



LOCAL GOVERNMENT COMMISSION MANA KĀWANATANGA Ā ROHE

Determination

of representation arrangements to apply for
the election of the Marlborough District Council
to be held on 8 October 2016

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.
2. 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.
3. The Marlborough District Council (the Council) last reviewed its representation arrangements prior to the 2010 local authority elections. Therefore it was required to undertake a review prior to the next elections in October 2016

Overview

4. The Marlborough District Council's current representation arrangements are a Mayor and 13 councillors elected from 3 wards. One of those wards falls outside the +/-10% range (see table below).
5. Statistical data for the wards is shown below:

Wards	Population	Number of councillors per ward	Population per councillor	Deviation from district average population per councillor	% deviation from district average population per councillor
Marlborough Sounds	8,100	3	2,700	-746	-21.65
Wairau-Awatere	10,900	3	3,633	187	5.43
Blenheim	25,800	7	3,686	240	6.95
Total	44,800	13	3,446		

Historical development of current arrangements

6. Marlborough District's current representation arrangements date from 2010.
7. Between 1989, when Marlborough District was constituted, and 2004 the district was divided into five wards – Sounds, Picton, Wairau, Blenheim and Awatere.
8. From 2004 till 2010 there were four wards, the Awatere Ward having been merged with the Wairau Ward. This was done in an effort to comply with the +/-10% requirement, this being the first review carried since this requirement had been in place. The Council retained two wards that did not comply with +/-10% - the Picton Ward and the renamed Pelorous-Northern Marlborough Sounds Ward - on the grounds that this was necessary for the effective representation of isolated communities of interest. The Council's 2004 review was not appealed against and the Commission was not involved in determining the Council's representation arrangements at that time.
9. In the next review carried out prior to the 2010 local elections the Council retained its previous arrangements, apart from some changes to the boundary between the Blenheim and Wairau-Awatere Wards. There was one appeal against the Council's proposal, from the current appellant, David Dew. His appeal related to the fact that the proposal did not comply with section 19V(3)(a) of the Local Electoral Act (the +/-10% requirement), in that the Picton Ward and the Pelorous-Northern Marlborough Sounds Ward did not comply with the +/-10% requirement.
10. In considering the appeal the then Commission stated the following:
 - It observed that the Council is elected under the STV electoral system and that under that system it would be possible with at large elections for smaller areas of the district to muster the required number of votes to elect members to the Council (with an at large system overcoming the problem of the +/-10% requirement).
 - The introduction of at large elections would be a radical change, and it would not be appropriate for the Commission to make such a change at the appeal stage of the review
 - It recommended that the Council undertake a comprehensive review of communities of interest and the best means of providing effective representation of these communities as part of its next representation review
 - Given the need for effective community consultation to take place before any major change to representation arrangements was made it decided to retain the ward system of representation for the 2010 elections
11. Having decided to retain wards the Commission then turned its mind to what ward arrangements there should be. It was particularly concerned that the Picton Ward did not comply with the +/-10% requirement, and did not accept that a significant proportion of the ward could be described as isolated. It also noted that the Picton Ward had much in common with the Pelorous-Northern Marlborough Sounds Ward. The Commission's determination stated that:

We carefully studied the nature of the two [existing] wards. We believe there is a commonality in community of interest between the two wards. Clearly both wards contain islands, sounds and other remote areas. As a result the Council's administration rate area, reflecting areas without road links, spans a large area of both wards with a small population [We were told that there were 252 permanent residents in the Picton Ward in the administration rate area and 132 in the Pelorus-Northern Marlborough Sounds Ward]. Both wards are popular holiday destinations and, as pointed out by the Council, both wards have a relatively high number of absentee owners.

12. The Commission decided to combine the Pelorous-Northern Marlborough Sounds Ward and the Picton Ward into a new Marlborough Sounds Ward. This new ward also did not comply with the +/-10% requirement. However, in addressing this the Commission stated that:

The combined ward still does not comply with the requirements of section 19V(2). We believe this can be justified, under section 19V(3)(a), given the proportion of population in isolated communities in the combined ward.

The council's proposal and review process

13. The Council carried out its current review as follows:

- A councillors' workshop was held in May 2015 to discuss the process and investigate scenarios
- The Council resolved its initial proposal on 27 August 2015, that proposal being the retention of the existing system, subject to a small boundary alteration between the Blenheim and Wairau-Awatere Wards to better reflect the divide between urban and rural.
- A result of retaining the status quo was the retention of the Marlborough Sounds Ward which does not comply with the +/-10% requirement. In relation to this Council's proposal stated that:
 - It considered there are significant communities of interest that are considered to be isolated in the 'Sounds' Ward
 - The ward structure will provide effective representation of communities of interest
- 18 submissions were received on the initial proposal
- After considering submissions the Council confirmed its initial proposal as its final proposal on 29 October 2015.

14. The 18 submissions on the initial proposal can be categorised as follows:

- Two, from Federated Farmers and the Marlborough Rural Advisory Group, supported the proposal in its entirety

- One supported the boundary alteration between the Blenheim and Wairau-Awatere Wards
- Fourteen supported the retention of the Marlborough Sounds Ward with 3 members (6 from individuals and 8 from organisations)
- One, from David Dew, opposed the proposal simply stating that “the provisions of the Act have not been complied with”¹.

The Appeal

15. One appeal was received from David Dew. His appeal simply stated that it was his “appeal from Council’s decision of the 29th October 2015 on the representation review”.

Hearing

16. The Commission met with the Council and the appellant at a hearing held in the Marlborough District Council’s chambers on 28 March 2016. The Council was represented at the hearing by the Mayor, Alistair Sowman, Democratic Services Manager, Mike Porter and Legal Advisor Jonathan Salter.
17. The main points made at the hearing in support of the Council’s proposal included:
 - It is self-evident that the Marlborough Sounds is an island or isolated community of interest where effective representation of communities of interest justify a variation from the +/-10% rule.
 - Non-compliance in this case is not a breach of the Act, it is exactly the type of situation that section 19V(3) was designed for
 - It has been a well-established arrangement for the Marlborough Sounds since at least 2001 and was upheld by the Commission in 2001 and 2010
 - The situation seems acceptable to the community, with only one objection in 2010 and in 2016
 - Of 18 submissions to the Council’s proposal only one was against with 15 specifically in favour
 - Nothing has changed in relation to the nature of the Sounds since the 2010 Commission decision
 - The appellant’s proposed arrangements would comply with the +/-10% rule but at the cost of effective representation for the Marlborough Sounds
 - The Marlborough Sounds includes 20% of New Zealand’s coastline and is intricately woven making travel by both road and boat difficult

¹ An officer’s report to the Council expands on this by stating that “one submission opposed the decision in its entirety especially in regard to section 19V(3) of the ... Act [isolated communities] in determining that three members should be elected from the Sounds ward, as the submitter alleged this did not meet the criteria under section 19V(2) of the Act [+/-10% rule], instead advocating for 12 members elected from the three current wards (with only two members elected from the Sounds Ward) or all members elected at large.” This is presumably based on what Mr Dew said at the Council’s hearing.

18. The main points made at the hearing by the appellant included the following:
- The starting point for the Council’s review should have been the legislation and the Commission’s 2010 determination which had provided the Council a roadmap
 - The comprehensive review suggested by the Commission hasn’t been done and the Council has not provided the information required to carry out a proper review
 - The district’s representation arrangements should be based on fairness, democracy and equality of voting power
 - The 2010 review identified STV as the perfect system for dealing with situations such as this
 - Not everyone in the Marlborough Sounds is isolated
 - The majority of people in the Marlborough Sounds Ward are urban or rural, not “Sounds people”
 - The Council’s survey had a low response because people do not respond to surveys of that nature
 - The councillors elected from the Marlborough Sounds Ward do not themselves live in isolated areas
 - Residents do feel constrained by ward boundaries in terms of which councillor they will contact about an issue; they will contact the best person

Requirements for determination

19. Statutory provisions relating to the determination of appeals and objections on territorial authority representation proposals are contained in sections 19R, 19H and 19J of the Act.

19R. Commission to determine appeals and objections

(1) The Commission must—

- (a) Consider the resolutions, submissions, appeals, objections, and information forwarded to it under section 19Q; and
- (b) Subject to sections 19T and 19V in the case of a territorial authority, and to sections 19U and 19V in the case of a regional council, determine,—
 - (i) In the case of a territorial authority that has made a resolution under section 19H, the matters specified in that section:
 - (ii) In the case of a regional council that has made a resolution under section 19I, the matters specified in that section:
 - (iii) In the case of a territorial authority that has made a resolution under section 19J, the matters specified in that section.

(2) For the purposes of making a determination under subsection (1)(b), the Commission—

- (a) May make any enquiries that it considers appropriate; and

- (b) *May hold, but is not obliged to hold, meetings with the territorial authority or regional council or any persons who have lodged an appeal or objection and have indicated a desire to be heard by the Commission in relation to that appeal or objection.*
- (3) *The Commission must, before 11 April in the year of a triennial general election, complete the duties it is required to carry out under subsection (1).*

19H. Review of representation arrangements for elections of territorial authorities

- (1) *A territorial authority must determine by resolution, and in accordance with this Part,—*
 - (a) *Whether the members of the territorial authority (other than the mayor) are proposed to be elected—*
 - (i) *By the electors of the district as a whole; or*
 - (ii) *By the electors of 2 or more wards; or*
 - (iii) *In some cases by the electors of the district as a whole and in the other cases by the electors of each ward of the district; and*
 - (b) *In any case to which paragraph (a)(i) applies, the proposed number of members to be elected by the electors of the district as a whole; and*
 - (c) *In any case to which paragraph (a)(iii) applies,—*
 - (i) *The proposed number of members to be elected by the electors of the district as a whole; and*
 - (ii) *The proposed number of members to be elected by the wards of the district; and*
 - (d) *In any case to which paragraph (a)(ii) or paragraph (a)(iii) applies,—*
 - (i) *The proposed name and the proposed boundaries of each ward; and*
 - (ii) *The number of members proposed to be elected by the electors of each ward.*
- (2) *The determination required by subsection (1) must be made by a territorial authority —*
 - (a) *On the first occasion, either in 2003 or in 2006; and*
 - (b) *Subsequently, at least once in every period of 6 years after the first determination.*
- (3) *This section must be read in conjunction with section 19ZH and Schedule 1A.*

19J. Review of community boards

(1) *A territorial authority must, on every occasion on which it passes a resolution under section 19H, determine by that resolution, and in accordance with this Part, not only the matters referred to in that section but also whether, in light of the principle set out in section 4(1)(a) (which relates to fair and effective representation for individuals and communities) —*

- (a) *There should be communities and community boards; and*
- (b) *If so resolved, the nature of any community and the structure of any community board.*

(2) *The resolution referred to in subsection (1) must, in particular, determine—*

- (a) *Whether 1 or more communities should be constituted:*
- (b) *Whether any community should be abolished or united with another community:*
- (c) *Whether the boundaries of a community should be altered:*
- (d) *Whether a community should be subdivided for electoral purposes or whether it should continue to be subdivided for electoral purposes, as the case may require:*
- (e) *Whether the boundaries of any subdivision should be altered:*
- (f) *The number of members of any community board:*
- (g) *The number of members of a community board who should be elected and the number of members of a community board who should be appointed:*
- (h) *Whether the members of a community board who are proposed to be elected are to be elected—*
 - (i) *By the electors of the community as a whole; or*
 - (ii) *By the electors of 2 or more subdivisions; or*
 - (iii) *If the community comprises 2 or more whole wards, by the electors of each ward:*
- (i) *in any case to which paragraph (h)(ii) applies, -*
 - (i) *The proposed name and the proposed boundaries of each subdivision; and*
 - (ii) *The number of members proposed to be elected by the electors of each subdivision.*

(3) *Nothing in this section limits the provisions of section 19F.*

20. Other statutory provisions the Commission is required to consider include those set out in sections 19A, 19C, 19F, 19G, 19T and 19V and these are addressed below.

Consideration by the Commission

21. In addition to determining the substantive matters raised in the appeals, the Commission is required by the Act to determine the representation arrangements for the Council generally.
22. The steps in the process for achieving required fair and effective representation are not statutorily prescribed. As reflected in its *'Guidelines to assist local authorities in undertaking representation reviews'*, the Commission believes that the following steps in determining representation arrangements will achieve a robust outcome that is in accordance with the statutory criteria:
 - (a) identify the district's communities of interest
 - (b) determine the best means of providing effective representation of the identified communities of interest
 - (c) determine fair representation for electors of the district.

Communities of interest

23. Both wards and any community boards need to be based on distinct and recognisable communities of interest.
24. The Guidelines identify three dimensions for recognising communities of interest:
 - perceptual: a sense of belonging to an area or locality
 - functional: the ability to meet the community's requirements for services
 - political: the ability to represent the interests and reconcile conflicts of the community.
25. The Commission considers that the case for specific representation of distinct and recognisable communities of interest should reflect these dimensions.
26. In Marlborough District the communities of interest that have identified as appropriate for representation are covered by the three current wards:
 - The Marlborough Sounds, which have a distinct geographic identity
 - The town of Blenheim with a population of over 25,000
 - The Wairau and Awatere areas covering the rural area and small towns broadly south of the Sounds and the Richmond Range
27. Although there are smaller communities of interest (e.g. the Awatere, and the towns of Picton, Havelock, Renwick and Seddon) these are too small to justify separate representation through separate wards. In any case there does seem to be a general consensus in the district that if there are to be wards the current wards are appropriate for that purpose.

Effective representation of communities of interest

28. 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 combination of both) will provide effective representation of communities of interest within the district
 - 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.
29. 'Effective representation' is not defined in the Act, but the Commission sees this as requiring consideration of factors including the number of elected members and the appropriate basis of election of members for a particular district.
30. 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.
31. The Council is proposing retention of 13 councillors and the Commission believes this is broadly appropriate for a district of Marlborough's geographic area and population.
32. The Guidelines state that decisions relating to the representation of communities of interest (the political dimension) will need to take account of the extent that distinct geographical communities of interest can be identified, i.e. a physical boundary is able to be defined below the district level for the community of interest. The options for the basis of election provided in the Act are: at large across the district as a whole, division of the district into wards, or a mix of at large and wards. In relation to wards, it is noted wards may contain more than one distinct community of interest, but that these communities have sufficient commonalities to be grouped together.
33. As can be seen from the table in paragraph 5 the Council is proposing to retain the Marlborough Sounds Ward with three members and therefore a population to member ratio that does not comply with the +/-10% rule in section 19V(2). In doing so the Council resolved that this is necessary for the effective representation of isolated communities of interest.
34. This is the subject of Mr Dew's appeal. What he seeks is either the Council being elected at large or the Marlborough Sounds Ward electing two members rather than three.
35. As noted in, paragraph 12, when considering Marlborough District's representation arrangements in 2010 the then Commission considered that non-compliance could be

justified given the proportion of population in isolated communities in the ward. It went on to say that –

Bearing in mind the factors we identified in our representation review guidelines, we note the combined ward contains physically isolated communities and there is evidence of significant distance and travel times for particular communities. In addition, as already noted, a number of these areas can only be reached by boat and can be completely cut off in severe weather. These characteristics of the ward do impact on the ability of particular communities to receive appropriate representation by elected members.

36. A key issue raised by Mr Dew is what proportion of the population of the Marlborough Sounds Ward lives in isolated communities. He contends that the proportion is small and not enough to justify non-compliance with section 19V(2). In thinking about this we have come to two main conclusions.
37. The first conclusion is that in considering the relevance of isolation to representation it is not always possible to determine that a community is either isolated or that it is not. There will not necessarily be a precise boundary where those on one side of the boundary are isolated and those on the other side are not. There will be degrees of isolation. Even in a fairly clear-cut example of isolation, the Golden Bay Ward of Tasman District, the Commission commented in its 2007 determination that while the whole of the ward was isolated those communities most distant from Takaka, such as areas beyond Colingwood, were more isolated than Takaka itself.
38. In a situation such as the Marlborough Sounds Ward an obvious case of isolation would be D'Urville Island. Less isolated would be Okiwi Bay, but in the Commission's mind it would still be isolated because of the driving distance from Picton.
39. Notwithstanding this issue the Commission has made a broad estimate of the number of people living in the Marlborough Sounds Ward who live in isolated communities. This is not claimed to be a precise statistic because of the issues outlined above but it can provide some clarity to this matter. The area used in this estimate includes those areas having access only by boat and those accessible by road involving significant driving time and distance². Our estimate is that a population of 925 (out of a total population for the ward of 8,100) is isolated.
40. The second conclusion is that a decision about isolation and representation needs to consider the overall context of the ward.
41. The first contextual issue is that the isolated population of the Marlborough Sounds Ward is not contained in one defined area accessible by one transport link. It is spread over the entire sweep of the Marlborough Sounds on a number of islands and along or at the end of a number of different roads. This has relevance to the question of how effective representation can be provided for isolated communities of interest.

² Examples of significant one way driving times are Tennyson Bay-Picton (2 hours 5 minutes), Okiwi Bay-Picton (1 hour 45 minutes), Kenepuru Head-Picton (1 hour 33 minutes).

42. In this regard the Commission notes that its representation review guidelines state that one of the factors that needs to be considered when determining effective representation is:

accessibility, size, and configuration of an area, including:

- *the population's reasonable access to its elected members and vice versa*
- *the elected members' ability to:*
 - *effectively represent the views of their electoral area*
 - *attend public meetings throughout the area, and provide reasonable opportunities for face-to-face meetings.*

43. A further contextual issue is the broader nature of the ward. The ward contains some areas that while not isolated are some distance from the centre of population of the ward. Rai Valley is just over an hour's drive from Picton. That in itself is not unusual but when added to those areas that can be considered to be isolated it has a cumulative impact on how effective representation can be provided. As noted in the Commission's representation review guidelines quoted above, an area's accessibility, size and configuration needs to be taken into account.

44. Although it is likely that the area of the Marlborough Sounds Ward overall would receive representation under at large system using the STV electoral system (as proposed by Mr Dew) the Commission has decided not to provide for that. This is for the following reasons:

- As with the Commission's 2010 determination, the introduction of at large elections would be a radical change, and it would not be appropriate for the Commission to make such a change at the appeal stage of the review
- The nature of the Marlborough Sounds Ward and its practical requirements for effective representation do not lend themselves, at this stage at least, to an at large system.

45. Having considered the above the Commission has decided that in order to provide effective representation of isolated communities of interest there should be a Marlborough Sounds Ward electing three councillors as currently constituted. The Commission considers that three members rather than two are necessary to provide that effective representation.

46. The other wards appear to conform with communities of interest. The Commission notes there was support for the current wards in submissions on the Council's initial proposal from Federated Farmers and the Marlborough Rural Advisory Group. The Commission therefore confirms the overall ward structure proposed by the Council.

Fair representation for electors

47. Section 19V of the Act requires that the electors of each ward receive fair representation having regard to the population of the district and of that ward. More

specifically, section 19V(2) requires that the population of each ward divided by the number of members to be elected by that ward produces a figure no more than 10% greater or smaller than the population of the district divided by the total number of elected members (the +/-10% fair representation requirement).

48. As noted above the Commission has determined under section 19V(3) that to ensure effective representation of communities of interest in isolated communities there should continue to be a Marlborough Sounds Ward with a membership population ratio that does not confirm with section 19V(2).

Communities and community boards

49. 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.
50. The Council is proposing that no community boards be established in Marlborough District and no appeals were received on this issue. In the absence of any appeals, the Commission determines to endorse the Council's proposal.

Other matters

51. In its 2010 determination the Commission suggested that the Council undertake a comprehensive representation review. The most recent review was not in our view a comprehensive one. While this determination has confirmed the Council's proposal this does not in the Commission's view obviate the need for a comprehensive review based on effective engagement with the community. The comments made in paragraphs 34 to 36 of the 2010 determination are still relevant.

Commission's Determination

52. Under section 19R of the Local Electoral Act 2001, the Commission determines that for the general election of the Marlborough District Council to be held on 8 October 2016, the following representation arrangements will apply:
- (1) Marlborough District as delineated on LGC-053-2016-W-1 deposited with the Local Government Commission is divided into three wards.
 - (2) The three wards are:
 - (a) the Marlborough Sounds Ward, comprising the area delineated on SO Plan 431037 deposited with Land Information New Zealand
 - (b) the Wairau-Awatere Ward, comprising the area delineated on LGC-053-2016-W-2 deposited with the Local Government Commission

(c) the Blenheim Ward, comprising the area delineated on LGC-053-2016-W-3 deposited with the Local Government Commission.

(3) The Council comprises the mayor and 13 councillors elected as follows -

(a) three councillors elected by the electors of the Marlborough Sounds Ward

(b) three councillors elected by the electors of the Wairau-Awatere Ward

(c) seven councillors elected by the electors of the Blenheim Ward.

53. As required by sections 19T(b) and 19W(c) of the Local Electoral Act 2001, the boundaries of the above wards and community coincide with the boundaries of current statistical meshblock areas determined by Statistics New Zealand and used for Parliamentary electoral purposes.

**REPRESENTATION REVIEWS COMMITTEE
FOR LOCAL GOVERNMENT COMMISSION**



Commissioner Janie Annear (Chair)



Temporary Commissioner Leith Comer



Temporary Commissioner Dr Pauline Kingi

8 April 2016