

WAITAKERE CITY COUNCIL

Background

1 The Waitakere City Council (hereafter referred to as the “Council”), in accordance with section 101H of the Local Government Act 1974 (hereafter called the “Act”), carried out a review of its membership and the basis of the election of its members prior to the triennial general election to be held in October 1998.

2 The present membership is a Mayor and 16 members elected from the following wards -

Wards	Members
Massey	4
Waitakere	3
Henderson	4
New Lynn	5

3 Following its review the Council resolved that for the 1998 elections it should comprise a Mayor and 13 members elected as follows -

Wards	Members
Massey	4
Waitakere	2
Henderson	3
New Lynn	4

4 The Council also proposed three minor boundary alterations between wards.

5 The Council received 30 objections to its proposal, and a further 439 submissions supporting the proposed reduction in members. Following consideration of objections and submissions, the Council resolved that it comprise a Mayor and 15 members elected as follows -

Wards	Members
Massey	4
Waitakere	3
Henderson	4
New Lynn	4

6 The Council cited the following reasons for changing the proposed memberships.

- “1. To retain representation of three members for the Waitakere Ward as the ward has special needs to be met including its special ecological nature, its larger geographical area and its distinctive communities of interest.*”

2. *To retain representation of four members for the Henderson Ward and a reduced membership of four members for the New Lynn Ward so as to provide reasonable representation ratios in each ward based on population.”*

7 The Council also resolved not to proceed with one of the boundary alterations between wards. This was the proposed inclusion in the Waitakere Ward of an area to the south of Metcalfe Road.

Appeals and Counter-objections

8 A total of 292 appeals and counter-objections were lodged against the Council’s decision, the majority of which opposed the Council’s decision to fix the number of councillors at 15, and that representation from the Waitakere Ward remain at 3.

Matter for Preliminary Determination

9 The Commission on receiving advice of the appeals and counter-objections, resolved that, before making a determination, it would meet with the Council and with those appellants and counter-objectors who wished to heard. The date of the meeting was fixed for 19 December 1997.

The Hearing

10 The Commission met with representatives of the Council and the appellants. Appearing for the Council were the Deputy Mayor, Dorothy Wilson; Councillor Janet Clews; the Manager: Corporate Services, Harry O’Rourke; and the Returning Officer, Lyndal Pedersen.

11 Those appellants and counter-objectors who attended the meeting were:

Bob Harvey, Mayor of Waitakere
 Derek Battersby
 Jenny Price
 Dr Robert Howell
 Aranne Donald
 Rex Vedder, Chairman of the West Harbour-Hobsonville Ratepayers Group
 Gwen Nash
 Kay Pilkington, Herald Island Ratepayers and Residents Association
 Margaret Allen
 Jack Lovelock, Ratewatch
 Gary Taylor, Waitakere Ranges Protection Society

12 On behalf of the Council, Janet Clews spoke to a written submission. She stated that while the Council considered it had fully met the statutory requirements specified in the Act, it had decided that a more comprehensive

review should commence in 1999, including a full programme of consultation with the community. A factor in not undertaking a wide ranging review prior to the 1998 elections, was the workload of councillors relating to the Council's draft district plan, and its long term financial strategy. A further factor was that parliamentary electoral boundaries had recently changed, and it was considered that further significant boundary change would cause confusion to electors.

- 13 In its final decision, the Council retained the number of members to be elected from the Waitakere Ward at 3 following objections from residents groups in the ward and from the Waitakere Ranges Protection Society. The arguments for a higher level of representation for that ward than its population would justify, included the size of the ward, physical separation of the settlements in the ward, and the environmental and ecological characteristics of the Waitakere Ranges.
- 14 The Council also resolved to retain the membership of the Henderson Ward at 4, and to accept the proposal to reduce the membership of the New Lynn Ward from 5 to 4 so as to provide reasonable representation ratios in each ward based on population.
- 15 Mrs Clews stated that the Council was aware that its decisions were contrary to the majority of the submissions received. However, it considered that the weight of the arguments coming before the Council justified the change.
- 16 Bob Harvey argued that Waitakere City is over-governed with the number of councillors and community board members it currently has. He stated that in Waitakere City, there is approximately one elected member per every 9,000 residents, whereas in other large cities the ratio is in the range of 1:12,000 to 1:14,000. He supported a reduction in the total number of members of the Council. He considered that this would lead to a more efficiently run city, and ensure that the Council acts as a Board of Directors setting a strategic direction, rather than involving itself with day to day matters.
- 17 Mr Harvey added that there was a case for the inclusion of all the commercial area, that is currently north of the Henderson Ward, in that ward. In respect of the Waitakere Ward membership, he stated that the case that had been presented for the retention of the current 3 members had been emotive but compelling.
- 18 Derek Battersby spoke to a written submission, lodged on behalf of Jenny Price and himself. They sought the reinstatement of the Council's original proposal for a 13 member council. They considered that the Waitakere Ward had been favourably treated in comparison to other wards, in particular the New Lynn Ward.
- 19 They disputed the arguments that had been used to justify 3 members for the Waitakere Ward. They did not agree that Waitakere Ward councillors had to travel significantly longer distances than other members, or that the workload

of Waitakere councillors is higher than that of the urban councillors. They considered the contrary was the case, as there is a very active community board and 14 active ratepayer groups in the ward, all of which provide effective support for the ward councillors. They further considered that the establishment of LATEs, the Waitakere Enterprise Board, the stand alone business unit for water and wastewater, and contracting out of recreation and leisure programmes had led to a reduced number of councillors being required overall. They also refuted the argument that the Waitakere Ward has special environmental and ecological needs, and said that as every ward has its own special needs, all wards should be treated equally.

- 20 In discussion, Mr Battersby stated that the environmental issues arising in the Waitakere Ward should be adequately dealt with by the district plan. He also considered that the Titirangi area and the New Lynn Ward would face a number of environmental issues similar to those arising in the Waitakere Ward. Jenny Price reiterated Mr Battersby's comments.
- 21 Dr Howell said that he had previously been Chief Executive of the Napier City Council and had carried out research at Massey University in relation to the membership requirements of local authorities. He considered that there was a tendency for councillors to get involved in activities which were more properly delegated to staff rather than concentrating on matters related to the governance of the district they are responsible for. He also considered that a larger number of councillors generated more work.
- 22 In response to questions from the Commission as to the requirements placed on elected members to consult with the public, Dr Howell stated that in many cases, Council staff are able to carry out consultation quite adequately. He also stated that he favours a non-ward system because ward councillors take a narrow focus, and because it is likely in a ward system that minority groups will miss out on representation.
- 23 Aranne Donald sought the retention of the existing 16 member Council, and in particular, the retention of 5 members for the New Lynn Ward. Allan Wesley spoke to the Commission on behalf of Ms Donald, principally about the process the Council had gone through in the course of its review, and the basis on which the Council had made its decisions. It was argued that the status quo should be retained because the Council had neither considered matters properly or taken into account all the factors it should have. It was also argued that there is a considerable amount of development occurring in New Lynn which both impacts on the workload of councillors, and will lead to an increase in the population of the ward.
- 24 The Commission then heard a number of submissions seeking a reduction in the total membership of the Council to 13 and, in particular, a reduction in the number of members to be elected from the Waitakere Ward to 2. These submissions were presented by:

Rex Bedder, Chairman of the West Harbour-Hobsonville Ratepayers Group
 Gwen Nash
 Kay Pilkington, Herald Island Ratepayers and Residents Association
 Margaret Allen
 Jack Lovelock, Ratewatch

25 Issues raised by these submitters were as follows -

- The Council had reversed its original proposal following an emotive plea from the Waitakere Ranges Protection Society;
- The result of that reversal was not considered to be fair in terms of population;
- It is possible to cite special circumstances for all wards, not just the Waitakere Ward;
- A reduction in the total membership of the Council was not considered to have an adverse affect on the level of consultation the Council is able to engage in;
- The existence of the Waitakere Community Board would ensure adequate representation for the Waitakere Ward and adequate consultation with residents;
- The level of rates in Waitakere City is such that it is necessary to bring about economies, and a reduction in the number of councillors would assist in achieving this.

26 Gary Taylor spoke on behalf of the Waitakere Ranges Protection Society. He also stated that the Society's submission had the support of the Piha and Bethells Beach Residents' Associations. The Society sought 4 members for the Waitakere Ward although it would be satisfied with the retention of the current 3 members. Mr Taylor spoke to the Society's written submission -

27 He stated that if the Waitakere Ward was to have fair representation, it is imperative for the area of the Ward and other relevant characteristics of the Ward to be taken into account. He stated that the physical size of the Ward had an impact on the work of councillors as the Ward has a number of discrete communities which are a considerable travelling time apart. He also stated that the environment, ecological features and the recreational activities in the Ward added to its councillors' normal responsibilities. In discussion, Mr Taylor was asked whether the regional and district plans acted as a safeguard for the environment in the Waitakere Ward. He said they do, but the process of dealing with the resource related issues is still a time consuming responsibility for the Ward members. In addition, the Council was currently developing the West Coast plan which required a considerable amount of input from Waitakere members. Mr Taylor also acknowledged that residents groups in the Ward did a good job, but he stated that it is still the Council that has statutory responsibility for its functions and responsibilities and these could not be devolved to residents groups. He added that consultation with such groups takes a considerable amount of time. He was also asked whether Council staff had a role in the pre-statutory consultation in relation to resource consent

applications. He agreed that they do have a role, but councillor involvement is important because dealing with such issues is related to the democratic process as much as it is about the principles and visions of planners.

- 28 In response to the argument put forward by other appellants and counter-objectors that other wards have issues and problems as well as the Waitakere Ward, Mr Taylor agreed, but stated that the level of consultation required in the Waitakere Ward requires 3 councillors.
- 29 The Commission also gave leave to Brian Copland to speak to the Commission. Mr Copland had not lodged an appeal or counter-objection but had lodged a submission in support of the Council's proposal. Further leave was given to Assid Corban to appear with Mr Copland. Mr Corban had not previously lodged an appeal, counter-objection or submission. Mr Copland did not consider that an adequate consultation process had been undertaken by the Council, and that significant change to the number of members to be elected from wards should not occur until that had taken place. He added that a reduction in the number of councillors would not lead to any rate relief as the average cost of democracy per rate payer was an insignificant amount.
- 30 Mr Corban said he was concerned about the lack of consultation with the public in the review process. He then spoke to a written submission supporting Mr Copland's argument for a 15 member council as finally proposed by the Council, and also for the transfer from the Massey Ward to the Henderson Ward of an area between Huruhuru Stream and Lincoln Road on the grounds that its community of interest is with Henderson.
- 31 In the Council's right of reply the Deputy Mayor, Dorothy Wilson, commented that -
- the issue of the "unjust" representation of the Waitakere Ward had never previously been an issue;
 - in addition to the usually resident population the Waitakere Ward had a large holiday population which led to significant issues for the Ward; and
 - There were active residents groups and strong local networking systems in the Waitakere Ward, but these, in fact, placed an extra burden on the Ward councillors as the interaction required with residents was greater.

Matters for Determination

- 32 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 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."*

33 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 two 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 the Department of Statistics 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

34 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.

35 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 of 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 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 ward.

- 36 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.
- 37 The Commission came to the view that because of the size and diversity of the district, effective representation of the various communities of interest could only be achieved at this time by councillors being elected on a ward basis.
- 38 The Commission then had to consider, whether the existing wards were appropriate. In relation to this, the Commission considered the issues raised by Mr Harvey and Mr Corban about the appropriate location of the area immediately to the north of the Henderson Ward.
- 39 The Commission noted that this issue had been raised by the Henderson Community Board when community boards were canvassed about their view as to ward boundaries. The officer's report submitted to the Council on possible alterations to boundaries commented, in relation to this area, that -

"The area in question clearly forms its own community of interest, defined as it is by the Henderson and Huruhuru Creeks and busy Swanson Road. The focal point for the area is the Lincoln Mall shopping centre. Council's compact city strategy encourages the further development of this centre as the logical hub for this community. In the longer term, the strategy will also see Lincoln Road become a key public transport corridor. Mixed use development, already evident along Lincoln Road, is possible around the Central Park area. These developments are likely to reduce the dividing effect of Lincoln Road, and integrate the Rathgar Road and Central Park areas into one community."

"This area could lie within the Massey or Henderson Wards. The important point is that it should not be split between the two Wards. Which ward it should be located within is not a clear choice: Lincoln Mall is an important shopping centre for the Massey area, and Lincoln Road is an important

connection between the northern and central parts of the urban area. On the other hand the schools in the area serve Henderson Ward residents and there is a strong “pull” towards Henderson town centre.”

- 40 Given this comment, and the lack of substantial evidence put to the Commission by those seeking change, the Commission has decided not to agree to this boundary alteration. It is a matter the Council should consider in the context of the comprehensive review it proposes to carry out prior to the 2001 elections.
- 41 The Commission then considered the general configuration of the wards. Its view is that, in general terms, they reflect communities of interest which require separate representation on the Council. The Commission therefore determined that the present system of 4 wards be retained subject to the boundary alterations affecting all of the wards proposed by the Council.
- 42 The next issue to be addressed by the Commission, and the issue raised by the majority of appeals and counter-objections, was the appropriate number of electors to be elected from each ward.
- 43 The Commission first considered whether fairness for the electors of the various wards could be achieved by taking account of population alone for a range of 13 to 15 councillors. The results are shown in the following table.

Table 1

Ward	Population	13	14	15
Massey	46,785	3.91	4.21	4.51
Waitakere	24,076	2.01	2.17	2.32
Henderson	37,879	3.17	3.41	3.65
New Lynn	46,825	3.91	4.21	4.52
Total	155,565	13.00	14.00	15.00

- 44 The Commission considers that reasonable fairness in the statistical sense, could be achieved based on a membership of 13. The Commission is however aware that the Waitakere Ward covers 72% of the total area of Waitakere City.
- 45 At the hearing the Commission heard a considerable amount of evidence about the workload required of Waitakere Ward councillors arising from the size of the ward; the dispersed nature of settlement within the ward; and other issues requiring councillor attention within the ward. The Commission also heard contrary evidence expressing the view that the workload of those councillors was not significantly different from that of councillors in other wards. It was also argued that representation should be allocated solely on population.
- 46 The Commission found itself in the position of having to make a judgement, firstly as to the likely workload of councillors, and secondly as to what represents fairness of representation in this particular situation.

- 47 The judgement of the Commission is that the size and nature of the Waitakere Ward is such this would be likely to have an impact on the demands placed on members and that fairness would not be achieved if representation was based on population alone. The Commission therefore looked at a distribution of membership taking into account population and area with population being given a weighting of 90% and area 10%. The result was as follows -

Table 2

Ward	Members		
	13	14	15
Massey	3.70	3.99	4.27
Waitakere	2.75	2.97	3.18
Henderson	2.92	3.14	3.37
New Lynn	3.62	3.90	4.18
Total	13.00	14.00	15.00

- 48 Using this formula the fairest representation received between wards would be obtained with a Council of 14 members with the following membership -

Wards	Members
Massey	4
Waitakere	3
Henderson	3
New Lynn	4

- 49 As a further indication the Commission considered how the use of a third factor - rateable values - would affect the distribution of membership. This is shown in the following table.

Table 3

Ward	Members		
	13	14	15
Massey	3.70	3.99	4.27
Waitakere	2.79	3.01	3.22
Henderson	2.89	3.11	3.33
New Lynn	3.62	3.89	4.17
Total	13.00	14.00	15.00

- 50 A comparison of Tables 2 and 3 shows that the addition of rateable values makes little difference to the distribution of membership between wards.
- 51 The Commission acknowledges that there were a large number of appeals seeking the distribution of membership solely on the basis of population.

- 52 The Commission agrees that this was the situation required by the Local Government Act in 1989. At that time section 101L provided that the definition of wards should be such that the population of each ward, divided by the number of members to be elected, should produce a figure no more than 10% greater or smaller than the population of the district divided by the total number of members.
- 53 This is in complete contrast to the current legislation as enacted in 1991. As already stated, the Commission considers the legislation now requires that the first consideration is effective representation of communities of interest. If a council, or the Commission is satisfied that the particular circumstances of a community of interest or a group of communities of interest is such that effective representation is best achieved by the establishment of a ward, then that should override any question of mathematical exactness. In other words, it is not repugnant to the legislation that a ward should have a population which is small in comparison to the populations of other wards within a district.

Determination

- 54 Pursuant to s 101K of the Act, the Commission hereby determines that for the triennial general election in 1998:
- (1) Waitakere City, as delineated on SO Plan No 63494 deposited with the Chief Surveyor of the North Auckland Land District, shall be divided into 4 wards:
 - (2) those 4 wards shall be:
 - (a) the Massey Ward, comprising the area delineated on SO Plan No 63526 deposited with the Chief Surveyor of the North Auckland Land District:
 - (b) the Waitakere Ward, comprising the area delineated on SO Plan No 63528 deposited with the Chief Surveyor of the North Auckland Land District:
 - (c) the Henderson Ward, comprising the area delineated on SO Plan No 63527 deposited with the Chief Surveyor of the North Auckland Land District:
 - (d) the New Lynn Ward, comprising the area delineated on SO Plan No 63529 deposited with the Chief Surveyor of the North Auckland Land District:
 - (3) The Council shall comprise 14 members of whom:
 - (a) Four members shall be elected by the electors of the Massey Ward; and
 - (b) Three members shall be elected by the electors of the Waitakere Ward; and

- (c) Three members shall be elected by the electors of the Henderson Ward; and
- (d) Four members shall be elected by the electors of the New Lynn Ward.

55 As required by s 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