



## Determination

of representation arrangements to apply for the election of the  
Hamilton City Council to be held on 8 October 2022

### Background

1. All territorial authorities are required under sections 19H and 19J of the Local Electoral Act 2001 (the Act) to review their representation arrangements at least every six years. Representation reviews are to determine the number of councillors to be elected, the basis of election for councillors and, if this includes wards, the boundaries and names of those wards. Reviews also include whether there are to be community boards and, if so, arrangements for those boards. Representation arrangements are to be determined so as to provide fair and effective representation for individuals and communities.
2. The Hamilton City Council (the Council) last reviewed its representation arrangements prior to the 2019 local authority elections with the Commission upholding the Council's review following consideration of an appeal. In May 2021 the Council resolved to establish Māori wards. Accordingly, it was required to undertake a review prior to the next elections in October 2022.
3. Previously, in August 2020 the Council had also adopted STV for use at the 2022 local elections. A submission process had favoured STV with 726 submissions for and 202 against.
4. The Council's current representation arrangements are that it comprises a mayor and 12 councillors elected as follows:

Ward	Population	Number of councillors	Population per councillor	Deviation from district average population per councillor	% deviation from district average population per councillor
West Ward	82800	6	13,800	-908	-6.18
East Ward	93700	6	15,617	908	6.18
<b>Total</b>	<b>176,500</b>	<b>12</b>	<b>14,708</b>		

\*Based on Tauranga Aotearoa Stats NZ 2020 electoral population estimates

5. There are currently no community boards in Hamilton City.

## Current review: Council process and proposal

### *Preliminary consultation*

6. Prior to developing a formal proposal the Council engaged with Māori and developed options through a councillor workshop. Consideration was underpinned by consultation on communities of interest and public understanding of representation options carried out prior to the 2018 review, which the Council considered recent enough to be valid.
7. A combined view was received from Waikato and Maatawaka expressing a desire that:
  - *The number of councillors constitutes 12 general and 2 Māori elected members*
  - *Māori elected members are elected via one city-wide ward.*
  - *As many general seats be elected at large as possible without reducing Māori ward seats (this recommendation favours a mixed system).*
  - *Any decisions on representation arrangements should be reviewed after the 2022 elections.*
8. The councillor workshop considered a number of options for the overall basis of election. In considering options it took into account the following:
  - *Voter choice (impacted by ward boundaries/number of candidates to choose from)*
  - *Degree of elector influence (proportion of full Council that electors will get to rank in order of preference under STV)*
  - *Perception of a united Hamilton*
  - *Perception of specific community needs and interests being served*
  - *Perception of closer connection with local councillors*
  - *Candidate campaign expenditure allowance (higher may be perceived as creating a greater barrier to some candidates' ability to stand and therefore equity of access to participation in the democratic process).*
9. The workshop narrowed these options down to two which were considered by the Council at its August 2021 meeting. They were:
  - A city-wide Māori ward electing 2 councillors, and one General ward electing 12 councillors
  - A city-wide Māori ward electing 2 councillors, and two General wards each electing 6 councillors.

### *The Council's initial proposal*

10. On 12 August 2021 the Council resolved as its initial representation proposal a council comprising 14 members elected from three wards, plus the mayor. The Council also resolved not to establish community boards.

11. From a statistical point of view the proposed arrangements were as follows:

Ward	Population	Number of councillors	Population per councillor	Deviation from district average population per councillor	% deviation from district average population per councillor
East General	81,940	6	13,657	1,171	9.38
West General	67,890	6	11,315	-1,171	-9.38
<b>Total general</b>	<b>149,830</b>	<b>12</b>			
Kirikiroa Maaori	26700	2	13,500		
<b>Total</b>		<b>14</b>			

\*Based on Tauranga Aotearoa Stats NZ 2020 electoral population estimates

12. The Council notified its proposal on 25 August 2021 and received 451 submissions by the deadline of 6 October 2021.

13. The submissions could be categorised as follows:

- 177 submissions (39%) supported the Council's proposal in its entirety
- 143 of 296 submissions (48%) that commented on increasing the total number of councillors to 14 supported this
- 105 of 175 submissions (60%) supported the East/West General ward arrangements
- 41 of 52 submissions (79%) supported a city-wide Māori ward (as opposed to two single member Māori wards)
- 27 of 43 submissions (63%) supported the introduction of community boards
- 99 submissions were rejected as being invalid, most for solely opposing the establishment of Māori wards.

### *The Council's final proposal*

14. After considering submissions the Council adopted its initial proposal as its final proposal. In doing so it also resolved to:

- *Recommend [to the next Council] that any arrangements confirmed as a result of this wider representation review be reviewed in 2023/24 (for the 2025 triennial elections)*
- *Request staff to report back to the Council by April 2022 on a process to establish a trial for two Community Committees, one in the East Ward, one in the West Ward [as an alternative to community boards].*

15. The Council publicly notified its final proposal on 17 November 2021.

### **Appeals against the Council's final proposal**

16. Five appeals against the proposal were received. The Council referred the appeals to the Commission in accordance with section 19Q of the Act.

17. Two of the appeals were considered valid and covered the following matters:

- a. One from Jason Howarth proposed alternative ward and membership arrangements for the Council
- b. One from Community Waikato sought the establishment of community boards in the four most deprived areas of Hamilton City<sup>1</sup>.

## Hearing

18. The Commission met with the Council and the two appellants at a hearing held online on 8 March 2022. The Council was represented at the hearing by Mayor Paula Southgate. She was assisted by Chief Executive Lance Vervoort, Governance and Assurance Manager Michelle Hawthorne, Project Manager Chelsey Stewart, and Electoral Officer Dale Ofoske.
19. The following appellants and objectors appeared at the hearing:
  - a. Jason Howarth spoke to his appeal
  - b. Speaking on behalf of Community Waikato were:
    - Holly Snape
    - Ray Mudford
    - Neil Tolan
    - Jamie Toko
    - Margaret Evans

### *Matters raised at the hearing*

20. Mayor Paula Southgate and Chief Executive Lance Vervoort, explained the process the Council had followed in carrying out its representation review and reaching its final proposal. They emphasised the following points:
  - a. The Council is making significant change to its representation arrangements through establishing Māori wards and introducing STV. Together the two changes introduce considerable complexity for the community
  - b. The Council had carried out an extensive review in 2018, in particular on communities of interest, and the information gathered through that exercise is recent enough to still be relevant
  - c. There had been significant engagement with Māori in the development of its review and the final proposal generally reflected their desires
  - d. The Council gave considerable thought to the general ward structure, including whether the East/West divide is still relevant or, conversely, whether there should be four general wards
  - e. It opted for continuation of the current two general wards noting that there was general support for this in the submissions received

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<sup>1</sup> This appeal had the support of 21 named community advocates and activists.

- f. In relation to community boards it noted that only 10% of submissions had commented on this issue
- g. Any change to establish community boards would need to be justified by more consultation with the community
- h. It was difficult to engage in nuanced consultation with the community about community boards during the pandemic
- i. Rather than establish community boards the Council had decided to establish two community committees, one for the area of each general ward
- j. The Council had taken the community board issue as one to explore further rather than one to act on immediately
- k. The Council is confident in the quality and coverage of its overall engagement with the community
- l. The Council had resolved to recommend to the new Council that it carry out a further review prior to the 2025 local elections, which could take in to account further population growth and the experience of the proposed community committees.

21. The appellants emphasised the following points in opposition to the Council's proposal:

#### **Community Waikato**

- a. A driver for the push for community boards was the fact that people generally didn't engage with Council, finding it a daunting experience, resulting in missed opportunities
- b. Society faces big challenges where often the solutions could be found at the grassroots level
- c. Community boards would fill a gap by encouraging village democracy
- d. Community boards are a new concept, but only in Hamilton. They operate successfully elsewhere.
- e. Feedback received in Hamilton since the topic had been raised had been positive
- f. Larger institutions often have difficulty engaging at the grassroots level and community boards would help fill the gap created by that
- g. Community Waikato's vision is that there should ultimately be community boards covering all of Hamilton City, but they were currently focused on the four suburbs with greatest need
- h. Historically those suburbs had not had not had elected members living in them
- i. A large number of people had been involved in the background helping to develop the proposal so there was a considerable body of people and knowledge available to support community boards
- j. There were also a number of community assets that could support community boards.

### Jason Howarth

- a. Jason Howarth's key concern was that the proposed arrangements had resulted in significantly different voting powers for people in the same geographic area merely as a result of ethnicity
- b. He thought this was an unforeseen consequence of the changed legislation on Māori wards but that it potentially raised some Bill of Rights issues
- c. He had proposed two possible options for addressing the issue.

### Matters for determination by the Commission

22. Section 19R of the Act makes it clear that the Commission, in addition to consideration of the appeals and objections against a council's final representation proposal, is required to determine, in the case of a territorial authority, all the matters set out in sections 19H and 19J which relate to the representation arrangements for territorial authorities. This interpretation was reinforced by a 2004 High Court decision which found that the Commission's role is not merely supervisory of a local authority's representation arrangements decision. The Commission is required to form its own view on all the matters which are in scope of the review.
23. The matters in the scope of the review are:
  - whether the Council is to be elected from wards, the district as a whole, or a mixture of the two
  - the number of councillors
  - if there are to be wards, the area and boundaries of wards and the number of members to be elected from each ward
  - whether there are to be community boards
  - if there are to be community boards, the area and boundaries of their communities, and the membership arrangements for each board.

### Key considerations

24. Based on the legislative requirements, the Commission's *Guidelines for local authorities undertaking representation reviews* (the Guidelines) 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

25. The Guidelines identify three dimensions for recognising communities of interest:
  - a. *perceptual*: a sense of identity and belonging to a defined area or locality as a result of factors such as distinctive geographical features, local history, demographics, economic and social activities
  - b. *functional*: ability of the area to meet the needs of communities for services such as local schools, shopping areas, community and recreational facilities, employment, transport and communication links
  - c. *political*: ability to represent the interests of local communities which includes non-council structures such as for local iwi and hapū, residents and ratepayer associations and the range of special interest groups.
26. We note that in many cases councils, communities and individuals tend to focus on the 'perceptual' dimension of communities of interest. That is, they focus on what intuitively they 'feel' are existing communities of interest. While this is a legitimate view, more evidence may be required to back this up. It needs to be appreciated that the other dimensions, particularly the 'functional' one, are important and that they can also reinforce the 'sense' of identity with an area. In other words, all three dimensions are important but should not be seen as independent of each other.
27. In addition to demonstrating existing communities of interest, evidence also needs to be provided of *differences* between neighbouring communities, i.e. that they may have "few commonalities". This could include the demographic characteristics of an area (e.g. age, ethnicity, deprivation profiles) and how these differ between areas, and evidence of how different communities rely on different services and facilities.

## Effective representation of communities of interest

28. Section 19T of the Act requires the Commission to ensure that:
  - a. the election of members of the Council, in one of the ways specified in section 19H (i.e. at large, wards, or a combination of both) will provide effective representation of communities of interest within the district
  - b. ward boundaries coincide with the boundaries of the current statistical meshblock areas determined by Statistics New Zealand and used for parliamentary electoral purposes
  - c. so far as is practicable, ward boundaries coincide with community boundaries (where they exist).
29. 'Effective representation' is not defined in the Act, but the Commission sees this as requiring consideration of factors including an appropriate number of elected members and an appropriate basis of election of members for the district concerned (at large, wards, or a mix of both).
30. 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:
  - 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.
31. Within the scope of a representation review, councils can achieve effective representation of communities of interest by having members elected by wards, at large, a mixture of wards and at large. As the Council has resolved to establish Māori wards, it must also establish at least one general ward.
32. While not a prescribed statutory requirement, 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, if there are to be wards.
33. Section 19A of the Act provides that a territorial authority shall consist of between 5 and 29 members, excluding the mayor. The Hamilton City Council initially comprised a mayor and 17 councillors on its constitution in 1989. This number was reduced to 13 in 1992 and then to the current 12 in 2007. Hamilton City initially had five wards in 1989 and this was reduced to three in 1998. The current two wards, divided by the Waikato River, were established for the 2007 elections.
34. In this review the Council's proposal for 14 councillors plus the Mayor was supported by the Council's submission process and there were no appeals relating to this matter. The proposal for three wards – one Māori and two general – was also supported by the submission process, although Jason Howarth's appeal does raise some alternatives to this arrangement.

### **Jason Howarth's appeal**

35. Mr Howarth's principal concern is that voters on the Māori electoral roll will be able to vote for fewer councillors than voters on the general electoral roll and that this is inequitable.
36. While Mr Howarth's broad concern falls within the range of issues that may be dealt with by the Commission neither of his two proposed solutions are ones the Local Electoral Act allows. In short, they allocate numbers of councillors to wards in a manner that does not fit with the formula set out in Schedule 1A of the Act.

37. His two options are:

Option1

<b>Area</b>	<b>Councillors</b>	<b>Voters</b>
East Ward	5	All electors
West Ward	5	All electors
At large	2	Maori roll
At large	2	General roll

Option 2

<b>Area</b>	<b>Councillors</b>	<b>Voters</b>
At large	12	All electors
Māori Ward	2	Māori roll

38. As an observation it is not uncommon for different wards to elect different numbers of councillors. It is in fact quite common. The difference is that in the majority of cases the difference is geographic whereas in this case (and in most other districts with Māori wards) the difference is based on different electoral rolls.

39. Mr Howarth also raises some issues related to the New Zealand Bill of Rights Act 1990 (the Bill of Rights).

40. Firstly, he argues that the Māori wards legislation is in breach of the Bill of Rights, specifically section 12(a) which provides that:

*Every New Zealand citizen who is of or over the age of 18 years ... has the right to vote in genuine periodic elections of members of the House of Representatives, which elections shall be by equal suffrage ...*

41. He suggests that the fact voters on the Māori electoral roll will vote for fewer councillors than voters on the general electoral roll is a breach of the equal suffrage requirement.

42. A flaw in this argument is that while the appeal relies on the underlined words above it omits reference to “elections of members of the House of Representatives”. The provision applies to parliamentary elections but not local elections.

43. Mr Howarth’s second argument is that the Commission has the powers of the District Court in the civil jurisdiction and this would mean that the Commission is required to uphold the New Zealand Bill of Rights Act. This view is presumably based on section 34(1)(a) of the Local Government Act. That provision only, however, provides the Commission has the powers of the District Court exercising its civil jurisdiction in respect of citing parties and maintaining order at any meeting or hearing. That is a very limited application and does not extend to what Mr Howarth argues applies to the Commission

44. As a statutory decision-maker the Commission should not make decisions that are in breach of the Bill of Rights and we do not intend to do so. However Mr Howarth’s key argument is that the legislation is in breach of the Bill of Rights rather a discretion exercised by the Commission. In effect he is asking the Commission to amend the legislation, which are not able to do.

45. Mr Howarth suggests that the Commission could use section 34 of the Inquiries Act 2013 to refer the point he raises to the High Court to seek a decision as to whether the Bill of Rights has been breached. It is correct that section 34 of the Inquiries Act applies to the Commission. It provides that an Inquiry may refer a question of law to the High Court. However this ability only relates to the Commission functions under the Local Government Act 2002 not the Local Electoral Act.
46. In any case, if the High Court did consider this matter, and if it did declare a provision of the Māori ward provisions to be in breach of the Bill of Rights the legislation would not change. At most it would create a state of uncertainty as the law remains in place. In the meantime, the Commission still has to make a representation determination for Hamilton City by 10 April 2022 and the only legislation enabling it to do so is that set out in the current Local Electoral Act 2001.
47. We have therefore decided to confirm the Council's proposal for a council of 14 councillors elected from three wards as being a proposal that is legally compliant and has the overall support of the community as indicated through the Council's submission and other engagement processes. Based on what we have heard we are satisfied that it will provide effective representation of communities of interest.

### **Fair representation for electors**

48. For the purpose of achieving fair representation for the electors of a district, section 19V(1) of the Act requires that the population of each ward divided by the number of members to be elected by that ward must produce a figure no more than 10 per cent greater or smaller than the population of the district divided by the total number of members (the '+/-10% rule').
49. However, section 19V(3)(a) permits non-compliance with the '+/-10% rule' for territorial authorities in some circumstances. Those circumstances are where:
  - a. non-compliance is required for effective representation of communities of interest within island communities or isolated communities
  - b. compliance would limit effective representation of communities of interest by dividing a community of interest
  - c. compliance would limit effective representation of communities of interest by uniting two or more communities of interest with few commonalities.
  - d. The ward and membership arrangements determined by the Council comply with the +/-10% rule. Consequently, we are not required to consider this matter further. Accordingly we have upheld the ward and membership arrangements proposed by the Council.
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### **Communities and community boards**

51. Section 19J of the Act requires every territorial authority, as part of its review of representation arrangements, to determine whether there should be community boards in the district and, if so, the nature of those communities and the structure of

the community boards. The territorial authority must make this determination in light of the principle in section 4 of the Act relating to fair and effective representation for individuals and communities.

52. The particular matters the territorial authority, and where appropriate the Commission, must determine include the number of boards to be constituted, their names and boundaries, the number of elected and appointed members, and whether the boards are to be subdivided for electoral purposes. Section 19W also requires regard to be given to such of the criteria as apply to reorganisation proposals under the Local Government Act 2002 as is considered appropriate.
53. Community Waikato seeks the establishment of four community boards in those areas of Hamilton City that are the most highly deprived and the most ethnically diverse. They are:
  - Fairfield-Enderley
  - Nawton
  - Central
  - Melville
54. While the appeal seeks the four community boards listed above the longer-term goal is community boards across the whole city.
55. At the hearing the representatives of the appellant spoke about the gaps they considered community boards would fill, particularly in relation to engaging with communities and in giving a voice to communities. They considered, also, that the necessary social and community infrastructure already existed to give the establishment of boards a strong basis.
56. The Council's response was somewhat more cautious viewing it as a new idea for Hamilton requiring exploration rather than immediate action, and ultimately consultation with the community. The Council considered it had effective mechanisms for engagement with the community and was continually trying to enhance these.
57. The reasons recorded by the Council for not establishing community boards were:
  - *Effective representation would not be enhanced by establishing community boards, having considered the identified communities of interest in terms of distinctiveness, representation, access and effective governance; and*
  - *If wards are confirmed, ward councillors are likely to provide sufficient representation of communities of interest and therefore ensure adequate representation and access between elected members and the population.*
58. These reasons are somewhat more conservative than the views expressed by the Council at the hearing where the Mayor conveyed a willingness to explore the issue. As noted above when the Council decided not to establish community boards it also resolved to seek a staff report on a process to establish a trial for two community committees (matching the two wards).

59. Overall we are not persuaded to change the Council's proposal to not establish community boards for the 2022 local elections. We have two concerns which are discussed below.
60. Firstly, while supporting the concept of community boards as a component of local government, it is not clear that the community board model is the one best suited to meet the broader aims of the appellant. The impression we gained was that what is desired is a fairly activist, advocacy-based model. The Council could have a role in facilitating this, but we feel that considering alternative models as well as community boards may be helpful. We strongly suggest that the Council considers these alongside its review of community committees. Although the context may be slightly different, the Flaxmere Planning Committee established some years ago with the assistance of the Hastings District Council provides one alternative model.
61. Secondly, although the appellants consider that community boards for Hamilton City are "ready to go" we consider the issue requires more consideration by the Council and the broader community than has so far been possible.
62. Consequently, we have decided to uphold the Council's decision to not establish community boards.
63. The Council has indicated that it will explore the concept of community committees while the Mayor has indicated that broader issues will be explored. Although we cannot bind the Council into how it deals with this matter in the future we hope that in the exploring the issue it takes a wide ranging and forward-thinking view.

### **Future review**

64. The Council has indicated through a resolution and through advice at the hearing that it will recommend to the Council elected at the 2022 local elections that a further representation review be undertaken prior to the 2025 elections.
65. It will allow the Council to consider a range of issues – most immediately the experience of holding elections by STV and representation through Māori wards, the Council's and the community's experience of community committees and associated initiatives, and beyond that the population growth Hamilton City continues to experience and the associated expansion of the built environment.
66. At the 2006 census Hamilton City's population was 129,588. The estimated population in 2020 was 176,900 (or a growth rate of 36.4% over 14 years). Current projections are that Hamilton City's population will be between 205,000 and 2018 by 2033. In addition to population growth Hamilton City has expanded geographically. In 2003 the Temple View area was included in the City, and, in 2011, five areas to the north and east, including 700 hectares at Ruakura and several areas between the east of the city and the then under construction Waikato expressway.
67. We look forward to seeing the considerations and outcomes of the next representation review.

## Commission's determination<sup>2</sup>

68. Under section 19R of the Local Electoral Act 2001, the Commission determines that for the general election of the Hamilton City Council to be held on 8 October 2022, the following representation arrangements will apply:
- a. Hamilton City, as delineated on Plan LG-016-2013-W-1 deposited with the Local Government Commission, will be divided into three wards.
  - b. Those three wards will be:
    - (i) the Kirikiriroa Maaori Ward, comprising the area delineated on Plan LG-016-2022-W-1
    - (ii) the East General Ward, comprising the area delineated on Plan LG-016-2013-W-2
    - (iii) the West General Ward, comprising the area delineated on Plan LG-016-2013-W-1.
  - c. The Council will comprise the mayor and 14 councillors elected as follows:
    - (i) 2 councillors elected by the electors of the Kirikiriroa Maaori Ward
    - (ii) 6 councillors elected by the electors of the East General Ward
    - (iii) 6 councillors elected by the electors of the West General Ward.
69. As required by section 19T(b) of the Local Electoral Act 2001, 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.

## Local Government Commission



Commissioner Brendan Duffy (Chair)



Commissioner Janie Annear



Commissioner Sue Piper

8 April 2022

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<sup>2</sup> All plans referred to in this determination are deposited with the Local Government Commission