

WHAKATANE DISTRICT COUNCIL

Background

- 1 The Whakatane District Council (“the Council”) as required by section 101H of the Local Government Act 1974 (“the Act”), considered its membership and the basis of election of its members for the local authority elections to be held in October 1998, and resolved to make changes.
- 2 At present, the Council comprises a Mayor and 15 members elected from 9 wards. These wards are -

Wards	Members
Whakatane Urban	7
Matua	1
Tarawera	1
Edgecumbe	1
Omataroa	1
Taneatua	1
Waimana	1
Galatea	1
Murapara	1

- 3 Following its review, the Council proposed that -
 - (a) the Omataroa Ward be absorbed within the Edgecumbe, Tarawera, Matua, Taneatua and Waimana Wards; and
 - (b) that an Ohope Ward be constituted from part of the Whakatane Urban Ward.

It was also proposed that the total members on the Council be reduced from 15 to 13 with the Whakatane Urban Ward having 5 members and each of the other 8 wards having 1 member each.

The reasons stated by the Council were that -

- “(a) The Council recognised a need to reduce the number of members on the Council, while retaining equitable levels of representation, taking into account population and communities of interest within each ward.
- (b) The establishment of an Ohope ward recognises that Ohope is a single urban community which should no longer be considered part of the Whakatane Urban area for purposes of representation.
- (c) The Council has given due consideration to the population and geographical sizes of the wards and has determined that the

proposed changes are in the best interest of effective representation of the residents of the District.”

- 4 The Council received two objections to its proposals, each seeking the retention of the Omataroa Ward. The objectors were Mark Sanderson and Sharon Heta. Following consideration of those objections, the Council confirmed its original proposal. The reasons given for this decision were the same as for making its original decision.

The Appeal

- 5 An appeal against the Council’s decision was lodged by Sharon Heta. The grounds of the appeal may be summarised as follows:
- the Council in its considerations failed to take into account and have regard to the substantive issues contained in those objections;
 - the Council failed to consult and seek the views of community groups in the Omataroa Ward, particularly the kaumatua and the people of the hapu who belong to the four marae of the Ngati Pukeko iwi who are considered to be a distinct community of interest group in the Omataroa Ward;
 - the new ward boundaries split the kaumatua and the marae of Ngati Pukeko iwi and therefore split a distinct community of interest.

Matter for Preliminary Determination

- 6 The Commission, on receiving advice of the appeal, resolved that before making a determination of this appeal the Commission would meet the Council and the appellant if she wished to be heard. The date of the meeting was fixed for 3 December 1997.

The Hearing

- 7 The Committee met with representatives of the Council and the appellant. Appearing for the Council were the Chief Executive, Mr Barrie Miles, and the Executive Officer Corporate Services, Philippa Crowe. The appellant, Sharon Heta, also appeared and was supported in the presentation of her appeal to the Commission by the Rev. Romana Kingi, a rangatira of Ngati Pukeko Iwi, and Joe Mason.

Mr Miles spoke to the Council’s submission. He said that in carrying out its review the Council was mindful of the Commission’s comments in the 1995 determination on the Council’s membership and basis of election. In that determination, the Commission confirmed the existing representation from the Whakatane Urban Ward on the understanding that the Council would carry out a thorough review of representation within the district prior to the 1998 elections. He considered that in any such review it was highly likely that the Omataroa Ward would be subject

to change because of its central location and low population, and therefore low ratio of population per councillor. He noted that the Waimana and Galatea Wards also had low populations but that their area and the distances involved in travelling through those wards required their retention.

- 8 In response to a question from the Commission as to whether the Omataroa Ward's community of interest had been split, the Chief Executive stated that the ward was made up of a series of community areas, each with its separate identity. The Council did not consider that any difficulty was caused by each of those separate communities of interest being in a separate ward.
- 9 The Commission also asked what consultation the Council had engaged in its review of wards and whether it had attempted to canvass opinion. The Council representatives advised that the Council had not sought public opinion in that manner but had engaged in consultation by way of public notice as required by the Act. The Commission also asked whether the Council's Maori Consultative Committee had been involved in the review process. The Council representatives advised the Committee had not had any specific involvement.
- 10 Sharon Heta spoke to her appeal stating that the Omataroa Ward contained a recognisable community of interest and that the proposed ward boundaries split the community of interest. Ms Heta's specific submissions were as follows -
- the kaumatua and people belonging to the full marae of Ngati Hine Pukeko iwi of Poroporo are an identifiable Maori community of interest encompassed within the present boundaries of the Omataroa Ward;
 - the Council had failed to consult adequately with the community particularly the Ngati Pukeko iwi on the abolition of the Omataroa Ward and the delineation of new ward boundaries; and
 - the Council had failed in its processes to take into account the principles of the Treaty of Waitangi.
- 11 The Rev. Kingi spoke on behalf of Ms Heta's appeal. He stated that Ngati Pukeko had an identity of its own and was not affiliated to Ngati Awa. He reiterated that the proposed ward boundary passes through the area of the marae and divided people associated with each marae.
- 12 The Council in its right of reply stated that the objection had no constructive proposal as an alternative to the Council's proposal. It considered that the appeal was focused primarily on the process the Council had gone through. The Council considered, however, that it had followed the statutory processes required by the Act.

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 first decision required of the Commission was to determine whether or not the district should be divided into wards for the purposes of representation. 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 wards. No submissions to the contrary were received, and the Council supported the concept of election by ward.
- 18 Having decided that the election would be held on the basis of wards, the next question to be addressed, was the number and 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 Sharon Heta.
- 19 The essence of Ms Heta's appeal was that the ward boundaries proposed by the Council split a community of interest and therefore would not result in the effective representation of that community of interest. The

question the Commission had therefore to consider was whether in fact a community of interest was being split. It was apparent to the Commission that the Ngati Pukeko Iwi had mana whenua over an area situated in the Omataroa Ward.

- 20 The precise definition of the term community of interest is open to debate. However it is generally understood to be based around shared identities, issues, or use of facilities. In the context of determining a geographical entity such as a ward, the term community of interest must be used to define a geographic community of interest.
- 21 In the opinion of the Commission the Ngati Pukeko Iwi demonstrated several of the characteristics of community of interest through, for instance, shared identity and relationship to a geographic area. The Commission therefore concludes that in defining the ward boundaries that it has proposed, the Council has split a community of interest and that those ward boundaries would not therefore provide “effective representation of communities of interest within the district” as required by section 101L(2)(a). The Commission has therefore decided that the Omataroa Ward should remain for the 1998 election. This in turn requires that changes to a number of other wards will not occur.
- 22 The appeal is therefore upheld. The appellant cited a number of other grounds in her appeal. Having made the foregoing decision it is not necessary for the Commission to deal with those matters, nor are they within the Commission’s jurisdiction. The Commission does, however, consider that it would be advisable for the Council in carrying out its next review to proactively consult with the community, including iwi, so as to avoid the type of issues raised in this appeal. It is acknowledged that the Council followed the statutory process, however there are times when the statutory process alone is not sufficient to arrive at the best outcome.
- 23 The other major change proposed by the Council was that there be a separate Ohope Ward. In determining the membership and basis of election for the district in 1995, the Commission rejected the proposal that there be a separate Ohope Ward on the basis that Ohope is a part of the greater urban Whakatane community of interest. On the basis of the evidence put to the Commission in respect of this determination, the Commission has been convinced that Ohope constitutes a sufficiently discrete community of interest to require separate representation. The Commission has therefore agreed to the proposal for an Ohope Ward.
- 24 Having determined what the ward structure should be for the 1998 elections of the Council, the next decision for the Commission to make is the number of members to be elected from each of those wards.
- 25 Based on the proposal to constitute an Ohope Ward and to fix the number of members to be elected by the redrawn Whakatane Ward at 5, and to

retain the remaining wards on their existing boundaries, the resulting total membership of the Council would be 14. The statistical allocation of such membership based solely on population, and the resulting actual membership would be as shown in the following table.

Table I

Ward	Population	%	Statistical allocation of members	Actual allocation of members
Edgecumbe	2,527	7.63	1.07	1
Galatea	1,754	5.30	0.74	1
Matata	2,208	6.67	0.94	1
Murupara	2,206	6.67	0.94	1
Omataroa	1,773	5.35	0.75	1
Taneatua	2,207	6.66	0.93	1
Tarawera	2,347	7.09	0.99	1
Waimana	1,251	3.78	0.53	1
Whakatane	14,230	42.96	6.01	6
Ohope	2,620	7.91	1.11	1
Totals	33,123	100.00	14.00	15

As can be seen, the rounding up of fractions increases the total actual membership to 15.

- 26 As noted in paragraph 3 the Council's proposal had been for, in addition to the absorption of the Omataroa Ward into other wards, a reduction in the membership of the Whakatane Ward by 1. The Commission's decision to retain Omataroa Ward for the 1998 elections caused it to further consider the proposed reduction in membership for the Whakatane Wards. As is evident from the table, the population of Whakatane town represents more than 42% of the population of the District, and, prima facie, a fair allocation of members for a 14 member council to be elected from the ward would be 6. The Commission is of the opinion that the retention of balance in representation in a district such as Whakatane, and to reduce the representation of the town below what is indicated by the respective populations of the urban and rural areas would need some strong justification. The Council did not produce any evidence to prove that its proposal to reduce the town's representation would be fair. The

Commission concluded that reduction in the membership of that ward to 5 would not result in fair representation between wards and the Commission has therefore decided that membership of the Whakatane Ward shall be 6, and that the total membership of the Council shall remain at 15.

- 27 If the Council is to achieve a reduction in its total membership, it will need to carry out a comprehensive review prior to the triennial elections in 2001. Such a review must inevitably focus on the appropriate number of wards which may require the amalgamation of wards or the reconfiguration of wards based on all the communities of interest. The review process will need to commence sufficiently early to ensure wide-spread consultation.

Determination

- 28 Pursuant to section 101K of the Act, the Commission hereby determines that for the triennial general election in 1998 -
- (1) The Whakatane District is delineated on S.O. Plan No. 58054 deposited with the Chief Surveyor of the South Auckland Land District, shall be divided into 10 wards.
 - (2) Those 10 wards shall be -
 - (a) the Whakatane Ward, comprising the areas delineated on S.O. Plan No. 60085 deposited with the Chief Surveyor of the South Auckland Land District;
 - (b) the Matata Ward, comprising the areas delineated on S.O. Plan No. 58055 deposited with the Chief Surveyor of the South Auckland Land District;
 - (c) the Edgecumbe Ward, comprising the areas delineated on S.O. Plan No. 58056 deposited with the Chief Surveyor of the South Auckland Land District;
 - (d) the Tarawera Ward, comprising the areas delineated on S.O. Plan No. 58060 deposited with the Chief Surveyor of the South Auckland Land District;
 - (e) the Omataroa Ward, comprising the areas delineated on S.O. Plan No. 58057 deposited with the Chief Surveyor of the South Auckland Land District;
 - (f) the Taneatua Ward, comprising the areas delineated on S.O. Plan No. 58061 deposited with the Chief Surveyor of the South Auckland Land District;
 - (g) the Waimana Ward, comprising the areas delineated on S.O. Plan No. 58063 deposited with the Chief Surveyor of the South Auckland Land District;
 - (h) the Galatea Ward, comprising the areas delineated on S.O. Plan No. 58062 deposited with the Chief Surveyor of the South Auckland Land District;

- (i) the Murapara Ward, comprising the areas delineated on S.O. Plan No. 58266 deposited with the Chief Surveyor of the South Auckland Land District;
 - (j) the Ohope Ward, comprising the areas delineated on S.O. Plan No. 60881 deposited with the Chief Surveyor of the South Auckland Land District.
- (3) The Council shall consist of a Mayor and 15 members to be elected as follows:
- (a) Six members shall be elected by the electors of the Whakatane Ward;
 - (b) One member shall be elected by the electors of the Matata Ward;
 - (c) One member shall be elected by the electors of the Tarawera Ward;
 - (d) One member shall be elected by the electors of the Edgecumbe Ward;
 - (e) One member shall be elected by the electors of the Omataroa Ward;
 - (f) One member shall be elected by the electors of the Taneatua Ward;
 - (g) One member shall be elected by the electors of the Waimana Ward;
 - (h) One member shall be elected by the electors of the Galatea Ward;
 - (i) One member shall be elected by the electors of the Murapara Ward;
 - (j) One member shall be elected by the electors of the Ohope Ward.
- 29 As required by section 101L(2) of the Act, the boundaries of the above wards coincide with the boundaries of current statistical meshblock areas determined by Statistics New Zealand and used for Parliamentary electoral purposes.
- 30 As required by section 101M(3) of the Act, a plan of the Whakatane Ward and of the Ohope Ward has been sent to the Chief Surveyor of the South Auckland Land District, and the Chief Surveyor has certified that the plan is sufficient to render the boundaries of the ward capable of identification.

The Local Government Commission

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

27 March 1998