



Determination

on a decision of the Otorohanga District Council to adopt representation arrangements for the local authority elections to be held on 12 October 2019

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 Otorohanga District 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. On 26 June 2018 the council resolved that its initial representation proposal for the current be:
 - (a) a council comprising seven members elected from five wards, plus the Mayor
 - (c) two community boards retained, being:
 - Kawhia Community Board (four elected members and one appointed member)
 - Otorohanga Community Board (four elected members and two appointed members)
 - (d) the Kawhia Community being subdivided for electoral purposes, with members elected as follows:
 - Aotea Subdivision (1 elected member)
 - Kawhia Subdivision (3 elected members)
4. As has been the case since 2006, when the Kawhia Community was extended to incorporate Aotea, its two subdivisions do not comply with the '+/- 10%' fair representation rule. The council has justified the non-compliance based on Aotea's geographic separation from Kawhia. The council also considered that the '+/- 10%' rule for community of this size may not be entirely appropriate. Details are in the table below:

Subdivisions	Population*	Number of members per subdivision	Population per member	Deviation from Community average population per member	% deviation from Community population per member
Aotea	40	1	40	-60	-60.0
Kawhia	360	3	120	20	+20.0
Total	400	4	100		

* Population estimates as at 30 June 2017

5. No submissions were received on the council's initial proposal and it therefore became final. The council was, however, required by section 19V(4) of the Act to refer its proposal to the Commission for determination as the subdivisions in the Kawhia Community do not comply with the fair representation requirement of subsection (2), i.e. the '+/-10% rule'.

Matters for determination by the Commission

6. Section 19V(3) provides that, despite subsection (2), if a territorial authority or the Commission considers one or more of certain prescribed conditions apply, subdivisions may be defined and membership distributed between them in a way that does not comply with subsection (2). The prescribed conditions are:
- (a) non-compliance is required for effective representation of communities of interest within island or isolated communities situated within the district of the territorial authority
 - (b) compliance would limit effective representation of communities of interest by dividing a community of interest between subdivisions
 - (c) compliance would limit effective representation of communities of interest by uniting within a subdivision two or more communities of interest with few commonalities of interest.
7. Section 19V(6) provides that on receiving a reference under subsection (4), the Commission must determine whether to:
- (a) uphold the decision of the council, or
 - (b) alter that decision.
8. Accordingly, the matters for determination by the Commission are limited to the council's decision to retain the current Aotea Subdivision and Kawhia Subdivision with their current membership, despite them not complying with the '+/-10% rule'.

Key considerations

9. 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.

10. 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.

Communities of interest

11. The Kawhia Community Board as a whole covers an area clearly distinct and somewhat distant from the nearest urban area, Otorohanga township (the only other significant urban area in the district). Both Aotea and Kawhia sit out on the west coast on a small peninsula between the Aotea and Kawhia harbours. Kawhia and Aotea are both about an hour's drive from Otorohanga (58km and 60km respectively) through hilly country.
12. The Ministry of Education provides an isolation allowance for teachers and principals employed in schools that the Ministry has defined as isolated. Normally this means a school is over 60 kilometres from a population centre of more than 1,500 people. While Kawhia School falls just short of the 60km definition it has still been defined as being isolated.
13. Kawhia and Aotea are not actually far apart from each other (only 15 minutes' drive). However, they are clearly separate from each other and separating them is sparsely settled farmland and forest.

Effective representation and fair representation

14. The Kawhia Community Board was established in 1989 when the Otorohanga District Council was constituted. As part of the council's 2007 representation review Kawhia Community was expanded to encompass the Aotea area. Subdivisions were established to ensure representation for Aotea. This arrangement was seen by the council as:

... [having] benefits for both communities. The enhanced representation of Aotea promotes good local government, and the costs of the KCB is shared amongst a wider population".
15. At the time, the membership of the community board was increased from 4 to 5 to allow for a member representing the new Aotea subdivision. In the subsequent 2012 representation review the council considered this level of representation to be too high for a population of 400. As a result, the community board was reduced to 4 elected members (3 from Kawhia and 1 from Aotea).
16. While the 2012 arrangements did not comply with the '+/- 10% rule' the council considered at the time that an exception was allowable on the basis of the physical separation between Kawhia and Aotea. The council also noted:

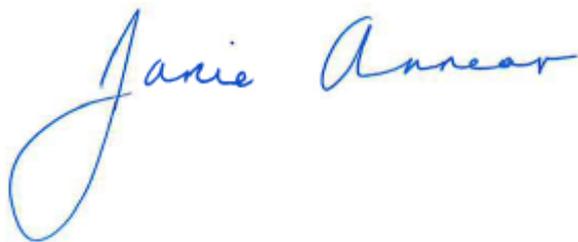
- *Having elections at large, and therefore running the risk that there would be no Aotea representative, is unlikely to be acceptable to the Aotea community.*
 - *The use of a percentage variance rule for a low population community may not be entirely appropriate (e.g. each Kawhia representative will represent only 80 more people than the Aotea representative, which is hardly material)*
 - *The estimated usually resident population (in both Aotea and Kawhia) does not reflect the number of ratepayers in each community.*
17. In 2013 the Act did not require non-compliant arrangements to be referred to the Commission.
18. In theory the council had three options to ensure compliance with the '+/-10% rule'. The council could have:
- removed the subdivisions and have the Kawhia Community Board members elected from the community as a whole
 - changed the numbers of elected members, or
 - changed the boundaries of the subdivisions.
19. As mentioned above, the council had considered removing the subdivisions from the Community Board but did not. This was because the difference in populations between Kawhia and Aotea (360 and 40 usual residents respectively) meant there was a chance that there would be no Aotea representative elected at all and that this would be unacceptable to the Aotea community. There is a reasonable argument that to do so would not provide the Aotea community with effective representation.
20. The council also considered changing the number of elected members to comply with the '+/- 10% rule'. However, to comply the community board would need 10 members (9 for the Kawhia subdivision and 1 for Aotea). The council considered such a high level of representation for a community of 400 people would not be appropriate or efficient and the Commission agrees with that assessment. Increasing the community board's total membership to that level clearly not a realistic proposition.
21. Changing the boundaries of the subdivisions, in the case, is not feasible because the two subdivisions are physically separate without a contiguous boundary.

Conclusion

22. In summary, we consider the council's proposal to retain the Aotea and Kawhia subdivisions of the Kawhia Community Board not complying with the '+/-10% rule' should be upheld. The reasons being that:
- (a) the Aotea area is a distinct community of interest
 - (b) Aotea is not isolated within the Kawhia Community Board area, but the community, as a whole, has a degree of isolation within Otorohanga District
 - (c) an Aotea subdivision provides the residents of Aotea with effective representation, and
 - (d) compliance with the '+/- 10% rule' in this case would limit the effective representation of Kawhia and Aotea communities by either splitting communities of interest or uniting communities of interest with few commonalities of interest.

Commission's determination

23. Under section 19R of the Local Electoral Act 2001, the Commission upholds the decision of the Otorohanga District Council not to comply with section 19V(2) in respect of the Aotea Subdivision and the Kawhia Subdivision, as compliance would limit effective representation of communities of interest by dividing a community of interest between subdivisions or uniting within a subdivision two or more communities of interest with few commonalities of interest.
24. Accordingly, for the triennial general election of the Kawhia Community to be held on 12 October 2019:
 - (a) the Kawhia Community will be divided into two subdivisions as follows:
 - (i) an Aotea Subdivision, comprising the area delineated on SO 374677, deposited with Land Information New Zealand
 - (ii) a Kawhia Subdivision, comprising the area delineated on SO 58099, deposited with Land Information New Zealand
 - (b) the Kawhia Community Board will comprise:
 - (i) one member elected by the electors of the Aotea Subdivision
 - (ii) three members elected by the electors of the Kawhia Subdivision
 - (iii) one member appointed to the community board by the Otorohanga District Council representing the Kawhia Ward.



Commissioner Janie Annear



Commissioner Brendan Duffy

4 April 2019