

6. UNDERTAKING OF REPRESENTATION REVIEW IN 2006 AND ESTABLISHMENT OF MAORI WARD/S

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PURPOSE OF REPORT

1. The purpose of this report is to outline the processes and timeframes relating to:
 - a possible further review of Council representation arrangements prior to the 2007 local elections;
 - the possible establishment of one or more Maori wards for electoral purposes;and to advise that the Council cannot carry out an election review in 2006 for the 2007 Council election.

EXECUTIVE SUMMARY

2. The Local Electoral Act 2001 sets out the processes and timeframes local authorities are required to comply with when undertaking representation reviews and considering the possible establishment of Maori wards.
3. These two processes are closely linked and are reasonably involved.

FINANCIAL AND LEGAL CONSIDERATIONS

Financial Considerations

4. If the Council could undertake a further electoral review prior to the 2007 local elections, there would be some additional expenditure involved, relating mainly to the cost of the associated public consultation (for example, seeking public input via a special edition of the City Scene). The cost of such consultation and other associated expenditure is estimated at approximately \$20,000. No specific provision has been made for such expenditure although it could have been met from existing budgets. If there was to be a poll on the possible establishment of Maori wards, the cost of such a poll would amount to approximately \$200,000. No provision has been made for a poll of this type.

Legal Considerations

5. The main elements of the local electoral legislative framework are the Local Electoral Act 2001, the Local Electoral Regulations 2001 and the Code of Good Practice for the Management of Local Authority Elections and Polls. In 2002 the Local Electoral Act was amended to include the representation review provisions, which had previously been contained in the Local Government Act 1974.
6. Sections 19A to 19Y of the Local Electoral Act set out different representation arrangements for territorial authorities and regional councils. Territorial authorities have:
 - A membership between 6 and 30 (including the Mayor)
 - A mayor who is directly elected
 - A choice of "at large" wards, or a mixture of both
 - The discretion to establish community boards
7. Sections 19H and 19I of the Act provide that councils must review their representation arrangements at least every **six** years. Reviews are to be undertaken based on the Act's principle of local decision-making ensuring "fair and effective representation for individuals and communities" following any decisions on the electoral system and the establishment of Maori wards/constituencies.
8. The Christchurch City Council undertook its last representation review in 2003, in time for the 2004 local authority elections. It is therefore **not** legally required to carry out its next review until 2009, in time for the 2010 elections.

STAFF RECOMMENDATIONS

It is recommended that the Council:

- (a) Note the contents of this report.
- (b) Not undertake an electoral review in 2006 (for the 2007 triennial election) for the reasons set out in this report.
- (c) Carry out its next electoral review by 31 August 2009, for the 2010 triennial election.
- (d) Consider the issue of the establishment of a Maori Ward by November 2008 in time for the August 2009 review.

BACKGROUND ON UNDERTAKING OF REPRESENTATION REVIEWS AND ESTABLISHMENT OF MAORI WARD/S

9. Twenty-eight councils undertook representation reviews prior to the 2004 elections and the remaining 58 councils are required to undertake reviews prior to the 2007 elections. Any of the 28 councils that undertook reviews for the 2004 elections may decide to undertake a further review prior to the 2007 elections but are not obliged to do so. Councils that undertake reviews for the 2007 elections must notify their initial proposals by 8 September 2006.
10. Twenty-three of the 28 reviews undertaken prior to the 2004 elections were appealed to the Local Government Commission. In these 23 Determinations, the Commission:
 - Reduced, or further reduced, the membership of nine councils.
 - Confirmed reductions in the membership of eight councils.
 - Confirmed the status quo in the membership of five councils.
 - Increased the membership of one council.
11. In 2004 an application was made to judicially review a Commission decision which substituted an electoral model for the model resolved by the Christchurch City Council. The Council had proposed eight wards with two members each, but the Commission reduced this to six wards with two members each. The High Court dismissed the claim.

JUSTICE AND ELECTORAL SELECT COMMITTEE: INQUIRY INTO 2004 LOCAL AUTHORITY ELECTIONS

12. The Local Government Commission's decision relating to Christchurch City was the subject of several submissions to the Justice and Electoral Select Committee, in the course of its inquiry into the 2004 elections.
13. The Select Committee's report and recommendations will be the subject of a separate report to the Council.
14. To give effect to these recommendations from the Select Committee will require legislative change by Parliament.

LOCAL GOVERNMENT COMMISSION - INITIAL REVIEW OF LOCAL GOVERNMENT ACT 2002 AND LOCAL ELECTORAL ACT 2001

15. The Local Government Commission has recently reviewed the operation of both the Local Government Act 2002 and the Local Electoral Act 2001, and reported to the Minister of Local Government on any amendments which the Commission considers necessary. With respect to representation reviews, the Commission has recommended that:
 - (a) all consecutive statutory deadlines under Part 1A of the Local Electoral Act 2001 should be moved forward by three months, and the final date for forwarding appeals and objections on representation reviews to the Commission under section 19Q should be changed to 15 October in the year preceding the triennial election of members, with the Commission continuing to have until 10 April in election year to issue its determinations;
 - (b) the Commission, in its determinations on representation arrangements under Part 1A of the Local Electoral Act 2001, should be able to prescribe community board delegations to apply for the next triennium.

These recommendations by the Commission would need legislative change.

PROPOSED ABOLITION OF BANKS PENINSULA DISTRICT AND ITS INCLUSION IN CHRISTCHURCH CITY

16. In August 2005 the Local Government Commission issued a final reorganisation scheme for the abolition of Banks Peninsula District and its inclusion in Christchurch City. A poll of Banks Peninsula electors will be held on 19 November 2005 to determine the level of support for the proposal. If the majority of electors support the proposal an election will be held on Saturday 25 February 2006 to elect one additional Christchurch City Councillor, representing the Banks Peninsula Ward and the elected members of the Lyttelton-Mount Herbert Community Board and Akaroa-Wairewa Community Board.

17. Should the reorganisation scheme proceed as a result of the poll on 19 November, the provisions of the Reorganisation Scheme would make it legally impossible for this Council to conduct a full representation review covering the whole of the enlarged city until prior to the 2010 elections.
18. In its Introductory Statement attached to the "Reorganisation Scheme For The Abolition of Banks Peninsula District And Its Inclusion In Christchurch City" issued in August 2005 by the Commission, the Commission stated, at paragraphs 10 and 11 of that Introductory Statement:

"10 The Commission has determined that the area of the Banks Peninsula District should form the Banks Peninsula Ward of the enlarged Christchurch City.

11 In accordance with clause 59(2) of Schedule 3 of the Act the Commission has determined that the boundaries and membership of the Banks Peninsula Ward may not be altered within a period of three years. The effect of this decision is that the Christchurch City Council would have its first opportunity to review the ward arrangements in the Banks Peninsula area in a representation review undertaken for the 2010 local elections. The Commission is of the view that this decision will provide certainty for the electors of Banks Peninsula during the transition period for the enlarged Christchurch City."
19. The effect of the Commission's decision regarding Banks Peninsula is that if the Council was to choose to carry out a representation review in 2006 (for the 2007 elections), such a review could only be done for the existing Christchurch City, and could not include the Banks Peninsula Ward. That would also mean that the Council would be required to carry out another review in 2009 (for the 2010 elections) to bring reviews of the Banks Peninsula Ward in line with the reviews of the City wards.
20. The Local Electoral Act 2001 does not permit a territorial authority to carry out an election review of just part of its district. One of the options that must be considered in such a review is whether to have Councillors elected at large across the **whole** district. There is no provision in the Act to have a review of part of the district.
21. Consequently staff advice to the Council is not to carry out a review in 2006 because of the Commission's decision to not alter the boundaries and membership of the Banks Peninsula Ward for three years, and that the Council carry out a review in 2009 for the whole of the enlarged City so that the governance issues of the enlarged City can be considered comprehensively. The Local Electoral Act requires that the review of 2009 must include the number of Councillors, wards and community boards.

ESTABLISHMENT OF MAORI WARDS

22. The Maori ward provisions in the Local Electoral Act are not mandatory. The Government sees their establishment as requiring public engagement and support, and should be seen within the overall context of engagement that the Local Government Act seeks to create between local authorities and Maori. The option does not preclude any other mechanisms to enhance representation, such as the STV electoral system, appointments to committees and memoranda of understanding with iwi/hapu.
23. The legislation allowing for the establishment of Maori wards did not come into effect until 25 December 2002. This meant that there was no opportunity for the Council to consider, within the required timeframe, this matter and, if so inclined, to pass the necessary resolution by 31 August 2003 in order for it to take effect for the 2004 local authority elections.
24. The decision to establish Maori wards for electoral purposes can be initiated in two ways:

 - (a) A local authority may resolve that its district be divided into one or more Maori wards; or
 - (b) A poll of electors of the local authority be held to determine the issue.
25. A poll can arise from either:

 - (a) A public demand; or
 - (b) A Council decision.

26. Although there is no mandatory requirement for the Council to consider the establishment of Maori wards, if the decision is taken to establish such wards there is a legislative process and timeframe that must be followed.

Establishment of Maori Wards by Council Resolution

- (a) The Council may resolve to establish one or more Maori wards for electoral purposes at any time. However, the timing of that resolution determines when the decision comes into effect.
- (b) As noted above, staff advice is that the Council not hold a triennial review for the 2007 election so the issue of a Maori ward would be an issue that could be addressed as part of the review for the 2010 election. Any decisions by the Council to establish a Maori ward for 2010 would need to be made by 23 November 2008.
- (c) If the Council resolves to establish Maori wards it is required to give public notice of the right of electors to demand that a poll be held on whether the city should be divided into one or more Maori wards. That public notice is required to be given within seven days of the Council's decision.
- (d) If a valid demand is received a poll must be held in accordance with the provisions of the Local Electoral Act 2001. The result of any poll is binding on the Council.

Demand for Poll by Electors on Establishment of Maori Wards

- (a) Five per cent or more of the electors of Christchurch City may, at any time demand that a poll be held to determine whether the city should be divided into one or more Maori wards. If a valid demand from electors is received the Council is required to hold a poll. The result of any poll, held either as a result of an electors' demand or a Council decision, is binding.
 - (b) If a valid demand for a poll on the possible establishment of Maori wards is received before 28 February in the year before the next triennial election the poll must be held within 82 days of notice having been given to the Electoral Officer that a poll is required (ie by 21 May 2006 at the latest in the case of the 2007 election). If the poll is held before 21 May the decision of the poll takes effect at the next triennial election (ie in 2007).
 - (c) If a valid demand is received after 28 February in the year before the next triennial election (ie from 1 March 2006 onwards) the poll required by the demand must be held after 21 May in that year. The result of a poll held during this period does not take effect until the 2010 triennial election.
 - (d) If a decision is taken to establish Maori wards, either by Council resolution or as the result of a poll, legal advice is that legally the Council could establish a Maori ward for the 2007 election separate from a city-wide election review.
27. The cost of running a stand-alone poll on the establishment of Maori wards would be in the vicinity of \$200,000 and no provision has been made for this expenditure. A preliminary calculation based on the formula set out in the legislation indicates that, based on the current membership of 12 members (excluding the Mayor) only one Maori ward member could be elected to the Christchurch City Council, and that such member would have to be elected from one city-wide ward.

CONCLUSION

28. Given the comments above regarding the fact that the Council cannot review the Banks Peninsula Ward until 2009 and that the Local Electoral Act does not permit a review of only part of the City, it is considered appropriate for any consideration of a Maori ward to be carried out at the same time as a general review by the Council of all the wards in the enlarged City which must be completed by 31 August 2009. Accordingly, staff advice to the Council is that the Council not resolve to divide its district into one or more Maori wards at this point in time as such a decision to establish a Maori ward should be carried out in the context of a review of all of the Council wards generally.