



LOCAL GOVERNMENT COMMISSION

Determination

of the membership and constituency arrangements for
the general election of the Bay of Plenty Regional
Council to be held on 9 October 2004

BACKGROUND

1 The Bay of Plenty Regional Council (“the Council”) undertook a review of its representation under section 19I of the Local Electoral Act 2001 (“the LEA”). The review was subject to the provisions of the Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001 (“the MCEA”), which require that the Council have one or more Māori Constituencies with effect from the 2004 general election of the Council. On 22 July 2003 the Council resolved the initial proposed electoral arrangements to apply for the general election of the Council to be held in October 2004.

2 The Council elected at the 2001 general election comprises 12 members elected from four constituencies, as follows:

Western Bay of Plenty Constituency	2 members
Tauranga Constituency	4 members
Rotorua Constituency	3 members
Eastern Bay of Plenty Constituency	3 members.

3 Following its review, the Council proposed the following electoral arrangements as its initial proposal:

General Constituencies

The Region would be divided into four general constituencies, electing ten members, as follows:

Western Bay of Plenty Constituency	2 members
Tauranga Constituency	4 members
Rotorua Constituency	2 members
Eastern Bay of Plenty Constituency	2 members.

Māori Constituencies

The Region would be divided into two Māori constituencies, electing two members, as follows:

Taimoana Constituency	1 member
Tuawhenua Constituency	1 member.

- 4 The Council received 12 submissions to its initial proposal. The submissions covered a range of issues including:
 - the Council's proposal was supported
 - the Council should comprise 13 members – 10 general members and 3 Māori members
 - the Council should comprise 14 members – 11 general members and 3 Māori members
 - the Council should comprise 14 members – 11 general members (Western Bay of Plenty Constituency – 2, Tauranga Constituency – 3, Rotorua Constituency – 3, Eastern Bay of Plenty Constituency – 3) and 3 Māori members
 - the Council should comprise 15 members.
- 5 Following consideration of the submissions, the Council confirmed its initial proposal as its final proposal.
- 6 Five appeals were received against the Council's final proposal. The subject matter of the appeals included the following:
 - three Māori seats on the Council would be more representative
 - the Council should comprise 11 general members and three Māori members
 - a 14 member Council would provide good governance
 - the Council's proposal does not provide effective or fair representation
 - three Māori constituencies would better identify with the iwi affiliations
 - implementation of the proposal would result in a democratic imbalance between the Eastern Bay of Plenty and Rotorua Constituencies compared with the Western Bay of Plenty and Tauranga Constituencies
 - the Council should comprise 13 members – 10 general members and 3 Māori members
 - the Council should comprise 12 general members and 3 Māori members, with the Māori members elected at large, or else each of the two Māori Constituencies proposed by the Council should elect two members.

Hearing

- 7 The Commission, on receiving advice of the appeals, decided that it would meet with the Council and the appellants if they wished to be heard. The hearing was held in Whakatane on 3 December 2003.

- 8 The Council and the five appellants appeared before the Commission at the hearing. The Council outlined its proposal, and the appellants spoke to their submissions.

MATTERS FOR DETERMINATION

- 9 The statutory provisions in respect of these appeals 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 subsection (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 19 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).*

- 10 When applying the provisions detailed above, the principles of the Act (set out in section 4 of the Act) need to be taken into account, particularly the principle of fair and effective representation for individuals and communities.

Consideration by the Commission

- 11 Section 19E(1) of the LEA provides that a region must be divided into constituencies for electoral purposes. The basis of election of the Council is therefore not a matter that the Commission is required to determine.

Total Number of Members

- 12 Given the requirement of section 6 of the MCEA that the proportion of Māori members be determined on the basis of the ratio of the Māori electoral population of the Region to the total election population of the Region, the Commission considered that its starting point should be the consideration of the total number of members to be elected to the Council.
- 13 The following membership entitlements are derived from applying the formula specified in section 6(1) of the MCEA to a Council of 10 to 14 members:

Total membership	Statistical entitlement for Māori members	Actual entitlement for Māori members	Statistical entitlement for general members	Actual entitlement for general members
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

(At the 2001 Census the Māori electoral population in the Region was 47676 and the general electoral population was 191730. The ratio of the Māori electoral population to the total electoral population in the Region is 0.20 (rounded to two decimal places).

- 14 The Council has proposed to retain its total membership at 12, while three of the appellants seek a 14 member Council and one appellant seeks a 13 member Council. Another appellant seeks a 15 member Council – the Commission notes that this falls outside the maximum of 14 members prescribed by section 19D of the LEA.
- 15 In considering the matters of membership, the Commission has noted that the Bay of Plenty Region is experiencing significant population growth, particularly in the Western Bay of Plenty and Tauranga areas. This growth may place pressures on the Council in performing its statutory responsibilities. The Commission also notes the views of some of the appellants that three Māori members on the Council (elected from three Māori constituencies) would better reflect the iwi affiliations in the Region than the Council's proposal for two Māori members (elected from two Māori constituencies).
- 16 Taking into account the information presented to it, the Commission has determined that the Council should comprise 14 members. The Commission notes that other than for a Council of 10 members, a Council of 14 members (along with a Council of 11 members) achieves the fairest statistical representation for both Māori and general electoral populations in the Region. Under the provisions of the MCEA a 14 member Council will have three Māori constituency members.

Māori Constituencies

- 17 Having determined that there will be three Māori constituency members, the next task for the Commission was to determine the number, boundaries and names of the Māori constituencies.
- 18 In determining the number and boundaries of Māori constituencies the Commission is required to have regard to the general provisions of section 19U of the LEA, and the specific provisions of section 8 of the MCEA which are:
- the need for the ratio of members to population in each Māori Constituency to be similar (if more than 1 Māori Constituency for the Region is proposed); and
 - the boundaries of any existing Māori electoral district; and
 - communities of interest and tribal affiliations.
- 19 In respect of the Māori electoral districts established for parliamentary electoral purposes, the Bay of Plenty Region falls almost entirely within the boundaries of the Waiariki electorate. A small area at the north-western periphery of the Region falls within the Tainui electorate.
- 20 After considering the information presented to it, the Commission decided that three single member Māori constituencies would reasonably reflect Māori communities of interest and tribal affiliations.
- 21 The Commission considered that a three-constituency model developed for Council consideration before the initial proposal was resolved, which was supported by the Council's Joint Māori Regional Representation Committee and its Māori Standing Committee, and generally supported by appellants in their submissions at the hearing, should form a reference point for determining the Māori constituency arrangements. That model is outlined in the following table:

Proposed Māori Constituency	Areas covered by constituency	No. of members	Māori electoral population (2001 census)
Mauao	Western BOP District; Tauranga District; and the following seaward meshblocks: 1204507, 1204508, 1204509, 1204510, 1204511, 1204512, 1204513, 1048606, 1194000 and 1194100.	1	14175

Okurei	Those parts of the Rotorua and Taupo Districts that fall within the Bay of Plenty Region.	1	15753
Kohi	Opotiki District; Whakatane District; Kawerau District; and the following seaward meshblocks: 1313701, 1313703, 1313704, 1313801 and 1313802.	1	17748

- 22 As noted above, section 8(a) of the MCEA provides that the Commission, in determining the number and boundaries of constituencies, must have regard to the need for the ratio of members to population in each Māori constituency to be similar.
- 23 The section 8(a) provisions need to be considered alongside the requirement of section 19V(2) of the LEA, which may only be set aside by the Commission under section 19V(3) of the LEA if considered necessary for effective representation. These provisions are outlined below:

19V. Requirement for fair representation and other factors in determination of membership for wards, constituencies, and subdivisions

- (1) *In determining the number of members to be elected by the electors of any ward or constituency or subdivision, the territorial authority or regional council and, where appropriate, the Commission must ensure that the electors of the ward or constituency or subdivision receive fair representation, having regard to the population of every district or region or community and every ward or constituency or subdivision within the district or region or community.*
- (2) *For the purposes of giving effect to subsection (1), the territorial authority or regional council and, where appropriate, the Commission must ensure that the population of each ward or constituency or subdivision, divided by the number of members to be elected by that ward or constituency or subdivision, produces a figure no more than 10% greater or smaller than the population of the district or region or community divided by the total number of elected members (other than the mayor, if any).*
- (3) *Despite subsection (2),—*
- (a) *if the territorial authority or the Commission considers that the effective representation of communities of interest within island communities or isolated communities situated within the district of the territorial authority so requires, wards and subdivisions of a community may be defined and membership distributed*

- between them in a way that does not comply with subsection (2):*
- (b) *if the regional council or the Commission considers that effective representation of communities of interest so requires, constituencies may be defined and membership distributed between them in a way that does not comply with subsection (2).*

24 In this case, the Commission was of the view that there are no overriding considerations justifying a departure from the requirements of section 19V(2) of the LEA and section 8(a) of the MCEA. It therefore decided that the three-constituency model outlined above should be modified by the transfer of an area of eight meshblocks (containing a Māori electoral population of 318) from the north-western part of the Kohi Constituency to the Mauao Constituency. The final constituency arrangements are as follows:

Māori Constituency	Area covered by constituency	No. of members	Māori electoral population (2001 census)
Mauao	Western BOP District; Tauranga District; the following meshblocks of Whakatane District: 1321300, 1321400, 1321500, 1321600, 1321700, 1325300, 1325400 and 1325500; and the following seaward meshblocks: 1204507, 1204508, 1204509, 1204510, 1204511, 1204512, 1204513, 1048606, 1194000 and 1194100.	1	14493
Okurei	Those parts of the Rotorua and Taupo Districts that fall within the Bay of Plenty Region.	1	15753
Kohi	Opotiki District; Kawerau District; Whakatane District excluding the following meshblocks: 1321300, 1321400, 1321500, 1321600, 1321700, 1325300, 1325400 and 1325500; and the following seaward meshblocks: 1313701, 1313703, 1313704, 1313801 and 1313802.	1	17430

The total Māori electoral population in the Region at the time of the 2001 Census was 47676. For three members the +/-10% ratio of section 19V(2) of the Act is 15892 +/-10%: 14303 to 17481.

General Constituencies

- 25 The Council has proposed to retain the same general constituencies that have applied, except for one modification, since the Council's constitution in 1989. Relevant information relating to its proposal is outlined in the following table:

General Constituency	No. of members	General Electoral Population per member	General Electoral Population (2001 Census)
Western Bay of Plenty	2	16740	33480
Tauranga	4	20378	81513
Rotorua	2	22737	45474
Eastern Bay of Plenty	2	15632	31263

The total General electoral population in the region at the time of the 2001 Census was 191730. For 10 members the +/-10% ratio of section 19V(2) of the Act is 19173 +/-10%: 17256 to 21090.

- 26 The Council's proposal for its general constituencies does not comply with the +/-10% rule of section 19V(2) of the Act. The Commission does not consider that there are any overriding considerations that would suggest that the requirements of section 19V(2) should not apply in the case. The Commission is of the view that effective representation of communities of interest can be achieved while complying with the +/-10% rule. The Commission has therefore modified the general constituencies proposed by the Council through the transfer of meshblocks to achieve the required population per member ratio across the constituencies. A detailed description of the area of each general constituency is contained in the Appendix.
- 27 Having already determined that the Council will have 14 members and that there will be three members elected from the Māori constituencies, section 6(3) of the MCEA requires that there be 11 members elected from general constituencies. The Commission has determined that the general constituency members should be elected as follows:

General Constituency	No. of members	General Electoral Population per member	General Electoral Population (2001 Census)
Western Bay of Plenty	2	18245	36489
Tauranga	4	19150	76599
Rotorua	3	15699	47097
Eastern Bay of Plenty	2	15773	31545

For 11 members the +/-10% ratio of section 19V(2) of the Act is 17430 +/-10%: 15687 to 19173.

GENERAL COMMENTS

- 28 The Council will need to give careful consideration to the boundaries of its general and Māori constituencies when undertaking its next review. Given the population growth evident in parts of the Region it is likely that significant changes will need to be made to the arrangements being put in place by the

Commission for the 2004 elections. The Commission would particularly encourage the Council to undertake early consultation with its Māori communities to assist it in developing any future proposals for its Māori membership and constituencies.

DETERMINATION

- 29 Under section 19R of the Local Electoral Act 2001, the Commission determines that for the general election of the Council to be held on 9 October 2004 -
- (1) The Bay of Plenty Region as delineated on S.O. Plan 334939 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 S.O. Plan No. 334941 deposited with Land Information New Zealand;
 - (b) The Tauranga General Constituency, comprising the area delineated on S.O. Plan No. 334942 deposited with Land Information New Zealand;
 - (c) The Rotorua General Constituency, comprising the area delineated on S.O. Plan No. 334944 deposited with Land Information New Zealand;
 - (d) The Eastern Bay of Plenty General Constituency, comprising the area delineated on S.O. Plan No. 334946 deposited with Land Information New Zealand;
 - (e) The Mauao Māori Constituency, comprising the area delineated on S.O. Plan No. 334947 deposited with Land Information New Zealand;
 - (f) The Kohi Māori Constituency, comprising the area delineated on S.O. Plan No. 334954 deposited with Land Information New Zealand;
 - (g) The Okurei Māori Constituency, comprising the area delineated on S.O. Plan No. 334948 deposited with Land Information New Zealand;
 - (3) The Council shall comprise 14 members who shall be elected as follows -

- (a) two members shall be elected by the electors of the Western Bay of Plenty General Constituency;
- (b) four members shall be elected by the electors of the Tauranga General Constituency;
- (c) three members shall be elected by the electors of the Rotorua General Constituency;
- (d) two members shall be elected by the electors of the Eastern Bay of Plenty General Constituency;
- (e) one member shall be elected by the electors of the Mauao Māori Constituency;
- (f) one member shall be elected by the electors of the Kohi Māori Constituency; and
- (g) one member shall be elected by the electors of the Okurei Māori Constituency.

30 As required by section 19U(b) of the LEA, 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.

THE LOCAL GOVERNMENT COMMISSION

Grant Kirby	(Chairman)
Linda Constable	(Commissioner)
Kerry Marshall	(Commissioner)

7 April 2004

APPENDIX

DESCRIPTION OF AREAS COVERED BY GENERAL CONSTITUENCIES OF THE BAY OF PLENTY REGIONAL COUNCIL

General Constituency	Area covered by constituency
Western Bay of Plenty	Western Bay of Plenty District excluding the following meshblocks: 1213802, 1213500, 1213400, 1213300, 1212300, 1210800, 1210700, 1192702, 1192701, 1192602, 1114601, 1210600, 1212202, 1212201, 1212500, 1212100, 1212400, 1211900, 1211700, 1211800, 1212900, 1213000, 1213100, 1213200, 1213600, 1213700 and 1213801; and including the following meshblocks of Tauranga District: 1209200, 1206903, 1206904, 1206905, 1206806, 1206830, 1206826, 1205060, 1206705, 1206704, 1206703, 1206303, 1206203, 1206204, 1205900, 1193301, 1193206, 1193205, 1193207, 1193900, 1192202, 1192208, 1192103, 1192104, 1192105, 1192106, 1192107, 1192108, 1192109, 1191201, 1191100, 1191001, 1191002, 1190903, 1175202, 1190902, 1190600, 1190200, 1190100, 1190500, 1190400, 1190300, 1188806, 1204809, 1204810, 1204803, 1204804, 1204808; and including the following seaward meshblocks: 1048606, 1194100, 1204507, 1204508 and 1204509.
Tauranga	Tauranga District excluding the following meshblocks: 1209200, 1206903, 1206904, 1206905, 1206806, 1206830, 1206826, 1205060, 1206705, 1206704, 1206703, 1206303, 1206203, 1206204, 1205900, 1193301, 1193206, 1193205, 1193207, 1193900, 1192202, 1192208, 1192103, 1192104, 1192105, 1192106, 1192107, 1192108, 1192109, 1191201, 1191100, 1191001, 1191002, 1190903, 1175202, 1190902, 1190600, 1190200, 1190100, 1190500, 1190400, 1190300, 1188806, 1204809, 1204810, 1204803, 1204804, 1204808; and including the following seaward meshblocks: 1194000, 1204510, 1204511, 1204512 and 1204513.
Rotorua	Rotorua District (part); Taupo District (part); and the following meshblocks of Western Bay of Plenty District: 1213802, 1213500, 1213400, 1213300, 1212300, 1210800, 1210700, 1192702, 1192701, 1192602, 1114601, 1210600, 1212202, 1212201, 1212500, 1212100 and 1212400, 1211900, 1211700, 1211800, 1212900, 1213000 and 1213100.
Eastern Bay of Plenty	Whakatane District; Opotiki District; Kawerau District; the following meshblocks of the Western Bay of Plenty District: 1213200, 1213600, 1213700 and 1213801; and the following seaward meshblocks: 1313701, 1313703, 1313704, 1313801 and 1313802.