



## **Determination**

on a decision of the Ōtorohanga District Council to adopt representation arrangements for the local authority elections 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 Ōtorohanga District Council (the council) last reviewed its representation arrangements prior to the 2019 local authority elections. 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 Kāwhia Community did not comply with the fair representation requirement of subsection (2), i.e. the '+/-10% rule'. The Commission upheld the decision of the council not to comply.
3. On 20 April 2021 the council resolved to establish a Māori ward in the Ōtorohanga District for the 2022 triennial elections. This triggered the need for the council to undertake a representation review.
4. On 17 August 2021 the council resolved its initial representation proposal as follows:
  - (a) a council comprising nine members elected from six wards, plus the Mayor
  - (c) two community boards retained, being:
    - Kāwhia Community Board (four elected members and one appointed member)
    - Ōtorohanga Community Board (four elected members and two appointed members)
  - (d) the Kāwhia Community being subdivided for electoral purposes, with members elected as follows:
    - Aotea Subdivision (1 elected member)
    - Kāwhia Subdivision (3 elected members)

5. As has been the case since 2006, when the Kāwhia 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 Kāwhia. 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	60	1	60	-58	-49.15
Kāwhia	410	3	137	19	+ 16.10
<b>Total</b>	<b>470</b>	<b>4</b>	<b>118 (average)</b>		

\* Department of Statistics Population estimates as at 30 June 2020

6. Six submissions were received on the council's initial proposal. Two were against the establishment of a Māori Ward, a decision which was already made by the council. One submission proposed a suggested name for the district wide Māori Ward – Rangiātea. The remaining submissions did not result in any changes to the initial proposal.
7. The council adopted its initial proposal as its final proposal, including the name Rangiātea Māori Ward on 19 October 2021.
8. 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 Kāwhia Community do not comply with the fair representation requirement of subsection (2), i.e. the '+/- 10% rule'.

### **Matters for determination by the Commission**

9. 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.
10. 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.

11. Accordingly, the matters for determination by the Commission are limited to the council's decision to retain the current Aotea Subdivision and Kāwhia Subdivision with their current membership, despite them not complying with the '+/-10% rule'.

### ***Key considerations***

12. 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.
13. 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.
14. The Commission considered the matter of non-compliance for the Aotea Subdivision and Kāwhia Subdivision of the Kāwhia Community Board in 2019. Many of the observations made at that time are included below as they are considered to still be applicable.

### ***Communities of interest***

15. The Kāwhia Community Board as a whole, covers an area clearly distinct and somewhat distant from the nearest urban area, Ōtorohanga township (the only other significant urban area in the district). Both Aotea and Kāwhia sit out on the west coast on a small peninsula between the Aotea and Kāwhia harbours. Kāwhia and Aotea are both about an hour's drive from Ōtorohanga (58km and 60km respectively) through hilly country.
16. 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 Kāwhia School falls just short of the 60km definition it has still been defined as being isolated.
17. Kāwhia 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***

18. The Kāwhia Community Board was established in 1989 when the Ōtorohanga District Council was constituted. As part of the council's 2007 representation review Kāwhia 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".*
19. 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 Kāwhia and 1 from Aotea).
20. As with previous arrangements, the council's final proposal does not comply with the '+/- 10% rule'. The council considered that to provide effective representation of the Aotea community strict compliance with the rule is not appropriate because Aotea is effectively an island/isolated community physically separate from Kāwhia, the percentage variance is considered to be appropriate and the estimated usually resident population does not reflect the number of ratepayers in the area.
21. In its 2012 review, 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 Kāwhia representative will represent only 80 more people than the Aotea representative, which is hardly material)*
  - *The estimated usually resident population (in both Aotea and Kāwhia) does not reflect the number of ratepayers in each community.*
22. In theory the council had three options to ensure compliance with the '+/-10% rule'. The council could have:
  - removed the subdivisions and have the Kāwhia Community Board members elected from the community as a whole
  - changed the numbers of elected members, or
  - changed the boundaries of the subdivisions.
23. As mentioned above, previously the council considered removing the subdivisions from the Community Board but did not. This was because the difference in populations between Kāwhia and Aotea (410 and 60 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.
24. 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 Kāwhia subdivision and 1 for Aotea). The council considered such

a high level of representation for a community of 470 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.

25. Changing the boundaries of the subdivisions, in this case, is not feasible because the two subdivisions are physically separate without a contiguous boundary.

### **Conclusion**

26. In summary, we consider the council's proposal to retain the Aotea and Kāwhia subdivisions of the Kāwhia 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 Kāwhia Community Board area, but the community, as a whole, has a degree of isolation within Ōtorohanga 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 Kāwhia and Aotea communities by either splitting communities of interest or uniting communities of interest with few commonalities of interest.

### **Commission's determination<sup>1</sup>**

27. Under section 19R of the Local Electoral Act 2001, the Commission upholds the decision of the Ōtorohanga District Council not to comply with section 19V(2) in respect of the Aotea Subdivision and the Kāwhia Subdivision of the Kāwhia Community, 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.
28. Accordingly, for the general election to be held on 8 October 2022 for the Ōtorohanga District Council the following representation arrangements will apply:
- 1. Ōtorohanga District, as delineated on LG-018-2013-W-1 will be divided into one Māori ward and five general wards
  - 2. Those six wards will be:
    - a. Rangiatea Māori Ward, comprising the area delineated on LG-018-2022-W-1, electing two councillors
    - b. Kāwhia-Tihiroa General Ward, comprising the area delineated on LG-018-2013-W-2, electing two councillors
    - c. Kio Kio-Korakonui General Ward, comprising the area delineated on LG-018-2013-W-3, electing one councillor

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<sup>1</sup> Plan references preceded by SO are deposited with Land Information New Zealand, and plan references preceded by LG are deposited with the Local Government Commission.

- d. Ōtorohanga General Ward, comprising the area delineated on SO Plan 374679, electing two councillors
  - e. Waipā General Ward, comprising the area delineated on SO Plan 59039, electing one councillor
  - f. Wharepuhunga General Ward, comprising the area delineated on LG-018-2013-W-4, electing one councillor
3. There will be two communities as follows:
- a. Ōtorohanga Community, comprising the area delineated in SO Plan 374679, with a community board comprising four elected members and two appointed members
  - b. Kāwhia Community, comprising the area delineated on SO 374676, with a community board comprising four elected members and one appointed member
4. the Kāwhia Community will be divided into two subdivisions as follows:
- (i) an Aotea Subdivision, comprising the area delineated on SO 374677, electing one member
  - (ii) a Kāwhia Subdivision, comprising the area delineated on SO 58099, electing three members
29. As required by sections 19T(b) and 19W(c) of the Local Electoral Act 2001, the boundaries of the above wards and communities 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 Bonita Bigham



Commissioner Sue Piper



1 February 2022