



LOCAL GOVERNMENT COMMISSION

Determination

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

Background

1. The Hawke's Bay Regional Council (the Council) elected at the 2004 local election comprises nine councillors. The nine councillors were elected as follows:

Constituencies	Population*	Number of councillors per constituency	Population per councillor	Deviation from the region average population per councillor	Percentage deviation from the region average population per councillor
Wairoa	8,410	1	8,410	-8,201.11	-49.37
Ngaruroro	11,300	1	11,300	-5,311.11	-31.97
Napier	56,400	3	18,800	+2,188.89	+13.18
Hastings	60,200	3	20,067	+3,455.89	+20.80
Central Hawke's Bay	13,190	1	13,190	-3,421.11	-20.60
TOTAL	149,500	9	16,611.11		

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

2. On 26 July 2006 the Council resolved its initial representation proposal for the 2007 elections under section 19I of the Local Electoral Act 2001 (the Act). The proposal was for five constituencies electing nine councillors as follows:

Constituencies	Population*	Number of councillors per constituency	Population per councillor	Deviation from the region average population per councillor	Percentage deviation from the region average population per councillor
Wairoa	8,410	1	8,410	-8,201.11	-49.37
Tutaekuri	15,670	1	15,670	-941.11	-5.66
Napier	56,400	3	18,800	+2,188.89	+13.18
Hastings	49,920	3	16,640	+28.89	+0.17
Tukituki	19,100	1	19,100	+2,488.89	+14.98
TOTAL	149,500	9	16,611.11		

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

3. The Commission notes that the Council interpreted the legislation differently from the Commission in respect of the requirement for fair representation under section 19V(2) of the Act. This section requires the population of each constituency divided by the number of councillors for that constituency to be within +/-10% of the ratio for the region as a whole. The Council, as it is entitled to do, identified the Wairoa Constituency as a "special case" warranting representation outside the fair representation requirement (+/-10% rule). It then removed the proposed member and population of the excepted constituency (i.e. Wairoa) from the calculation required by section 19V(2) to achieve fair representation in the balance of the region. This approach resulted in the proposal complying for the other constituencies with the exception of Tutaekuri Constituency (11.15%).
4. The Commission sought legal advice on interpretation of section 19V(2). The opinion received stated that the Council's approach is not valid. It essentially involved changing the formula under section 19V(2) to avoid possible flow on problems with compliance for the remaining constituencies created by making an exception for Wairoa. Accordingly the analysis of the Council's initial and final proposals, as set out in this determination, differs from that publicly notified by the Council.
5. The Council publicly notified its initial proposal on 29 July 2006 and called for submissions by 31 August 2006. The Council received a total of 138 submissions, 94 of which were generated by cut-outs in local newspapers. These form submissions described the Council's proposed constituencies as undemocratic and outside the legal requirements for equal representation and called for a reduction in the number of councillors to six. Of the remaining 44 submissions:
 - five supported the Council's proposal including the retention of the Wairoa Constituency as a "special community of interest";
 - 22 supported a complying proposal with nine councillors and seeking the inclusion of the Heretaunga Plains rural and coastal areas in the Hastings Constituency; and
 - 17 covered a range of issues including concerns about the proposed constituency names of Tutaekuri and Tukituki.
6. Following the hearing of submissions, the Council, on 27 September 2006, amended its initial proposal. On 7 October 2006 it notified its final proposal as follows:

Constituencies	Population*	Number of councillors per constituency	Population per councillor	Deviation from the region average population per councillor	Percentage deviation from the region average population per councillor
Wairoa	8,410	1	8,410	-8,201.11	-49.37
Napier	56,400	3	18,800	+2,188.89	+13.18
Hastings	66,540	4	16,635	+23.89	+0.14
Central Hawke's Bay	18,150	1	18,150	+1,538.89	+9.26
TOTAL	149,500	9	16,611.11		

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

7. Again the Council removed the proposed member and population of the Wairoa Constituency before calculating the fair representation requirement for the other three constituencies. On this basis the Napier, Hastings and Central Hawke's Bay Constituencies complied with the +/-10% rule.
8. In notifying its proposal the Council:
 - described the four proposed constituencies as follows:
 - Wairoa: the constituency being the same as Wairoa District;
 - Napier: the constituency being the same as Napier City;
 - Hastings: the constituency being the area encompassing the proposed Flaxmere, Hastings, Havelock North, Heretaunga and Northern Wards of Hastings District and that part of Hastings District known as Waimarama together with those parts of the Taupo and Rangitikei Districts in the Hawke's Bay Region; and
 - Central Hawke's Bay: the constituency being the same as Central Hawke's Bay District as well as the proposed Southern Ward of Hastings District excluding the area known as Waimarama;
 - noted the boundaries for the Hastings and Central Hawke's Bay Constituencies had changed to ensure the final population figures fall within the requirements of section 19V(2) of the Act;
 - noted it had carefully considered the key factors of community of interest, effective representation of communities of interest and fair representation and concluded that the boundary changes proposed to the Hastings and Central Hawke's Bay Constituencies and the incorporation of a large part of the old Ngaruroro Constituency into the Hastings Constituency allow these factors to be met;
 - noted the representation of the Wairoa Constituency falls well outside the stipulated population parameters but the Council is of the view that:
 - the factors of community of interest and effective representation of community of interest cannot be met for the Wairoa area of the region as:
 - this area is a distinct community of interest which should not be compromised; and
 - the size of the constituency that would exist, should the population requirement be complied with absolutely, would give rise to a constituency encompassing 70% of the total land area of the region which would severely compromise reasonable access of the population to an elected member for this area;
 - the elected member would be unlikely to effectively represent the views of the electoral subdivision, given the extent and diversity in such a large constituency, and neither would elected members realistically be able to attend public meetings throughout the area and provide reasonable opportunities for constituents to have face-to-face meetings given the size and configuration of the constituency that would be required;

- noted it amended its initial proposal to reflect the concerns of submitters that the proposed constituencies of Tutaekuri and Hastings did not reflect an appropriate community of interest and therefore compromised fair and effective representation of these areas (by combining these constituencies and the Waimarama area into a new Hastings Constituency which reflects a significant portion of Hastings District identified as a community of interest under the 1989 reforms); and
 - noted that in respect of names of constituencies, councillors wish to identify constituencies in the most descriptive way possible and to relate these to territorial authority areas where appropriate.
9. Three appeals/objections were received in response to the Council's final proposal. One appellant, Wayne Taylor, subsequently withdrew his appeal before the hearing. The main concern raised by the other two objectors related to the location of the boundary between the proposed Hastings and Central Hawke's Bay Constituencies.

Hearing

10. The Commission met with the Council and objectors at a hearing held in the Hawke's Bay Regional Council Chambers on 30 January 2007. The Council was represented by Eileen von Dadelszen Chairperson, Andrew Caseley Chief Executive and Carol Gilbertson Electoral Officer. The objectors who appeared at the hearing were Kevin Rose and Ewan McGregor. In addition, the Mayor of Wairoa, Les Probert, and Rex McIntyre, Councillor for Wairoa Constituency, appeared in support of the Council's proposal to retain the Wairoa Constituency as an exception to the +/-10% rule.

Matters raised in objections and at the hearing

11. The main arguments presented in support of the retention of the Wairoa Constituency as an exception to the +/-10% rule were:
- it is a large area physically separated from the rest of the region;
 - hills and rivers separate the area from the south, in particular the Waikari Gorge;
 - the geography and roading pattern result in only one main access route to the south (state highway 2);
 - it is a 1.5 hour drive between Napier and Wairoa township;
 - Wairoa has a community of interest distinctly different from the rest of the region including:
 - higher proportions of the population under 15 years or over 65 years and hence a lower proportion of working age population;
 - a Māori population in excess of 60% (the largest proportion of Māori of any local authority in New Zealand);
 - both the Regional Council and the Wairoa District Council have established effective relationships with local Māori including Māori committees, and these support a separate Wairoa Constituency;
 - Wairoa has a socio-economic profile distinctly different from the rest of the region, with all the population in the 4th decile or above of the deprivation

index identified in the 2001 edition of the Atlas Of Socioeconomic Difference (87% in decile 7 or above);

- compliance with the +/-10% rule would result in a northern constituency comprising over 70% of the region which would still be eligible for only one councillor and would severely compromise access to an elected member;
 - one councillor would be unable to provide effective representation for the area given its diversity including the nature of Wairoa distinct from the neighbouring rural areas of the Hastings Constituency.
12. The Commission notes that there were submissions on the Council's initial proposal seeking an outcome that complied with the legislation but that there were no appeals/objections to the final proposal on this issue.
13. The main issue raised by the objectors related to the boundary between the proposed Hastings and Central Hawke's Bay Constituencies. Mr Rose said he had discussed the issue with the Hastings District Electoral Officer and proposed an amended boundary increasing the area of the Hastings Constituency that he believed was more appropriate.

Matters for determination

14. The statutory provisions in respect of appeals and objections are contained in sections 19R and 19I of the Act.

19R. Commission to determine appeals and objections

- (1) *The Commission must—*
- (a) *Consider the resolutions, submissions, appeals, objections, and information forwarded to it under section 19Q; and*
 - (b) *Subject to sections 19T and 19V in the case of a territorial authority, and to sections 19U and 19V in the case of a regional council, determine,—*
 - (i) *In the case of a territorial authority that has made a resolution under section 19H, the matters specified in that section:*
 - (ii) *In the case of a regional council that has made a resolution under section 19I, the matters specified in that section:*
 - (iii) *In the case of a territorial authority that has made a resolution under section 19J, the matters specified in that section.*
- (2) *For the purposes of making a determination under subsection (1)(b), the Commission—*
- (a) *May make any enquiries that it considers appropriate; and*
 - (b) *May hold, but is not obliged to hold, meetings with the territorial authority or regional council or any persons who have lodged an appeal or objection and have indicated a desire to be heard by the Commission in relation to that appeal or objection.*
- (3) *The Commission must, before 11 April in the year of a triennial general election, complete the duties it is required to carry out under subsection (1).*

- 19I. **Review of representation arrangements for elections of regional councils**
- (1) *A regional council must determine by resolution, and in accordance with this Part,—*
- (a) *the proposed number of constituencies; and*
 - (b) *the proposed name and the proposed boundaries of each constituency; and*
 - (c) *the number of members proposed to be elected by the electors of each constituency.*
- (2) *The determination required by section (1) must be made by the regional council,—*
- (a) *on the first occasion, either in 2003 or in 2006, and*
 - (b) *subsequently, at least once in every period of 6 years after the first determination.*
- (3) *This section must be read in conjunction with section 19ZH and Schedule 1A.*

Consideration by the Commission

Effective and fair representation

15. A review of representation arrangements under the Act is to ensure that:
- the number and boundaries of constituencies will provide effective representation of communities of interest within the region (section 19U); and
 - in determining the number of members to be elected by each constituency, electors of that constituency will receive fair representation (section 19V).
16. For the purpose of achieving fair representation, section 19V(2) of the Act requires that the population of each constituency divided by the number of members to be elected by that constituency produces a figure no more than 10% greater or smaller than the population of the region divided by the total number of elected members. The Act does not define 'effective representation' or 'communities of interest'.
17. The steps in the process for achieving effective and fair representation are not statutorily prescribed. The Commission believes that the following process for determining representation arrangements will achieve a robust outcome that is in accordance with the statutory criteria:
- (a) identify the region's communities of interest;
 - (b) determine the best means of providing effective representation of the communities of interest; and
 - (c) determine fair representation of electors for the region.

Hawke's Bay Region

18. The Council proposed that the region's communities of interest relate primarily to territorial authority areas. This is consistent with section 19U of the Act which provides, among other things, that so far as is practicable, constituency boundaries coincide with the boundaries of one or more territorial authority districts or the boundaries of wards.

19. On this basis, the Council proposed:
- a Wairoa Constituency covering Wairoa District;
 - a Napier Constituency covering Napier City;
 - a Hastings Constituency covering the urban, plains and coastal areas of Hastings District; and
 - a Central Hawke's Bay Constituency covering Central Hawke's Bay District and the balance of Hastings District being of a similar rural land-use type.
20. The Council's final proposal does not comply with the fair representation requirement (+/-10% rule) in respect of the Wairoa and Napier Constituencies.
21. Subsection 19V(3)(b) of the Act provides that where a regional council or the Commission considers that effective representation of communities of interest so requires, constituencies may be defined and members distributed between them in a way that does not comply with the +/-10% rule. Subsection 19V(4) provides that in these circumstances the regional council must refer the matter to the Commission for determination.

Wairoa Constituency

22. We first addressed the issue of the proposed Wairoa Constituency and its non-compliance with the +/-10% rule. After carefully considering the points raised by the Council and also those made by the Mayor of Wairoa and the Wairoa Constituency Councillor, as set out earlier in this determination, we agree that a separate Wairoa Constituency is necessary to ensure effective representation of this community of interest. In summary we agree that:
- Wairoa has a community of interest distinct from the rest of the region, both physically and socio-economically, and this presents particular challenges for community consultation and provision of services;
 - the physical realities of the area give rise to particular issues not experienced elsewhere including hill country erosion, pressure on coastal development, pest management, transport infrastructure biodiversity protection, wetland enhancement, flooding and other natural hazards;
 - effective representation is most unlikely to be achieved by merging Wairoa into another constituency in order to comply with the +/-10% rule as this would result in a very large area (70% of the land area of the region) with few commonalities of interest and still eligible for only one councillor;
 - effective representation would be compromised in terms of both access to a councillor and representation of the diversity of the constituency; and
 - the demands on a councillor servicing an enlarged area would be unreasonable.

Other constituencies

23. Given the decision to make an exception to the +/-10% rule in respect of the Wairoa Constituency, we were then required to address requirements for effective representation of communities of interest and fair representation of electors for the balance of the region. We note firstly the discretion that section 19V(3)(b) of the Act provides the Commission in respect of the

balance of the region. The section provides that constituencies may be defined and membership distributed between them in a way that does not comply with subsection 19V(2).

24. In the absence of other guidance, the Commission believes the principle of fair representation of electors, as defined in the Act by the +/-10% rule, remains an important criterion. It also notes that the requirements for effective representation of communities of interest and other factors, as set out in section 19U of the Act, still apply. These provide, among other things, that the Commission must ensure that the number and boundaries of constituencies will provide effective representation of communities of interest and, so far as is practicable, constituency boundaries coincide with the boundaries of one or more territorial authority districts or the boundaries of wards.
25. Applying these considerations to the other constituencies, we then addressed the proposed Central Hawke's Bay Constituency. We note that the population of Central Hawke's Bay District is not sufficient for it to comprise a separate constituency based on a total of nine regional councillors.
26. We note that the Council appears to have considered from the outset of the review that the current number of councillors (i.e. nine) was appropriate for achieving fair and effective representation and to meet the Council's statutory and other responsibilities. The issue of councillor numbers was raised in the standard form submissions but was not the subject of appeal or objection to the Commission. On this basis, we proceed on the assumption of retention of a total of nine councillors for the region.
27. In respect of the proposed Central Hawke's Bay Constituency, we heard from the Council that the arguments were not strong for an exception to the +/-10% rule. It said the Central Hawke's Bay District had similar land use patterns to bordering areas of Hastings District. Unlike Wairoa, the area was not physically separate or distinct, and travel time to the Hastings urban area was by comparison negligible. Given these points, we consider that a Central Hawke's Bay Constituency comprising the Central Hawke's Bay District plus some or all of the adjacent Southern Ward of Hastings (since renamed the Kahuranaki Ward), in order to comply with the +/-10% rule, is appropriate in light of its proximity coupled with similar land use patterns.
28. We note the tenor of submissions to the Council on its initial proposal, relating to the retention of a Hastings Constituency reflecting the linkages between the different interests of the Hastings District. On this basis the Council's final proposal included an extended Hastings Constituency incorporating the urban, plains and coastal areas of the district along with a large proportion of rural area. The proposed constituency includes the coastal communities of Clive, Haumoana and Te Awanga, as well as Ocean Beach and Waimarama further south. The Waimarama area in the Southern (Kahuranaki) Ward of Hastings District was excluded from the Central Hawke's Bay Constituency given its character in common with coastal areas to the north and distinct from the land use patterns of inland areas of Central Hawkes' Bay Constituency.
29. We heard an objection from Kevin Rose seeking a further extension of the Hastings Constituency to include more of Hastings District. Mr Rose contended that the area concerned, including Te Mata Peak, has a strong community of interest with Hastings and Havelock North.

30. The Commission agrees with the intent of Mr Rose's objection based on community of interest considerations. As part of its determination of representation arrangements for Hastings District, we note that the Commission has transferred some of the meshblocks concerned from the current Poukawa Ward to new Heretaunga and Havelock North Wards. On this basis, these particular meshblocks will be included in the Hastings Constituency of Hawke's Bay Region.
31. This leaves a further 15 meshblocks proposed by Mr Rose to be transferred to the Hastings Constituency. The area concerned extends south of Havelock North and is bounded by the Tukituki River to a point just north of Tainui, Middle Road to Kahika, across Kaokaoroa Range to Poukawa, the Palmerston North – Gisborne Railway to PakiPaki, and PakiPaki Road to the junction with Longlands Road West. The topography and hence land use of the area is different from the more inland rural areas of the Kahuranaki Ward of Hastings District which are proposed to be combined with Central Hawke's Bay District to comprise the Central Hawke's Bay Constituency.
32. We determine that this area, comprising 15 meshblocks, be transferred from the Central Hawke's Bay Constituency to the Hastings Constituency.
33. There were no submissions or appeals/objections relating to the placement in the Hastings Constituency of those parts of the Taupo and Rangitikei Districts in the Hawke's Bay Region. The Commission confirms the Council's proposal in this respect.
34. Finally we considered the Napier Constituency which does not comply with the +/-10% rule. In excess of 2,000 people would need to be transferred from this constituency if it were to equate to the region average population per councillor with a minimum of over 500 to be transferred in order to be within a +/-10% variation.
35. Given the numbers involved and the predominantly urban nature of the Napier Constituency, we note that a large segment of the outlying area of Napier City would have to be transferred to the adjoining Hastings Constituency. We also note that the neighbouring parts of the Hastings Community are primarily rural or semi-rural in nature. While it is guided by the principle of fair representation defined in the Act by the +/-10% rule, the Commission considers it is also appropriate to be guided by the requirement to ensure, so far as is practicable, constituency boundaries coincide with territorial authority boundaries. The Commission sees this as important as territorial authorities reflect communities of interest based on the delivery of a wide range of day-to-day services. Territorial authority districts are also areas that electors closely identify with which in turn encourages participation in local government such as by voting or standing as a candidate at local elections.
36. We determine that the proposed Napier Constituency, reflecting Napier City in its entirety, should be retained notwithstanding its deviation (13.28%) from the fair representation requirement.
37. We believe that the above decisions will provide effective representation of the communities of interest of Hawke's Bay Region. They also provide fair representation of electors to the extent that this does not compromise effective representation of communities. The relationship between the our

decisions on constituency boundaries, the number of councillors, and the requirements of section 19V(2) is illustrated in the following table:

Constituencies	Population*	Number of councillors per constituency	Population per councillor	Deviation from the region average population per councillor	Percentage deviation from the region average population per councillor
Wairoa	8,230	1	8,230	-8,425.55	-50.59
Napier	56,600	3	18,866.66	+2,211.11	+13.28
Hastings	68,800	4	17,200	+544.45	+3.27
Central Hawke's Bay	16,300	1	16,300	-355.55	-2.13
TOTAL	149,900	9	16,655.55		

*These figures are rounded 2006 population estimates, being the most up-to-date available, provided by the Government Statistician

Determination

38. Under section 19R of the Local Electoral Act 2001, the Commission determines that for the election of the Hawke's Bay Regional Council to be held on 13 October 2007, the following representation arrangements will apply -

- (1) The Hawke's Bay Region, as delineated on S.O. Plan 10572 deposited with Land Information New Zealand, shall be divided into four constituencies;
- (2) Those four constituencies shall be -
 - (a) the Wairoa Constituency, comprising the area delineated on SO Plan 9853 deposited with Land Information New Zealand;
 - (b) the Napier Constituency, comprising the area delineated on SO Plan 9855 deposited with Land Information New Zealand;
 - (c) the Hastings Constituency, comprising the area delineated on SO Plan 9854 deposited with Land Information New Zealand; and
 - (d) the Central Hawke's Bay Constituency, comprising the area delineated on SO Plan 386632 deposited with Land Information New Zealand;
- (3) The Hawke's Bay Regional Council shall comprise nine councillors elected as follows -
 - (a) one councillor shall be elected by the electors of the Wairoa Constituency;
 - (b) three councillors shall be elected by the electors of the Napier constituency;
 - (c) four councillors shall be elected by the electors of the Hastings Constituency; and
 - (d) one councillor shall be elected by the electors of the Central Hawke's Bay Constituency.

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

THE LOCAL GOVERNMENT COMMISSION

Sue Piper (Chair)

Gwen Bull (Commissioner)

Wynne Raymond (Commissioner)

5 April 2007