

WAITOMO DISTRICT COUNCIL

Background

- 1 The Waitomo District Council (hereafter referred to as “the Council”), in accordance with section 101H of the Local Government Act 1974 (hereafter referred to as “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 10 members elected from the following 7 wards -

Wards	Members
Te Kuiti	4
Aria	1
Mangaokewa	1
Paemako	1
Tainui	1
Te Anga	1
Waitomo	1

- 3 After carrying out its review, the Council resolved to retain the existing membership and basis of election. The Council received one objection to its proposal, from the Waitomo Caves Community Committee. The Committee sought a reduction in the total number of councillors from 10 to 7, involving a reduction in the number of members for the Te Kuiti Ward from 4 to 3, and a reduction in the number of rural members from 6 to 4. It proposed that this latter reduction be brought about by -
 - (a) merging the Tainui and Aria Wards and part of the Paemako Ward to constitute a new ward with a population of approximately 1200;
 - (b) expanding the Te Anga Ward to include the Waitomo Caves/Hangatiki area; and
 - (c) realigning the boundaries in the remaining areas of the Paemako and Waitomo Wards with the Mangaokewa Ward.
- 4 After considering this objection the Council declined to amend its original proposal for the following reasons -
 - “The paramount considerations still centre on communities of interest and ease of effective representation;
 - Council considered the cost imposition to realign any ward boundaries were extreme when compared to the present operating costs to run Council at its present level of representation;
 - Council also considered that the election of councillors on an at large basis by the whole District was not a viable option as it would not

necessarily provide for equitable representation of the various communities of interest.”

Appeal

- 5 The Waitomo Caves Community Committee appealed against the Council’s decision on its objection.

Matter for Preliminary Determination

- 6 The Commission, on receiving advice of the appeal, resolved that before making a determination on this appeal, it would meet with the Council and the appellant if it wished to be heard. The date of the meeting was fixed for 18 December 1997.

The Hearing

- 7 The Commission met with representatives of the Council and of the appellant. Appearing for the Council were the Mayor, Mr Wally Baines, and the Chief Executive, Mr Paul Davies. A number of other members of the Council also attended the hearing. The principal spokesperson for the appellant was Mr J Patrick Carey.
- 8 On behalf of the Council, the Chief Executive outlined the process the Council had gone through. The Mayor then stated that the factors taken into consideration by the Council when carrying out their review of membership and basis of election and considering the Waitomo Caves Community Committee’s objection were -
- the overriding requirement of section 101L of the Local Government Act to achieve effective and fair representation;
 - the cost of change being considered to be disproportionate to the benefits of changing the system;
 - the long distances required to be travelled by councillors in existing wards and in any enlarged wards and;
 - the fact that the current wards were considered to reflect existing separate communities of interest.
- 9 The Council also considered that amalgamation with the Otorohanga District was inevitable and it therefore seemed inappropriate to carry out internal ward restructuring given the likelihood of this impending change.
- 10 After outlining the factors considered by the Council, the Mayor and other members of the Council then outlined the characteristics of each ward and the factors that made them distinctive communities of interest.
- 11 Mr Carey, for the appellants, said that he considered that in reviewing the ward structure, the Council had not considered all the requirements in the

Act. In particular, he said that the “one person one vote” principle was being overlooked. He stated that the Council staff had undergone restructuring and that the PioPio Community Board had reduced its membership. He considered that the Council should continue this process and streamline its own membership.

- 12 Mr Carey acknowledged that some wards contained isolated areas. However, he considered that this was partially negated by the fact that large areas of those wards contained state forest and reserves. He also noted that there was not a great deal of roading infrastructure and of what roading there was, a significant proportion was state highway. Mr Carey pointed to instances of cross-overs in community of interest. He stated, for instance, that part of the Tainui Ward east of the Awakino Ward focused predominantly on Piopio in the Paemako Ward. He also stated that there was a significant interflow between the Te Anga area and the Waitomo Ward and that one councillor could effectively represent the combined areas. He did not consider it was correct to state that the communities contained in small wards would not receive adequate representation if they were absorbed into larger wards, nor did he believe that merging of wards would result in a significant change in the workload of councillors. He said that there were a number of possible ways of achieving this. He considered that the overriding issue should be fair representation based on population. Simple methods would be one rural ward or two rural wards dividing the district on a north-south basis.

Matters for Determination

- 13 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."*

- 14 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

15 The Commission considers when deciding -

- (a) whether the election of the members of the 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 those wards,

that 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.

16 The Commission 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 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 ward.

- 17 The Commission came to the view that because of the size, diversity, and existence of discrete communities of interest, the only means by which the provisions of section 101L(2) of the Act could be met in providing effective representation for the various communities of interest would be by the district continuing to be divided into two or more wards. No submissions to the contrary were received, and the Council supported the concept of election by wards rather than by electors of the whole district. Therefore the Commission decided that the district would be divided into wards for the purposes of providing effective representation for the electors of the district.
- 18 Having decided that the election would be held on the basis of wards, the next question to be addressed, was the number and the boundaries of wards required to provide effective representation for the various communities of interest. In this respect, the Commission considered the issues raised in the appeal lodged by the Waitomo Caves Community.
- 19 The essential issues to be considered by the Commission are -
- (a) the predominant communities of interest in the District and;
 - (b) the appropriate configuration of communities of interest for the purposes of representation.

The essence of the appeal was that some parts of the district were over-represented on the basis of population. As noted above, however, the Act does not require fair representation to be based solely on the populations of the various wards. What the Commission is required to do is determine fair representation for communities of interest, having regard to the population of every ward and, if the circumstances so require, the rateable values, areas, or other relevant characteristics of the various wards.

- 20 The appellant's argument is based upon the concept that there should be some equality between the populations of the wards within a district. The Commission agrees that this was the situation envisaged 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.

- 21 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.
- 22 Having considered the evidence presented to it at the hearing of the appeal, and other material gathered by it, the Commission is satisfied that the current wards of the Waitomo District more or less equate to communities of interest requiring separate representation on the Council. In coming to that conclusion, the Commission considered the distinct nature of each community, the distance between communities and between those communities and the centre of the district in Te Kuiti, and the topography of the District.
- 23 Having decided on the number and boundaries of the various wards, the remaining question to be decided was the number of representatives required to be elected by the electors of each of those wards to provide fair representation as between the wards.
- 24 As noted above, the number of members to be elected by 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, area and rateable value of every ward. However inherent in the decision to create an area as a ward is a requirement that the ward be represented by at least one member.
- 25 Set out below are two tables. Table 1 shows the number of members that each ward would be entitled to taking into account population only with a total membership of 10 (excluding the Mayor). Table 2 shows the same information but taking into account the three factors of population weighted at 80%, rateable land value weighted at 10%, and area weighted at 10%.

Table 1

Ward	Population	%	Statistical Entitlement to Members	Actual Members
Te Kuiti	4,596	47.21	4.72	5
Aria	474	4.87	0.49	1
Mangaokewa	1,155	11.86	1.19	1
Paemako	1,206	12.39	1.24	1
Tainui	480	4.93	0.49	1
Te Anga	624	6.41	0.64	1
Waitomo	1,200	12.33	1.23	1
Total	9,735	100.00	10	11

As can be seen, the rounding up of fractions would increase the total actual membership to 11.

Table 1 shows that the Te Kuiti Ward would be entitled to 5 members on such a Council if population was the sole factor taken into account. This is a result of having made the decision that each of the other 6 wards require separate representation and the allocation of one member to each of those wards.

Table 2

Ward	Members
Te Kuiti	3.81
Aria	0.61
Mangaokewa	1.49
Paemako	1.37
Tainui	0.69
Te Anga	0.69
Waitomo	1.31
Total	10

- 26 Table 2 takes into account the factors of rateable land value and area, in addition to that of population. The weightings given to those factors are the same as the Commission usually applies in a district of a predominantly rural nature. The inclusion of these two additional factors enabled two measures of Council activity to be taken into account in equal proportion. The use of area as a factor enables recognition to be given to the fact that land-based activities over less densely populated areas, are a significant part of the responsibilities and expenditure of the Council. The

use of rateable value enables due regard to be given to people-based activities which require the regulation of development in more closely settled areas.

- 27 Applying that formula gives the Te Kuiti Ward an entitlement of 3.8 members (effectively 4) while the entitlement of the remaining rural wards range from 0.61 to 1.48. The Commission acknowledges that this represents a statistical departure from the ideal. It considers, however, that this is unavoidable if those communities of interest requiring separate representation receive that representation by being constituted as separate wards.
- 28 Having considered all aspects of the matter of representation the Commission has concluded that the membership and basis of election of the Waitomo District should remain unchanged. In making this decision the Commission has dismissed the appeal of the Waitomo Caves Community Committee.
- 29 The Commission has some comment on two of the reasons the Council gave in deciding not to alter the ward structure of the district. In dismissing the objection from the Waitomo Caves Community Committee the Council stated that it considered the cost imposition to realign any ward boundaries would be extreme, when compared to the present operating costs to the Council at its present level of representation. The Commission notes that it is a requirement of the Act for the Council to review its membership and basis of election in accordance with the criteria contained in section 101L. Although cost may be a valid reason for rejecting a proposal of a frivolous or minor nature, it is not one of the criteria listed in the Local Government Act to be considered when determining the basis of representation, and should not therefore be used as grounds for dismissing an objection of a serious nature. In the same way, the possibility of some future proposal for amalgamation of Waitomo District with another district is also not one of the statutory criteria. Objections and appeals should be considered and dealt with solely on the basis of the criteria specified in section 101L of the Act.

Determination

- 30 Pursuant to section 101K of the Act the Commission hereby determines that at the triennial general election in 1998 -
- (1) the Waitomo District as delineated on S.O. Plan No.58028 shall be divided into 7 wards;
 - (2) those 7 wards shall be -

- (a) The Te Kuiti Ward, comprising the area delineated on S.O. Plan No. 58022 deposited with the Chief Surveyor of the South Auckland Land District;
 - (b) the Aria Ward, comprising the area delineated on S.O. Plan No. 58032 deposited with the Chief Surveyor of the South Auckland Land District;
 - (c) the Mangaokewa Ward, comprising the area delineated on S.O. Plan No. 58029 deposited with the Chief Surveyor of the South Auckland Land District;
 - (d) the Paemako Ward, comprising the area delineated on S.O. Plan No. 58031 deposited with the Chief Surveyor of the South Auckland Land District;
 - (e) the Tainui Ward, comprising the area delineated on S.O. Plan No. 58034 deposited with the Chief Surveyor of the South Auckland Land District;
 - (f) the Te Anga Ward, comprising the area delineated on S.O. Plan No. 58033 deposited with the Chief Surveyor of the South Auckland Land District;
 - (g) the Waitomo Ward, comprising the area delineated on S.O. Plan No. 58030 deposited with the Chief Surveyor of the South Auckland Land District;
- (3) The Council shall comprise a Mayor and 10 members of whom -
- (a) four members shall be elected by the electors of the Te Kuiti Ward; and
 - (b) one member shall be elected by the electors of the Aria Ward;
 - (c) one member shall be elected by the electors of the Mangaokewa Ward;
 - (d) one member shall be elected by the electors of the Paemako Ward;
 - (e) one member shall be elected by the electors of the Tainui Ward;
 - (f) one member shall be elected by the electors of the Te Anga Ward; and
 - (g) one member shall be elected by the electors of the Waitomo Ward.

31 As required by section 101L of the Act, the boundaries of the above wards coincide with the boundaries of statistical meshblocks determined by 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