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JWT:BJM

Ref:

30 March, 2001

Mr E.P. Maguire  
Secretary  
Wellington Regional Council  
P.O. Box 11 646  
WELLINGTON

Dear Sir,

### CONSTITUENCY REVIEW

1. Thank you for your email of 29 March 2001 enclosing a copy of the determination of the Local Government Commission dated 27 March 2001 of the membership and basis of election for the next general election of the Council to be held on 13 October 2001.
2. I confirm that, subsequently, I received a copy of Councillor Gibson's letter/memorandum of 29 March 2001 to the General Manager raising the question of challenging the Commission's determination by way of appeal.
3. I confirm my earlier oral advice that I do not consider there are adequate grounds to challenge the Commission's determination. I set out my reasons briefly.
4. The right to challenge any determination of the Commission is to be found in section 37ZE of the Local Government Act 1974. Such a right is exercisable only by a party to such proceedings as are subject to challenge. Pursuant to section 37ZE(4) every local authority affected by the decision is deemed to be a party. The Wellington Regional Council is therefore competent to appeal the Commission's determination of 27 March 2001.
5. The only ground of appeal is that the decision of the Commission is erroneous in point of law. To succeed, therefore, it would be necessary for the Council to identify a relevant point of law and persuade the High Court that the Commission's determination of that point of law was erroneous.
6. It is not uncommon for legislation to provide that appeals from specialist tribunals are to be limited to errors of law. A similar limitation is to be found in the Resource Management Act 1991 in respect of any appeal from a decision of the Environment Court. Of particular note, in that regard, are successive recent observations by both the High Court and the Court of Appeal of a regrettable tendency – to be discouraged – of

dissatisfied litigants seeking to prosecute an appeal on the merits in the guise of an appeal on a point of law. Also to be discouraged were appeals alleging an error of law in that a particular finding is not supported by any evidence (the absence of evidence to support a finding of fact being an error of law).

7. Whilst there are aspects of the determination which might be criticised, none of these, in my opinion amounts to an error of law. The Commission correctly sets out the relevant statutory provisions to be applied in making its determination. It then proceeds to make its determination on the basis of those provisions, i.e. it applies the correct legal principles.
8. Critical to the Commission's ultimate determination are its decisions that the focus of the residents in Tawa was predominantly southwards to Wellington City rather than northwards to Porirua City, and the absence of any separate community of interest of the proposed constituencies within Wellington City itself. Whilst each of these decisions may be arguable on the merits, they involve no question of law. The calculations which the Commission then makes (for the purposes of determining numerical representation) are based on these prior decisions. Again, they involve no error of law given the prior decisions themselves are not challengeable as being erroneous in law.
9. Accordingly, there is no proper basis upon which the Council could challenge the determination by the Commission.
10. I am happy to answer any further queries if that is necessary.

Yours faithfully  
**OAKLEY MORAN**



**J.W. Tizard**