



LOCAL GOVERNMENT COMMISSION
MANA KĀWANATANGA Ā ROHE

Determination

of representation arrangements to apply for
the election of the Porirua City Council
to be held on 12 October 2013

Background

1. The Porirua City Council (the Council) elected at the 2010 local elections comprises the mayor and 13 councillors elected as follows:

| Wards | Population* | Number of councillors per ward | Population per councillor | Deviation from city average population per councillor | Percentage deviation from city average population per councillor |
|---------------|---------------|--------------------------------|---------------------------|---|--|
| Northern | 20,800 | 5 | 4,160 | +110 | +2.72 |
| Western | 12,050 | 3 | 4,016 | -34 | -0.84 |
| Eastern | 19,800 | 5 | 3,960 | -90 | -2.22 |
| TOTALS | 52,650 | 13 | 4,050 | | |

*These figures are rounded 2011 population estimates provided by the Government Statistician

2. Currently Porirua City has no community boards.
3. Porirua City Council uses the STV electoral system.
4. The Council commenced its review of its representation arrangements by undertaking preliminary consultation with the community on views about communities of interest in Porirua City and the establishment of community boards. The Council issued a discussion document on 31 October 2011 to 259 community groups and organisations and received eight submissions in response by the deadline of 15 December 2011.
5. On 7 March 2012 the Council resolved, under sections 19H and 19J of the Local Electoral Act 2001 (the Act), its initial proposed representation arrangements to apply for the 2013 local elections. These were publicly notified on 20 March 2012.
6. The Council's initial proposal was that the Council comprise a mayor and 10 councillors elected by three wards as follows:

| Wards | Population* | Number of councillors per ward | Population per councillor | Deviation from city average population per councillor | Percentage deviation from city average population per councillor |
|---------------|---------------|--------------------------------|---------------------------|---|--|
| Northern | 20,800 | 4 | 5,200 | -70 | -1.33 |
| Western | 10,800 | 2 | 5,400 | +130 | +2.47 |
| Eastern | 21,100 | 4 | 5,275 | +5 | +0.09 |
| TOTALS | 52,700 | 10 | 5,270 | | |

*These figures are rounded 2011 population estimates provided by the Government Statistician

7. The Council resolved that no community boards be established.
8. In notifying its proposal, the Council provided the following explanations for its proposed changes:
 - the current ward boundaries do not naturally fit the recently gazetted Ranui suburb and Ranui residents have indicated they still feel part of the Eastern Ward
 - the number of councillors proposed for each ward ensures fair representation through an equitable spread of members representing a similar proportion of the population
 - it is not in the best interests of Porirua City to establish community boards
 - effective representation would not be enhanced by having community boards having considered the identified communities of interest in terms of distinctiveness, representation, access and effective governance
 - ward councillors are likely to provide sufficient representation of communities of interest and therefore will ensure adequate mechanisms of representation and access between elected members and the population.
9. The Council received 3 submissions on its initial proposal. All three related to the issue of effective representation of communities of interest and specifically the proposed reduction in the number of councillors with two proposing establishment of one or more community boards.
10. Following consideration of submissions, the Council on 6 June 2012 resolved to decline the submissions and confirmed its initial proposal as its final proposal. Its final proposal was publicly notified on 19 June 2012.
11. Two appeals against the proposal were received, both related to the reduction in the number of councillors for the Western Ward from three to two, and to the decision not to establish a community board for Titahi Bay. One appellant also raised the procedure adopted by the Council in its review.

Hearing

12. The Commission met with the Council and the two appellants at a hearing held in the Porirua City Council Chambers on 14 August 2012. The Council was represented by the Mayor Nick Leggett and the Council's Chief Executive Gary Simpson. Six councillors were also in attendance along with Council officers. The two appellants, Don Borrie and the Titahi Bay Residents Association represented by Graeme Ebbett, also appeared at the hearing.

Matters raised in appeals and at the hearing

13. The Mayor noted the fact that Porirua City was one of the most diverse communities in New Zealand in terms of age, ethnicity and the geographical spread of the city. It has one of the youngest councillors in the country as well as both Māori and Pacifica councillors. The Council has also adopted the STV electoral system which helps in achieving diverse representation. The Council had consulted on the proposed moving of the part of Rānui currently in the Western Ward back to the Eastern Ward and this was supported by that community. The Mayor said the Council had previously resolved to reduce the number of councillors to ten, and this meets the fair representation requirements of the legislation. He also noted comparable representation ratios of other councils in the region. Given the representative nature of the Council, it did not consider that community boards were necessary and there were enough mechanisms for consultation with the community. The Mayor highlighted the village planning process that the Council had adopted for which it had received a number of awards. The process involved open engagement with local communities and had attracted large numbers of participants driving achievement of local outcomes. There were a number of active residents associations in the city.
14. Don Borrie highlighted the diversity of the Western Ward, incorporating four distinct communities, with diverse needs and centres of community focus which he believed could not be fairly and adequately serviced by two councillors. He said that historically the Western Ward had failed to attract an equitable allocation of resources compared to the other wards. Mr Borrie said two councillors for the Western Ward would not provide effective representation of communities of interest but that a Titahi Bay community board would enhance the effectiveness of representation. The proposal for a board is based on the fact that Titahi Bay is located on a peninsula thereby clearly delineating it from other communities in the ward, the distinctiveness and history of the area. A community board would be legally recognised as a partner to work with the Council unlike residents associations. Mr Borrie said this lack of legal power had resulted in tension between the community and the Council in areas like management of the beach and implementation of the village plan as an integrated strategy. Advocates for a community board in Titahi Bay saw it as a model for consideration elsewhere in the city in the future.
15. Graeme Ebbett, representing the Titahi Bay Residents Association, presented a range of material in support of the Association's appeal. He said the Western Ward was a mix of communities that shared few commonalities while Titahi Bay was unique in terms of a full range of socio-economic, cultural, religious and political characteristics. It also was relatively isolated with one road in and out. Mr Ebbett compared Titahi Bay with other distinctive communities in the region which had community boards such as Eastbourne, Paekakariki and also Tawa which was less distinctive. Titahi Bay was an ocean beach community at the end of a peninsula with its own unique historical culture and sense of identity. Mr Ebbett said the current representation system for the Western Ward was not working and supported this with a residents' survey with over 91% saying enforcement of car parking rules on the beach was an 'essential need'. He said under the proposed ward system, the only hope for effective representation was an elected community board.

Procedural issue

16. The Titahi Bay Residents Association also appealed against what it considered to be a flawed process based as it was "on officer recommendations which were unsubstantiated and exclusive of public scrutiny prior to the meeting and that this concern was not addressed by the Council".

17. Section 19R of the Local Electoral Act 2001 (the Act) makes it clear that the Commission is required to determine, in the case of a territorial authority, the matters set out in sections 19H and 19J of the Act which relate to representation arrangements for territorial authorities and for community boards. For this purpose, the Commission may make such enquiries as it considers appropriate and may hold meetings with interested parties. The Commission's *'Guidelines to assist local authorities in undertaking representation reviews'* refer to a High Court decision that found that the Commission's role is not merely supervisory of a local authority's representation arrangements decision. The Guidelines state the Commission is "required to form its own view on the matters which are within the scope of the review". The Commission must therefore form its own view on the matter of a case for the establishment of a community board for Titahi Bay and therefore the allegation of the Titahi Bay Residents Association that the Council decision was flawed is not a matter that the Commission needs to address.

Matters for Determination

18. The statutory provisions in respect of appeals 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.*

Consideration by the Commission

Achieving effective and fair representation

19. A review of representation arrangements under the Act is to ensure that:
 - the method adopted for the election of members (i.e. at large, wards, or a combination of both) will provide effective representation of communities of interest within the district (section 19T) and
 - in determining the number of members to be elected by each ward, electors of that ward will receive fair representation (section 19V).
20. For the purpose of achieving fair representation, 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 Act does not define 'effective representation' or 'communities of interest'.
21. The steps in the process for achieving effective and fair representation are not statutorily prescribed. 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 of electors for the district.

Basis of election

22. Porirua City has been divided into wards since its constitution in 1989. Initially there were five wards which were reduced to three for the 1998 elections with the amalgamation of the Cannons Creek and Tairangi Wards into the Eastern Ward, and the amalgamation of the Horokiri and Plimmerton Wards into the Northern Ward. The current three wards have been in place since 1998.
23. In notifying both its initial and final proposals, the Council identified the current wards as appropriate groupings of the following communities of interest:
 - Northern Ward: Pukerua Bay, Plimmerton, Camborne, Hongoeka, Paremata, Papakōwhai, Whitby, Judgeford, Pāuatahanui, Pāekakariki Hill
 - Western Ward: Titahi Bay, Takapūwāhia; Elsdon, City Centre, Kenepuru, Mana Island
 - Eastern Ward: Ascot Park, Aotea, Waitangirua, Cannons Creek, Rānui.
24. The Council had noted that the above communities of interest relate directly to recently gazetted suburbs and follow the Council's village planning structure. We note that there was no opposition to the proposed ward structure based on the current three wards with one modification. This modification was the placement of all of Rānui suburb in the Eastern Ward which appeared to be generally supported. The three wards are quite distinct in terms of the communities or villages that they group together particularly with the railway line and motorway separating the Western and Eastern Wards.

25. On the basis of the three wards as identified above, current representation of five councillors each for the Northern and Eastern Wards and three councillors for the Western Ward does not comply with the fair representation requirements of section 19V of the Act. In light of this, we note that the Council considered a number of representation options for the three wards including a mix of ward and at large representation. The proposal for four councillors each for the Northern and Eastern wards and two councillors for the Western Ward was the only compliant one for the wards as identified. The Council adopted its proposal unanimously.
26. We note that the Council first proposed a ten member council prior to the 2007 elections and has maintained its view that this will provide effective representation for communities of interest in Porirua City. On this basis it received only three submissions (one from the Northern Ward and the two appellants from the Western Ward) on its initial proposal, and two appeals on the final proposal relating only to the Western Ward. It can reasonably be assumed from this that there is no strong opposition to a reduction in the size of the Council. We also note the Mayor's advice that in the latest NRB residents survey, 80% of respondents expressed satisfaction with the Council.
27. In response to a question, the Mayor said the Council considered its proposal for three wards and ten councillors was sustainable with the majority of population growth projected to occur in the Northern and Eastern Wards.
28. The Council drew our attention to representation ratios elsewhere in the Wellington Region noting that Porirua had the lowest ratio of population to councillors of the Hutt Valley, Wellington City and Kapiti Coast councils.
29. We note further that the Council's village planning programme is now well established and has received a number of awards for its partnership approach with local communities. The Council's representation review discussion document described the programme as putting communities in charge of developing a vision for their neighbourhoods and then partnering with the Council to make it happen. The vision is to be brought together through community consultation and then developed into village plans which lay out the community's goals and aspirations for the future of their neighbourhoods. The Council states in its long-term council community plan that it is committed to continuing to work with communities on community planning as a way of facilitating local action and fostering a sense of local identity. It says this will influence the way the Council plans and provides services.
30. We asked the Council and the appellants a number of questions about the relationship between the Council and local communities and the ways the Council sought to engage communities. In relation to Titahi Bay, Mr Ebbett tabled a letter recently received by the Titahi Bay Residents Association from the Council which expressed the view that it was timely to review the Titahi Bay Village Plan produced in 2005. The Council noted the Association's position it was unwilling to work with the Council on the review until the Titahi Bay beach bylaw had been resolved but said it still intended to engage with Titahi Bay groups and residents and hoped the Association would still take part. Mr Ebbett saw this as an example of the 'top-down' approach adopted by the Council on what should be seen as a grassroots process facilitated by the Council. We are disappointed at the nature of the relationship between the Council and the Association and encourage both sides to engage positively to promote the interests of the Titahi Bay community.
31. Subject to these comments regarding the relationship with the Titahi Bay Residents Association, we are satisfied the Council has mechanisms in place, such as the

village planning programme, monthly councillor clinics and initiatives for on-line engagement of residents, to be able to provide effective representation for the three wards of Porirua City with ten councillors as proposed by the Council. On this basis and given the proposal provides fair representation for electors as required by section 19V of the Act, we endorse the proposal for four councillors to represent each the Northern and Eastern Wards and two councillors to represent the Western Ward with the wards as defined by the Council.

Communities and community boards

32. Section 19W of the Act sets out criteria for community board reviews. These include requirements for effective representation of communities of interest within the community and fair representation of electors.
33. We note that the Council began its review by producing and circulating for comment a discussion document on communities of interest and community boards. Eight submissions in response to this document were received with three in favour of the establishment of community boards and five opposed. The three in favour included the two appellants.
34. The Council in notifying its initial proposal stated it believed: it was not in the best interests of Porirua City to establish community boards; having considered the identified communities of interest in terms of distinctiveness, representation, access and effective governance, effective representation would not be enhanced by having community boards; and ward councillors are likely to provide sufficient representation of communities of interest. The Council maintained this position in its final proposal after considering submissions on this issue from the two appellants.
35. The two appellants sought establishment of a community board for Titahi Bay and saw it as a possible model for other areas of the city. There were no calls for the establishment of community boards elsewhere at this time. The appellants sought a board for Titahi Bay on the basis that Titahi Bay is a distinct identifiable community of interest on a peninsula with one access road in and out of the community. In his submission, Mr Borrie also referred to the fact that over 70% of respondents to the Titahi Bay Village Plan supported the call for establishment of a community board for Titahi Bay.
36. As noted previously, the Titahi Bay Village Plan was produced in 2005 and we received no evidence on the current level of support for a community board for Titahi Bay apart from the two appellants. We were advised that the Titahi Bay Residents Association currently has a membership of approximately 50 people, while the population of the community is 7,431 based on the 2006 Census.
37. While Titahi Bay may be a distinct community as maintained by both appellants, we believe there needs to be up-to-date evidence of support for the establishment of a community board in order to achieve the objectives sought by the appellants. We note that in 2006 the Council received 30 submissions supporting the establishment of a community board for Titahi Bay. We note further there is a process in Schedule 6 of the Local Government Act 2002 for 10% of electors to petition a territorial authority at any time for the establishment of a community board. In the event of a territorial authority declining to establish a community board sought by petitioners, the petitioners may appeal that decision to the Commission. We believe that would be an appropriate process to determine the support for a community board for Titahi Bay.

38. We note that the then Commission when considering the same issue in 2006 commented in its determination that community boards can and do play an important and effective role in local communities around the country. The Commission noted in the cases where this occurred, there was evidence of a close and effective working relationship between the board and the council including, for example, mutually agreed levels of delegations. The Commission commented that this appeared to be an important prerequisite and something that should be considered before further pursuing the establishment of community boards in Porirua City. We endorse those comments.
39. On this basis we have determined that a community board for Titahi Bay should not be established at this time.

Commission's Determination

40. Under section 19R of the Local Electoral Act 2001, the Commission determines that for the general election of the Porirua City Council to be held on 12 October 2013, the following representation arrangements will apply:
- (1) Porirua City, as delineated on Plan LG-044-2012-W-1 deposited with the Local Government Commission, will be divided into three wards.
 - (2) Those three wards will be:
 - (a) the Northern Ward, comprising the area delineated on Plan LG-044-2012-W-2 deposited with the Local Government Commission
 - (b) the Western Ward, comprising the area delineated on Plan LG-044-2012-W-3 deposited with the Local Government Commission
 - (c) the Eastern Ward, comprising the area delineated on Plan LG-044-2012-W-4 deposited with the Local Government Commission.
 - (3) The Council will comprise the mayor and 10 councillors elected as follows:
 - (a) four councillors elected by the electors of the Northern Ward
 - (b) two councillors elected by the electors of the Western Ward
 - (c) four councillors elected by the electors of the Eastern Ward.
41. As required by sections 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.

THE LOCAL GOVERNMENT COMMISSION



Basil Morrison (Chair)



Anne Carter (Commissioner)

24 August 2012