

WELLINGTON REGIONAL COUNCIL

Background

- 1 The Wellington Regional 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 election for its members prior to the local authority elections to be held in October 1998.
- 2 The Council proposed no change to the boundaries of the Kapiti, Lower Hutt, Upper Hutt or Wairarapa Constituencies. It resolved that the two Wellington constituencies conform to the proposed ward boundaries within Wellington City as follows:
 - (a) The Wellington Northwestern Constituency; comprising the Tawa, Onslow, Western, and Northern Wards; and
 - (b) The Wellington Southeastern Constituency; comprising the Lambton, Eastern, and Southern Wards.
- 3 There was no proposal for any change to the number of members representing the various constituencies. The current and proposed representation therefore is as follows:

Constituency	Members
Kapiti	1
Porirua	2
Wellington Northwestern	2
Wellington Southeastern	3
Lower Hutt	3
Upper Hutt	1
Wairarapa	2

- 4 The Council received two appeals against its proposal, and, because it had proposed a small change to its first-advertised proposals relating to the Wellington constituencies, one counter-objection.

Council's Consideration

- 5 The Council constituted a constituency review subcommittee to consider its options. The subcommittee considered reports in May and July, and on 31 July, resolved to recommend to the Council an electoral structure which the Council subsequently adopted at its meeting on 12 August. Objections were received from Mr Michael Gibson and the Wellington and Upper Hutt City Councils. The objection from the Wellington City Council was, in effect, a request to the Council to modify its Wellington constituency boundaries to conform with the latest ward proposals in that

area from the City Council. This objection was accepted and acted upon by the Council.

- 6 Mr Gibson’s objection was that the difference between the member to population ratios in the two Wellington City constituencies was so great as to be unfair within the meaning of section 101L(3) of the Act; and that the Council itself had too many members.
- 7 The Upper Hutt City Council’s objection was to the Council’s proposal to allocate only one member to the Upper Hutt constituency. The City Council considered that the electors of this constituency should be able to elect two members to the Council.
- 8 Both these objections were rejected by the Council, and both objectors subsequently appealed. Following the Council’s decision, and the second publication of its statutory notice relating to decisions on objections, a counter-objection was also received from the Hon Peter Dunne MP.

Subject Matter of Appeals and Counter-Objection

- 9 *Upper Hutt City Council (“the City Council”)*. The appeal complained that the allocation of one representative for the Upper Hutt City Constituency was unfair because the electors of the constituency were under-represented in relation to the electors of every other constituency, save Kapiti. It maintained that, in order to achieve fair representation, the Council would need to approach the matter of representation in a less detached manner than a mathematically based allocation of members. The City Council considered it unfair that the Upper Hutt Constituency has only one member while other constituencies, which have far less involvement in the provision of regional services have as many as three representatives.
- 10 *Mr Gibson*, appealed on the basis of his objection, and in relation to procedural errors which he alleged the Council was guilty of.
- 11 *Mr Dunne* counter-objectioned on two grounds:
- (a) The imbalance in representation between the two Wellington constituencies; and
 - (b) The representation of the Lower Hutt constituency when compared to the Wellington South-eastern constituency.
- 12 The Commission received the appeal and counter-objection and resolved to meet the Council, the appellants, and counter-objector in Wellington on 27 January.

The Hearing

- 13 The Council was represented by Councillor McQueen; Mr Ted McGuire, the Council's Secretary; and Mr Lloyd Bezett, a Policy Analyst.
- 14 **Mr Gibson** was the only appellant who appeared and he was accompanied by Mr Peter Isacc as a witness.
- 15 **Councillor McQueen** made a presentation based upon papers which had been prepared by and for the Council. The major points from this presentation may be summarised as follows:
- The Council has found it impractical to allocate representation fairly on the basis of population alone; it therefore fixed on a formula of population 90: rateable value 5: area 5;
 - The Council considers it needs 14 members because of its functions and the requirement for an even split between its regulatory/policy functions and its service delivery functions;
 - The Council considers it appropriate to have constituencies which coincide with the boundaries of territorial authority districts;
 - The only reason for change from its original proposal was the need to comply with the new ward boundaries for Wellington City;
 - Given the make-up of the region, and the way it is divided into territorial authority districts, the Council had found it impossible to come up with suitable councillor to population ratios between the electors of each of its constituencies, even though it was aware of concern expressed, particularly from the Kapiti Coast and Upper Hutt Constituencies;
 - The Wellington City Council's decision to reconstitute a Lambton Ward has caused the Council considerable problems in attempting to arrive at fair representation between the electors of the two Wellington constituencies;
 - The Council could not satisfy itself that the Lambton Ward should be part of the Northwestern constituency, because the Council considered the ward's community of interest was, on balance, closer to the south-east of Wellington City;
 - A single constituency for Wellington City caused an imbalance in representation in the past where, following the 1992 election, none of the regional councillors came from the Onslow, Northern, or Tawa wards; and
 - The Council also considered that a single constituency to represent 158,000 people was too large.
- 16 Comments in response to questions may be summarised as follows:
- The allocation of two members for the Porirua constituency was justified on the basis of the use of a mathematical method known as "highest remainder", which was then explained to the Commission;
 - The Council did not decide to use the Tinakori Fault, per se as a constituency boundary - the term was used as shorthand for the streets in the area;

- If the Wellington City Council had not changed its ward boundaries, the Council would have sought to retain the boundaries it had established in 1995; the fact that they differed from those used for the Wellington City Council elections did not cause any electoral problems;
- The region's major resource management issues are in the Wairarapa and Kapiti Coast constituencies;
- Of these two areas, the Wairarapa Constituency has more catchment issues and greater problems with noxious pests, to the extent that the extra representation for this constituency is warranted;
- The regional issues affecting the Wellington Northwestern Constituency are the flood control programme for Stebbings Stream and planning for public transport;
- Although Tawa and Porirua share a number of regional issues, the Council's decision to include Tawa within a Wellington constituency was on the balance of community of interest;
- Even though Tawa shares many regional issues with Porirua, the fact that it is a Wellington dormitory suburb decided the Council that it was best to keep Tawa in the Wellington North-eastern Constituency, although, in time it may be included with Porirua;
- The inclusion of Tawa with Porirua could cause some disquiet amongst the residents of Tawa and it was noted that, in 1994 the Mayor of Porirua said that he would not like to see Tawa included in the Porirua constituency;
- Another factor for its retention in a Wellington constituency was the fact that Churton Park, which adjoins Tawa, has the same regional concerns as Tawa and Porirua;
- The Wairarapa Constituency requires the attention of about a quarter of the regional staff, although some staff based in the Wairarapa have responsibilities over the whole of the region;
- The Council has appointed a person from Kapiti as a lay member of the Environmental Resources Committee in order to ensure that issues concerning Kapiti are given due weight; and
- It is notable that the Wellington City Council considers that Wellington is under-represented because of the major financial contribution to regional finances from the ratepayers of Wellington City.

17 **Mr Gibson** first introduced Mr Peter Isaac as a witness. Mr Isaac lives on the fault line. Mr Gibson said that Mr Isaac's contribution would be helpful in establishing the community of interest in that area. Mr Isaac's comments may be summarised as follows:

- The Tinakori Fault is not considered by people in the area as a major division; in fact he doubts that it would be often on their minds;
- In his view the most appropriate place to divide the two constituencies would be down the middles of Lambton Quay and Willis Street;
- Other, much more distinct boundaries, which could also have been used were the Karori or Hataitai Tunnels;

- He considered that it would be more rational to divide Wellington into three constituencies, two based upon Southern and Eastern Wellington; and the other on Karori, Kelburn, and Khandallah; and
- The Lambton community of interest is new and is becoming more important because of reverse migration into the area.

18 **Mr Gibson** gave an oral presentation. His comments and responses to questions may be summarised as follows:

- Lambton Quay should be in the Northwestern Constituency;
- He considers Wellington City to be a single community of interest with the possible exception of Tawa;
- If Wellington City must be divided, there is a need to find a good dividing point;
- The boundary the Council has decided upon is not appropriate because it has the effect that Wellington North is under-represented and Wellington East and South over-represented;
- This conflicts with the requirement for fair representation;
- The boundary which the Regional Council said it preferred had only been used since 1995;
- He referred to errors and omissions relating to the public notices given by the Council during the review process;
- The Commission would be able to take account of the Wellington City Council wards when fixing regional constituencies;
- There is no problem in contemplating 5 Regional Councillors elected from a constituency comprising the whole city, in fact 6 would be a fairer number;
- Tawa should be included with Porirua, because, from a regional viewpoint, this is the most logical and appropriate placement;
- Suggested that Porirua and Kapiti should be in a single constituency, with or without Tawa;
- Said it must not be overlooked that although most of the public transport flow from Tawa is into Wellington City, this is very much offset by the increasing volume of private travel from Tawa to Porirua;
- A single Hutt Valley constituency would be far less parochial than the present two, because both cities share a joint sewage disposal scheme, and also have similar concerns about the supply of water;
- The only divisions are political, other than Wainuiomata, which does have a distinct community of interest;
- Sees no problem with any districts being represented in a combined constituency, it would be up to candidates from the smaller areas to campaign more vigorously;
- Did not agree that it would be appropriate to decide representation within Wellington upon the 90:5:5 formula used for the whole region;
- If Tawa were to be part of the Porirua constituency, it would be logical for the remaining Wellington Councillors to be elected from a combined constituency;

- The reluctance of Tawa to be associated with Porirua is an expression of snobbery;
- The numbers may suggest that Upper Hutt should be combined with the Wairarapa constituency but there could be a problem with effective representation of the two communities of interest;
- In his view, the decision to divide the region into the existing constituencies was political rather than on the basis of community of interest; and
- Was pleased to see the Hon Peter Dunne MP had also put in a counter-objection which supported his viewpoint.

For the Council in reply Councillor McQueen's comments may be summarised as follows-

- The fault line was not intended to be the major identifying feature, but merely a point of recognition in the absence of other clear indicators;
- The Council believes that it is important to have two constituencies within Wellington City;
- In respect of Tawa, the linkage between Tawa and the rest of Wellington through public transport is but one of many factors indicating a commonality of community of interest;
- Agreed that, in the end it was a balance of judgement, and said that the Council believes it has to recognise the views of territorial authority leaders;
- The constituencies in Wellington are appropriate;
- The use of the present formula does justify two members for the Wairarapa Constituency, but would only allow for two members for a combined Kapiti and Porirua Constituency; and
- While Mr Gibson appears to say that community of interest should be ignored, the Council believes it has no option but to take it into account.

19 At the conclusion of the Council's reply the Chairman said the Commission reserved its decision and declared the meeting closed.

Matters for Determination

20 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.

21 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."*

22 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

23 The Wellington Region, as required by section 101D(2) of the Act, is divided into constituencies for electoral purposes. The present constituencies were established by the Local Government Amendment Act 1992, save that the Council itself divided the Wellington Constituency in two prior to the 1995 elections.

24 As a general principle, the Commission considers that when deciding the number and boundaries of constituencies, the only criterion to be met within the terms of section 101L(1) of the Act is the provision of effective representation for the various communities of interest within the region. This can be achieved by any constituency encompassing one or more regional communities of interest.

- 25 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) of the Act is the provision of fair representation for the electors of the various constituencies within the region. In deciding this fairness of representation, the Commission must have regard primarily to population, but as 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 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 in the opinion of the Commission will, after having regard to the various factors set out in the Act, provide fair representation for the electors of any constituency.
- 26 The Council admitted that the practice of having its constituencies coincide with territorial authority boundaries had caused it some difficulties, not so much in ensuring effective representation for the various communities of interest, as in ensuring fair representation for the electors of the various constituencies. This was also the point taken by the two appellants and the counter-objector. While the Commission agrees that the present situation is not satisfactory, it does not believe that it has been able to come up with a resolution which will satisfy all of the parties entirely. A large part of the difficulty, the Commission considers, rests with the requirement in section 101L(1)(c) that, “so far as it is practicable, constituency boundaries coincide with the boundaries of one or more territorial authority districts, or the boundaries of wards”.
- 27 Two examples, both affecting Wellington City, will suffice in this instance. Both relate to the imbalance in population numbers between the two proposed Wellington constituencies.
- 28 The first issue is that the electors of the proposed Wellington Northwestern Constituency, with a population of over 72,000, are able to elect 2 members on to the Council, while the electors of the Southeastern constituency with a population of just over 85,000, may elect 3 members on to the Council. The ratio of members to population in the Northwestern Constituency is 1:36,000, while the same ratio in the Southeastern Constituency is 1:28,400. This is because the whole of the Lambton Ward, with a population of about 27,000, must be included in its entirety within one constituency or the other. If the situation were to be reversed, the members to population ratio would improve (1:33,100 for the Northwestern and 1:29,100 for the Southeastern), but would still be

further apart than is desirable for true fairness between two constituencies with very similar regional characteristics.

- 28 The second issue is that, from a regional viewpoint, the Commission saw a great deal of merit in the constitution of a constituency which would combine Porirua City and Tawa. However, in its decision in the appeal affecting the Wellington City Council, the Commission has determined to include Tawa within a new Northern Ward. This means that the combination of Tawa with Porirua is no longer possible. The legislation requires that constituency and ward boundaries should coincide where practicable; the Commission considers that it is practicable that they so coincide in this case.
- 29 If there were not this requirement for conformity, the constituency boundaries would have been able to be placed at the appropriate points either somewhere in the Lambton Ward, or to include Tawa and Porirua in the one constituency, so as to get a much more satisfactory parity between the populations of the proposed two Wellington constituencies.
- 30 The existence of these legislative restraints has given the Commission little alternative in seeking to ensure fair representation, but to decide that there should be only one constituency for the whole of Wellington City. It makes this decision in the full knowledge that this one constituency will have a total population of about 158,000. While this is a large number, the Commission did not consider it was possible, given the shape of the Wellington City wards, to make any other decision at this time. In any event there are single constituencies for Auckland and Manukau Cities in the Auckland Region, both with populations exceeding Wellington's.
- 31 The other difficulty which the above legislation creates is in considering the rather anomalous situation of the Porirua Constituency whose electors may elect 2 members although, on a strict mathematical basis, their entitlement should be 1 only. If equalisation of numbers were the only objective, it would be possible to combine the Kapiti and Porirua Constituencies and their electoral entitlements so that the combined constituencies could continue to elect 3 members. However this would immediately raise serious questions about the ability of the electors in the present Kapiti Constituency being able to ensure the election of their present 1 member. The regional community of interest of the Kapiti Constituency is not the same as that of the Porirua Constituency, and therefore the Commission believes there should continue to be a separate Kapiti Constituency in order to guarantee the continued effective representation of that community of interest.
- 32 Neither does the Commission consider that a combined Lower Hutt and Upper Hutt Constituency, with or without the addition of Porirua, would provide effective representation for those communities of interest. While to a large extent, the appeals of Mr Gibson and the Upper Hutt City

Council, and the Hon Peter Dunne's counter-objection is answered by the constitution of a single Wellington Constituency, the hard fact remains that the electors of the Porirua Constituency would be over-represented with 2 members.

- 33 The present membership of the Council is 14, which is the maximum allowed under the Act. Therefore it is not possible to consider increasing the membership in order to deal with any electoral inconsistencies. The Council itself provided sound evidence that a reduction in Council numbers could lead to some problems with effective management of the region. It would not be possible to fairly reallocate a member from the Porirua Constituency to some other constituency.
- 34 The Commission is prepared, on this occasion, to find that the over-representation of Porirua is still reasonably fair in the current circumstances of the Wellington Region. However, it recommends the Council to consider the situation very carefully prior to the elections to be held in 2001. The Council's proposals are confirmed except for the Commission's determination relating to the Wellington Constituency.

Determination

- 35 Pursuant to section 101K of the Act, the Commission determines that for the triennial general election in 1998:
- (1) The Wellington Region, delineated on S.O. Plan No 35951 deposited with the Chief Surveyor of the Wellington Land District shall be divided into 6 constituencies;
 - (2) Those 6 constituencies shall be:
 - (a) The Kapiti Constituency comprising the area delineated on S.O. Plan No. 35952 deposited with the Chief Surveyor of the Wellington Land District;
 - (b) The Porirua Constituency comprising the area delineated on S.O. Plan No. 35953 deposited with the Chief Surveyor of the Wellington Land District;
 - (c) The Wellington Constituency comprising the area delineated on S.O. Plan No. 37891 deposited with the Chief Surveyor of the Wellington Land District;
 - (d) The Lower Hutt Constituency comprising the area delineated on S.O. Plan No. 35956 deposited with the Chief Surveyor of the Wellington Land District;
 - (e) The Upper Hutt Constituency comprising the area delineated on S.O. Plan No. 35957 deposited with the Chief Surveyor of the Wellington Land District;
 - (f) The Wairarapa Constituency comprising the area delineated on S.O. Plan No. 35958 deposited with the Chief Surveyor

of the Wellington Land District;

- (3) The Council shall comprise 14 members of whom -
- (a) one member shall be elected by the electors of the Kapiti Constituency; and
 - (b) two members shall be elected by the electors of the Porirua Constituency; and
 - (c) five members shall be elected by the electors of the Wellington Constituency; and
 - (d) three members shall be elected by the electors of the Lower Hutt Constituency; and
 - (e) one member shall be elected by the electors of the Upper Hutt Constituency; and
 - (f) two members shall be elected by the electors of the Wairarapa Constituency.

36 As required by section 101L(2) of the Act, the boundaries of the above constituencies coincide with the boundaries of current statistical meshblock areas determined by Statistics New Zealand and used for Parliamentary electoral purposes.

37 As required by section 101M(3) of the Act, a plan of the Wellington Constituency has been sent to the Chief Surveyor of the Wellington Land District, and the Chief Surveyor has certified that that plan is sufficient to render the boundaries of the constituency capable of identification.

The Local Government Commission

Ian Lawrence, Chairman
Barbara Durbin (Commissioner)
Robin Wilkins (Commissioner)

27 March 1998