



LOCAL GOVERNMENT COMMISSION

Determination

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

BACKGROUND

- 1 The Tauranga 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.
- 2 The Council elected at the 1998 general election comprises 13 members and the Mayor. The 13 members were elected as follows:

Mount Maunganui-Papamoa Ward	4 members
Bethlehem-Otumoetai Ward	4 members
Te Papa Ward	3 members
Welcome Bay-Pyes Pa Ward	2 members.
- 3 In undertaking its review, the Council conducted a referendum seeking residents’ views about whether there should be a ward system for elections. A majority of those who voted supported continuing with wards. Following its review, the Council proposed to retain its current system of wards and membership, except for an alteration to the boundary between the Mount Maunganui-Papamoa Ward and the Te Papa Ward so that all of the Tauranga Bridge Marina would fall within the Mount Maunganui-Papamoa Ward.
- 4 Mr Larry Baldock and Cr Len Bailey objected to the Council’s proposals.
- 5 Mr Baldock’s objection was to the continued inclusion of the Pyes Pa area in the Welcome Bay-Pyes Pa Ward. Cr Bailey sought a reduction in the number of wards to two and a reduction in the total number of members to 12.

- 6 Following consideration of the objections, the Council confirmed its original proposals. Both objectors appealed against the Council's decision.

Subject Matter of Appeals

- 7 The content of the Mr Baldock's appeal may be summarised as follows:
- an overwhelming majority of the residents of Pyes Pa support the proposal that they be included in the Te Papa Ward (he attached a petition signed by 287 residents);
 - the District-wide referendum supporting the retention of a ward system should not have been taken by the Council as support for no change at all;
 - the fact that residents in other areas of the District have not sought any changes to their ward boundaries is no reason not to implement the change sought by the appellant; and
 - inclusion within the Te Papa Ward will give Pyes Pa residents the opportunity to vote for councillors who will be interested in the development of the part of the District that Pyes Pa people see as their true community of interest.
- 8 The content of Cr Bailey's appeal may be summarised as follows:
- two wards, each with 6 councillors, would ensure that each elector could vote for the same number of members;
 - the referendum supporting the retention of wards did not mean that there could be no change to the ward structure, and the Council itself is proposing a change to the boundary between the Te Papa and Mount Maunganui-Papamoa Wards;
 - membership of subcommittees and working parties could always comprise equal representation from both wards; and
 - representation at conferences, etc. could be more fairly shared between members representing both wards.

Preliminary Matter for Determination

- 9 The Commission, on receiving advice of the appeals, resolved that, before making a determination of the electoral arrangements of the Council, it would meet the Council, and the appellants if they wished to be heard. The Commission resolved to meet the Council and the appellants in Tauranga on 19 February 2001.

The Hearing

- 10 The Council was represented by the Mayor (Mr Noel Pope), the Chief Executive (Ms Paula Thompson), the City Secretary (Mr Paul Shand), and the Legal Officer (Ms Kirsty Downey-McGuire). Cr Bailey presented his own appeal while Mr David Eglinton appeared on behalf of Mr Baldock.

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

- the Council conducted a referendum so that electors could decide whether members should be elected from wards or at large - retention of wards was supported by a majority of those who voted;
- the proposed change to a meshblock on the boundary of the Te Papa Ward and the Mount Maunganui-Papamoa Ward was being done, at the suggestion of Statistics New Zealand, so that the whole of the Tauranga Bridge Marina would be in one ward - there would be no change in population of either ward and no ratepayers were affected;
- the current four-ward system gives effective representation for the District's communities of interest;
- in determining representation for the electors of the wards, the Council took account of the three factors mentioned in the Act, but gave most weighting to population;
- the Mayor agreed that the residents of Pyes Pa had more in common with residents of the Te Papa Ward than with the residents of Welcome Bay - as an example, they would go to Greerton in the Te Papa Ward for their shopping, and almost never to Welcome Bay;
- the Council decided not to make the change sought for Pyes Pa because of a desire to keep the ratio of members to population in each ward approximately equal;
- even though the area under discussion is known as "Pyes Pa", the actual Pyes Pa is not in the Tauranga District;
- the Council had not considered that Pyes Pa was ready yet to become a part of the "city";
- the whole of the District is changing very quickly, and perhaps changes such as those sought for Pyes Pa should be looked at as part of a future review;
- the Mayor said that he had no strong feelings against a change; and
- while there was undoubtedly some support from within the Council for a two-ward system, the general feeling was that the District was not yet ready for such a change.

Mr Eglinton: Mr Eglinton read Mr Baldock's submission. The submission, comments, and responses to questions may be summarised as follows:

- the petition Mr Baldock presented to the Council showed overwhelming support for the change sought, because, he said, it showed that the 287 signatures represented 98.5% of residents in the affected area;
- considered that Cr Bailey's appeal seeking a two-ward District would, if implemented, be only a modified version of an at large electoral system, and therefore would be contrary to the result of the referendum which supported the retention of wards;

- if the Commission were to support a two-ward system, Pyes Pa should be included in the same ward as Te Papa;
- the referendum was on whether or not to retain wards, it did not bind the Council to retaining the present wards or their boundaries; and
- the area of Pyes Pa stretches beyond the District.

Councillor Bailey: Councillor Bailey first made an oral submission, and then read his appeal. That submission and his replies to questions may be summarised as follows:

- the Local Government New Zealand submission on the Local Electoral Bill, currently under consideration, states that every person should have an equal chance to be nominated for election and an equal say in the election of representatives - in Tauranga this would be best achieved with two wards, each with 6 members;
- agreed that under the Act at present, fairness of representation does not mean equality of representation;
- Pyes Pa has only a small common boundary with the Te Papa Ward while it has a much larger common boundary with Welcome Bay - therefore, if commonality of boundaries is a major criterion, Pyes Pa should remain in its present ward;
- he would prefer that members be elected at large; and
- the referendum did not give a true reflection of the views of Tauranga residents because only 47% of those eligible voted.

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

- given the dynamics of Tauranga, and the fact it is changing so quickly, the Council's proposal is the best at this time; and
- if the Commission was minded to alter the ward boundaries as requested by Mr Baldock, it should also give consideration to the effect this may have on representation for an altered Welcome Bay Ward.

MATTERS FOR DETERMINATION

11 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.”

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

12 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.

13 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.

- 14 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.
- 15 The Tauranga District is primarily urban. While it contains significant areas of rural land, much of this is being developed, or will eventually be developed for housing or other urban purposes. While the District is centred upon Tauranga Harbour, the nature of that harbour, by dividing much of the District into three peninsulas, has contributed to the development of recognisably different communities of interest. In the past, the Commission has recognised that these communities of interest would be most effectively represented by dividing the District into wards. As already noted, the referendum conducted by the Council demonstrated continuing support for a ward system. The Commission was given no evidence that there have been any developments within the District that would make a change to an election from wards appropriate. Therefore, the Commission determines that, at this time, the District should continue to be divided into wards for electoral purposes.

Appropriate Ward System

- 16 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.
- 17 The Commission emphasises that wards are for electoral purposes only, and that the Council is the entity to which members are elected.

- 18 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.
- 19 The Council has proposed that the District continue to 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 to the 1998 election of members of the Council, fixed the division of the District into its present four wards. There has now been an appeal that this be changed to a two-ward division. It is noteworthy that this appeal was not argued on the basis of effective representation for the different communities of interest within the District. Rather, Cr Bailey argued for wards with approximately equal populations so that each could be represented by the same number of members. In the Commission's view, this approach is contrary to the intent of the Act.
- 20 Cr Bailey admitted that his preferred option would have been for an election at large. The Commission accepts that his proposition is seen by him as being the next best alternative. However, as no evidence was adduced to demonstrate that the change sought would improve effectiveness of representation for the District's communities of interest over the ward system already existing, the Commission has not acceded to this appeal. There was also no evidence that any reduction in the number of wards would be generally supported within the District.
- 21 Therefore the Commission has decided that there will be no change to the division of the District into four wards.
- 22 Mr Baldock produced evidence that the community of interest of Pyes Pa residents was aligned with residents of the Te Papa Ward rather than with residents of Welcome Bay and Oropi. Certainly the shopping centre for Welcome Bay is remote from Pyes Pa Road, while the shopping centre at Greerton is not only much closer, but the range of shops is much more comprehensive. The Commission also noted that the Mayor admitted that this closer relationship exists. On balance the Commission decided to uphold Mr Baldock's appeal.
- 23 Having decided to uphold this appeal, the Commission then considered the extent of the boundary change that would be necessary to best give effect to its decision. It noted that the land within meshblocks 1192101, and 1192201 to 1192208 contains all the areas served by Pyes Pa Road, and decided that this should be the extent of the change to be made.
- 24 The Commission agreed with the Council's proposal to modify the boundary between the Te Papa Ward and the Mount Maunganui-Papamoa Ward so that all of the Tauranga Bridge Marina falls within the Mount Maunganui-Papamoa

Ward. As already noted, this change was originally suggested by Statistics New Zealand.

25 Accordingly, the Tauranga District will continue to be divided into four wards, but their boundaries will be modified, as outlined above. While the Commission does not consider that there need be any change to the name of the Te Papa Ward, it is obvious that the name “Welcome Bay-Pyes Pa” is no longer appropriate. Therefore the name of the altered ward shall be changed to the “Welcome Bay” Ward.

26 The appeal from Mr Baldock is upheld, and that from Cr Bailey is dismissed.

Number of Members

27 Having decided that there will continue to be four wards, the Commission was then required to determine what would be fair representation for the electors of the various wards.

28 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 Tauranga District, the Council, while considering all factors, took most account of population. On that basis, the Commission first considered representation on the basis of the populations of the various wards.

29 The certificate of population supplied to the Council by the Acting Government Statistician in August 2000 estimated the population of the District as at 30 June 1999 to be 87,100, divided into wards as follows:

Mount Maunganui-Papamoa Ward	29,700
Bethlehem-Otumoetai Ward	26,400
Te Papa Ward	18,000
Welcome Bay-Pyes Pa Ward	13,050

Total Tauranga District (rounded down) 87,100

30 Obviously, with the change to ward boundaries, which the Commission has decided, the populations of the last two wards have required re-estimation. The revised figures for the District are as follows:

Mount Maunganui-Papamoa Ward	29,700
Bethlehem-Otumoetai Ward	26,400
Te Papa Ward	18,440
Welcome Bay Ward	12,610

Total Tauranga District (rounded down) 87,100

31 On the basis of these population estimates, the following table shows the possible fair memberships for the wards taking account of population alone.

Ward	12 Members	13 Members
Mount Maunganui-Papamoa	4.09	4.43
Bethlehem-Otumoetai	3.63	3.94
Te Papa	2.54	2.75
Welcome Bay	1.74	1.88
Totals	12	13

- 32 What this table indicates is that, when rounding is taken into account, a total membership of 12 would not be fairly achievable, and that a total membership of 13 is not unreasonable at this time. When the Council conducts its next statutory review, it will have accurate figures from the recently conducted Census and these figures may indicate that a significant restructuring of membership would be required.

DETERMINATION

- 33 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 Tauranga District as delineated on S.O. Plan No. 58067 deposited with the Chief Surveyor of the South Auckland Land District, shall be divided into 4 wards;
- (2) Those 4 wards shall be -
 - (a) The Mount Maunganui-Papamoa Ward, comprising the area delineated on S.O. Plan No. 60086 deposited with the Chief Surveyor of the South Auckland Land District;
 - (b) The Bethlehem-Otumoetai Ward, comprising the area delineated on S.O. Plan No. 58068 deposited with the Chief Surveyor of the South Auckland Land District;
 - (c) The Te Papa Ward, comprising the area delineated on S.O. Plan No. 61677 deposited with the Chief Surveyor of the South Auckland Land District;
 - (d) The Welcome Bay Ward, comprising the area delineated on S.O. Plan No. 58070 deposited with the Chief Surveyor of the South Auckland Land District;

- (3) The Council shall comprise the Mayor and 13 members who shall be elected as follows -
- (a) four members who shall be elected by the electors of the Mount Maunganui-Papamoa Ward;
 - (b) four members who shall be elected by the electors of the Bethlehem-Otumoetai Ward;
 - (c) three members who shall be elected by the electors of the Te Papa Ward; and
 - (d) two members who shall be elected by the electors of the Welcome Bay Ward.

34 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