

# **Enhancing the 'local' in Auckland's governance**

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Christine Cheyne  
School of People, Environment & Planning  
Massey University  
C.M.Cheyne@massey.ac.nz





## Introduction

The establishment of the Royal Commission on Auckland Governance provided the context for consideration of a model of local or community governance that is innovative and relevant to contemporary realities and challenges. As you know from the programme, I have been tasked with talking on the topic ‘Putting the local back into Auckland’s local governance’. But I have to confess to taking some poetic or other license with my allocated title. Rather than talking about **Putting the local back into Auckland’s local governance** – which assumes that the local has been taken out – I want to talk about **Enhancing the local in Auckland’s governance**. Some will argue, perhaps with some justification, that the local was taken out in 1989. However, I see no point in debating that point. It is more fruitful to consider the positive aspects of what has evolved over the last two decades as there has been much local, national and international learning and lesson-drawing in the sphere of local governance. I am confident that there is a strong desire by the government to build on the strengths of this country’s local governance arrangements as it develops the details of the new arrangements for Auckland’s governance.<sup>1</sup> In my presentation I want to 1) highlight those strengths, 2) remind us why a robust local governance framework is important and how this has been dealt with by the Royal Commission and the government in its high level decisions, and 3) consider the government’s response to the notion of shared governance proposed by the Royal Commission in chapter 16 of its report, and how the proposed Local Boards may assist in enhancing the continuing evolution of strong and effective local government through sharing in Auckland’s governance.

In 2009 we are twenty years on from the significant innovations in local governance that were ushered in with the legislative amendments to the Local Government Act 1974. Those amendments introduced new opportunities for public participation through the annual planning process and also inserted a new purpose of local government into the Local Government Act. In part 1 of my paper I reflect on the past 20 years and the evolution of our system of local government highlighting the developing framework of community governance – a trend that has emerged internationally as the importance of the local has become reinforced by effects of globalisation – a trend sometimes referred to as ‘glocalisation’. There are numerous influences on this trend not the least being the growing awareness, accelerating since the early 1980s, of the global nature of environmental challenges and the need for international action to address such challenges as climate change.

Having sketched the evolution of our local government system in the past two decades, in part 2 of the paper, I then consider the recommendations of the Royal Commission that impact most appreciably on local or community governance. In particular, I wish to comment on the concept of shared governance in Chapter 16, and the provisions for Māori participation. Then I turn to the government’s response as outlined in *Making Auckland Greater* (New Zealand Government, 2009), in particular the proposal for Local Boards.

Recognising that the timeframe is tight for implementing new governance arrangements, I focus in part 3, on three areas where the forthcoming further details and draft legislation implementing the high-level decisions should might fruitfully be focused: (i) the role of the Local Boards; (ii) a short-term strategy to assist in developing fair and effective Māori representation and (iii) the importance of the quality of citizen engagement and accountability by the Auckland Council.

### Part 1: The evolution of community governance 1989-2009

Legislative amendments to the Local Government Act 1974 introduced new opportunities for public participation through the annual planning process and also inserted a new purpose of local

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<sup>1</sup> The term ‘governance’ is used here to refer to an interorganisational network characterised by interdependence between organisations, rather than by hierarchical control (Brugué and Vallès, 2005: 197-198). Goss (2001: 11) defines local governance as “emerging new forms of decision-making at local level which lead to the development of different relationships, *not simply between public agencies but between citizens and public agencies* (emphasis added).

government into the Local Government Act. That purpose stated that the purpose of local government included:

37 K Purposes of local government – The purposes of local government in New Zealand are to provide, at the appropriate levels of local government,—

- (a) Recognition of the *existence of different communities* in New Zealand
- (b) Recognition of the identities and values of those different communities...
- (g) Recognition of communities of interest
- (i) For the *effective participation of local persons in local government* (emphasis added).

This firmly embedded the goal of effective public participation in local authority decision-making recognising that New Zealand a diverse society. A key opportunity for public participation was the requirement to use a special consultative procedure for feedback on the draft annual plan as well as other draft proposals. During the 1990s considerable experience was gained by councils and their communities in this aspect of local/community governance. The expectation that councils would engage their communities was broadened. In 1996 when a longer-term plan, the Long Term Financial Strategy, was introduced, the consultative procedure was also required to be utilised. And it is worth mentioning that requirements for public participation in local authority planning and decision-making are not confined to the Local Government Act. The Resource Management Act 1991 also mandated public participation in resource management decision-making and policy and plan development under that Act. Good practice evolved and was recognised in a major report by the Auditor-General in 1998 (Controller and Auditor-General, 1998).

Local governance was fostered not only through the requirements relating to consultation and public participation but also through the provision for sub-local representation and participation. Community boards exist in 46 of the 73 city and district councils (Richardson, 2008). Created in 1989 as a means of ensuring democratic representation and extending the scope for public participation, have remained flawed in their design and often poorly used and treated by their parent authorities. The number of boards has declined since 1989 despite a trend internationally to devolve more local issues to locally-based organisations.

The Local Government Act 2002 took further steps to strengthen and enhance public participation in local authority planning and decision-making. Section 37K of the 1974 Act was repealed and replaced by section 10 of the 2002 Act thereby introducing a new statutory purpose that also linked public participation to sustainable development, as follows:

The purpose of local government is-

- (a) To *enable local democratic 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 (emphasis added).

In addition, section 14 of the Act set out a number of principles relating to local authorities. These included the following:

- (b) when making a decision, a local authority should make itself aware of, and should have regard to, the views of all its communities; and...
- (d) a local authority should provide opportunities for Māori to contribute to decision-making processes.

The new Act notably did not dispense with the special consultative procedure. However, it seems that there was awareness that, as many policy and academic commentators had observed, the special consultative procedure should be viewed as a statutory minimum and more substantive and diverse modes of citizen engagement were needed (see, for example, Cheyne and Comrie 2002).

The focus of the 2002 Act moved from prescription to good practice. To foster the development of good practice, section 82 of the 2002 Act included a set of consultation principles that highlighted a number of features of meaningful engagement. For example, section 82(f) recognised the importance of councils giving feedback to those in the community who present their views to their council.

Significantly, the new Act required councils to lift their game in relation to Māori involvement in local governance. As well as section 14(d) mentioned above, section 81 explicitly addressed Māori contributions to decision-making and required local authorities not only to establish and maintain processes to provide opportunities for Māori to contribute to the decision-making processes of the local authority, but also to consider how they might build capacity of Māori to contribute to decision-making processes. Moreover, councils were also required to provide relevant information to Māori in relation to both processes for contributing to decision-making and capacity-building. The requirements of this section are indeed expansive and arguably remain only partially fulfilled in many areas.

The new long-term planning framework (identification of community outcomes and preparation of long-term council community plan) further stimulated community engagement in local authority planning and decision-making. The 2002 Act provisions are still relatively ‘young’ – with councils and communities only just now going through the first three yearly review of the first full LTCCPs adopted in mid 2006 – and should be allowed to mature and evolve to play the important strategic planning function that the public sector has adopted from the private sector.

To summarise the argument thus far, New Zealand has been innovative and progressive over the past two decades in opening up new opportunities for public participation in local governance. Indeed, New Zealand’s innovativeness has received international recognition.

There is undoubtedly much room for improvement and further innovation. However, the gains for local governance have been substantial and the strengths have outweighed any weaknesses and contradictions. The task for reform then is enhancement, not rejection, of the fundamentals of the system. Recent independent reviews (namely, the 2008 review of the Local Government Act by the Local Government Commission and the Auditor-General’s 2007 *Good practice guide on local authority decision-making and consultation*) affirmed the current statutory provisions for public participation. Rather than any radical change to those provisions, enhanced public participation was seen as a matter for good practice guidance and training which have often been lacking in this country compared to other places. Good practice guidance, in turn, emerges from the findings of rigorous research. While research can identify misuses and abuses by governments at all levels of participation and consultation, it can also offer rich insights into how the shortcomings can be overcome and also reinforces the theoretical case for local governance and meaningful citizen engagement.

## Part 2: The importance of *local* governance

In the previous section I argued that the establishment over the past two decades of a framework for local governance grounded in the principles of consultation by local authorities and participation by citizens in local authority decision-making has generated important benefits despite the critique that may be made of actually existing participation. The framework that has emerged in New Zealand over the past two decades has been a response to international trends towards increasing recognition of the importance of a range of societal actors (business, citizens, households, the community and voluntary sector) to achieving solutions to complex societal problems. The importance of networks of social actors at the local level is as crucial to local governance as national and international networks respectively are to national and international governance. Local government as the legislatively authorised and democratically elected body at the local level is clearly a primary social actor in local governance arrangements. However, on its own, it cannot deliver the outcomes that a community seeks. It needs to co-ordinate action by other local actors.

In my opening comments I referred to the apparently perverse pattern of intensifying interest in local identities, cultures and places at a time of ever more pervasive globalisation. Despite many social, economic and environmental challenges being experienced globally, in fact effective responses may only develop through local action. When national and international leadership is ineffective or hesitant, local communities and individuals within them may be an important source of action to address global issues. The Rio Earth Summit in 1992 reinforced the need to act locally while thinking globally. As further evidence of the importance of local governance to sustainable development, in some cases (and arguably New Zealand is one such case) it was local government and NGO participants at the Earth Summit that catalysed environmental sustainability in their country.

Despite a body of academic and practitioner literature that questions the so-called ‘new localism’ and the orthodoxy of participation, the counter-evidence in support of enhancing public participation – or, at least, clarifying its legitimate use – has continued to mount (see, for example, Goss, 2001; Boulding, 2008; Beaumont and Nicholls, 2008; Brugué and Vallès, 2005; Klijn, 2008; Crozier, 2008). Governments in many countries continue to seek to expand opportunities for public participation when, on the surface, it would seem much more in their self-interest to limit public participation. Again, I don’t wish to imply that the expanding opportunities are without their limitations. However, the momentum has not diminished. A recent example of contemporary political interest is the White Paper released in the United Kingdom in July 2008, titled, unequivocally (and even somewhat provocatively), *Communities in control. Real people, real power.* The paper refers to a massive evidence base uncovered in an evidence mapping exercise of 45,000 articles in just one field on empowerment.

As was recognised in 1989 and 2002, effective public participation that is a feature of strong local governance is a key element in the checks and balances on local representative democracy, and also contributes to the health of that democracy. Phil McDermott (n.d.) expressed this well when he said:

determination of the larger issues facing a locality should not rest simply in the hands of an unrepresentative and only partially informed elected chamber. Nor should it be left to the discretion of an increasingly specialised and professionalised council executives. ... Without active, informed, and effective participation in the affairs of the local state by a wide range of people, the outlook is for more of the same, weak local democracy, dependent on the will on central government, with which people currently struggle to identify, and prey to the whim of vested interests.

As well as contributing to environmental and other initiatives at the international level, local governance may be ‘training ground’ for prospective community leaders. It is also the vehicle – as recognised by both the 1974 and 2002 Local Government Acts – for reflecting the diversity of communities, and incorporating the concerns of, and building capacity of, groups that would

otherwise be disengaged from politics. How, then, can the reforms of Auckland's governance enhance local governance? We have been given two somewhat different packages by the Royal Commission and the government. In the following sections I outline the distinctive components of these reform packages.

### *The Royal Commission's proposals for local governance*

The Terms of Reference of the Royal Commission noted that, in order to face the challenges associated with the changes induced by global economic, environmental and political forces, as well as local trends such as population growth, Auckland "requires local and regional governance equal to the best in the world." The Royal Commission was tasked with investigating the governance and representation arrangements that best provide leadership for the Auckland and its communities while facilitating appropriate participation by citizens and other groups and stakeholders in decision making processes. Thus, the interface between leadership and public participation becomes crucial.

The Commission identified 2 broad problems: weak and fragmented regional governance and poor community engagement. Time does not permit me to outline the symptoms of these problems (typically these symptoms – including consultation fatigue, low voter turnout – were referred to in submissions). To address these, it recommended a directly-elected mayor, a unitary regional authority with six local councils with strong statutory powers including overseeing the delivery of services such as building consents and local road building and repairs by Auckland Council staff in their areas. As subordinate bodies these councils would be required to develop much closer relationships with their residents, and advocate their area's perspectives to the planners involved in developing the One Plan and their area's needs to the Auckland Council. They would have an important role in place-shaping and would be accountable for spending a block of funds delegated from the Auckland Council. In short, this was a vision of shared governance. It is a vision that I think was both timely and innovative and warrants close consideration as the government formulates the detail of its high-level decisions.

Of particular relevance to local governance was the Commission's recognition that citizen engagement needed to be creative, inclusive and innovative. The Commission's impression was that consultation may be viewed as a "legislative requirement undertaken reluctantly, instead of an opportunity to engage communities in forward planning" (Royal Commission, 2009: 297). The Commission emphasised that consultation is only one of a range of techniques and that there was a need for substantive engagement rather than a compliance focus. In this aspect of its analysis the Commission's findings have been consistent with other recent local government legislative reviews and enquiries (such as the 2008 review by the Local Government Commission referred to in Part 1 above, the Local Government Rates Inquiry in 2007 and the Auditor-General's 2007 report on matters raised in the audits of the 2006-16 LTCCPs). However, none of these reports suggest that the statutory framework be altered. Rather, council practice and culture needs to evolve more rapidly to achieve the intent of the legislation. The Royal Commission used a word that, for me, captured the essence of the challenge, when it spoke to the need for **agility** in community engagement:

Engagement must reach the right people, those with a genuine concern and knowledge about a particular issue. Achieving this requires agility, in terms of how, when, and where local government interacts with its communities (Royal Commission, 2009: 305).

To conclude this section, there is continuing momentum for more meaningful public participation in local governance, reflecting a much broader contemporary public management recognition that the local is important to the global. That means effective local representation, but, equally, effective local participation. These two in fact are closely intertwined. New Zealand local governance reformers who ignore these wider, international trends are likely to find that this country is going against the tide. More problematically, there are likely to be economic costs resulting from reduced social capital and social cohesion. Ultimately, there are consequences for legitimacy of our political institutions with growing political disengagement and further declines in voter turnout. I expect that with the first election for a new directly elected mayor

will be characterised by considerable voter interest and (hopefully) an increased voter turnout.<sup>2</sup> Whether this will be sustained is doubtful and may depend on the style of political leadership and electoral system. The use of proportional representation would be a further stimulus to voter turnout, in theory in particular turnout of Māori voters, Pasifika voters and voters of other ethnic groups.

### **Part 3: From high-level to detail – enhancing the ‘local’ in Auckland’s governance**

#### ***Government response: Making Auckland Greater***

The government agrees that there should be a unitary authority<sup>3</sup> at the regional level with a second tier of Local Boards. The six local councils with dual member wards recommended by the Royal Commission were rejected on the grounds that they would result in unnecessary and costly duplication of service delivery, and would be too large to allow effective grassroots community representation. The government’s view is that 20-30 Local Boards would better reflect communities of interest and be more closely connected to their communities than the Royal Commission’s ‘local councils’.

The Local Boards are intended to

provide for strong community representation and the ability for residents and ratepayers to influence decision-making. ... [They] will have prescribed roles and functions, but will not replaced the service delivery structures that will be managed by the Auckland Council (New Zealand Government, 2009: 11).

In remarks posted on the Prime Minister’s website on 7 April the Minister of Local Government (2009b: n.p.) expressed the government’s intentions for local governance in Auckland thus:

The new system for Auckland governance is much simpler, more co-ordinated and will provide for community representation at grassroots level. The Local Boards will have prescribed roles and functions, but will not replicate the service delivery structures that will be managed by the new Auckland Council....

The Boards will provide the ability for residents and ratepayers to influence decision making, while the Council will fulfil the functions that are most appropriately managed on a regional basis.

Whether it be through the Mangere or Henderson Board, the Pukekohe or Papakura Board, the Waiheke or Devonport Board, local communities need to be able to manage local issues and express their identities. That is what makes Auckland special. Reflecting their geographic position, the smaller communities of Great Barrier and Waiheke Islands will each have Local Board representation.

A recently released Cabinet paper dated 3 April notes that the proposed Local Boards will not be separate legal entities and cannot raise their own revenue or hire staff. They will have an advocacy role and channel local input into the Auckland Council’s plans. They will be able to develop local policies for purely local issues (e.g. dog control, liquor licensing and graffiti control)

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<sup>2</sup> In the UK since 2000 there has been increasing turnout in elections for the Mayor of London but it may not be appropriate to claim evidence of a sustained new level of voter turnout. Moreover, this might not be replicated in New Zealand where the proposed elected mayor’s powers are not as great and where direct election of mayors has existed for some time.

<sup>3</sup> The Auckland Council would comprise 20 elected members, with eight elected at large and 12 elected in single member wards.

and petition Auckland Council for additional services funded by a targeted rate for the local area, a local rate rise or reprioritisation of projects for their area.

At first glance this seems a **somewhat limited terms of engagement for the Local Board members and the residents they represent**. The government's high-level decisions to date on Auckland governance acknowledge the vital role that Board members will have in engaging people in their area. That engagement should encompass any aspect of community well-being that residents consider to be critical for their area. New Zealand's local government legislation recognises the valuable role that local government has in promoting community well-being – both in terms of network infrastructure and the increasingly important community infrastructure. The decisions of the Auckland Council will be sustainable to the extent that they address the needs and aspirations of the diverse communities within the region. The statutory framework now being developed by the government **should establish a key role for Local Board members in acting as a conduit of information between the Board and the Auckland Council**. It should ensure that the lessons are learned from Auckland's experience of community boards to date (see Richardson, 2008 and Royal Commission, 2009, para 11.42) and that the Local Boards have adequate delegated powers.

Surprisingly given the National government's decision to retain the Maori Parliamentary seats, the Royal Commission's well-researched recommendation of three Māori seats was rejected. The reason given for rejecting the recommendation of three Māori seats was that there was a provision for Māori representation in the Local Electoral Act 2001. I would argue that the reason is not compelling and indeed the logic is flawed given that the Local Electoral Act provisions have not been effective in securing fair and effective Māori in local government and given the demographic characteristics of Auckland region.

More positively, a recent Cabinet paper noted that a poll to determine the level of support for Māori seats could be run in conjunction with the 2010 local elections. A report to Cabinet was due yesterday (27 April) on how the governance arrangements might incorporate the perspective of local iwi as well as the perspective of Pacific and other ethnic perspectives. The government has appropriately recognised the need for governance to be inclusive of Māori and the diversity of ethnic groups. The task now is how to achieve that in the short-term. Clearly, fair and effective representation for Māori requires innovation in our representation structures and participatory processes.

The status quo in local government – the option of Maori wards/constituencies – has not significantly improved Māori representation for reasons that are quite obvious. On the other hand, there is clear evidence that the provisions for Māori representation in Parliament (Māori i seats, Māori electoral roll and MMP electoral system) have combined to significantly enhance fair and effective Māori representation and thus brought considerable benefits to Māori in terms of government responsiveness. Since the 1989 legislative amendments there has been a growing evidence base from academic, legal and other research that demonstrates the shortcomings of current arrangements for Maori participation in local governance. Based on this evidence base, I would suggest that a poll in 2010 is unlikely to achieve the fair and effective representation that is urgently needed. Rather than conduct a poll later in 2010, the outcome of which may be predictable, the **principles that apply for Parliamentary elections (i.e. wards/constituencies for Māori electors) should be applied at the regional level in Auckland on an interim basis** (for example, for the next two local authority election) and then be reviewed.

Ultimately, the specific mechanism for achieving Māori representation is less important than achieving a more satisfactory outcome in the short-term than the current level of representation. Once there is clear evidence that Māori are contributing to decision-making and fair and effective Māori representation has been achieved in the shorter term, the longer term arrangements (whether there is a continuing need for Māori wards/constituencies) can be reviewed.

As well as having a somewhat broader mandate than that suggested in the government's proposals, the proposed Local Boards must be mandated to undertake effective community engagement on behalf of the Auckland Council and ideally there should be some legislative principles if not more prescriptive provisions to ensure that the Auckland Council incorporates the views of Local Boards into its decision-making. The conventional form of consultation has long been recognised as needing to be supplemented by other forms of engagement and this now needs to be incentivised through more proactive use of other mechanisms such as transparent and formalised joint working arrangements with residents, business, community and voluntary sector organisations (especially social and environmental groups), deliberative forums, culture-specific engagement, and so on. The strengths of the current statutory arrangements are in their openness and transparency and recognition of the nexus between representation and participation. In establishing the unitary Auckland Council and the Local Boards the government has a prime opportunity to draw on the Royal Commission's analysis (grounded as it is in community engagement through the submissions, hearings, hui and other deliberations) to harness the strengths of the current system for the new Auckland governance structures and processes and develop a more sophisticated interactive and inclusive governance for the region and at the sub-regional level. The quality of engagement is vital to ensure a representation deficit does not result from the abolition of the existing territorial authorities, regional councils and community boards, and the resultant representation ratio. However, quality engagement by the Local Boards will be pointless if the results of that engagement are not properly incorporated by the Auckland Council into its planning and decision-making processes.

## **Conclusion**

While the Royal Commission's preferred governance structures may not be adopted, based on my earlier two arguments (about the evolving nature of New Zealand's local governance and international trends, I would argue that it is still possible for, and indeed imperative that, the government's model of Local Boards incorporate features to harness the benefits of shared governance.

The government's imminent decisions that translate its high level decisions into new structures and processes – where it departs from recommendations of the Royal Commission – are now of critical importance.

As I noted in my opening remarks, the report of the Royal Commission provides a vision of shared governance that is innovative and forward-looking, as well as timely. Contemporary global, national and local trends mean that the institutions and processes for governing a sustainable city have become an urgent priority. Luhde-Thompson (2004: 485) has described this as follows:

The art of 'governing sustainable cities' is thus to create competent local governments that, in interaction with a highly responsible and responsive civil society, apply a form of governing that brings about the most sustainable solutions.

New Zealand has a distinctive form of local governance reflecting the statutory framework that has evolved since 1989. Arrangements for engagement of communities generally, and Māori in particular, were appreciably strengthened in the statutory framework for local governance that emerged with the 2002 Act.

Though distinctive, the evolution of New Zealand's local governance arrangements has been influenced by broader, international trends in western liberal democracies which have sought to strengthen public participation in local government planning and decision-making. Thus, in the second section I briefly presented the theoretical case for local governance.

Moore and Hartley (2008) highlight the importance of governance innovations that promote justice and the development of a society as well as their efficiency and effectiveness in achieving collectively established goals. While far from perfect, and indeed many of its constituent

elements (such as the mechanisms for public participation and the option for community boards) can be more explicitly developed and promoted, the existing form of local governance provides a solid foundation on which to build robust institutions. The government intends to strengthen community representation and seeks more engaged communities. These are important goals that I wish to affirm as integral to local governance. Without these goals being achieved Auckland will not become greater. Worse it is likely to become less competitive internationally as quality of life is likely to be compromised. Meaningful engagement and inclusive decision-making will then provide all Auckland's residents – and its future ones - citizens with the opportunity to shape their lives and enjoy justice and community well-being.

I well appreciate the value of moving swiftly to implement changes to Auckland's governance. However, indecent haste will not provide a durable set of arrangements that should be the legacy of this government's reforms. The Commission's recognition of the importance of shared governance, fair and effective Maori representation and meaningful engagement between the citizens of the region and the Auckland Council via local structures can and should, I would argue, be incorporated into the more detailed designs that will flow shortly from government's high-level decisions.

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