

WAIKATO REGIONAL COUNCIL

Background

1 The Waikato Regional Council (“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.

2 The present membership of the Council is 14 members elected from the following constituencies:

Thames-Coromandel	1
Waihou	2
North Waikato	2
Hamilton	4
South Waikato	1
Waipa/Waitomo	2
Taupo	2

3 After carrying out its review, the Council resolved to divide the Waihou Constituency into a Hauraki Constituency and a Matamata-Piako Constituency each with 1 member.

4 The Council received objections to its proposal from -

- the Waikato District Council which sought -
 - ◆ two separate constituencies for the North Waikato Constituency;
 - ◆ consistency for rural constituencies; in that they all have either 1 member or 2 members each;
 - ◆ a review of the Taupo Constituency so that its membership better reflected the statistics considered by the Council;
- the Franklin District Council, which supported the Waikato District Council’s objection;
- the Waitomo District Council;
- Otorohanga District Council;
- Otorohanga, Waitomo and Te Awamutu Federated Farmers; and
- Nineteen signatories from the Mokau/Awakino area, all seeking the division of the Waipawa-Waitomo Constituency into a Waipa Constituency and a North King Country Constituency;
- M S McFall, who sought -
 - ◆ a reduction in the membership of the Taupo Constituency by 1;
 - ◆ the division of the Waipa-Waitomo Constituency; and
 - ◆ inclusion of part of Waipa District in the Hamilton Constituency.

5 After considering the objections the Council resolved to -

- (a) divide the existing Waipa-Waitomo Constituency into a Waipa Constituency and a North King Country Constituency each with 1 member; and
 - (b) to divide the North Waikato Constituency into a North Waikato Constituency, consisting of part of Franklin District and the Whangamarino, Huntly, and Rangiriri Wards of Waikato District; and a Central Waikato Constituency, comprising the balance of the Waikato District, each of those constituencies electing 1 member.
- 6 The reason cited by the Regional Council for amending its original proposal was that, by taking into account population, rateable value, area and separate rates, it is possible to get a closer alignment of the communities of interest as reflected by the district boundaries.

Counter-objections

- 7 Three counter-objections were received against the Regional Council's amended proposal from -

G A O'Carroll;
 Waikato Federated Farmers; and
 N Campbell.

Matter for Preliminary Determination

- 8 The Commission on receiving advice of the counter-objections resolved that before making a determination on those counter-objections it would meet with the Council and with the counter-objectors if they wished to be heard. The date of the meeting was fixed for 17 February 1998.

The Hearing

- 9 The Commission met with representatives of the Council and of Waikato Federated Farmers. Appearing for the Council were the Chairman, Mr Neil Clark; the General Manager Corporate Services, Warren Stevens; and Mr Parker, Solicitor for the Council. Appearing for Waikato Federated Farmers was Mr Gordon McIvor, President.
- 10 The Council firstly raised a procedural matter relating to the validity of counter-objections.
- 11 Mr Parker stated that G A O'Carroll and S M Campbell had not been objectors to the original proposal while Waikato Federated Farmers had lodged an objection seeking the division of Waipa-Waitomo Constituency but that that objection had been accepted by the Council. Each now sought a reduction in the total number of members and two specified a reduction in the membership of the Hamilton and Taupo Constituencies. The total number of Council

members and representations of Hamilton City and Taupo were not modified after the hearing of objections. Those numbers remain the same as originally proposed.

12 The Council argued as follows -

“Section 101J(5) of the Act provides:

“Where the Council has amended its proposals under subsection (3)(a) of the section, any interested person or organisation may lodge a written counter-objection to the modified proposal....”

“The counter-objections filed do not relate to any modification to the original proposal. It is submitted that it cannot have been the intention of the legislature to afford interested parties a second right of general objection to any aspect of the proposal merely because some entirely unrelated aspect has been modified. To accept that a right of general objection arises would result in the somewhat perverse situation of interested parties having no right of further objection if Council made no modifications to its proposal following the hearing of the original objections but having an unrestricted second opportunity to object if the slightest unrelated modification were to be made. This highlights a result which cannot have been intended. The use of the word “counter” is instructive. A counter-objection to modified proposals must be limited to countering modifications.

“Council accepts that its objection to the validity of the counter-objections has not been accepted by the Chief Executive Officer of the Commission. However it respectfully perseveres with the submission that the counter-objections are invalid and seeks a ruling from the Commission.”

13 The Council sought a ruling from the Commission on this point. The Commission advised that it would reserve its position on this point and deal with it in the final determination.

14 Mr Stevens then spoke to written evidence outlining the process the Council had gone through in its review.

15 Mr Clark outlined the basis for the Council’s decision. He considered that a total membership of 14 was appropriate because of the workload councillors were expecting in the coming triennium. The division of some constituencies had been agreed on to ensure better representation of communities of interest.

16 Mr Clark then focused on the two constituencies that were the subject of the counter-objections. Issues currently being addressed in the Taupo area include: iwi relations with the Tuwharetoa Maori Trust Board; asset management plans for the Paeroa Range, and Reporoa and Taupo catchments;

a joint working party with the Taupo District Council; geothermal activity; and issues relating to ECNZ and forestry. He considered that to give fair representation to all those, two constituency members are warranted. He also referred to the large area encompassed by the Taupo Constituency.

- 17 With regard to the Hamilton Constituency, Mr Clark sated that it is the fastest growing area in the region. It contains a third of the region's total population, and is the source of a considerable proportion of the Council's rates. The Council strives to work with the city and district councils in a partnership and this takes considerable effort.
- 18 In discussion, the Commission noted that the division of the Waipa-Waitomo Constituency resulted in the under-representation of the new Waipa Constituency, at least on strict application of statistical formula. The Council advised that the division of this ward had been in response to a number of objections from the proposed Northern King Country Constituency and that this had been done on the basis of community of interest. Consideration had been given to altering the boundaries between the Waipa and Hamilton Constituencies, but this was decided against on the basis that it would split communities of interest. The Council also noted that the Waipa District Council had not made any objection to the proposed Waipa Constituency or its allocation of membership.
- 19 Mr McIvor, on behalf of Waikato Federated Farmers, spoke to a written submission. The principal points raised by Mr McIvor were as follows -
 - The Taupo and Hamilton Constituencies were considered to be over-represented by 1 member each.
 - Reduction of the total membership of the Council to 12 would achieve both cost savings and representation.
 - Federated Farmers considered that the workload of councillors should not be unduly changed because a number of major projects were nearing completion, e.g., the regional policy statement and the Regional Coastal Plan.
 - It was considered that resource consent hearings should reduce once the regional plan is in place, while a smaller Council would lead to less time being taken to make decisions.
- 20 Federated Farmers disputed the formula used by the Council to determine the allocation of membership between constituencies. In the case of the Taupo Constituency particularly, it observed that the ownership and management of a large area of the land was the responsibility of the Department of Conservation. It also noted that the rateable value of the Taupo Constituency is affected by the location in the constituency of electricity generation plants. It was considered that the inclusion of these in the statistical analysis distorted the result.

- 21 It was also considered that special rates should be included as well as the factors taken into account because of their impact on ratepayers.
- 22 Mr McIvor added that Federated Farmers supported the proposed constituency boundaries, particularly the division of the Waipa-Waitomo Constituency. He also stated that while Federated Farmers had submitted an objection earlier in the process on that matter, it had raised other issues by way of a counter-objection because the more consideration it had given to the issue of regional council membership generally, the more developed its thinking about it became.
- 23 In the Council's right of reply, Mr Parker stated that -
- the Council did not see how a reduction in the number of members would benefit Federated Farmers as this would inhibit the ability of Council to do the work required of it;
 - it might be, that at some time in the future, workload would be reduced to a level enabling a reduction in membership, however the time was not yet right for this to occur;
 - the cost savings resulting from a decrease in membership would be insignificant in total terms, and might be negated by the need to appoint commissioners to hear consent applications; and
 - if the Commission were to uphold the counter-objection that would be a reversal of its 1995 determination and this could not be justified unless some difference occurring since then could be pointed to.

Procedural Matters

- 24 As noted above the Council questioned the validity of the three counter-objections. This matter was previously the subject of comment to the solicitor for the Council by the Commission's Chief Executive Officer. That advice was as follows -

“Section 101J(5) suggests that a person or organisation may make a counter-objection to the “modified proposals”. If there has been any amendment at all then, in our opinion, the council's proposals have become “modified proposals”. There is no suggestion in subsection (5) that a counter-objection may only be lodged against an amendment or modification of the original proposals. To restrict the counter-objections to a modification would represent a narrowing of the meaning of subsection (5) which is not justified by the words used in that subsection.

“The language used in subsection (5) is quite different from the language used in subsection (4). In subsection (4) the language used narrows the subject matter of the appeal to a precise topic which is the decision of the council in respect of the objection originally lodged by the objector. By way of contrast subsection (5) talks about the “modified proposals” i.e. the

totality of the amended scheme the council has resolved to put forward to the Commission.

“Subsection (5) uses the word “proposals” in the plural. It cannot be argued that there is some distinction between a proposal which has been modified and one which has not been modified. The word “proposals” is used throughout section 101J as a collective noun to refer to the matters relating to the review which the council has determined under section 101H. Section 101J(5) applies where the council has amended its “proposals” under subsection (3)(a) but there is nothing in subsection (3) which suggests that a counter-objection may only be lodged against the particular items which have been amended.

“Even if there was doubt about the meaning of ‘modified proposals’ it would be best to give the benefit of the doubt to the counter-objections. Where there is a degree of uncertainty in a statutory provision relating to the rights of individuals, there is a principle of statutory interpretation that a provision should be given a more liberal interpretation in favour of such rights. In other words if rights to object are to be restricted or narrowed, the intention of the relevant provision should be quite clear from its language.”

- 25 The Commission has considered this advice and concurs with it. The procedural objection from the Council is dismissed. The Commission now moves on to the substantive matters of the counter-objections.

Matters for Determination

- 26 Section 101D(2) of the Act provides that “every region shall be divided into constituencies for electoral purposes”. That, therefore, is not a matter which must be determined by the Commission.
- 27 The statutory provisions in respect of this appeal 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 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.”*
- 28 The relevant provisions of section 101L are subsections (1) and (3) which state:

- "(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 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

- 29 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) is the provision of fair representation of 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 indicative as 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.
- 30 As noted above the legislation requires the Commission to ensure that the boundaries of constituencies will provide effective representation for communities of interest within the region. It is not of course a requirement that each individual community of interest will receive separate representation by

way of a separate constituency. The Commission must be convinced that the particular community of interest or in some cases, groupings of communities of interest will require separate representation to ensure the effective representation of those communities of interest. The Commission also considers that inherent in the concept of effective representation for communities of interest is the ability of those communities to receive fair representation.

- 31 The Commission is satisfied that the constituencies proposed by the Council do constitute reasonably discrete communities of interest. It specifically considered the Council's proposal to divide the North Waikato, Waihou and Waipa/Waitomo constituencies. On the basis of the evidence presented to it, the Commission considered that these new constituencies, as well as the remaining existing constituencies reflect communities of interest and that those communities require separate representation.
- 32 The Commission then considered whether the division of the Waikato Region into those constituencies would create a situation where fair representation is possible. When the Commission considered the membership of the Council in 1995 it applied a formula with the following weightings - population 75%, area 12.5%, rateable value 12.5%. The following table sets out what the statistical allocation of members would be for those constituencies on a council with a membership of between 12 and 14.

Constituency	Members		
	12	13	14
North Waikato	0.93	1.01	1.08
Central Waikato	0.92	1.00	1.07
Hamilton	3.13	3.39	3.66
Waipa	1.25	1.35	1.46
North King Country	0.93	1.01	1.08
Thames-Coromandel	0.93	1.01	1.09
Hauraki	0.58	0.63	0.68
Matamata-Piako	1.01	1.10	1.18
South Waikato	0.84	0.91	0.98
Taupo	1.47	1.60	1.72
Total	12.00	13.00	14.00

- 33 Waikato Federated Farmers sought the use of special rates as one of the factors to be used in the formula used to determine allocation of membership. It also sought some account being taken of the fact that the location in Taupo Constituency of large areas administered by the Department of Conservation

and a number of hydro electric power stations would distort the rateable value of that constituency.

- 34 The Commission was not convinced that separate rates should be used as one of the characteristics used in determining membership for constituencies, at least in a statistical sense. Firstly, notwithstanding the compulsion to pay them, these rates have a high element of user charge, and those paying them, broadly speaking, receive a service in return for payment. The Commission is also conscious that separate rates are only one indicator of the activities of a regional council and the impact it has on the residents and ratepayers of a region. Collectively, the activities of the Council across the Region, or in a particular constituencies, may be an appropriate characteristic for the Commission to take into account, but the Commission considers it is more appropriate to do so by way of the exercise of judgement than a rigid statistical formula.
- 35 As far as the location in the Taupo Constituency of Department of Conversation land and power stations is concerned, the Commission acknowledges this fact. However, it also observes that both exist in other parts of the Region. There are also, arguably, other land uses which create some sort of distortion. Determining which land useages should be discounted, and to what extent, would become a very arbitrary exercise, and the Commission does not consider it appropriate for it do so in the context of this determination.
- 36 After considering the above table, the Commission observed that none of the membership options provide a good statistical fit. In other words, there is a moderate degree of unfairness with each. This therefore requires the Commission to make a judgement as to which option of balance provides the fairest representation between constituencies.
- 37 When a committee of the Commission considered the membership and basis of election of the Waikato Regional Council in 1995 the committee concluded that -
- “the Taupo Constituency contained a number of resources which are of regional or national significance, such as Lake Taupo itself, part of the Tongariro National Park, the geothermal area of Wairakei, the headwaters of the Waikato River, and very extensive areas of forestry. Apart from the constituency containing these resources it is the constituency most remote from the headquarters of the Council, and it contains an area requiring a high level of regional council activity.”*
- 38 In the view of the Commission, the circumstances described by its committee in 1995 are as applicable today as they were then. The Commission concludes from this that the fairest confederation of constituencies and distribution of membership is one which entitles the Taupo Constituency to 2 members. The

Commission further considers the fairest means of achieving this is a Council with a total of 14 members. The Commission has therefore decided that the Regional Council will comprise 14 members elected on the following basis:

Constituency	Members
North Waikato	1
Central Waikato	1
Hamilton	4
Waipa	1
North King Country	1
Thames-Coromandel	1
Hauraki	1
Matamata-Piako	1
South Waikato	1
Taupo	2

- 39 Having made the above decision, the Commission declined the counter-objections to which this determination applies.

Determination

- 40 Pursuant to section 101K of the Act, the Commission hereby determines that for the triennial general election in 1998:
- (1) the Waikato Region, as delineated on S.O. Plan No. 58086, deposited with the Chief Surveyor of the South Auckland Land District, shall be divided into 10 constituencies;
 - (2) Those 10 constituencies shall be:
 - (a) The North Waikato Constituency, comprising the area delineated on S.O. Plan No. 60888, deposited with the Chief Surveyor of the South Auckland Land District:
 - (b) The Central Waikato Constituency, comprising the area delineated on S.O. Plan No. 60889, deposited with the Chief Surveyor of the South Auckland Land District:
 - (c) The Hamilton Constituency, comprising the area delineated on S.O. Plan No. 59232, deposited with the Chief Surveyor of the South Auckland Land District:
 - (d) The Waipa Constituency, comprising the area delineated on S.O. Plan No 60890, deposited with the Chief Surveyor of the South Auckland Land District:
 - (e) The North King Country Constituency, comprising the area delineated on S.O. Plan No. 60891, deposited with the Chief Surveyor of the South Auckland Land District:

- (f) The Thames-Coromandel Constituency, comprising the area delineated on S.O. Plan No. 58092, deposited with the Chief Surveyor of the South Auckland Land District:
 - (g) the Hauraki Constituency, comprising the area delineated on S.O. Plan No. 60892, deposited with the Chief Surveyor of the South Auckland Land District:
 - (h) The Matamata-Piako Constituency, comprising the area delineated on S.O. Plan No. 60893, deposited with the Chief Surveyor of the South Auckland Land District:
 - (i) The South Waikato Constituency, comprising the area delineated on S.O. Plan No. 58094, deposited with the Chief Surveyor of the South Auckland Land District:
 - (j) The Taupo Constituency, comprising the area delineated on S.O. Plan No. 58095, deposited with the Chief Surveyor of the South Auckland Land District:
- (3) The Council shall comprise 14 members of whom:
- (a) One member shall be elected by the electors of the North Waikato Constituency;
 - (b) One member shall be elected by the electors of the Central Waikato Constituency;
 - (c) Four members shall be elected by the electors of the Hamilton Constituency;
 - (d) One member shall be elected by the electors of the Waipa Constituency;
 - (e) One member shall be elected by the electors of the North King Country Constituency;
 - (f) One member shall be elected by the electors of the Thames-Coromandel Constituency;
 - (g) One member shall be elected by the electors of the Hauraki Constituency;
 - (h) One member shall be elected by the electors of the Matamata-Piako Constituency;
 - (i) One member shall be elected by the electors of the South Waikato Constituency; and
 - (j) Two members shall be elected by the electors of the Taupo Constituency.

41 As required by section 101L of the Act, the boundaries of the above constituencies coincide with the boundaries of current statistical meshblock areas determined by the 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