

TRIENNIAL REVIEW OF REPRESENTATION DISCUSSION PAPER

PURPOSE

The purpose of this discussion paper is to provide information to assist the Council to discuss all aspects of representation, as required by the Local Electoral Act 2001 and the Local Government Act 2002.

INTRODUCTION

Because the Council chose not to review its representation arrangements in 2003 it must do so for the 2006 year.

It is appropriate to consider all aspects to the review simultaneously and holistically now, even though some decisions do not need to be taken or implemented until 2006.

The aspects requiring consideration in 2005 are:

- System of election: A change is not mandatory, but the question must be addressed;
- Maori Wards: A decision is not mandatory, but any decision must be made by 23 November 2005 to be effective for 2007 election.

The aspects requiring consideration in 2006 are:

- Composition of the Council and Community Boards;
- Basis of election of Members of the Council and Community Boards.

The Local Government Commission has advised that while it cannot guarantee to 'hear' submissions, appeals and objections at a venue in the local authorities' territories, its ability to do so will be enhanced where local authorities make their determinations before the statutory deadlines.

It is therefore recommended that the Waitakere City Council continue the progress seamlessly through 2005 and onto 2006 so that a determination is made before the deadline (but after consultation has been completed).

STRATEGIC CONTEXT

Active Democracy (one of the Council's nine strategic platforms) supports the involvement of citizens in the Council's decision-making process, in a variety of reactive and pro-active ways.

The Council conducts regular household surveys which indicate improved success in engaging the public in the Council's decision-making processes since these surveys were first conducted in 2001/2002. This is partly due to this Council's extensive community consultation processes.

Nevertheless, the voter turnout for Council elections was only 35.68% during the 2004 election. The electoral representation review process will assist in exploring why this is so and how to encourage higher voter turn-outs.

The Treaty of Waitangi is one of the priorities that must be affirmed in all the Council's activities and planning.

The Local Government Act 2002 (Part 6), requires the Council to establish and maintain processes to provide opportunities for Maori and to foster the development of Maori capacity to contribute to its decision-making processes. These various factors make it incumbent on this Council to consider the issue of appropriate Maori representation.

PURPOSE AND PRINCIPLES

Local government in New Zealand is carried out under the provisions of the Local Government Act 2002 and the Local Electoral Act 2001 (and amendments). Its purposes are described under Section 10 of the Local Government Act 2002 as being:

- "(a) to enable democratic local decision-making and action by, and on behalf of, communities; and*
- (b) to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future."*

The purpose of the Local Electoral Act 2001 is to modernise the law governing the conduct of local elections and polls, to:

- "(c) allow diversity (through local decision-making) in relation to -*
 - (i) the particular electoral system to be used for local elections and polls; and*
 - (ia) the regular review of representation arrangements for local authorities; and*
 - (ii) the particular voting method to be used for local elections and polls:"*

The principles underpinning the conduct of elections, including representation arrangements, set out in Section 4 of the Local Electoral Act 2001, are:

- fair and effective representation for individuals and communities;
- a reasonable and equal opportunity for all qualified persons to;
 - cast an informed vote;
 - nominate one or more candidates;
 - accept nomination as a candidate.
- public confidence in, and understanding of, local electoral processes through;
 - a regular election cycle;
 - the separation of elections from the elected body freedom of choice and secrecy for voters;
 - transparency in electoral systems and voting methods and;
 - certainty in electoral outcomes impartiality for resolving disputed elections and polls.

Discussion of these principles is included in the guidelines issued by the Local Government Commission, particularly in relation to:

- community of interest;
- effective representation;
- fair representation.

During the review process it will also be necessary to consult with the Auckland Regional Council, the Waitemata District Health Board and the Waitakere and Portage Licensing Trusts as changes in one may affect the others.

LEGISLATIVE REQUIREMENTS

System of Election

The Local Electoral Act 2001 provides for two systems (Section 5): First Past the Post (FPP) (Section 5A) and Single Transferable Vote (STV) (Section 5B). First Past the Post is currently used by Waitakere City Council. District Health Boards are elected under STV.

A Local Authority may no later than 12 September two years before a Triennial General Election resolve to change the system of elections for at least the following two Triennial General Elections. Accordingly if the Council wish to change to the STV system with effect from the 2007 Triennial General Local Authority Elections (hereafter referred to as Elections), a decision needs to be made by 12 September 2005 (Section 27).

Whether the Council changes or not, it must, however, no later than 19 September 2005, give public notice of the public's right to demand a binding poll on the issue. Support from at least 5% of the registered electorate, is required to enforce a poll.

The public notice will advise the public's right to have a poll:

- To see if there is support for a change to STV (if the Council decides to stay with FPP);
- To reverse the decision if the Council does decide in favour of a change to STV,

If a poll is held in Waitakere City, a successful poll held before 21 May 2006 will take effect from the 2007 Elections and also apply in 2010. A successful poll held after that time, will take effect for the 2010 and 2013 Elections.

The Council itself may choose to have a poll, and if this is held before 21 May 2006 the outcome will take effect at the 2007 Elections. If the poll is held after 21 May 2006, the outcome can only take effect from the 2010 Elections.

Maori Representation

Amendments to the Local Electoral Act 2001, provide for the Council to establish Maori Wards, provided that there are sufficient numbers of Maori electors. The number of directly elected Maori Councillors would be dependent on the ratio of Maori voters to general voters. The definition of Maori electors are voters of Maori descent who have opted to enrol on the Maori Electoral Roll.

If the Council wants to provide for the establishment of Maori Wards at the 2007 elections any resolution to that effect must be made no later than 23 November this year. If such a resolution is made later than that, it will only take effect from 2010 elections.

Again a poll is possible, whether initiated by the public (at least 5% of enrolled electors) or by the Council. A poll may be demanded at any time, but if a valid demand for the poll is received before 28 February 2006, the outcome of the poll will be effective for 2007 and 2010. If a valid demand for a poll received after 28 February 2006, the outcome will be effective for the 2010 and 2013 elections.

If the Council makes a decision to introduce Maori Wards it must, within 7 days, give public notice of the public's right to demand a poll. This is further emphasised by the provision that if the Council decision is made by 23 November the notice is to be given no later than 30 November.

Conduct of Polls

If polls are to be held on both the voting system and Maori Wards it would be more cost effective to hold both at once. The estimated cost of a poll would be around \$200,000.

The Council itself may call for a poll on this issue and such a poll is also required to be held no later than 21 May 2006, for it to take effect at the 2007 elections, failing which it can only take effect in 2010.

The Review Process

Membership and basis of Election

Mayor and Council (Sections 19A, 19B and 19C)

The governing body of every Council is to consist of no less than 6 and no more than 30 members (Councillors) including the Mayor (Section 19A). The Mayor must be elected at large, (Section 19B).

The remaining Councillors may be elected at large or by Ward or, by a mixture in which some Councillors are elected at large and others by Ward.

(The "mixture option" was introduced with the Local Electoral Amendment Act 2002 and used in 2004 by the Kapiti Coast District and the Tauranga City Councils.)

Community Boards (Section 19 F and Section 19G)

Community Boards must have between four and twelve members. Councillors appointed to Community Boards must constitute less than half of the Board's total membership. Where there are Wards, Councillors must be appointed to the Community Board for the Ward in which they were elected (Section 19 F). Another new option under the Local Electoral Amendment Act 2002, is to subdivide Community Boards into Electoral Subdivisions represented by one or more members. These Electoral Subdivisions are the equivalent of Wards at Community Board level.

A further option, where a Community Board is comprised of two or more whole Wards, of the Council, Council is to elect the Members from these Wards (Section 19G). The Wards of Council will also be Wards of the Community Board.

Thus, the options available for the election of Members of a Community Board are:

- at large;
- by Electoral Subdivision (where the community is subdivided for electoral purposes);
- by Ward (where the Community Board includes two or more complete Wards).

There is however, no provision for any combination of these systems of election.

Review of Representation Arrangements of Territorial Authorities (Section 19H)

As already stated, Councils must undertake a review at least every 6 years, with the first Review (under the Local Electoral Act 2001) to be undertaken either in 2003 or 2006. In addition, a review must be undertaken, whether it is due or not, before a Triennial Election at which Maori Wards are in place for the first time.

The review is required to determine the method of election of all the Members (Councillors) of the Council as outlined above: If a decision is made to introduce Maori Wards, this has to be taken into account.

In order to facilitate the decision on the method of election, the Review is also required to determine:

- Election at large and how many Members it is proposed to elect by this method.
- Election by Wards, which will also require a decision indicating the name and boundaries of each Ward and the number of Members to be elected by each Ward.
- In the case of a "mixture" between at large and by Ward, the number of Members to be decided by each system.

Review of Community Boards (Section 19J)

Each review representation arrangements for the Council, it must also review them for Community Boards (even if that Council doesn't have any Community Boards). This review must use the principle of fair and effective representation, to determine if there should be Community Boards and if so, their nature and structure.

This enables territorial authorities to create, abolish, amalgamate or subdivide Community Boards subject to consultation and review by the Local Government Commission. If the Council resolve to create or retain Community Boards, it must determine:

- The number of Community Boards and their boundaries
- Whether Electoral Subdivisions are required and if so, their names and boundaries
- The number of members and how many are to be elected and how many appointed
- The method of election of Community Board Members.

Fair (Sections 4 and 19V) and Effective (Sections 4, 19T, 19W) Representation

Fair representation is to be achieved by the 10% rule. This means that although the ratio of population to Elected Members may vary from Ward to Ward (or within a Community Board for Electoral Subdivision to Electoral subdivision) this variance may not be greater than 10% above or below the ratio of population to Elected Members of the Council (or Community Board) as a whole.

This applies equally to Members (other than the Mayor) elected at large and those elected by Ward. However, it only applies to Community Boards that are subdivided for electoral purposes, or that consist of two or more whole Wards and the Board Members are to be elected by Ward. It does not apply between different Community Boards within the same Council.

The only exceptions to this 10% rule are for island or isolated communities and there will be a stringent interpretation by the Local Government Commission of "isolated" (Sections 4 and 19V).

Effective representation is to be achieved through the identification of Communities of Interest, in Councils, Community Boards, Wards and Electoral Subdivisions. All electoral boundaries are required to align with statistical meshblocks.

Work is being undertaken by David Mead of Hill Young Cooper Planning Partnership, to identify Waitakere City's Communities of Interest (taking population figures and trends into account).

Public Notices of Proposal (Sections 19K, 19M (1))

The Council's decisions arising from a representation review, must take the form of a resolution. This resolution must include the reasons for any change from previous representation arrangements (Section 19K).

Public notice of the content of the resolutions must be given no later than 14 days after the resolutions are made (except in the year prior to a Triennial Election, when notice must be given no later than 8 September).

Period during which Submissions may be made (Section 19M)

The public notice must include:

- Details of where the full proposals may be inspected;
- Details of the Communities of Interest identified;
- Details of ratio of members to population per Ward or Electoral Subdivision;
- Details of the period during which submissions may be made (not less than one month from the date of the first publication of the notice). In the event that the notice is published on 8 September 2006 this would be 9 October 2006.

All submissions must be acknowledged in writing and all submitters wishing to speak to their submissions will be given the opportunity to do so. All submissions must be heard in public and written submissions must be publicly available (subject to the requirements of the Local Government Official Information and Meetings Act 1987 (Section 19M).

Submissions by Community Boards (Section 19O)

Community Boards have the right to make submissions on representation proposals made by their Council (Section 19O).

Final Decision and Public Notice Calling for Appeals and Objections (Sections 19N, 19O and 19P)

Up to 6 weeks is allowed to consider submissions and give public notice of the Council's decisions on them. Council decisions on submissions are quasi judicial and similar to that of a hearings committee adjudicating on resource consent applications.

With a maximum of 6 weeks for the hearing and consideration of submissions, the latest date for the publication of the public notice, is 20 November 2006. This must include:

- Details of any amendments to the original proposal;
- The reasons for any amendments made;
- The reasons for the rejection of any submissions;
- How the decisions may be appealed;
- the procedure for objections if the Council has amended the original proposal;
- Specify the deadline for submitting appeals and objections to the Council. This must be not less than one month from the date the notice is first published (and in this instance 20 December 2006).

Appeals and Objections by Community Boards (Section 19O)

Community Boards, that have made submissions may appeal to the Local Government Commission on the Representative Review like all submitter, where they are dissatisfied with the final decision of the Council. They may also submit objections where the Local Authority's final decision differs from its original proposal (Section 19O).

Lodgement of Appeals and/or Objections with the Local Government Commission (Section 19Q)

Appeals and objections received by the Council, must be forwarded to the Local Government Commission as soon as possible and (in this instance) no later than 15 January 2007.

The documentation to be forwarded to the Commission is:

- The resolution detailing the proposed representation arrangements;
- any resolution amending the original proposals following the hearing of submissions;
- a copy of the public notice of the Council's decisions after hearing submissions;
- every submission;
- every appeal and objection received by the Council;
- all relevant information held by the Council relating to Communities Of Interest of the district, community, Ward or Electoral Subdivision with which any appeal or objection is concerned.

Determination of Appeals and/or Objections by the Local Government Commission (Sections 19R and 19S)

The Commission will make a quasi judicial finding on all appeals and objections and for this reason will consider the matter afresh (de novo). The Commission may - but does not have to - conduct hearings for this purpose. In the past the Commission has conducted public hearings in the affected territory. The Commission must make its determinations (in this instance) no later than 11 April, 2007 (Section 19R).

The Commission must notify the Council in writing of its decision and the reasons for it. It is also required to give public notice of the decision and reasons. This decision is final and subject to judicial review as to points of law only, but not as to substance (Section 19S, Section 37 and Schedule 5 Local Government Act 2002).

Triennial Local Government Election (Section 10)

The next Triennial Local Government Election will take place on 13 October 2007 (Section 10).

The Role of the Local Government Commission (Sections 28 - 37 Local Government Act 2002)

The Local Government Commission has full legal capacity (Section 29 LGA 02) as well as being a Commission of Enquiry in terms of The Commissions of Inquiry Act 1908 (Section 34 LGA02). It consists of three members appointed by the Minister of Local Government, one of whom must have a knowledge of Tikanga Maori. Its operations are provided for in schedule 4 of the Local Government Act 2002. In addition to hearing representation review appeals and objections, the Commission is empowered to:

- amend re-organisation schemes;
- recommend the granting of city status;
- report to the Minister on Local Government matters generally;
- review the operation of the Local Government Act 2002 and the Local Electoral Act 2001.

The current Local Government Commission comprises:

Grant Kirby (Chairperson)
Gwen Bull (Member)
Sue Piper (Member)

Summary of Lessons learnt from the 2004 Reviews

Key points learnt from the 2004 representation reviews, are:

- start the process early;
- try to reach consensus with interested parties wherever practicable;
- a community will not be considered to be "isolated" merely because it is rural;
- as many Councillors as possible should attend all hearings to avoid decision making by a minority of Councillors;
- the tendency of the Commission's decisions has been to reduce the number of Elected Members (which has a positive effect on remuneration);
- the Commission supports Community Boards and has resisted attempts to abolish them;
- the Commission is in favour of Councils partly elected at large and partly by Ward.

LOCAL GOVERNMENT COMMISSION GUIDELINES

The Commission must, under s19ZI of the Act, issue guidelines for representation reviews.

Fair and Effective Representation

Key Concepts

The key steps in the commission's guidelines for the review process, are:

- identify Communities of Interest;
- determine effective representation (wards/constituencies/subdivisions) for Communities of Interest;
- determine fair representation for each ward/constituency/subdivision of communities.

The Council must determine the appropriate balance between effective and fair representation in terms of statutory compliance and also, by having regard for factors such as the optimal size of the elected Council.

Factors influencing the size of the elected Council (and Community Board/s) will include:

- whether or not Maori Wards are to be established;
- the number of general Wards;
- the basis on which members will be elected ie. all by whole district, all by Wards, combination of whole district and Wards etc.;
- the continuance and number of Community Boards.