



LOCAL GOVERNMENT COMMISSION

Determination

of the membership and basis of election for the
general election of the Opotiki District Council
to be held on 9 October 2004

BACKGROUND

- 1 The Opotiki District Council (“the Council”) undertook a review of the membership and basis of election of the Council, and also considered whether to constitute one or more communities under sections 19H and 19J of the Local Electoral Act 2001 (“the Act”). On 26 August 2003 the Council resolved the initial proposed electoral arrangements to apply for the general election of the Council to be held in October 2004.
- 2 The Council elected at the 2001 general election comprised 10 members and the Mayor. The 10 members were elected as follows:

Coast Ward	2 members
Waiotahi Ward	2 members
Opotiki Ward	4 members
Waioeka-Otara Ward	2 members.

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

Ward	Population	Members	Est. Population Per Member (30 Jun 02)
Coast Ward	1840	2 members	920
Waiotahi Ward	1650	2 members	825
Opotiki Ward	4350	5 members	870
Waioeka-Otara Ward	1690	2 members	845
<i>Total</i>	9530	11 members	866

(Average)

- 4 The increase in total membership of the Council to 11 by increasing the number of members to be elected from the Opotiki Ward to 5 was the Council’s response to the need to comply with section 19V of the Act.

- 5 The Council received three submissions to its initial proposal, and the issues raised included:
- The electoral structure makes no provision for any process whereby Māori may contribute to the Council's decision-making process;
 - The proposals divide the community of interest of urban electors in Opotiki Town by including a number of them in other wards when they could be included if certain meshblocks were split;
 - The resultant increase in population for the Opotiki Ward should be recognised by increasing the number of members to be elected from the Ward to 6;
 - The present ward boundaries should also be adjusted by combining the Waioeka-Otara and Waiotahi Wards;
 - The Coast Ward should continue to be represented by 2 members, thereby recognising its remoteness, area, and sparse population;
 - One or more communities should be constituted within the District;
 - Rather than a council of 11, membership should be reduced to 8 members;
 - The Opotiki Ward should have fewer members;
 - There should be only three wards, with boundaries altered to allow the required equality of representation; and
 - The Council's membership should not be increased.
- 6 Following consideration of the submissions, the Council confirmed its initial proposal. All three of the submitters appealed against the Council's decision.
- 7 The subject matter of the appeals included the following:
- Opposed to the increase in membership of the Council;
 - The small amount of public interest in the process did not justify the increase;
 - Opposed to the Council's failure to include additional areas in the Opotiki Ward, which would have allowed for a total membership of between 6 and 8;
 - Opposed to the Council's decision not to alter the boundary between the Coast Ward and the Waioeka-Otara Ward;
 - Opposed to the Council's decision not to amalgamate the Waiotahi and Waioeka-Otara Wards; and
 - Opposed to the Council's decision not to constitute any communities within the District.

Hearing

- 8 The Commission, on receiving advice of the appeals, decided that it would meet with the Council and the appellants if they wished to be heard. The hearing was held in Opotiki on 29 January 2004.
- 9 The Council and three appellants appeared before the Commission at the hearing. The Council outlined its proposal, and reasons, and the appellants spoke to their submissions.

MATTERS FOR DETERMINATION

- 10 The statutory provisions in respect of these appeals and objections are contained in sections 19R, 19I and 19J 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).*

19H. Review of representation arrangements for elections of territorial authorities

- (1) *A territorial authority must determine by resolution, and in accordance with this Part,—*
- (a) *whether the members of the territorial authority (other than the mayor) are proposed to be elected—*
 - (i) *by the electors of the district as a whole; or*
 - (ii) *by the electors of 2 or more wards; or*
 - (iii) *in some cases by the electors of the district as a whole and in the other cases by the electors of each ward of the district; and*
 - (b) *in any case to which paragraph (a)(i) applies, the proposed number of members to be elected by the electors of the district as a whole; and*
 - (c) *in any case to which paragraph (a)(iii) applies,—*
 - (i) *the proposed number of members to be elected by the electors of the district as a whole; and*

- (ii) *the proposed number of members to be elected by the wards of the district; and*
- (d) *in any case to which paragraph (a)(ii) or paragraph (a)(iii) applies,—*
 - (i) *the proposed name and the proposed boundaries of each ward; and*
 - (ii) *the number of members proposed to be elected by the electors of each ward.*
- (2) *The determination required by subsection (1) must be made by a territorial authority,—*
 - (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.*

19J. Review of community boards

- (1) *A territorial authority must, on every occasion on which it passes a resolution under section 19H, determine by that resolution, and in accordance with this Part, not only the matters referred to in that section but also whether, in light of the principle set out in section 4(1)(a) (which relates to fair and effective representation for individuals and communities),—*
 - (a) *there should be communities and community boards; and*
 - (b) *if so resolved, the nature of any community and the structure of any community board.*
- (2) *The resolution referred to in subsection (1) must, in particular, determine—*
 - (a) *whether 1 or more communities should be constituted:*
 - (b) *whether any community should be abolished or united with another community:*
 - (c) *whether the boundaries of a community should be altered:*
 - (d) *whether a community should be subdivided for electoral purposes or whether it should continue to be subdivided for electoral purposes, as the case may require:*
 - (e) *whether the boundaries of any subdivision should be altered:*
 - (f) *the number of members of any community board:*
 - (g) *the number of members of a community board who should be elected and the number of members of a community board who should be appointed:*
 - (h) *whether the members of a community board who are proposed to be elected are to be elected—*
 - (i) *by the electors of the community as a whole; or*
 - (ii) *by the electors of 2 or more subdivisions; or*
 - (iii) *if the community comprises 2 or more whole wards, by the electors of each ward*
 - (i) *in any case to which paragraph (h)(ii) applies, -*
 - (i) *the proposed name and the proposed boundaries of each subdivision; and*

- (ii) *the number of members proposed to be elected by the electors of each subdivision.*
- (3) *Nothing in this section limits the provisions of section 19F.*

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

CONSIDERATION BY THE COMMISSION

- 12 The Commission considers that when deciding the basis of election of the Council, i.e. whether the Council should be elected at large, or by wards, or partly by wards and partly at large, the criterion to be met within the terms of section 19T of the Act is the provision of effective representation of the various communities of interest within the District. The Commission must determine which communities of interest require representation. If wards are considered to be appropriate, then any one ward may encompass one or more communities of interest.
- 13 Section 19V provides that the electors of the various wards within the District must receive fair representation. Section 19V(3) provides that the requirements of section 19V(2) may only be set aside in the circumstances where the Commission considers that island or isolated communities require specific representation. The provisions of section 19V which are relevant to the Commission's consideration are subsections 1, 2 and 3, as follows:

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

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

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

- 14 The Commission notes that any preliminary ward arrangements determined to reflect communities of interest may need to change to ensure that the population per member requirement of section 19V(2) is met, unless it is satisfied that island or isolated communities require separate representation to achieve effective representation.
- 15 The Commission's first responsibility was to decide whether or not the District should be divided into wards. If wards were to apply it then had to determine the number and boundaries of those wards to provide effective representation of communities of interest within the District.
- 16 The Opotiki District covers a very large area. It includes differing land types, the township of Opotiki, rural farming areas, small settlements, and areas devoted to horticulture. The Commission came to the view that because of the size and diversity of the District, and its widely separated areas with small clusters of inhabitants, effective representation of the various communities of interest could only be achieved at this time by councillors being elected on a ward basis. In reaching its decision, the Commission noted that both the Council and the appellants supported a ward system for electoral purposes.

Appropriate Ward System and Membership

- 17 Having decided that the basis of election would be the ward system, the Commission then considered the number and boundaries of wards necessary to ensure the effective representation of the various communities of interest in the District. The Commission does not consider that section 19T envisages that individual communities of interest need separate representation. Its sole requirement in this regard is that the representation of communities of interest must be effective.
- 18 The Commission emphasises that wards are for electoral purposes only, and that the Council is the entity to which members are elected.
- 19 In the Commission's view, where a district is to be divided into wards, there should be such number of wards as is necessary and consistent with the concept of effective representation of various communities of interest. In this regard the requirements of section 19V(2) also need to be taken into account.
- 20 The Council has proposed that the District should continue to be divided into four wards; one for the Opotiki urban area, the others for the rest of the District. The Council considered that the proposed structure would provide

effective representation for what it sees as the major communities of interest within the District while complying with the +/-10% rule of section 19V(2).

- 21 The Commission considers that there is no evidence of isolation in the rural communities of the District. In reaching this decision the Commission has applied the following criteria:
- Physical separation alone is not isolation;
 - For a community to have enhanced representation on the grounds of isolation a significant proportion of the population of the area must be isolated;
 - Remote rural areas are not automatically isolated;
 - Isolation must be evidenced by significant distance or travel time, or other physical/practical travel and/or communications difficulties;
 - Isolation must relate to the ability of a community to receive appropriate representation by elected members; and
 - Isolation may justify one member instead of no separate representation for a community, but caution would need to be used in allocating additional members on that basis.
- 22 The views of the appellants relating to the wards generally covered four main areas:
- There was no need for three rural wards;
 - The boundary between the Coast Ward and the rest of the District was in the wrong place;
 - A Council of 11 members was too large; and
 - The Council had not supported the formation of any communities.
- 23 In considering the proposal put forward by the Council, the Commission noted that the current ward memberships do not comply with the requirements of section 19V(2) of the Act. The Council was therefore required to either alter its wards so that they did comply with the statutory requirements, or alter its membership. The Council chose to increase its membership for the Opotiki Ward.
- 24 The Council believed that its approach was reasonable because it retained ward boundaries that had been established for some time. Its view was that if there had been any change to accommodate the requirements of section 19V, and changes in population, it would have been necessary to alter the boundaries of all of the wards. The Council believed that the greatest support in the community was for the status quo.
- 25 The appellants, on the other hand, did not consider that the Council had given rigorous consideration to other possible options so as to avoid enlarging the Council while still ensuring effective and fair representation for all residents of the District. They suggested a number of other approaches, all of which would involve the amalgamation of two of the rural wards, and the shifting of boundaries between other wards. One appellant, Mr Lux, in particular, suggested that the current ward boundaries did not properly take account of the various communities of interest in different areas of the District. For example,

he stated that there were urban areas on the fringes of the Opotiki Ward whose residents should more properly be included within that ward. As another example, he said that the current boundary between the Coast Ward and the Waioeka-Otara Ward divides the Ngai Tai Iwi.

- 26 Federated Farmers, in their appeal, while advocating the retention of the Coast Ward, also suggested an amalgamation of the other two rural wards. Where the emphasis of their appeal differed from that of Mr Lux was in the contention that the Opotiki Ward should be reduced in area.
- 27 The Commission was not persuaded by the arguments advanced on behalf of the Council. Rather it was of the view that the ward structure of the District was no longer relevant to the current situation, and that it was time to make some structural changes in order to enhance the effectiveness of representation. In this respect, it notes that it was strongly suggested in the appeal prior to the 2001 election that there should be some change to the boundaries of the Opotiki Ward. Although that appeal was declined, the Commission believes that the situation under the new legislation makes this change much more desirable. For these reasons, the Commission was drawn to the case put forward by Mr Lux and investigated whether changes similar to those he suggested could be implemented. The changes to the ward structure that it investigated were:
- To alter the boundaries of the Coast Ward;
 - To amalgamate the other two rural wards; and
 - To increase the size of the Opotiki Ward.
- 28 Mr Lux suggested changes to the Coast Ward in order to enhance the integrity of iwi interests in the area of the boundaries. Implementation of this has the effect of locating the boundary of the Coast Ward further to the east. While not agreeing entirely with all of Mr Lux's suggested meshblocks, the Commission considered this to be a reasonable suggestion. It has therefore decided that that the Coast Ward should be reduced by placing meshblocks 1335600, 1334700, 1334600, and 1334500 in the adjoining rural ward.
- 29 The Commission was also persuaded of the reasonable commonality of interest among the residents of both the Waioeka-Otara and the Waiotahi Wards. Both of these wards tend to centre upon Opotiki Town, and a reasonably large part of their populations live in close proximity to the town. For this reason, the Commission was persuaded that these wards should be combined in a single ward to be called "The Waioeka-Waiotahi Ward".
- 30 Finally, the Commission accepted the evidence of Mr Lux that the community of interest of the residents in the areas immediately adjacent to the present boundaries of the Opotiki Ward was substantially the same as that of the residents within that Ward. This community of interest can be recognised by extending the boundaries of the Ward. After consideration of the situation, the Commission has decided that this objective can be best achieved by including meshblocks 1337401, 1337204, 1337902, 1336101, 1336103, and 1336203, presently in the rural wards, within the Opotiki Ward.

31 In summary then, the Commission has determined that the Opotiki District shall be divided into three wards. Those three wards shall be:

- The Opotiki Ward; being the current Opotiki Ward with the addition of those areas contained in meshblocks 1337401, 1337204, 1337902, 1336101, 1336103, and 1336203;
- The Coast Ward; being the current Coast Ward, less those areas contained in meshblocks 1335600, 1334700, 1334600, and 1334500; and
- The Waioeka-Waiotahi Ward; being the current Waiotahi and Waioeka-Otara Wards, less those areas contained in meshblocks 1337401, 1337204, 1337902, 1336101, 1336103, and 1336203; and including those areas contained in meshblocks 1335600, 1334700, 1334600, and 1334500.

32 On the basis of the wards determined by the Commission, the small population the District and the need for the population per number ratio in each ward to comply with the requirements of section 19V(2) of the Act the Commission has determined that the Council shall comprise 6 members, excluding the Mayor. The allocation of members is shown in the following table:

Ward	Members	Population Per Member	Population
Opotiki	3	1454	4362
Coast	1	1524	1524
Waioeka- Waiotahi	2	1656	3312

The population per member falls within the range of 1533 +/-10% (1380 to 1686). The District's total usually resident population at the time of the 2001 census was 9198.

33 The total number of members falls within the ambit of membership numbers suggested by one appellant. The Commission considers that, given the current population of the District, this number will be sufficient to deal with the Council's responsibilities.

34 When considering an appropriate membership for the Council, the Commission noted that the Council had itself used an estimate of population as at 30 June 2002 supplied by Statistics New Zealand. However because such estimates are not available for individual meshblocks, the Commission used the usually resident population as at the date of the 2001 Census. Because Statistics New Zealand uses rounding in individual meshblocks, the District total differs slightly from the published Census total for the District.

Communities

35 At this time there are no communities within the District. However, the Commission noted that in giving strong support for the retention of the Coast Ward, all the appellants mentioned the character of the area, and its need for an adequate local government presence. Mr Lux was of the opinion that communities should be established throughout the District. While the establishment of a number of communities may be appropriate at some time in the future, the Commission believes that the circumstances of the Coast Ward,

now that it will have only one member, are such that there would be a worthwhile benefit from the establishment of a community, to be known as “The Coast Community”, for that ward. The board members could then attend to purely “local” local government matters. This would allow the ward member to attend more fully to district-wide concerns. This is in keeping with the intent of the new Local Government Act.

- 36 The Commission has decided that the Coast Community Board will have four elected members, and one member appointed by the Council. The community board will not be subdivided for electoral purposes.

GENERAL COMMENTS

- 37 The Commission encourages territorial authorities that have communities constituted within their areas to maximise the effectiveness of the contribution of community boards to local governance. The Commission is of the view that territorial authorities should consider providing the boards with a comprehensive set of delegated functions. Three current examples of effective community board delegations are:

- The delegations for the Otago Peninsula Community Board, as detailed in the Commission’s determination of 11 October 2001, and
- The delegations issued by the Thames-Coromandel District Council and Christchurch City Council for the community boards constituted in their districts.

DETERMINATION

- 38 Under section 19R of the Act, the Commission determines that for the general election of the Council to be held on 9 October 2004 -

- (1) The Opotiki District as delineated on S.O. Plan No. 334312 deposited with Land Information New Zealand, shall be divided into three wards;
- (2) Those three wards shall be -
 - (a) The Opotiki Ward, comprising the area delineated on S.O. Plan No. 334313 deposited with Land information New Zealand:
 - (b) The Coast Ward, comprising the area delineated on S.O. Plan No. 8392 deposited with Land Information New Zealand: and
 - (c) The Waioeka-Waiotahi Ward, comprising the area delineated on S.O. Plan No. 334314 deposited with Land Information New Zealand.

- (3) The Council shall comprise the Mayor and 6 members who shall be elected as follows -
- (a) Three members shall be elected by the electors of the Opotiki Ward;
 - (b) One member shall be elected by the electors of the Coast Ward; and
 - (c) Two members shall be elected by the electors of the Waioeka-Waiotahi Ward.
- (4) There shall be a Coast Community for the area of the Coast Ward.
- (5) The Coast Community Board shall comprise four elected members and one member of the Council representing the Coast Ward.

39 As required by sections 19T(b) and 19W(c) of the Act, the boundaries of the above wards and the Coast Community coincide with the boundaries of current statistical meshblock areas determined by Statistics New Zealand and used for Parliamentary electoral purposes.

THE LOCAL GOVERNMENT COMMISSION

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

7 April 2004