 - (2) those 7 wards shall be:
 - (a) the Matakaoa Ward, comprising the area delineated on SO Plan No8380 deposited with the Chief Surveyor of the Gisborne Land District:
 - (b) the Waiapu Ward, comprising the area delineated on SO Plan No 8381 deposited with the Chief Surveyor of the Gisborne Land District:

- (c) the Waikohu Ward, comprising the area delineated on SO Plan No 8382 deposited with the Chief Surveyor of the Gisborne Land District:
 - (d) the Uawa Ward, comprising the area delineated on SO Plan No 8383 deposited with the Chief Surveyor of the Gisborne Land District:
 - (e) the Taruheru-Patutahi Ward, comprising the area delineated on SO Plan No 8753 deposited with the Chief Surveyor of the Gisborne Land District:
 - (f) the Gisborne Ward, comprising the area delineated on SO Plan No 8752 deposited with the Chief Surveyor of the Gisborne Land District:
 - (g) the Cook Ward, comprising the area delineated on SO Plan No 8390 deposited with the Chief Surveyor of the Gisborne Land District.
- (3) the Council shall comprise a Mayor and 14 members of whom:
- (a) one member shall be elected by the electors of the Matakaoa Ward;
 - (b) one member shall be elected by the electors of the Waiapu Ward;
 - (c) one member shall be elected by the electors of the Waikohu Ward;
 - (d) one member shall be elected by the electors of the Uawa Ward;
 - (e) one member shall be elected by the electors of the Taruheru-Patutahi Ward;
 - (f) eight members shall be elected by the electors of the Gisborne Ward; and
 - (g) one member shall be elected by the electors of the Cook Ward.

31 As required by section 101L 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.

The Local Government Commission

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

27 March 1998