



Determination

of representation arrangements to apply for the elections of the Marlborough District Council to be held on 8 October 2022

Background

1. All territorial authorities are required under sections 19H and 19J of the Local Electoral Act 2001 (the Act) to review their representation arrangements at least every six years. Representation reviews are to determine the number of councillors to be elected, the basis of election for councillors and, if this includes wards, the boundaries and names of those wards. Reviews also include whether there are to be community boards and, if so, arrangements for those boards. Representation arrangements are to be determined so as to provide fair and effective representation for individuals and communities.
2. The Marlborough District Council (the Council) last reviewed its representation arrangements prior to the 2016 local elections with the Commission upholding the Council's review following consideration of an appeal. Accordingly, it was required to undertake a review prior to the next elections in October 2022. In addition, in May 2021 it resolved to establish a Māori ward.
3. The Council's current representation arrangements have been in place since 2016 and comprise a mayor and 13 councillors elected as follows:

Ward	Population	Number of councillors	Population per councillor	Deviation from district average population per councillor	% deviation from district average population per councillor
Marlborough Sounds	8840	3	2,947	-918	-23.75
Wairau-Awatere	12900	3	4,300	435	+11.27
Blenheim	28500	7	4,071	207	+5.35
Total	50,240	13	3,865		

*Based on Tauranga Aotearoa Stats NZ 2020 electoral population estimates

4. There are no community boards in the district:

Current review: Council process and proposal

Preliminary consultation

5. The Council began work on its representation review in March 2021 with workshopping communities of interest, effective representation and fair representation issues and possible scenarios. It was assisted in this by an external consultant who continued to assist the Council through the remainder of the process. It also appointed the Mayor and three councillors to undertake the consultation

required by the representation process (principally the formal submission process) and to develop options for consideration by the Council.

6. Initial work commenced before the decision to establish a Māori ward and then incorporated that decision as options were developed for consideration by the Council.
7. The group of councillors identified four options for further consideration. Common to each option was maintaining the total number of councillors at 13, compliance with the '+/-10% rule', and for those options with multiple general wards, the transfer of two areas from the Wairau-Awatere Ward to the Blenheim Ward (these being new residential subdivisions).
8. The options were:

Option 1	Marlborough Sounds General Ward Wairau-Awatere General Ward Blenheim General Ward Marlborough Māori Ward	2 councillors (a reduction of 1) 3 councillors 7 councillors 1 councillor
Option 2	Single general ward Marlborough Māori Ward	12 councillors 1 councillor
Option 3	Marlborough Sounds General Ward Wairau-Awatere General Ward Blenheim General Ward Marlborough Māori Ward At large	2 councillors (a reduction of 1) 3 councillors 6 councillors (a reduction of 1) 1 councillor 1 councillor
Option 4	Non-urban General ward Blenheim General Ward Marlborough Māori Ward	5 councillors (a reduction of 1) 7 councillors 1 councillor

The Council's initial proposal

9. At a meeting on 30 August 2021 the Council adopted option 1 as its initial proposal. From a statistical point of view the proposed arrangements were as follows:

Ward name	Population	Number of councillors	Population per councillor	Deviation from district average population per councillor	% deviation from district average population per councillor
Marlborough Sounds General	8,020	2	4,010	121	+3.11
Wairau-Awatere General	11,550	3	3,850	-39	-1.01
Blenheim General	27,100	7	3,871	-18	-0.46
Total general	46,670	12			
Marlborough Māori	3,570	1	3,570		
Total	50,240	13	3,865		

*Based on Tauranga Aotearoa Stats NZ 2020 electoral population estimates

10. Other than establishing a Māori ward, the main change was the reduction of number of councillors elected from the Marlborough Sounds Ward from three to two. The minutes of the meeting at which the initial proposal was adopted recorded the following reasons for doing so:
 - *improvements in communications technology in recent years means the argument for a third member for the Marlborough Sounds Ward on the grounds of isolation is harder to sustain*
 - *all members can represent Sounds residents and ratepayers*
11. The Council notified its proposal on 8 September 2021 and received 29 submissions by the deadline of 22 October 2021.
12. Of these submissions 27 argued that the Marlborough Sounds Ward should have three members to ensure the effective representation of its island and isolated communities of interest. Fourteen of those submissions were from individuals. The 13 organisations submitting were:
 - Cissy Bay Community Association
 - Guardians of the Sounds
 - Havelock Community Association
 - Kenepuru and Central Sounds Residents Association
 - Marlborough Environment Centre
 - Marlborough Federated Farmers
 - Marlborough Rural Advisory Group
 - Pelorous Area Health Trust
 - Penzance Tuua Bays Property Owners association
 - Queen Charlotte Sound Residents Association
 - Rai Valley Progress League
 - Rural Connect
 - Waikawa Ratepayers and Residents Association
13. Of the other two submissions:
 - One, from David Dew, supported the Council's proposal as being a step in the right direction (but commenting that his preference would be an entirely at large system)
 - One supported another of the options considered by the Council in its preliminary consideration – a mixed system with 1 member elected at large and 12 members elected from wards.

The Council's final proposal

14. After considering submissions the Council resolved at a meeting on 15 November 2021 to increase the number of councillors elected from the Marlborough Sounds General Ward to three.
15. This resulted in the following arrangements:

Ward name	Population	Number of councillors	Population per councillor	Deviation from district average population per councillor	% deviation from district average population per councillor
Marlborough Sounds General	8,020	3	2,673	-917	-25.53
Wairau-Awatere General	11,550	3	3,850	260	+7.24
Blenheim General	27,100	7	3,871	281	+7.84
Total general	46,670	13			
Marlborough Māori	3,570	1	3,570		
Total	50,420	14	3,865		

*Based on Tauranga Aotearoa Stats NZ 2020 electoral population estimates

16. The reasons cited in the Council’s resolution for increasing the number of councillors elected from the Marlborough Sounds General Ward were:
- In the past 3 reviews the Local Government Commission has endorsed the retention of a third Marlborough Sounds Ward member*
 - The recent weather event in July 2021 has shown the fragility of the roading system in the Marlborough Sounds with a number of roads still closed by large slips. This makes it difficult for some residents to attend community meetings.*
 - There are a number of areas in the Marlborough Sounds which are without or have limited internet connection or mobile phone coverage.*
 - All councillors, once elected, represent all of the Marlborough District. However it is more likely for constituents in the Marlborough Sounds ward to contact a councillor from that ward as being more “in tune” with the issues which arise in that ward. This belief was reinforced by a number of submitters.*
 - The Marlborough Sounds Ward is a large geographic area that has special and unique transport and communications challenges in one of the largest geographic areas in New Zealand. It contains two boat-access-only island communities – being Rangitoto ke ti Tonga/Durville Island and Arapaoa Island. Both have a community of permanent residents.*
 - That three (3) members for the Marlborough Sounds Ward are required to provide effective representation for isolated communities within that ward.*
17. The Council publicly notified its final proposal on 18 November 2021, including advice that the Marlborough Sounds General Ward did not comply with the fair representation criteria as a result of it including island and isolated communities
18. Given the non-compliance of the proposed ward, the Council was required under section 19V(4) of the Act to refer its proposal to the Commission for determination. In addition, one appeal against the proposal were received.

Appeal against the Council’s final proposal

19. The Council referred the appeal to the Commission, in accordance with section 19Q of the Act.
20. The appeal, from David Dew was considered valid. It opposed the increase in the number of councillors to be elected from the Marlborough Sounds General Ward to

three, compared to two in the initial proposal and its resulting non-compliance with the '+/-10% rule'.

Hearing

21. The Commission met with the Council and the appellant at a hearing held online on 3 March 2022. The Council was represented at the hearing by Mayor John Leggett, Deputy Mayor Nadine Taylor and Councillor Gerald Hope. They were assisted by Chief Executive, Mark Wheeler, Manager Economic, Community and Support Services Dean Heiford, Manager Corporate Finance Martin Fletcher and Democratic Services Manager Mike Porter.

Matters raised at the hearing

22. The Council's representative explained the process the Council had followed in carrying out its representation review and reaching its final proposal. They emphasised the following points:
- a. Both the Marlborough Sounds and Marlborough District form a large geographic area. Marlborough District contains about 20% of New Zealand's coastline
 - b. The Council is a unitary authority with wider responsibilities to that of a normal district council
 - c. The Council had developed an initial proposal that complied with the '+/-10% rule' in respect of the Marlborough Sounds Ward as it thought it should attempt to comply with the legislation
 - d. Through the submission process the Council heard the views of residents and those with interests in the Marlborough Sounds about their representation needs and its initial proposal had been changed as a result of a robust submissions process
 - e. In particular it heard through that:
 - The Marlborough Sounds contains two islands – Arapaoa and Rangitoto ke ti Tonga/Durville – with permanent residents
 - The July 2021 storm had caused flooding and washouts of roads, isolating communities in the Marlborough Sounds both at the time and on a continuing basis. It was expected that it would take 18 months to 2 years to completely restore roading in the Sounds and that some roading would never get back to the same standard as it had been prior to the storm
 - Communications and connectivity in the Marlborough Sounds are worse than the rest of Marlborough District, and lack resilience. Technology is intermittent and expensive
 - Residents have a perception of living in isolated communities with each individual bay constituting a self-contained community, and the sense of isolation compounded by a reliance on water access

- The scale of geography of the Marlborough Sounds added to the sense of isolation both from the rest of Marlborough District and from one part of the Sounds to another
- Residents of the Sounds had a strong preference for face to face contact with councillors and wish to see councillors on site rather than on-line. This and the geography of the Sounds means it takes more time for councillors to service the Marlborough Sounds Ward than other wards
- The above factors meant that the Marlborough Sounds is a significant and isolated community of interest that requires the number of councillors allocated in the Council's final representation review proposal

23. The appellant emphasised the following points in opposition to the Council's proposal:

- a. Comments made by the Council supporting its initial decision set out a clear case for Marlborough Sounds Ward only having two councillors
- b. Only two of the groups making submissions could be considered to be from isolated communities, those from Cissy Bay and Penzance
- c. He questioned the relevance of the submission from Federated Farmers and whether there are many operating farms in the outer Sounds
- d. He noted that a submission had been made by the Rai Valley Progress League and that Rai is not isolated being on State Highway
- e. In order to apply isolation, it is first necessary to make a finding on what areas, and what population, are isolated
- f. He considered that the isolated population is only about 200, and this is insufficient to justify the isolation exception
- g. The bulk of people living within the ward would be within two hours of Blenheim and could not therefore be considered to be isolated
- h. He commented that many people in Auckland would be two hours' drive from the Auckland Council's main office and those people could not be considered to be isolated
- i. He argued that an interpretation of the term "community" lead back to the definition of "community" in the Local Government Act and this suggested that a community would require a community board before it could be considered to be isolated.
- j. He observed that when he was a member of the Council, Sounds residents had often contacted him, although he did not represent a ward covering the Marlborough Sounds.

24. In its right of reply the Council made the following points, in addition to those included above:

- a. It refuted Mr Dew's assertions that only 200 people are isolated or that only two of the groups making submissions are from isolated communities

- b. It refuted Mr Dew's comments about the relevancy of the submission from Federated Farmers, noting that six farms were cut off by the closure of the road at Kenepuru and are currently reliant on the Council subsidised barge service
- c. The submission made by the Rai Valley Progress League was not only on behalf of the township of Rai, it was also made on behalf of the more isolated communities connected to Rai. It was also noted that the Rai Valley suffered from poor connectivity
- d. It commented that the proposed withdrawal of copper wiring from many areas in the Sounds would have a significant impact on connectivity and will create a greater reliance on the internet (which in turn is impacted on by an electricity supply that lacks resilience)
- e. It refuted the comparison to Auckland as the whole context there is different, including the existence of local boards.

Matters for determination by the Commission

- 25. 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.
- 26. The matters in the scope of the review are:
 - whether the Council is to be elected from wards, the district as a whole, or a mixture of the two
 - the number of councillors
 - if there are to be wards, the area and boundaries of wards and the number of members to be elected from each ward
 - whether there are to be community boards
 - if there are to be community boards, the area and boundaries of their communities, and the membership arrangements for each board.
- 27. The Council's final proposal and the appeal raise the following overarching issues for the Commission to resolve:
 - a. To what extent does the Marlborough Sounds Ward include island and isolated communities of interest?
 - b. Should non-compliance by the Marlborough Sounds Ward be permitted?

Key considerations

- 28. Based on the legislative requirements, the Commission's *Guidelines for local authorities undertaking representation reviews* (the Guidelines) identify the following three key factors when considering representation proposals:

- a. communities of interest
- b. effective representation of communities of interest
- c. fair representation for electors.

Communities of interest

29. The Guidelines identify three dimensions for recognising communities of interest:
 - a. *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
 - b. *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
 - c. *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.
30. 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.
31. In addition to 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.
32. The communities of interest reflected in the current general ward arrangements have been in place for a number of years. As groupings of communities of interest their appropriateness has not been questioned in this process, by the Council, by submissions or the appeal.

Effective representation of communities of interest

33. Section 19T of the Act requires the Commission to ensure that:
 - a. 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
 - b. ward boundaries coincide with the boundaries of the current statistical meshblock areas determined by Statistics New Zealand and used for parliamentary electoral purposes
 - c. so far as is practicable, ward boundaries coincide with community boundaries (where they exist).

34. 'Effective representation' is not defined in the Act, but the Commission sees this as requiring consideration of factors including an appropriate number of elected members and an appropriate basis of election of members for the district concerned (at large, wards, or a mix of both).
35. The Commission's Guidelines note that what constitutes effective representation will be specific to each local authority but that the following factors should be considered:
 - a. avoiding arrangements that may create barriers to participation, such as at elections by not recognising residents' familiarity and identity with an area
 - b. not splitting recognised communities of interest between electoral subdivisions
 - c. not grouping together two or more communities of interest that share few commonalities of interest
 - d. accessibility, size and configuration of an area including access to elected members and vice versa.
36. Within the scope of a representation review, councils can achieve effective representation of communities of interest by having members elected by wards, at large, a mixture of wards and at large. However, as the Council has resolved to establish Māori wards, it must also establish at least one general ward.
37. 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, if there are to be wards.
38. Section 19A of the Act provides that a territorial authority shall consist of between 5 and 29 members, excluding the mayor. Since 2010 the Council has comprised a mayor and 13 councillors elected from three wards.¹ The sole changes at this review are the establishment of a Māori ward and an increase in the number of councillors by one.
39. Those arrangements seem broadly reasonable given the size and geography of Marlborough District and the fact that, through being a unitary authority, the Council also has the responsibilities of a regional council. This conclusion could, however, be affected by our discussion of fair representation below.

Fair representation for electors

40. For the purpose of achieving fair representation for the electors of a district, section 19V(1) 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').

¹ The history of representation in Marlborough District is set out in some detail in the Commission's 2016 determination for Marlborough District. See paragraphs 6 to 12.

41. However, section 19V(3)(a) permits non-compliance with the '+/-10% rule' for territorial authorities in some circumstances. Those circumstances are where:
 - a. non-compliance is required for effective representation of communities of interest within island communities or isolated communities
 - b. compliance would limit effective representation of communities of interest by dividing a community of interest
 - c. compliance would limit effective representation of communities of interest by uniting two or more communities of interest with few commonalities.
42. The Council's proposal results in the Marlborough Sounds Ward not complying with the '+/-10% rule'. This was the focus of much of the Council's considerations through the representation review process, most of the submissions, the appeal and the hearing.
43. Before dealing with the substantive matter of whether the Marlborough Sounds Ward should be exempt from the '+/-10% rule' we will deal with an argument raised by Mr Dew in the hearing. That is that that an interpretation of the term "community" in the Local Electoral Act leads back to the definition of "community" in the Local Government Act, suggesting that a community would require a community board before it could be considered to be isolated.
44. We do not agree with this interpretation. Both Acts state that words or terms defined in the list of interpretations have the meaning set out unless the context otherwise requires. It is quite clear to us that the context in which the terms "community" and "communities of interest" are used in the Local Electoral Act requires a broader interpretation than a technical interpretation relating to a "community" for which a community board is to be established.
45. The Commission has considered representation arrangements for Marlborough District, and particularly for the Marlborough Sounds, on a number of other occasions, most recently in 2016. It may be useful to take note of some of the considerations taken into account by the Commission when making its 2016 determination as they relate to a number of points raised in the current review. Those considerations are set out below:

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.

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 these 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.

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.

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.

The second conclusion is that a decision about isolation and representation needs to consider the overall context of the ward.

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.

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.*

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.

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).*

46. The then Commission concluded from this “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”.
47. In relation to the current review our analysis of the information put to us is that the conclusions reached by the Commission in 2016 remain relevant today. The overall conditions and assessments of isolation described in 2016 do not appear to have changed. Using the same approach as that taken then we have analysed the statistics for the usually resident population at the 2018 census for the isolated areas of the Marlborough Sounds. The 2018 census recorded the population of the ward’s isolated areas as being approximately 800 - slightly less than it was at the 2013 census, but still significant in terms of representation. This is considerably more than the isolated population of 200 suggested by Mr Dew.
48. If anything, some of the specific conditions of isolation are possibly worse now than they were in 2016. At the hearing we heard that:
 - The Kenepuru Road has not been restored following the 2021 July storm and that a number of properties are reliant on a barge service for the transport of goods in and out the area
 - There is a prospect of the road not being restored to the same condition it had prior to the storm
 - The copper wiring service will be withdrawn from some areas leaving those areas reliant on a less reliable internet service (exacerbated by a less than fully resilient electricity supply).
49. We do note Mr Dew’s comments that when he was a member of the Council, Sounds residents had often contacted him, although he did not represent a ward covering the Marlborough Sounds. If that was the case, we see it being as a somewhat ad hoc arrangement that cannot be relied on to assure effective representation. We do not see it as being a valid augment to help us determine representation for the Marlborough Sounds Ward.
50. We conclude from the above discussion that the allocation of three councillors to the Marlborough Sounds General Ward and the ward’s resulting non-compliance with section 19V(2) continues to be justified to ensure effective representation of island and isolated communities.

Communities and community boards

51. 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.
52. There have been no community boards in Marlborough District since legislation first provided for boards in 1989. In the current review, the Council is not proposing the

establishment of any community boards and the appeal does not raise this issue. Accordingly, we endorse the Council's proposal in relation to this matter.

Commission's determination³

53. 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 2022, the following representation arrangements will apply:
- a. Marlborough District, as delineated on Plan LG-053-2022-W-1 will be divided into four wards.
 - b. Those four wards will be:
 - (i) The Marlborough Māori Ward, comprising the area delineated on LG-053-2022-W-2
 - (ii) the Marlborough Sounds General Ward, comprising the area delineated on SO 431037
 - (iii) the Wairau-Awatere General Ward, comprising the area delineated on LG-053- 2022-W-3
 - (iv) the Blenheim General Ward, comprising the area delineated on LG-053-2022-W-4
 - c. The Council will comprise the mayor and 14 councillors elected as follows:
 - (i) 1 councillor elected by the electors of the Marlborough Māori Ward
 - (ii) 3 councillors elected by the electors of the Marlborough Sounds General Ward
 - (iii) 3 councillors elected by the electors of the Wairau-Awatere General Ward
 - (iv) 7 councillors elected by the electors of the Blenheim General Ward.
54. 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.

Local Government Commission



Commissioner Brendan Duffy (Chair)

³ Plan references preceded by SO are deposited with Land Information New Zealand, and plan references preceded by LG are deposited with the Local Government Commission.

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Commissioner Janie Annear

A handwritten signature in blue ink that reads "Sue Piper". The signature is written in a cursive style with a large initial 'S'.

Commissioner Sue Piper

8 April 2022