

HUTT CITY COUNCIL

Background

- 1 The Hutt City 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 some changes. Its present membership and basis of election was fixed by a committee of the Commission in 1995 when it determined appeals against the Council’s proposals prior to the 1995 elections. The current membership is 13, in addition to the Mayor, elected as follows:

Wards	Members
Northern	2
Western	2
Eastern	2
Harbour	2
Central	2
Wainuiomata	3

- 2 The Council proposed to retain the existing 6 wards and to reduce the number of members to be elected from the Wainuiomata Ward by 1. This means that in October 1998 there would be a total Council membership of 12 compared to the present 13 members.
- 3 Although the Council received what purported to be 7 appeals against its decisions, the Commission found that 3 of them were not valid because they related to the question of the constitution of communities and community board membership, these are not matters which can be dealt with in any appeal pursuant to section 101J of the Act.

Council’s Consideration

- 4 The review process started in June 1996 with an officer’s report recommending that consideration be given to a system of communities over the whole City. A working party was established and subsequently an independent facilitator was retained. The facilitator presented her first report to the Council in April 1997.
- 5 In the report, the facilitator stated she had sought public input and received 176 responses to a consultation document which was distributed widely throughout the City, as well as being published in the Hutt News. This report concentrated on a structure of communities rather than the number of councillors and their method of election.

- 6 This initial public consultation was followed by further consultation in July where input was sought from 5 focus groups. Two of these comprised members of the public; one was from the business community; one from the Maori community; and another from community groups.
- 7 On 19 August 1997, the Council considered all the information it had before it from focus groups, the facilitator, and officers. It resolved that at the 1998 elections the Council would comprise 12 members elected at large. As an adjunct it also resolved that 6 community boards be constituted covering the whole of the City. The required public notice of this proposal was given.
- 8 The Council received 296 submissions on its proposals. The vast majority of these were on a form designed by the Council and published in community newspapers. The submissions/responses were analysed by officers who reported that, from an extremely varied range of responses, the retention of the existing 6 wards was favoured. The responses also favoured the election of 2 members from each ward.
- 9 As already indicated, the Council, after considering the objections and submissions, resolved to support the majority of submissions and to retain its present wards with a reduced membership of 12; 2 members representing each ward.

Subject of Appeals

- 10 *Max Shierlaw*: Council membership should not exceed a maximum of 10. Two other points in his appeal did not relate to the matters identified in section 101J of the Act.
Warren Thessman: The Council should not have sought to retain 12 members when the public gave a distinct preference for fewer members. He also made the point that the Council did not make it clear that options other than the two listed could have been considered.
Mr G Pallo: The Council should comprise only 10 members.
Hutt Valley Chamber of Commerce and Industry: The Council should comprise 6 members, elected at large.

Preliminary Matters for Determination

- 11 As referred to previously, the Commission noted that a number of the appeals were about communities and community board representation. While communities are an important part of the constitutional structure of the City of Lower Hutt, that structure and the number of members of the boards are not matters which are considered pursuant to section 101H of the Act, nor are they open to a formal system of public objection and appeal under section 101J of the Act. For those reasons, the Commission

considered it was inappropriate for it to give formal status to appellants who dealt only with those matters.

- 12 The Commission received the valid appeals and resolved to meet the Council and appellants in Lower Hutt on 29 January.

The Hearing

- 13 The Council was represented by:

the Mayor, Mr John Terris
Cr Monrad (Deputy Mayor)
Councillors Dalziell, Ross, Finlayson, Glensor, Brosnahan, and Eady;
Mr Dunn (Acting Chief Executive)
Ms Hall (Executive Adviser); and
Mr Lewis.

The only appellant present was Mr Pallo.

- 14 *Mr Terris:* began with a statement which may be summarised as follows:

- the Council wished to have its membership reduced to 12;
- there is a continuing need to consider community representation across the City, and perhaps this needed more time for review;
- the Council conducted widespread public consultation over a period of 10 months, during which time it also made use of an independent facilitator and took on the views of various focus groups and;
- his own view is that he would prefer to have communities covering the whole City.

Other comments from Council representatives and their responses to questions are now summarised:

- the Council did not consider the ratio of population to councillors in the various wards because its first proposal was to reduce the size of Council and have the members elected at large;
- the Wainuiomata Ward was over-represented with 3 members;
- with a Council of 12 members, the Western Ward is now over-represented in comparison to the other wards;
- the possibility of some boundary alterations affecting the Western Ward was considered in a workshop; but the Council considered there was some sense in not making alterations to what now exists because it considered there is a need for stability;
- if the Council were reduced to a total of 11 members, one ward would have only 1 member;

- the ward system has been a success in the City, not least because it enables the concerns of residents within each ward to have an identifiable councillor with whom they can air their concerns;
- this Council inherited the present ward boundaries from the previous Commission decision; it was observed that in 1995 the Council had opted for a 5 ward division but the Commission decided that 6 would be more appropriate;
- now that they are fixed the Council is loath to see them moved yet again;
- the wards do recognise natural boundaries for the most part, and the river is a particularly strong division;
- while the placement of Korokoro and Alicetown was a matter of serious discussion in 1995, their current placement is accepted as appropriate;
- the wards, by their existence, have encapsulated and created communities of interest, this is because there are factors other than geography; examples are Eastbourne, Wainuiomata, and Petone which retain staunch communities of interest;
- perhaps the other areas have boundaries which are not quite so strong because they have no history of having been part of independent districts;
- agreed that the Western Ward, with its smaller population, does present a problem;
- there is some growth in the centre of the City but this is largely because of in-fill housing;
- the residents of the Western Ward feel isolated and under-represented because there is no community for the ward nor any ward committee;
- this feeling of isolation would increase if ward representation was reduced to only 1 member;
- the Council did not consider any need to take account of factors other than population in determining ward representation;
- two-thirds of the public responses to the Council's first proposal were in favour of the retention of a ward system;
- there would be no benefit from the amalgamation of wards to remove representational anomalies because this would lessen the effectiveness of representation in some areas;
- the area of the Western Ward has good potential for further development; new housing is going ahead, together with some life-style blocks; and perhaps these factors justify some over-representation;
- while a majority of councillors first considered that the ward system tends to lead to parochialism, the Council, as a whole, accepted the wishes of a majority of those who submitted that there should be a ward system;
- one councillor said that the ward system in Lower Hutt leads people to ask for attention to ward affairs at the expense of the City's wider requirements;

- another councillor said that parochialism was a strength which would be best served by a complete system of communities with extensive power to devolve community boards;
- one councillor agreed that it could be reasonable to unite the Western and Central Wards;
- figures produced for the Council showed that a 4 ward division of the City would create difficulties with the representation for the Central Ward;
- it is that ward which possibly has the least strong community of interest;
- it was admitted that the Council only looked at wards as a prospect at the end of the process and had little time to consider appropriate boundaries and;
- this proposal is seen as only an interim measure; if the people still want wards in 3 years, the Council will need to give serious consideration to appropriate boundaries.

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

- there is a problem in getting the public to participate in local government affairs in Lower Hutt; his reason was that people feel disempowered because ward representatives may not properly represent, or may even misrepresent residents' views;
- he liked the 19 October proposal, and was very disappointed with the Council's decision following objections to retain a ward system and 12 members;
- his impression of the focus groups was that they were in favour of the Council's proposals for community representation;
- he suggested there may have been some misinformation about the roles of community boards;
- questioned whether exact boundaries for the wards were all that important;
- the City could come together with a properly constituted system of communities;
- if wards are to be retained, the present 6 looks about right;
- has lived in the City for over 35 years and is a member of the Eponi Residents' Association Committee;
- if councillors were elected at large, it would make them look at the whole City, rather than their ward power bases;
- believes that 10 members would be quite sufficient but this would be hard to achieve with a ward system;
- did not consider it necessary to attempt to achieve perfection in the ratio of population to elected members in order to achieve fairness;
- it is the ability to be able to approach councillors which is important and;

- did agree that perhaps if the numbers of residents in the various wards did become completely unbalanced, some adjustment would be necessary.

The Council in reply:

Mr Terris made the following comments:

- it is notable that there were very few appeals initially and that only 1 appellants was finally present;
- it is also notable that 75% of the submissions supported the retention of the ward system despite the Council's initial decision;
- while he would still prefer an at large system he believes it is important that councillors do listen to the wishes of the public;
- there could have been some misconception about the cost of community boards which lessened the totality of public support for them and;
- the Commission must always bear in mind that those who appeal often have an axe to grind.

- 15 At the conclusion of the Council's reply, the Chairman said that the Commission will consider all valid appeals it had received, that the Commission reserved its decision, and declared the meeting closed.

Matters for Determination

- 16 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 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.”*

- 17 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

18 The Commission considers 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,

that 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.

19 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.

- 20 The Council, when making its first resolution, proposed that Lower Hutt not be divided into wards for electoral purposes. After considering objections, the Council reversed this stance, and reverted to supporting the retention of the existing 6 wards. The Commission agrees that the second decision is, for the present, the correct one. The communities which represent the former district of Wainuiomata, Petone, and Eastbourne, still retain a robust sense of identity, and will likely continue to do so for some time yet.
- 21 It may be that a comprehensive system of communities, with satisfactory delegations to the community boards will, in time, ensure the City's communities of interest have effective representation without the need for wards.
- 22 The Commission did give some consideration to whether the residents of the present Western Ward would be better served if that ward and the Central Ward were combined. The Commission notes that the Western Ward is not well served with formal council structures. For example, the Western Ward does not have its own service centre nor its own permanent library. In addition, there is no separate Western Hills community nor has the Council constituted a special Western Ward Committee. In fact, all that the residents of the Western Ward have is the ability to elect two councillors. The Commission considers that the area of the Western Ward does contain communities of interest which require the continuation of a separate ward to provide for their effective representation.
- 23 The Commission is satisfied that the boundaries of the other wards within the City are appropriate for the continued effective representation of their internal communities of interest. The Council's proposals for wards are therefore confirmed and the appeals of Mr G Pallo and the Hutt Valley Chamber of Commerce and Industry, both seeking an election at large are declined.
- 24 All four appeals against the Council's proposals sought a reduction in the number of councillors. For example, the Hutt Valley Chamber of Commerce and Industry suggested the Council should comprise no more than 6 members (presumably in addition to the Mayor).

- 25 As it happens, if the Council were reduced to 6, an allocation of 1 member to each of the wards would give fair representation to the electors of those wards having regard only to their populations. The Commission believed however, that if the number of councillors were reduced to this extent, there could be some difficulty in guaranteeing effective and democratic local government to the residents of Lower Hutt. The Commission is not charged under section 101L with ensuring that a Council shall be of an appropriate size to provide effective and accountable local government, bearing in mind the functions, duties, and powers of the particular territorial authority. Nevertheless, the Commission believes it must be mindful of the general purposes of local government as set out in section 37K of the Act.
- 26 In relation to this, the Commission has, in other contexts, commented that, while local government must be efficient and business-like, it cannot be run as if it were a business. There needs to be a sufficient representation on a territorial authority to allow for the consideration and presentation of differing points of view. The Commission also believes there is merit in the view that a council needs to have sufficient members to enable a division of its membership into committees which foster the separation required under section 223C of the Act, but can still be large enough to allow for robust debate.
- 27 For those reasons, the Commission considered that, when seeking to arrive at fair representation for the electors of the various wards, it should not accept a size of Council which, in its opinion, could be insufficient at this time, for the proper democratic governance of Lower Hutt. It therefore limited itself to a possible range of councillors very close to the present establishment of 13. The results are as shown in the table immediately below.

Ward	Population	%	Members			
			10	11	12	13
Northern	14,729	15.36	1.54	1.69	1.84	2.00
Western	11,635	12.14	1.21	1.33	1.46	1.58
Eastern	16,475	17.18	1.72	1.89	2.06	2.23
Harbour	17,103	17.83	1.78	1.96	2.14	2.32
Wainuiomata	17,725	18.49	1.85	2.03	2.22	2.40
Central	18,205	18.99	1.90	2.09	2.28	2.47
Totals	95,872	100.00	10	11	12	13

- 28 What the table indicates is that on a solely mathematical basis, fairness is not achievable with a Council comprising either 10 or the existing 13 members. While a Council comprising 11 members is mathematically achievable, it would result in a significant under-representation for the electors of the Western Ward. The Council's proposal on the other hand,

is that the electors of the Western Ward, on the basis of population alone, would be somewhat over-represented. The Commission was informed that the Western Ward is one of the few parts of the City where significant green fields residential development is taking place. It also noted that the population of the Belmont statistical area unit showed the greatest increase between the 1991 and 1996 censuses. A factor which has masked the increase in residential development in the ward has been the decline in population in Haywards-Manor Park, which has been largely driven by the reduction in the numbers of Electricorp staff. The Council proposed that the Wainuiomata Ward should be reduced to 2 members. This was not opposed, and in any event is the correct allocation for the Ward. The Ward will continue to retain a community.

- 29 On balance, the Commission considers that the retention of two representatives for the Western Ward is fair even if not mathematically equal. The Commission's opinion is that the legislation requires fairness rather than strict mathematical equality. This means that the Commission confirms the Council's proposals that the electors of each ward will be fairly represented by being able to elect 2 members of the Council. Accordingly none of the appeals are upheld.
- 30 As already noted, the Council did give serious consideration to a radical change in the basis of election for the City. It appears that a major factor in it deciding not to carry through this change was some general uncertainty within the City about the possible effectiveness of a system of community board administration for a number of local government issues. No doubt this issue will be revisited by the Council, and the Commission will watch developments with some interest.

Determination

- 31 Pursuant to section 101K of the Act, the Commission hereby determines that for the triennial general election in 1998:
- (1) The Lower Hutt City as delineated on S.O. Plan No. 35979 deposited with the Chief Surveyor of the Wellington District shall continue to be divided into 6 wards;
 - (2) Those 6 wards shall be:
 - (a) the Northern Ward comprising the area delineated on S.O. Plan No. 37405 deposited with the Chief Surveyor of the Wellington Land District;
 - (b) the Western Ward comprising the area delineated on S.O. Plan 37406 deposited with the Chief Surveyor of the Wellington Land District;

- (c) the Eastern Ward comprising the area delineated on S.O. Plan No. 37407 deposited with the Chief Surveyor of the Wellington Land District:
 - (d) the Harbour Ward comprising the area delineated on S.O. Plan No. 37408 deposited with the Chief Surveyor of the Wellington Land District:
 - (e) the Central Ward comprising the area delineated on S.O. Plan No. 37409 deposited with the Chief Surveyor of the Wellington Land District:
 - (f) the Wainuiomata Ward comprising the area delineated on S.O. Plan No. 35984 deposited with the Chief Surveyor of the Wellington Land District:
- (3) The Council shall comprise a Mayor and 12 members of whom:
- (a) two members shall be elected by the electors of the Northern Ward;
 - (b) two members shall be elected by the electors of the Western Ward;
 - (c) two members shall be elected by the electors of the Eastern Ward;
 - (d) two members shall be elected by the electors of the Harbour Ward;
 - (e) two members shall be elected by the electors of the Central Ward: and
 - (f) two members shall be elected by the electors of the Wainuiomata Ward.

32 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.

The Local Government Commission

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

27 March 1998