



LOCAL GOVERNMENT COMMISSION
MANA KĀWANATANGA Ā ROHE

Determination

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

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, arrangements for those boards. Representation arrangements are to be determined so as to provide fair and effective representation for individuals and communities.
2. The Napier City Council (the Council) last reviewed its representation arrangements prior to the 2007 local authority elections. Accordingly it was required to undertake a review prior to the next elections in October 2013.
3. As a result of appeals/objections on its last review, the representation arrangements that applied for the 2007 and subsequent 2010 elections were determined by the Commission and comprised a mayor and 12 councillors six of whom were elected at large and six elected as follows.

Ward	Population*	Number of councillors per ward	Population per councillor	Deviation from district average population per councillor	Percentage deviation from district average population per councillor
Ahuriri	9,230	1	9,230	-407	-4.22
Onekawa-Tamatea	9,640	1	9,640	+3	+0.03
Nelson Park	18,450	2	9,225	-412	-4.28
Taradale	20,500	2	10,250	+613	+6.36
TOTALS	57,820	6	9,637		

*These figures are updated 2011 population estimates.

4. Napier City currently has no community boards.

5. The Council commenced its review of representation arrangements by conducting two Council seminars in June 2012 covering representation issues and options. At these seminars the Council also had before it a range of socio-economic statistics and the results of an NBR survey conducted in April 2011 covering council size, the basis of election (i.e. wards, at large or a mix of the two) and community boards.
6. On 26 June 2012 the Council, under sections 19H and 19J of the Act, resolved its initial proposed representation arrangements to apply for the 2013 elections. The proposal was for the council to continue to comprise a mayor and 12 councillors six of whom would be elected at large and six elected from the current four wards. The proposal was also for no community boards to be established.
7. The Council notified its proposal on 4 July 2012 and two submissions were received. One supported the proposal but suggested the Council needed to address its current policy on wards covering such issues as residents' contact with ward councillors and the need for ward meetings. A second submission proposed that the Council either be elected at large or, alternatively, the number of wards be reduced from four to three with each ward electing two members along with four members elected at large.
8. Following consideration of the submissions, the Council on 19 September 2012 resolved to adopt its initial proposal as its final representation proposal.
9. The Council notified its final proposal on 26 September 2012. In doing so the Council advised it had rejected the objections to its proposal for the following reason: "the representation proposal was based on arrangements determined by the Local Government Commission in 2006. Council reviewed the proportionality of wards based on Statistics New Zealand estimated population by ward at 30 June 2011 and is satisfied that these fairly reflect the City's population distribution to ensure equal representation within the community. In addition the proposal was supported by an independent survey of residents which demonstrated general support for the initial proposal of 4 wards with 6 councillors, 6 councillors at large and the mayor".
10. One appeal, from Mr Derek Williams, was received against the Council's final proposal. The appellant was seeking a modified basis of election for Napier City being three wards each electing two members and four members elected at large.

Procedural issues

11. In his appeal and subsequently, Mr Williams raised a number of procedural issues about the Council's decision-making process. This included an allegation of pre-determination on the part of the Council. 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 fair and effective representation for individuals and community within Napier City and therefore issues relating to the Council's decision-making process, including alleged pre-determination, are not matters that the Commission needs to address.
12. Section 19R of 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. For this purpose, the Commission may make such enquiries as it considers appropriate and

may hold meetings with interested parties. There is no obligation on the Commission to hold a hearing and the need for a hearing is determined by the information provided by the parties and as a result of any further inquiries the Commission may wish to make. While Mr Williams sought “an independent hearing” to address the concerns he had raised, we decided this was not necessary given the nature of the Commission’s role as outlined above and the information provided and available to the Commission. We therefore proceeded to determine this matter.

Requirements for determination

13. 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.*

- 14. 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

- 15. The steps in the process for achieving required fair and effective representation are not statutorily prescribed. As reflected in its guidelines, 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

16. 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.
17. The Commission considers that the case for specific representation of distinct and recognisable communities of interest will need to reflect these dimensions.

Effective representation of communities of interest

18. 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.
19. While not a prescribed statutory requirement, the guidelines also 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.
20. Section 19A of the Act provides that a territorial authority shall consist of between 5 and 29 elected members (excluding the mayor). The Council has comprised 12 elected members (excluding the mayor) since its constitution in 1989 and this appears to be within an appropriate range in the number of elected members, being comparable with other city councils with populations between 50 and 100,000. We note the 2011 NRB survey found a majority of respondents (62%) preferred retention of the status quo in relation to councillor numbers i.e. 12.
21. 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. Napier City was divided into three wards at the time of its constitution in 1989 but later moved to an at large basis of election. In 2007 the Council proposed retaining the at large system but, as a result of appeals, the Commission determined that a mixed at large

and wards basis of election should be introduced. The Council is now proposing that this should be retained.

22. We note that in determining its initial representation proposal, the Council noted there was a strong preference (72%) in the 2011 NRB survey for either a mixed or ward only basis of election. We note further that only two submissions were received on the Council's initial proposal with one supporting the Council proposal and one supporting either an at large basis of election or a modified mixed system. This latter proposal was the basis of the one appeal received on the Council's final proposal. Given the absence of any strong support within the community for change, we believe a mixed system of representation should be retained. As the Commission in 2007 put it, such a system allows for enhanced representation of distinct communities of interest in the city while also facilitating promotion of the interests of the city as a whole.
23. The appellant was proposing a modified system with the four wards reduced to three with each ward electing two members. He was proposing this as "a constructive alignment towards the amalgamation concept and would give council an opportunity to make wards work and be in a good position pre amalgamation". We observe that any future amalgamation involving Napier City is not a relevant consideration for representation reviews under the Local Electoral Act at this time. It is also not clear to us how reducing the number of members and the number of wards would give the Council "an opportunity to make wards work". Either a council has the will to make wards work or not, and if the latter, the community then has the opportunity at any time to make its views known to the council.
24. In the absence of any relevant argument as to why the appellant's proposed modified basis of election would be preferable, we decided to endorse the Council's proposal for a council comprising 12 members with six elected at large and six elected from the current four wards.

Fair representation for electors

25. 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 rule'). The Council's proposal complies with the '+/-10% rule'.

Communities and community boards

26. 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.
27. There have been no community boards in Napier City since its constitution in 1989 and the Council was not proposing that any be established. No submissions or appeals were received on this issue and accordingly we endorse the Council's proposal for no boards to be established.

Commission's Determination

28. Under section 19R of the Local Electoral Act 2001, the Commission determines that for the general election of the Napier City Council to be held on 12 October 2013, the following representation arrangements will apply:
- (1) Napier City, as delineated on SO Plan 9830 deposited with Land Information New Zealand, will be divided into four wards.
 - (2) Those four wards will be:
 - (a) Ahuriri Ward, comprising the area delineated on SO Plan 386665 deposited with Land Information New Zealand
 - (b) Onekawa-Tamatea Ward, comprising the area delineated on SO Plan 386668 deposited with Land Information New Zealand
 - (c) Nelson Park Ward, comprising the area delineated on SO Plan 386667 deposited with Land Information New Zealand
 - (d) Taradale Ward, comprising the area delineated on SO Plan 386666 deposited with Land Information New Zealand.
 - (3) The Council will comprise the mayor and 12 councillors elected as follows:
 - (a) 1 councillor elected by the electors of Ahuriri Ward
 - (b) 1 councillor elected by the electors of Onekawa-Tamatea Ward
 - (c) 2 councillors elected by the electors of Nelson Park Ward
 - (d) 2 councillors elected by the electors of Taradale Ward
 - (e) 6 councillors elected by the electors of Napier City as a whole.
29. As required by section 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.

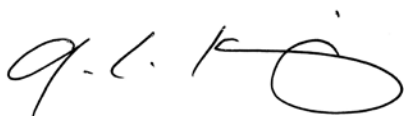
THE LOCAL GOVERNMENT COMMISSION



Basil Morrison (Chair)



Anne Carter (Commissioner)



Grant Kirby (Commissioner)

25 March 2013