



LOCAL GOVERNMENT COMMISSION
MANA KĀWANATANGA Ā ROHE

Determination

of representation arrangements to apply for
the election of the Bay of Plenty Regional Council
to be held on 12 October 2013

Background

1. All regional councils are required under section 19I of the Local Electoral Act 2001 (the Act) to review their representation arrangements at least every six years. These reviews are to determine the number of councillors to be elected and the number and boundaries of the constituencies from which they are elected, in order that these arrangements provide fair and effective representation for individuals and communities. The Bay of Plenty Regional Council (the Council) last reviewed its representation arrangements prior to the 2007 local authority elections. Accordingly it was required to undertake a review prior to the next elections in October 2013.
2. As a result of appeals/objections lodged, the Commission determined the Council's representation arrangements for the 2007 elections. These arrangements also applied for the 2010 elections and were for 13 councillors elected as follows:

General Constituencies	General Electoral Population*	Number of councillors per constituency	Population per councillor	Deviation from region average population per councillor	% deviation from region average population per councillor**
Western Bay of Plenty	40,000	2	20,000	-2,160	-9.75
Tauranga	102,500	4	25,625	+3,465	+15.64
Rotorua	47,100	2	23,550	+1,390	+6.27
Eastern Bay of Plenty	32,000	2	16,000	-6,160	-27.80
Total	221,600	10	22,160		

* This is defined in section 3 of the Electoral Act 1993 and is an updated 2011 estimate provided by Statistics New Zealand.

** The deviations from the +/-10% fair representation rule in the Commission's 2007 determination were: Tauranga +11.6%, Western Bay of Plenty -11.1%, Rotorua +13.7% and Eastern Bay of Plenty -24.4%.

Māori Constituencies	Māori Electoral Population*	Number of councillors per constituency	Population per councillor	Deviation from region average population per councillor	% deviation from region average population per councillor
Mauao	19,300	1	19,300	+783	+4.23
Okurei	18,200	1	18,200	-317	-1.71
Kohi	18,050	1	18,050	-467	-2.52
Total	55,550	3	18,517		

* This is defined by section 3 of the Electoral Act 1993 and is an updated 2011 estimate provided by Statistics New Zealand.

3. The Council commenced the review process by conducting two workshops in April and May 2012 on representation options. Issues addressed included the number of constituencies, the number of councillors, the size of the region, councillor workload and councillors being able to adequately respond to the interests and demands of their constituents. It was also noted that any reduction in the total number of councillors would impact on the number of Māori constituencies. On this basis it was agreed to retain the same constituency boundaries with the exception of the transfer of a small area within Whakatane District from Mauao Constituency to Kohi Constituency. The Council also agreed to increase the number of councillors in Tauranga Constituency from four to five to meet the +/-10% fair representation requirement. It considered that further adjustments in order to meet the fair representation requirement would compromise the principle of effective representation of communities of interest.
4. Accordingly on 28 June 2012, the Council resolved its initial representation proposal as follows being current arrangements with an extra member for Tauranga Constituency and one boundary change between two of the Māori constituencies.

General Constituencies	General Electoral Population	Number of councillors per constituency	Population per councillor	Deviation from region average population per councillor	% deviation from region average population per councillor
Western Bay of Plenty	40,000	2	20,000	-145	-0.72
Tauranga	102,500	5	20,500	+355	+1.76
Rotorua	47,100	2	23,550	+3,450	+16.90
Eastern Bay of Plenty	32,000	2	16,000	-4,145	-20.58
Total	221,600	11	20,145		

Māori Constituencies	Māori Electoral Population	Number of councillors per constituency	Population per councillor	Deviation from region average population per councillor	% deviation from region average population per councillor
Mauao	18,990	1	18,990	+473	+2.55
Okurei	18,200	1	18,200	-317	-1.71
Kohi	18,360	1	18,360	-157	-0.85
Total	55,550	3	18,517		

5. The Council notified its initial proposal on 6 July 2012 and called for submissions by 13 August 2012. Four submissions were received as follows:
 - Tauranga City Council supported the proposal
 - Whakatane District Council supported the proposed boundary change between the Māori constituencies, opposed the proposed increase in the number of councillors for Tauranga Constituency given the importance of environmental and geographic factors rather than population, and proposed a further review in three years
 - Kawerau District Council opposed the proposed increase in the number of councillors for Tauranga Constituency given the scope for regional councils to consider geography not just population, and that the increase was out of step with the impetus for change and sent the wrong signals
 - Te Arawa FoMA Inc. opposed any proposal to rename the Okurei Māori Constituency.

6. At its meeting on 11 September 2012, after considering the submissions received, the Council adopted its initial proposal as its final representation proposal. In notifying its final proposal, the Council noted that it had declined the submissions opposing the increase in the number of councillors for Tauranga Constituency as the submissions did not raise any new matters from the Council's consideration of the initial proposal and that the change provided for effective and fair representation in compliance with the Act. The Council also noted that three submitters supported the proposed arrangements for the Rotorua and Eastern Bay of Plenty Constituencies despite these not complying with the fair representation requirement.

7. The Council notified its final proposal on 19 September 2012 and sought any appeals by 19 October 2012. No appeals were received. However, as the population to member ratios of the Rotorua and Eastern Bay of Plenty Constituencies did not comply with the requirements of section 19V(2) of the Act, the Council was required by section 19V(4) of the Act to refer its proposal to the Commission for determination. The Commission was required to consider the proposal as if it were subject to an appeal.

Requirements for determination

8. Statutory provisions relating to the determination of appeals and objections on regional council representation proposals 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.*
9. Section 19V(3)(b) of the Act provides that if a regional council considers that effective representation so requires, constituencies may be defined and membership distributed between them in a way that does not comply with the +/-10% requirement of section 19V(2). Where a regional council has made such a decision, section 19V goes on to provide as follows:
- (4) *A regional council that decides under subsection (3)(b) not to comply with subsection (2) must refer that decision to the Commission together with the information specified in section 19Q(a) to (e).*
 - (5) *A reference under subsection (4) must be treated as if it were an appeal against the decision of the regional council, for the purposes of sections 19R (other than subsection (1)(b)), 19S, and 19Y, which apply with any necessary modifications.*
 - (6) *On receiving a reference under subsection (4), the Commission must determine, under section 19R(1), whether—*
 - (a) *to uphold the decision of the regional council; or*
 - (b) *to alter that decision.*
10. Other statutory provisions the Commission is required to consider include those set out in sections 19D, 19E, 19U and 19V and these are addressed below.

Consideration by the Commission

- 11. The steps in the process for achieving required fair and effective representation are not statutorily prescribed. As reflected in its '*Guidelines to assist local authorities in undertaking representation reviews*', the Commission believes that the following steps

in 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 identified communities of interest
- c) determine fair representation of electors for the region.

Communities of interest

12. The Guidelines identify three dimensions for recognising communities of interest:
 - perceptual: a sense of belonging to an area or locality
 - functional: the ability to meet the community's requirements for services
 - political: the ability to represent the interests and reconcile conflicts of the community.
13. The Commission considers that constituencies should be based on distinct and recognisable communities of interest reflecting these dimensions.
14. As part of its review, the Council identified the following general regional communities of interest in Bay of Plenty Region:
 - the commercial hubs of Tauranga, Rotorua and Whakatane
 - coastal/lifestyle/horticulture: coastal (west), coastal (central) and coastal (east)
 - forestry/conservation/iwi: central and east
 - rural/farming: west, central and east.

Effective representation of communities of interest

15. Section 19U of the Act requires the Commission to ensure that:
 - the election of members of the council will provide effective representation of communities of interest in the region
 - constituency boundaries coincide with the boundaries of the current statistical meshblock areas determined by Statistics New Zealand and used for parliamentary electoral purposes
 - so far as is practicable, constituency boundaries coincide with the boundaries of one or more territorial authority districts or the boundaries of wards.
16. While not a prescribed statutory requirement, the Guidelines also 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 region as a whole. In other words, the final number of members should not be arrived at solely as the product of the total number of members per constituency.
17. Section 19D of the Act provides that a regional council shall consist of between 6 and 14 members. The Council comprised 12 members when constituted in 1989; 11 members for the elections in 1992, 1995 and 1998; 14 members for the elections in 2001 and 2004; and 13 members for the elections in 2007 (as determined by the Commission after the Council proposed reducing the number to 8) and 2010. The

Council was proposing an increase of one to 14 members for the 2013 elections which is within the range established since 1989.

18. The Commission's Guidelines note that what constitutes effective representation of communities of interest will be specific to each local authority but that the following factors should be considered to the extent possible:
 - avoiding arrangements that may create barriers to participation, such as at elections, for example by not recognising residents' familiarity and identity with an area
 - not splitting recognised communities of interest between electoral subdivisions
 - not grouping together two or more communities of interest that share few commonalities of interest
 - accessibility, size and configuration of an area including access to elected members and vice versa.
19. The Guidelines state that decisions relating to the representation of communities of interest (the political dimension) will need to take account of the extent that distinct geographical communities of interest can be identified, i.e. a physical boundary is able to be defined below the region level for the community of interest. Territorial authority boundaries may provide this in some cases in line with section 19U(c) of the Act.
20. The Bay of Plenty Region has been divided into four general constituencies since 1989 and these are well established based on territorial authority districts. In 2006 the Council initially proposed a reduction to three constituencies along with a reduction in the number of councillors. Following receipt of submissions, it continued to propose a reduction in the number of councillors but reverted back to a four-constituency structure which did not totally reflect territorial authority boundaries but complied with the +/-10% fair representation requirement. The Commission, on the receipt of appeals/objections, determined that there should continue to be four constituencies based on territorial authority districts as these reflected communities of interest based on:
 - the delivery of a wide range of necessary day-to-day services
 - areas that electors identify with, which in turn encourages participation (for example standing as a candidate and voting at local elections).
21. From the 2004 elections there have also been three Māori constituencies as a result of the enactment of the Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001. As part of its proposal to reduce the total number of councillors in 2006, the Council also proposed to reduce the number of Māori constituencies to two. This was one of the matters raised in appeals and the Commission determined that there should continue to be three Māori constituencies.
22. In this review the Council was proposing to retain the current three Māori constituencies subject to one small boundary change between two of these constituencies. The boundary change was to provide for inclusion within Kohi Constituency (and exclusion from Mauao Constituency) of the area east of the Western Bay of Plenty District/Whakatane District boundary (i.e. within Whakatane District) as far as Matata. This would result in alignment of the Māori constituencies with territorial authority boundaries. We agree this would provide more effective representation of communities of interest in the area.

Fair representation for electors

23. Section 19V of the Act requires that the electors of each constituency receive fair representation having regard to the population of the region and of that constituency. More specifically, section 19V(2) 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 '+/-10% fair representation rule').
24. Under current arrangements, all three Māori constituencies complied with the '+/-10% rule' but two of the four general constituencies did not comply.
25. The Council considered a number of variations as part of its review in order to achieve compliance, or closer compliance, with the '+/-10% rule'. As a result of this consideration, it proposed that the membership of Tauranga Constituency be increased from four to five. This was seen to be appropriate given current and projected population growth in Tauranga City. However, as a result of the increase in total membership, Rotorua Constituency no longer complied with the '+/-10% rule'. The Council then considered possible variations to the Rotorua and Eastern Bay of Plenty Constituencies to achieve compliance but believed these would compromise the achievement of effective representation of communities of interest in these areas.
26. After careful consideration, we agree with the Council that options to transfer either areas of Rotorua Constituency or Western Bay of Plenty Constituency to Eastern Bay of Plenty Constituency to achieve compliance, or nearer compliance, with the '+/-10%' rule would compromise effective representation of the affected communities of interest. This is in light of geography and land use in the areas concerned including large areas of forestry separating particular communities.
27. We note the Commission in its 2007 determination concluded that the Bay of Plenty Region's territorial authority boundaries are a good reflection of current sub-regions and natural communities of interest. In particular it concluded that amalgamating Kawerau, Whakatane and Opotiki Districts into one constituency was sensible given the similarities of terrain, settlement patterns and their focus on Whakatane as the main service town. The Commission identified strong commonalities between these areas noting as examples, the collaborative nature of the three sub-regional district councils and the shared business and professional links. It also considered that retaining that part of Taupo District in Bay of Plenty Region within Rotorua Constituency was sensible given that the only road access to this area is from State Highway 5 to the west. We concur with these conclusions.
28. Finally, we note that none of the submitters on the Council's initial proposal in this review expressed concern about the non-compliance of the Rotorua and Eastern Bay of Plenty Constituencies with the '+/-10% rule'.
29. As a result, we have concluded that the constituency arrangements as proposed by the Council are the most appropriate option for achieving effective representation of communities of interest and that the non-compliance of the Rotorua and Eastern Bay of Plenty Constituencies (16.90% and 20.58% respectively) are acceptable variations to the fair representation requirement in the circumstances.
30. Accordingly we have decided to uphold the decision of the Council in respect of its proposed representation arrangements for the 2013 elections.

Commission's Determination

31. Under section 19R of the Local Electoral Act 2001, the Commission determines that for the general election of the Bay of Plenty Regional Council to be held on 12 October 2013, the following representation arrangements will apply:
- (1) Bay of Plenty Region, as delineated on LG-04-2013-Con-1 deposited with the Local Government Commission, will be divided into four general constituencies and three Māori constituencies.
 - (2) Those seven constituencies will be:
 - (a) the Western Bay of Plenty Constituency, comprising the area delineated on SO Plan 386696 deposited with the Local Government Commission
 - (b) the Tauranga Constituency, comprising the area delineated on SO Plan 386697 deposited with the Local Government Commission
 - (c) the Rotorua Constituency, comprising the area delineated on SO Plan 386695 deposited with the Local Government Commission
 - (d) the Eastern Bay of Plenty Constituency, comprising the land delineated on SO Plan 334946 deposited with the Local Government Commission
 - (e) the Mauao Māori Constituency, comprising the land delineated on LG-04-2013-Con-3 deposited with the Local Government Commission
 - (f) the Okurei Māori Constituency comprising the land delineated on SO Plan 334948 deposited with the Local Government Commission
 - (g) the Kohi Māori Constituency comprising the land delineated on LG-04-2013-Con-2 deposited with the Local Government Commission.
 - (3) The Bay of Plenty Regional Council will comprise 14 councillors elected as follows:
 - (a) two councillors elected by the electors of the Western Bay of Plenty Constituency
 - (b) five councillors elected by the electors of the Tauranga Constituency
 - (c) two councillors elected by the electors of the Rotorua Constituency
 - (d) two councillors elected by the electors of the Eastern Bay of Plenty Constituency
 - (e) one councillor elected by the electors of the Mauao Māori Constituency
 - (f) one councillor elected by the electors of the Okurei Māori Constituency
 - (g) one councillor elected by the electors of the Kohi Māori Constituency.
32. As required by section 19U(b) of the Local Electoral Act 2001, the boundaries of the above constituencies coincide with the boundaries of current statistical meshblock areas determined by Statistics New Zealand and used for Parliamentary electoral purposes.

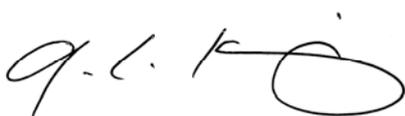
THE LOCAL GOVERNMENT COMMISSION



Basil Morrison (Chair)



Anne Carter (Commissioner)



Grant Kirby (Commissioner)

20 December 2012