

NORTHLAND REGIONAL COUNCIL

Background

- 1 The Northland Regional 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 October 1998, and resolved to make no change.
- 2 Its present membership and basis of election was fixed by the Local Government Amendment Act 1992, and comprises 8 members, elected from 3 constituencies as follows:

Constituency	Members
Far North	3
Kaipara	1
Whangarei	4

- 3 The Far North District Council (hereafter referred to as “the District Council”) appealed against the Council’s proposal.

Council’s Consideration

- 4 The Council considered an officer’s report at its meeting on 19 March 1997. This report, which recommended that there be no change to the existing number of members or the basis of their election, was adopted by the Council as its formal resolution. The Council therefore adopted the viewpoint in the report that there had been no significant changes to the circumstances of the Northland Region since the last restructuring of membership in 1992.
- 5 The District Council objected to the Council’s membership proposals on the basis that it considered electors of its district were under-represented given the continuing growth in population of the Far North District. The District Council suggested that this imbalance could be rectified by increasing the number of members to be elected from the Far North Constituency to 4, giving a total Council membership of 9.
- 6 The Council considered the District Council’s objection in May and rejected it. The reasons the Council gave for its decision were:
 - “a. That the membership of the Council at eight, is adequate to enable the Council to carry out its functions and responsibilities.

- “b. While the present ratio of Councillors to population in respect to each constituency is not equal, it is as closely representative as can be achieved with a total number of eight.
- “c. The imbalance in the ratio of members to population as determined by current factual census data, would not be redressed by increasing the membership of the Far North Constituency, but would instead create an imbalance in the representation in respect to the other constituencies.
- “d. There has been no request from any other sectors of the community for an increase in the number of Councillors.”

Subject of Appeal

7 The District Council’s appeal was summarised as follows:

- “1. The Northland Regional Council determination does not provide fair representation between each constituency due to the varying rates of population growth in each constituency.
- “2. The desire of the Northland Regional Council to set the number of members at 8 should not be the prime determination, but rather that:
 - “the electors of the constituency receive fair representation having regard for the population of each constituency...per Section 101L(3) of the Local Government Act.”

Preliminary Matter for Determination

8 The Commission received the appeal and resolved to meet the Council and District Council in Whangarei on Tuesday 10 February.

The Hearing

9 The Council was represented by the Chairman, Councillor Peters; Mr Warren McLennan, the Chief Executive; and Mr David Jones, the Secretary. The District Council was represented by Ms Sue James, the Mayor; and Mr Ross Bauld, the Chief Executive.

Mr Jones made a submission which summarised the procedures followed by the Council. Mr Peters then read a submission, the content of which may be summarised as follows:

- While the Council acknowledges that there is an inequality in the ratio of representatives to population, an increase in representation for the Far North Constituency, rather than rectifying the situation would move the inequality to the opposite extreme;

- Because the regional constituencies are based on district boundaries, there is little room to alter representation to achieve a closer member to population ratio; and because there is uncertainty about the make-up of wards in the Far North District, it was not possible to consider fixing constituencies in accordance with wards on this occasion;
- The Council noted that the District Council suggested that membership should be fixed upon the projected population of districts in the year 2000, but the Council believes there is no legal basis for using any population projections;
- The Council concedes that there has been much more rapid population growth in the Far North District than in the Whangarei District, but suggests that with new developments in the Whangarei District, population growth may equalise;
- The present number of Councillors are able to adequately and effectively represent the interests of the regional community, and to increase the size of the Council would go against what appears to be a national trend to reduce numbers;
- Residents of the Far North District have been well represented by the Council since the region was constituted in 1988;
- He noted that both of the Chairmen who have served since 1989 have come from that constituency;
- The current workload of the Council has peaked and is expected to dramatically decrease from the end of 1998; and
- The Council has been effective because Councillors act as a small cohesive unit, and see themselves as representing the interests of Northland, not any particular community.

10 Responses of Council representatives to questions may be summarised as follows:

- Issues under the Resource Management Act are intense and demanding at present because the regional planning statement is being finalised;
- The Council would not see merit in allocating membership within the Far North District upon the basis of the present proposed ward boundaries because, it was maintained, these boundaries do not equate exactly with the population of the district;
- The Council has been able to adequately and satisfactorily address Iwi issues and take account of them in its operations in planning;
- The current major responsibilities of the Council are:
 - ◆ Coastal Planning
 - ◆ The impact on water resources of forestry clearance
 - ◆ Forestry roading
 - ◆ Control of pests including possums
 - ◆ Control of Northland rivers

- A long-term answer for Northland may be a complete restructuring of local government;
- A suggestion to combine the Kaipara Constituency with a Far North ward raises questions about the effectiveness of representation of the two communities of interest;
- While the populations of the constituencies are not equal, the inequalities are not so great as to be unfair; and
- Resource management issues affect catchments rather than individual districts.

11 Ms James spoke to the District Council's original objection. Points made and responses to questions by the two representatives may be summarised as follows:

- Representation is about the balance of power, and should ensure that the proportional allocation of membership is appropriate to the tasks being undertaken in the affected constituencies;
- Even though the District Council suggested originally that 9 members would be appropriate, it really believes the Council should look at a membership of 7 in the near future;
- The Far North District is the largest in the region, has approximately 1700 kilometres of coastline, and has many issues relating to the use and availability of water;
- The balance of power on the Council is against the Far North District;
- Iwi issues in the district are more important than elsewhere in the region because 48% of the Far North District's population is Maori;
- Much of the power is centred in Whangarei, but the District Council believes views relating to urban areas are far more easily dealt with;
- The District Council believes its population projections reflect what is going to happen, and cited the fact that the greatest number of building consents in the region are in the Far North District;
- One factor for the accelerating increase has been the District Council's programme of seal extension, thereby encouraging residential and other developments;
- It would not be a good idea to have three regional constituencies in the district;
- The district should have the same number of members as Whangarei because Whangarei has fewer resource management issues and by far the least number of issues affecting Maori;
- The area of the districts should be taken into account as a factor when assessing membership;
- It is seldom possible to come up with a satisfactory number of members, but believes that its proposals are the least worst option;

- The fairest population to be considered is that projected to be in the district at the middle of next term because that is the number of people who will need to effectively be represented;
- The detriment to the Far North District in the balance of power is most readily shown in the availability of funding, for example decisions relating to maritime issues in the region have been detrimental to the Far North District;
- The greater number of resource management issues in the Far North District should dictate that the greater number of Council members are elected from that constituency;
- The Council is acting more like a wealthy company than a local authority because of its substantial income from its landholdings and ownership of Ports of Northland: and
- The present situation is not fair to the electors of the far north because of the dominance of Whangarei.

12 Responses to the issues raised by the District Council may be summarised as follows:

- Committees established to deal with resource management issues in the Far North Constituency have significant representation from far north residents as lay members;
- The Rural Services, Environment Services, and Transport Committees have large appointed far north representation although actual Council members are a minority on all committees except Rural Services;
- The far north perception of Whangarei domination is not a reality;
- Council committees always have delegated power;
- Maori issues are important over the whole of the region. For example, Ngapuhi is the major tribe in both the Whangarei and Far North Districts;
- The Council maintains offices in Dargaville and Kaitaia, and for some purposes, in Opuia. Staff are readily available for consultation at any of these points;
- Resource management is not a balance of power issue; the terms of the Act mean that all issues have to be dealt with appropriately;
- The Council does not actively manage its income producing assets, rather it acts in a passive manner, and uses its income to keep down all rates for the benefit of all ratepayers;
- It is dangerous to use population projections because they rely only upon historical events and, for example, do not take account of the new phenomenon of “Auckland overspill” that is occurring in the south of the region;
- In any event, the Council does not believe the future population projections have any statutory basis allowing their use;

- A reduction in total size of the Council to 7 would, at least in the short term, lead to very large increases in workloads for individual members: and
- There are still other plans which the Council needs to develop such as catchment management, and it has been Council policy to use Councillors as much as possible in developing all its plans.

13 At the conclusion of proceedings, the chairman said the Commission 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(1) 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.*
- (2) *For the purposes of making a determination under subsection (1)(b) of this section, the Commission may, but shall not be obliged to, hold meetings with the council or any persons or organisations who have indicated a desire to be heard by the Commission.*
- (3) *Notice in writing of every determination under subsection (1)(b) of this section, setting out the reasons for the determination, shall be given by the Commission to the council concerned, and by public notice.*
- (4) *Forthwith upon the publication of a public notice undersubsection (2) of this section, the Commission shall send a copy of that notice to -*
 - (a) *The Surveyor-General; and*
 - (b) *The Government Statistician.*
- (5) *Subject to section 37ZE of this Act, the determination of the Commission made under subsection (1)(b) of this section shall be final and shall come into force for the next triennial general election.”*

15 Section 101L(1) and (3) provides as follows:

- (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 far 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.”*

Consideration by the Commission

16 Section 101D of the Act provides that every region shall be divided into constituencies for electoral purposes. In accordance with this requirement, the Commission considered the structure of constituencies proposed by the Council. During the course of the hearing, it had explored with the Council, and the appellant, the possibility of regional constituencies based upon wards of territorial authorities, or the combination of districts or parts of districts into different constituencies. Neither the Council nor the District Council were in favour of any change, and the Commission is satisfied, from its own considerations and from the evidence presented to it, that the present division of the region into constituencies comprising the districts of the component territorial authorities is appropriate and provides effective representation for the various regional communities of interest. The existing structure of constituencies is therefore continued.

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) of the Act is the provision of fair representation for 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 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 constituency.

- 18 The Commission then considered the number of members to be elected from the various constituencies in order to ensure that the electors of each constituency receive fair representation. The Council had not considered it necessary to use any factors other than population when considering representation. The District Council suggested that a population projection should be used, and that some account should be taken of the area of the Far North District as another factor for determining representation.
- 19 The Commission first considered whether fair representation can be achieved by considering the population of the region alone. Table 1 immediately below shows the possible membership for the three constituencies based on their populations. As the range of members discussed in the appeal and hearing was between 7 and 9, an allocation of representation has been calculated for these possible numbers of members.

Table 1

Constituency	Population	%	Members		
			7	8	9
Far North	57,079	40.23	2.82	3.22	3.62
Kaipara	17,584	12.39	0.87	0.99	1.12
Whangarei	67,202	47.37	3.32	3.79	4.26
Totals	141,865	100.00	7	8	9

- 20 What the table illustrates is that a measure of fairness is achievable with any of the three total membership options. The Council in its evidence said that it did not see any reason to increase the total number of members at this time, but that a reduction at this time also would be premature, given its workload. The District Council, in its appeal, gave a rather conflicting message. The original objection and therefore the appeal sought an increase in membership to 9, with the extra member being allocated to the Far North Constituency. However, the District Council

representatives who appeared before the Commission suggested that 7 would be an appropriate number, with one member being deducted from the total elected from the Whangarei Constituency.

- 21 The Commission considers that as all membership options, appear to be equally fair, there is no reason why it should seek to alter the Council’s proposals. Those representation proposals do not appear at this stage to be unreasonable, and the decision to remain with 8 members appears to also be reasonable at this time, given the Council’s own appreciation of its workload. The appeal is accordingly dismissed.
- 22 As mentioned, the District Council suggested that the projected population of the district for the year 2000 was more appropriate in deciding membership, and asked that this be used instead of the population at the 1996 census. The Commission notes that this proposal also arose in the hearing of other appeals. Despite the view expressed on behalf of the Council, the Commission does not believe that this option is entirely ruled out by the legislation. As recorded in paragraph 15 of this determination, section 101L(5) of the Act provides that the population to be used is to be the published ordinary resident population from the most recent census or as assessed by the Government Statistician at any later date. Logic suggests that “the later date” referred to is a date after the census but before the date on which a decision is made, but it is not absolutely clear. While not accepting the argument that some future date may be used, the Commission did for the purposes of comparison, consider what the membership allocation could be if it were to use a population projection at the year 2000. The results are as shown on Table 2 below.

Table 2

Constituency	Projected Population	%	Members		
			7	8	9
Far North	61,959	41.07	2.87	3.29	3.70
Kaipara	17,794	11.79	0.83	0.94	1.06
Whangarei	71,114	47.14	3.30	3.77	4.24
Totals	150,867	100.00	7	8	9

- 23 It is interesting to note that, using the same method as in Table 1, there is no substantive difference between the assessments of representation using either method.

Determination

- 24 Pursuant to section 101K of the Act the Commission determines that for the triennial general election in 1998:
- (1) the Northland Region as delineated on S.O. Plan No. 63483 deposited with the Chief Surveyor of the North Auckland Land District, shall be divided into three constituencies.
 - (2) those three constituencies shall be:
 - (a) the Far North Constituency comprising the area delineated on S.O. Plan No. 63500 deposited with the Chief Surveyor of the North Auckland Land District;
 - (b) the Whangarei Constituency comprising the area delineated on S.O. Plan No. 63498 deposited with the Chief Surveyor of the North Auckland Land District;
 - (c) the Kaipara Constituency comprising the area delineated on S.O. Plan No. 63499 deposited with the Chief Surveyor of the North Auckland Land District.
 - (3) the Council shall comprise 8 members of whom:
 - (a) three members shall be elected by the electors of the Far North Constituency;
 - (b) four members shall be elected by the electors of the Whangarei Constituency: and
 - (c) one member shall be elected by the electors of the Kaipara Constituency.
- 25 As required by section 101L(2) of the Act, the boundaries of the above constituencies coincide with the boundaries of current statistical mesh block areas determined by Statistics New Zealand and used for Parliamentary electoral purposes.

The Local Government Commission

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

27 March 1998