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Report to the Policy & Finance Committee
from Ted Maguire, Council Secretary

Constituency Review – Local Government Commission Determination

1. Purpose

To inform the Council of the Local Government Commission's Determination in regard to the review the membership and basis for election for the 2001 local authority elections.

2. Background

The Local Government Commission (the Commission) Hearing into the Wellington Regional Council triennial review of membership and basis of election was held in the Council Chamber on 19 December 2000. As required by the Local Government Act, the Commission has now released its Determination.

The Commission Determination (**Attachment 1**) results in the following representation for the 2001 local authority elections:

Kapiti Constituency	1 member
Porirua Constituency	1 member
Wellington Constituency	5 members
Lower Hutt Constituency	3 members
Upper Hutt Constituency	1 member
Wairarapa Constituency	2 members

The Council's proposal was for Porirua to be represented by two elected members and the Wellington City community of interest to have three constituencies.

3. Comment

3.1 *Wellington Constituency*

The Local Government Commission Determination found that, as there was no evidence of Wellington City being three communities of interest for regional purposes, it did not agree to the division of Wellington City into three constituencies.

It should be noted that 3 years ago the then Commission considered a proposal to split Wellington into two constituencies. In 1998, while accepting in principle the ability to split a community of interest into more than one constituency to achieve more effective representation, the Commission rejected the Council's proposal because fair representation could not be achieved because, in the Commission's view, the member to population ratios of the proposed two constituencies were too dissimilar. This was despite the proposed Wellington constituencies being within the range of member to population ratios elsewhere in the Region.

Councillors will recall that "effective representation" means to set the number of constituencies and their boundaries to ensure that the communities of interest are represented. "Fair representation" means that a vote in each part of the Region is of approximately of equal value.

While the LGC is within its rights to decide that Wellington City remain a single constituency, this latest decision does present the Council with a problem when the next constituency review is conducted in two year's time. Can a community of interest be divided into several constituencies to achieve effective representation? The 1998 Determination suggests "yes", while the 2001 Determination suggests "no".

3.2 *Porirua Constituency*

The Commission spent the greater part of its determination addressing the issue of representation for the Porirua Constituency. The Commission, after examining a number of different weightings, judged that when compared with Kapiti, the Porirua Constituency was over-represented. The Commission has therefore reducing Porirua's representation to one elected member.

Councillors will recall that the issue of Porirua's representation was specifically discussed by the Constituency Review Subcommittee, which recommended to Council that two elected members be retained. That was also the subject of strong representation from Porirua City Council.

The Commission reminds the Council that when determining the number of elected members the only consideration is fair representation – not the operational requirements of the Council. This again conflicts with the Determination in 1998 which included the following statement:

"The Council itself provided sound evidence that a reduction in Council numbers could lead to some problems with effective management of the region."

3.3 *Highest Remainder Method*

The Commission has noted that the method used by the Council to allocate elected members to constituencies (Highest Remainder method) “*departs significantly from the method used by the Commission*” – rounding to the nearest whole number. The Commission, while stating that “*a different system is not in itself a bad thing*”, “*does not believe that the particular method used (ie highest remainder) results in fair representation between wards*”. This amounts to a criticism of the outcome, not the method.

Highest remainder method was adopted by the Council in 1994 as the result of a submission from a member of the public. That submission pointed out that simple rounding is not consistent as the desired total number of elected members cannot be guaranteed. Some times there will be too few and some times there will be too many. The submitter suggested the system of allocating representation used by the United States House of Representatives. On the basis of this submission the Council approved the use of the highest remainder system – a system that is easier to explain to the public.

The Commission would have been faced with an interesting dilemma if rounding had suggested a 15 member Council. (The Council is legally prevented from having more than 14 elected members.) It should also be noted that no criticism of the highest remainder method was made in the 1998 Determination.

3.4 *Review of the Determination*

Section 37ZE of the Local Government Act provides that:

“37ZE. **Appeal against decision of Commission on question of law** – (1) Where in relation to any proceedings before the Commission, -

- (a) Any party to those proceedings; or
- (b) The Minister –

is dissatisfied with any decision of the Commission in those proceedings as being ***erroneous in point of law***, that party or the Minister may appeal to the High Court on that question of law.

(2) The decision of the high Court on any such appeal shall be final.

(3) Subject to sections 37ZF to 37ZM of this Act, every appeal under this section shall be dealt with in accordance with rules of Court.

(4) For the purposes of this section and sections 37ZF to 37ZM of this Act, every local authority affected by the decision and every person who has made submissions to the Commission in the proceedings shall be deemed to be a party to the proceedings before the Commission.

(Emphasis added.)

The Act provides that appeals should be lodged within one month of the Commission’s Determination.

Officers have sought legal advice on whether the Commission Determination contains any erroneous points of law on which an appeal to the High Court could be made. The Council's legal advice (**Attachment 2**) agrees with the officers' views that no valid grounds for appeal exist.

4. Communications

The Commission has publicly notified its Determination, as required by the Local Government Act, and an article explaining the outcome of the Determination will be included in the next issue of *Elements*.

5 Recommendation

That the Report be received and the contents noted.

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