

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV-2025-485-249
[2025] NZHC 2805

UNDER	the Local Government Act 2002
IN THE MATTER OF	an appeal under schedule 5, cl 2 of the Local Government Act 2002 against a determination under the Local Electoral Act 2001
BETWEEN	TASMAN DEMOCRACY INCORPORATED Appellant
AND	LOCAL GOVERNMENT COMMISSION Respondent

Hearing:	25 August 2025
Counsel:	M Schaeffner and C Schaeffner for Appellant M S Smith and J O Kirton-Luxford for Respondent No appearance for the Tasman District Council
Judgment:	25 September 2025

JUDGMENT OF GENDALL J

Introduction

[1] Tasman Democracy Incorporated (TDI) appeals a decision of the Local Government Commission | Mana Kāwanatanga ā Rohe (the Commission) determining representation arrangements for upcoming local body elections in the Tasman District (the Determination).¹ The Tasman District is represented by the Tasman District Council | Te Kaunihera o te tai o Aorere (the Council).

¹ Local Government Commission *Determination of representation arrangements to apply for the election of the Tasman District Council to be held on 11 October 2025* 24 March 2025 (Determination).

[2] The foundation of the appeal, and the Determination under review, is how to fairly and effectively ensure everyone in the Tasman region has a voice in local decision-making. Self-evidently, the Council, the Commission and TDI have different ideas as to the best framework and arrangements. The question is whether the Commission was able, as a matter of law, to come to the conclusions they did.

[3] TDI seeks a declaration that the Commission made errors of law in the Determination, and an order quashing the Determination. The Commission appears to assist the Court. The Council is not a party to the appeal.

Background

The Tasman District Council

[4] The Council represents the Tasman District, a local government district in the north-west of the South Island | Te Waipounamu.

[5] There are five wards in the district:

- (a) Golden Bay;
- (b) Lakes-Murchison;
- (c) Motueka;
- (d) Moutere-Waimea; and
- (e) Richmond.

[6] There is also a Māori ward: Te Tai o Aorere Māori Ward,² and two community boards (in Golden Bay and Motueka). These arrangements can be visualised in the graphic below:

² Following the Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Act 2024, the Council will conduct a binding poll on the continuation of this Ward as part of its 2025 local elections.



The Commission

[7] The Commission’s role is to promote good local government practice in Aotearoa New Zealand.³ As a statutory body, it makes decisions and recommendations on local government reform.⁴ One major responsibility is to oversee the representation arrangements of local authorities. In *Ford v Local Government Commission*, Hansen J confirmed that this role is not merely supervisory but the Commission is required to form its own view.⁵ Grice J has observed the Commission has a “wide-ranging ability to conduct its inquiry” to determine the representation arrangements for a local authority.⁶

³ Local Government Act 2002, s 30(2).

⁴ *Northern Action Group Incorporated v Local Government Commission* [2018] NZHC 2823 at [12] [*Northern Action 2018*].

⁵ *Ford v Local Government Commission* HC Christchurch CIV-2004-409-948, 16 August 2004 [*Ford*], at [36] and [38].

⁶ See s 34(1)(b) of the Local Government Act, giving the Commission access to powers under the Inquiries Act 2013, and *Northern Action 2018*, above n 4, at [11].

Tasman Democracy

[8] TDI is a non-profit residents' group that advocates for community interests in the Tasman region. It maintains that it provides for the voices of the "voiceless".⁷ TDI's concerns as to representation in Tasman largely centre on the Moutere-Waimea ward. Following the Local Government Act 2002, sch 5, cl 2(4), TDI made submissions to the Commission in the proceedings under review,⁸ and so is a party to the proceeding (and therefore entitled to bring an appeal).

The Council's representation review process

[9] The Council last reviewed its representation arrangements prior to the 2019 elections. In September 2023, it resolved to establish a Māori ward, and affirmed this in September 2024. Accordingly, it was required to undertake a review prior to the next elections in October 2025.⁹

[10] The Council conducted preliminary community engagement via an online survey between November 2023 and January 2024. This generated 16 responses. Councillors attending community association meetings also undertook informal engagement. Between September 2023 and April 2024, the Council held four workshops, including one with community boards, during which it considered four options for ward configurations based on variations of the current arrangements.

[11] The Council notified its initial representation proposal on 17 July 2024 and received 93 submissions by the deadline date of 29 August 2024. On 2 October 2024, the Council met to hear and deliberate on submissions. At that 2 October meeting, the Council adopted its initial proposal as its final representation proposal. The proposal was as follows:

⁷ Christin and Mathias Schaeffner *Mission Statement of Tasman Democracy* <[Mission — Tasman Democracy](#)>.

⁸ See Determination, above n 1, at [28(b)].

⁹ Local Electoral Act 2001, ss 19H to 19J, and in particular ss 19H(2)(b) and 19I(2)(b).

Wards	Population*	Number of members	Population per member	Deviation from district average population per member	% deviation from district average population per member
Golden Bay General	5,590	2	2,795	-1,573	-36.01
Motueka General	12,500	3	4,167	-201	-4.60
Moutere-Waimea General	15,350	3	5,117	749	+17.15
Lakes-Murchison General	3,990	1	3,990	-378	-8.65
Richmond General	19,350	4	4,838	470	+10.76
Total general wards	56,780	13	4,368		
Te Tai o Aorere Māori	2,540	1	2,540		
Total	59,320	14			

*Based on Stats NZ Tatauranga Aotearoa 2023 population estimates (2018 census base)

[12] In short, five wards, one Māori ward, and two community boards.

[13] The Council publicly notified its final proposal on 22 October 2024. The proposal then came before the Commission for determination for two reasons:

- (a) Appeal:¹⁰ because it was contested by TDI and another individual (who is not a party to, or participating in this appeal); and
- (b) Referral:¹¹ because some of the Council's proposed wards are not compliant with the fair representation requirements.

The Determination hearing

[14] When the Commission receives an appeal and/or a reference, it must determine whether to uphold the decision or to alter that decision.¹²

¹⁰ Local Electoral Act, s 19Q

¹¹ Local Electoral Act, s 19V(4).

¹² Local Electoral Act, s 19V(6) and s 19R.

[15] The Commission convened a hearing on 19 February 2025, and met with the Council, the other appellant and TDI. The Commission then issued its decision (the Determination) on 24 March 2025.¹³ This decision conforms with much of the Council’s proposal, but supersedes such. It also makes some changes and recommendations.

[16] In its Determination the Commission retained the five general wards, two community boards and one Māori ward arrangement, but redrew the boundaries of the Moutere-Waimea and Lakes-Murchison wards. This had the effect of altering the percentage deviation from the district average population per member. Its decision can be visualised as follows:

Ward	Population*	Number of members	Population per member	Deviation from district average population per member	% deviation from district average population per member
Golden Bay General	5,590	2	2,795	-1,573	-36.02
Motueka General	12,500	3	4,167	-202	-4.62
Moutere-Waimea General	15,650	3	5,217	848	+19.42
Lakes-Murchison General	3,700	1	3,700	-668	-15.30
Richmond General	19,350	4	4,838	469	+10.74
Total general wards	56,790	13	4,368		
Te Tai o Aorere Māori	2,540	1	2,540		
Total	59,330	14			

*Based on Stats NZ Tatauranga Aotearoa 2023 population estimates (2018 census base)

Prior to the hearing in the High Court

[17] This appeal was filed on 23 April 2025. TDI’s intention was that the appeal would be heard prior to the Local Government elections due to take place on 11 October 2025. However, Gwyn J concluded it was “plain that that timeframe could

¹³ Pursuant to s 19R(3).

not be met” and “any order that the matter be heard urgently would be ineffective”.¹⁴ Regardless, TDI has continued with its appeal, as it is entitled to do, and as is logical, given the arrangements for representation may well continue to the 2028 local government elections.¹⁵

[18] In a minute following the first call of the matter, Gwyn J directed that:¹⁶

The Commission advises that it is able to appear through counsel and to assist the court to understand the legal framework and how that was applied in making the decision under appeal, while being mindful of the need to respect the non-partisan limitations applicable to counsel acting for statutory decision-makers. ...

... it was appropriate for counsel for the Commission to participate in the hearing to assist the Court by way of understanding the legal framework and its application to the decision being appealed, but not to engage in the merits of the decision. No doubt the trial Judge will provide further direction.

Legal principles

[19] There are two operative Acts that govern representation reviews, the role of the Commission, and the pathway to appeal in the High Court: the Local Electoral Act 2001¹⁷ and the Local Government Act. Representation reviews are also informed by Guidelines issued by the Commission.¹⁸

[20] An important touchstone in this appeal is the purpose of local government:¹⁹

- (a) to enable democratic local decision-making and action by, and on behalf of, communities; and

¹⁴ *Tasman Democracy Incorporated v Local Government Commission* HC Wellington CIV-2025-485-249, 19 May 2025 (Minute of Gwyn J) at [19].

¹⁵ It is possible that the Tasman District’s decision on retention of a Māori ward may accelerate the requirement for a review. As discussed below, it seems a review prior to 2028 is advisable.

¹⁶ Minute of Gwyn J, above n 14, at [5] and [6].

¹⁷ The provisions governing representation reviews came into force through the Local Electoral Amendment Act 2002, and were previously part of the Local Government Act 1974.

¹⁸ These Guidelines are required by s 19ZI of the Local Electoral Act. They are not binding, but describe recommended practice in conducting representation reviews. See Local Government Commission “Guidelines for Local Authorities Undertaking Representation Reviews” (9th ed, July 2023) at [1.23].

¹⁹ Local Government Act 2002, s 10.

- (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.

[21] And the purposes and principles of the Local Electoral Act which include:²⁰

- (a) representative and substantial electoral participation in local elections and polls; and
- (b) fair and effective representation for individuals and communities.

[22] It is necessary here to set out in full how the Local Electoral Act colours fair and effective representation in ss 19T and 19V:²¹

19T Requirement for effective representation and other factors in determination of membership and basis of election of territorial authorities and local boards

- (1) In determining the matters specified in paragraphs (a) to (d) of section 19H(1), the territorial authority and, where appropriate, the Commission must ensure—
 - (a) that the election of members of the territorial authority (other than the mayor), in one of the ways specified in subparagraphs (i) to (iii) of section 19H(1)(a), will provide effective representation of communities of interest within the district; and
 - (b) that ward boundaries coincide with the boundaries of the current statistical meshblock areas determined by Statistics New Zealand and used for parliamentary electoral purposes; and
 - (c) that, so far as is practicable, ward boundaries coincide with any local board area or community boundaries.
- (2) In determining the matters specified in section 19H(1)(e) to (h), the territorial authority and, where appropriate, the Commission must ensure—
 - (a) that the election of members of the local board, in one of the ways specified in section 19H(1)(f)(i) to (iii), will provide effective representation of communities of interest within the local board area; and

²⁰ Local Electoral Act, s 4(1)(aa) and (a).

²¹ Local Electoral Act, s 19V.

- (b) that the boundaries of subdivisions coincide with the boundaries of the current statistical meshblock areas determined by Statistics New Zealand and used for parliamentary electoral purposes; and
- (c) that, so far as is practicable, subdivision boundaries coincide with ward boundaries.

...

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 local board area or community and every ward or constituency or subdivision within the district or region or local board area 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 local board area 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).
- (3) Despite subsection (2),—
 - (a) if the territorial authority or the Commission considers that 1 or more of the following apply, wards and subdivisions of a local board area or a community may be defined and membership distributed between them in a way that does not comply with subsection (2):
 - (i) non-compliance with subsection (2) is required for effective representation of communities of interest within island communities or isolated communities situated within the district of the territorial authority; or
 - (ii) compliance with subsection (2) would limit effective representation of communities of interest by dividing a community of interest between wards or subdivisions; or
 - (iii) compliance with subsection (2) would limit effective representation of communities of interest by uniting

within a ward or subdivision 2 or more communities of interest with few commonalities of interest:

- (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).

[23] Schedule 5 of the Local Government Act provides for appeals against decisions of the Commission. The High Court has a supervisory jurisdiction over the Commission on questions of law.²² If a party is dissatisfied with a decision of the Commission “as being erroneous in point of law”, the party may appeal to the High Court on the question of law.²³

[24] The decision of the High Court is final.²⁴ The appeal “must be dealt with in accordance with rules of court”.²⁵ It follows that sch 5 is supplemented by the High Court Rules 2016 and the Judicial Review Procedure Act 2016.

[25] This Court has held the Commission may have made an error of law if it:²⁶

- (a) applied the wrong legal test (or misinterpreted what was required by the legislation);²⁷
- (b) reached a factual finding that was “so insupportable — so clearly untenable — as to amount to an error law” (sic);
- (c) came to a conclusion that it could not reasonably have reached on the evidence before it;

²² Local Government Act, sch 5, cl 1(2).

²³ Clause 2(1).

²⁴ Clause 2(2).

²⁵ Clause 2(3).

²⁶ *Northern Action Group Inc v Local Government Commission* [2015] NZHC 805, [2015] 3 NZLR 538 at [43] [*Northern Action 2015*] citing *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 721 at [24]–[27]; *R v Gwaze* [2010] NZSC 52, [2010] 3 NZLR 734 at [50]; *Vodafone New Zealand Ltd v Telecom New Zealand Ltd* [2011] NZSC 138, [2012] 3 NZLR 153 at [5]; *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 (HC) and *May v May* (1982) 1 NZFLR 165 (CA).

²⁷ *Northern Action 2018*, above n 4, at [8].

- (d) took into account irrelevant matters; or
- (e) failed to take into account matters that it should have considered.

The appeal

[26] TDI's present appeal is separated into five questions:

- (a) Was it reasonably open to the Commission to uphold the Council's proposal (with a minor adjustment regarding Totara View Road), in the light of the Commission's view that the evidence advanced by the Council was insufficient for identifying communities of interest, while the Commission at the same time acknowledged a compelling case advanced by the appellants which opposed the Council's proposal? **(First ground of appeal: 'Council's proposal')**
- (b) Did the Commission act within its powers by imposing a quantitative condition, namely to "require sufficient evidence of community views", as a prerequisite for implementing large-scale changes to ward boundaries? **(Second ground of appeal: 'prerequisite')**
- (c) Did the Commission act within its powers for the purpose of section 19R of the Act by setting aside the genuine consideration of matters raised and information before the Commission relating to boundary changes in the Determination? **(Third ground of appeal: 'boundary changes')**
- (d) Did the Commission act within its statutory authority under section 19R of the Act by endorsing the Council's proposal in regard to community boards solely on the basis that no appeals were received on those matters? **(Fourth ground of appeal: 'community boards')**
- (e) Did the Commission act within its statutory authority under section 19R of the Act for determining the numbers of councillors per ward which result in an overrepresentation in some wards and underrepresentation

in other words without providing a reasoned justification for the conclusion it reached? (**Fifth ground of appeal: ‘number of councillors’**).

[27] I will address each of these grounds in turn. The first, second and third grounds of appeal overlap to some degree.

First ground of appeal: (Council’s proposal)

[28] TDI argues the Commission could not uphold the Council’s proposal given its assessment of TDI’s submissions as “compelling”.²⁸ Put another way, the Commission was barred from reaching the conclusion it did on the evidence before it, or its conclusion was so illogical as to constitute an error of law.

[29] I consider the appellant’s argument conflates two ideas:

- (a) First, was the Commission entitled to weigh the merits of two mutually exclusive propositions and uphold one of them while acknowledging the quality and persuasiveness of the other?
- (b) Second, was the Commission’s decision reasonably available on the evidence before it?

[30] It is accepted that the Commission found TDI’s proposal thorough and convincing.²⁹

Both appellants described communities of interest in the Moutere-Waimea General Ward with regards to perceptual, functional, and political dimensions using examples that were relevant and compelling. They demonstrated an understanding of communities of interest to a level we also expect from councils undertaking reviews.

[31] And.³⁰

We were impressed with the degree to which appellants engaged with the principles and requirements of representation reviews. They argued that the

²⁸ Determination, above n 1, at [42].

²⁹ At [42].

³⁰ At [51].

proposed ward arrangements no longer effectively represent communities of interest because they combine Waimea and Moutere communities, which share few functional connections.

[32] While Hansen J commented in *Ford* that “one compelling submission may be sufficient material for the [Commission] to reach a decision”,³¹ it almost goes without saying that the Commission must, and is entitled to, weigh different viewpoints.³² I agree with Mr Smith, for the Commission, that the use of the term ‘may’ in Hansen J’s observation does not have the effect of requiring any single submission (compelling as it may be) to be determinative for the Commission.³³

[33] As a general principle, decision-makers and statutory bodies must be, and are, able to make complimentary observations about a party’s case or position while concluding that an alternative, even mutually exclusive, proposition is the best route forward.³⁴ It follows I cannot accept the argument advanced by TDI on this question.

[34] Regarding the second question: it is regrettable that ‘consultation fatigue’ as Mr Smith put it, or “engagement pressures” as the Commission termed it,³⁵ resulted in a relative vacuum of information upon which the Commission had to find a path forward, within the tight statutory timeframe.³⁶ The Commission made the following critical observations about the Council’s proposal:

- (a) ...we have concerns regarding the Council’s analysis of communities of interest...³⁷
- (b) ...the current ward boundaries, based on a rural/urban split, may no longer reflect meaningful communities of interest for the District’s residents. ...³⁸

³¹ *Ford*, above n 5, at [91].

³² At [92].

³³ At [92], Hansen J acknowledges as such.

³⁴ See by way of example Crown Law *Te Pouārahi The Judge Over Your Shoulder: A guide to good decision-making and the law in New Zealand* (2019).

³⁵ Determination, above n 1, at [45].

³⁶ See 19R(3) of the Local Electoral Act.

³⁷ Determination, above n 1, at [43].

³⁸ At [41].

- (c) There are limitations in perpetuating an existing representation structure if communities of interest have evolved. A comprehensive analysis of communities of interest during the next review will either inform a new perspective on ward boundaries or confirm the relevance of the current structure. ...³⁹
- (d) Given the evidence provided in the appeals and by the Council at the hearing, and the increasing levels of non-compliance with the +/-10% rule, we believe the Council has a strong mandate to test significant change to its ward arrangements with the community. The Commission strongly recommends the Council takes the opportunity to do so in its next representation review.⁴⁰

[35] The Commission concluded by making four recommendations for the Council to consider as part of the next review:⁴¹

- (a) Undertaking concerted, proactive engagement with communities and evaluating other information it holds to inform a ground-up analysis of communities of interest.
- (b) Testing representation options with the community at the preliminary stage, including models such as those set out in the appeals to this review and options for preserving rural representation.
- (c) The appropriateness of combining communities of interest across significant geographic features such as the Hope Ranges.
- (d) Supporting engagement on representation options with educational material explaining the purpose of a representation review and the key principles of fair and effective representation.

³⁹ At [66].

⁴⁰ At [83].

⁴¹ At [84(a)–(d)].

[36] Preferring observations and recommendations to the Council over TDI's argument was not a decision "so bizarre or so strange" as to call into question the proper exercise of the functions and authorities of the Commission.⁴² Nor is it the function of the Courts to adjudicate or comment on the merits of competing proposals "in this sort of case".⁴³

[37] I am satisfied that the Commission made a decision which was a permissible option and one available to it. It was one it was entitled to make, by maintaining the status quo of the Council's proposal. It is not enough here that this Court may have reached a different conclusion.⁴⁴

[38] Additionally, I find that my discussion on the second ground of appeal below, reinforces somewhat that the first ground of appeal cannot succeed.

Second ground of appeal: ('prerequisite')

[39] TDI submits that the Commission erred in law and acted outside its powers by improperly limiting its decision-making through the imposition of a "quantitative condition" (being a requirement for sufficient evidence of community views) as a "prerequisite". Having carefully considered the arguments advanced at the hearing, I conclude this ground cannot succeed.

[40] The relevant extracts that are the foundation of this ground are, at [58] of the Determination:

While the Commission could uphold the broad intent of the appellants' proposals, such large-scale changes require sufficient evidence of community views. Therefore, for at least the 2025 local elections, the Moutere-Waimea General Ward continues to form part of the Council's representation arrangements.

We strongly recommend the Council's next review includes early community testing of multiple representation options, including those proposed by the appellants, alongside alternative ways to preserve rural representation. This might include well supported and empowered community boards for rural

⁴² *Waitaki County Council v Local Government Commission* [1998] NZLR 366 (HC) at 368 at 375.

⁴³ *Devonport Borough Council v Local Government Commission* [1989] 2 NZLR 203 (CA) at 209 and *Waitaki County Council v Local Government Commission* [1998] NZLR 366 (HC) at 368.

⁴⁴ *Northern Action Group Inc v Local Government Commission* [2020] NZHC 830 [Northern Action 2020] at [8].

areas, a model that has proven effective for rural representation in other districts.

(emphasis added)

[41] And, to some extent, at [75]:

Richmond residents may share some commonalities of interest with nearby Moutere-Waimea communities. However, until the Council has sought **appropriate community input at its next review**, we believe altering the boundary purely for compliance with the +/-10% rule does not support effective representation. ...

(emphasis added)

[42] A duty to consult may be provided for expressly or impliedly by statute.⁴⁵ The principles of procedural fairness can require consultation.⁴⁶

[43] On a plain reading, the Commission did conclude it was unable to uphold the appellant's proposal, given the absence of broader community views, including those outside the three wards on which TDI focused their engagement and advocacy.⁴⁷ However, I do not find this to be a reviewable error. It may well be a pre-requisite or as TDI labels it, a "quantitative condition", but I consider it is one, at its highest, mandated by the Local Government Act and Local Electoral Act, and on another level, permitted by those Acts. The legislative mandate in the local government arena is clear:

- (a) The Commission's stated purpose is "allow[ing] diversity (through local decision-making)"⁴⁸, and it is required principally to implement "public confidence in, and public understanding of, local electoral processes"⁴⁹.

⁴⁵ *Nicholls v Health and Disability Commissioner* [1997] NZAR 351 (HC) at 369.

⁴⁶ *Leigh Fishermen's Association Inc v Minister of Fisheries* HC Wellington CP266/95, 11 June 1997 at 27.

⁴⁷ I am referring to Moutere-Waimea, Richmond, and Motueka; but acknowledge the Court does not have full insight into the arguments TDI developed at hearings before the Council and the Commission.

⁴⁸ Local Electoral Act, s 3(c).

⁴⁹ Local Electoral Act, s 4(1)(c).

(b) The Commission should “promote good practice” relating to local government.⁵⁰ By analogy, the provisions in the Local Government Act which relate to local authorities must also apply to some extent to the Commission.

(c) By way of snapshot:

(i) Local authorities must “maintain and improve opportunities for Māori to contribute to local government decision-making processes”.⁵¹

(ii) One purpose of local government is to enable democratic local decision-making and action by, and on behalf of, communities.⁵²

(iii) Community views are both “relevant and important”.⁵³

(d) In performing its role, a local authority must act in accordance with the following principles:⁵⁴

...

(b) a local authority should make itself aware of, and should have regard to, the views of **all of its communities**; and

(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

...

(d) a local authority should provide **opportunities for Māori** to contribute to its decision-making processes:

⁵⁰ Local Government Act, s 30(2)(b).

⁵¹ Local Government Act, s 4.

⁵² Local Government Act, s 10(1)(a).

⁵³ *Neil Construction Ltd v North Shore City Council* [2008] NZRMA 275 (HC) at [276].

⁵⁴ Local Government Act, s 14(1)(b), (c) and (d).

...

(emphasis added)

- (e) Further, the requirement the Commission placed on itself was properly tempered by the modifiers of “appropriate” and “sufficient”.

[44] Put another way, while it was and is regrettable that the paucity of information before the Commission meant it could not safely proceed on the basis of the appellant’s arguments, where inadequate weight is given to a relevant consideration that the statutes imbue with great weight, *this* will be an error of law which shades into the ground of unreasonableness.⁵⁵

[45] My conclusion here must be understood in the broader context of local government engagement challenges, and acknowledging Hansen J’s observation that one compelling submission *can* be enough. But I suggest that is an idea somewhat in tension with the clear statutory guidance for the Commission. Nor does that mean the Commission acted outside of its powers by concluding that more evidence as to the broader community perspective was required here.

[46] Therefore, this second ground of appeal also fails.

Third ground of appeal: (‘boundary changes’)

[47] I understood this argument from TDI to suggest the Commission had a closed mind, and/or did not engage with the relevant material before it relating to boundary changes for the upcoming 2025 election and/or was not entitled to decide against the information brought before it by TDI.

[48] I conclude the Commission did give genuine attention and thought to the proposals, and did not rebuff them at the outset, or carry out an idle exercise.⁵⁶

[49] Especially in the context of the tight timeframe, I find the Commission did genuinely consider the matters raised — although under s 19R(2) it could determine

⁵⁵ *CMP v Director General of Social Welfare* (1996) 15 FRNZ 40 (HC) at 77.

⁵⁶ *Attorney-General v Refugee Council of New Zealand Inc* [2003] 2 NZLR 577 (CA) at [97].

appeals on the papers without hearings, it convened an oral hearing, provided reasons, and made staunch recommendations to the Council. Despite its concern about some aspects of the Council's consultation, I conclude the Commission was essentially entitled to shift a further consideration of TDI's argument to the next representation review. I reach this conclusion primarily because of my view on the legislative mandate acting on the Commission, and the Council.

[50] I do not consider this to be a situation where something has gone wrong to the extent that it offends the Court and warrants intervention.⁵⁷

Fourth ground of appeal: ('community boards')

[51] The Determination endorsed the Council's proposal regarding community boards principally due to an absence of appeals in relation to community boards. It is unclear why TDI, who submitted no change was required to community boards, has advanced this ground of appeal.

[52] Counsel for the Commission did advance the submission that "it cannot be said the Commission endorsed the Council's proposal 'solely' on the basis that there were no appeals against that aspect of the proposal". In the Determination, the Commission said:

81. The Council is proposing to retain the existing Golden Bay and Motueka Community Boards, each electing four members. There are no appeals in relation to community boards.

82. Accordingly, we endorse the Council's proposal in relation to this matter.

[53] With respect, the reasoning does appear to be confined mainly to the fact there were no appeals in relation to this matter. However, I do not consider that means that the Commission acted outside of its statutory authority, or that there is any merit in this ground of appeal. It would have been improper for the Commission to assess community boards in the absence of any submission, data or information on those boards (even if it is permitted to do so in exercise of its broader inquisitorial role).

⁵⁷ See Matthew Smith *New Zealand Judicial Review Handbook* (2nd ed, Thomson Reuters, Wellington, 2016) at [62.2.3].

[54] I also consider it relevant that TDI submitted “no change” be made to the community board structure. It was not meaningfully within the scope of the review, and the Commission did nominally consider it, noting that the community board structure had been substantively assessed at the previous review.

[55] In conclusion, I find there is nothing in this fourth ground of appeal. It is dismissed.

Fifth ground of appeal: (‘number of councillors’)

[56] Section 19S(1) of the Local Electoral Act requires reasons for a determination to be made public. Where a statute requires reasons, the reasons given must be “adequate to the occasion”.⁵⁸ This is a flexible standard; a contextual and fact-specific question. Reasons do not need to be lengthy.⁵⁹

[57] This ground of appeal is separate from the drawing of ward boundaries. It focuses on the councillor allocation to each ward:

- (a) Te Tai o Aorere Māori Ward: 1
- (b) Golden Bay General Ward: 2
- (c) Motueka General Ward: 3
- (d) Moutere-Waimea General Ward: 3
- (e) Lakes-Murchison General Ward: 1
- (f) Richmond General Ward: 4

[58] And, I suggest, the total number of councillors across all the Wards.

⁵⁸ *R v Awatere* [1982] 1 NZLR 644 (CA) at 649. Recently affirmed and applied in *Aitken v Judicial Conduct Commissioner* [2025] NZHC 190, [2025] NZAR 206 at [70]. See *Northern Action 2020*, above n 44, at [125]–[128].

⁵⁹ *Aitken*, above n 58, at [71].

[59] Mr Smith submitted before me that where ward representation complies with the proportional formula of s 19V(2), there can be no requirement to provide further justification.

[60] Section 19V(2) of the Local Electoral Act sets out the formula for achieving fair representation in terms of the number of members per ward and provides:

(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 local board area 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).

[61] Where the ward does not comply with s 19V(2), however, both the Council and the Commission must identify the ground for non-compliance from those outlined in subs (3) — and arguably it may have done so here. As I see it, paragraph [6] of the Determination to an extent discharged this requirement when it noted:

6. Under section 19V(6) of the Local Electoral Act 2001, the Commission upholds the decision of the Council not to comply with section 19V(2) in respect of the following wards:
 - a. The Golden Bay General Ward, as compliance would limit effective representation of communities of interest within the isolated community of Golden Bay.
 - b. The Mouere-Waimea General Ward as compliance would limit effective representation of communities of interest by dividing the Wakefield community of interest, which includes Totara View, between wards.
 - c. The Richmond General Ward, as compliance would limit effective representation of communities of interest by dividing the Richmond community of interest between wards.

[62] The Determination provides some further explanation for each of the three non-compliant wards.⁶⁰ As *Aitken* confirms, reasons need not be lengthy.⁶¹

⁶⁰ Decision under appeal, above n 1, at [71]–[79].

⁶¹ *Aitken v Judicial Conduct Commissioner*, above n 58, at [71].

[63] While I agree with Mr Smith that some reasons were given for the non-compliance, arguably this may not address the substance of TDI's fifth ground of appeal. Before concluding on non-compliance questions, in my view a possible argument exists that the Commission was required fully to assess the distribution and total number of councillors.

[64] TDI argue before me that the Commission failed to give specific reasons for deciding on the numbers of councillors per ward. I agree. There is merit in two interlinked considerations here:

- (a) first, that the Determination is silent on the total number of councillors appropriate for the Council; and
- (b) second, that the Determination does not sufficiently disclose a justification for allocating councillors in the way it has.

The failure to address the total number of councillors

[65] The Council is a unitary authority:⁶²

unitary authority means a territorial authority that has the responsibilities, duties, and powers of a regional council conferred on it under—

- (a) the provisions of any Act; or
- (b) an Order in Council giving effect to a reorganisation plan.

[66] Territorial authorities shall consist of between five and 29 members, excluding the mayor.⁶³ Regional authorities are permitted to have up to 14 members, excluding the mayor.⁶⁴ It is not clear however, which provision governs the membership limits of unitary authorities. In *Northern Action 2020*, Grice J indicates unitary authorities are permitted up to 30 (including the mayor), suggesting her Honour's position that the limit is that for a territorial authority.⁶⁵ However, aside from the Auckland Council, which has its own statutory regime, the other unitary authorities limit themselves to

⁶² Local Government Act, s 5 Interpretation.

⁶³ Local Electoral Act, s 19A.

⁶⁴ Local Electoral Act, s 19D.

⁶⁵ *Northern Action 2020*, above n 44.

14 or less. At [50] of the Determination, the Commission references s 19A of the Act (the provision governing membership of territorial authorities of between five and 29 members), which may support a conclusion that the Council was entitled to exceed 14 members. During the course of the hearing, it was not clear to me that TDI and counsel for the Commission were in agreement on this.

[67] Leaving this question to one side, I do find the Commission made an error of law in failing to address this matter as a relevant consideration in the Determination. At [9] of the Determination, the Commission confirms specifically that reviews “are to determine the number of councillors to be elected”. Submissions to the Council included a request to increase the number of general ward councillors to 14.⁶⁶ The Council confirmed its workshops “considered a range of different options for arrangements with 13 or 14 councillors.”⁶⁷ At [26(b)] of the Determination, the Commission said the appeal “raised the following matters...increasing the number of general ward councillors”. A matter “in the scope of the review” was “the number of councillors”.⁶⁸ At [47], the Commission suggests it sees effective representation “as requiring consideration of factors including an appropriate number of elected members”. At [49], the Commission went on to say:

The Guidelines suggest that local authorities consider the total number of members, or a range in the number of members, necessary to provide effective representation for the district as a whole. In other words, the total number of members should not be arrived at solely as the product of the number of members per ward.

[68] However, as best as I can tell, there does not appear to be any real consideration in the Determination of the total number of members necessary to provide effective representation for the district as a whole.

Justification for allocation?

[69] Further, I am not persuaded as a result of this failure to consider total numbers, and without the benefit of further evidence or argument on the matter, that the allocation of the councillors here was justified. At [21(a)] of its Determination, the

⁶⁶ Determination, above n 1, at [20(c)].

⁶⁷ At [29(e)].

⁶⁸ At [32(b)].

Commission appeared to accept the Council's 2 October 2024 view that "Two councillors are necessary for the Golden Bay General Ward to provide for effective representation of the ward's geographically dispersed communities". This may well be the case, but I suggest the Commission was required to fully discuss and consider the question which it did not do. Similarly, as a matter of logic, the Lakes-Murchison Ward requires at least one councillor given the decision to retain that ward. But, without any consideration on the viability of increasing the total number of councillors (or confirming that this unitary authority was capped at 14), I find merit in TDI's suggestion that there was a failure to provide a reasoned justification on councillor numbers that might also be considered here to amount to an error of law.

[70] For these reasons, this fifth ground of appeal succeeds.

Five broad communities?

[71] For completeness, I address one final argument. TDI, in submissions before me, did express some concern as to the Commission's introductory statement in the Determination that "five broad communities of interest have been recognised" since 1989. TDI suggests this is an assumption of fact, and the Commission "must have misdirected itself in law" by making a decision on inadequate and/or absent information.

[72] I do not accept this argument. It is not a determinative statement, rather an observation, that should be understood in the context of the whole decision.

[73] In *Northern Action 2018*, Grice J noted the principle emerging from *Marris*.⁶⁹

It is not, however, every allegation of a lack of factual basis or incorrect or inappropriate inferences or conclusions from the evidence which will turn the issue of fact into a question of law. In other words, it is not sufficient merely to allege that there is no sufficient evidence as has been done in the case, to raise the point in law.

[74] This was not a pleaded ground of appeal before me however. I do not intend to consider it further.

⁶⁹ *Northern Action 2018*, above 4, at [9] citing *Marris v Ministry of Works and Development* [1987] 1 NZLR 125S at 127.

Result and outcome

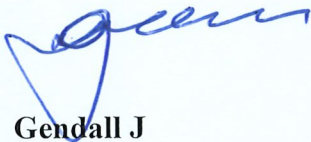
[75] Mr Smith, for the Commission, suggests its “specialist role may make the most appropriate relief a direction that the Commission reconsider its decision in light of this Court’s judgment.”⁷⁰ TDI agrees this Court “could consider deference” to the Commission, given the obligations in the Local Government Act as to the characteristics of Commissioners.

[76] As the Court has found an error of law has occurred here but only in TDI’s fifth ground of appeal (and not otherwise), a direction is now made that the Commission is to reconsider its decision in relation to that matter in light of this Court’s judgment. This of course will not alter the course of the October 2025 electoral process and will relate only to future arrangements.

[77] I emphasise that it may be necessary for the Council to revisit these arrangements before the next review is required by statute given the combined observations of the Commission and this Court.

Costs

[78] As to costs, no detailed submissions were made to me at the hearing. Costs are reserved. The parties are urged to liaise to settle any costs matters that arise between themselves. Failing this, memoranda may be filed (five pages maximum) and any issue of costs will be determined on the papers.



Gendall J

Solicitors:
Woods Fletcher and Associates, Wellington for Respondent

cc: M Schaeffner and C Schaeffner for Appellant

⁷⁰ Citing the High Court Rules 2016, r 20.19(1)(b) and the approach taken in *Northern Action 2015*, above n 26, at [100] and [101].