



LOCAL GOVERNMENT COMMISSION

Determination

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

BACKGROUND

- 1 The Opotiki District 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 changes.
- 2 The Opotiki District Council elected at the 1998 general election comprises 10 members and the Mayor. The 10 members were elected as follows:

Coast Ward	2 members
Waiotahi Ward	2 members
Opotiki Ward	4 members
Waioeka-Otara Ward	2 members.
- 3 Mr D. and Mrs J. Lux objected to the Council’s proposal on their own behalf, and on behalf of -
 - Ngati Muriwai Hapu
 - Te Whanau O Te Urikore
 - Te Oitahuna Raukawa Whanau Trust
 - Opape 3A1A2 Trust
 - Opape 3C2B Trust
 - Opapa 13 Trust
 - Poua Lands Trust.
- 4 The subject matter of the objection may be summarised as follows:
 - the Council’s proposal does not give equal representation to the electors of each ward;

- the proposals divide the community of interest of urban electors in Opotiki Town by including a number of them in two other, mainly rural wards; and
 - the electoral structure makes no provision for Maori Representation.
- 5 Following consideration of the objection, the Council confirmed its original proposal. Mr and Mrs Lux appealed against the Council's decision.

Subject Matter of Appeal

- 6 The content of the appeal may be summarised as follows:
- the Council's decision to retain a 10 member council has not allowed the Opotiki Ward to have its proper allocation of 5 members;
 - the decision not to adjust the boundaries of the Opotiki Ward to include adjacent areas on the grounds of cost alone does not take account of the Council's responsibilities; and
 - the decision not to press for legislation making provision for Maori representation was contrary to the item in the Annual Plan relating to cultural sensitivity.

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 appellants, if they wished to be heard. The Commission resolved to meet the Council and the appellants in Opotiki on 28 November 2000.

The Hearing

- 8 The Council was represented by the Mayor (Mr Riesterer) and the District Manager (Mr Guerin). Mrs Julie Lux presented the appeal.

The Council: The Mayor spoke to a submission in support of the Council's decision to make no changes to the present electoral system. The submission, additional comment by the Mayor, and replies to questions may be summarised as follows:

- the Council undertook wide public consultation prior to its formal review, and the results of this indicated strong support for no changes;
- in response to the appeal, the Council agrees with some of the points made, but does not consider change justified because the changes to ward boundaries would have included too many rural electors, and the cost of splitting meshblock boundaries outweighs the benefits;
- the Mayor produced a table to support a claim that increasing or reducing representation for the Opotiki Ward would not improve the member to elector ratio;

- while some of the areas are zoned Residential, the low occupation density at this time would, in the Council's opinion, indicate that a large number of the residents have as much a rural as an urban interest;
- the Council does not have the power to make provision for Maori representation in the absence of specific legislation;
- the Council did not rely on population alone when considering representation, it also took into account land value, capital value, the General Rate levied, and land area, although the weightings used were only one or two percent;
- the decision to retain representation for the Opotiki Ward at four members was taken because the Council's survey indicated that this was what residents wanted;
- the Council would not wish to increase its membership because it would be an additional cost;
- alternatively, a council of six would be too small because it would not allow for proper representation, and would lead to a danger that there could be sudden wide swings in policy decisions; and
- while the Council could accept 11 members plus a Mayor, 6 councillors would be cheaper to maintain.

Mrs Lux: Mrs Lux spoke to a submission. The submission, her comments, and replies to questions may be summarised as follows:

- the population of the District is 56% Maori, but this is not reflected in the voting figures;
- the effect of the present situation is that, at best, one Maori is elected;
- Maori have a different community of interest to others in the District;
- Maori tend not to vote because they do not believe that the Council will listen to them, and they do not trust the Council;
- a change in electoral law is needed to improve this situation;
- the Council only pays lip service to Maori issues, such as an Iwi Consultation Committee, which has only met once in three years;
- inclusion of the outlying areas within the Opotiki Ward would be fairer, as this would help to justify an increase in the members for the ward to 5 in an 11 member council;
- Maori have a different perspective, and this can only be achieved on the Council with specific Maori representation, but the need for legislation was acknowledged;
- would not support a reduction in councillor numbers to 6; and
- believed that an increase in councillor numbers to 11 would be justified on the grounds of fairer representation.

The Council in reply: Comments on behalf of the Council may be summarised as follows:

- the three iwi in the District have not raised the issue of Maori representation so far;

- not only do Maori vote but there were a number of Maori candidates at the last local government elections; and
- despite the appellant's comments, the Council has always consulted widely at iwi, hapu, and runanga level.

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,

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 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 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 that 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 District should be divided into wards, and if so the number and boundaries of those wards to provide effective representation of communities of interest within the District.

14 The Opotiki District covers a very large area. It contains a diversity of geographical characteristics, including land types, the township of Opotiki, rural farming areas, small settlements and areas devoted to horticulture. The Commission came to the view that because of the size and diversity of the District, and its widely separated areas with small clusters of inhabitants,

effective representation of the various communities of interest could only be achieved at this time by councillors being elected on a ward basis. In reaching its decision, the Commission noted that both the Council and the appellants sought a ward system for electoral purposes. The Commission considers that, in a district of the nature of Opotiki, a ward system is always likely to be necessary in order to ensure effective representation for rural residents.

Appropriate Ward System

- 15 Having decided that the basis of election would be the ward system, the Commission then had to consider the number and boundaries of wards necessary to ensure the effective representation of the various communities of interest in the District. The Commission does not consider that section 101L of the Act envisages that individual communities of interest need separate representation. Its sole requirement in this regard is that the representation of communities of interest must be effective.
- 16 The Commission emphasises that wards are for electoral purposes only, and that the Council is the entity to which members are elected.
- 17 In the Commission's view, where it is appropriate for a district to be divided into wards, there should be such number as is necessary and consistent with the concept of effective representation of various communities of interest.
- 18 The Council has proposed that the District be divided into four wards. The Council considers that the proposed structure gives effective representation to the distinct communities of interest within the District. The Commission, in its determination prior 1998 election of members of the Council accepted the division of the District into its present four wards, and did not hear any evidence that this basis should be changed. This appeal is about the boundaries and membership for the Opotiki Ward. Accordingly, the Commission is prepared to accept the continuation of four wards as the basis of election of council members.
- 19 The appellants argued that the community of interest of Opotiki Town extends beyond the boundaries of the Opotiki Ward. Therefore, they suggested that this ward should be enlarged to take in adjoining areas that are residential in nature. The Council has countered this argument by suggesting that the sparse nature of settlement in the areas under consideration may be taken to mean that the residents have interests which are as much rural as they would be urban.
- 20 The Council also apparently believes that the cost of splitting meshblocks, approximately \$3 500 plus GST, to separate rural from urban residents is a justification for not acceding to the appellant's request. While the Commission can understand the desire of the Council to keep its costs as low as possible, it does not believe that, if a change were warranted, this relatively small

expenditure should be seen as a barrier.

- 21 However, in this case, the Commission does not consider that the evidence adduced is sufficiently compelling to require a change to ward boundaries at this time. There have been assertions from the appellants that communities of interest are split by the present ward boundaries, but these are disputed by the Council. Some sort of survey of the views of residents in the disputed area may have been of assistance to the appellants' case, but they did not carry out such an exercise. In the circumstances, the Commission considers that it must reject the appeal seeking an alteration to the boundaries of the Opotiki Ward, and uphold the Council's ward proposals.
- 22 Accordingly, the Opotiki District will continue to be divided into the current four wards with their current boundaries. However, the Commission does believe that the Council, as part of its considerations prior to the 2004 elections, should consider those parts of its District immediately adjacent to the Opotiki Ward to ascertain whether some of them should be included within the Ward.

Number of Members

- 23 Having decided that there will continue to be 4 wards, the Commission was then required to determine what would be fair representation for the electors of the various wards.
- 24 As noted above, the number of members to be elected from each ward is to be determined on the basis of providing fair representation for the electors of the various wards having regard to population and, if the circumstances so require, the rateable value and area of every ward. In the case of the Opotiki District, the Council itself identified a large imbalance between the electors per member in the Opotiki Ward when compared to the other wards in the District where comparisons were made on a population basis alone. The Council then considered a comparison that used other factors of land value, capital value, general rates levied, and land area. General rates were given a weighting of 2%, the other three additional factors weightings of 1%, and population 95%. The Commission was not given any convincing reason for this rather unusual system, and the actual outcome of calculations based on them did not show a clear support for the Council's proposals. The Commission therefore considered the outcome if the matter of representation were to be studied in relation to its own usual formula of Population 80%: Rateable Value 10%: and Area 10%. The results are shown in the following table.

Ward	Factor Value	9 members	10 members	11 members	12 members
Opotiki	37.92	3.41	3.79	4.17	4.55
Waiotahi	20.25	1.82	2.03	2.23	2.43
Waioeaka-Otara	17.67	1.59	1.77	1.94	2.12

Coast	24.16	2.17	2.42	2.66	2.90
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- 25 The table shows fairness of representation would be best achieved with a Council of 10 or 11 members. The Commission is of the view that the Council's proposal to leave its present representation unchanged at this time is not unreasonable, and the Commission has determined that it be upheld.
- 26 Therefore the appeal of Mr and Mrs Lux seeking increased representation for the Opotiki Ward is rejected.
- 27 The appeal seeking special provision for Maori representation is rejected on the grounds that the Act makes no provision for such a procedure

DETERMINATION

- 28 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) The Opotiki District as delineated on S.O. Plan No. 8757 deposited with the Chief Surveyor of the Gisborne Land District, shall be divided into 4 wards;
 - (2) Those 4 wards shall be -
 - (a) The Opotiki Ward, comprising the area delineated on S.O. Plan No. 8754 deposited with the Chief Surveyor of the Gisborne District:
 - (b) The Waiotahi Ward, comprising the area delineated on S.O. Plan No. 8755 deposited with the Chief Surveyor of the Gisborne Land District:
 - (c) The Waioeka-Otara Ward, comprising the area delineated on S.O. Plan No. 8756 deposited with the Chief Surveyor of the Gisborne Land District:
 - (d) The Coast Ward, comprising the area delineated on S.O. Plan No. 8392 deposited with the Chief Surveyor of the Gisborne Land District;
 - (3) The Council shall comprise the Mayor and 10 members who shall be elected as follows -

- (a) four members who shall be elected by the electors of the Opotiki Ward;
- (b) two members who shall be elected by the electors of the Waiotahi Ward;
- (c) two members who shall be elected by the electors of the Waioeka-Otara Ward; and
- (d) two members who shall be elected by the electors of the Coast Ward.

29 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

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

27 March 2001