

**The Proposal to Establish  
a Maori Constituency**

**for**

**Environment B-O-P  
(The Bay of Plenty Regional Council)**

**Report from  
Hearings Commissioner**

**Judge Peter J Trapiski, CBE, KSS, LLB, MBS, FCI Arb(London), FAMINZ**

**6 August 1998**

*Peter J. Leitch*

The Proposal to Establish a Maori Constituency

Executive Summary

1. Maori people comprise some 28% of the total population of the Bay of Plenty as compared with Maori being 14% of the total New Zealand population. In some parts of the Bay of Plenty the proportion of Maori is much higher; within the Whakatane district it comprises some 40% of the population; in Opoitiki it is 54%; and in Kawerau, Maori are 48% of the total population.

2. There are currently no Maori on the Bay of Plenty Regional Council. In the past, some Maori have been elected to the Council, but none have yet been able to be re-elected to a second term.

3. There is a widely held perception among Maori in the Bay of Plenty that they are "unrepresented" on the Regional Council.

4. Submissions received in response to the Council's invitation for people to become involved in a consultation process on its proposal to establish a Maori constituency resulted in strong support being shown by Maori in particular. They have strongly indicated a desire to be involved in local government, particularly at a regional level, and in the management of the environment.

5. The validity of the proposal should be considered primarily and essentially against the constitutional law of New Zealand, particularly that which effects the delivery of democracy in this country.

6. Since 1867 it has been an essential part of New Zealand's electoral process and its constitutional law, that Maori have a privileged position in the government of this country. That position and those laws were reviewed as recently as 1993, but 6 years ago. Despite positive moves to abolish the Maori seats in New Zealand's House of Representatives, the Government confirmed the constitutional position of Maori, and then increased the number of Maori seats in Parliament, to ensure that they more truly represented the proportion of Maori to that of the general population.

7. The proposal for a Maori Constituency of the Bay of Plenty Regional Council is in conformity with the principals enunciated by the Royal Commission on the Electoral System, and the provisions of the Electoral Act 1993. It is therefore considered to be constitutionally sound, paralleling and reflecting the delivery of democracy in the government of New Zealand.

8. I therefore recommend that the Bay of Plenty Regional Council continue to promote the establishment of a Maori constituency in accordance with the proposal under consideration.

*Peter Leitch*

6 August 1998

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Bay of Plenty Regional Council

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My Terms of Reference

On 3 June 1998, I was appointed a Hearings Commissioner to conduct hearings and to report on the proposal to establish a Maori constituency for the Bay of Plenty Regional Council.

My brief was to:-

1. Consider all the written submissions made as part of the public consultative process.

2. Conduct hearings of all those who have requested to be heard and who still wish to do so.

3. Having regard to the arguments developed and the points raised in the written and oral submissions and the constitution and laws of New Zealand and the principles of the Treaty of Waitangi, report to the Chairman of Environment B.O.P. on whether or not Environment B.O.P. should proceed to promote a local Bill to establish a Maori constituency for the Bay of Plenty Regional Council (Environment B.O.P.).

My Inquiry

After some preliminary reading, I conducted oral hearings over a period of seven days in Tauranga, Rotorua, Whakatane and Opoitiki. After reviewing those submissions and the other matters detailed in my brief I now report.

Background

The 1996 statistics indicate that 28% of the population of the Bay of Plenty has identified as Maori - as compared to 14% of the New Zealand population. In some parts of the Bay of Plenty the proportion of Maori in the population is much higher. Within the Whakatane district Maori comprise some 40% of the population; in Opoitiki it is 54% and in Kawerau it is 58%. In Tauranga it is 16%.

The Bay of Plenty Maori population is expected to increase by 47% (30,500 people) by the year 2021. It represents the second largest growth rate in the country.

The Council has an Iwi Liaison Officer and three Maori liaison committees, but none of the Council's existing 11 seats is occupied by Maori.

Although the high proportion of Maori people should ensure their representation on the Council, it simply has not worked that way. For whatever reason, apathy, distrust of a "pakeha" system, the belief they do not stand a chance, or anti Maori prejudice, Maori are not being elected on to the Council.

For some years there has been the perception, particularly among Maori that:

- there is no Maori representation at the Council table;
- the present system of election to the Regional Council with constituencies based only on area and population, does not properly recognise the high proportion of Maori people living in the Bay of Plenty;
- direct representation would enable the Council to have a greater understanding of its responsibilities to Maori people under the Resource Management Act and would also give Maori people a greater understanding of sustainable management of the environment;
- direct representation would guarantee increased Maori participation in local government activities.

In 1996, the three Maori Regional Representation Committees set up a working party to investigate the establishment of a Maori electoral constituency. A report was prepared and presented to the Resource Planning Committee at its meeting on 28 November 1996. Subsequently a report from the Resource Planning Committee was considered by the full Council and as a result the Council established a working party consisting of

- three representatives from the Maori Representation Committees;
- the Chairperson of the Council;
- the Chairperson of the Resource Planning Committee; and
- the General Manager,

to consider the matter. That working party recommend to the Council that it publicly notify its proposal to establish a Maori constituency and follow the public consultative procedure set out in section 716A of the Local Government Act which allows one month for the public to make submissions on the proposal and giving those who make submissions the right to be heard, if they so desire it.

The Proposal

In essence, the Proposal is to promote a local Bill through Parliament to change the existing provisions for the election of members to the Council. Each voter in the Bay of Plenty region would choose whether they wanted to be on the General roll or the Maori roll. The General roll voters would elect councillors in either the Tauranga, Western Bay of Plenty, Rotorua, or Eastern Bay of Plenty, just as they do now. The Maori roll voters would vote for one councillor in either the Western Bay of Plenty, Rotorua, or Eastern Bay of Plenty areas, depending on where they lived; they would elect representatives for the Maori rohe or ward. These representatives could be Maori or non Maori, but could be voted for only by people on a Maori roll.

The Proposal is not intended to affect the 1998 local body elections and, if accepted, would mean the following changes to representation on the Council:

**Number of Members**

Area	Prior to the Proposal	If the proposal was implemented
Tauranga	3	3 general
Western BOP	2	2 general
Rotorua	3	2 general
Eastern BOP	3	2 general
<b>Total:</b>	<b>11</b>	<b>12</b>

The Proposal is not entirely new. In the 1980s special legislation was passed to provide for Maori membership of the Auckland Regional Authority by creating constituencies reflecting not only the general electoral districts within the region but the Maori electoral districts (or parts of those districts) as well. But that electoral system was repealed during the 1992 local government reforms.

The Consultation Process

The Proposal was publicised by means of a brochure and potential submitters were told that a committee of the Council would consider all of the submissions, hold a public hearing if needed and make a recommendation to the full Council meeting on 21 May 1998. At that meeting, a decision would be made by Council to either proceed or not to proceed.

Some 760 written submissions were received in favour of the proposal and 252 against. Of those, some 139 for the proposal and 18 of those against the proposal indicated that they wished to be heard.

In general the submissions reflected a very strong desire of Maori to proceed with the Proposal.

I was then appointed as a Hearings Commissioner on the terms of reference set out above.

#### Distribution of Pamphlets

Concern was expressed about the consultation process, and the numbers who responded. It was said that the proportion of submissions received in support of the proposal was skewed because the distribution of the pamphlet was restricted; that it was made available to some ratepayers, but not to all, and that it received maximum publicity among the Maori population.

Section 716A of the Local Government Act does not require the Council to poll each and every ratepayer. It simply prescribes a consultative procedure. It is in no way a referendum and the results of the process cannot be taken as expressing the view of the electorate. The process was undertaken to better advise the Council on the Proposal which it then would have to decide upon. To that extent I believe the process has been helpful, but there the matter must remain. It can be taken no further.

#### The Arguments For the Proposal

Views from those who were in favour of the Proposal may be summarised as:-

- The partnership role under the Treaty of Waitangi dictates that Maori should be provided with an elected voice on Council.
- There is no Maori representation amongst the political members of the Council.
- There would be better communication between all parties.
- Maori issues and concerns would be given more consideration.
- Active participation of iwi at all levels of governance should be supported.
- No matter how well intentioned, a Pakeha cannot be a Maori at heart.
- The majority of the natural resources are owned by tangata whenua. Maori hapu and iwi should be given the confidence to participate.
- It is the only effective method to guarantee Maori representation.
- It provides an imaginative opportunity for justice.

The major argument in support of the Proposal was that none of the Council's existing 11 seats are occupied by Maori, despite strong Maori population in the Bay of Plenty.

The Arguments Against the Proposal

Those who were against the proposal said:

- There is nothing to stop Maori standing for Regional Council.
- Councillors should stand on their own merits.
- The basis of democracy will be undermined.
- New Zealanders should be treated equally.
- The present system seems fair and democratic.
- It will create another area of conflict.
- We are one land and one people.
- We want to keep the costs of local government down.
- It will promote separateness; will lead to apartheid
- The proposal is racist and extra-ordinarily divisive.

Considerations

Although one of the people who had opposed the Proposal in his written submission, on the basis that it was undemocratic, actually withdrew from the opportunity to be heard when he heard of the number of submissions which favoured the proposal - he declared that he must remain true to his "democratic principles" - I do not accept the results of the consultation process in that way. I suggest that the number of people who indicated their support for the Proposal cannot be taken as an indication of what might happen if there was a referendum on the matter. It cannot be regarded as a mandate. So in evaluating the Proposal I prefer to disregard the numbers, and instead to look to the constitutional issues. They are of prime importance in my view in considering whether or not the Proposal should be promoted.

Democracy

The overriding view of those submissions received against the Proposal criticise it as being "undemocratic". Their views are probably encapsulated in the words of the Member of Parliament for Tauranga who is reported as having said:

*If Maori, or for that matter women or farmers, want their representatives on the council then they should vote for them. That is called democracy. People should be elected to representative positions based on merit, not race.*

*Why would you want to change the normal democratic process, particularly when as a result of that process, in the past, Maori representatives have been elected?*

A cynic may regard that statement as ironic, coming from the Leader of New Zealand First which achieved its position within the governing coalition by taking one General seat and the five Maori seats, but democracy is far more important than that.

I found it difficult to get any of the people who presented submissions against the Proposal to define what they meant by Democracy, but if one is to define it as:

*Government by the people; that form of government in which the sovereign power resides in the people as a whole, and is exercised either directly by them or by officers elected by them.*

as it is in the Oxford English Dictionary, then it is difficult to see how 3 Maori representatives out of a total of 12 members on the Regional Council can be undemocratic, when 28% of the population in the Bay of Plenty are Maori.

It has been suggested that if a Maori constituency is to be established, then a similar provision should be made for the Forest and Bird Society, or the Institute of Surveyors and Engineers, or any other group which has a direct interest in the environment and its management. But none of these groups comprise 28%, and more, of the population; nor do they have solemn treaty obligations with the Crown.

It seems to me that however we regard Democracy personally, the Council in considering the Proposal ought to be guided by the fact that since 1867 the delivery of democratic government in New Zealand has been effected by a system in which there have been Maori electorates, and seats in the House of Representatives reserved specifically for people who enrol on the Maori roll. I suggest that Council must further be persuasively guided by the fact that this situation was reviewed in 1986, by a Royal Commission, the Royal Commission on the Electoral System, and that it regarded the Maori seats

*as an important symbol to Maori people of their special status as the indigenous people of New Zealand.*

Far from recommending the abolition of those Maori seats, the Royal Commission considered that four seats were inadequate to ensure proper Maori representation.

The Commission said:-

*Although they were not set up for this purpose, the Maori seats have nevertheless come to be regarded by Maori as an important concession to, and the principal expression of, their constitutional position under the Treaty of Waitangi. To many Maori, the seats are also a base for the continuing search for more appropriate constitutional and political forms through which Maori rights (mana Maori in particular) might be given effect. It is because of this that many Maori who opt to go on to the General roll continue to*



support the retention of the Maori seats. It is in this context that Maori views concerning the seats should be understood.

and it then continued:-

*These principles constitute what we believe to be the conditions under which an important minority might reasonably expect to enjoy a just and equitable share of political power and influence in a decision-making system which is subject to the majority principle and over which the political parties hold sway.*

These statements, made by a Royal Commission of Inquiry, eloquently summarise the submissions of the people of the Bay of Plenty who favour of the Proposal, and in 1993 they became part of the electoral law of New Zealand. Section 45 of the Electoral Act 1993 provides for Maori Electoral Districts to be established in order to provide just representation for Maori people on the basis of the proportion which the Maori population bears to the general population of this country. As a result, there are currently 5 Maori seats; in the next election there will be 6.

This must be seen as Parliament's declaration concerning the way in which democracy is to be delivered in New Zealand. The Proposal under consideration appears to be in total conformity with that declaration, and may therefore be regarded as constitutionally sound and democratic. It is in accordance with New Zealand constitutional principles and law, and in conformity with a Royal Commission of Inquiry on the topic. It is the way people are elected to the House of Representatives in this country.

To put it another way, Maori in this country are accorded specific rights to elect their own Members of Parliament; that system of representation and democracy has recently been reviewed. On that review it was it decided not only to retain the system as an integral part of New Zealand's democratic process, but it was in fact extended from four to five seats so as to have a greater regard to the proportion of the Maori population bears to others in the New Zealand electorate. And it is to be further extended at the forthcoming election.

### Separatism

Another argument against the Proposal, was that would lead to separatism, or apartheid. That view is not shared by Maori. They say the implementing of the Proposal would in fact heal the wounds of separatism; it would emphasise the concepts of partnership and of proportional representation. It would get to the Council table people who were truly representative of the population at large, and once those representatives get to the Council table, they would become part of a team which would together work on the business of the Council.

But if the Proposal is an illustration of separatism, then so must be the present system of election of representatives from within a ward, or an electorate.

#### A Privileged Position for Maori

Whilst the Proposal is based on the privileged position of Maori in New Zealand, it would give Maori no more voting power than the general population. Like everyone else, Maori will have only one vote. Those who elect to go on to the Maori roll are committed to voting on that roll, for one of the candidates offering themselves for election in their particular ward of the Maori Constituency. They are able to vote only for candidates offering themselves in that ward, and they have only one vote.

#### Single Transferable Vote (STV) System

It was said that this system of election (STV) was a truly proportional representative method, which will achieve true representation for Maori, and it was suggested that the Council should wait until this system became established.

You may consider that STV would achieve better representation for Maori but whether or not this system will be introduced, is a matter of conjecture at this stage, especially in the present political environment. The possibility of the introduction, and then the adoption of this system cannot, I suggest, be a reason to allow for the postponement of the recognition of Maori people's rights to direct representation in accordance with New Zealand's constitutional principles. It may be that STV or a similar system may be effected later, but that is a matter for conjecture.

#### Cost

The cost of the Proposal is the subject of a separate paper from the General Manager. I merely wish it to be noted that I have been told that the cost of effecting the Proposal is likely to be small, relative to the annual turnover of the Council, such that cost may not be a major issue.

#### Conclusions

1. For whatever reason, the fact is that in some places 16% of the population in the Bay of Plenty, and in others, up to 58% of that population, clearly perceive that they are unrepresented at the Council table.

2. Adoption of the Proposal would deliver to Maori the same voting rights as others. Their electoral rights would be no greater than those afforded to any other voter in the Region and I can see no way in which the Proposal would enable Maori to "outvote" the other members of the Regional Council as a block. The Proposal would in my view not disadvantage anyone.

3. The Proposal is in conformity with the delivery of the democratic process in New Zealand, and in conformity with New Zealand's constitutional principles.

Recommendations

I recommend that the Bay of Plenty Regional Council should continue to promote the establishment of a Maori Constituency in accordance with the Proposal under consideration.

*Alan Curtis*

6 August 1989