

# Regulatory Impact Statement: Proposal to remove membership requirement on Auckland Council

## Coversheet

Purpose of Document	
Decision sought:	<i>This analysis and advice has been produced for the purpose of informing key policy decisions to be made by Cabinet.</i>
Advising agencies:	<i>The Department of Internal Affairs</i>
Proposing Ministers:	<i>Minister of Local Government</i>
Date finalised:	<i>7 October 2021</i>
Problem Definition	
<p>The statutorily fixed membership of Auckland Council’s governing body is incompatible with the representation review framework under the Local Electoral Act 2001 (LEA 2001) and creates a barrier to achieving the objectives of that framework in terms of fair representation of electors, effective representation of communities of interest, and realistic choices about separate Māori electoral representation.</p>	
Executive Summary	
<p>Under the LEA 2001, local authorities are required to ensure that their representation arrangements provide for the fair representation of electors, and effective representation of communities of interest. This is achieved by ensuring all votes are of approximate equal value and communities of interest are not split between electoral subdivisions.</p> <p>The LEA 2001 allows territorial authorities and regional councils to alter the number of members if it will help them meet the fair and effective representation requirements. For regional councils the limit is between 6 and 14 members, for territorial authorities the limit is between 5 and 29 members.</p> <p>When several Auckland councils were merged and Auckland Council was formed in 2010, the Local Government (Auckland Council) Act 2009 (the Auckland Act) fixed the membership of the governing body of Auckland Council at 20 members plus the mayor.<sup>1</sup></p> <p>The rigid prescription of the number of councillors Auckland Council must have is now hampering Auckland Council’s ability to meet its statutory requirements to provide for fair representation of electors and effective representation of communities of interest. It is also creating a barrier to improving Māori representation on Auckland Council.</p> <p>Government intervention is required to amend the legislation governing Auckland Council to enable Auckland Council to provide for fair and effective representation.</p>	

<sup>1</sup> Auckland Council is a unitary authority which means it is a territorial authority that has the responsibilities, duties and powers of a regional council.

There are 4 options proposed in this RIS:

1. Status quo
2. Remove the 20-membership requirement from the Auckland Act and align with the numbers allowed in the LEA 2001 of between 5-29 councillors (preferred option)
3. Remove the 20-membership requirement from the Auckland Act and leave the number of councillors to be decided solely by the representation review process and its statutory criteria
4. Remove the 20-membership requirement from the Auckland Act and set a flexible range for Auckland Council that is different to what is in the LEA 2001.

The analysis of options has focused on criteria that would provide Auckland Council with the ability to meet the “fair” and “effective” statutory requirements, as well as remove barriers to Māori representation. The criteria also focus on giving Auckland Council the same ability to respond to requests for change as other local authorities have.

The Department has engaged with Auckland Council on this problem and the position and views of Auckland Council have been factored into the criteria used to analyse options. The position of Auckland Council as set out in this analysis is that of the current governing body. However, that position has not changed since 2015 when this issue was first raised.

Based on the analysis of options against the criteria, the preferred option (Option Two) is to remove Auckland Council’s 20-membership requirement and instead introduce the same membership limits as other territorial authorities (under the LEA 2001). This option will be reflected in the Cabinet paper.

While Option Three would provide Auckland Council with the greatest flexibility to meet the fair and effective representation requirements under the LEA 2001, this option is not supported by Auckland Council whose views have been factored into the analysis of options.

The preferred option would remove the barriers to Māori representation. The Independent Māori Statutory Board (IMSB) supports removing the barriers to Māori representation but has expressed some concerns that the role of Māori wards could be diluted if Auckland Council increases their membership by too much.

Engagement on the policy issue has been targeted, and residents of Auckland Council have not been publicly consulted as part of this work, but we are aware there is support for removing the restriction on the number of councillors Auckland Council can have.

Any increase in the number of councillors will not lead to an increase in costs for Auckland Council or its residents. The Remuneration Authority has advised that it is unlikely that the “governance pool” (funded by the council) will be increased to account for the additional salaries. This does mean that salaries are likely to decrease for Auckland Council councillors should additional councillors be introduced; however, this situation is not unique to Auckland Council.

### **Limitations and Constraints on Analysis**

The solution to the identified problem needs to be made as an amendment to the Auckland Act.

Auckland Council has expressed a preferred option to address the problem identified. This option is based on the position of the current governing body, but it is a view that has been held for several years since this problem was first identified. The Department has been

engaging with Auckland Council in good faith and has therefore factored in Auckland Council's position into its criteria which has been used to analyse the options.

The analysis on the options has assumed that by removing the restriction on the number of councillors for Auckland Council that fair and effective representation will be improved. However, in practice there is often a tension between the tests for effective and fair representation, and even with the preferred option it may not satisfy both tests perfectly.

The Department has engaged in targeted consultation with officials from Auckland Council. In turn, officials have been engaging with elected members from Auckland Council, and members of the IMSB. Auckland Officials have relayed this information back to the Department to help refine our analysis. The Department has also engaged with the Local Government Commission. We acknowledge that this targeted consultation is limited and may not reflect all the views of Auckland residents.

Our understanding of the policy rationale for the status quo is limited. The Government of the day agreed to 20 councillors following the release of the Royal Commission report. Although the Royal Commission recommended that there be 23 councillors (including three Māori wards) the Government at the time did not agree to establish Māori seats at the governing body level. The report from the Auckland Governance Legislation Committee<sup>2</sup> did not discuss the rationale for limiting the number of councillors to 20. However, the minority view did express concern that 20 councillors was insufficient.

### Responsible Manager

*Richard Ward*

*General Manager*

*Policy and Operations*

*Department of Internal Affairs*



19/10/2021

### Quality Assurance (completed by QA panel)

Reviewing Agency: Department of Internal Affairs

Panel Assessment & Comment: The panel considers that, on balance, the information and analysis summarised in the RIA meets the quality assurance criteria.

The RIA clearly explains the history and context of the policy problem using plain English and is relatively concise given the need to cover that content. It identifies and describes the options that the context allows. Assumptions and limitations and uncertainties are identified and the analysis against the stated criteria is balanced, although this reveals that the case for the preferred option is only marginally stronger than for some other options. The RIA notes that direct consultation has been limited to Auckland Council officers and has relied on this to indirectly capture the views of Auckland council elected members, the Independent Māori Statutory Board, and Auckland citizens.

<sup>2</sup> This Committee was established in 2009 to consider legislation concerning the new governance of Auckland.

## Section 1: Diagnosing the policy problem

### What is the context behind the policy problem and how is the status quo expected to develop?

**Auckland Council is the only council in New Zealand with a legislatively fixed number of governing body members**

1. In 2010, Auckland Council began operating. This new Council combined the functions of the previous regional council and the region's seven city and district councils into one "super city". Auckland Council was created after a Royal Commission was established to investigate the local government arrangements of Auckland. The Royal Commission recommended a reorganisation to maximise the current and future wellbeing of the region and its contribution to national prosperity.
2. The Local Government (Auckland Council) Act 2009 (the Auckland Act) established Auckland Council which included:
  - I. a mayor with enhanced powers;
  - II. 20 governing body members; and
  - III. local boards.
3. The Local Government Commission (the LGC) was tasked with deciding the number of wards and, the number of local boards. The LGC decided on 13 wards, and 21 local boards with between five and nine members elected to each board (149 local board members in total).
4. Section 8(1) of the Auckland Act set the number of councillors at 20. The LEA 2001 gives other New Zealand councils more scope to determine their size. The LEA sets the range of members of the governing body of a territorial authority at between 6 and 30, including the mayor. For regional councils the membership range is between 6 and 14.<sup>3</sup>

### The requirement for effective and fair representation

5. The LEA requires local authorities to provide for the 'effective representation of communities of interest' and 'fair representation of electors'. This is achieved by local authorities reviewing their representation arrangements at least once every six years. For all councils (but excluding Auckland) this includes a review of the number of members of the council's governing body.

#### *Effective representation of communities of interest*

6. Effective representation means communities of interest should be represented by the same councillor or councillors, rather than being divided between multiple wards. Disparate communities of interest should not be grouped together in a single ward. For Auckland it also means that, so far as practicable, ward boundaries should coincide with local board boundaries.
7. "Communities of interest" is not defined in the LEA and may mean different things to different people. The LGC issues comprehensive guidelines to help territorial or regional councils understand what communities of interest can mean.

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<sup>3</sup> Auckland Council is a unitary authority which means it is a territorial authority that has the responsibilities, duties and powers of a regional council.

8. Territorial authorities use these criteria to determine what type of representation arrangements would provide the most effective representation for their communities, including whether councillors should be elected at large, in wards, or a mixture of both, and where any ward boundaries should be located.
9. The LGC was responsible for determining ward and local board boundaries for Auckland Council in 2010. Due to Auckland's population size and the fixed number of governing body members, the LGC focused primarily on not splitting communities of interest between wards, rather than keeping disparate communities of interest apart.

#### *Fair representation*

10. Fair representation is defined in the LEA as requiring the ratio of councillors to constituents (known as the representation ratio) of each ward to be no more than 10 per cent greater or smaller than the representation ratio of the territorial authority as a whole. The broad intention of this provision is to ensure that the value of a vote in any given ward is roughly the same as a vote in any other ward in a council area.
11. The LEA provides for exceptions to the requirement for fair representation if compliance with the 10 per cent threshold would significantly reduce the effective representation of communities of interest. This may occur if the ratio would require dividing a community of interest into two or more wards. Exceptions are also permitted, if required, to effectively represent an isolated community. Any proposals that do not comply must be referred to the LGC for review.

#### *Effective and fair representation are equally important*

12. The LEA makes it clear that fairness and effectiveness are equally important when undertaking a representation review. In practice, there is often tension between the tests for effective and fair representation, and the identified options in a representation review may not satisfy both tests perfectly. However, the assessment of one requirement will help inform assessment of the other in order to reach a balance between the two.
13. The fixed membership of Auckland Council constrains the Council's ability to comply with both the fair and effective representation requirements compared to other councils. Other councils are able to achieve both effective and fair representation without significant trade-offs due to the ability to vary the total membership on their council if required. This is something Auckland Council is unable to do; it must instead meet its fair and effective legislative requirements within the 20-councillor limit.

#### *Auckland Council first identified issues with its fixed membership requirements in 2015*

14. To ensure the new representation arrangements had a chance to bed in, the Auckland Act required Auckland Council to carry out its first representation review after three elections in 2018 (rather than after two elections as is the norm). In 2015, Auckland Council identified that the fixed number of councillors could become a concern during their 2018 representation review. The governing body decided to seek legislative change to enable it to review the number of governing body members. Auckland Council brought the matter to the attention of the then Minister of Local Government, however there was no appetite to address the matter at that time.

#### **Auckland Council does have a high councillor to constituent ratio, but this is offset by local boards**

15. The fixed membership requirement means Auckland Council has the highest councillor to resident ratio in New Zealand by some margin. Auckland has an overall ratio of one

councillor to 85,873 constituents. The council with the next highest ratio is Christchurch City Council with a ratio of 1:24,661. Wellington City Council has a ratio of 1:15,428. New Zealanders, in general, are under-represented at a subnational governmental level when compared to overseas jurisdictions.<sup>4</sup>

16. Although Auckland Council has a high councillor to resident ratio, this is not considered a significant issue by residents as local boards are able to identify and communicate the views of local people up to the governing body. Local boards deal with community issues and are used to relaying residents' concerns up to the governing body.
17. The governing body and the local boards share the decision-making responsibilities of Auckland Council, with the governing body focused on region-wide strategic decisions and local boards representing their local communities and making decisions about local issues, facilities and activities.
18. Auckland Council is currently the only council in New Zealand with local boards, although the option of including local boards as part of a unitary authority's structure, through a reorganisation proposal, was extended to all councils in 2014.

#### **The fixed membership of Auckland Council creates an additional hurdle to establishing separate Māori wards**

19. While the Royal Commission recommended three Māori seats on Auckland Council, the Auckland Act did not provide for guaranteed Māori representation. The Auckland Governance Legislation Select Committee thought the decision should be left to Auckland Council to make, if there was community support for this move.
20. The barrier the 20-councillor limit placed on Māori wards may have been unintentional. The Cabinet decision [CAB Min (09) 30/9 refers] not to provide for Māori wards in the Auckland Council representation noted that the LEA provides a process for local authorities to establish Māori wards. However, the decision did not appear to consider the additional difficulties the fixed membership requirement would present to this process, including the need to remove a general councillor and significant boundary changes that could potentially split up communities of interest.
21. The LEA provides for councils to divide their district into one or more Māori wards for electoral purposes. All other councils in New Zealand can do this by either adding an additional member(s) or removing a general councillor(s). This compares to Auckland which can only remove a councillor(s) to introduce a Māori ward(s). The LEA 2001 formula for calculating Māori representation is based on the Māori electoral population as a ratio of the electoral population, relative to the number of available seats on the council. When deciding where ward boundaries are situated, the council must have regard for matters such as communities of interest and iwi affiliations.
22. The Auckland Act does provide for Māori participation through the Independent Māori Statutory Board (IMSB). The IMSB is an independent body whose purpose is to assist the Council to make decisions, perform functions, and exercise powers by promoting cultural, economic, environmental, and social issues of significance for mana whenua groups and Mataawaka of Tāmaki Makaurau. Two IMSB members sit, with voting rights, on any of Auckland Council's committees that deal with the management and stewardship of natural and physical resources.

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<sup>4</sup> The Governance of Auckland: 5 years on. Report commission by The Committee for Auckland  
[https://thepolicyobservatory.aut.ac.nz/data/assets/pdf\\_file/0017/69020/Governance-of-Auckland-5-years-On-Full-report.pdf](https://thepolicyobservatory.aut.ac.nz/data/assets/pdf_file/0017/69020/Governance-of-Auckland-5-years-On-Full-report.pdf)

## What is the policy problem or opportunity?

23. The statutorily fixed membership of Auckland Council's governing body is incompatible with the representation review framework under the LEA and creates a barrier to achieving the objectives of that framework in terms of fair representation of electors, effective representation of communities of interest, and realistic choices about separate Māori electoral representation.

### **Auckland Council's first representation review identified issues with their ability to provide for fair and effective representation under its fixed membership requirements**

24. In 2018, Auckland Council reviewed its representation arrangements ahead of the 2019 elections and noted major concerns with the ability to provide fair representation. Auckland Council has said, that if it had had the ability to add at least one extra member in 2018, there would still have been some boundary changes but the flow-on effects to other wards would have been much less.

25. The 2018 review highlighted a significant issue with the Waitemata and Gulf ward, being 43% over-represented compared to the average for the region. The Waitemata and Gulf Ward had been allocated one councillor by the LGC in 2010. Between 2010 and 2017, the representation ratio of the Waitemata and Gulf Ward had increased from 10.2 per cent greater than the Auckland ratio as a whole, to 43.7 per cent greater. At the other end of the scale, the Rodney Ward had a representation ratio that was 22 per cent lower than Auckland's average ratio. The imbalance in the representation ratios between wards means that Rodney residents effectively have more representation than voters in other wards like the Waitemata and Gulf ward.

26. In order to bring the representation ratio to within the 10% threshold, Auckland Council had to change the boundaries of several wards. As the LGC noted when it upheld Auckland Council's proposed changes, making changes to ward boundaries to deal with non-compliance can impact on neighbouring wards, either for their compliance or for community of interest issues. This can end up creating a domino effect.

27. In their determination<sup>5</sup>, the LGC noted that it had previously recommended to the Minister of Local Government that consideration should be given to whether the Auckland Act should be amended to give the Auckland Council more flexibility over their representation matters.

28. The LGC noted that all other councils can change councillor numbers through the representation review process (subject to limits), with a public right of appeal to the Commission. The key risk for Auckland Council, noted by the LGC is that it cannot respond as easily as other councils to patterns of growth and changes to communities of interest.<sup>6</sup>

### **The fixed membership requirement amplifies issues caused by differing ward and local board boundary processes**

29. Auckland Council must consider changes to its ward boundaries through the normal representation review process set out in the LEA. But if the Council wants to change the boundaries or numbers of its local boards, it must apply to the LGC for a formal local

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<sup>5</sup> <http://www.lgc.govt.nz/assets/Uploads/Auckland-Council-determination.pdf>

<sup>6</sup> Enhancing Local Government for Aucklanders, Recommendations to Auckland Council. March 2018. <http://www.lgc.govt.nz/assets/Uploads/Enhancing-Local-Government-for-Aucklanders-Recommendations-for-Auckland-Council.pdf>

government reorganisation using the multi-stage statutory process that is used for investigating council reorganisations (including amalgamations).

30. While local boards and wards both aim to identify communities of interest, the intention of requiring separate processes for setting wards and local board boundaries is to protect local boards' statutory independence, recognise their decision-making powers, and reflect the control local boards have over assets and services for their community. Wards focus on communities of interest for representation, while local boards focus on communities of interest for decision-making.

*Auckland's ward and local board boundaries will get increasingly misaligned over time*

31. As part of the requirement to provide for effective representation of communities of interest, the LEA requires that ward boundaries should coincide with local board area boundaries as far as practicable. The extent to which ward and local board boundaries are not aligned can increase community confusion and administration challenges, as well as increasing the cost and complexity of electoral processes.
32. As Auckland Council carries out its representation reviews, and as the region continues to grow and urbanise, the Auckland Act's fixed membership requirement will make it increasingly difficult to adjust ward boundaries to reflect changing communities of interest without further compromising the fair representation requirement. Auckland's growth has been unevenly spread across the city, which has had an impact on the fairness of the current representation arrangements. Increasing the number of councillors would allow Auckland Council to address increasing ward and local board boundary misalignment. Auckland Council has not expressed any interest in increasing the number of Local Boards.
33. The original intent of this work was to also align the two processes and allow local board boundaries to be changed as part of the representation review process. Officials at Auckland Council advised that significant local board boundary changes should continue to be part of the reorganisation process as it is overseen by the independent LGC as Local Boards would not want the Council to be involved. There is a proposal (not subject to this RIS) that will allow Auckland Council to make minor changes to local board boundaries if it will help maintain alignment between local board and ward boundaries.<sup>7</sup>
34. Increasing the member limit and allowing Auckland Council to make minor boundary changes as part of the representation review should go some way to helping Auckland Council align their ward boundaries with local board boundaries as required to provide for effective representation of communities of interest.

**Auckland Council continues to struggle in creating a Māori ward under the current legislation**

35. The fixed membership requirement means that Auckland Council has less ability to consider using the LEA provisions to create a Māori ward than other councils in New Zealand. Under the current legislation, if a governing body member was to be elected through a Māori ward, the number of general-ward members would need to decrease to 19. Under the current situation councillors are not incentivised to introduce a Māori ward, as they are personally affected by the need to reduce the number of councillors to accomplish this.

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<sup>7</sup> It is proposed to allow Auckland Council to make minor changes to Local Board boundaries during the representation review. The process only applies when a maximum of 1% of the population of the smallest Local Board area is to be transferred between Local Board areas.



*A recent law change has made it easier to create Māori wards*

36. In February 2021, the Local Electoral (Māori Wards and Māori Constituencies) Amendment Act 2021 was passed that removed all mechanisms from the LEA for binding polls to be held on the establishment of Māori wards.
37. Since the poll provision was removed, it is now easier to introduce Māori wards. Auckland Council has resolved to introduce a Māori ward but only if the limit of 20 councillors is lifted. This is because it would otherwise be at the expense of a general councillor which would trigger significant boundary changes.

### **Stakeholder engagement**

#### *Independent Māori Statutory Board*

38. The Department engaged with the IMSB through officials from Auckland Council. The IMSB said it supports increasing Māori representation through the consideration of Māori wards, while also keeping the IMSB as an effective method to ensure Māori participation on the Council.
39. During a separate consultation exercise in August 2021,<sup>8</sup> the IMSB submitted on its concerns about increasing the size of Auckland Council and its potential to dilute the impact of Māori wards. It noted that any increase in general wards needs to be considered and aligned with the principles of Te Tiriti to ensure the intent of any reforms is in improving Māori participation in local government.

#### *Auckland Council*

40. The Department engaged with Auckland Council through Auckland Council officials. As previously noted, Auckland Council has been trying for several years to have the 20-councillor restriction removed and this was well known to the Department. Options were presented to officials on removing the councillor restriction, but it was made clear that councillors' preference was still to have the councillor cap removed and the council be subject to the same requirements as other councils in New Zealand in being able to choose between 5-29 members excluding the mayor. It was also important for them to have the councillor restriction removed to help align local board and ward boundaries because they represent the same communities.

#### *Residents of Auckland Council*

41. The Department did not do any public consultation on removing the councillor cap on Auckland Council. Auckland Council has previously stated that it has received several public submissions in support of removing the councillor restriction when undergoing their last representation review in 2018.

### **What objectives are sought in relation to the policy problem?**

42. The outcome sought is to enable Auckland Council to be able to provide for fair representation of electors and the effective representation of communities of interest

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<sup>8</sup> The Department conducted public consultation between July and August 2021 on possible changes to Māori ward legislation that would apply for all councils. In addition to the comments from the IMSB, three Auckland local boards submitted that the membership cap should be lifted. Prior to this consultation, in February 2021 during select committee consideration of the Local Electoral (Māori Wards and Māori Constituencies) Amendment Bill, a small number of submitters commented that the Auckland Council membership restriction is a barrier to Auckland creating a Māori ward and that the restriction should therefore be removed.

without unnecessary restrictions. A secondary objective is to enable Auckland Council to enable Māori representation without unnecessary barriers.

## Section 2: Deciding upon an option to address the policy problem

### What criteria will be used to compare options to the status quo?

43. The criteria used to assess the options are:

- **Fair and effective representation of electors:** Auckland Council is able to provide for the fair representation of electors and effective representation of communities of interest by having the flexibility to adapt to population and demographic changes.
- **Removes barriers to Māori representation:** The unnecessary barrier to introducing Māori wards is removed.
- **The views of Auckland Council:** The views of Auckland Council are considered in any option proposed.
- **Consistency within the local government system:** Auckland Council and the LGC have the ability to respond to requests and drivers for change through the representation review process.

44. The criteria have all been given the same weighting and operate independently although there is a relationship between fair and effective representation of electors and removing barriers to Māori representation criteria.

45. Councils must conduct a representation review every six years, but this does not have to consider whether a council should have a Māori ward.<sup>9</sup> If a Māori ward is introduced, then a local authority must conduct a representation review. The addition of Māori wards can alter fair representation thresholds in the previously existing (general) wards because electors on the Māori ward will no longer be counted as part of the general electoral population.

46. The Department has been engaging in good faith with Auckland Council on this problem as Auckland Council are the experts in assessing their own representation arrangements and identifying the issues the fixed membership requirement has presented. As such we have factored in the views of Auckland Council into the criteria in which options have been assessed against.

### What scope will options be considered within?

47. The solution to the identified problem needs to be made as an amendment to the Auckland Act.

48. In June 2021, Auckland Council staff noted that the most recent articulation of Auckland Council's position on the number of councillors was Auckland Council's submission to the Justice Committee's inquiry into the 2019 local elections in February 2020. Auckland Council staff said they have sufficient and recent political direction on this matter and no further political direction would be sought on this point.

49. Auckland Council's submission recommended that the Auckland Act be amended to remove the specification that Auckland Council's governing body will comprise 20

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<sup>9</sup> Under the current law, considering the adoption of one or more Māori wards is optional. A separate process is considering changes to processes related to Māori wards and constituencies; however, at the time of writing, the Government has not yet made policy decisions on this matter.

members in addition to the mayor so that Auckland Council has the same discretion as any other council to review its membership.

## What options are being considered?

50. We have considered four options:

- **Option One** - Status quo
- **Option Two** - Remove the 20-membership requirement from the Auckland Act and align with the numbers allowed in the LEA 2001 of between 5-29 councillors **(preferred option)**
- **Option Three** - Remove the 20-membership requirement from the Auckland Act and leave the number of councillors to be decided solely by the representation review process and its statutory criteria
- **Option Four** - Remove the 20-membership requirement from the Auckland Act and set a flexible range for Auckland Council that is different to what is in the LEA 2001

### Option One – Status Quo

51. Under the status quo, Auckland Council would continue to be restricted to 20 councillors plus the mayor. Auckland Council would not be able to meet its legislative requirements under the LEA to provide for fair and effective representation of electors as wards would continue to be under and over the 10% threshold without the ability to add councillors to adjust the thresholds. It also means that ward boundaries and local board boundaries will continue to become misaligned, splitting up communities of interest.

52. The status quo also presents a barrier for Auckland Council to introduce a Māori ward without removing a general councillor and significantly altering boundaries.

53. There would remain an inconsistency compared to other local authorities in New Zealand where Auckland Council and the LGC would have very limited means to respond to requests for change through the representation review.

### Option Two – Remove the membership requirement from the Auckland Act and align with the numbers allowed in the Local Electoral Act of between 5-29 councillors - preferred option

54. This option would remove the restriction on the number of councillors Auckland must have and allow Auckland Council to choose between 5 and 29 members like other territorial authorities in New Zealand.

55. Under this option, Auckland Council would have more ability to meet the fair and effective requirements under the LEA. Under this option Auckland Council would not have to trade off fair and effective representation as much as it needs to under the status quo. This option would allow Auckland Council to add one or more additional councillors so significant ward boundary changes do not have to be made to meet the fair representation requirement at the cost of splitting up communities of interest. This option would also go some way to enabling better alignment between ward and local board boundaries so as to avoid splitting up communities of interest.

56. This option would provide Auckland Council the same flexibility as other councils to investigate the option of creating a Māori ward without having to reduce the number of general councillors. Auckland Council and the LGC would also have the ability to respond to requests for change through the representation review process as other territorial authorities are able to within the statutory limits.

57. This is Auckland Council's preferred option. While this preferred option is based on currently elected members views, Auckland Councils preferred option has not changed since 2015 when the issue was first raised. Auckland Council has repeatedly requested that it wants the restriction removed and it be subject to the same rules as other territorial authorities in New Zealand in being able to decide between 5 and 29 councillors.
58. The IMSB have noted their concerns that any increase in councillors on Auckland Council could dilute the impact of Māori wards. While the concerns of the IMSB are noted, the total number of councillors is only one variable when determining the number of Māori wards. The other key variable is the council's Māori Electoral Population (MEP) (which is calculated by Statistics New Zealand and derived from the number of people on the Māori electoral roll) in proportion to the council's General Electoral Population (GEP). This means the more Māori on the Māori electoral roll; the more Māori ward positions will be available to the Council and vice versa.
59. Using the formula in the LEA, Auckland Council (based on 20 councillors) would be entitled to 1.34 Māori ward councillor positions (rounded down to one). If Auckland Council decided to increase their membership to 23, then Auckland Council would be entitled to 2 Māori ward councillors and one additional general ward councillor. If Auckland Council increased their membership to the maximum number under the preferred option, Auckland Council would still only be entitled to 2 Māori ward councillors using the formula. However, a sufficient increase in MEP and corresponding decrease in GEP would likely enable Auckland Council to have two Māori ward councillor positions with fewer total councillors.
60. If the law was amended, and Auckland Council introduced a Māori ward(s), the Council would have to implement this through a representation review. This review involves public consultation and Auckland Council would be expected to engage with the IMSB to consider any concerns it has and to recognise not only the partnership the Council has with the IMSB but also the Te Tiriti o Waitangi partnership.

**Option Three – Remove the 20-membership requirement from the Auckland Act and leave the number of councillors to be decided solely by the representation review process and its statutory criteria**

61. Under this option, the number of councillors Auckland Council could have would be determined by the representation review process and its statutory criteria. After undertaking their representation review, Auckland Council could adjust the number of councillors it believes is required to meet the legislative requirements to meet fair and effective representation.
62. Under this option, Auckland Council would be in a better position to meet the fair and effective requirements under the LEA than it is with the status quo or would be under option two. It would also enable Auckland Council to account for the uneven growth across the city and help get wards within the 10% threshold allowable. Adding additional councillors would also facilitate ensuring ward and local board boundaries remain aligned.
63. This option could remove barriers to Māori representation. Māori wards are not something that representation reviews have to consider but councils can decide to include them in a representation review prior to 23 November in the year after the most recent triennial election.
64. This option would provide Auckland Council and the LGC with significant ability to consider and respond to requests from electors and the community through the

representation process, but they won't be able to agree to every request as they have to weigh up several factors. Auckland Council would also be in a unique situation again where it would be subject to different statutory criteria compared to other territorial authorities. However, this could be justified because of Auckland's large population compared to other cities in New Zealand.

65. Auckland Council has not requested an alternative statutory number of councillors apart from the one already available to other territorial authorities. Having an upper limit of councillors allows local authorities to function effectively which may not be achieved if the number if the number is too high.

**Option four – Remove the 20-membership requirement from the Auckland Act and set a flexible range for Auckland Council that is different to what is in the LEA 2001**

66. Under this option a range that is different from what is currently the range in the LEA would be set. The range would be set in legislation and the decision on where the council membership would sit within that range would be decided through a representation review process involving Auckland Council, the LGC and public engagement, and having regard to the statutory criteria. The upper limit would need to be set at higher than 29.
67. Under this option, it does not mean that Auckland would have to go to the highest number set but this option would give Auckland Council more flexibility to meet their legislative requirements to provide fair and effective representation.
68. This option would remove the barriers to Māori representation and make it easier for Auckland Council to introduce Māori wards. If the number of councillors is increased enough, Māori electors will be entitled to more representatives.
69. Auckland Council and the LGC would have the ability to respond to requests and drivers to change through the representation process more easily than they can do now, but it would create an inconsistency with other territorial authorities who are restricted to 29. However, this inconsistency could be justified by Auckland's large population compared to other cities in New Zealand.
70. Auckland Council has not indicated any preference for wanting greater or different flexibility than what is already in the LEA, nor has it indicated that it wants the number of councillors to be set at below 20.

## How do the options compare to the status quo

	<b>Option One – Status Quo</b>	<b>Option Two – Remove the 20-membership requirement from the Auckland Act and align with the numbers allowed in the LEA 2001 of between 5-29 councillors (<u>preferred option</u>)</b>	<b>Option Three – Remove the 20-membership requirement from the Auckland Act and leave the number of councillors to be decided solely by the representation review process and its statutory criteria</b>	<b>Option Four – Remove the 20-membership requirement from the Auckland Act and set a flexible range for Auckland Council that is different to what’s in the LEA 2001</b>
<b>Fair and effective representation of electors</b>	<b>0</b> Auckland Council struggles to meet the fair and effective legislative requirements under the LEA.	<b>+</b> Auckland Council’s ability to meet the fair and effective legislative requirements under the LEA would improve.	<b>++</b> Would provide Auckland Council the best ability to meet the fair and effective requirements as numbers could be adjusted depending on what provides the best fair and effective representation for Auckland	<b>++</b> Would provide Auckland Council with an improved ability to meet the fair and effective requirements under the LEA.
<b>Removes barriers to Māori representation</b>	<b>0</b> Auckland Council cannot introduce a Māori ward without removing a general councillor position and making significant boundary changes.	<b>+</b> Auckland Council would be able to introduce a Māori ward without removing a general councillor and significantly alter boundaries. An increase in the number of councillors will also improve the ability to provide for Māori representation.	<b>++</b> A barrier to Māori representation would be removed and with a higher number of councillors possible, there is the ability to provide for more representation for Māori.	<b>++</b> A barrier to Māori representation would be removed and with a higher number of councillors possible, there is ability to provide for more representation for Māori.
<b>Auckland Council’s position</b>	<b>0</b> Auckland Council is not satisfied with the status quo.	<b>++</b> Auckland Council’s preference is to be subject to the same membership requirements as other territorial authorities in New Zealand.	<b>0</b> Auckland Council has not expressed any preference for this type of option which would provide Auckland Council with another unique situation.	<b>0</b> Auckland Council has not expressed any preference for a range that is different and higher to the current range in the LEA.
<b>Consistency with local electoral system</b>	<b>0</b> Auckland Council and the LGC have very limited ability to respond to requests for change	<b>+</b> Auckland Council and the LGC would have greater ability to respond to requests for change	<b>+</b> Auckland Council and the LGC would have greater ability to respond to requests for change	<b>+</b> Auckland Council and the LGC would have greater ability to respond to requests for change

	through the representation review process.	through the representation review process but would still have to balance fair and effective representation.	through the representation review process but in a process that would be unique to Auckland.	through the representation review process.
<b>Overall Assessment</b>	<b>0</b>	<b>++</b>	<b>++</b>	<b>++</b>

<b>Key for qualitative judgements:</b>	
<b>++</b>	much better than doing nothing/the status quo
<b>+</b>	better than doing nothing/the status quo
<b>0</b>	about the same as doing nothing/the status quo
<b>-</b>	worse than doing nothing/the status quo
<b>--</b>	much worse than doing nothing/the status quo



## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

71. Compared to the status quo, Options Two, Three and Four best meet the criteria in different ways identified above. However only option Two meets the Auckland Councils position criteria and for this reason it is the Departments preferred option.
72. Option Two would allow Auckland Council to provide for the fair and effective representation of communities of interest without unnecessary restriction. Auckland Council would be able to add additional councillors (like other territorial authorities can) if it decides that is what is needed to provide fair and effective representation during a representation review. Auckland does not have to increase the size of the governing body to 29 councillors (and the mayor) but this Option gives them the ability to do so.
73. Option Three would provide Auckland Council with the best ability to meet the fair and effective requirements as a representation review would determine how many councillors Auckland Council should have. This would allow Auckland Council to alter the number of councillors depending on what the representation review finds at least every six years and could mean that Auckland Council needs to go beyond 29 councillors. However, no other council has this option and this option has not been raised by Auckland Council as something it wants.
74. Likewise, Option Four would improve the ability of Auckland Council to meet the legislative requirements for fair and effective requirements if the number is set above 29 members to begin with. It would also remove barriers to Māori representation, but Auckland Council has not expressed any preference to have a number that is different and higher than the maximum currently available under the LEA.
75. Option Two provides Auckland Council the ability to introduce a Māori ward without unnecessary barriers, while Auckland Council and the LGC would be able to respond to requests for change without as many restrictions compared to the status quo.
76. This option is also Auckland Council's official position and has been for several years. Auckland Council has not asked for a different number or range of councillors to be able to choose from, instead opting to be aligned with other territorial authorities in being able to decide between 5 and 29 members. While this is the view of the current Auckland Council, this position has not changed since 2015.
77. Under the preferred option, Auckland Council will still have to make trade-offs between fair and effective representation. There is often a tension between the tests for effective and fair representation, and the identified options may not satisfy both tests perfectly. However, the trade-offs Auckland Council will need to make will not be as significant as they are under the status quo where the set number of councillors restricts the trade-offs it is able to make compared to other territorial authorities.

## What are the marginal costs and benefits of the option?

<b>Affected groups</b> <i>(identify)</i>	<b>Comment</b> <i>nature of cost or benefit (e.g., ongoing, one-off), evidence and assumption (e.g., compliance rates), risks.</i>	<b>Impact</b> <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	<b>Evidence Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
<b>Regulated Parties:</b> Auckland Council Councillors	The Remuneration Authority has advised that the “governance pool” used to pay councillor salaries would remain the same meaning councillors would be forced to take a pay cut if more councillors are introduced	Low	High
Auckland Council	Increased administrative costs of support staff and services for a higher number of councillors	Low	High
<b>Regulators</b>	N/A	N/A	N/A
<b>Others (e.g., wider govt, consumers, etc.)</b> Ratepayers	No increase in salary costs associated with additional councillors will be passed on to ratepayers but administrative costs of support staff and services for a higher number of councillors may be passed on.	Low	High
<b>Total monetised costs</b>		N/A	N/A
<b>Non-monetised costs</b>		Low	High
<b>Additional benefits of the preferred option compared to taking no action</b>			
<b>Regulated groups</b> Auckland Council	Opportunity for improved representation ratios for councillors.	Medium	Medium
<b>Regulators</b> The LGC	Opportunity for automatic referrals to the LGC to be avoided if the 10% limits are adhered to by adding extra councillors.	Medium	Medium
<b>Others (e.g., wider govt, consumers, etc.)</b> Residents of Auckland Council	Opportunity for improved Māori representation and improved representation for residents.	Medium	Medium
<b>Total monetised benefits</b>		N/A	N/A
<b>Non-monetised benefits</b>		Medium	Medium

78. The Remuneration Authority sets out the minimum amount a councillor must be paid, as well as setting a “governance pool” of funding (funded by the council) that must be spent on councillor remuneration. The entire pool must be divided between the councillors in a way that is determined by the council.
79. The Remuneration Authority has advised that it is unlikely the “governance pool” will be increased to account for the extra councillors. This does mean that any increase in councillors for Auckland Council would lead to a reduction in how much a councillor earns, however this situation is not unique to Auckland Council as the Remuneration Authority does not increase the governance pool for other local authorities who introduce more councillors.

## Section 3: Delivering an option

### How will the new arrangements be implemented?

81. The preferred approach would amend the Local Government (Auckland Council) Act 2009. The proposal is intended to be part of an omnibus bill for local electoral reform. Separate regulatory impact assessments have been completed for the separate proposals of this bill where they are required.
82. Any law changes affecting Auckland Council will come into effect in the fourth quarter of 2022 after the 2022 local elections and are therefore expected to be in place in time for Auckland Council's next representation review.
83. Auckland Council will be responsible for undertaking a representation review that would determine any changes to the number of Auckland councillors. The Council is required to carry out a representation review by 2024 at the latest.
84. The representation review process will give the Council sufficient time to implement the changes and the opportunity to consult with affected communities, including the IMSB before any changes are made to the Council's structure.
85. The Department does not see any implementation risks. The LGC will issue guidance closer to the time Auckland Council does its representation review which, including guidance on any new aspects of the legislation.

### How will the new arrangements be monitored, evaluated, and reviewed?

86. The Department does not consider monitoring the amendment as a high priority considering it brings Auckland Council into line with the rest of New Zealand territorial authorities.
87. The council is required to produce accountability and planning documents for its residents, detailing costs and expenditure annually. As with other councils in New Zealand, communities decide whether their council's performance is satisfactory and have the opportunity to comment on council proposals through consultation and at the ballot box every three years.
88. If the results of a representation review are challenged, the process is referred to the Local Government Commission, which will determine the council's membership and basis of election.

#### *When and how will the new arrangements be reviewed?*

89. Auckland Council may review the arrangements through mandatory 6-year representation reviews (or optional 3-year reviews) which have mandated submission periods to hear from residents and ratepayers.
90. The Council and the community are best placed to know how well their representation is working and residents can raise their concerns with the Council post-implementation.