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Auckland Council Governing Body Representation Review

Response by Cr Michael Lee

Declaration of interest: I am the elected councillor for the Waitematā & Gulf Ward. I have represented the area since February 1992, initially for the former Auckland Regional Authority/Council electorate of 'Auckland Central'. I have represented the Waitematā & Gulf Ward since the establishment of the Auckland Council in 2010.

Summary

The preferred option to address a problem of 'under representation' in the Waitematā & Gulf Ward proposed by the Representation Review Joint Working Group does not provide a durable solution and will not be in the best interests of Auckland Council or its electors. This is because that due to the special nature of this part of inner Auckland, there is a significant 15% difference (previously undetected) with the rest of Auckland (and New Zealand), in the ratio of electors to population. The proposed changes to the ward boundary will be disruptive and likely to exacerbate this distortion and therefore do more harm than good. An alternative approach enabled within the legislation of retaining the existing ward boundaries and preserving existing communities of interest is recommended along with a request, additional to those the Council has already made, to amend anomalies and inconsistencies in the legislation relating to Auckland Council under the **Local Electoral Matters Bill** currently before parliament. This is a more pragmatic approach and one much more likely to achieve a durable solution to this unusual problem.

Introduction

Auckland Council has been undertaking a review of its representation arrangements for the 2019 elections. A Council Representation Review Joint Working Group made up of councillors and local board members has identified a number of problems with representation across the region. These are mainly not of a major nature but the Joint Working Group has identified a significant 43.74% differential in respect of councillor/population ratio between the Waitematā & Gulf Ward and the other wards in the region. This is the result of major population growth in the Auckland central subdivision (Waitematā) of the ward and more to the point, the special nature of that growth, resulting in apparent 'under-representation'.

The difficulty the Council faces in dealing with this problem in the Waitematā & Gulf Ward can be partially traced to misalignment between certain provisions of the generic Local Electoral Act (2001) and the bespoke Local Government Auckland Council Act (2009). This misalignment between legislation designed for the 78 local bodies across New Zealand and the special legislation establishing the Auckland Council lies in the exceptional nature of the 'Super City'. The other factor is the apparent unusual growth in the non-citizen, non-permanent resident population of inner Auckland.

Neither of the three options examined by the Council's Representation Review Joint Working Group provide a satisfactory solution to the problem and all are predicated on a narrow, mechanistic interpretation of the Local Electoral Act (2001). The disproportionate focus on the '10% rule' for 'fair representation' comes at the expense of the other criteria for 'effective representation' i.e. maintaining communities of interest and the coherent alignment of ward and local board boundaries.

All the proposed options have the simplistic objective of simply achieving a more mathematically equal ratio of population-to-elected member by carving off large segments of residential areas and transferring them to neighbouring wards but local board boundaries will stay the same. Therefore, the

proposed alterations will have cascading effects on neighboring wards, extending across the isthmus: Orakei, Tamaki-Maungakiekie, Albert-Eden-Roskill, and Whau. This will have the effect of unravelling the Local Government Commission's carefully crafted alignment of wards and local board area boundaries, which has worked very successfully since 2010. Furthermore, the changes will be costly to implement and will be confusing to electors. Finally, none of the proposed options provide anything more than a temporary solution to a problem - which upon closer examination is actually more apparent rather than real.

The legislative framework – key provisions

There are three key pieces of legislation which deal with the special nature of representation and decision-making within the Auckland Council and this report will highlight key aspects of them.

1. Local Government (Auckland Council) Act 2009.

s7. Decision-making of Council shared between governing body and local boards

- a) The Auckland council has a *two-tier governance structure* comprising the governing body and the local boards; and
- b) The *decision-making responsibilities of the Auckland Council are shared between the governing body and the local boards* in accordance with sections 14 to 23 of this Act.

s34. Local Government Commission to determine boundaries of local board areas and wards.

- s34 (2). (f) *So far as practicable*, local board area boundaries coincide with ward boundaries; and
 - (g) a local board area is constituted for the Waiheke Island community; and
 - (h) a local board area is constituted for the Great Barrier Island community.

2. The Local Electoral Act 2001

s4. Principles

- (1) The principles that this Act is designed to implement are the following:
 - (a) fair and effective representation for individuals and communities;
 - (b) all *qualified* persons have a reasonable and equal opportunity to- [Interalia] (i) *cast an informed vote*.

The Local Electoral Act places particular emphasis on the determining role in all electoral matters of those qualified persons called '*the electors*'. Please see Part 1, s19ZB, & s 19ZF and Part 2, s20, s21, s22 s23, 24A, s24B, s24C, s24D, s24E.

Noting especially '**Requirement for effective representation and other factors in determination of membership and basis of election territorial authorities and local boards**'.

s19T (1) (a) "*that the election of members of the territorial authority...will provide effective representation of communities of interest with the district...*"

However, in addition to 'effective representation' the Act also addresses 'fair representation'. Section 19V (below) seemingly equating 'electors' with 'population' (though elsewhere the Act makes very clear they are not the same).

s19V(1) *In determining the number of members to be elected by the electors of any ward or constituency or subdivision , the territorial authority or regional council and, where appropriate, the Commission must ensure that the electors of the ward or constituency or subdivision receive fair representation, having regard to the population of every district or subdivision within the district or*

region or local board area or community and every ward or constituency or subdivision with the district or region or local board area or community,

s19V (2). *For the purpose of giving effect to subsection (1) the territorial authority or regional council and, where appropriate, the Commission must ensure that the population of each ward or constituency or subdivision produces a figure no more than 10% greater or smaller than the population of the district or region or local board area or community divided by the total number of elected members (other than members elected by the electors of a territorial authority as a whole, if any, and the mayor, if any)...*

The population is defined as the 'ordinary resident population' as defined by the Government Statistician. The qualification of 'electors' is defined in a third Act of Parliament:

3. The Electoral Act 1993

s74 Qualification of electors

(1) Subject to the provisions of this Act, every adult person is qualified to be registered as an elector of an electoral district if—

(a) that person is—

(i) a New Zealand citizen; or

(ii) a permanent resident of New Zealand; and

(b) that person has at some time resided continuously in New Zealand for a period of not less than 1 year; and

(c) that electoral district—

(i) is the last in which that person has continuously resided for a period equalling or exceeding 1 month; or

(ii) where that person has never resided continuously in any one electoral district for a period equalling or exceeding 1 month, is the electoral district in which that person resides or has last resided."

Therefore, there are two important categories in the legislation, 'electors' and 'population' which appear to be considered equivalent. Population assessed from time to time by census has been the preferred tool in determining democratic representation across the country. But under the same legislation participation in elections and in all matters of representation it is electors not population that is the determining element. This does not normally present any difficulties because the proportion of adult population qualified to vote is around 70% across the country, however because of abnormal factors peculiar to central Auckland and the special legislation relating to Auckland Council we are now presented with what appears to be problem.

Special nature of Auckland Council representation.

A standard population-to-elected member ratio plus or minus 10% applies to Auckland Council but unlike the 77 other councils across New Zealand, the Auckland Council is prevented, under the Local Government (Auckland Council) Act (2009), from increasing the number of elected councillors in line with growing population. It is also legally unable to change the boundaries of its local board areas though it can change the boundaries of its wards. These restrictions are due to the special nature of the governance arrangements of the Auckland Council as set out in the same Act. However, in the

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Auckland Council, unlike most other councils, the exercise of “functions, responsibilities and duties and executing its powers” unlike all other councils, are not the sole prerogative of elected councilors

Co-governance

Auckland Council is a unitary authority with two-tiers of governance – a Governing Body of the mayor and 20 elected councillors and 21 elected Local Boards - a form of representation exceptional to Auckland.

Local Board members of which there are 140, therefore share decision-making with Governing Body members (mayor and councillors). This unique form of shared governance operated during the preparation of the ‘Auckland Plan’, (first and second versions), the Unitary Plan and the Annual and Long Term Plans, and also in numerous working parties and the City Centre Advisory Board. The council committee I chair is an interesting example. The Auckland Domain Committee is made up of 8 voting members, 3 councillors, 3 local board members and 2 members of the Independent Maori Statutory Board. The Joint Governance Review Working Party is another example, made up of 4 councillors and 4 local board members and chaired by a local board member.

In addition to the role of local boards, there are other governance features unique to Auckland Council. While outside of what normally considered representative government and therefore this discussion, they do underscore the unusual nature of this Council,

Council Controlled Organisations

In the Auckland Council, traditional local government responsibilities, considered core business by other territorial authorities and regional councils e.g. transport, have been devolved to the boards of CCOs which comprise some 25 decision-making board directors.

Independent Māori statutory Board (IMSB)

IMSB members are represented on all Council committees (albeit not the Governing Body), i.e., all committees-of-the-whole, all sub-committees and all working parties. The two votes of these members are often critical to decision-making outcomes of the important Council committees-of-the-whole, including the Finance and Performance Committee. This is a form of representation unique to Auckland and unlike any other in local government, including in those councils that have elected Māori Wards. The presence on the Council of 9 voting, members of the IMSB has of course not been factored into the standard plus or minus 10% councillor-to-population ratio but it does underscore that this 10% rule based on just 20 councillors is not completely sensible in relation to the reality of Auckland Council

Clearly, in terms of representation and in carrying out “functions, responsibilities and duties and executing its powers”, the Auckland Council is very much a special case.

Rather than just 20 councillors there are actually 160 elected members of the council, plus the mayor, plus 9 x IMSB members and 25 x CCO directors, all having an active role more or less, in “functions, responsibilities and duties and executing its powers”.

The special case of Waitematā & Gulf

In terms of population and representation an examination of population and registered electors reveals the Waitematā & Gulf Ward to be strikingly different from any other ward – not only in Auckland but across New Zealand.

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The Ward has three local board areas. In terms of population while Great Barrier Island and Waiheke Island are significantly over-represented, urban mainland Waitematā (inner city Auckland) is under represented. While the unique nature of these island subdivisions is specifically catered for in the legislation (see above), the unusual nature of the inner city subdivision, which has become apparent only in recent years, is not recognized at all.

Waitematā – ‘City Centre’ & ‘CBD of New Zealand’

Inner city or central Auckland is no longer just the ‘Central Business District’, it is now defined by the *City Centre Master Plan* (2012) to be the ‘*City Centre*’ closely bounded by the ‘*City Fringe*’ all within the Waitematā & Gulf Ward and the Waitematā Local Board Area. The City Centre has become a primary residential zone and the principal focus of the Auckland Council’s strategy of population intensification. The urban subdivision of the ward contains by far the highest number of non-citizen residents in New Zealand, with a high concentration international students, long-staying visitor and temporary work permit holders. The total *population* of the ward is now 119,100 people. However, in terms of representation for Auckland Council it is important to bear in mind the number of *electors* in the ward.

The total number of electors in the Waitematā & Gulf ward is 60,685. This is just over half the total population – **51%** of the Ward’s population. By comparison the total population of Auckland is **1,657,200**. The total number of electors in Auckland is **1,085,520**. Therefore, the ratio of electors to population Auckland-wide is nearly **66%**

	Those Enrolled, May 2018	Total Population, June 2017	Percent of Population that is enrolled.	Ratio of Population to Those Enrolled
New Zealand	3,282,416	4,793,900	68.5%	1.46
Auckland	1,087,986	1,657,200	65.7%	1.52
Waitematā and Gulf Ward	60,685	119,100	51.0%	1.96

Table 1.

Source notes: Pop Ests: data extracted on 06 Feb 2018 20:48 UTC (GMT) from NZ.Stat

Those enrolled: data extracted 13 June 2018 from <http://www.elections.org.nz/research-statistics>

Information and table by Brian Osborne & Warwick McNaughton. The population estimates in the NZ.Stat source are rounded to the nearest hundred.

The disparity is even greater when you subtract the population and the electors of Waitematā & Gulf from the Auckland-wide totals: Auckland-wide population (without W&G) **1,538,100**. Auckland-wide electors (without W&G) **1,024,835** which increases the Auckland-wide ratio of electors to population to **67%**, underscoring how different Waitematā & Gulf is from the norm. While Auckland has been a magnet for high levels of immigration in recent years the Auckland-wide ratio of electors-to-population (without W& G) is only 1.5% below the national norm of 68.5%. See Table 1 below.

This significant disparity between electors and population is unique to the Waitematā & Gulf Ward. It is also reflected in the parliamentary constituency of Auckland Central where despite recently shedding of ‘City Fringe’ residential areas it has almost exactly the same unusual low ratio of electors to population:

Auckland Central population **76,240**. Auckland Central registered electors **37,709**. Ratio **51.11%**

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Table 2. Ratio of electors per member, population per member and electors to population

Ward	Electors	No. mbrs	Electors per mbr	Ppn/mbr	Electors/ppn
Rodney	46,394	1	46,394	64,300	72%
Albany	118,571	2	59,286	84,900	70%
North Shore	106,471	2	53,236	78,400	68%
Waitakere	115,514	2	57,757	88,250	65%
Waitematā & Gulf	60,685	1	60,685	119,100	51%
Whau	54,892	1	54,892	84,700	65%
Albert-Eden-Roskill	114,303	2	57,152	86,100	67%
Orakei	65,339	1	65,339	91,500	72%
Maungakiekie	51,504	1	51,504	79,700	65%
Tamaki					
Howick	101,848	2	50,924	75,100	68%
Manukau	105,847	2	52,924	84,450	63%
Manurewa-Papakura	94,553	2	47,277	74,450	64%
Franklin	51,921	1	51,921	74,600	70%

Numbers courtesy Electoral Commission.

Note: in terms of electors per member Waitematā & Gulf has a lower ratio than the Orakei and just above Albany (each highlighted). However the Representation Review Joint Working Party recommendation is to remove meshblocks of electors from Waitematā & Gulf and add them to Orakei.

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In 2010 the Waitematā & Gulf Ward population was 79,300 and the number of electors 45,785. The ratio of electors to population was **58%**. Since then the population has increased by 40,000 residents but the number of registered electors has increased only by 14,900, therefore the ratio of electors to population has fallen to **51%**.

While we do not have precise information on the reason for this significant disparity, we can surmise that as with other international-scale cities the city centre has a very large and rapidly growing non-citizen, non-permanent resident and likely transient population.

Political representation and voter participation.

However, despite theoretical 'over' representation on the islands and 'under' representation in the city, the Waitematā & Gulf Ward has a lively political culture with relatively high voter turnout at elections. At the 2016 local elections Great Barrier had 71% voter participation, Waiheke had 60% and the urban subdivision had 43%. The community is sophisticated and politically aware. Election contests for the Council tend to draw prominent media coverage.

Waitematā Community of Interest

The urban subdivision of the ward comprises the central and most historic parts of Auckland. Like the islands, it is very much a maritime ward – almost a semi-island. Projecting into the Waitematā Harbour, bounded to the east by Hobson Bay and to the west by the Meola inlet, with three sides backstopped largely by the Western Motorway, and the North Auckland (rail) Line, the ward forms a geographically and socially coherent entity.

The City Centre is flanked to the west by what the City Centre Master Plan calls the 'urban villages' of Ponsonby, Grey Lynn, Western Bays and Westmere and to the east by the 'urban village' of Parnell, to the south Newmarket, Newton and Arch Hill. Reinforced by the identical boundaries of the Waitematā Local Board Area and the Waitematā & Gulf Ward, a strong community of interest based on a common historical and geographic identity and has built up, especially over the last 8 years.

However, the option preferred by the Joint Working Group will slice through all this – on both eastern and western sides. This will disrupt rather than preserve long-standing communities of interest with meshblocks of electors to be moved about like pieces on a board.

What appears to have been overlooked by the Joint Working Group is that stripping away these historical suburbs where registered elector presence is relatively high (in line with the rest of Auckland), but leaving the CBD untouched, is that the consequence is likely to exacerbate the very low ratio between 'population' and 'electors'. As a result the ratio of electors to population in what is left of the ward is almost certain to fall even lower – well below 50%.

Impacts of proposed boundary changes on the logistics and costs of managing the 2019 local body elections

In order to hold local body elections, the Auckland Council through Election Services presently is required to produce 130 different combinations of voting papers. This to ensure that accurate voting papers are delivered to electors with the correct Wards, Local Board Areas, District Health Boards, and Licensing Trusts. The proposed change to the Waitematā & Gulf boundary will dislocate the common ward and local board boundaries and cause knock-on effects to surrounding wards Orakei, Tamaki-Maungakiekie, Albert-Eden-Roskill, and Whau. This will significantly increase the number and level of complexity of required voting paper combinations. This in turn will generate extra costs to the Council. Election Services predict these boundary changes will generate a significant number of extra enquiries and complaints during the election period. The resulting confusion caused by a bewildering mish-mash of counter-intuitive ward and local board boundary changes is likely to be a turn-off for voters and not likely to improve voter participation. These effects will be ongoing as the proposed changes are not likely to be sustainable for more than six-year review period.

Conclusion

Changing the Ward boundaries to achieve what appears to be in the case of Waitematā & Gulf ward to be a less than meaningful mathematical formula will not provide a robust nor sustainable solution to a problem not foreseen by the drafters of the legislation. Nor will it achieve more effective or fair representation by any dictionary meaning of those words. In fact, in terms of cost benefit it will do more harm than good.

Therefore, it is recommended that the Council advises the Local Government Commission that it is unconvinced of the merits of dismantling the carefully balanced structures erected by the Commission itself in 2010. Instead citing 19V (3) (a) of the Local Electoral Act, and that compliance with the 10% formula in this situation would actually reduce effective representation by dividing communities of interests between wards and local boards and drive the proportion of electors to population even lower. Instead the Council should offer to work with the Commission to review those parts of the legislation that are not currently fit-for-purpose with the objective of formulating a more durable solution, taking into account central Auckland's non-permanent resident population. This should also be considered in terms Council's current applications to the government for minor changes in the **Local Electoral Matters Bill** presently before parliament.