



## LOCAL GOVERNMENT COMMISSION

### Determination

of the representation arrangements to apply for  
the election of the Bay of Plenty Regional Council  
to be held on 13 October 2007

#### Background

1. The Bay of Plenty Regional Council (the Council) elected at the 2004 local election comprises 14 councillors. The 14 councillors were elected as follows:

<i>General Constituencies</i>	Population*	No. of councillors per constituency	Population per councillor	Deviation from general constituency average population per councillor	Percentage deviation from general constituency average population per councillor
Western Bay of Plenty	42,000	2	21,000	+2,182	+11.59
Tauranga	84,916	4	21,229	+2,411	+12.81
Rotorua	49,308	3	16,436	-2,382	-12.65
Eastern Bay of Plenty	31,388	2	15,694	-3,124	-16.60
<b>Totals</b>	<b>207,000</b>	<b>11</b>	<b>18,818</b>		
<i>Māori Constituencies</i>	Population*	No. of councillors per constituency	Population per councillor	Deviation from average Māori electorate population per councillor	Percentage deviation from average Māori electorate population per councillor
Mauao	18,825	1	18,825	+1,058	+5.95
Kohi	17,789	1	17,789	+22	+0.12
Okurei	16,712	1	16,712	-1,055	-5.93
<b>Totals</b>	<b>53,300</b>	<b>3</b>	<b>17,767</b>		
<b>REGION TOTAL</b>	<b>260,300</b>				

\*These figures are rounded 2005 population estimates provided by the Government Statistician.

2. In 2003, the Council undertook its first review under the provisions of the Local Electoral Act 2001 (the LEA) and was the only regional council to do so. The review was also subject to the provisions of the Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001 (the MCEA). The Council was not

required to carry out a review in 2006, however it decided to undertake one because it considered:

- 14 councillors was too many for the population and work required of the Council;
  - the effect of rapid population growth meant more frequent reviews were needed;
  - the Commission's 2004 determination was significantly different from that which the Council had originally promoted, and boundaries were manipulated in a haphazard way;
  - there was a need to identify communities of interest that reflect the current Bay of Plenty Region; and
  - a lesser number of councillors might assist in building a more efficient and effective governance team.
3. On 6 June 2006, the Council resolved its initial proposal, under section 19I of the LEA, which can be illustrated as follows:

<i>General Constituencies</i>	<b>Population*</b>	<b>No. of councillors per constituency</b>	<b>Population per councillor</b>	<b>Deviation from general constituency average population per councillor</b>	<b>Percentage deviation from general constituency average population per councillor</b>
Western	111,900	4	27,975	+2,100	+8.11
Rotorua	46,800	2	23,400	-2,475	-9.56
Eastern	48,900	2	24,450	-1,425	-5.50
<b>Totals</b>	<b>207,000</b>	<b>8</b>	<b>25,875</b>		
<i>Māori Constituencies</i>	<b>Population*</b>	<b>No. of councillors per constituency</b>	<b>Population per councillor</b>	<b>Deviation from average Māori electorate population per councillor</b>	<b>Percentage deviation from average Māori electorate population per councillor</b>
Taimoana	26,300	1	26,300	-200	-0.75
Tuawhenua	26,700	1	26,700	+200	+0.75
<b>Totals</b>	<b>53,000</b>	<b>2</b>	<b>26,500</b>		

\*These figures are rounded 2005 population estimates provided by the Government Statistician.

4. In notifying its initial proposal, the Council described the proposed general constituencies as follows:

General Constituency	Communities of Interest
Western	Encompasses all of Tauranga City as well as the western part of the Western Bay of Plenty District.
Rotorua	Encompasses that part of the Rotorua District that is within the Bay of Plenty Region.
Eastern	Encompasses the Whakatane, Kawerau and Opotiki Districts and that part of the Taupo District that is within the Bay of Plenty Region, as well as the eastern portion of the Western Bay of Plenty District including Te Puke.

5. The Māori constituencies were intended to reflect the coastal and inland geographical location of the Māori population in the Bay of Plenty, as follows:

Māori Constituency	Communities of Interest
Taimoana	Encompasses those Māori who live in either the western part of the Western Bay of Plenty, including Tauranga, and the Eastern Bay of Plenty excluding Kawerau and any others who identify as Māori who live in those areas.
Tuawhenua	Encompasses those Māori who live in the Rotorua, Kawerau and Te Puke areas and any others who identify as Māori who live in those areas.

6. The Council received 79 submissions on its initial proposal. Ten were in support and 68 in opposition, with one both supporting and opposing different aspects.
7. Submissions in support of the Council's proposal raised the following issues:
- the reduction in the number of councillors will provide an opportunity to cut costs;
  - the reduction in Māori and general seats is proportional and maintains the current percentage of influence; and
  - the proposal maintains recognised communities of interest, with some compromises, while complying with the +/-10% rule;
8. Submissions in opposition raised the following issues:
- the reduction in the number of councillors will reduce the representation of Māori;
  - population should not be the determining factor for representation and setting boundaries of constituencies;
  - the proposed communities of interest do not reflect the traditional communities of interest of district and city boundaries;
  - the Council was not required to undertake a review in 2006 and the existing arrangements should be left unchanged;
  - regional councils do not have to strictly adhere to the +/-10% rule (under the LEA). (Rotorua District Council, Tauranga City Council and Western Bay of Plenty District Council submitted along these lines.)
  - the Commission provided for three Māori seats in its 2004 determination.
9. Following consideration of the issues raised, the Council resolved its final proposal on 12 October 2006, which can be illustrated as follows:

<i>General Constituencies</i>	Population*	No. of councillors per constituency	Population per councillor	Deviation from general constituency average population per councillor	Percentage deviation from general constituency average population per councillor
Western Bay of Plenty	28,100	1	28,100	+2,225	+8.6
Tauranga	101,100	4	25,275	-600	-2.3
Rotorua	51,500	2	25,750	-125	-0.4
Eastern Bay of Plenty	27,000	1	27,000	+1,125	+4.3
<b>Totals</b>	<b>207,000</b>	<b>8</b>	<b>25,875</b>		
<i>Māori Constituencies</i>	Population*	No. of councillors per constituency	Population per councillor	Deviation from average Māori electorate population per councillor	Percentage deviation from average Māori electorate population per councillor
Taku Taimoana	28,100	1	28,100	+1,600	+6.03
Tuawhenua	24,700	1	24,700	-1,800	-6.79
<b>Totals</b>	<b>53,000</b>	<b>2</b>	<b>26,500</b>		

\*These figures are rounded 2005 population estimates provided by the Government Statistician.

10. In notifying its final proposal, the Council described the changes to the initial proposal as follows:

(a) general constituencies:

- the Eastern Bay Constituency would reduce in size and have one councillor. Its area would generally cover Opotiki, Whakatane urban and the Rangitaiki and Galatea Plains;
- the Rotorua Constituency would enlarge to include Murupara South, including Ruatahuna. Councillor numbers would remain at two;
- a Western Bay of Plenty Constituency would be established, generally following the boundaries of the Western Bay of Plenty District and have one councillor; and
- a Tauranga Constituency would be established, generally following the boundaries of Tauranga City, but including parts of Oropi, Pyes Pa and Omokoroa from Western Bay of Plenty District. This constituency would have four councillors;

(b) Māori constituencies:

- the main adjustment was in the Western Bay area, where the boundary between the two constituencies would now follow the Rotorua District and Western Bay of Plenty District boundaries. Both constituencies would have one councillor each.

11. The Council described the reasons for the amendments as follows:

- amendments to the general constituency boundaries and councillor numbers were made in response to submissions asking for a better reflection of communities of interest, particularly in the Western Bay of Plenty, Tauranga and Rotorua areas; and

- amendments to the Māori constituency boundaries were made to better reflect communities of interest in a two Māori constituency option.
12. The Council received 13 appeals and 31 objections against its final proposal. The main issues raised by the appellants and objectors concerned:
- the total number of councillors;
  - the number of general constituencies and how many councillors should be allocated to each;
  - the Māori constituencies, including the number and the disadvantages of reducing from the current three;
  - how to fairly reflect the region's communities of interest, including:
    - Eastern Bay of Plenty representation;
    - Western Bay of Plenty representation;
    - Whakatane District representation; and
  - how to achieve effective and fair representation, including taking into account factors such as land area and use, geography and environment, economic drivers and natural sub regions.

### **Hearing**

13. The Commission met with the Council and appellants/objectors at a hearing held in the Bay of Plenty Regional Council Chambers on 1 March 2007. The Council was represented by John Cronin, Chairman, Bill Cleghorn, Rotorua Constituency councillor, Miles McConway, Electoral Officer, and supported by Tai Eru, Okurei Constituency councillor.
14. The appellants/objectors who appeared at the hearing were: Anne Tolley, Derek Spratt from Bay of Plenty Federated Farmers, Tom Bayliss, Geoffrey Neilson, Judy Lamont from Kawerau and Districts Grey Power, Ray Whatmough, Warren Persson, Malcolm Whitaker, Colin Hammond, Barry Marshall, Maanu Paul from the Mataatua District Māori Council, Whakatane District Mayor Colin Holmes (supported by Diane Turner, Whakatane District Chief Executive Officer, and Selby Fisher, Deputy Mayor of Opotiki District Council), Charles Sturt from Rotorua District Council, Roku Mihinui from the Te Arawa Lakes Trust (supported by Hera Smith), Maureen Waaka, Kawerau District Mayor Malcolm Campbell and Russell George, Kawerau District Chief Executive Officer, Western Bay of Plenty District Mayor Graeme Weld and Blaise Williams from the Western Bay of Plenty District Council; Tauranga City Mayor Stuart Crosby, Bryan Riesterer (supported by Raewyn Bennett) and Tipene Marr.

### **Matters raised in appeals, objections and at the hearing**

15. The main arguments presented in support of the Council's proposal were:

#### *Total number of councillors*

- compared with other regional councils around New Zealand, the Council's population to councillor ratio is around the midpoint both currently, and in terms of what is proposed;

- when the Commission increased the total number of councillors in 2003 from 12 to 14, the Council was disappointed with the outcome as it considered that 14 was too many to deal effectively with the business of the Council;
- 14 councillors was also at odds with the Commission's decision to reduce councillor numbers from 14 to 11 in Tauranga City, an area of significant population increase;
- a lesser number of councillors will improve efficiency and effectiveness;
- a total of 10 councillors provides the best balance in a reduced Council and complies with the MCEA; and
- reducing the number of councillors will not significantly increase a councillor's workload.

*Number of general constituencies, their boundaries and the allocation of councillors*

- boundaries imposed by the Commission in 2003 caused annoyance and disquiet amongst constituents;
- western constituencies are currently under-represented, while the Rotorua and Eastern Bay of Plenty Constituencies are over-represented;
- retaining current boundaries does not meet fair representation requirements. All four constituencies would be non-compliant;
- various options considered either had a significant impact on traditional communities of interest, or did not meet fair representation requirements;
- an option based on territorial authority boundaries results in significant non-compliance with the +/-10% rule;
- trying to get the population numbers required to achieve two councillors in the Eastern Constituency creates distortions of communities of interest;
- the bulk of the area in the eastern part of the Eastern Constituency is contained within a national park, and also has large tracts of exotic forestry and undeveloped land (i.e. sparse population);
- the population of Kawerau is too small to warrant an additional councillor if it were incorporated into the Eastern Constituency;
- large constituencies in other regions (such as Waitaki in Canterbury Region) operate successfully with one councillor;
- the law requires consideration of population numbers, not geographical size, when determining the number and allocation of councillors;
- the final proposal provides a similar population per councillor ratio for both general and Māori constituencies; and
- the final proposal complies with the +/-10% rule.

*Māori constituencies*

- representation is determined by the formula set out in the MCEA. It is not determined by the number of iwi in a given region;
- the Council is only required to consider tribal areas in setting Māori constituency boundaries. The Council took the advice of Māori in developing those boundaries, and did as much as it could;

- the legislation does not specifically provide for a comfortable fit with iwi boundaries and consequently iwi representation;
- the target for fair representation is to have an outcome which is as close as possible to the 80%/20% split between the general electoral population and the Māori electoral population. The proposed number of Māori seats (2) fairly represents that percentage of influence;
- the Council has structures in place (such as the combined Māori regional representation committees) which deal specifically with Māori issues, and which are intended to complement the representation provided for by the MCEA with a mechanism for Māori to speak to and consult with the Council on an iwi level. This is under review to ensure this objective continues to be met; and
- the Māori constituency option (developed by Councillor Eru) was passed unanimously when the Council voted on the final proposal;

#### *Communities of interest*

- the final proposal, with some compromises, addresses new emerging communities of interest and rearranges some old ones, such as those based on river and drainage schemes. It provides the “best fit” with either established or recognised new communities of interest;
- amendments to the general constituency boundaries and councillor numbers were made in response to submissions on the initial proposal asking for a better reflection of communities of interest;
- Kawerau is included in the Rotorua parliamentary electorate, and before that, the Tarawera electorate, for several general elections;
- Kawerau people travel to Rotorua as much as they would to the eastern towns;
- Murupara and Ruatahuna have close ties with Rotorua. Murupara people travel to Rotorua more than to Whakatane (as demonstrated by use of bus services);
- Te Puke would not be a neat fit with the Eastern Constituency (as per the initial proposal);
- some Western Bay of Plenty areas being included within the Tauranga Constituency is necessary to meet fair representation requirements and ensure that Western Bay can continue to have the separate constituency which the Council felt it needed;
- the division of some territorial authorities between two constituencies will not reduce the quality or effectiveness of their representation;
- the final proposal presents the best fit.

16. Arguments raised in opposition to the Council’s proposal were that:

#### *Total number of councillors*

- a reduction in the number of councillors should not be at the expense of effective and fair representation;
- ten councillors is insufficient to represent an area as large and diverse as the Bay of Plenty. A smaller council will lead to less diversity of opinion, which is contrary to the principle of “participatory democracy”;

- the status quo and in particular the Māori constituencies, should be maintained for another term; it has not yet been fully tested;
- 10 general and three Māori constituencies would better reflect communities of interest;
- reducing councillor numbers will dilute the quality and accessibility of the region's representation;
- a greater number of councillors leads to better representation, and a greater number of ideas put forward;
- reducing councillor numbers will weaken the representation of the smaller districts;
- a reduction in councillors will not result in any cost savings to ratepayers (for example, a lesser number of councillors will expect to be paid more), nor will it make decision-making any easier;
- smaller numbers does not guarantee increased efficiency;
- most submissions on the initial proposal opposed a reduction in numbers, but this was ignored;
- fewer councillors would mean smaller subcommittee numbers, which could have disproportionate powers of approval; and
- Eastern Bay Constituency needs at least two representatives;

*Number of general constituencies, their boundaries and the allocation of councillors*

Opposed to constituency boundary adjustments under final proposal because:

- it has led to unacceptable under-representation for Eastern Bay of Plenty;
- it divides three territorial authorities into two constituencies (Opotiki is within Eastern Bay, Kawerau in Rotorua, and Whakatane split between Eastern Bay and Rotorua);
- Eastern Bay constituency should include Whakatane District and Kawerau District;
- Whakatane District would have two wards split between two constituencies. Elected representatives will have to work outside established governance structures and community networks;
- they do not reflect the sub-regions (that is, Western, Rotorua and Eastern) communities of interest;
- two major river schemes are divided between two constituencies; and
- the Council's initial proposal would provide a fairer level of representation;

*Māori constituencies*

- the number should be set according to rating contribution by Māori to the Council;
- the number of Māori constituencies should be increased;
- Māori make up 25% of the region's population, and should therefore be entitled to three Māori councillors;
- the existing three Māori constituencies should be retained:

- they are a fair reflection of the main iwi in the area; the situation has not changed since 2004;
- they provide better representation than what is proposed;
- they have not yet had time to become fully established, or tested;
- there should be three Māori constituencies: West, Rotorua and East;
- the proposed reduction will further disadvantage Māori:
- it will make Māori voters feel disenfranchised because:
  - it will reduce trust and undermine opportunities for iwi to work with the Council;
  - it does not provide fair and effective representation;
  - it would not meet the Local Government Act 2002 (LGA) requirements of developing Māori capacity to contribute to decision making; and
- the +/-10% rule does not apply to Māori seats, and Māori culture is not about looking at population figures;

#### *Communities of interest*

- the final proposal does not maintain or adequately represent the various communities of interest, especially in relation to where much of the Council's work is undertaken and where environmental issues exist;
- the Council's area is large, with a number of communities of interest. The present arrangements provide far better representation for these communities (e.g. Eastern Bay of Plenty)
- it will be difficult for councillors to properly represent the rural and Māori sectors;
- Council's activities have a particular impact on rural areas. It is important that the rural sector has a proportional input around the decision-making table;
- the compromises made in terms of community of interest are too great;

#### *Eastern Bay of Plenty representation*

- Eastern Bay of Plenty has a large geographical area (the current area comprising just under half the Council's total area), large coastline, and difficult terrain. It has vital river and drainage assets, and is the source of most the region's forestry, agriculture and horticulture. Two representatives are needed to cover the concerns and requirements of this area, and for management of the large number of environmental issues relevant to the Council;
- community of interest issues were not adequately addressed for this area;
- there are longstanding commonalities between the three Eastern territorial authorities, and as a sub-region it is geographically distinct;
- Kawerau should not be split from Eastern Bay of Plenty; it has greater links with the other Eastern Bay districts, such as shared initiatives among the three Eastern Bay district councils, and business and professional links;
- the Kawerau community should have been consulted over which constituency it would be placed in;

- the whole of Whakatane and Kawerau Districts should be included within its constituency boundaries; and
- the proposal disenfranchises Eastern Bay of Plenty residents;

*Western Bay of Plenty representation*

- Western Bay of Plenty District will lose separate representation in that it will lose a number of meshblocks to the Tauranga constituency; and
- under the Council's proposal, there may be no representation from Western Bay of Plenty District, or someone may be elected who is not acquainted with the district's issues or understand their concerns;

*Effective and fair representation*

- population should not be the determining factor;
- the environment must be the focus, not just population distribution;
- land area and use, and rates contribution, should be taken into account;
- factors such as economic links and drivers, labour involvement, community of interest, geographic and environmental linkages should also be considered;
- the final proposal does not reflect natural sub-regions within the Bay of Plenty;
- population figures used (GEP) are not the total electoral population;
- the +/-10% rule would have been satisfied by the initial proposal;
- even if one or more constituency is outside the +/-10% rule, the status quo must be maintained to ensure effective representation for all residents;
- the Commission should use the discretion provided by section 19V3(b) of the LEA in order to maintain communities of interest;
- the Council is changing its focus to the fastest growing part of the region, which will have a negative impact on effective representation for the Eastern Bay of Plenty.

**Matters for determination**

17. The statutory provisions in respect of appeals and objections are contained in sections 19R and 19I of the LEA and sections 5 and 6 of the MCEA:

***Local Electoral Act 2001***

**19R. Commission to determine appeals and objections**

**(1) The Commission must—**

- (a) Consider the resolutions, submissions, appeals, objections, and information forwarded to it under section 19Q; and
- (b) Subject to sections 19T and 19V in the case of a territorial authority, and to sections 19U and 19V in the case of a regional council, determine,—
  - (i) In the case of a territorial authority that has made a resolution under section 19H, the matters specified in that section:
  - (ii) In the case of a regional council that has made a resolution under section 19I, the matters specified in that section:
  - (iii) In the case of a territorial authority that has made a resolution under section 19J, the matters specified in that section.

- (2) For the purposes of making a determination under subsection (1)(b), the Commission—
- (a) May make any enquiries that it considers appropriate; and
  - (b) May hold, but is not obliged to hold, meetings with the territorial authority or regional council or any persons who have lodged an appeal or objection and have indicated a desire to be heard by the Commission in relation to that appeal or objection.
- (3) The Commission must, before 11 April in the year of a triennial general election, complete the duties it is required to carry out under subsection (1).
- 19I. Review of representation arrangements for elections of regional councils**
- (1) A regional council must determine by resolution, and in accordance with this Part,—
- (a) the proposed number of constituencies; and
  - (b) the proposed name and the proposed boundaries of each constituency; and
  - (c) the number of members proposed to be elected by the electors of each constituency.
- (2) The determination required by section (1) must be made by the regional council,—
- (a) on the first occasion, either in 2003 or in 2006, and
  - (b) subsequently, at least once in every period of 6 years after the first determination.
- (3) This section must be read in conjunction with section 19ZH and Schedule 1A.

**Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001**

**5. Review of membership and basis of election of Council**

For the purposes of carrying out the duties imposed by [section 19I of the Local Electoral Act 2001], in the year 2003 and in any subsequent year when those duties are required to be undertaken, the Council must first determine—

- (a) the proposed number of members of the Council; and
- (b) the proposed number of members of the Council to be elected by the electors of 1 or more Māori constituencies; and
- (c) the proposed number of members of the Council to be elected by electors of general constituencies.

**6 Calculation of number of Māori and general constituency members**

- (1) The number of members to be elected by the electors of 1 or more Māori constituencies of the Council (Māori constituency members) is to be determined in accordance with the following formula:

$$nmm = \frac{mepr}{mepr + gepr} \times nm$$

where –

*nmm* is the number of Māori constituency members

*mepr* is the Māori electoral population of the region

*gepr* is the general electoral population of the region

*nm* is the proposed number of members of the Council.

- (2) *If the number of the Māori constituency members calculated under subsection (1) includes a fraction, the fraction must be disregarded unless it exceeds a half. If the fraction exceeds a half, the number of Māori constituency members must be the next whole number above the number that includes the fraction.*
- (3) *The number of members to be elected by the electors of the general constituencies is to be determined by subtracting from the proposed number of members of the Council the number of Māori constituency members, as calculated under subsections (1) and (2).*

## **Consideration by the Commission**

### *Effective and fair representation*

18. A review of regional council representation arrangements under the LEA is to ensure that:
- the number and boundaries of constituencies will provide effective representation of communities of interest within the region (section 19U); and
  - in determining the number of members to be elected by each constituency, electors of that constituency will receive fair representation (section 19V).
19. In the case of Bay of Plenty Region, special considerations apply because it has Māori constituencies as provided for by the MCEA. Section 4 of the MCEA provides that it is to be read in conjunction with the Local Government Act 2002 and the LEA, but if there is any inconsistency, the MCEA prevails.
20. For the purpose of achieving fair representation, section 19V(2) of the LEA requires that the population of each constituency divided by the number of members to be elected by that constituency produces a figure no more than 10% greater or smaller than the population of the region divided by the total number of elected members. The LEA does not define 'effective representation' or 'communities of interest'.
21. In relation to Māori constituencies, section 8 of the MCEA provides that the Commission is required to have regard to the need for the ratio of members to population in each Māori constituency to be similar (if more than one Māori constituency for the region is proposed).
22. The process to be followed for achieving fair and effective representation in the Bay of Plenty Region is statutorily prescribed. This provides that the Commission must first make decisions on the total number of councillors, the number to be elected by Māori constituencies, and the number to be elected by general constituencies, in accordance with sections 5 and 6 of the MCEA. It is then required to carry out the duties required by section 19I of the LEA and section 8 of the MCEA. That is, decide on the number and boundaries of constituencies, and the allocation of councillors to those constituencies. These decisions need to be made in the context of identifying and confirming regional communities of interest, and ensuring their most effective representation.

### *Number of councillors*

23. The Council has proposed a reduction in total membership, from 14 to 10 councillors. Its reasoning included that 14 is too many to deal effectively with the business of the Council, that a reduction would not have a significant impact on

workload and that it would be consistent with other Councils of similar size around the country. However, we heard numerous counter-arguments, including that a reduction in councillors should not be at the expense of effective and fair representation for smaller districts, that the status quo has not yet been fully tested, that it would not necessarily bring any cost savings to ratepayers, and that a larger number of councillors would result in greater diversity of councillors who could represent the range of opinions within the region. Having listened to and considered the evidence, we are inclined to agree with the counter arguments, especially given the MCEA which has only been in place for three years.

24. We found it was not possible to decide the total number of councillors disconnected from recognition of the region's communities of interest and consideration of their most effective representation. We agreed that the Council's proposal that there be four general constituencies with eight councillors as follows:

- Tauranga Constituency, comprising Tauranga City and various surrounding meshblocks from Western Bay of Plenty District;
- Western Bay of Plenty, containing the remaining part of Western Bay of Plenty District;
- Rotorua Constituency, containing Rotorua, Kawerau, part of Taupo District, and part of two Whakatane wards (Edgecumbe-Tarawera Ward and Galatea-Murupara Ward); and
- Eastern Constituency comprising the remainder of Whakatane District and all of Opotiki District

was not a fair reflection of the general communities of interest, nor would the numbers proposed provide effective representation for those communities. This is further discussed below. We also agreed that the proposed two Māori constituencies (with one councillor each) did not have sufficient acceptance to indicate a fair reflection of Māori interests or iwi affiliations.

25. Deciding on the total number of councillors is informed by the membership entitlements derived from applying the population based formula set out in section 6(1) of the MCEA. Applying this formula to a Council of eight to 14 councillors provides the following entitlements:

Total membership	Statistical entitlement for Māori members	Actual entitlement for Māori members	Statistical entitlement for general members	Actual entitlement for general members
8	1.6	2	6.4	6
9	1.8	2	7.2	7
10	2.0	2	8.0	8
11	2.2	2	8.8	9
12	2.4	2	9.6	10
13	2.6	3	10.4	10
14	2.8	3	11.2	11

(The Māori electoral population in the Region was estimated at June 2005 to be 53,300 and the general electoral population was 207,000. The proportion of Māori electoral population to the total electoral population in the Region is 20% (rounded).)

26. Alternative total numbers sought by appellants and objectors ranged from nine to eleven general seats, and one to four Māori seats. However, given that the total number of Council members can be no more than 14 and no less than six, this means that the number of allowable seats ranges from one to three for Māori, and five to 11 for general. We considered two options considered appropriate: nine general seats and two Māori seats, or 10 general seats with three Māori seats. Taking into account the evidence presented, the principle of achieving fair and effective representation for individuals and communities, and the requirements of the MCEA concerning the order of decisions, we decided to proceed on the basis that the total number of councillors should be 13. This equates to 10 general councillors with three Māori councillors and an overall reduction of one.

#### *Māori Constituencies*

27. On the basis that there should continue to be three Māori councillors, we next considered the number and boundaries of their constituencies. In doing so, the MCEA requires that we have regard to communities of interest, the boundaries of existing Māori electoral districts, and tribal affiliations.
28. In respect of the Māori electoral districts established for parliamentary purposes, we noted that Bay of Plenty Region is almost entirely within the Waiariki electorate. A small area at the north-western periphery of the region falls within Tainui electorate.
29. In terms of communities of interest, and tribal affiliations, we heard evidence as to the different waka, iwi and hapu represented in the region. Waka include Te Arawa, Mataatua and Tainui. Iwi include Te Arawa, Ngati Tuwharetoa, Ngati Tuwharetoa (Bay of Plenty), those of Tauranga Moana (Ngati Ranginui, Ngati Pukenga, Ngaiterangi), Ngati Awa, Ngati Manawa, Ngati Whare Tuhoē, Whakatohea, Ngaitai and Te Whanau a Apanui. We also heard that significant consultation with Māori in the region preceded the current arrangements and there was general agreement that while they are not a perfect reflection of tribal areas, they fairly meet the legislative requirements. We were reminded that the current arrangements were only three years old and that more time was needed to prove their worth or otherwise.
30. The Council's proposal of a moana/whenua split does not meet the requirements of the LEA or the MCEA. It splits communities of interest and tribal affiliations. We therefore agree that there should continue to be three Māori constituencies with boundaries and allocation of councillors maintained as they are at present.
31. In terms of fair representation, as noted earlier, the ratio of councillors to population in each Māori constituency needs to be similar. We are satisfied this is the case, using the +/-10% rule as a tool in measuring the extent to which this is being achieved.

#### *General Constituencies*

32. The Council proposed to retain four general constituencies; with altered boundaries and membership, as described in paragraph 10 above. Tauranga and Western Bay Constituencies would be retained, but the Tauranga Constituency would enlarge considerably, taking in some of the Western Bay area. Tauranga Constituency would retain four councillors, but Western Bay would reduce to one councillor. The Eastern Bay Constituency would reduce in size, with the area covering Opotiki, Whakatane urban, and the Rangitaiki and Galatea Plains. It would also lose one

councillor. The Rotorua Constituency would enlarge to include Murupara and small settlements close to the Hawkes Bay Region border, such as Ruatahuna and Minginui, and would reduce from three to two councillors. The Council argued that this configuration would provide a better reflection of communities of interest, and pointed out that its proposal complies with the +/-10% rule.

33. We note the number and tenor of appeals and objections regarding the effect the Council's proposal would have on communities of interest across the region. In particular, aspects such as removing Kawerau from the Eastern Constituency, splitting two Whakatane wards between constituencies, and moving a number of meshblocks out of Western Bay of Plenty District were vigorously opposed.
34. We agree that using territorial authority boundaries would provide a fairer basis for representation, in that the Bay of Plenty Region's territorial authority boundaries are a good reflection of current sub-regions and natural communities of interest. This decision also achieves compliance with the community of interest requirement under section 19U(c) of the LEA that constituency boundaries should "so far as is practicable" coincide with territorial authority boundaries.
35. We consider generally that territorial authority districts are important in determining regional constituencies, as they reflect communities of interest based on:
  - the delivery of a wide range of necessary day-to-day services; and
  - areas that electors identify with, which in turn encourages participation (for example, standing as a candidate and voting at local elections).
36. Adopting this arrangement means that Rotorua, Tauranga and Western Bay of Plenty boundaries would form one constituency each, with the fourth comprising Whakatane, Kawerau and Opotiki Districts. We were persuaded that Kawerau is part of the Eastern sub-region rather than Rotorua, as confirmed by roading links, and the fact that it is surrounded by Whakatane District. There are also strong links with Whakatane – schooling, shopping, medical and emergency facilities. Kawerau representatives were of the view that residents would travel to Whakatane just as much as to Rotorua (if not more).
37. Amalgamating Kawerau, Whakatane and Opotiki Districts into one constituency is sensible given the similarities of terrain, settlement patterns and their focus on Whakatane as the main town. There are also strong commonalities, noting as examples the collaborative nature of the three sub-regional district councils, and the shared business and professional links. We also agree with one appellant who pointed out that the region's environmental issues have not moved from east to west, for example, lakes water quality is still a Rotorua Constituency issue, and flooding (as in Whakatane) is more of an eastern issue.
38. We also consider retaining that part of Taupo District which is within the Bay of Plenty Region with Rotorua Constituency is sensible, given that the only road access to this area is from State Highway 5 to the west.
39. Having decided that there should be four constituencies and that these should follow territorial authority boundaries, we next considered the allocation of councillors between constituencies. We do not believe that one councillor for Eastern Bay of Plenty would provide effective representation, either under the Council's proposal, or under an alternative of nine general councillors which we also evaluated in the context of deciding on total numbers. Under a nine-councillor

configuration, Eastern Bay of Plenty would be under-represented by 36% (and Western Bay would be over-represented by 20%). Given factors such as:

- the constituency's large size (comprising 61% of the region's total land area);
- its settlement pattern: it contains a large number of small settlements in farming areas flung along the coastal strip and inland, ranging from Waihou Bay in the east, to Minginui in the south, to Otamarakau in the west. Some of these are quite deeply inland, such as Ruatahuna;
- distance and travel times: as examples, it can take 1½ hours to drive from Opotiki to Te Kaha, or around 50 minutes to drive from Whakatane to Murupara. It would take even longer to get around all of the settlements. There is a degree of remoteness involved;
- the proposal to move the Council's headquarters from Whakatane to Tauranga;
- its land use and drainage issues (six out of the region's eight major rivers are located in the constituency);
- environmental issues, such as erosion, flooding and slips; and
- regional population trends

we believe that effective representation would be at stake with just one councillor. Two councillors results in a 24% over-represented quota, but we note that this is less of a departure from the +/-10% rule than 36% under-representation.

40. We therefore determine that effective representation will be provided by the following distribution of councillors:
- Tauranga: four councillors;
  - Rotorua: two councillors;
  - Western Bay of Plenty: two councillors; and
  - Eastern Bay of Plenty: two councillors.
41. While this arrangement does not meet the +/-10% rule in any constituency, there is only one significant departure which is Eastern Bay of Plenty, discussed above. Our judgement is that to act otherwise, by artificially moving boundaries to comply with the +/-10% requirement, or by reducing total councillor numbers, would compromise the effective representation requirement under the LEA. For example, the Council's final proposal would divide two Whakatane District wards (Galatea and Tarawera). This would not meet the communities of interest requirement that wards should not be split unless there is good reason. It would also divide Māori communities of interest. Establishing a new boundary between the Tauranga urban area and Western Bay of Plenty is difficult given the rate of change and disagreement about the location of the peri-urban area.
42. We note that Western Bay of Plenty under these arrangements will be over represented by 11%, however, we believe that the continued strong growth in that part of the region will compensate for the departure from the fair representation quota. We acknowledge the impact on present representation in the case of Rotorua, however, we still believe it is necessary to achieve an acceptable representation of communities of interest. We note the Rotorua constituency boundary will reduce slightly. Other general constituencies likewise represent a

good proxy for communities of interest, and none are split unlike under the Council's final proposal.

43. The relationship between our decisions on general constituency boundaries, the allocation of councillors, and the requirements of section 19V(2) is illustrated in the following table:

<i>General Constituencies</i>	<i>Population*</i>	<i>No. of councillors per constituency</i>	<i>Population per councillor</i>	<i>Deviation from general constituency average population per councillor</i>	<i>Percentage deviation from general constituency average population per councillor</i>
Tauranga	92,400	4	23,100	+2,400	+11.6
Western Bay of Plenty	36,800	2	18,400	-2,300	-11.1
Rotorua	47,100	2	23,550	+2,850	+13.7
Eastern Bay of Plenty	31,300	2	15,650	-5050	-24.4
<b>Totals</b>	<b>207,000</b>	<b>10</b>	<b>20,700</b>		

44. We note the discretion that section 19V(3)(b) of the LEA provides the Commission, in that constituencies may be defined and membership distributed between them in a way that does not comply with subsection 19V(3)(b).

#### *Conclusion*

45. We wish to acknowledge the considerable effort invested by the Council in reviewing its representation arrangements in what could never be a simple exercise, given the Bay of Plenty's unique circumstances.
46. We believe that our decisions will provide effective representation of the communities of interest, both general and Māori, of the Bay of Plenty Region. They also provide fair representation of electors, to the extent that this does not compromise effective representation of communities.

#### **Determination**

47. Under section 19R of the Local Electoral Act 2001, the Commission determines that for the election of the Bay of Plenty Regional Council to be held on 13 October 2007, the following representation arrangements will apply -
- (1) the Bay of Plenty Region as delineated on SO Plan 386694 deposited with Land Information New Zealand, shall be divided into four general constituencies and three Māori constituencies;
  - (2) those constituencies shall be -
    - (a) the Western Bay of Plenty General Constituency, comprising the area delineated on SO Plan 386696 deposited with Land Information New Zealand;
    - (b) the Tauranga General Constituency, comprising the area delineated on SO Plan 386697 deposited with Land Information New Zealand;
    - (c) the Rotorua General Constituency, comprising the area delineated on SO Plan 386695 deposited with Land Information New Zealand;

- (d) the Eastern Bay of Plenty General Constituency, comprising the area delineated on SO Plan 334946 deposited with Land Information New Zealand;
  - (e) the Mauao Māori Constituency, comprising the area delineated on SO Plan 334947 deposited with Land Information New Zealand;
  - (f) the Kohi Māori Constituency, comprising the area delineated on SO Plan 334954 deposited with Land Information New Zealand;
  - (g) the Okurei Māori Constituency, comprising the area delineated on SO Plan 334948 deposited with Land Information New Zealand;
- (3) the Council shall comprise 13 councillors who shall be elected as follows –
- (a) two councillors shall be elected by the electors of the Western Bay of Plenty General Constituency;
  - (b) four councillors shall be elected by the electors of the Tauranga General Constituency;
  - (c) two councillors shall be elected by the electors of the Rotorua General Constituency;
  - (d) two councillors shall be elected by the electors of the Eastern Bay of Plenty General Constituency;
  - (e) one councillor shall be elected by the electors of the Mauao Māori Constituency;
  - (f) one councillor shall be elected by the electors of the Kohi Māori Constituency; and
  - (g) one councillor shall be elected by the electors of the Okurei Māori Constituency.

47. As required by section 19U(b) of the Local Electoral Act 2001, the boundaries of the above constituencies comply with the boundaries of current statistical meshblock areas determined by Statistics New Zealand and used for Parliamentary electoral purposes.

## **FOR THE LOCAL GOVERNMENT COMMISSION**

Sue Piper (Chair)

Gwen Bull (Commissioner)

10 April 2007