

WHANGAREI DISTRICT COUNCIL

Background

1 The Whangarei District 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 of its members prior to the local authority elections to be held in 1998, and resolved that a reduced Council of 10 members, including the Mayor, should be elected at large.

2 At the present time the Whangarei District is divided into 6 wards with representation as follows:

Denby Ward	3 members
Okara Ward	4 members
Coastal Ward	2 members
Hikurangi Ward	1 members
Maungatapere Ward	1 member
Bream Bay Ward	<u>2 members</u>
Total	13 members

3 The Council’s proposal attracted approximately 150 counter-objections and 1 appeal. Some submissions in support of its proposals were received. A number of the counter-objections were signed by more than one person, in two cases by several hundred. The groups represented significant numbers of urban residents and rural residents.

Council’s Consideration

4 The Council first gave consideration to its representation at a workshop where a number of issues were discussed. No decisions were made at that time. The Council formally considered its representation at a meeting in July and resolved to retain its existing structure.

5 At the end of the time allowed for the receipt of submissions, only one objection was received, from the Mangakahia Maori Komiti. This objection sought the alteration of the name of the Maungatapere Ward to the Mangakahia Ward.

6 Three weeks after the closing date for objections, two further objections were received and accepted by the Council. The Council received prior oral legal advice that it was able to follow this course. The Council met to consider objections on 1 October. After receiving the two late objections, it resolved that the community of interest for the Whangarei District was the district as a whole. On that basis, it resolved that the district would not

be divided into wards, and that the number of members to be elected should be reduced to 9 plus the Mayor.

Preliminary Matter for Determination

- 7 The Commission received the appeal and valid counter-objections against the Council's proposal, and resolved to meet the Council, the appellant, and counter-objectors in Whangarei on Thursday 12 February. In the event the hearing proceeded over that day and the succeeding day.

The Hearing

- 8 The Council was represented by the Mayor, Mr Semenoff; the Deputy Mayor Cr Reyburn; and Mr Mitchell the District Secretary. Also present were a representative of the Mangakahia Maori Komiti and many counter-objectors.

For the Council the Mayor made a statement and also read a submission. These may be summarised as follows -

- the decision of the Council on both occasions was a split decision;
- most of the reaction against the Council's decision was from the rural area;
- he produced a graph showing the increase in expenditure on rural roading as evidence that the rural area has benefited since the district was formed in 1989;
- he said that as the district is one, it is time to treat it as one, and it is also appropriate to reduce the size of the Council;
- the next stage should be to consider the constitution of Whangarei District as a unitary authority; and
- he believed that there would not be a problem for the Council in handling its workload with a reduced number, as this would be dealt with by having one committee day per month where all members would attend as members of the various committees.

Cr Reyburn then made a statement which may be summarised as follows

-

- he repeated the Council's view that the Whangarei District has a single community of interest;
- he had been a member of the Whangarei City Council for 11 years, and there had been no need for the constitution of wards within the City;
- Council members have always considered the district as a whole, as they are required to;
- there is only one community of interest within Whangarei and that is the district; and
- there are no other large population centres in the district other than the former city.

Cr Brown objected to Cr Reyburn being allowed to speak in support of the Council's decision. The Chairman explained that it was up to the Council itself to organise its submissions in support of its decision, and that he had no problem with Cr Reyburn taking on this task as well as the Mayor. While Cr Brown accepted the Chairman's ruling he asked that his reservations be noted. Cr Reyburn then continued with his presentation.

- He said that his own original preference was for the redivision of the district into 3 wards with a total of 9 councillors, he envisaged this as -
 - (a) the Northern Ward, which would incorporate the Coastal and Hikurangi Wards, with 2 councillors;
 - (b) the Central Ward, which would incorporate the Okara and Denby Wards, with 5 councillors; and
 - (c) the Southern Ward, which would incorporate the Bream Bay and Maungatapere Wards, with 2 councillors
- In respect of the present proposal he did not consider it a problem that the great majority of councillors would likely come from the City area;
- He noted that of the present 6 rural members, 2 are farmers, and of those who have other occupations, two worked within the City;
- The major activity for business and shopping is in the City, although Hikurangi and Ruakaka have fairly good shopping centres;
- The district is not large, it would take an hour at the most to drive from one end to the other;
- He was unaware of any special characteristics of any of the wards which would require separate representation;
- The two coastal wards were mostly life-style blocks, while the inland areas were given over to farming; and
- There had been little evidence of a split between rural and urban interest during Council meetings.

- 9 The rest of that day and most of the following was then given over to submissions from counter-objectors, and the appellant Mangakahia Maori Komiti. There were major issues raised by those who appeared. The first, was the lack of any public consultation before the Council made its decision to abolish wards. The second, was the Council's decision to accept late objections. Third, and major, was the concern expressed about the perceived loss of effective representation for the communities of interest outside of the old Whangarei City. Some took exception to the use by the Mayor of his casting vote to support the abolition of wards.
- 10 Evidence from the Mangakahia Maori Komiti was that Maungatapere is the name of a hill in the Maungatapere Ward. The Ward extends over the area of the Mangakahia River. Therefore it was only right that Mangakahia should also be recognised. The spokesperson for the Komiti, Ms Sharon Taipa, said that a joint hyphenated name such as the "Mangakahia-Maungatapere" Ward would be acceptable to her people.

- 11 For the Council in reply, Mr Semenoff and Cr Reyburn made a number of comments which may be summarised as follows -
- the statutory process had been followed correctly;
 - people have been happy so far with the performance of the Council;
 - the Council was aware that 9 years have elapsed since the formation of the Whangarei District, and was of the opinion that it was time to seriously consider the electoral situation;
 - all wards contain more than the one local community of interest;
 - the Commission found in 1989 that the major community of interest was the Whangarei District as a whole;
 - the roles of elected councillors have changed, their major responsibility is now policy and not service delivery;
 - because councillors are elected to serve the whole district, the time has come to make elections at large; and
 - in response to concerns about urban domination, it was noted that the Electricity Trust is elected at large and has mostly rural members.

Matters for Determination

- 12 The legislation relating to the determination of appeals and counter-objections, is contained in sections 101K and 101L(2) and (3) of the Act. Section 101K(1) provides as follows -

“(1) The Commission shall, before the 29th day of March of the year of each triennial general 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.”

- 13 Section 101L(2) and (3) provides as follows -

“(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

14 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) of the Act is the provision of effective representation for the various communities of interest within the district. This can be achieved by any ward encompassing one or more communities of interest.

15 The Commission further considers that when fixing 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.

16 The Council has defended its decision to seek the election of all its members by the electors of the district as a whole by stating its view that

the only community of interest which is clearly important is that of the Whangarei District as a whole. The Commission agrees that the district community of interest is important. Neither did any of the counter-objectors deny that they had a feeling of belonging in the Whangarei District. The viewpoint the counter-objectors took was rather that, within the over-arching framework of the Whangarei District, there are a number of smaller communities of interest. Many of these communities share interests which are sufficiently similar to present no problem if they are all represented within the one electoral ward. However, the evidence given to the Commission was that there are sufficient different communities of interest within the district to lead to the conclusion that at least some of these require separate wards to receive effective representation.

- 17 Cr Reyburn himself said he was, at one stage, an advocate of a 3 ward division of the district. Some counter-objectors maintained that this suggestion was faulty, or at the least, subject to some debate. Others pointed out that, in their opinion, there were sufficiently significant differences between the communities in the groupings suggested by Cr Reyburn to warrant the retention of the existing wards. This viewpoint was even expressed in relation to the Okara and Denby Wards, where perhaps the first impression may be that differences in community of interest may not be sufficiently great to warrant the retention of the two separate wards.
- 18 One counter-objector, in the Commission's opinion, expressed the situation of the Whangarei District most aptly and succinctly with his statement that Whangarei is a rural district with a significant urban population.
- 19 The Commission is of the opinion that the Council has misread the situation of the Whangarei District. Notwithstanding the fact that Whangarei for most purposes is a unified district, it is not, and is not likely to be a district where it would be appropriate to consider holding elections at large. There are just too many differences between the urban communities within the former city, the mixed life-style and tourist oriented areas of the Coastal and Bream Bay Wards, and the more rurally centred pastoral and horticultural farming areas of the Maungatapere and Hikurangi Wards to ensure the effective representation of these communities in an at large system. The Commission therefore has resolved to uphold the counter-objections and determine that the Whangarei District shall continue to be divided into wards for electoral purposes.
- 20 Reference has already been made to the proposal for a 3 ward rather than a 6 ward division of the district. This may or may not be an appropriate course to follow, but the Commission is of the opinion that the delineation of the boundaries between any changed system of wards should emerge from an extensive and intensive programme of consultation and

investigation. The Commission does not have the time nor the resources to carry out this task in relation to this appeal given the statutory requirement to complete it before 29 March. Nor does it believe that, it is really appropriate for it to attempt to do so. Therefore, except for the boundary between the Denby and Okara Wards, which is discussed in relation to the number of members of the Council, the Commission will make no changes to the boundaries of the existing wards and, to that extent, upholds the many counter-objections on this point.

- 21 The Council also proposed that the number of members be reduced from the current 13 to 9 plus a mayor. While the Commission may have been able to support this part of the Council's proposal, and perhaps allocated 5 members to the 2 urban wards, and 1 member to each of the 4 rural wards, it did not consider that this would be an appropriate course to follow at this time. It notes that on a strictly population basis, the rural wards are greatly over-represented at this time. However this does not appear to have been of any concern to the urban electors of the district. Perhaps this is because a majority of Council members come from the 2 urban wards. The Commission's view is that it is required to ensure that there is fair representation between the electors of the various wards, but that in seeking fair representation, it is not required to attempt to achieve equality of representation between the electors of those wards.
- 22 In the case of the Whangarei District, the Commission considered that it should only look at the equality of representation between the 2 wards which are most similar to each other, that is the Denby and Okara Wards. Since 1989 a progressive inequality has built up between the two wards in relation to the populations which each member represents. This has now developed to the extent that the 4 members elected from the Okara Ward represent a population of 22,000, while the 3 members from the Denby Ward represent a population of some 20,000. The Commission believes that, because of the greater similarities of community of interest of these wards, this imbalance in representation is unfair for the electors of the Denby Ward in particular. It has therefore decided that the most appropriate action to take in this instance, is to extend the boundary of the Okara Ward to take in all of the Mairtown Statistical Area Unit and that part of the Kensington Statistical Area Unit to the east of the railway line. This would have the effect of almost equalising the population to member ratio between the two wards. With that exception, the Commission upholds those counter-objectors who wished to see no change to the existing electoral structure of the Whangarei District.
- 23 The Commission has also decided that the Maungatapere Ward will be known as the Mangakahia-Maungatapere Ward. The appeal of the Mangakahia Maori Komiti is therefore upheld on this issue.
- 24 The Commission referred to the number of counter-objectors who raised as part of their submission the decision of the Council to receive two late

objections. The Commission notes that the Council had received legal advice that it was able to do this. To the extent that the Commission was required under the provisions of section 101K of the Act to carry out a de novo consideration of the district's electoral structure, from its point of view the most important aspect of the proceedings was that it received counter-objections, rather than the process followed by the Council in coming to its own decisions. That was the reason for Commission members stating that the Council's decision was not a major factor for it. Therefore, in this determination, the Commission limits itself to merely observing that it would question the wisdom of the Council in following the course it took in accepting objections outside the time specified for their receipt in section 101J of the Act. If there had been an original intention on the part of a significant faction on the Council to depart from a system of elections on a ward basis to an at large system, perhaps the wiser course would have been to have adequately foreshadowed this intent prior to the time of making the Council's first decision.

- 25 This time, the electors of the district will not need to feel that they have been disadvantaged by the Council's decision. The Commission's determination of the counter-objections means that, apart from a small boundary alteration as already discussed, the electoral status quo will remain for the forthcoming election.
- 26 The Council is required before the 2001 elections, to carry out another consideration of its representation and the basis of election. This would be an appropriate time for the Council to give full consideration to all the various options which were presented to it, and any other options which may be suggested.

Determination

- 27 Pursuant to section 101K of the Act, the Commission determines, that for the triennial general election in 1998:-
- (1) The Whangarei District as delineated on S.O. Plan No. 63498 deposited with the Chief Surveyor of the North Auckland Land District, shall continue to be divided into 6 wards;
 - (2) Those 6 wards shall be:
 - (a) The Coastal Ward, comprising the area delineated on S.O. Plan No. 63541 deposited with the Chief Surveyor of the North Auckland Land District;
 - (b) The Hikurangi Ward, comprising the area delineated on S.O. Plan No. 63543 deposited with the Chief Surveyor of the North Auckland Land District;

- (c) The Mangakahia-Maungatapere Ward, comprising the area delineated on S.O. Plan No. 63544 deposited with the Chief Surveyor of the North Auckland Land District;
 - (d) The Bream Bay Ward, comprising the area delineated on S.O. Plan No. 63545 deposited with the Chief Surveyor of the North Auckland Land District;
 - (e) The Denby Ward, comprising the area delineated on S.O. Plan No. 63542 deposited with the Chief Surveyor of the North Auckland Land District;
 - (f) The Okara Ward, comprising the area delineated on S.O. Plan No. 63540 deposited with the Chief Surveyor of the North Auckland Land District;
- (3) The Council shall consist of a Mayor, and 13 members, elected as follows -
- (a) Two members, elected by the electors of the Coastal Ward; and
 - (b) One member, elected by the electors of the Hikurangi Ward; and
 - (c) One member, elected by the electors of the Mangakahia-Maungatapere Ward; and
 - (d) Two members, elected by the electors of the Bream Bay Ward; and
 - (e) Three members, elected by the electors of the Denby Ward; and
 - (f) Four members, elected by the electors of the Okara Ward.
- 28 As required by section 101L(2) of the Act, the boundaries of the above wards coincide with the boundaries of the current statistical meshblock areas determined by Statistics New Zealand and used for Parliamentary electoral purposes.
- 29 As required by section 101M(3) of the Act, plans of the Denby, Okara and Mangakahia-Maungatapere Wards have been sent to the Chief Surveyor of the Auckland Land District, and the Chief Surveyor has certified that the plans are sufficient to render the boundaries of each ward capable of identification.

The Local Government Commission

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

27 March 1998