



**LOCAL GOVERNMENT COMMISSION**  
**MANA KĀWANATANGA Ā ROHE**

**GUIDELINES TO ASSIST  
LOCAL AUTHORITIES  
IN UNDERTAKING  
REPRESENTATION REVIEWS**

Local Government Commission  
WELLINGTON

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## **1 INTRODUCTION**

This is the fourth set of representation review guidelines issued by the Local Government Commission in accordance with *section 19ZI* of the *Local Electoral Act 2001*.

*Section 19ZI* requires the Commission to “*issue guidelines identifying factors and considerations for territorial authorities or regional councils to take into account in making their determinations under any of the provisions of sections 19H to 19J and Schedule 1A*” of the *Local Electoral Act*.

The next triennial local authority elections will be held in October 2013. These Guidelines are provided to assist local authorities in undertaking their reviews of representation arrangements for these elections. They replace the guidelines issued in November 2008.

### **What are representation reviews?**

As defined by the *Local Electoral Act*, representation reviews are reviews of the particular representation arrangements for a local authority. In the case of territorial authorities, they include the basis of election (at large, wards or a mix of both) and establishment of community boards. The review determines for each local authority the detailed arrangements on the number of electoral subdivisions (if any), their boundaries, names and number of members.

Local authorities are required to review their representation arrangements at least every six years.

### **Related processes**

In addition to the above representation arrangements, local authorities and communities have the opportunity to consider the electoral system to be used for their elections i.e. either first past the post (FPP) or single transferable vote (STV) and the establishment of Māori wards or constituencies.

Options around the choice of electoral system and the establishment of Māori wards or constituencies are not formally part of the representation review process. They are matters for local discretion on which there is no right of appeal to the Commission. However, these options are closely linked to identification of the most appropriate representation arrangements for a district or region. They also need to be resolved before detailed ward/constituency arrangements can be determined.

Accordingly these Guidelines address the following issues:

- the options and processes for local authorities and communities to choose the electoral system to be used for local authority elections (*Chapter 2*)
- the options and processes for local authorities and communities to decide to establish Māori wards or constituencies (*Chapter 3*)

- statutory provisions and the factors and considerations to be taken into account in reviews of representation arrangements for local authorities (*Chapters 4 and 5*)
- the factors and considerations to be taken into account in reviews of community boards (*Chapter 6*)
- considerations relating to community consultation (*Chapter 7*)
- recommended good practice processes to assist the formulation of a local authority's representation proposals (*Chapter 8*)
- some general review matters (*Chapter 9*).

### **What is the Commission's role in the representation review process?**

The Commission has no involvement in the formulation of either initial or final local authority representation proposals.

The Commission becomes involved if appeals and/or objections are made against the final proposal of a local authority. In such a situation, *section 19R* of the *Local Electoral Act* requires the Commission to determine the representation arrangements for the local authority, including any constituent community boards, for the next triennial local authority election.

In addition, where a regional council's final proposal on which no appeals or objections are received does not comply with *section 19V(2)* (relating to requirements for achieving fair representation) the regional council must refer its proposal to the Commission. The regional council's proposal will then follow the same process as applies to representation proposals that are subject to appeal or objection. However territorial authority decisions that do not comply with *section 19V(2)* are only considered by the Commission if there are appeals or objections.

The approach taken by the Commission in its quasi-judicial role of determining representation arrangements is outlined in *Chapter 10* of these Guidelines. Appeals against Commission determinations may only be made on a point of law. Commission determinations may also be subject to judicial review as to matters of process.

### **Are the Guidelines legally binding?**

The Commission is required under the *Local Electoral Act* to issue these Guidelines. The Guidelines are to identify factors and considerations for local authorities to take into account in making determinations on representation arrangements. The factors and considerations identified include the statutory requirements which are binding on both local authorities and the Commission itself in the exercise of its powers on objections, appeals and referrals.

Beyond the statutory requirements, there is no obligation to comply with these Guidelines. They do, however, set out recommended good practice for the review process. They also identify the considerations and processes that the Commission will adopt in considering appeals, objections and referrals of local authority representation proposals.

### **Supplementary information**

If there is a need identified for new guidelines on any matter or an expansion of the issues dealt with in these Guidelines, the Commission will consider issuing supplementary guidelines.

The Commission may also provide, from time to time, further information of a technical nature relating to representation reviews or representation issues.

### **Feedback and review**

These Guidelines are reviewed, after each round of triennial local elections. Following the 2010 round the Commission carried out a survey of local authorities on the representation review process including feedback on the Commission's Guidelines. While feedback on the Guidelines was very positive, a number of suggestions have been incorporated in this revised set.

Feedback from local authorities continues to be welcomed on the Guidelines and on Commission procedures, and all suggestions for enhancement will be considered.

Comments may be forwarded to:

By post: Chief Executive Officer  
Local Government Commission  
PO Box 5362  
WELLINGTON 6145

By email: [info@lgc.govt.nz](mailto:info@lgc.govt.nz)

Further contact details are provided in *Chapter 12*.

## **2 PARTICULAR FACTORS AND CONSIDERATIONS RELATING TO CHOICE OF ELECTORAL SYSTEM**

### **Introduction**

The *Local Electoral Act* provides for local authorities and communities to choose between the first past the post (FPP) and the single transferable vote (STV) electoral system for local elections. The electoral system applying for a territorial authority election also applies in respect of the election of members of any constituent community boards.

A change of electoral system can be achieved either by way of a local authority resolution or as the outcome of a poll of electors. Such a poll may either be demanded by electors or be the result of a local authority resolution. The statutory provisions for changing the electoral system are set out in *sections 27 to 34 of the Local Electoral Act*.

The *Local Electoral Act* provides that by a specified date a local authority may, but is not required, to make a resolution on the electoral system to apply for the next triennial local authority election. Whether or not it makes such a resolution, the local authority must give public notice of the right for 5% of electors to demand a poll on the electoral system. This notice must include a statement that a poll will be required to countermand any resolution that a local authority may have made. Determination of the electoral system by way of a poll will apply for a minimum of two triennial local authority elections.

### **Key statutory provisions**

The relevant provisions of the *Local Electoral Act* for changing a local authority's electoral system are:

- a local authority may, no later than 12 September two years before the next triennial local authority election, resolve to change electoral system to take effect for the next two triennial elections (*section 27*)
- every local authority must give public notice by 19 September two years before the next triennial local authority election, of the right for electors to demand a poll on the electoral system and that notice must include a statement that a poll is required to countermand any local authority resolution made on the electoral system (*section 28*)
- 5% of electors may at any time demand a poll on a proposal that a specified electoral system be used at the election of a local authority (*section 29*)
- a local authority may, no later than 28 February in the year immediately before the next triennial local authority election, resolve to hold a poll on the electoral system (*section 31*)

- if, prior to 28 February in the year immediately before the next triennial local authority election, either a valid demand for a poll is received (under *section 29*) or a local authority resolves to hold a poll (under *section 31*) this is notified to the electoral officer and the poll must be held not later than 82 days after the notification i.e. not later than 21 May in that year, and the result of the poll takes effect for the next two triennial local authority elections (*section 33*)
- if a valid demand for a poll is received after 28 February in the year before the next triennial local authority election, the poll must be held after 21 May in that year and takes effect for the next but one triennial local authority election and the subsequent election (*section 30*)
- *sections 27 to 31* do not apply if the result of a poll took effect at the previous triennial local authority election or takes effect at the next triennial local authority election (*section 32*).

## General

Decisions relating to the choice of electoral system (and also the establishment of Māori wards/constituencies, addressed in the next chapter) are not formally part of the representation review process. The Commission's role in determination of appeals and objections does not extend to these two matters. However decisions on both matters can impact on the representation review process and local authorities should be aware of these impacts.

The Commission notes, for example, the argument that to gain the full benefits of proportional representation under STV, multi-member wards or constituencies of at least three members, but preferably five to seven members, are required. Clearly this should be considered by a local authority using STV when undertaking its representation review.

The potential impact of a change in electoral system or the establishment of Māori wards/constituencies is reflected in the timeline for each process. The choice of electoral system can also influence decisions on establishment of Māori wards/constituencies and so is prescribed to occur first. While the *Local Electoral Act* prescribes dates by which processes must be completed, in order for the outcome to apply for the next triennial local election, this does not prevent a local authority from giving consideration to the issues jointly and their inter-relationship.

The Commission considers it good practice for local authorities not to resolve their initial representation proposals until the time for lodging demands for a poll on the electoral system has expired i.e. after 28 February in the year before the next triennial local authority election.

*Chapter 8* sets out what the Commission considers to be good practice in respect of the representation review process, timing and related issues including those relating to the electoral system.

### **3 PARTICULAR FACTORS AND CONSIDERATIONS RELATING TO ESTABLISHMENT OF MĀORI WARDS AND CONSTITUENCIES**

#### **Introduction**

The *Local Electoral Act* provides that Māori wards or constituencies may be established for territorial authorities or regional councils respectively. This can be achieved either by way of a local authority resolution or as the outcome of a poll of electors. Such a poll may either be demanded by electors or be the result of a local authority resolution. The statutory provisions for establishing Māori wards or constituencies are set out in *sections 19Z to 19ZH* of the *Local Electoral Act*.

A local authority resolution or a demand for a poll by 5% of electors may be made at any time. However the *Local Electoral Act* provides that if a resolution or valid poll demand is to apply for the next triennial local authority election, they must be made within a particular timeframe. This timeframe is designed to follow that applying to the choice of electoral system. This is because the choice of electoral system may influence a decision on the establishment of Māori wards or constituencies.

If the local authority does make a resolution to establish Māori wards or constituencies it must give public notice of this resolution. The public notice must include a statement that a poll will be required to countermand the local authority resolution.

If a local authority is required to be divided into Māori wards or constituencies at the next triennial local authority election that local authority must undertake a representation review (whether or not it conducted a review three years ago). For this reason the Commission considers it good practice for local authorities not to resolve their initial representation proposals until the time for lodging demands for a poll on Māori representation has expired i.e. after 28 February in the year before the next triennial local authority election.

The local authority needs to be fully aware of the relevant provisions and possible implications of establishing Māori wards or constituencies for any representation review. *Chapter 8* sets out what the Commission considers to be good practice in respect of the representation review process, timing and related issues including those relating to Māori representation.

The Commission's role in respect of determination of appeals and objections on representation arrangements does not extend to whether or not Māori wards or constituencies should be established. This is a matter for local discretion. The Commission's role is limited to consideration of the detailed arrangements for such wards/constituencies e.g. the number of wards/constituencies, their boundaries and number of members.

## Key statutory provisions

The relevant provisions of the *Local Electoral Act* relating to the establishment of Māori wards or constituencies are:

- a local authority may resolve to establish Māori wards or constituencies and, if made no later than 23 November two years before the next triennial local authority election, the resolution takes effect for the next triennial local authority election (*section 19Z*)
- if a local authority makes such a resolution to establish Māori wards or constituencies by 23 November it must give public notice of this fact by 30 November two years before the next triennial local election including a statement that a poll is required to countermand that resolution (*section 19ZA*)
- 5% of electors may demand a poll at any time on whether a district or region should be divided into one or more Māori wards or constituencies (*section 19ZB*)
- a local authority may resolve at any time to conduct a poll on whether the district or region should be divided into Māori wards or constituencies (*section 19ZD*)
- if, prior to 28 February in the year before the next triennial local authority election, either a valid demand for a poll is received (under *section 19ZB*) or the local authority resolves to hold a poll (under *section 19ZD*) this is notified to the electoral officer and the poll must be held not later than 82 days after the notification i.e. not later than 21 May in that year, and the result of the poll takes effect for the next two triennial local authority elections (*section 19ZF*)
- if a valid demand for a poll is received after 28 February in the year before the next triennial local authority election, the poll must be held after 21 May in that year and takes effect for the next but one triennial local authority election and the subsequent election (*section 19ZC*)
- *sections 19Z to 19ZD* do not apply if the result of a poll took effect at the previous triennial local authority election or takes effect at the next triennial local authority election (*section 19ZE*).

If, as a result of a resolution or poll, Māori wards or constituencies are to apply for a triennial local authority election, *clauses 1 and 3* of *Schedule 1A* of the *Local Electoral Act* require that a review of the representation arrangements of the local authority be undertaken. In such cases the requirements of *Part 1A* of the *Local Electoral Act* are subject to the provisions of *Schedule 1A*.

*Clauses 1 and 3* of *Schedule 1A* provide that the local authority is required to determine:

- the proposed total number of members of the local authority
- whether (for territorial authorities only):

- all members are to be elected from either Māori or general wards, or
- some members are to be elected from either Māori or general wards, and some are to be elected at large
- the proposed number of members to be elected from the Māori wards/constituencies and the number from the general wards/constituencies
- the proposed name and boundaries of each ward/constituency
- the proposed number of members to be elected from each Māori and general ward/constituency.

The processes involved with these steps and the factors and considerations to be taken into account are set out below.

### Calculating the number of members

The process for determining the number of members to be elected from both Māori and general wards/constituencies is set out in *clauses 2 and 4 of Schedule 1A* and involves:

- determining the total number of members of the local authority
- multiplying the total number of members by the ratio of the Māori electoral population to the total (Māori and general) electoral population.

For territorial authorities the following formula is applied:

$$nmm = \frac{mepd}{mepd + gepd} \times nm$$

where:

nmm is the number of Māori ward members  
 mepd is the Māori electoral population of the district  
 gepd is the general electoral population of the district  
 nm is the proposed number of members of the territorial authority (other than the mayor).

For regional councils the following formula is applied:

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

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 regional council.

In both cases, fractions are rounded up or down to the nearest whole number.

The general electoral population and the Māori electoral population are defined in *section 3* of the *Electoral Act 1993*. The general electoral population is the total ordinarily resident population at the last census less the Māori electoral population. The Māori electoral population is a calculation based on the number of electors on the Māori electoral roll and proportions of those of Māori descent not registered and those under 18 years of age.

The Māori electoral population and the general electoral population are calculated by Statistics New Zealand and must be provided on request to a local authority by the Government Statistician.

Given the nature of the Māori electoral population and the mathematical calculation that must be made, there may be very limited options available to a local authority in terms of the number of elected members from Māori wards or constituencies. The mathematical calculation may mean that no members could be elected from such wards or constituencies.

Local authorities should therefore identify at the outset the range of options for the number of members elected from both Māori and general wards/constituencies for their own district or region. This will ensure that any debate occurs in the district or region in the context of what is possible.

### **Number and boundaries of wards or constituencies**

In determining arrangements for Māori wards or constituencies, *clause 6 of Schedule 1A* requires local authorities to:

- satisfy the requirements of *sections 19T and 19U*, which require:
  - that the election of members will provide effective representation of communities of interest within the district or region
  - conformity with meshblock boundaries
  - to the extent that is practicable, conformity of ward boundaries with community boundaries, and conformity of constituency boundaries with the boundaries of territorial authority districts or wards
- have regard to:
  - the boundaries of any existing Māori parliamentary electoral district
  - communities of interest and tribal affiliation.

## **Number of members to be elected by each ward or constituency**

*Clause 6 of Schedule 1A* also sets out particular requirements when determining the number of members to be elected by each Māori ward or constituency (where there are two or more wards/constituencies). The local authority is required to ensure, to the extent that is reasonably practicable and consistent with the above considerations relating to Māori electoral districts, communities of interest and tribal affiliations, that the ratio of members to Māori electoral population in each Māori ward/constituency produces a variance of no more than +/-10%.

This may require a judgment to be made in individual cases as to the relative importance to be given to each of these sets of factors when determining the number of members from each Māori ward/constituency. Local authorities should record in detail the decisions they reach on this issue.

The Commission notes that, where Māori wards/constituencies are established, the '+/-10% rule' for general wards/constituencies is calculated using the general electoral population (which excludes the Māori electoral population). This means people are not counted twice for the calculations for the number of members for the two types of wards/constituencies.

### **General**

In working through the requirements of *Schedule 1A* of the *Local Electoral Act*, local authorities need to consider appropriate consultation at an early stage with iwi and hapu. This will assist, among other things, in determining the appropriate number of Māori wards/constituencies (subject to Māori and general electoral populations) to reflect Māori communities of interest.

The legislation does not provide for Māori electoral subdivisions to be constituted for community board areas.

## **4 STATUTORY PROVISIONS FOR REPRESENTATION REVIEWS**

The requirements relating to the review of representation arrangements of local authorities are contained in *sections 19A to 19Y of Part 1A of the Local Electoral Act*. These can be identified as follows:

- representation arrangements
- review of representation arrangements
- procedural steps and timelines.

### **Representation arrangements**

The following provisions relate to representation arrangements for territorial authorities, regional councils and community boards:

- *section 19A: membership of territorial authorities*
- *section 19B: basis of election of mayor of territorial authority*
- *section 19C: basis of election of members of territorial authority*
- *section 19D: membership of regional councils*
- *section 19E: basis of election of members of regional council*
- *section 19F: membership of community boards*
- *section 19G: basis of election of members of community board.*

### **Review of representation arrangements**

The following provisions relate to periodic reviews of representation arrangements:

- *section 19H: review of representation arrangements for elections of territorial authorities*
- *section 19I: review of representation arrangements for elections of regional councils*
- *section 19J: review of community boards*
- *section 19T: requirement for effective representation and other factors in determination of membership and basis of election of territorial authorities*
- *section 19U: requirement for effective representation and other factors in determination of membership and basis of election of regional councils*
- *section 19V: requirement for fair representation and other factors in determination of membership for wards, constituencies and subdivisions*

- *section 19W: factors in determination of matters in relation to community boards.*

If Māori wards or constituencies are to apply in respect of a triennial local authority election then the provisions of *Schedule 1A* of the *Local Authority Act* also apply. Those provisions substitute the *Part 1A* provisions to the extent necessary to provide for the Māori wards or constituencies.

Matters for local authorities to take into account when formulating proposals for Māori wards or constituencies are outlined in *Chapter 3* of these Guidelines.

### **Procedural steps and timelines**

The following provisions set out procedural requirements relating to representation reviews and associated timelines:

- *section 19K: requirements for resolution*
- *section 19L: distribution of copies of resolution*
- *section 19M: public notice of proposals and responsibilities in relation to submissions*
- *section 19N: response to submissions*
- *section 19O: appeals*
- *section 19P: objections*
- *section 19Q: obligation to forward appeals and objections to Commission*
- *section 19R: Commission to determine appeals and objections*
- *section 19S: determination of Commission*
- *section 19X: certificate of Government Statistician*
- *section 19Y: when determinations take effect.*

In general terms, the representation review process involves the following steps:

<b>Procedure</b>	<b>Legislative provision</b>	<b>Deadline</b>
Local authority determines proposed representation arrangements	<i>Section 19H</i> for territorial authorities, <i>section 19I</i> for regional councils, and <i>section 19J</i> relating to community boards ( <i>Schedule 1A</i> if Māori wards or constituencies are to be established)	No specific deadline, except that <ul style="list-style-type: none"> <li>determinations must be made by 31 August in the year prior to election where Māori wards/constituencies are to be established</li> <li>determinations must be made in time for the deadline for public notice</li> </ul>
Local authority gives public notice of "initial" proposal and invites submissions	<i>Section 19M(1)</i>	Within 14 days of resolution, and not later than 8 September in the year prior to election
Submissions close	<i>Section 19M(2)(d)</i>	Not less than one month after public notice
If no submissions then proposal becomes final <sup>1</sup>	<i>Section 19Y(1)</i>	Public notice to be given when there are no submissions but no date fixed for doing this
Local authority considers submissions and may amend proposal	<i>Section 19N(1)(a)</i>	Within 6 weeks of closing date for submissions
Local authority gives public notice of its "final" proposal	<i>Section 19N(1)(b)</i>	Within 6 weeks of closing date for submissions
Appeals and objections close	<i>Sections 19O and 19P</i>	Not less than 1 month after the date of the public notice issued under <i>section 19N(1)(b)</i> , and not later than 20 December in the year prior to election
If no appeals or objections then proposal becomes final <sup>2</sup>	<i>Section 19Y(1)</i>	Public notice to be given when there are no appeals/objections, but no date fixed for doing this
Local authority forwards appeals, objections and other relevant information to the Commission <sup>3</sup>	<i>Sections 19Q and 19V(4)</i>	As soon as practicable, but not later than 15 January in election year
Commission considers resolutions, submissions, appeals and objections and makes determination	<i>Section 19R</i>	Before 11 April in election year
Determination subject to appeal to High Court on a point of law <sup>4</sup>	<i>Clause 2, Schedule 5, Local Government Act 2002</i>	Appeals to be lodged within 1 month of determination

<sup>1</sup>Under *section 19V(4)* regional council proposals that do not comply with the +/-10% fair representation requirement are subject to confirmation by the Commission.

<sup>2</sup> As above

<sup>3</sup> Includes any regional council proposal that does not comply with the +/-10% fair representation requirement

<sup>4</sup> Commission determinations may also be subject to judicial review

## **5 FACTORS AND CONSIDERATIONS FOR REPRESENTATION REVIEWS**

### **Statutory framework relating to representation reviews**

In addition to the specific requirements of *Part 1A* of the *Local Electoral Act*, local authorities preparing for and carrying out representation reviews need to bear in mind other relevant provisions of that *Act* and also the *Local Government Act 2002*.

#### *Local Electoral Act 2001*

*Section 3(c)(ia)* provides that the purpose of the *Act* is to allow diversity, through local decision-making, in relation to:

*“the regular review of representation arrangements for local authorities”.*

*Section 4(2)* requires local authorities:

*“in making decisions under this Act or any other enactment, (to) take into account those principles specified in subsection (1) that are applicable (if any), so far as is practicable in the circumstances”.*

*Section 4(1)(a)* provides that one of the principles the *Act* is designed to implement is the provision of:

*“fair and effective representation for individuals and communities”.*

#### *Local Government Act 2002*

It is also necessary for local authorities to consider the purpose and principles of local government and the consultation and decision-making requirements set out in the *Local Government Act 2002* when undertaking their review of representation arrangements.

*Section 3* of the *Local Government Act* provides that:

*“The purpose of this Act is to provide for democratic and effective local government that recognises the diversity of New Zealand communities”.*

*Section 10* provides that the purpose of local government is:

- “(a) to enable democratic local decision-making and action by, and on behalf of, communities; and*
- (b) to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future”.*

Section 13 provides that sections 10 (*Purpose of local government*) and 12(2) (*Status and powers*):

*“apply to a local authority performing a function under another enactment to the extent that the application of those provisions is not inconsistent with the other enactment”.*

Section 14 sets out principles for local authorities and these include the following provisions that a local authority must act in accordance with in performing its role:

- “(1)(b) a local authority should make itself aware of, and should have regard to, the views of all of its communities; and*
- (1)(c) when making a decision, a local authority should take account of –*
  - (i) the diversity of the community, and the community’s interests, within its district or region; and*
  - (ii) the interests of future as well as current communities; and*
  - (iii) the likely impact of any decision on each aspect of well-being referred to in section 10”.*

Section 11 provides that the role of a local authority includes performing the duties and exercising the rights conferred on it by any other enactment.

Sections 77, 78 and 81 set out requirements for local authorities when making decisions including contributions to decision-making by Māori, and section 82 sets out principles of consultation. Subsection 76(1) provides that every decision must be in accordance with these sections (i.e. sections 77 to 82) and subsection 76(5) applies these requirements to decisions made under other enactments to the extent they are not inconsistent with the other enactment.

Consultation requirements are addressed further in *Chapter 7*.

Section 19W of the *Local Electoral Act* sets out provisions relating to reviews of community boards. It provides that a local authority in undertaking a review under section 19J, or the Commission in determining a local authority’s community board arrangements, must have regard to the criteria for reorganisation proposals specified in the *Local Government Act 2002*, as considered appropriate in the circumstances.

The general role of community boards is set out in section 52 of the *Local Government Act*. To a significant extent, the role of particular community boards will be determined by the specific matters that are referred or responsibilities that are delegated to boards by the parent territorial authority under section 52(b) and (f).

### *Relationship of Local Government Act and Local Electoral Act*

In summary, the above provisions of the *Local Government Act*, to the extent they are not inconsistent with the *Local Electoral Act*, apply to local authorities making decisions under the *Local Electoral Act* including on representation reviews.

Specific provisions of the *Local Electoral Act* reflect, to a large extent, the philosophy of the *Local Government Act* which recognises the diversity of New Zealand communities. These provisions provide local choice in respect of:

- the electoral system to be used
- the establishment of Māori wards or constituencies
- representation arrangements (subject to appeal/objection to the Local Government Commission) including:
  - the number of members of the elected body (within a prescribed range)
  - (for territorial authorities) the basis of election i.e. at large, wards, or a mix of both
  - (for territorial authorities) the establishment of community boards.

It should be noted that in both the *Local Electoral Act* and the *Local Government Act*, the word 'community' is used in two different senses. Sometimes it refers to a community constituted under *Schedule 6* of the *Local Government Act* and relating to a community board, and sometimes it refers to a broader community of interest within the district or region. *Section 5* of the *Local Government Act* provides that, with specified exceptions, the term 'community' in that *Act* (and by cross-reference in the *Local Electoral Act*) refers to a community board area. However, the provisions referred to above (from *Part 2* of the *Local Government Act*) use 'community' in the wider sense.

### **Requirement to carry out a review**

The *Local Electoral Act* requires local authorities to carry out representation reviews at least every six years. Twenty-eight local authorities undertook their first review under the new provisions of the *Local Electoral Act* prior to the 2004 triennial local authority elections. The remaining 57 local authorities undertook their first review prior to the 2007 elections. In addition, seven local authorities that had undertaken a review for the 2004 elections undertook a further review prior to the 2007 elections. Prior to the 2010 elections, 24 local authorities undertook a review, including 4 which had also undertaken a review prior to the 2007 elections.

Subject to the requirement to undertake a review if Māori wards or constituencies are to be established for the 2013 triennial local authority elections (see below), the 24 local authorities that undertook representation reviews for the 2010 elections are not required to undertake a further review until 2015 (for the 2016 elections). They do have the option, however, of undertaking another review in 2012 (for the 2013 elections) if they wish to do so.

Any local authority for which Māori wards or constituencies will be established for the 2013 triennial local authority elections, will be required to review its representation arrangements for these elections in accordance with *Schedule 1A of the Local Electoral Act*.<sup>5</sup> The requirements relating to the establishment of Māori wards and constituencies are discussed in detail in *Chapter 3* of these Guidelines.

### **Reviews of communities and community boards**

Territorial authorities must consider the establishment of communities and community boards as part of their representation review. A review of the structure of existing communities and community board membership can only be carried out through the representation review process. Factors and considerations relating to reviews of communities and community boards are set out in *Chapter 6*.

### **Key factors and considerations**

In reviewing their representation arrangements, local authorities are required to provide for 'effective representation of communities of interest' (*sections 19T and 19U*) and 'fair representation of electors' (*section 19V*). As a result, there are three key factors that must be carefully considered by local authorities when determining their representation proposals. They are:

- communities of interest
- effective representation of communities of interest
- fair representation of electors.

These inter-related factors are discussed in detail below.

#### *Communities of interest*

The term 'community of interest' is not defined in the *Local Electoral Act*. It is a term that can mean different things to different people. Giving proper consideration to defining local communities of interest is, however, an essential part of the representation review process. It is a necessary precursor to determining effective representation.

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<sup>5</sup> This requirement does not apply to the Bay of Plenty Regional Council (Environment Bay of Plenty) as the existence of Māori constituencies arises from the Council's own local empowering Act.

Communities of interest may alter over time. Local authorities need, therefore, to give careful attention to identifying current communities of interest within their district or region when undertaking representation reviews.

Communities of interest can be seen to exist at different levels. Local authorities themselves are distinct and identifiable communities of interest. For the purposes of determining appropriate representation arrangements, territorial authorities need to determine firstly the extent to which there are identifiable communities of interest below the district level.<sup>6</sup> Next they need to determine whether these communities of interest are located in identifiable geographical areas, justifying the establishment of wards, or are spread across the district.

A paper prepared for the South Australian Department of Local Government defined community of interest as a three-dimensional concept as follows:

- *perceptual*: a sense of belonging to an area or locality which can be clearly identified
- *functional*: the ability to meet with reasonable economy the community's requirements for comprehensive physical and human services
- *political*: the ability of the elected body to represent the interests and reconcile the conflicts of all its members.<sup>7</sup>

The paper was prepared to address issues associated with local authority boundaries. It can also be seen to apply to identification of electoral subdivisions within local authorities.

In this context, community of interest can be seen as the area to which one feels a sense of belonging (the perceptual aspect) and to which one looks for social, service and economic support (the functional aspect).

In short, a particular community of interest can be defined in terms of the such characteristics as:

- a sense of community identity and belonging reinforced by:
  - similarities in the demographic, socio-economic and/or ethnic characteristics of the residents of a community
  - similarities in economic or social activities carried out in the area
  - distinctive physical and topographical features (e.g. rivers, principal roads, hill ridge lines)
  - distinct local history of the area
  - the rohe or takiwā of local iwi

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<sup>6</sup> Given the nature of regions, they are assumed to have a number of distinct identifiable communities of interest within the region and therefore are required to be divided into constituencies.

<sup>7</sup> *The Concept of Community of Interest* (1989) prepared by Helen Fulcher for the South Australian Department of Local Government.

- dependence on shared facilities and services in an area, including:
  - schools, recreational and cultural facilities
  - retail outlets
  - transport and communication links.

Decisions relating to the representation of communities of interest (the political aspect) will need to take account of the extent that distinct geographical communities of interest can be identified i.e. a physical boundary is able to be defined below the district or region level for the community of interest concerned.

### *Effective representation of communities of interest*

*Section 19T* of the *Local Electoral Act* provides that territorial authorities must ensure:

- effective representation of communities of interest
- ward boundaries coincide with boundaries of meshblocks<sup>8</sup>
- so far as is practicable, ward boundaries coincide with community boundaries.<sup>9</sup>

*Section 19U* provides that regional councils must ensure:

- effective representation of communities of interest
- constituency boundaries coincide with boundaries of meshblocks
- so far as is practicable, constituency boundaries coincide with the boundaries of one or more territorial authority districts or the boundaries of wards.

Effective representation must be achieved within the following statutory limits on the minimum and maximum number of members:

- 5 and 29 (excluding the mayor) for territorial authorities
- 6 and 14 for regional councils.

While not a prescribed statutory consideration, local authorities should consider the total number of members, or a range in the number of members, necessary to provide effective representation for the district or region as a whole. This consideration will be in light of such factors as the size, nature and diversity of the district or region.

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<sup>8</sup> Requirements relating to meshblocks are addressed in *Chapter 9* of these Guidelines.

<sup>9</sup> As previously noted, given the definition of the term ‘community’ in the *Local Electoral Act* (*section 5 ‘Interpretation’*), the provision for ward boundaries to relate to community boundaries is seen as referring to boundaries of community board areas.

Achievement of effective representation requires consideration of the identified communities of interest and the extent these are geographically distinct and warrant specific representation. Effective representation for these communities of interest determines the basis of election for territorial authorities (regions must be divided into constituencies).

The basis of election chosen for territorial authorities (at large, by ward, or partly by ward and partly at large), is required to be in the view of the territorial authority or, as the case may be the Commission, that which best provides for effective representation of communities of interest.

While what constitutes effective representation will be specific to each local authority area, the following factors should be considered to the extent possible:

- avoiding arrangements that may create barriers to participation, such as at elections, for example by not recognising residents' familiarity and identity with an area
- not splitting recognised communities of interest between electoral subdivisions
- not grouping together two or more communities of interest that share few commonalities of interest
- accessibility, size and configuration of an area including:
  - would the population have reasonable access to its elected members and vice versa?
  - would elected members be able to effectively represent the views of their electoral area?
  - would elected members be able to attend public meetings throughout the area, and provide reasonable opportunities for face-to-face meetings?

The Commission also agrees that it is appropriate for the different local authority electoral subdivision boundaries (e.g. constituency and ward boundaries) to coincide as far as is practicable. This supports communities of interest and local electors' identification with their area. In turn this can facilitate participation such as standing as a candidate and voting at local elections.

The legislation is neutral on whether the district of a territorial authority should be divided into wards. The Commission notes that the characteristics that have generally been evident for those territorial authorities that have opted for elections at large include:

- the district having a relatively compact geographic area and/or
- very strong commonalities of interest among identified communities of interest i.e. a shared common community of interest at the district level and/or

- distinct communities of interest are not geographically located but spread across the district.

In cases where district-wide communities of interest are seen to prevail, elections at large may be appropriate. On the other hand, wards are likely to be appropriate in circumstances where a territorial authority district contains a number of distinct, geographically identifiable communities of interest best served by separate representation.

In deciding on ward and constituency arrangements, it should be noted that a separate ward/constituency might not be necessary or practicable for the effective representation of each community of interest. Where there are a large number of communities of interest, practicality suggests that it may be appropriate to consider the linkages between these various interests so that those that display linkages could be combined together into one or more larger wards/constituencies.

Considerations here include the relative merits of one and multi-member wards/constituencies. For example, single-member wards/constituencies can be seen to provide a close direct link between local electors and their representative. On the other hand, multi-member wards/constituencies can provide greater choice for voters and then for residents following the election on who to approach on local issues. They can also allow sharing and specialising in responsibilities between the ward/constituency representatives.

It is also relevant for the local authority to consider the electoral system used when addressing particular configurations of wards or constituencies. The Commission notes in *Chapter 2* that multi-member wards/constituencies of at least three members are seen to be more conducive to achieving the benefits of proportionality under the STV electoral system.

As another option to provide effective representation of communities of interest, the *Local Electoral Act* has provided since the 2004 elections that the members of a territorial authority may be elected partly by wards and partly at large. This option may best reflect the existence of clear district-wide communities of interest in tandem with specific geographically based communities of interest.

The Commission notes that all members elected under a ward or mixed system make a declaration on coming into office to act in the best interests of the whole district. In other words, even where the use of a ward or mixed system will achieve more effective representation, the members under that system have the same obligation to the district as members elected at large. Therefore, in terms of the duties of elected members there is no functional difference in the decision-making role of members elected at large and members elected by way of a ward system.

Details of the basis of election adopted by territorial authorities since 1989 are set out in *Appendix 1*.

## *Fair representation of electors*

*Section 19V* of the *Local Electoral Act* details the factors to be applied in determining the membership for wards and constituencies in order to achieve fair representation of electors.

Under this provision, membership of wards/constituencies is required to provide approximate population equality per member i.e. all votes are of approximately equal value (referred to as the '+/-10% rule') unless there are good (prescribed) reasons to depart from this requirement.

*Section 19V(2)* outlines the specific requirements as follows:

*“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 members elected by the electors of a territorial authority as a whole, if any, and the mayor, if any).”*

In respect of territorial authorities, *section 19V(3)(a)* provides two grounds for not complying with the fair representation requirements of *section 19V(2)*. These grounds are to provide for effective representation of communities of interest within island communities or within isolated communities.

In the case of regional councils, *section 19V(3)(b)* provides that constituencies may be defined in such a way that does not comply with *section 19V(2)* if it is considered that effective representation of communities of interest so requires.

A decision by a regional council not to comply with *section 19V(2)* must be referred to the Commission for determination. Referral to the Commission is required whether or not appeals or objections have been lodged against the regional council's proposal. That referral is to be treated by the Commission as an appeal under the *Local Electoral Act*.

Any local authority proposing membership for any of its electoral subdivisions involving a member to population ratio not complying with the '+/-10% rule' of *section 19V(2)*, needs to specifically identify its reasons for doing so to support its decision. This is required for the public notice under *section 19M(2)(c)* and will also assist the Commission in its deliberations.

Examples of the application of the '+/-10% rule', including exceptions, can be found in the Commission's determinations for the 2004, 2007 and 2010 elections – these can be viewed on the Commission's website [www.lqc.govt.nz](http://www.lqc.govt.nz).

The *Local Electoral Act* does not specify the criteria to be met for an isolated community to warrant specific representation by a member or members on a territorial authority, but given the requirements of *subsections (1) and (2) of section 19V*, it does imply a significant test in this regard.

The Commission has identified the following factors for a local authority to take into account in considering whether a community or grouping of communities of interest warrants specific representation because of its isolation:

- isolation should relate to the ability of a community to receive appropriate representation by elected members
- isolation should be evidenced by significant distance or travel time, or other physical/practical travel and/or communications difficulties or service reliability problems
- for a community to have enhanced representation on the grounds of isolation, a significant proportion of the population of the area should be physically isolated
- physical separation alone may not necessarily constitute isolation
- an area may not be isolated simply because it is rural in nature
- isolation may justify one member instead of no specific representation for a community based on an application of the '+/-10% rule', but caution would need to be applied in allocating additional members on that basis.

In addition, a district may have its own particular factors that contribute to an area having a sense of isolation.

While *section 19V* does not specifically identify grounds for regional councils not to comply with the '+/-10% rule', such as isolation, the Commission may consider this as a factor for non-compliance with *section 19V(2)*.

It is important that all local authorities, including regional councils, clearly identify the grounds for any proposed non-compliance.

### **Questions and answers relating to effective and fair representation**

*Is effective or fair representation more important?*

The *section 4(1)(a)* principle of 'fair and effective representation for individuals and communities' makes it clear that fairness and effectiveness are equally important.

In practice, there will usually be a tension between the tests for effective and fair representation. It is unlikely that any option identified will be able to satisfy both tests perfectly. The assessment of each will inform the other in order to reach a balance between the two.

*How much discretion is there in applying the isolation factor when determining fair representation for territorial authorities?*

The Commission believes it would be difficult to define 'isolation' in the *Local Electoral Act* as it is best assessed in relation to the particular local circumstances of a district. However, it also believes there are some generic characteristics of isolation which should guide territorial authorities' assessment of any isolation factor in their district.

The Commission has identified these characteristics in these Guidelines and will apply these when considering appeals, objections and proposals referred to it for determination.

*How does a territorial authority deal with a situation where it does not have any island or isolated communities requiring specific representation, and there is a tension between achieving effective and fair representation?*

The *Local Electoral Act* requires that a territorial authority (and the Commission) must ensure both effective representation of communities of interest and fair representation for electors.

Determining effective representation requires a territorial authority to make a number of judgments relating to communities of interest. Determining fair representation, however, involves the application of an objective measure (the '+/-10% rule').

If there are no isolated or island communities within the city or district, and therefore no grounds for moving outside the '+/-10% rule', then the territorial authority will need to revisit its assessment of what constitutes effective representation for the identified communities of interest concerned to ensure compliance with the '+/-10% rule'.

*If an area within a territorial authority district is considered to be isolated, how does that affect the application of the '+/-10% rule' across the rest of the district?*

If it is necessary to depart from the '+/-10% rule' for one area to provide effective representation of a community of interest within an island or isolated community, *section 19V(3)(a)* provides that wards (for the district) may be defined and members distributed between them in a way that that does not comply with the '+/-10% rule'. In such a case, while compliance with the rule is relaxed for the balance of the district, the Commission considers that the rule should be applied to the extent practicable in line with the principle of fair and effective representation for individuals and communities.

*If an area within a region is considered to require specific representation that does not comply with the '+/-10% rule' in order to provide effective representation for its communities of interest, how does that affect the application of the '+/-10% rule' across the rest of the region?*

Unlike territorial authorities, regional councils are not limited to identifying an isolated or island community to depart from the '+/-10% rule'. If a specific community of interest (or grouping of communities of interest) is considered to be more effectively represented without complying with the '+/-10% rule', then *section 19V(3)(b)* provides that compliance with the rule may be relaxed for the balance of the region. However, again the rule should be applied to the extent practicable and the decision will need to be confirmed by the Commission (even if there are no appeals or objections).

*How is the '+/-10% rule' calculated for the balance of the district/region when an exception is made for one ward or constituency?*

The '+/-10% rule' is calculated once under *section 19V(2)* for the district or region as a whole regardless of whether any exceptions to the rule are being proposed. It is *not* calculated again for the balance of the district or region once any exception has been identified.

## **6 PARTICULAR FACTORS AND CONSIDERATIONS FOR REVIEWS RELATING TO COMMUNITY BOARDS**

### **Introduction**

A territorial authority is required by *section 19J* of the *Local Electoral Act*, whenever reviewing its representation arrangements, to consider whether there should be communities and community boards in the district and, if so, their nature and structure. The requirement applies to all territorial authorities carrying out representation reviews, not just those territorial authorities that currently have community boards.

This means that every territorial authority must, as part of its representation review, consider whether community boards would be appropriate to provide fair and effective representation for individuals and communities in its district. The review provides a process for a territorial authority to propose the constitution of new boards, alterations to existing boards, or disestablishment of existing boards.

In carrying out a review two levels of decisions are required:

- whether there should be communities and community boards within the territorial authority's district
- if the territorial authority considers that one or more communities should be established (or retained), the nature of the community and the structure of the community board.

*Schedule 6* of the *Local Government Act 2002* provides for community boards to be established at any time as the result of a proposal from the community concerned. However boards may only be disestablished, or the boundaries of a community altered, as part of a representation review under the *Local Electoral Act* or as part of a local government reorganisation scheme.

### **Key statutory provisions**

*Section 19F* provides for the minimum and maximum number of community board members (4 and 12 members respectively with at least 4 to be elected members) and the appointment of members by the parent territorial authority (appointees must total less than half the total number of members).

*Section 19G* prescribes that the area of a community board may be subdivided for electoral purposes. This includes provision for the community board members to be elected by wards if the community board area comprises two or more whole wards of a district.

The division of a community board area into electoral subdivisions may be appropriate when the community board area is made up of a number of distinct communities of interest and the formation of subdivisions will provide effective representation of these communities of interest.

The issues to be considered when deciding whether or not a community board area should be subdivided for electoral purposes are similar to those which apply in respect of the division of a territorial authority district into wards (as addressed in *Chapter 5*). The mixed system of representation, however, is not available for community boards.

The fair representation requirements of *section 19V* (the ‘+/-10% rule’) also apply in respect of subdivisions of communities. The permitted exceptions to compliance with the ‘+/-10% rule’ for territorial authorities, in respect of isolated and island communities, also apply in respect of subdivisions of communities.

The following table sets out specific decisions that need to be made in reviews of community boards under *section 19J* of the *Local Electoral Act*.

<b>Section</b>	<b>Decision</b>
19J(1)	Whether: <ul style="list-style-type: none"> <li>• there should be communities and community boards</li> <li>• the nature of any community and the structure of any community board</li> </ul>
19J(2)(a)	Whether 1 or more communities should be established
19J(2)(b)	Whether any community should be abolished or united with another community
19J(2)(c)	Whether the boundaries of a community should be altered
19J(2)(d)	Whether a community should be subdivided for electoral purposes
19J(2)(e)	Whether the boundaries of a subdivision should be altered
19J(2)(f)	The number of members of a community board
19J(2)(g)	The number of members of a community board who should be elected and the number who should be appointed
19J(2)(h)	Whether the members to be elected should be elected: <ul style="list-style-type: none"> <li>• from the community as a whole</li> <li>• from subdivisions</li> <li>• where the community comprises two or more whole wards, from those wards</li> </ul>
19J(2)(i)	Where members are to be elected from subdivisions: <ul style="list-style-type: none"> <li>• the name and boundaries of subdivisions</li> <li>• the number of members to be elected from each subdivision (in accordance with the ‘+/-10% rule’ set out in <i>section 19V(2)</i>)</li> </ul>

In undertaking its review, the territorial authority is required by *section 19W* to have regard to such of the criteria as apply to reorganisation proposals under the *Local Government Act 2002* as the territorial authority considers appropriate. Those criteria are detailed in *clause 3* of *Schedule 3* of the *Local Government Act*, and are set out in *Appendix 2* of these Guidelines. Applying those criteria for reviews relating to community boards means that the following matters should be considered:

- Will the proposal promote the good local government of the parent district and the community area concerned?
- Will the district and the community have the resources necessary to enable them to carry out their respective responsibilities, duties and powers?
- Will the district and the community have areas that are appropriate for the efficient and effective performance of their role?
- Will the district and the community contain a sufficiently distinct community of interest or sufficiently distinct communities of interest?
- Will the district and the community be able to meet the decision-making requirements of *section 76* of the *Local Government Act 2002*, to the extent that they are applicable?

### **Administrative changes resulting from proposals to change community board arrangements**

As noted, in making a decision on matters relating to community boards under *section 19J* of the *Local Electoral Act*, the territorial authority, and where appropriate the Commission, are required to have regard to such of the criteria for reorganisation proposals, set out in *Subpart 2* of *Part 1* of *Schedule 3* of the *Local Government Act 2002*, as it considers appropriate.

The High Court has found that these statutory considerations are sufficiently broad that administrative changes that would arise as a result of changing existing community board arrangements fall within the criteria, and are therefore matters that the territorial authority and the Commission should take into account in their decision-making.

Administrative changes include any allocation of resources and funding and any delegation of statutory authority to enable a community board to discharge responsibilities referred or delegated to it under *section 52* of the *Local Government Act* by the territorial authority.

Paragraphs 111 to 119 of the judgment in *Ford & Ors v The Local Government Commission & Ors* (CIV-2004-409-948) set out the Court's reasoning on this matter.

## **General**

Territorial authorities should note that all elements of their representation proposals, including the elements relating to community boards, are subject to rights of appeal and/or objection. It is therefore important that the issues relating to community boards, when considered under *section 19J*, receive the same detailed consideration as all other elements of the review.

The Commission notes that it has no power to consider appropriate functions or delegations to a community board as part of any representation determination it may make for the parent territorial authority.

## **7 CONSULTATION**

### **Introduction**

*Part 1A* of the *Local Electoral Act* sets out requirements for conducting representation reviews, including provision of the opportunity for the public to make submissions on a local authority's proposals.

As noted in *Chapter 5*, *sections 10 and 12(2)* of the *Local Government Act 2002* relating to the purpose of local government and the status and powers of local authorities, and *sections 77, 78, 81 and 82* relating to decision-making and consultation requirements, apply to local authorities performing functions under other enactments.

Local authorities need to be mindful in particular, when undertaking representation reviews, of the requirements of the *Local Government Act* to:

- consider the views of affected/interested persons (*section 78*)
- provide opportunities and foster capacity for contributions to decision-making by Māori (*section 81*)
- act in accordance with the consultation principles (*section 82*).

Local authorities should refer to the good practice guide prepared by the Controller and Auditor-General entitled 'Turning principles into action: A guide for local authorities on decision-making and consultation' (12 September 2007) which is available on the website of the Office of the Auditor-General [www.oag.govt.nz](http://www.oag.govt.nz). That document includes a discussion of administrative law issues and provides guidance for local authorities in developing good consultation practice.

### **Preliminary consultation**

The Commission is aware that some local authorities undertake preliminary consultation prior to commencing the formal statutory representation review process. Forms of consultation used by local authorities include community surveys or referenda, discussion documents, newspaper advertising, focus groups, email groups of interested citizens, public workshops and meetings. Some of these exercises may be led or facilitated by local councillors, community boards or other community groups. Targeted consultation may also be appropriate including with local Māori.

Preliminary consultation can be used to seek views on particular representation options as well as on factors such as current communities of interest. This consultation can assist local authorities to identify issues relevant to the review process and enable them to formulate and consider a wider range of representation options in the development of their formal proposals.

While preliminary consultation can be a useful component of the representation review process, it is not a substitute for the formal statutory steps. The results of a referendum, for example, may be helpful in indicating overall public opinion. However it would be dangerous to rely solely upon its outcome to justify a particular ward/constituency configuration. The outcome of a review must seek to achieve fair and effective representation (as defined in the *Local Electoral Act*) for all individuals and communities of interest of the district or region. It should not merely reflect community views on particular aspects of overall arrangements for the district or region.

Some local authorities have used independent panels to undertake preliminary consultation and then make recommendations on options for representation arrangements. Independent panels remove possible perceptions of parochialism and self-interest arising from elected members' close involvement in these issues and the Commission encourages local authorities to consider this option.

When deciding to convene an independent panel, it is important to select people who have relevant skills and a good knowledge of the district or region. It is also important that the panel is provided with clear terms of reference, is fully briefed on its task, and has a good understanding of the statutory requirements for reviews.

### **Statutory requirements**

*Sections 19M and 19N* set out the statutory consultation requirements for a local authority's initial and final proposals respectively. These requirements, summarised in *Chapter 4*, are based on the special consultative procedure provided for in the *Local Government Act 2002*.

*Appendices 3 and 4* contain sample public notices based on the requirements of *sections 19M and 19N*.

The requirements of *sections 19M and 19N* are minimum requirements. The Commission believes that local authorities should consider additional steps to encourage input and feedback from the community on their proposals. Consideration should be given, for example, to making best use of existing local authority facilities and communications channels such as displays at council offices and libraries, and the use of council publications, newsletters and websites. Creative use of the media should also be considered. Public comprehension of proposed electoral subdivisions can be aided, for example, with the inclusion of suitable maps in public notices, or by references in the public notices to maps and other details of the proposals being available for viewing at selected sites.

The Commission notes that the provision of full information to the public on representation proposals is not only a matter of good practice, but may lessen the potential for appeals and/or objections.

## **8 GOOD PRACTICE PROCESS FOR REPRESENTATION REVIEWS**

The *Local Electoral Act* does not prescribe the process to be applied in undertaking a representation review. Each local authority may determine its own process for undertaking its review provided the statutory requirements are met. The following recommended process steps are designed to assist local authorities to achieve a robust outcome that accords with the statutory requirements and other relevant considerations.

### **Preliminary steps**

#### *Step 1: Identify criteria for assessing need for review after three years*

Local authorities are required to undertake a representation review at least every six years. They also have discretion to undertake a review three years after the last review. To help local authorities decide whether to undertake a review after three years, the Commission identifies factors such as the following for consideration:

- What are the local authority's and/or community's views on the current electoral system?<sup>10</sup>
- Given the establishment of Māori wards or constituencies triggers a representation review, what are the local authority's and/or community's views on the issue of separate Māori representation? Do local authority policies result in an obligation to consult with local Māori on this issue?<sup>11</sup>
- What are the local authority's and/or community's views on current community boards (if any) and/or the establishment of new boards? (applies only to territorial authorities)
- What are the local authority's and/or community's views on the current basis of election i.e. should it be a ward, at large or mixed system? (applies only to territorial authorities)
- What are the local authority's and/or community's views on the present number of councillors?
- Have there been significant changes in population in some areas which impact on fair representation i.e. approximate equality between councillors in the numbers represented?
- Is the determination for the previous triennial election now seen as resulting in less than optimum effectiveness of representation for communities of interest?
- Are there any other reasons (current or future considerations) that suggest a review should be undertaken at this time?

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<sup>10</sup> This will not be a consideration if the electoral system was determined by way of poll for the last triennial election as that outcome applies for two triennial elections as a minimum.

<sup>11</sup> As above in respect of any poll on separate Māori representation.

The Commission recommends that local authority officers consider these questions and the need to raise, formally or informally with elected members, the matter of the appropriateness of undertaking a review after three years.

*Step 2: Consider preliminary consultation*

- When a representation review is to be undertaken, the local authority should consider the need for preliminary consultation with the community, including with local Māori, on the range of representation issues including the electoral system, Māori representation and communities of interest.
- It is recommended that the local authority also liaise with the other local authorities in the region over the timing of representation reviews including options for joint consultation exercises.

**Representation review steps**

*Step 3: Identify communities of interest*

- Identify the communities of interest of the region or district taking into account the factors set out in *Chapter 5* of these Guidelines and any other information available to the local authority.

*Step 4: Determine effective representation for identified communities of interest of the region or district*

- For regional councils, constituencies are required.
- For territorial authorities, consider whether effective representation for identified communities of interest is best achieved by way of elections held at large, wards or a mix of both. Considerations will include the impact of:
  - accessibility, size and configuration of the district
  - the existence of community boards
  - the electoral system
  - single versus multi-member wards
  - the wider statutory role of local authorities encompassing overall community well-being, sustainability and the interests of future generations
  - increasing diversity of the population and the physical location of particular communities of interest
  - improved communications mechanisms.
- Consider what council size, or range in membership, would be appropriate to provide effective representation for the region or district as a whole bearing in mind:

- the diversity of the region/district
- statutory obligations e.g. is it a unitary authority
- the need for efficient and effective governance of the region/district.
- In relation to constituencies and wards, consider whether each identified community of interest needs separate representation, or whether communities of interest can be grouped together in certain ways to achieve effective representation bearing in mind the desirability of:
  - avoiding barriers to elector and resident participation
  - avoiding the splitting of recognised communities of interest between constituencies/wards
  - avoiding the grouping of communities of interest with few commonalities
  - taking account of accessibility, size and configuration of the area concerned.
- In relation to constituencies and wards, determine:
  - the number of constituencies or wards based on communities of interest, or groupings of communities of interest
  - the boundaries of the constituencies or wards including the requirement, as far as practicable, for constituencies to coincide with territorial authority and ward boundaries, and for ward boundaries to coincide with community boundaries
  - the names of the constituencies or wards.

*Step 5: Consider fairness of representation for electors of constituencies and wards*

- In relation to the range of options for the total membership of the local authority:
  - identify the ratio of population per member for each proposed constituency or ward
  - compare the constituency/ward ratios calculated with the average population per member for the local authority as a whole.
- Under any of the options for total membership, do the constituency/ward ratios fall within +/-10% of the average population per member?
  - If “yes”, which option would provide the optimum local authority size in terms of providing effective and fair representation?

- If “no”, consider altering constituency/ward boundaries or reconfiguring these arrangements (to the extent practicable to provide effective representation of communities of interest) so that the ratios fall within +/-10% of the average population per member.
- If the alteration or reconfiguration does not achieve the required ratios or is impracticable to provide effective representation of communities of interest, consider whether there are sufficient grounds not to comply with the requirements of *section 19V(2)* – i.e. are there sufficient grounds for applying the provisions of *sections 19V(3)(a)* or *19V(3)(b)*?
- If sufficient grounds for an exception are identified, document these in appropriate detail.
- If sufficient grounds cannot be identified, consider again altering or reconfiguring constituency/ward boundaries.

*Step 6: Consider communities and community boards (for territorial authorities only)*

- In light of the principle of fair and effective representation for individuals and communities, consider and document whether:
  - there should be communities and community boards
  - the nature of any community and the structure of any community board.
- Where community boards are to be established or retained, consider whether effective representation for identified communities of interest is best achieved by way of:
  - an at large system
  - subdivision of the community, including boundaries and names of subdivisions
  - whole territorial authority wards within the community.
- Where community boards are to be established, a similar process for territorial authority reviews is to be undertaken to:
  - identify the total number of members required (both elected and appointed)
  - the number of members per subdivision (if any) to ensure compliance with the ‘+/-10% rule’, or the number per ward (if any)
  - the number (if any) of members to be appointed by the parent territorial authority.

## Local authority decision-making

Each local authority in resolving its initial determination must act in accordance with the requirements of the *Local Electoral Act* and the consultation and decision-making provisions of the *Local Government Act 2002*.

Local authority officers and members involved with the review process should also have a familiarity with relevant administrative law issues, and should seek advice from their legal advisers when necessary.

If a local authority receives submissions on its initial proposal, it must ensure that it acts in a legally 'fair' way in considering them. In particular, it is important that, where any person exercises the right to be heard under *section 19M(3)* of the *Local Electoral Act*, only those members of the local authority who hear the submissions participate in decision-making on those submissions.

Each local authority needs to consider all submissions received, and must be able to demonstrate that it has considered all the submissions made to it, by providing reasons for the acceptance or rejection of submissions. A local authority's final proposal must be made in light of the submissions lodged on its initial proposal, or else the initial proposal should be retained.

The local authority's public notice of its final proposal under *section 19N(2)* is required to state the reasons for amendments and the reasons for any rejection of submissions, so it is important that these reasons are recorded in the local authority's resolution of its final proposal.

Because the final decision is the outcome of a participative process, it is important that the final proposal either has a clear relationship to the initial proposal, or that alternatively any significant changes are the result of submissions on the initial proposal. A final proposal which bears no relation to either the submissions on the initial proposal or the initial proposal itself is likely to be one on which the community has had no real opportunity to express views and, for that reason, is more likely to attract appeals or objections.

As noted in these Guidelines, it is important that careful consideration is given to the following issues in particular and detailed reasons for the decisions are recorded:

- identification of communities of interest
- the basis of election (for territorial authorities only)
- establishment or retention of community boards (for territorial authorities only)
- provision of fair and effective representation for electors and communities of interest and compliance with the '+/-10% rule' in particular

- consideration by regional councils of the practicality of constituency boundaries coinciding with territorial authority or ward boundaries, and consideration by territorial authorities of ward boundaries coinciding with community boundaries.

Finally the Commission notes that some local authorities have in the past worked closely to the statutory deadlines. In doing so they limited their ability to deal with any unexpected issues that may have arisen, and potentially created problems for themselves later in the process.

The Commission encourages all local authorities to get the planning for their reviews underway as early in the triennium as possible, including those which undertook reviews in the previous triennium, and to set internal deadlines that are not too close to the statutory deadlines.

The Commission considers that a formal determination of initial proposals should not be made until after 28 February in the year before the next triennial local authority election. This is to enable account to be taken of any demand for a poll on the electoral system or separate Māori representation. However this does not preclude local authorities from undertaking preliminary consideration, planning and consultation.

## 9 GENERAL MATTERS RELATING TO REVIEWS

### Names of electoral subdivisions

It is important to note that appeals and/or objections may be lodged against the names of communities, subdivisions, wards and constituencies. Local authorities considering new names for any electoral subdivisions may wish to contact the New Zealand Geographic Board Ngā Pou Taunaha o Aotearoa, which has national guidelines on naming including the appropriate use of names and applying the correct orthography to Māori names. However, it should be noted that the Board does not have jurisdiction over the naming of electoral subdivisions, so the statutory process outlined in the *New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008*, does not apply. (Note that the Board does have a naming role in respect of proposed changes to district and region names.)

It is desirable to avoid duplication and confusion of names of electoral subdivisions with those in other local authority areas. In general, names should indicate the most common or predominant official or recorded place or feature name within the electoral subdivision concerned.

Information on the Board, the rules of nomenclature covered in the Board's frameworks, the New Zealand Geographic Place Names Database (archived), and the New Zealand Gazetteer of Official Geographic Names, can be found under "Place names & street names" at [www.linz.govt.nz](http://www.linz.govt.nz).

Enquires regarding the New Zealand Geographic Board and the process for assigning or altering official place names should be directed to:

Wendy Shaw  
Secretary for the New Zealand Geographic Board Ngā Pou Taunaha o  
Aotearoa  
c/o Land Information New Zealand  
PO Box 5501  
WELLINGTON 6145  
Phone: (04) 460 0581  
Fax: (04) 472 2244  
Email: [wshaw@linz.govt.nz](mailto:wshaw@linz.govt.nz)  
Website [www.linz.govt.nz](http://www.linz.govt.nz)

### Meshblocks

Under sections 19T(b), 19U(b) and 19W(c) of the *Local Electoral Act*, all ward, constituency, community and subdivision boundaries (including those of Māori wards or constituencies) must coincide with the boundaries of statistical meshblock areas determined by Statistics New Zealand and used for parliamentary electoral purposes.

If a local authority wishes to develop community/subdivision/ward/constituency boundaries that do not align with meshblock boundaries, it will need to consult Statistics New Zealand to ascertain whether specific meshblock boundary alterations are possible. Statistics New Zealand may, in some cases, be able to split meshblocks or nudge meshblock boundaries to better reflect communities of interest or current property boundaries.

Enquiries regarding meshblock alterations should be directed to:

Jill Foster  
Geospatial Team  
Statistics New Zealand Tatauranga Aotearoa  
Private Bag 4741  
CHRISTCHURCH  
Phone: (03) 964 8909  
Email: [geography@stats.govt.nz](mailto:geography@stats.govt.nz)  
Website: [www.stats.govt.nz](http://www.stats.govt.nz)

(Note: As Statistics New Zealand's Christchurch office was damaged by the Christchurch earthquake in February 2011, Jill Foster is working partially from home. If immediate contact cannot be made with her by phone, contact should be made at the above e-mail address. E-mails can be accessed by Jill or other members of the Geospatial team as required.)

### **Use of population data**

In undertaking its representation review, *section 19X* of the *Local Electoral Act* requires that a local authority apply the "ordinarily resident population" figures derived either from the most recent Census or from population estimates prepared by Statistics New Zealand.

It is important that each local authority applies population data that most accurately reflects its current situation. If a district/region is experiencing significant population changes (increase or decrease) then the Census information, if more than one year old, may not provide an accurate picture of the current population of the district/region and its subdivisions. The Commission therefore recommends that in all cases the most recent population estimate is used.

Statistics New Zealand produces population estimates annually. New estimates for groups of meshblocks are available each year from February onwards. This is another reason for local authorities not to make their initial determination until after 28 February in the year before the next triennial local authority elections.

When obtaining population estimates from Statistics New Zealand, a certificate from the Government Statistician does not need to be sought. While the Government Statistician's certificate is the formal certification for population estimates, it is the practice of Statistics New Zealand to only arrange for such a certificate when the boundaries of electoral subdivisions are finalised.

If a local authority is proposing to alter the boundaries of its electoral subdivisions it should be noted that Statistics New Zealand will not provide estimates of population for individual meshblocks. Estimates of population will be provided for existing wards, proposed wards (provided an appropriate geographic description is provided), area units and whole districts.

If a local authority wishes to obtain an estimated ordinarily resident population for an area smaller than an area unit (e.g. a group of meshblocks or even a single meshblock) it should discuss the matter with Statistics New Zealand to determine whether an appropriate methodology may be developed and applied.

Statistics New Zealand charges a fee for the preparation of population estimates for areas that are not existing electoral subdivisions.

Enquiries regarding population estimates should be directed to:

Alan Ambury  
Population Statistics  
Statistics New Zealand Tatauranga Aotearoa  
Private Bag 4741  
CHRISTCHURCH  
Phone: (03) 964 8819  
Fax: (03) 964 8999  
Email: [demography@stats.govt.nz](mailto:demography@stats.govt.nz)  
Website: [www.stats.govt.nz](http://www.stats.govt.nz)

(Note: As Statistics New Zealand's Christchurch office was damaged by the Christchurch earthquake in February 2011 Alan Ambury is working partially from home. If immediate contact cannot be made with him by phone, contact should be made at the above e-mail address. E-mails can be accessed by Alan or other members of the Demography team as required.)

### **Preparation and certification of plans**

Representation arrangements for the next triennial election of a local authority or community board do not take effect unless plans of the relevant electoral subdivisions have been forwarded to Land Information New Zealand (LINZ) and certified by the Surveyor-General or his delegate. Plans should preferably be forwarded in PDF format to [electoral@linz.govt.nz](mailto:electoral@linz.govt.nz), with the words "Plan for certification" and the name of the local authority in the subject line of the email.

Plans prepared to depict electoral subdivisions are required to comply with the Surveyor-General's 'Standard for Plans of Local Authority Electoral Areas (LINZS50000)', which is available under "Electoral support" on the "LINZ's Responsibilities" page at [www.linz.govt.nz/about-linz](http://www.linz.govt.nz/about-linz). The purpose of the standard is to achieve uniformity and accuracy in the presentation of those areas that are required to be defined for formal notification.

Under *section 19Y(5)* of the *Local Electoral Act*, where the Commission is required to arrange the preparation of plans, the relevant local authority must reimburse the Commission for all costs incurred in obtaining the certification, or must meet the costs of the production of the certificate if required to do so by LINZ. The relevant costs are all those relating to the drafting of the plans and their certification. The Commission may either invoice the local authority to cover the costs it incurs, or may arrange for the firm undertaking the preparation of the plans to invoice the local authority directly.

It should be noted that the drafting and certification of plans, whether undertaken under instructions from a local authority or the Commission, could take some time to complete. The time and costs involved will generally reflect the number and complexity of changes to existing representation arrangements. All local authorities should factor in provision for costs associated with such plans when developing the budgets for their representation reviews.

### **Keeping the relevant organisations informed**

It is important that each local authority keeps the Commission, the Surveyor-General and the Government Statistician informed of progress with its review.

Under the *Local Electoral Act* local authorities are required to provide the following information to the above parties and to the Remuneration Authority:

- a copy of the resolution on its initial proposals (*section 19L*)
- a copy of the public notice of its final proposals, if submissions were received on the initial proposals (*section 19N*)
- a copy of the public notice of its final proposals, if no submissions were received on the initial proposals, or if no appeals and/or objections were received (*section 19Y*).

A copy of the public notice under *section 19Y* is also required to be sent to the Secretary for Local Government.

It assists the Commission considerably if, in addition to the statutory information requirements, each local authority provides copies of the following information to the Commission:

- any public discussion or consultation documents issued relating to the review
- officer reports to the local authority
- all relevant local authority resolutions and public notices.

A local authority also needs to ensure that other local authorities with a direct interest in its proposal are provided with copies of the public notices issued by the local authority in undertaking its representation review. *Sections 19N and 19Y* require:

- a territorial authority issuing a public notice to provide it to the regional council(s) in whose region(s) the district is located
- a regional council issuing a public notice to provide it to the territorial authorities located in its region.

The postal addresses for the organisations required to receive copies of public notices are:

Chief Executive Officer  
Local Government Commission  
PO Box 5362  
WELLINGTON 6145

Government Statistician  
Statistics New Zealand  
PO Box 2922  
WELLINGTON 6140

Surveyor-General  
Land Information New Zealand  
PO 5501  
WELLINGTON 6145  
Preferred means of contact –  
[electoral@linz.govt.nz](mailto:electoral@linz.govt.nz)

Chairman  
Remuneration Authority  
PO Box 10-084  
WELLINGTON 6143

Secretary for Local Government  
Department of Internal Affairs  
PO Box 805  
WELLINGTON 6140

## **10 APPEALS AND OBJECTIONS**

### **Introduction**

Under *section 19O* of the *Local Electoral Act*, an appeal against a local authority's final proposal may be lodged by a person who or organisation that made a submission on the local authority's initial proposal. The matters raised in the appeal must relate to those matters raised in the person's or organisation's submission on the initial proposal.

Under *section 19P*, the right of objection exists only if a local authority's final proposal differs from its initial proposal. Any person or organisation may lodge an objection to any elements of a local authority's final proposal, regardless of whether they made a submission on the initial proposal. An objection must identify the matters to which the objection relates.

Under *section 19V*, where a regional council's final proposal does not comply with the '+/-10% rule', the regional council must refer the proposal to the Commission. Such a referral is to be treated as if it were an appeal against the decision of the regional council. (Accordingly references in this chapter to appeals include any final proposal referred pursuant to *section 19V(5)*).

There is no provision in the *Local Electoral Act* for the acceptance of late appeals or objections.

### **The role of the Commission**

Under *section 19R*, the Commission must consider the appeals, objections and other information forwarded to it and determine the representation arrangements for the local authority. In making its determination, the Commission is able to make any enquiries that it considers appropriate and may, but is not obliged to, hold meetings with the parties.

The Commission must complete its duties before 11 April in the year of the triennial local authority election.

Determinations of the Commission may be appealed on a point of law, in accordance with *Schedule 5* of the *Local Government Act 2002*. The determinations may also be subject to judicial review under the *Judicature Act 1908*.

One of the Commission's 2004 determinations was subject to judicial review. The High Court in *Ford & Ors v The Local Government Commission & Ors* (CIV-2004-409-948) confirmed that the role of the Commission is to determine the matters required to complete the review of representation arrangements.

The Court also confirmed that the Commission's role is not merely supervisory of a local authority's decision. This means that the Commission is not restricted merely to checking that a local authority has followed a correct process and referred to all relevant factors, but that it is also required to form its own view on the matters which are within the scope of the review.

The Court made it clear that the local authority's proposal is one of a number of matters that the Commission is required to take into account. However, the weight accorded to the local authority's proposal is a matter for the Commission.

In this regard, the judgment stated that the weight of numbers in favour of a particular viewpoint cannot be a mandatory consideration for the Commission. One compelling submission might provide sufficient material for the Commission to reach a decision.

### **Information to be provided to the Commission**

*Section 19Q* sets out in detail the information required to accompany the appeals and/or objections forwarded to the Commission. The required information is:

- copies of the resolutions on the initial and final proposals
- a copy of the public notice of the final proposal
- all submissions made on the local authority's initial proposal
- all appeals and objections received
- information concerning the communities of interest and population of the district, region or community, or any proposed electoral subdivision, as is held by the local authority and is necessary for the Commission's determination of the appeals and objections.

In addition, the Commission would normally expect the following information to be provided:

- copies of any public discussion or consultation documents on the review
- detailed maps showing the existing electoral subdivisions of the local authority or community and the proposed subdivisions
- officer reports to the local authority, which provide background information and make recommendations, including financial impacts of any proposals.

## **Commission consideration**

When considering appeals and/or objections against the final proposal of a local authority, the Commission has the option of either making a decision based on the papers, or holding a hearing at which the parties may put forward their respective viewpoints. The Commission also has the discretion to make any enquiries it considers appropriate.

The current Commission has adopted the practice of inviting selected submitters who support local authority proposals to appear at hearings in order that the Commission hears a balance of views. Such invitations are made at the discretion of the Commission.

In previous review rounds, the Commission has held hearings in most cases. For appeals involving relatively minor matters the Commission has, on occasions, reached its decision based on a consideration of the papers. In deciding whether or not to hold a hearing, the appeals and/or objections received will be assessed to determine whether a hearing is justified in a particular case, taking into account the workload of the Commission and the time constraints of the legislation.

Because of the limited time available to the Commission for considering and determining appeals and objections, meetings to hear appellants/objectors may not always be at times or on dates that are convenient to all participants. Hearings are usually held in local authority premises. Refer to *Appendix 5* for details on the conduct of Commission hearings and process requirements.

## **Commission decisions**

Commission decisions take account of the matters that come before it through appeals and objections. Under *section 19R* the Commission may also take into account matters raised in submissions to a local authority's initial proposal, and information gained through any further enquiries the Commission considers appropriate.

With regard to a proposal before it, the Commission must rectify any element of a local authority's proposal that it considers does not comply with the statutory provisions, whether or not that element of the proposal was the subject of an appeal or objection. Therefore, there may be occasions when the Commission makes a determination that is not founded on any particular proposal, submission, objection or appeal.

In considering local authority proposals, the Commission must ensure that the provisions of *section 19T or 19U or 19W, and section 19V* are complied with. If the Commission does not consider that the local authority has established grounds for a departure from the '+/-10% fair representation rule' in *section 19V(2)*, then the Commission is required to ensure that this requirement is met.

## 11 APPLICATION TO AUCKLAND

The representation review provisions of the *Local Electoral Act 2001* apply to the Auckland Council because it is a territorial authority. This is, however, subject to the following specific provisions of the *Local Government (Auckland Council) Act 2009*:

- The Auckland Council's first representation review is to be undertaken after the 2013 triennial local authority elections but before 8 September 2018, unless Auckland is required to be divided into Māori wards for the 2013 elections. If the latter is the case, the Council's representation review must be completed no later than 8 September 2012 (*section 103*).
- The governing body of the Auckland Council must comprise a mayor and 20 members (*section 8*).
- Local boards must comprise no fewer than 5 and no more than 12 members (*section 11(1A)*).
- The following matters relating to local boards are to be dealt with by way of reorganisation proposals, and therefore not through the representation review process (*section 13A*):
  - establishment of local board areas
  - abolition of local board areas
  - alteration of boundaries of local board areas
  - union of 2 or more local boards.
- The following matters relating to local boards must be included in the representation review process (*section 103(3)*):
  - whether local board areas should be subdivided for electoral purposes
  - whether the boundaries of any subdivision should be altered
  - the number of members of local boards
  - the names of local boards
  - the names and boundaries of subdivisions
  - the number of members to be elected from each subdivision.
- A prohibition on the establishment of community boards in Auckland (*section 102*).

The following requirements of the Auckland Council's initial representation arrangements for the 2010 elections do not apply in future:

- single member wards for the rural part of the former Rodney District and for that part of the former Franklin District included in Auckland
- the more flexible approach to the '+/-10% rule' allowing the requirement not to be complied with if considered necessary for the effective representation of communities of interest.

## **12 CONTACTING THE LOCAL GOVERNMENT COMMISSION**

Staff of the Commission are happy to provide advice to councils and to answer queries regarding representation reviews or any matters raised in these Guidelines. Please contact the Local Government Commission:

Telephone: (04) 494 0552

Facsimile: (04) 494 0501

Email: [info@lgc.govt.nz](mailto:info@lgc.govt.nz)

Postal address: PO Box 5362, Wellington, 6145

Street address: Level 5, 46 Waring Taylor Street, Wellington

## **APPENDIX 1**

### **Basis of election of territorial authorities**

At the 1989 triennial local authority elections, following the reorganisation of local government, the members of the Kaikoura and Kawerau District Councils were elected at large. All other territorial authority elections were conducted by wards.

At the 1992 elections, five further territorial authorities adopted the at large system: Upper Hutt City, Napier City, Invercargill City, Nelson City, and the Chatham Islands. All remaining territorial authorities used wards as the basis of election for their members.

The basis of election of territorial authorities remained the same for the 1995, 1998 and 2001 triennial local authority elections.

For the 2004 elections, in addition to the above seven territorial authorities, the Commission upheld a proposal of the Wairoa District Council that the Council be elected at large. For these elections, the Commission also determined that the mixed system of representation would apply for the election of members to the Kapiti Coast District Council and the Tauranga City Council. The remaining 63 territorial authorities continued to use wards as the basis of election for members.

At the 2007 elections, the above eight territorial authorities with the exception of Napier City, conducted their election at large. In addition, as a result of appeals/objections, the Commission determined that the Wanganui District Council election would also be conducted at large. The Commission also determined that three further territorial authority elections (in addition to Tauranga City and Kapiti Coast District) would be conducted using a mixed system of representation. These were Napier City, Masterton District and Gore District Councils. The remaining 60 territorial authorities continued to use wards as the basis of election for members.

For the 2010 elections the Commission upheld the Rotorua District Council's proposal that it be elected at large. The newly constituted Auckland Council was elected from wards. This meant that for those elections:

- 53 territorial authorities were elected by wards
- 9 were elected at large
- 5 were elected by a mixed system

## **APPENDIX 2**

### **Criteria for reorganisation schemes (as prescribed in *Subpart 2 of Part 1 of Schedule 3 of the Local Government Act 2002*)**

#### ***Subpart 2—Criteria to be considered***

#### **3 *Promotion of good local government***

- (1) *When considering a reorganisation proposal or scheme, the joint committee of the affected local authorities or the appointed local authority or the Commission must satisfy itself that the proposal or scheme will—*
- (a) *promote good local government of the districts or regions concerned; and*
  - (b) *ensure that each local authority provided for under the proposal will—*
    - (i) *have the resources necessary to enable it to carry out its responsibilities, duties, and powers; and*
    - (ii) *have a district or region that is appropriate for the efficient and effective performance of its role as specified in section 11; and*
    - (iii) *contain within its district or region a sufficiently distinct community of interest or sufficiently distinct communities of interests; and*
    - (iv) *be able to meet the requirements of section 76.*
- (2) *When considering the matters specified in subclause (1) in relation to any reorganisation proposal or scheme, the joint committee of the affected local authorities or the appointed local authority or the Commission must have regard to—*
- (a) *the area of impact of the responsibilities, duties, and powers of the local authorities concerned; and*
  - (b) *the area of benefit of services provided; and*
  - (c) *the likely effects on a local authority of the exclusion of any area from its district or region; and*
  - (d) *any other matters that it considers appropriate.*

#### **4 *Appropriate boundaries***

*In determining boundaries under any reorganisation proposal or scheme, the joint committee of the affected local authorities or the appointed local authority or the Commission must ensure that,—*

- (a) *if practicable, the boundaries of regions conform with catchment boundaries; and*
- (b) *if practicable, the boundaries of districts conform with the boundaries of regions; and*
- (c) *the boundaries of regions and the boundaries of districts conform with the boundaries of statistical meshblock areas determined by Statistics New Zealand and used for parliamentary electoral purposes.*

## **5 Representation**

*If a joint committee of the affected local authorities or the appointed local authority or the Commission is required to determine the membership of a local authority as a consequence of any reorganisation proposal or scheme, the joint committee of the affected local authorities or the appointed local authority or the Commission must—*

- (a) *provide fair and effective representation for individuals and communities of that local authority; and*
- (b) *comply with the requirements of the Local Electoral Act 2001; and*
- (c) *take into account the responsibilities, duties, and powers of that local authority.*

## **6 Minimum populations of districts and regions**

*A reorganisation proposal may not proceed if the implementation of that proposal would result in the constitution of—*

- (a) *a district with a population of less than 10 000 persons; or*
- (b) *a region having both a separately elected regional council and a population of less than 50 000 persons.*

## **7 Cities**

*A reorganisation scheme issued under subpart 4 may not provide that a territorial authority is to be called a city council unless the scheme provides for the constitution of a new district and the district—*

- (a) *has a population of not less than 50 000 persons; and*
- (b) *is predominantly urban; and*
- (c) *is a distinct entity and a major centre of activity within the region.*

## APPENDIX 3

### Sample public notice under *section 19M* (outlining a local authority's initial representation proposal)

This example can be used as a guideline to assist local authorities in the preparation of their public notices under *section 19M* of the *Local Electoral Act 2001*.

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#### NAMELESS DISTRICT COUNCIL

#### REVIEW OF REPRESENTATION ARRANGEMENTS FOR THE 2013 LOCAL ELECTIONS

On 3 August 2012 the Nameless District Council reviewed its representation arrangements, and resolved that the following proposal apply for the Council and its community boards for the elections to be held on 12 October 2013:

#### Council Representation

It is proposed that the Council comprise 10 members elected from five wards, and the mayor.

The five wards reflect the following identified communities of interest:

Ward	Communities of Interest
Brown Ward	(Brief geographic description of communities of interest encompassed by each ward)
Green Ward	
Yellow Ward	
Red Ward	
Blue Ward	

The population that each member will represent is as follows:

Ward	Population (2006 Census)	Members	Population per member
Brown Ward	8900	2	4450
Green Ward	11400	3	3800
Yellow Ward	3500	1	3500
Red Ward	8400	2	4200
Blue Ward	<u>8800</u>	<u>2</u>	4400
	<u>41000</u>	<u>10</u>	

In accordance with section 19V(2) of the Local Electoral Act 2001 the population that each member represents must be within the range of 4100 +/- 10% (3690 to 4510), unless particular community of interest considerations justify otherwise. Only the representation of the Yellow Ward falls outside the stipulated range. The Council considers that the Yellow Ward warrants a single member for the following reasons: *[Provide justification based on community of interest considerations set out in section 19V(3)].*

**Community Board representation**

It is proposed that five community boards be elected. The five community boards will be:

<b>Community Board</b>	<b>Area of Community</b>
East Community Board	(Brief geographical description of area covered by each Community Board.)
West Community Board	
North Community Board	
South-West Community Board	
South-East Community Board	

The East, West and North Community Boards will each elect five members. They will not be subdivided for electoral purposes. They will each have one appointed member as follows:

East Community Board	1 member appointed from the Brown Ward
West Community Board	1 member appointed from the Green Ward
North Community Board	1 member appointed from the Yellow Ward.

*South-West Community Board*

The South-West Community Board will elect six members. One member will be appointed to the Board from the Red Ward.

The South-West Community Board will be subdivided for electoral purposes as follows:

<b>Subdivision</b>	<b>Area of Subdivision</b>
Hills Subdivision	(Brief geographical description of areas covered by each subdivision).
Valley Subdivision	

The population that the members of each subdivision will represent is shown below:

<b>Subdivision</b>	<b>Population (2006 Census)</b>	<b>Members</b>	<b>Population per member</b>
Hills Subdivision	3200	2	1600
Valley Subdivision	<u>5800</u>	<u>4</u>	1450
	<u>9000</u>	<u>6</u>	

The population each member of the South-West Community Board represents falls within the range of 1500 +/-10% (1350 – 1650) in accordance with section 19V(2) of the Act.

### *South-East Community Board*

The South-East Community Board will elect six members. One member will be appointed to the Board from the Blue Ward.

The South-East Community Board will have two subdivisions for electoral purposes as follows:

<b>Subdivision</b>	<b>Area of Subdivision</b>
Lakes Subdivision	(Brief geographical description of areas covered by each
Rivers Subdivision	

The population that the members of each subdivision will represent is shown below:

<b>Subdivision</b>	<b>Population (2006 Census)</b>	<b>Members</b>	<b>Population per member</b>
Lakes Subdivision	4200	3	1400
Rivers Subdivision	<u>4000</u>	<u>3</u>	1333
	<u>8200</u>	<u>6</u>	

The population each member of the South-East Community Board represents falls within the range of 1367 +/-10% (1230 - 1504) in accordance with section 19V(2) of the Act.

### **Further Information**

Copies of the Council's resolution and maps setting out the areas of the proposed wards, communities and subdivisions may be viewed and obtained from (outline Council offices and addresses).

Any queries regarding the Council's decision should be directed to (contact details of Council officer).

Relevant information is also available on the Council's website: (web address).

### **Submissions are invited**

Persons with an interest in the proposed representation arrangements are invited to make written submissions on the Council's representation proposal.

Submissions are to be forwarded to: (relevant Council details – postal, physical, email, fax).

Submissions must be received by Council no later than ..... *[Date – must be at least one month after first publication of public notice under section 19M (2) of the Act]*.

Chris Jones  
Chief Executive

## **APPENDIX 4**

### **Sample public notice under section 19N (outlining a local authority's final representation proposal)**

This example is a guideline to assist local authorities in the preparation of their public notices under section 19N of the *Local Electoral Act 2001*.

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#### **NAMELESS DISTRICT COUNCIL**

#### **FINAL PROPOSAL FOR REPRESENTATION ARRANGEMENTS FOR THE 2013 LOCAL ELECTIONS**

On 6 October 2012 the Nameless District Council considered the submissions received on its initial proposal regarding the representation arrangements for the Council and its constituent community boards to apply for the local elections to be held on 12 October 2013.

The Council received 12 submissions on its proposal. Seven submissions were in favour of the Council's proposal. Five submissions contained objections to various elements of the proposal, as follows:

- one submitter sought the division of the District into 6 wards, electing 12 members
- one submitter objected to the names of the wards, and to the boundaries of the wards
- one submitter considered that the boundary between the Yellow and Red Ward should be moved to York Street
- one submitter objected to the continued existence of community boards in the District
- one submitter considered that there should only be two community boards – one for the Red Ward and one for the Blue Ward, reflecting the rural nature of those wards.

Having considered all of the objections, the Council resolved to adopt its initial proposal as the Council's final proposal, subject to the following amendments:

- the proposed "Brown" Ward be renamed as the "Purple" Ward
- the proposed "Green" Ward be renamed as the "Orange" Ward.

The Council considers that the name changes are appropriate for the following reasons: (briefly state reasons).

The Council rejected the other matters raised in objections for the following reasons: (briefly state reasons).

Any person who made a submission on the Council's initial proposal may lodge an appeal against the Council's decision. An appeal must relate to the matters raised in that person's submission.

Any person who objects to the final proposal may lodge an objection to the Council's final proposal. Any objection must identify the matters to which the objection relates.

Appeals and objections must be made in writing.

Appeals and objections are to be forwarded to: *(relevant Council details – postal, physical, email, fax)*. They must be received by Council no later than *(date – must be at least one month after first date of publication of public notice under section 19O(2) of the Act)*.

Any queries regarding the Council's decision should be directed to *(contact details of Council officer)*.

Chris Jones  
Chief Executive

## **APPENDIX 5**

### **Sample public notice under *section 19Y(1)* (outlining a local authority's representation proposal where no submissions were received on the initial proposal)**

This example can be used as a guideline to assist local authorities in the preparation of their public notices under section 19Y(1) of the Local Electoral Act 2001 where no submissions have been received on the initial proposal

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#### **NAMELESS DISTRICT COUNCIL**

#### **REPRESENTATION ARRANGEMENTS FOR THE 2013 LOCAL ELECTIONS**

On 3 August 2012 the Nameless District Council reviewed its representation arrangements, and resolved that the following proposal apply for the Council and its community boards for the elections to be held on 12 October 2013

*[Details of proposal]*

Submissions on the proposal were invited. As no submissions were received in respect of the proposal it becomes the basis of election for the Nameless District Council for the elections to be held on 12 October 2013.

Any queries regarding the Council's decision should be directed to (*contact details of Council officer*).

Chris Jones  
Chief Executive

## **APPENDIX 6**

### **Sample public notice under *section 19Y(1)* (outlining a local authority's representation proposal where no appeals or objections were received on the final proposal)**

This example can be used as a guideline to assist local authorities in the preparation of their public notices under *section 19Y(1)* of the *Local Electoral Act 2001* where no appeals or objections are received in respect of the final proposal.

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#### **NAMELESS DISTRICT COUNCIL**

#### **REPRESENTATION ARRANGEMENTS FOR THE 2013 LOCAL ELECTIONS**

On 3 August 2012 the Nameless District Council gave public notice of its final proposal for representation arrangements to apply for the Council and its community boards for the elections to be held on 12 October 2013. Those arrangements were as follows -

*[Details of proposal]*

Notification of the right to appeal or object was also given. As no appeals or objections were received in respect of the resolution it becomes the basis of election for the Nameless District Council for the elections to be held on 12 October 2013.

Any queries regarding the Council's decision should be directed to *(contact details of Council officer)*.

Chris Jones  
Chief Executive

**Local Government Commission processes  
for hearing appeals and objections**

A standard set of processes applies when the Commission decides to hear the appeals and objections lodged against a local authority's representation proposal.

**Preliminary organisation**

Firstly, the Commission will propose a date for the hearing. The local authority will then be advised of the proposed hearing date and venue arrangements. Hearings are usually held in local authority premises.

When the hearing date and venue arrangements are finalised all parties (the local authority, appellants and objectors) will be notified. Appellants and objectors will be contacted to ascertain whether they wish to appear before the Commission. There is no obligation for appellants and objectors to appear before the Commission – those who decide not to appear can be assured that the Commission will give their written appeals or objections full consideration.

The Commission may also decide to invite to the hearing people who made submissions to the local authority in support of its proposal.

Once appellants and objectors have responded to the Commission regarding the opportunity to appear, the hearing schedule will be finalised, and each party will receive written advice of the time and venue for their appearance. Each party should plan to be at the hearing venue at least 10 minutes before the allocated speaking time.

A copy of the briefing prepared for the Commission by the Commission's officers will be provided to those appearing at the hearing.

**The hearing**

Each hearing follows a standard sequence:

1. introduction from the Commission Chair
2. outline of its proposal by local authority
3. representations from appellants and objectors – each appellant and objector will have the opportunity to speak to the matters raised in their appeal or objection
4. representations from invited submitters outlining basis of support for the local authority proposal
5. exercise of right of reply of local authority to matters raised in the hearing

6. the Commission reserves its determination.

Commissioners may ask questions of each party during the course of their appearance.

As a general guide, the local authority is allocated up to 30 minutes to outline its proposal and appellants and objectors up to 10 minutes to speak to the matters raised in their written appeal or objection. If an appellant or objector considers that more time is needed to speak to their appeal or objection then a request for additional time should be made to the Commission well prior to the hearing – each request will be considered on a case-by-case basis.

If any party wishes to table new written material at the hearing, this information should be provided to the Commission at the time that the party appears before the Commission. Six copies of the written material are required – five copies for the Commission and one copy for the local authority.

Hearings are generally kept as informal as possible and are open to the public. Many persons appearing before the Commission will not have experience in presenting submissions, and the Commission endeavours to foster an environment in which people can feel comfortable in presenting their submissions.