



Determination

of representation arrangements to apply for
the election of the Hauraki District Council
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. These 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, membership arrangements for those boards. Representation arrangements are to be determined so as to provide fair and effective representation for individuals and communities.
2. The Hauraki District Council (the council) last reviewed its representation arrangements prior to the 2013 local authority elections. Therefore, it was required to undertake a review prior to the next elections in October 2019.
3. The history of representation in Hauraki District has been that:
 - When it was constituted in 1989 the council had 3 wards each electing 4 members (identical to the current system)
 - Three community boards were established in 1989, one for each ward. They were abolished by the council prior to the 1998 local elections
 - In 2001 the council increased the number of members elected from the Waihi Ward to 5, and therefore the total membership of the councillors to 13
 - In 2010, as part of the establishment of the Auckland Council, the Kaiaua-Miranda area was included in Hauraki District, and in the Plains Ward, (increasing the population of that ward somewhat).
4. In 2013 the council's initial proposal was to reduce the total number of councillors from 13 to 12 with the number of councillors representing the Waihi Ward being reduced from 5 to 4. Following the hearing of submissions, the council resolved to revert to the 'status quo' i.e. a total of 13 members with the Waihi Ward electing 5 members and the Paeroa and Plains wards each electing 4 members.
5. Eight objections were received against the council's final proposal. Each opposed the Waihi Ward having 5 councillors. They argued that the Waihi Ward having one more councillor than the other two wards was inequitable.

6. Both the initial 12-member proposal and the final 13-member proposal complied with the +/-10% fair representation rule. The then Commission therefore had to decide the issue according to what it considered to be effective representation.
7. The then Commission stated in its determination that it was not persuaded that there was a clear case for greater representation for the Waihi Ward compared to the two other wards, that it is important for councils to be seen to have equitable representation arrangements, and that in Hauraki District's case this could be achieved by each council having the same number of members. The Commission therefore upheld the objections.
8. As a result of the Commission's determination, the following ward arrangements applied for the 2013 and subsequent 2016 elections.

Ward	Population*	Number of councillors per ward	Population per councillor	Deviation from district average population per councillor	% deviation from district average population per councillor
Plains	6,160	4	1,540	-23	-1.47
Paeroa	5,930	4	1,483	-80	-5.12
Waihi	6,600	4	1,665	+102	+6.53
Total	18,750	12	1,563		

*Based on Statistics NZ 2011 population estimates

9. Applying 2017 population estimates to those arrangements, the Waihi Ward becomes non-compliant with the '+/-10% rule' at +10.99%.
10. The council commenced its current review with a series of workshops and a community meeting (at Waikino). The conclusions of these were that:
 - The 3 current wards reflect communities of interest
 - The township of Waikino has a community of interest with the Waihi Ward and should remain there
 - A reduction in the number of councillors should be explored.
11. The council adopted the following as its initial representation proposal.
 - a council comprising the mayor and 9 councillors (a reduction of 3 councillors)
 - retention of the 3 existing wards, with each ward having 3 members instead of the current 4
 - the Waihi Ward to be non-compliant at +10.99%
 - no community boards to be established.
12. In notifying its proposal, the council commented that the reason for reducing the number of councillors was to "provide more effective representation to Hauraki District residents and ratepayers (whilst still ensuring accessibility to a large area made up of populated towns and villages and sparsely populated rural areas)".

13. The consultation period ran from 4 July to 3 August 2018. The council received 32 submissions. Of these, 5 supported the council's proposal and 27 opposed it. The council summarised these submissions as follows:

Those supporting the council's proposal:

- considered that it may encourage younger and more diverse councillors
- supported the decision for there not to be community boards.

Those opposing the council's proposal identified the following issues:

- Waihi Ward requires four councillors to provide fair and effective representation, i.e. one more than the other wards
- Three councillors for Waihi ward are insufficient for the area's complex and unique needs (e.g. mining)
- Arguments for the benefits of the initial proposal were flawed
- One or more community boards should be established (especially in Waihi)
- Fewer councillors will not lead to greater diversity or more effective representation
- Waikino is part of the Waihi community of interest
- The process was flawed by not taking into account non-resident ratepayers
- The representation arrangements should comply with the '+/-10% rule'
- The status quo should be retained.

14. On 29 August 2018, the Council, in light of the submissions received, amended its initial proposal to be the status quo, that is:

- a council comprising a mayor and 12 councillors
- Three wards electing 4 councillors each (rather than 3 each)
- the Waihi Ward to be non-compliant at +10.99%.

15. The council's rationale for its final proposal, as expressed in its public notice, were that:

- Twelve councillors better reflect unique ward issues and consequential workload
- Twelve councillors may provide greater diversity
- Four councillors per ward provides better local representation (with no community boards)
- The majority of submissions supported a greater number of councillors [than the 9 proposed in the initial proposal].

16. Given the non-compliance of the Waihi Ward, the council was required, under section 19V(4) of the Act, to refer its proposal to the Commission for determination.

Appeals against the council's final proposal

17. Six appeals on the council's final proposal were received, each seeking an additional councillor for the Waihi Ward, and two proposing a community board for Waihi. The appellants are:
 - Sara-Ann Howell
 - Mary Carmine
 - Glenis Gentil
 - Brian Gentil
 - Kerry Single
 - Rob Bowater
18. The key arguments put forward by the appeals are that the Waihi Ward requires an additional councillor:
 - For the ward to be compliant with the '+/-10% rule', and therefore receive fair representation
 - For the Waihi Ward to receive effective representation, given the particular issues faced by the ward created by mining activity
 - Because of the higher rate of population growth in the Waihi Ward compared to other wards.

Hearing of appeals

19. The Commission met with the council and the three appellants at a hearing held in Paeroa on 19 February 2019.
20. The council was represented by mayor John Tregidga, deputy mayor Toby Adams and chief executive Langley Cavers.

Matters raised at hearing and in appeals

Hauraki District Council

21. Points made by council representatives include the following:
 - A key decision at the beginning of the council's process was a decision to retain the three wards which has provided effective representation over the history of Hauraki District
 - With the Waihi Ward being non-compliant an initial step was consultation with the Waikino community which clearly conveyed that its inclusion in the Paeroa Ward as a means of the Waihi Ward becoming compliant was unacceptable. Confirming that was an easy decision for the council to make
 - The council considered three options for the total number of councillors – 9, 10 and 12. It decided on 9 for its initial proposal, considering that could provide effective representation for the district, and after comparison with other councils of a similar population and type
 - Submissions on the initial proposal showed a clear preference for 12 councillors, the status quo. The council's final proposal reflected the weight of submissions

- The council feels that a strength in its current make-up is the equality in number of members for each ward, putting communities on an equal footing
- Within that framework the council had applied the exception to the +/-10% rule it considered appropriate to the situation to ensure effective representation
- Mining activity in the Waihi Ward is not currently a generator of additional workload for councillors, at least no more than a variety of other issues the council must deal with. Each ward presents its challenges. Issues facing the Plains Ward include the effects of climate change and the fact that, with 12 different communities in the ward, councillors have to devote a lot of time to engagement
- Ward committees comprising councillors from each ward provided a useful means of dealing with local issues and works
- Building consents for the Waihi Ward were possibly inflated by the fact that a number were for re-locatable homes built in Waihi but transported outside the ward, or district. The total number of building consents was therefore not a reliable indicator of growth in the Waihi Ward.

Appellants

22. Each of the appellants argued that the Waihi Ward is entitled to an additional member on a statistical basis, and that the fair representation rule should be applied strictly. Additional points raised by appellants were as follows.

Sarah-Ann Howell

23. Sarah-Ann Howell did not believe that the Waihi Ward currently receives adequate representation as evidenced by the level of maintenance carried out in Waihi.

Mary Carmine

24. Mary Carmine said the key issue is fair representation based on the population of the Waihi Ward. Arguments about the workload of councillors representing the Waihi Ward are not relevant as the ward required an additional councillor on population alone. Likewise, the suggestion that the ward is only marginally above +10% is wrong because it is either over or it is not. References to mining issues leading to an extra member in 2001 were misleading. An additional member was warranted at that time because the then population of the Waihi Ward justified it, as it does now. She noted that when the Waihi Ward was allocated an additional member at that time the workings of the council were not adversely affected, and she didn't expect that they would be now. She did consider the increase in Waihi's population to be a blip and was confident that it is trend that will likely continue. This was supported by building permit statistics for the Waihi Ward. Because of that growth, if the Waihi Ward is not allocated an additional member now the imbalance is likely to worsen. She was happy with either a 10-member council or a 13-member council, as long the Waihi Ward received its statistical entitlement.

Glennis Gentil

25. In addition to wanting an extra member for the Waihi Ward she had some concerns with the council's process. She considered that the issue of Waikino was an unnecessary step in the council's consultation. If the council had wanted to comply with the legislation it should have proposed a compliant model. Her preference was

for 13-member council. The concept of community boards had not been properly consulted on as the council had no appetite to go down that path. She believed community boards would ensure that local issues within the district are better represented.

Brian Gentil

26. He considered that fair representation (which is what the legislation requires) is different to equal representation (which is what the council is arguing). As well as an additional councillor ensuring that the Waihi Ward received its fair entitlement of members he considered that a larger council allowed for more diversity in the membership of the council, with it better able to bring forward issues of concern to the community. Community boards should be considered to look after local issues councillors are not able to focus on.

Kerry Single

27. In addition to Waihi being entitled, statistically to an additional member, he considered that Waihi is disadvantaged within the district. Although the district is divided into three wards, in reality the Plains and Paeroa wards could be considered to be single community of interest with 8 councillors out of a total of 12. He considered this sometimes put Waihi at a voting disadvantage. He did not support the reintroduction of community boards because of the additional cost they created. He preferred a 10-member council but could support a 13-member council.

Matters for determination by the Commission

28. 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.
29. Given this requirement, any concerns expressed by appellants/objectors relating to the council's review process are not matters that the Commission needs to address. We may, however, comment on a council's process if we believe it would be of assistance to the council in a future review.
30. The matters in scope of the review are:
- whether the council is to be elected from wards, the district as a whole, or a mix of the two
 - the number of councillors
 - if there are to be wards, the area, boundaries and names of wards and the number of councillors to be elected from each ward
 - whether there are to be community boards
 - if there are to be community boards, the area, boundaries and names of their communities, and the membership arrangements for each board.

Key considerations

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

Communities of interest

32. The Guidelines identify three dimensions for recognising communities of interest:
- *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
 - *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
 - *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.
33. 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.
34. In addition to evidence 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.
35. The communities of interest comprising the three wards are as described below:
- Plains Ward is centred on the township of Ngatea and comprises most of the former Hauraki Plains County, along with the Kaiaua -Miranda area, formerly part of Franklin District
 - Paeroa Ward is centred on the town of Paeroa. It contains the eastern part of the Hauraki Plains but also the western slopes of the Coromandel and Kaimai ranges
 - Waihi Ward is centred on the town of Waihi. It is the most geographically distinct of the three wards, with the boundary between it and the Paeroa Ward being formed by the Coromandel and Kaimai Ranges. The only roading access between the two wards is through the Karangahake Gorge. Although the travelling time between Waihi and Paeroa is 20 minutes the combination of the ranges and the gorge constitutes a significant geographical barrier and provides a clear demarcation between communities of interest.

36. Each town acts as a service centre for the surrounding area (albeit with Paeroa and Waihi providing a greater range of services than Ngatea) and each town contains a secondary school.

Effective representation of communities of interest

37. Section 19T of the Act requires the Commission to ensure that:
- the election of members of the council, in one of the ways specified in section 19H (i.e. at large, wards, or a mix of both) will provide effective representation of communities of interest within the city
 - ward 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, ward boundaries coincide with community boundaries (where they exist).
38. 'Effective representation' is not defined in the Act, but the Commission sees this as requiring consideration of factors including the appropriate total number of elected members and the appropriate basis of election of members for the district concerned (at large, wards, or a mix of both).
39. The Commission's Guidelines note the following factors need to be considered when determining effective representation:
- avoiding arrangements that may create barriers to participation, such as at elections by not recognising residents' familiarity and identity with an area
 - not splitting recognised communities of interest between electoral areas
 - 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.
40. Section 19A of the Act provides that a territorial authority shall consist of between 5 and 29 members, excluding the mayor. Between 1989 and 2001 the council comprised 12 members, increasing to 13 in 2001 when an additional member was allocated to the Waihi Ward and then reducing again to 12 in 2013 when equitable membership between wards was considered paramount.
41. As previously discussed a key argument put forward by the appellants is that effective representation for the Waihi Ward requires an additional councillor.

Fair representation for electors

42. For the purposes of fair representation for the electors of a district, section 19V(2) 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').
43. However, section 19V(3)(a) permits non-compliance with the '+/-10% rule' for territorial authorities in some circumstances. Those circumstances are:

- non-compliance is required for effective representation of communities of interest within island or isolated communities
- compliance would limit effective representation of communities of interest by dividing a community of interest
- compliance would limit effective representation of communities of interest by uniting two or more communities of interest with few commonalities.

44. As shown in the table below, the council’s proposal does not comply with this rule in respect of the Waihi Ward.

Ward	Population*	Number of councillors per ward	Population per councillor	Deviation from district average population per councillor	% deviation from district average population per councillor
Plains	6,350	4	1588	-66	-3.95
Paeroa	6,150	4	1538	-116	-7.01
Waihi	7,340	4	1835	+182	+10.99
Total	19,840	12	1653		

*Based on Statistics NZ 2017 population estimates

45. A compliant 12-member council would require the transfer of an area from the Waihi Ward to the Paeroa Ward. The nearest part of the Waihi Ward with access to the Paeroa Ward is Waikino township.
46. Consultation with the Waikino community by the council indicated overwhelming support for Waikino to remain in the Waihi Ward with which it identifies as a community of interest. As noted in paragraph 35 the ranges and the gorge form a clear geographic divide between the Waihi and Paeroa wards, and clearly place Waikino within Waihi’s community of interest.
47. Transferring Waikino to the Paeroa Ward would result in the division of a community of interest, and an exemption from the +/-10% rule would be justified under section 19V(3)(a)(i) of the Act if that were the sole issue.
48. The Commission may uphold non-compliance if “compliance ... would limit effective representation of communities of interest by dividing a community of interest between wards”. However compliance would be achieved if the Waihi Ward were allocated an additional councillor. The appellants argue that this is the Waihi Ward’s statistical entitlement.
49. We do not consider this to be a case where “effective representation” can be used as a reason to reduce a ward’s statistical entitlement to councillors. Therefore, it follows that the Waihi Ward should be allocated an additional member. The question now is on what size council should that be?
50. Compliance would be achieved on both a 10-member council and a 13-member council. There is a wider spread on the +/-10% range on a 10-member council, however it is still compliant.
51. Allocation of an additional councillor to the Waihi Ward on a 10-member council would result in the following.

Ward	Population*	Number of councillors per ward	Population per councillor	Deviation from district average population per councillor	% deviation from district average population per councillor
Plains	6,350	3	2,116	+132	+6.69
Paeroa	6,150	3	2,050	+66	+3.33
Waihi	7,340	4	1,835	-149	-7.51
Total	19,840	10	1,984		

*Based on Statistics NZ 2017 population estimates

52. Allocation of an additional councillor to the Waihi Ward on a 13-member council (essentially adding one councillor to the current arrangements) would result in the following.

Ward	Population*	Number of councillors per ward	Population per councillor	Deviation from district average population per councillor	% deviation from district average population per councillor
Plains	6,350	4	1588	+61	+4.02
Paeroa	6,150	4	1538	+11	+0.74
Waihi	7,340	5	1468	-58	-3.81
Total	19,840	13	1526		

*Based on Statistics NZ 2017 population estimates

53. We are reluctant, however, to reduce the total number of councillors as this could be perceived as a reduction in the representation of the Plains and the Paeroa wards.
54. We have therefore decided that the Hauraki District Council should have a total of 13 councillors, with the Plains and Paeroa wards having four councillors each, and the Waihi Ward having five councillors.

Communities and community boards

55. 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.
56. 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. The Commission sees two of these criteria as particularly relevant for the consideration of proposals relating to community boards as part of a representation review:
- Will a community board have an area that is appropriate for the efficient and effective performance of its role?

- Will the community contain a sufficiently distinct community or communities of interest?
57. In the current review, the council has proposed not to re-establish community boards. As noted in paragraph 3 community boards existed from 1989 until 1998 when they were abolished by the council.
58. Two appeals sought a community board for Waihi. One states that “a community board for Waihi should be considered to look after local issues that councillors can’t as they focus more on the district”. Five submissions also proposed that community boards be established, either across the district, or for the Waihi Ward.
59. We do not consider there is a sufficient argument for a Waihi Community Board or other community boards. We believe that existing mechanisms can deal adequately with the specific local needs faced by the ward, especially with the participation of an additional councillor.

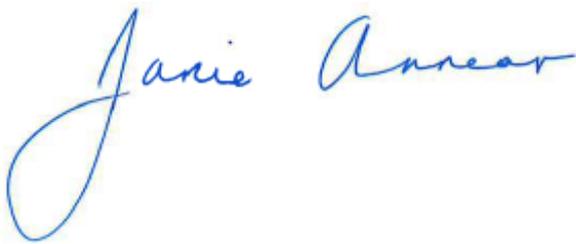
Commission’s determination

60. Under section 19R of the Local Electoral Act 2001, the Commission determines that for the general election of Hauraki District Council to be held on 12 October 2019, the following representation arrangements will apply:
1. Hauraki District, as delineated on Plan LG-012-2013-W-1 deposited with the Local Government Commission, will be divided into three wards.
 2. Those three wards will be:
 - i. Plains Ward, comprising the area delineated on Plan LG-012-2019-W-2 deposited with the Local Government Commission
 - ii. Paeroa Ward, comprising the area delineated on SO 57980 deposited with Land Information New Zealand
 - iii. Waihi Ward, comprising the area delineated on SO 57979 deposited with Land Information New Zealand.
 3. The Council will comprise the mayor and 13 councillors elected as follows:
 - i. Four councillors elected by the electors of Plains Ward
 - ii. Four councillors elected by the electors of Paeroa Ward
 - iii. Five councillors elected by the electors of Waihi Ward
61. As required by section 19T(b) 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

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Commissioner Pita Paraone (Chairperson)

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Commissioner Janie Annear

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Commissioner Brendan Duffy

10 April 2019