

Process to conduct a review of representation arrangements

File No.: CP2017/17701

Purpose

1. To agree a process for undertaking the statutory review of representation arrangements.

Executive summary

2. The Local Electoral Act 2001 requires all local authorities to undertake a review of representation arrangements at least once every six years.
3. Auckland Council was established in 2010 and was not required to undertake a review of representation arrangements for the 2016 elections, but is required to undertake a review for the 2019 elections. The review will take place during 2018.
4. It is possible to review the following for the governing body:
 - (i) whether members are elected at-large or by ward or a combination
 - (ii) if by ward, the number of members in each ward, the ward boundaries and ward names.
5. The number of governing body members is set at 21 (the mayor and 20 councillors) in the Auckland Council legislation. Therefore, unlike for other councils the number of members cannot be reviewed.
6. It is possible to review the following for each local board:
 - (i) the number of members
 - (ii) whether local board members are to be elected by subdivision or at large
 - (iii) if by subdivision, the number of members in each subdivision and the subdivision boundaries and names
 - (iv) the local board name.
7. It is not possible to review the boundaries or number of local boards; a reorganisation process is required to do this. This is a separate process under the Local Government Act 2002.
8. With a governing body and 21 local boards, Auckland Council has more complex arrangements than other councils and an efficient and effective process for undertaking the review needs to be determined. This report outlines options and recommends a political working party with representation from the Governing Body and local boards.
9. Following consideration by the Governing Body, staff propose to present this report to local boards for their feedback, which will then be presented back to the Governing Body to make a final decision regarding the review process in December 2017.

Recommendation/s

That the Governing Body:

- a) note that the statutory review of representation arrangements requires an initial proposal be developed, which is publicly notified for submissions
- b) note that the Governance Framework Review political working party has recommended that a new political working party, comprised of governing body and local board members, be formed to deal with governance issues, which could include the representation review

- c) endorse the staff recommendation that the new governance political working party, develop the initial proposal and present it to local boards and the Governing Body for comments before the Governing Body makes the statutory resolution to release the Auckland Council's initial proposal for consultation
- d) endorse the staff recommendation that the new governance political working party hear public submissions on the proposal, then report its findings to local boards and the Governing Body before the Governing Body makes the final statutory resolution on any representation changes, which will then be publicly notified for objections and appeals
- e) endorse the staff recommendation that the Mayor call for expressions of interest from all elected members to be on the new governance political working party and then appoint an equal number of governing body and local board members to the political working party
- f) agree that this report, together with the Governing Body's resolutions, be presented to local boards for their comments, and that local board comments be reported back to the Governing Body for a final decision on the process for conducting the statutory review of representation arrangements in December 2017.

Comments

The scope and overall process of the representation review are set in legislation

- 10. For the next local body election in 2019 the council must determine by resolution, for the governing body:
 - (i) whether councillors are to be elected by ward, at large or by a mix of both
 - (ii) for any wards, their names, boundaries and the number of members to be elected in each ward

For each local board, it must determine by resolution:

 - (iii) the number of members
 - (iv) whether local board members are to be elected by subdivision, at large or, if a local board area comprises two or more wards (not the case in Auckland), by ward
 - (v) for any subdivisions, their names, boundaries and the number of members to be elected in each
 - (vi) The name of the local board.

(Local Electoral Act 2001, section 19H)
- 11. The number of governing body members is set at 21 - a mayor and 20 members (*Local Government (Auckland Council) Act 2009, part 2 section 8*). Therefore, unlike for other councils the number of members cannot be reviewed.
- 12. It is not possible to review the boundaries, or number, of local boards. A reorganisation process is required to do this. This is a separate process under the legislation.
- 13. The council must give public notice of its resolution on the initial proposal within 14 days of making it and by 8 September 2018 at the latest. The public notice must provide a period of at least one month for interested persons to make submissions. (*Local Electoral Act 2001, section 19M*)
- 14. The council hears and considers submissions and must give public notice, within six weeks, of its amended proposal. The public notice must advise the right to appeal for those who made submissions and the right to object for any interested person. (*Local Electoral Act 2001, section 19N*)

15. The council forwards all appeals and objections to the Local Government Commission for determination. (*Local Electoral Act 2001, section 19Q*)

The council's representation proposal must meet set legal requirements

16. The legislation requires:
- (i) effective representation of communities of interest
 - (ii) that ward and subdivision boundaries must coincide with statistical meshblock boundaries
 - (iii) that ward boundaries must coincide with local board boundaries so far as is practicable.

(*Local Electoral Act 2001, section 19T*)

17. The legislation also requires fair representation when members are elected by ward or subdivision.
- (i) The population per member in each ward (or subdivision) must be no more than 10 percent greater or smaller than the population of the Auckland Council area (or local board area) divided by the total number of members elected on a ward (or subdivision) basis.
 - (ii) Non-compliance with the +/- 10 percent rule is possible in the case of isolated or island communities, or if compliance would compromise effective representation of communities of interest by dividing a community of interest or amalgamating disparate communities of interest.
 - (iii) A decision to not comply must be referred to the Local Government Commission to determine.

(*Local Electoral Act 2001, section 19V*)

There are relevant matters to consider when deciding the representation review process

18. The purpose of this report is to identify the process for conducting the review and not to debate the substance of representation issues. However, the following information is relevant to decide what process to follow and specifically whether to conduct preliminary consultation.

Previous governing body discussion

19. In 2014 the Governing Body decided to defer the representation review until 2017 and established a political working party to look at options for conducting the review and whether legislative changes were warranted [AUC 2014/19 and GB 2014/110]. On the advice of the working party, in 2015 the Governing Body decided to seek legislative change, as follows [GB2015/79]:
- (i) the council should be able to review the number of governing body members, as are other councils. This was particularly an issue when considering whether to establish a Māori ward. A member elected by a Māori ward would reduce the number of members elected through general wards. The council sought the ability for such a member to be an addition
 - (ii) if, through the review, ward boundaries needed to change to maintain fair representation, ward boundaries would get out of alignment with local board boundaries since these could not be reviewed. Any change to local board boundaries would need to be through a reorganisation process. The council sought a process for local board boundaries to be changed if that was the wish of the local board

20. The then Minister of Local Government advised the council that he felt there should be no change to the number of governing body members, but that the matter of the alignment of boundaries would be considered. A streamlined process for local authority-led reorganisation applications was included in the Local Government Act 2002 Amendment Bill No.2. The Bill completed its second reading; however the House did not pass it before Parliament rose prior to the general election. It is unclear whether, and if so when, the incoming parliament will resume its consideration of the Bill. This means there is limited chance that any change will happen in time for the Auckland Council's representation review.

Previous commentary on representation arrangements

21. The Royal Commission on Auckland Governance considered the representation arrangements for the new Auckland Council in detail. The Commission noted that at-large representation would provide members that had region-wide appeal and who had a regional focus while ward representation provided members who would be more representative of the various communities in Auckland. The Commission recommended a mixture of 10 members elected at-large and 10 elected by ward (and three Māori seats).
22. In its proposal "Making Auckland Greater", the government recommended 8 members elected at-large and 12 members elected by ward.
23. The Auckland Legislation Select Committee noted that it received a significant number of submissions opposing at-large members. It recommended that all members should be ward-based to provide for better representation.
24. The Auckland University of Technology's report, "The Governance of Auckland: 5 Years On", noted the need for members to have a regional focus but felt there were good reasons for retaining ward representation.
25. Gareth Stiven's Governance Framework Review report also identified the need for councillors to have a regional focus and raised the issue of overlap between ward-based councillors and local boards. The Governance Framework Review political working party has considered the issue and considers that it is not sufficient in itself to warrant a restructure of ward arrangements.
26. These facts will be relevant when considering whether to change the way ward councillors are elected.

Effect of population growth on wards

27. The representation review will not affect all areas of Auckland. The following table illustrates the effect of population growth on representation ratios. One ward that will be affected is the Waitemata and Gulf Islands ward, with a potential flow-on effect on neighbouring wards. It is likely that the variance for this ward is too great to be accepted by the Local Government Commission as valid non-compliance. The next greatest variance is in Rodney, however the findings of the Commission on the current applications for reorganisation may contain guidance for dealing with this.

| Ward | 2016 Population estimate | Number of councillors | Population per councillor | Difference from regional average | % Difference from average |
|--------------------|--------------------------|-----------------------|---------------------------|----------------------------------|---------------------------|
| Rodney | 62,200 | 1 | 62,200 | -18,520 | -23% |
| Albany | 164,400 | 2 | 82,200 | 1,480 | 2% |
| North Shore | 153,200 | 2 | 76,600 | -4,120 | -5% |
| Waitakere | 173,300 | 2 | 86,650 | 5,930 | 7% |
| Waitemata and Gulf | 111,900 | 1 | 111,900 | 31,180 | 39% |

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|---------------------|------------------|-----------|---------------|----------|-----------|
| Whau | 82,900 | 1 | 82,900 | 2,180 | 3% |
| Albert-Eden-Roskill | 168,000 | 2 | 84,000 | 3,280 | 4% |
| Orakei | 89,200 | 1 | 89,200 | 8,480 | 11% |
| Maungakiekie-Tamaki | 78,300 | 1 | 78,300 | -2,420 | -3% |
| Howick | 146,500 | 2 | 73,250 | -7,470 | -9% |
| Manukau | 166,100 | 2 | 83,050 | 2,330 | 3% |
| Manurewa-Papakura | 145,600 | 2 | 72,800 | -7,920 | -10% |
| Franklin | 72,800 | 1 | 72,800 | -7,920 | -10% |
| Auckland | 1,614,400 | 20 | 80,720 | 0 | 0% |

Known requests for change

28. The known community requests for change include the applications to the Local Government Commission for reorganisation in Rodney and Waiheke. The findings of the Local Government Commission will be known before the council undertakes its review.

29. In August 2017 the Waiheke Local Board resolved:

“Request that, in conjunction with the Great Barrier Board, the coming representation review give consideration to an Auckland Council Hauraki Gulf Islands only Ward Councillor position in recognition of the difference between the islands and the mainland and the importance of these communities being fully represented.”
[WHK/2017/138].

30. Other boards may have additional requests for change.

31. The council will take all issues into account when it develops its initial proposal for public consultation.

There are options for what process to follow

32. This section presents and analyses process options to conduct the review. The key issues relating to the process are:

- (i) whether there should be preliminary consultation to inform the council’s first proposal
- (ii) how the proposal is developed in a way which includes local boards
- (iii) the process for considering submissions
- (iv) the timeframe.

Should the council conduct preliminary consultation?

33. One approach to conducting a representation review is to undertake a preliminary consultation to inform the council’s first proposal. This is discretionary and not a legislative requirement.

34. The Local Government Commission publishes guidelines for conducting representation reviews. On the matter of preliminary consultation the guidelines state:

“8.4 Some local authorities undertake preliminary consultation before beginning the formal statutory representation review process, including community surveys or referenda, discussion documents, newspaper advertising, focus groups, email groups of interested citizens, and public workshops and meetings. These activities are led or facilitated by local councillors, community boards, or other community groups. Targeted consultation may also be appropriate, including with local Māori.”

- 8.5 *Preliminary consultation may seek views on particular representation options as well as on factors such as current communities of interest. This consultation can assist local authorities to identify issues relevant to the review process and enable them to consider a wider range of representation options when developing their formal proposal.*
- 8.6 *Preliminary consultation is not a substitute for the formal statutory steps. For example, the results of a referendum may indicate overall public opinion, but should not be used as the only justification of a particular ward/constituency configuration. The review must seek to achieve fair and effective representation for all individuals and communities of interest of the district/region, and not be limited to reflecting community views on particular aspects of arrangements.*
- 8.7 *Consider using independent panels to undertake preliminary consultation and then make recommendations on options for representation arrangements. This avoids potential perceptions of parochialism and self-interest arising from elected members' involvement.*
- 8.8 *When convening an independent panel:*
- *select people who have relevant skills, and a good knowledge of the district/region*
 - *provide clear terms of reference,*
 - *fully brief the panel on its task, ensuring it has a good understanding of the statutory requirements for reviews.”*

35. The following table presents the pros and cons of conducting a preliminary consultation prior to the statutory consultation process.

| Pros | Cons |
|--|--|
| There has been growth in various parts of Auckland. This will lead to some ward and subdivision boundaries needing to be redrawn to maintain fair representation. Preliminary consultation could help understand any changes in communities of interest which will be relevant to draw the new boundaries. | When Auckland Council was established, there was a lot of public participation at the time. The Local Government Commission, when making its determinations regarding the governing body and local boards, had community views to take into account and, as a result, the Commission's determinations were robust and have withstood seven years of operation. |
| The number of local board members can be reviewed. There may be community views which could be considered when developing the first proposal. | The number of members of the governing body is set in legislation and is not open to review. In terms of the governing body, there is less to consult about than for other councils. |
| Although the council cannot review the number of governing body members, it can review whether any governing body members should be elected on an at-large basis. This would be a significant change and community feedback could be helpful. | The ward representation of governing body members and their alignment with local board areas was discussed as part of the Governance Framework Review. There was a consensus that any issues relating to this were not so strong that a restructure of ward arrangements was required. |
| | The Local Government Commission has been recently consulting on issues relating to Rodney and Waiheke. Its findings for those areas can be taken into account. |
| | There may be consultation fatigue in Rodney and Waiheke. If pre-consultation occurs local residents will have been consulted three times on similar issues in 18 months. |
| | The political working party can decide to conduct targeted consultation in areas where there are known issues, without the need to pre-consult with the whole of Auckland |

36. On balance staff recommend not to conduct initial consultation and to directly develop the initial proposal. However, should elected members decide to conduct initial consultation, staff ask that they indicate in what forms they would like consultation to take place so an overall plan can be developed and costed. In particular, staff will need guidance on whether elected members want to conduct hearings themselves or use independent commissioners.

Staff recommend a political working party develop the initial proposal

37. One of the recommendations of the Governance Framework Review political working party is that a new working party, comprised of governing body and local board members, be formed to work on ongoing joint governance issues, including the representation review.
38. Staff recommend that this new governance political working party develop the initial proposal. The political working party would work with staff to develop options that would meet the legal criteria. These would be reported to local boards and the Governing Body. The Governing Body would pass the statutory resolution that is publicly notified for submissions. Public consultation would then take place on the proposal developed and adopted by the council.
39. To form the political working party staff recommend that the mayor call for expressions of interest from all elected members and then appoint an equal number of governing body and local board members to the political working party. We recommend that the party comprise between 6 and twelve members. The mayor can make the final decision on numbers based on the number of expressions of interest he receives.
40. The Governance Framework review paper on this agenda recommends that staff submit the Terms of Reference for the new political working party to the Governing Body in December 2017 so it aligns with the timing of the representation review.

We recommend that the political working party hear submissions on the initial proposal

41. Two options for hearing submissions are:
- (i) the Governing Body and local boards each hear submissions in relation to their own arrangements. Local boards make recommendations to the Governing Body, which passes the statutory resolution. The resolution is then publicly notified for appeals and objections; or
 - (ii) the political working party becomes a hearings panel that hears all submissions and reports its findings to local boards to make recommendations to the Governing Body. The Governing Body passes the statutory resolution which is then publicly notified for appeals and objections.
42. Staff recommend that the political working party hear the submissions because of the expertise it will have built up developing the initial proposals.

Indicative timeframe

43. The following indicative timeframe is based on an outcome where the initial proposal is made by 31 July 2018 (the statutory deadline is to give public notice of this by 8 September).

| Indicative dates | Process |
|-----------------------|--|
| 14 December 2017 | Governing Body decides the process for conducting the representation review after local board feedback has been gathered Governing Body approves the terms of reference of the new governance political working party |
| February - March 2018 | Mayor appoints the political working party, which develops the draft initial proposal |

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| April – June 2018 | The draft initial proposal is reported to local boards and Governing Body. Local boards make recommendations to Governing Body. |
| 26 July 2018 | Governing Body resolution establishing the Auckland Council's initial proposal |
| August 2018 | 1 month for submissions |
| September 2018 | Submissions are heard (either by the political working party or by local boards and governing body separately). Final proposals agreed for presenting to Governing Body. |
| By mid-October 2018 | Governing Body passes resolution that establishes the Auckland Council's final proposal; Public notice of the amended proposal published. If there are no appeals or objections this proposal is implemented for the 2019 elections |
| November 2018 | Appeals or objections can be lodged |
| December 2018 | Any appeals or objections are forwarded to the Local Government Commission |
| 11 April 2019 | Deadline for the Local Government Commission to determine appeals and objections. Their determination is then final. |

Consideration

Local board views and implications

44. A political working party comprising governing body and local board members undertook the Governance Framework Review. A proposal emerging from that review was that some form of joint political working party should continue to deal with governance-related issues. This proposal received support from local boards.
45. The process proposed in this report includes full local board engagement, with final statutory decision made by the Governing Body.

Māori impact statement

46. There is a large impact on Māori of representation arrangements. The provision in the Local Electoral Act for establishing dedicated Māori wards is the subject of a separate report.
47. One of the responsibilities of the political working party will be to ensure that active engagement occurs with Māori to seek their views and hear their feedback on the council's proposal.

Implementation

48. Following consideration by the Governing Body, staff will arrange for the report to be presented to local boards for their feedback, which will be reported back to the Governing Body for its final decision on the process in December 2017.

Attachments

There are no attachments for this report.

Signatories

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|-------------|---|
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