



LOCAL GOVERNMENT COMMISSION

Determination

of the membership and basis of election for the
general election of the Invercargill City Council to be
held on 13 October 2001

BACKGROUND

- 1 The Invercargill 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 the election of the Council to apply for the general election of the Council to be held in October 2001, and resolved to make no change.
- 2 The Invercargill City Council elected at the 1998 general election comprises 12 members elected by the electors of the City as a whole and the Mayor.
- 3 The Council received two objections to its proposal from:
 - A Swallow; and
 - F Dorricott.
- 4 Both objectors sought a reduction in the number of elected members, and proposed that the Council should comprise 9 elected members and the Mayor.
- 5 Following consideration of the objections, the Council confirmed its original proposal. Mr Swallow appealed the Council’s proposal.

Subject Matter of Appeal

- 6 The appellant considers that the Council could operate with 9 Councillors, taking into account the fact that Council and Committee meetings often function without the full participation of all members, due to the absence of members, the lack of participation of a member in discussion and members declaring conflicts of interest.

-

Preliminary Matter for Determination

- 7 The Commission, on receiving advice of the appeal, resolved that before making a determination of the electoral arrangements of the Council, it would meet with the Council and the appellant if he wished to be heard. The Commission resolved to meet the Council and the appellant in Invercargill on 8 December 2000.

The Hearing

- 8 The Council was represented by the Mayor (Tim Shadbolt), the Deputy Mayor (Neil Boniface), the Chief Executive Officer (Richard King) and the Manager Secretarial Services (Peter Ford). Mr Swallow was present.

The Council: The Mayor spoke to a submission. The content, his comments and replies to questions may be summarised as follows:

- the Council currently comprises 12 Councillors and a Mayor elected at large;
- the Council operates on a six weekly meeting cycle and operates four Committees;
- there are three community boards, each having Council representation;
- the Council has two Councillors as Directors of Invercargill City Holdings and Electricity Invercargill Limited and one Councillor as a Director of Invercargill Airport Limited;
- many of the issues raised in the appeal are arguments for the status quo or an increase in the number of elected members;
- based on the last Census the Council has one elected member per 4434 residents;
- elections for Council are hotly contested and there is a high voter turnout;
- having 12 Councillors ensures that a broad range of people from the Invercargill community have a chance of being elected and that the public have ready access to them;
- from time to time conflicts of interest will arise, some Councillors may be away on business, but by having 12 Councillors there is always a good core present to vote and provide a balanced decision;
- the Council considers that it is prudent to retain the status quo to provide fair representation to its electors, given the nature and breadth of Council activity;
- the Council has operated with 12 Councillors elected at large since 1992;
- and
- the city is compact in geographic terms, containing a farming community on the fringes and fishing interests at Bluff.

The Deputy Mayor made comments that may be summarised as follows:

- a group of people residing in the area locally known as the “Bush ward” wanted to transfer out of the City, however an independent report showed that the City really has one community of interest, and that group did not appeal the Council’s decision to not proceed with a boundary alteration;
- if there was to be a problem in terms of community of interest it would be in Bluff, but the people of Bluff are happy with the current electoral arrangements; and
- if the Council was reduced to 9, there would still be occasions when Councillors were unable to fully participate in Council meetings.

Alan Swallow: Mr Swallow addressed his appeal. His comments and replies to questions may be summarised as follows:

- if the Council had provided more than one month for objections to be received, it would probably have received more submissions;
- the current Council is operating with 9 Councillors because one Councillor consistently says nothing in meetings, one Councillor is away regularly and seven Councillors are involved in activities which give rise to conflicts of interest;
- with 9 Councillors meeting on a monthly basis the Council could do the business currently done by committees;
- the population of Invercargill is continuing to decline;
- the Council did not give any justification for retaining 12 members; and
- elections at large are appropriate for the City.

The Council in reply: The Mayor’s comments can be summarised as follows:

- three Councillors are members of the Invercargill Licensing Trust, and have been involved with initiatives, including Tropoclimax, the new sports stadium, the city centre upgrade and the new Olympic pool; and
- there are no conflicts of interest in respect of 95% or more of the decisions of Council.

MATTERS FOR DETERMINATION

9 The statutory provisions in respect of these appeals 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 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 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 2 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 Statistics New Zealand 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,

that 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. What the Commission has to do then is determine which communities of interest or groupings of communities of interest require representation.

- 12 If the Commission determines that wards are required, it 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 for 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 constitute the predominant factor, but if other factors are applied, different weightings 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. In the end though, the final decision must be that which the Commission considers will, after having regard to the various factors set out in the Act, provide the fairest representation on balance for the electors of each ward.
- 13 In the Commission's opinion, its first responsibility, which also applied to the Council, was to decide whether or not the City should be divided into wards, and if so the number and boundaries of those wards to provide effective representation for communities of interest within the City.
- 14 The Council proposed that the election of the Council by the electors of the City as a whole, as has been the electoral system in place since the 1992 elections, should be retained for the 2001 elections. The Commission notes that the Council received no objections or appeals regarding the "at large" electoral system.
- 15 The Commission is of the view that the overall Invercargill City community of interest will be effectively represented through the Council being elected by the electors of the City as a whole for the 2001 elections.

Number of Members

- 16 Having decided that basis of election will be the "at large" system, the only other matter to be determined by the Commission is the number of Councillors to be elected to the Council.
- 17 The appellant argued that the Council could operate effectively with 9 Councillors. From the information presented to it, the Commission is not satisfied that a Council of 9 Councillors would provide effective governance for the City, taking into

account the functions, duties and powers of the Council, and its need to separate regulatory and service delivery functions.

- 18 Given the involvement of Council members on LATES and other bodies, reducing the membership of the Council at this time would likely impact on the effective running of the Council and ultimately on effective representation of the electors of the City.
- 19 The Commission notes that in any local authority there will be occasions when some members will be unable to participate in decision-making processes for a number of reasons. The fact that this may occur regularly in a local authority does not provide grounds for reducing the number of elected members.
- 20 The Commission considers that it is not desirable to design electoral arrangements around the circumstances of individual members, which might change over time, through the electoral process or otherwise.
- 21 From the information presented to it, the Commission is satisfied that for the 2001 elections, it is appropriate for the Council to comprise 12 members (excluding the Mayor) to provide effective representation of the electors of the City as a whole.

DETERMINATION

- 22 Under section 101K of the Act, the Commission determines that for the general election of the Council to be held on 13 October 2001 -
 - (1) Invercargill City, as delineated on S.O. Plan 11471 deposited with the Chief Surveyor of the Southland Land District, shall not be divided into wards;
 - (2) The Council shall comprise the Mayor and 12 members who shall be elected by the electors of the City as a whole.

THE LOCAL GOVERNMENT COMMISSION

Sir Ross Jansen	(Chairman)
Barbara Durbin	(Commissioner)
Bruce Anderson	(Commissioner)

27 March 2001