



LOCAL GOVERNMENT COMMISSION

Determination

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

BACKGROUND

- 1 The Waitomo District Council (“the Council”) undertook a review of the membership and basis of election of the Council and of community boards under sections 19H and 19 J of the Local Electoral Act 2001 (‘the Act’). On 24 June 2003 the Council resolved the initial proposed electoral arrangements to apply for the general election of the Council to be held in October 2004.
- 2 The Council elected at the 2001 general election comprises 10 members and the Mayor. The 10 members were elected as follows:

| | |
|-----------------|-----------|
| Waitomo Ward | 1 member |
| Tainui Ward | 1 member |
| Paemako Ward | 1 member |
| Te Kuiti Ward | 4 members |
| Mangaokewa Ward | 1 member |
| Aria Ward | 1 member |
| Te Anga Ward | 1 member |
- 3 Elections were held for the Piopio Community Board at the 2001 general election. However, the Piopio Community was abolished with the consent of the community board subsequent to the 2001 elections.
- 4 Following its review, the Council proposed that its membership comprise a Mayor and 5 members elected from the district as a whole.
- 5 The Council received 53 submissions to its initial proposal. The submissions covered a range of issues including:
 - The current ward system should be retained
 - An alternative ward system should be adopted
 - Six councillors is not enough

- It is possible that the Council could be made up entirely of urban councillors, creating a bias in Council decisions
 - The potential for party politics exists under the system proposed
 - Amalgamation proposals have included a ward system
 - The district does not constitute a single community of interest
 - The Mokau-Awakino and Marokopua-Te Waitere areas represent isolated areas for the purposes of modifying the requirements of fair representation under section 19V of the Local Electoral Act
 - Concern that not having ones own representative would be a disadvantage
 - There was inadequate consultation
 - Representation should reflect land ownership.
- 6 Following consideration of the submissions, the Council amended its initial proposal. The Council's final proposal was for 6 members, excluding the Mayor, to be elected from two wards as follows:
- | | |
|--------------------|-----------|
| Te Kuiti Ward | 3 members |
| Waitomo Rural Ward | 3 members |
- 7 One appeal and one objection were received against the Council's final proposal. The subject matter of the appeals and objections included the following:
- On a population basis there should be four rural members:
 - Because of distinct communities of interest there should be four rural wards.

Hearing

- 8 The Commission, on receiving advice of the appeals and objections, decided that it would meet with the Council, the appellants and objectors if they wished to be heard. The hearing was held in Te Kuiti on 30 January 2004.
- 9 The Council, the appellant and the objector appeared before the Commission at the hearing. The Council outlined its proposal, and the appellant and objector spoke to their submissions.

MATTERS FOR DETERMINATION

- 10 The statutory provisions in respect of these appeals and objections are contained in sections 19R, 19H 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) *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 provisions detailed above, the principles of the Act (set out in section 4 of the Act) need to be taken into account of, 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 parts at large, the criterion to be met within the terms of section 19T is the provision of effective representation of the various

communities of interest within the District. The Commission must determine which communities of interest or groupings of communities of interest require representation. If wards are considered appropriate, then any particular 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 19(V) 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 to member ratio 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, and if so the number and boundaries of those

wards to provide effective representation of communities of interest within the district.

- 16 The Waitomo District is a relatively diverse district, comprising the Te Kuiti urban area and a number of dispersed rural communities. The Commission came to the view that because of the diversity of the District, effective representation of the various communities of interest could only be achieved through councillors being elected on a ward basis. The Commission noted that the Council's final proposal put forward a ward system, and that the appellant and objector sought a ward system for electoral purposes, albeit of a different type to that proposed by the Council.

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, as the population that each ward member represents must be generally similar across the District.
- 20 The Council has proposed that the District be divided into two wards. The Council considers that the proposed structure takes into account the two principal communities of interest within the District while complying with the +/-10% rule of section 19V(2).
- 21 The appellant and objector were of the view that the rural part of the district contains a number of distinct communities requiring separate representation. They pointed in particular to the areas of the current Tainui and Te Anga Wards. They also argued that the size of the rural part of the district would make it difficult for councillors elected from either a single rural ward or a greater number of rural wards to effectively represent their communities if there are only 3 rural councillors. In addition to a larger number of rural wards, it was proposed that a larger number of councillors be allocated to the rural part of the district.
- 22 In considering the two-ward proposal put forward by the Council, the Commission noted that the current ward arrangements do not comply with the requirements of section 19V(2). The Council was therefore required to amend its wards so that they did comply with the statutory requirements. The status

quo was not an option unless it could be argued that the effective representation of isolated communities of interest justified not complying with the +/-10% requirement.

- 23 The Commission considers that there is no evidence of isolation creating a need for a level of representation in any area that does not comply with section 19V(2). In reaching this decision the Commission has applied the following criteria:
- Physical separation 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
 - 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 or reliability problems
 - Isolation must relate to the ability of a community to receive appropriate representation by elected members
 - Isolation may justify 1 member instead of no separate representation for a community but caution would need to be used in allocating additional members on that basis.
- 24 The Commission acknowledges that Waitomo District contains a number of localised communities of interest. However, as noted in paragraph 16, it is not the case that every community requires separate representation to ensure effective representation. Although evidence was presented to the Commission about the cohesiveness of various communities, the Commission formed the impression that each of the communities would need to look outside their areas to Te Kuiti for a number of services, while the linkages between individual communities would not be great. Rather, collectively across the district the rural communities of interest had a commonality of interest, which could be effectively represented as a whole.
- 25 The Commission did examine an alternative option put forward in the appeal process involving a 7 member council with 4 members elected from 4 rural wards. It found, however, that some wards would not comply with the +/-10% requirement. To comply they would require significant alterations in boundaries. This would have resulted in the division of communities of interest, leading to an outcome contrary to that which the proposal seemed to be seeking.
- 26 Having considered the information presented to it, the Commission is satisfied that the wards proposed by the Council more or less equate to the communities of interest requiring separate representation on the Council. In coming to that conclusion, the Commission considered the distinct nature of each community and the geographical characteristics of the District.
- 27 The next issue requiring the Commission's attention was the number of members to be elected from each of the wards. The Council proposed an allocation of 3 members to each of the two wards, while the alternative

proposed by the appellant and objector was for 4 members to be elected from the rural part of the district. Either option would comply with the +/-10% requirement. However the Commission concluded that an allocation of 3 members to each ward would be equitable and provide effective representation for the communities on interest in the District.

- 28 The Council's two-ward scenario proposed a total Council of 6 members. The allocation of members between the wards enables the requirements of section 19V(2) to be met, as follows:

| Ward | Members | Population per member | Ward Population |
|---------------|---------|-----------------------|-----------------|
| Te Kuiti | 3 | 1458 | 4375 |
| Waitomo Rural | 3 | 1696 | 5088 |

(The population per member falls within the range of 1579+/-10% (1421 to 1737). The District's total usually resident population at the time of the 2001 Census was 9473.)

- 29 Having considered all aspects of the matter of Council representation the Commission has concluded that the membership of the Council should total 6 members elected from the two wards proposed by the Council, and the Mayor.

Community Boards

- 30 As part of its representation review the Council considered whether community boards should be established in the district. The Council concluded that because it considered the district to be a single community of interest neither representation nor governance would be enhanced by the establishment of new communities. It also noted that there was no evidence before it that supported the establishment of community boards.
- 31 The Council's subsequent decision in favour of a two ward system modifies to a degree its initial conclusion that the district comprises a single community of interest. However none of the submitters to the Council's initial or final proposal sought the constitution of community boards. The Commission considers that the Council should be able to provide effective governance across its District. Therefore, it is of the view that the constitution of community boards would not be appropriate at this time.

DETERMINATION

- 32 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 Waitomo District as delineated on S.O. Plan 335334 deposited with Land Information New Zealand, shall be divided into two wards;
 - (2) Those two wards shall be -
 - (a) The Te Kuiti Ward, comprising the area delineated on S.O. Plan No. 335336 deposited with Land information New Zealand:

(b) The Waitomo Rural Ward, comprising the area delineated on S.O. Plan No. 335335 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 Te Kuiti Ward; and

(b) three members shall be elected by the electors of the Waitomo Rural Ward.

33 As required by sections 19T(b) and 19W(c) of the Act, the boundaries of the above wards 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