



LOCAL GOVERNMENT COMMISSION

Determination

of the appeals against the decision of the Dunedin City Council to not constitute a Community for the Otago Peninsula.

BACKGROUND

- 1 On 15 November 2000 the Otago Peninsula Community Petition Committee submitted to the Dunedin City Council (“the Council”) a petition requesting that the Council constitute a Community for the Otago Peninsula.
- 2 The petition contained 818 signatures. The Principal Administrative Officer of the Council determined that there were 503 valid signatures in terms of the provisions of section 101ZJ of the Local Government Act (“the Act”). This was a sufficient number to require that the Council consider the proposal and resolve whether or not to constitute the proposed Community.
- 3 At its meeting on 19 February 2001, the Council resolved to reject the proposal in accordance with section 101ZK(3)(b) of the Act. It stated its reasons for rejecting the proposal as follows:
 - “The Council considers fair representation is achieved with the current four South Dunedin Ward Councillors and that the efficient and effective exercise of the Council’s functions, duties and powers occurs under the existing governance arrangement.
 - The Council considers that there is no clear evidence that the establishment of a community board would improve governance and service delivery to the residents of the Peninsula.
 - While recognising there are communities of interest in the Peninsula, there is also a high degree of dependence on the facilities and services provided in the City, i.e., health, education, recreational, which the Council does not consider warrants separate representation by way of a community board.
 - Consideration of whether the proposal should be progressed would be better carried out in conjunction with the review of membership and basis of election to be undertaken in the next triennium.

- Taking into account the cost of running the community board, the Council considers existing consultation, representation, participation and associated processes are satisfactory.”
- 4 Six persons who were signatories to the petition appealed the Council’s decision. The appellants are:
- Leah McBey
 - Sam Neill
 - Colin White
 - Neil Clayton
 - Ron Paterson
 - Kate Lindsay, on behalf of the Otakou Community Support Group.

COMMISSION’S PRELIMINARY CONSIDERATION

- 5 On receipt of the appeals the Commission gave consideration to them and the relevant legislation. It decided that, in addition to informing the Council of the appeals, it would invite public submissions on the proposal, and hear the appeals and any submissions at a hearing to be held on the Otago Peninsula.
- 6 Submissions were invited by way of public notices published in the Otago Daily Times on 2 May and 5 May 2001 and the Dunedin Star on 2 May and 6 May 2001. A press release was also circulated to those newspapers. The Commission received 18 submissions in response to the public notices. 13 submissions were in favour of the proposal and five submissions were against the proposal. Submissions in favour of the proposal were made by:
- Raymond McCormick
 - Bill and Lenni Allen
 - Lloyd Algie
 - Wilma Beck
 - Richelle Adams
 - P Berman
 - Ross Davies
 - Colin Weatherall
 - Dunedin Ratepayers & Household Association
 - Colleen Bond
 - Otakou Maori Womens Welfare League
 - Tatane Wesley
 - Helen Frizzell and Peter Henderson.

Submissions against the proposal were made by:

- Alison Anderson
- Norman Anderson
- Alan McDonald
- Selwyn Inglis
- A Harris.

7 The Commission held a hearing on Thursday 5 July 2001 at the Portobello Coronation Hall. The following persons and organisations appeared before the Commission:

- Dunedin City Council – Cr Syd Brown, Jim Harland (Chief Executive), Graham Spargo (General Manager, Strategy and Planning), Doug Jackson (Team Leader Governance).

Appellants

- Sam Neill (and witness– Kevin Charles)
- Kate Lindsay, on behalf of Otakou Community Support Group
- Cr Leah McBey (and witnesses– Mayor Sukhi Turner, Lesley Denison, Irene Taylor, Lox Kellas and Neale McMillan)
- Colin White (and witnesses- Jay Ray, Michael Whitehead, Hendrick Koch, David Lyttle, John Bellamy).

Submitters

- Raymond McCormick
- Wilma Beck
- Ross Davies
- Cesley Wesley, on behalf of the Otakou Maori Womens Welfare League
- Colin Weatherall (by pre-recorded audio tape).

8 The Commission was informed of the various points of view relating to the proposal, and at the conclusion of the hearing reserved its decision.

PROVISIONS OF THE LEGISLATION

9 Provisions relating to the constitution of Communities are set out in Part IVB of the Act. The relevant provisions pertaining to the Commission's consideration of this matter are set out below:

- 101ZG. Constitution of communities** - (1) A community may from time to time be constituted by-*
- (a) An Order in Council giving effect to a reorganisation scheme; or*
 - (b) A resolution made in accordance with section 101ZN of this Act by the territorial authority within whose district the community will be situated (which resolution may be made only with the prior written consent of the Commission).*
- (2) A community may be constituted in any part of a district and shall be wholly within one district.*
- (3) No community may be constituted in respect of any part of a district where a community is already constituted.*

101ZH. Matters pertaining to constitution of communities- (1) *The Order in Council or resolution constituting the community shall-*

(a) *Fix the boundaries of any community constituted pursuant to section 101ZG of this Act and describe the boundaries in a manner that makes them readily capable of identification;*

(b) *Assign a name to the community;*

(c) *Fix the date of the first election of members of the community board, which date shall not be a date within 12 months before the date of the next triennial general election of the territorial authority.*

(2) *The boundaries of every community shall coincide with the boundaries of statistical meshblock areas determined by Statistics New Zealand and used for Parliamentary electoral purposes.*

(3) *The community shall come into existence on the day after the day on which the Returning Officer declares the result of the first election of members of the community board.*

101ZL. Matters to be considered when constituting community - *In deciding whether or not a community should be constituted,-*

(a) *The territorial authority; or*

(b) *Where appropriate, the Commission,- shall have regard to such of the criteria that apply to reorganisation proposals by virtue of this Act as the territorial authority or Commission considers appropriate in the circumstances.*

101ZM. Appeal against refusal to constitute community - (1) *Where, following a proposal under section 101ZI of this Act, a territorial authority resolves not to constitute a community, any signatory to the proposal may appeal to the Commission.*

(2) *The Commission shall have all the powers of the territorial authority in respect of the constitution of the community, and, subject to section 101ZZ of this Act, may determine the functions of the community board for a period of up to 3 years.*

(3) *Nothing in subsection (2) of this section prevents the territorial authority from conferring further functions on the community board.*

10 The criteria that apply to reorganisation schemes, as referred to in section 101ZL of the Act, are contained in sections 37ZQA, 37ZR and 37ZRA of the Act:

37ZQA. Criteria - (1) *The principal local authority or the Commission, as the case may be, shall, when considering any reorganisation proposal or any reorganisation scheme, satisfy itself that the proposal or scheme -*

(a) *Will promote the good local government of the districts concerned;*

and

- (b) Will, in particular, ensure that each proposed local authority and each local authority continued in existence under the proposal -
- (i) Will have the resources necessary to enable it to carry out its functions, duties, and powers; and
 - (ii) Will have a district that is appropriate for the efficient and effective exercise of its functions, duties, and powers; and
 - (iii) Will contain within its district a sufficiently distinct community of interest or sufficiently distinct communities of interests; and
 - (iv) Will be able to meet the requirements of section 223C of this Act.

(2) The principal local authority or the Commission, as the case may be, shall, when considering the matters specified in subsection (1) of this section in relation to any reorganisation proposal or any reorganisation scheme, consider -

- (a) The area of impact of the functions, duties, and powers of the local authorities concerned; and
- (b) The area of benefit of services provided; and
- (c) The likely effects on any local authority of the exclusion of any area from its district; and
- (d) Such other matters as it considers appropriate.

37ZR. Boundaries - The principal local authority or the Commission, as the case may be, shall, in determining boundaries under any reorganisation scheme, ensure that -

- (a) The boundaries of regions conform, where practicable, with catchment boundaries; and
- (b) The boundaries of territorial authority districts conform, where practicable, with the boundaries of regions; and
- (c) The boundaries of regions and the boundaries of territorial authority districts conform with the boundaries of statistical meshblock areas determined by Statistics New Zealand and used for Parliamentary electoral purposes.

37ZRA. Membership - Where a principal local authority or the Commission is required to determine the membership of a local authority as a consequence of any reorganisation scheme, the principal local authority, or the Commission, as the case may be, shall -

- (a) Provide for the effective representation of the electors of the local authority; and
- (b) Comply with the requirements of sections 101C, 101CA, 101D, 101E and 101L of this Act; and
- (c) Take into account the need to provide effective and accountable local government; and
- (d) Take into account the functions, duties, and powers of the local authority.

- 11 The Commission is also of the view that the purposes of local government set out in section 37K of the Act, and the purposes of community boards set out in section 101ZY, should be considered in reaching a decision of this matter:

37K. Purposes of local government - *The purposes of local government in New Zealand are to provide, at the appropriate levels of local government, -*

- (a) Recognition of the existence of different communities in New Zealand:*
- (b) Recognition of the identities and values of those communities:*
- (c) Definition and enforcement of appropriate rights within those communities:*
- (d) Scope for communities to make choices between different kinds of local public facilities and services:*
- (e) For the operation of trading undertakings of local authorities on a competitively neutral basis:*
- (f) For the delivery of appropriate facilities and services on behalf of central government:*
- (g) Recognition of communities of interest:*
- (h) For the efficient and effective exercise of the functions, duties and powers of the components of local government:*
- (i) For the effective participation of local persons in local government.*

101ZY. Purposes of community board - *The general purposes of a community board shall be -*

- (a) The consideration of and reporting on of all matters referred to it by the territorial authority or any matter of interest or concern to the community board:*
- (b) The overview of road works, water supply, sewerage, stormwater drainage, parks, recreation facilities, community activities, and traffic management within the community:*
- (c) The preparation of an annual submission to the budgetary process of the territorial authority for expenditure within the community:*
- (d) Communication with community organisations and special interest groups within the community:*
- (e) To perform such functions as are delegated to it under the authority of section 101ZZ of this Act.*

COMMISSION'S CONSIDERATION

- 12 As stated above, section 101ZL of the Act requires the Commission to have regard to such of the criteria that apply to reorganisation proposals as the Commission considers appropriate. For this proposal, the Commission has determined that the provisions of section 37ZQA of the Act are relevant to its consideration.

- 13 Section 37ZQA(1)(a) of the Act requires the Commission to satisfy itself that a proposal will “promote the good local government” of the districts concerned. For the proposal before it, the Commission has focused primarily on whether the proposal would promote the good local government of the Otago Peninsula area that is the subject of the proposal, but also gave consideration to the impact of the proposal on the good local government of Dunedin City as a whole.
- 14 With regard to the word “promote”, the Commission is conscious that it has various meanings, but is satisfied that in the context of the legislation, the clear intention was that the word have the meanings: to advance, help forward, enhance, or improve.
- 15 The expression “good local government” is not defined in the Act. However, the Commission has adopted the view, based on section 37K of the Act (which sets out the purposes of local government) that the achievement of those purposes would be the basis of good local government. The Commission interprets the expression “promote good local government” as meaning to improve or enhance the ability of the proposed Community, and more generally the City of Dunedin, to achieve the purposes of local government as set out in section 37K.
- 16 The proposal was assessed by the Commission against the criteria specified in section 37ZQA of the Act as follows:

Subsection (1)(a) – Whether the proposal will promote the good local government of the districts concerned.

This is the principal criterion which the Commission must satisfy itself would be complied with if a proposal were to be given effect to.

In the context of this criterion, the Commission determined that the “district concerned” was the Otago Peninsula area, which was the subject of the application.

As discussed above, the Commission decided that consideration of the proposal in the context of the matters specified in section 37K of the Act, was necessary to enable the Commission to determine whether the proposal would promote the good local government of the Otago Peninsula. In giving consideration to the matters outlined in section 37K, the Commission found it first necessary to assess whether the area of the proposed Community is a distinct community of interest. The area of the proposed Community makes up the major portion of the South Dunedin Ward of the City Council. The area of the proposed Community can, however, be differentiated from the remainder of the ward area in respect of its geography, land use and population density. After studying the submissions received on the proposal, visiting the Otago Peninsula area, and hearing submitters, the Commission also identified

a shared sense of community identity and belonging among the residents of the Peninsula area.

The economic activities of the area are also somewhat distinct from the urban parts of the City that adjoin it. The focus of the Otago Peninsula is on farming, lifestyle opportunities and specific forms of tourism.

Taking all of the above matters into account, the Commission is satisfied that, in the context of the proposal before it, the area of the proposed Community reflects a distinct community of interest. Having reached this conclusion, the Commission is satisfied that the establishment of a Community for the Otago Peninsula would, in keeping with the purposes of local government outlined in section 37K –

- Recognise the distinct community of interest of the Otago Peninsula area that is the subject of the proposal.
- Provide for the definition and enforcement of appropriate rights for that community (through provision of appropriate functions – as discussed below).
- Provide scope for the community to make choices between different kinds of local public facilities and services (through liaising with, and making submissions and recommendations to the Council and other organisations).
- Enable local persons to effectively participate in local government (through standing as candidates for the Community Board).

The other issue, in terms of section 37K, which required consideration by the Commission, was whether the establishment of a Community for the Otago Peninsula area would provide for the efficient and effective exercise of the functions, duties and powers of a Community Board for the Community. In considering this issue the Commission was mindful of the matters raised in the submissions to it on the proposal. The matters of primary importance to submitters were:

- The concerns of the residents of the Otago Peninsula were not being listened to by the Council
- There were particular local tensions that did not apply to the broader City area
- The Otago Peninsula area has particular special needs, e.g. ecology and growing tourism that required special attention
- There is a lack of co-ordination between agencies involved in delivering services on the Otago Peninsula
- There are specific and unique traffic capacity and safety issues.

The Commission considers that the constitution of a Community Board for the area would only be efficient and effective if the Board has the capacity to address the specific concerns identified above. The Commission is of the view that a Community Board, empowered with appropriate functions, would be able to address those issues.

In terms of efficiency, the constitution of a Community will impose costs (as detailed in a later section of this determination) on the Council. However, given the importance of the Otago Peninsula to the City as a whole in terms of its tourism activity, conservation values, and lifestyle opportunities, the Commission considers that the establishment of a Community for the area will provide a positive benefit to the residents of the Community. It also considers that the constitution of a Community has the potential to enhance the efficiency of the Council, as the Council will be able to utilise the Community Board as a sounding board for its proposals and as a means of gaining feedback from the Community of issues of concern.

In the view of the Commission, the effectiveness of the Board would be dependent on the functions provided to it. It considers that a Community Board constituted for the area would require particular functions in addition to those provided to the existing Community Boards to deal with the specific local issues identified above.

The Commission formed the view that the proposal would promote the good local government of the Otago Peninsula, and more generally Dunedin City. Having reached this conclusion, it then decided to consider the proposal in detail against the criteria of subsection (1)(b) of section 37ZQA of the Act.

Subsection (1)(b)

- (i) *Whether the proposed Community and the Dunedin City Council will each have the resources necessary to enable it to carry out its functions, duties and powers.*

Information provided by the Dunedin City Council indicates that the direct costs of operating a Community Board for the proposed Community would be in the order of \$35000 to \$40000 per annum. In addition, there would be a staff commitment in respect of preparing reports for the Board and attendance at meetings.

A new Community Board would also have a discretionary fund of \$4000 per annum, as provided to the existing Community Boards of the City for local projects.

The funding for the Board, staff and the discretionary fund would be derived from the resources of the Council. The costs associated with the Board would be modest in the context of the Council's total expenditures, and no information was tendered by the Council to suggest that the constitution of the proposed Community would have any detrimental effect on the ability of the Council to carry out its responsibilities.

The Commission is satisfied that the resourcing of the proposed new Community on a similar basis to the other Communities of the City would provide the Board with the resources necessary to carry out its functions, duties

and powers. The enhanced functions for the Community Board, as discussed below, would not impose any significant additional costs on its operation.

- (ii) *Whether the proposed Community Board and the Dunedin City Council will each have a district that is appropriate for the efficient and effective exercise of its functions, duties and powers.*

The western boundaries of the proposed Community would exclude the Andersons Bay, Shiel Hill and Waverley areas, which are primarily urban residential areas focused more towards the central business district of the City than to the Otago Peninsula.

The Commission is satisfied that the boundaries of the proposed Community would appropriately reflect the distinct community of interest of the Otago Peninsula and that these boundaries would be appropriate for the efficient and effective exercise of the functions, duties and powers of a Community Board for the proposed Community.

The proposal has no impact on the boundaries of Dunedin City.

- (iii) *Whether the proposed Community Board and the Dunedin City Council will each contain within its district a sufficiently distinct community of interest or sufficiently distinct communities of interests.*

As discussed above, the Commission is satisfied that the area of the proposed Community appropriately recognises a distinct community of interest in the context of the proposal before it.

Dunedin City has within it a number of distinct communities of interest, and in the view of the Commission, the proposal will have no impact on the other established communities of interest in the City.

- (iv) *Whether the proposed Community Board and the Dunedin City Council would be able to meet the requirements of section 223C of the Act.*

Section 223C outlines the manner in which a local authority is to conduct its affairs.

In the view of the Commission, the proposal would not impact on the ability of the Council to maintain governing and administrative structures that would

comply with the requirements of this section. The Council has a long experience in working with the five existing Community Boards in the City.

With regard to the proposed Community Board, Council staff with experience in servicing Community Boards would be available to provide advisory and administrative support. The Commission is satisfied that with the provision of appropriate support arrangements, the proposed Community Board would be able to meet the requirements of section 223C.

Subsection 2

(a) area of impact of the functions, duties and powers of the proposed Community; and

(b) the area of benefit of services provided.

As mentioned above, the Commission considers that the boundaries of the proposed Community will provide an effective boundary for the operation of a Community Board.

Only the western boundary of the proposed Community would adjoin other land of the City. The area westward of the boundary is urban in its focus and appropriately falls outside the area of the proposed Community. That area is not served by a Community Board. The Commission considers that the proposed boundary will be effective in minimising cross-boundary issues with the adjoining area.

(c) The likely effects on any local authority of the exclusion of any area from its district.

This criterion is not relevant in terms of this proposal. The proposal does not exclude any area from the existing jurisdiction of the Dunedin City Council or of any other Community Board.

Overall assessment of the proposal against the criteria

- 17 Having considered the proposal against the criteria of section 37ZQA of the Act, and in terms of the purposes of local government as specified in section 37K of the Act, the Commission is satisfied that the proposal meets the requirements of the criteria specified in section 37ZQA.
- 18 In particular, the Commission is of the view that the proposal will promote the good local government of the Otago Peninsula, and of the Dunedin City as a whole. The Commission has therefore determined that the proposal for the constitution of a Community for the Otago Peninsula shall be put into effect.

Matters relating to the constitution of the Community

Name of Community

- 19 The Commission has determined that the Community for the Otago Peninsula is to be known as the “Otago Peninsula Community”, and the Community Board for the area is to be known as “The Otago Peninsula Community Board”.

Boundaries

- 20 Section 101ZH(2) of the Act requires that the boundaries of every community shall coincide with the boundaries of statistical meshblock areas determined by Statistics New Zealand and used for parliamentary electoral purposes. The boundaries of the Community meet this requirement. A map showing the boundaries of the Community is attached to this determination.

First election

- 21 In accordance with section 101ZH(1)(c) of the Act, the Commission is required to set the date of the first election of the members of the Community Board. The Commission has determined that the date of the election shall be 6 April 2002.
- 22 The term of office of the initial Community Board will expire at the time of the 2004 local elections.

Membership

- 23 Under section 101ZQ of the Act the Commission is required to determine the number of elected and appointed members of the initial Community Board.
- 24 The existing Community Boards of the City each have six elected members. The Boards also have at least one appointed member, except where an elected Councillor is also an elected Community Board member.
- 25 The Commission has decided that the membership of the initial Otago Peninsula Community Board shall comprise six elected members and one appointed member.

Functions

- 26 As discussed above, the Commission considers that functions will need to be provided to the Otago Peninsula Community Board, in addition to those delegated by the Council to the other Community Boards of the City, in order for the Community Board to be effective and efficient in dealing with issues of concern to its community.
- 27 The Commission is of the view that the functions prescribed by the Council for the existing Boards are of a minimalist nature, and as such do not enable the

Boards to make as effective a contribution to local democracy in the City as they potentially could. In this regard, there appears to have been little substantive change to the functions since the existing Boards were constituted in 1989. The Commission gave consideration to providing an entirely new set of functions to the Otago Peninsula Community Board, but was mindful of the comments made by Council representatives at the hearing that the Council has resolved to undertake a thorough review of the functions delegated to its Community Boards following the October 2001 local elections.

- 28 Taking the Council's publicly stated commitment into account, the Commission decided to build on the functions delegated to the existing Community Boards, to take into account the particular issues facing the Otago Peninsula Community. The additional functions will enable the Otago Peninsula Community Board to:
- determine a traffic management plan in respect of the area of the Community;
 - consult with, and make submissions to any organisation on matters of concern to the Board in respect of the area of the Community; and
 - consult with, and make recommendations to the Council and Tourism Dunedin on tourism issues, the development of tourism strategies and initiatives that would impact on the Community.
- 29 Furthermore, as a matter of good governance, the Commission considers that the Council should involve the Otago Peninsula Community Board in decisions that will impact on the area of the Community. Reflecting the importance of the linkage between the Council and the Community Board on matters affecting the Otago Peninsula Community, the Commission has decided to prescribe a function empowering the Community Board to participate in the decision-making processes of the Council on matters impacting on the area of the Community.

GENERAL COMMENT

- 30 The Council, in the record of its decision on the proposal, lists five reasons for declining the proposal. The Commission is concerned that, for the most part, the reasons do not accord with the criteria detailed in section 37ZQA of the Act.
- 31 In its evidence to the Commission, the Council acknowledged that its assessment of the proposal was essentially a "desk-top" exercise. The Commission is disappointed that the Council did not consult with the residents of the Otago Peninsula as part of its consideration of the proposal.
- 32 As a general comment, the Commission considers that it would be beneficial to a local authority and interested parties if the local authority's decision on such a matter is recorded in a form that can be readily referenced to the relevant criteria of the Act.

COMMISSION'S DETERMINATION

- 33 Under section 101ZM of the Act, the Commission determines that the appeals against the decision of the Council to not constitute a Community for the Otago Peninsula are upheld, and specifies the following arrangements in respect of the Community:
- (1) The Community shall be known as the "Otago Peninsula Community" and the Community Board for that Community shall be known as "The Otago Peninsula Community Board".
 - (2) The Otago Peninsula Community shall comprise the area delineated on S.O. Plan No. 303092 deposited with the Chief Surveyor of the Otago Land District.
 - (3) The first election of the Otago Peninsula Community Board shall be held on 6 April 2002.
 - (4) The initial Otago Peninsula Community Board shall comprise six elected members and one appointed member.
 - (5) The Otago Peninsula Community Board shall have the following functions -
 - (a) The Otago Peninsula Community Board shall have those functions delegated to Community Boards by the Dunedin City Council on 24 October 2000; and
 - (b) The Board shall have the following additional functions:
 - i. The Board may determine a traffic management plan in respect of the area of the Community – the plan to include the placement of road signage, controls on vehicle parking, traffic constraints and controls;
 - ii. The Board may approve the temporary use and closure of roads, footpaths and Council owned land for market days, street appeals, stalls and parades and specific events and functions;
 - iii. The Board may consult with, and make submissions to any organisation relating to matters of interest to the Board in respect of the Community area. Any submission made by the Board under this function shall be copied to the Council's Chief Executive at the time the submission is made;
 - iv. The Board may consult with, and make recommendations to the Council and Tourism Dunedin,

- on tourism issues of interest to the Board in respect of the Community area;
- v. The Board may provide input into the development of tourism strategies and initiatives proposed by the Council or Tourism Dunedin in respect of the Community area; and
 - vi. The Board may participate in Council deliberations on any matters impacting on the area of the Community.

- 34 As required by section 101ZH(2) of the Act the boundaries of the Otago Peninsula Community coincide with the boundaries of statistical meshblock areas determined by Statistics New Zealand and used for Parliamentary electoral purposes.

THE LOCAL GOVERNMENT COMMISSION

Grant Kirby (Chairman)
Linda Constable (Member)
Kerry Marshall (Member)

11 October 2001