



Determination

of representation arrangements to apply for
the election of the Bay of Plenty Regional Council
to be held on 12 October 2019

Background

1. All regional councils are required by 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 constituencies, the name and boundaries of those constituencies and the number of councillors to be elected by each constituency.
2. The Bay of Plenty Regional Council (the council) last reviewed its representation arrangements prior to the 2013 local authority elections. Accordingly it was required to undertake a review prior to the next elections in October 2019.
3. No appeals/objections were received on the council's last review. However, due to the non-compliance of two constituencies with fair representation requirements, the final proposal was referred to the Commission for a determination. As a result of that determination, the following arrangements applied for the 2013 and subsequent 2016 elections.

| General constituencies | 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 | 22,145 | | |

* These are 2011 population estimates

| Māori constituencies | 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 | | |

* These are 2011 population estimates

4. Māori constituencies were established for the region by the Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001.
5. At a meeting on 10 May 2018 the council, under section 19I of the Act, resolved its initial representation proposal in its latest review. The proposal was for the retention of status quo representation arrangements. This resulted in proposed arrangements as set out in the following tables.

| General constituencies | Population* | Number of councillors per constituency | Population per councillor | Deviation from region average population per councillor | % deviation from region population per councillor |
|------------------------|----------------|----------------------------------------|---------------------------|---------------------------------------------------------|---------------------------------------------------|
| Western Bay of Plenty | 43,000 | 2 | 21,500 | -627 | -2.83 |
| Tauranga | 117,700 | 5 | 23,540 | +1,413 | +6.39 |
| Rotorua | 49,700 | 2 | 24,850 | +2,723 | +12.31 |
| Eastern Bay of Plenty | 33,000 | 2 | 16,500 | -5,627 | -25.43 |
| Total | 243,400 | 11 | 22,127 | | |

* These are 2017 population estimates

| Māori constituencies | Population* | Number of councillors per constituency | Population per councillor | Deviation from region average population per councillor | % deviation from region population per councillor |
|----------------------|---------------|----------------------------------------|---------------------------|---------------------------------------------------------|---------------------------------------------------|
| Mauao | 19,850 | 1 | 19,850 | +967 | +5.12 |
| Okurei | 18,300 | 1 | 18,300 | -583 | -3.09 |
| Kohi | 18,500 | 1 | 18,500 | -383 | -2.03 |
| Total | 56,650 | 3 | 18,883 | | |

* These are 2017 population estimates

6. The council notified its initial proposal on 24 May 2018. In doing so, it acknowledged that two of the four proposed general constituencies were outside the statutory +/- 10% fair representation requirement.
7. The council received four submissions by the deadline of 30 June 2018.
8. At a meeting on 2 August 2018, the council, after considering the submissions, resolved to adopt its initial proposal as its final proposal. In doing so, it declined matters raised in submissions as follows:
 - a proposal to increase the number of members for the Eastern Bay of Plenty Constituency while retaining existing boundaries, would result in a far greater % deviation from the average population per councillor than currently proposed
 - the council is required by legislation to use ordinarily resident population as opposed to projected population statistics in calculating fair representation.

9. The council noted that the proposed representation for the Rotorua and Eastern Bay of Plenty constituencies did not comply with the fair representation requirement but confirmed the proposal “remained a good reflection of the current sub-regions, aligned with the region’s territorial boundaries and did not compromise the natural occurrence of communities of interest based on geographical and social associations”.
10. In making its decision, the council also acknowledged the region’s population is experiencing significant growth and change, and therefore resolved to undertake a further representation review prior to the 2022 elections.
11. The council’s final proposal was publicly notified and appeals invited by 11 September 2018. No appeals were received.
12. In notifying the proposal the council advised, given the non-compliance with the fair representation requirement, the proposal was subject to final determination by the Local Government Commission. Accordingly the proposal was referred to the Commission under section 19V(4) of the Act.

Matters for determination by the Commission

13. Section 19V(3)(b) of the Act makes it clear that if a regional council 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 the fair representation requirement (the ‘+/-10% rule’). Section 19V(4) then provides that in such a case, the regional council must refer its decision to the Commission for determination.
14. Section 19V(6) provides that on receiving a reference under subsection (4), the Commission must determine whether to:
 - a. uphold the decision of the regional council, or
 - b. alter that decision.
15. Accordingly, the matters for determination by the Commission are limited to the council’s decision to retain the current Rotorua and Eastern Bay of Plenty general constituencies with their current membership despite these constituencies not complying with the ‘+/-10% rule’. It is noted, however, that if the Commission does not uphold the council’s decision, alteration of that decision may impact on the other constituency arrangements.

Key considerations

16. Based on the legislative requirements, the Commission’s *Guidelines for local authorities undertaking representation reviews* identify the following three key factors when considering representation proposals:
 - a. communities of interest
 - b. effective representation of communities of interest
 - c. fair representation for electors.

Communities of interest

17. We note regions must be divided into constituencies for electoral purposes (section 19E of the Act). For the purposes of effective representation of communities of interest, section 19U requires constituency boundaries, so far as is practicable, to coincide with territorial authority boundaries or with territorial authority ward boundaries.
18. Given these requirements, we believe it is reasonable to take the communities of interest reflected in existing territorial authorities or their wards, as a starting point for communities of interest to be reflected in regional council constituencies.
19. In the case of Bay of Plenty Region, the general constituencies reflect territorial authority boundaries, with the Rotorua Constituency comprising Rotorua District and that part of Taupo District in the Bay of Plenty Region, and the Eastern Bay of Plenty Constituency comprising Whakatane, Kawerau and Opotiki districts. Accordingly the current regional constituencies, as groupings of sub-regional communities of interest, can be seen as largely coinciding with territorial authority communities of interest.

Effective representation of communities of interest

20. The Commission's Guidelines note that what constitutes effective representation will be specific to each local authority but that the following factors should be considered to the extent possible:
 - a. avoiding arrangements that may create barriers to participation, such as at elections by not recognising residents' familiarity and identity with an area
 - b. not splitting recognised communities of interest between electoral subdivisions
 - c. not grouping together two or more communities of interest that share few commonalities of interest
 - d. accessibility, size and configuration of an area including access to elected members and vice versa.
21. The Bay of Plenty Region has been divided into four general constituencies, reflecting territorial authority boundaries, since its constitution in 1989. Accordingly these general arrangements are now well established and are familiar to residents.
22. For the 2007 elections, 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% rule'. The Commission, on the receipt of appeals/objections, determined that there should continue to be four constituencies reflecting territorial authority districts as these reflected communities of interest based on:
 - a. the delivery of a wide range of necessary day-to-day services
 - b. areas that electors identify with, which in turn encourages participation (for example standing as a candidate and voting at local elections).

23. In its review prior to the 2013 elections, the council proposed the retention of the four general constituencies with one additional member for the Tauranga Constituency bringing the total number of general members to eleven. It also proposed a boundary alteration between two of the Māori constituencies. There were no appeals or objections to the council's proposal. However, given the Rotorua and Eastern Bay of Plenty constituencies did not comply with 'the +/-10% rule', the proposal was referred to the Commission for determination. The Commission upheld the council's decision.

Fair representation for electors

24. Section 19V(2) of the Act requires that the population of each constituency divided by the number of members to be elected by that constituency must produce a figure no more than 10 per cent greater or smaller than the population of the region divided by the total number of elected members (the '+/-10% rule').
25. However, section 19V(3)(b) provides that, if a 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 section 19V(2).
26. The council is proposing, for the purposes of effective representation of communities of interest, the Rotorua (+12.31%) and Eastern Bay of Plenty (-25.43%) constituencies not comply with 'the +/-10% rule'.
27. Accordingly we needed to consider whether closer compliance with the '+/-10% rule' is desirable, possibly at the expense of effective representation of communities of interest.
28. In agreeing its proposal, the council recorded the following reasons for it:
- a. The Local Government Commission has previously noted that the Bay of Plenty Region's territorial authorities were a good reflection of current sub-regions and natural communities of interest. Little change has occurred to alter these distinct and natural communities of interest.
 - b. The Eastern Bay of Plenty Constituency was formed by amalgamating Kawerau, Whakatane and Opotiki districts into one constituency. The Local Government Commission has previously noted that this 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 three areas noting as examples, the collaborative nature of the three sub-regional district councils and the shared business and professional links. These commonalities are as strong today as previously and demand separate effective representation.
 - c. The constituency boundaries coincide with the boundaries of the territorial authorities or their wards.
 - d. Current boundaries cannot be realigned in a way that will not alienate communities of interest or create unnatural geographical boundaries.
29. As noted, the wording of section 19V(3)(b) is such that once the Commission agrees that effectiveness of representation requires non-compliance with the '+/-10% rule' in a particular constituency, then *generally* "constituencies may be defined and

membership distributed between them in a way that does not comply” with this rule. Accordingly the other Bay of Plenty constituencies can technically also not comply with the ‘+/-10% rule’. However, the overriding ‘fair and effective representation’ principle of the Act does still apply.

30. On this basis, a small proposed under-representation in the Rotorua Constituency is seen to be justified partly in compensation for the significant over-representation proposed in the Eastern Bay of Plenty Constituency.
31. An officers’ report also noted that “the growth trends occurring in the Bay of Plenty indicate that while the Western Bay of Plenty and Tauranga will continue to have population increases, the population growth particularly in the Eastern Bay of Plenty may remain static. It may well be that at the next review further boundary adjustments may be required across more constituencies to accommodate such growth enabling a far greater comprehensive review and repositioning of boundaries and representation ratios based on population changes and communities of interest.”
32. In summary, we consider the circumstances of the Rotorua and Eastern Bay of Plenty constituencies can be seen to be very similar to those applying at the time of the council’s last review in 2013. At that time the then Commission upheld the council’s proposal not to comply with the ‘+/-10% rule’ in respect of those two constituencies.
33. In conclusion, we consider existing arrangements do provide an appropriate balance between the requirements for both fair and effective representation. On this basis we have decided to uphold the decision of the council for the two identified constituencies not to comply with the ‘+/-10% rule’.

Commission’s determination

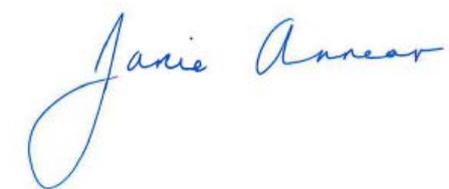
34. Under section 19R of the Local Electoral Act 2001, the Commission upholds the decision of the Bay of Plenty Regional Council not to comply with the section 19V(2) +/-10% fair representation requirement in respect of the Rotorua and Eastern Bay of Plenty constituencies, as non-compliance is required for effective representation of communities of interest within these constituencies.
35. Accordingly for the triennial Bay of Plenty Regional Council elections to be held on 12 October 2019, there will continue to be Rotorua and Eastern Bay of Plenty constituencies each electing two councillors.
36. Therefore for those elections for the Bay of Plenty Regional Council, covering the area delineated on LG-04-2013-Con-1, the following arrangements will apply:
 - a. Western Bay of Plenty Constituency, comprising the area delineated on SO 386696, electing two councillors
 - b. Tauranga Constituency, comprising the area delineated on SO 386697, electing five councillors
 - c. Rotorua Constituency, comprising the area delineated on SO 386695, electing two councillors
 - d. Eastern Bay of Plenty Constituency, comprising the area delineated on SO 334946, electing two councillors

- e. Mauao Māori Constituency, comprising the area delineated on LG-04-2013-Con 3, electing one councillor
- f. Okurei Māori Constituency, comprising the area delineated on SO 334948, electing one councillor
- g. Kohi Māori Constituency, comprising the area delineated on LG-04-2013-Con 2, electing one councillor.

Local Government Commission

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Commissioner Pita Paraone (Chairperson)

A handwritten signature in blue ink, appearing to read 'Janie Annear', with a large, stylized initial 'J'.

Commissioner Janie Annear

A handwritten signature in black ink, appearing to read 'B. J. Duffy', with a large, stylized initial 'B'.

Commissioner Brendan Duffy

20 December 2018