

Good governance and democracy—are you engaged?

Submission by Flash Langley on the *Local Government (Auckland Law Reform) Bill (2009)*
to the Auckland Governance Legislation Committee

Good governance and democracy— are you engaged?

Select committee submission by Flash Langley
on the *Local Government (Auckland Law Reform) Bill (2009)*
to the Auckland Governance Legislation Committee



Please help defend democracy—for your town, region and nation

Good governance and democracy—are you engaged?

Submission by Flash Langley on the *Local Government (Auckland Law Reform) Bill (2009)*
to the Auckland Governance Legislation Committee

To: Clerk of the Committee
Auckland Governance Legislation Committee
Select Committee Office
Parliament Buildings
WELLINGTON

By online submission at Parliament's website: <http://www.parliament.nz/>

From: Mr Flash Langley

Version 01 date: Friday 12th February 2010

Version 02 date: Monday 15th February 2010 [Replaces 12Feb2010 preliminary submission]

1 Submission on the *Local Government (Auckland Law Reform) Bill (2009)*

This is a preliminary submission by Flash Langley.

Amended and supplementary submissions are likely - to expand, revise and canvas related issues.

I am a Papakura resident, who used to live in a suburb of Sydney. Now I live in Papakura which is over 30km south of Auckland City. I am strongly concerned for the welfare and identity of local communities. I believe the proposed changes will diminish Auckland or Papakura as an attractive place to live. I believe the effectiveness of Papakura and Auckland can both be improved if the right changes are made with the support of the people.

I wish to appear before the select committee (preferably in the Papakura area), to discuss my submission and answer your questions.

My contact details have been provided on the online submission page.

- P01. Overall I support the intent of this Bill. In this submission I offer suggestions on how that intent can be best achieved; and critically examine the consequences of options. Immense improvements will be required.

Good governance and democracy—are you engaged?

Submission by Flash Langley on the *Local Government (Auckland Law Reform) Bill (2009)* to the Auckland Governance Legislation Committee

2 Executive summary: Integrating democracy

- P02. Local Board relationships with Auckland Council continue to be difficult and need resolution as was promised for this Bill. Further, this Bill increases fragmentation with the disconnectedness of CCOs with Local Boards, the public, and Auckland Council.
- P03. Decisions on Council-Controlled Organisation should await the Auckland Council, in meaningful and full consultation with the public, in accordance with the Local Government Act (2002) provisions for establishing CCOs. To achieve the required public scrutiny, democratic accountability and minimise risks.
- P04. Auckland Council representation remains problematic, for Boundary determinations and future Representation Reviews. Provide flexibility in the number of Auckland Councillors, similar to the rights that other New Zealand Councils have under the Local Electoral Act.
- P05. The extent of Central Government intervention is causing compounding problems during these otherwise complex reforms; and further eroding the minimal public support there is for these reforms.
- P06. Are you engaged with the new Supercity Council and it's entities? It appears the public and Local Boards will have a diminished role with disconnected Local Governance arrangements. Long gone will be the days you can take your concern directly to an elected decision maker.

Good governance and democracy—are you engaged?

Submission by Flash Langley on the *Local Government (Auckland Law Reform) Bill (2009)* to the Auckland Governance Legislation Committee

3 Contents

Good governance and democracy—are you engaged?	1
Select committee submission by Flash Langley on the <i>Local Government (Auckland Law Reform) Bill (2009)</i> to the Auckland Governance Legislation Committee.....	1
1 Submission on the <i>Local Government (Auckland Law Reform) Bill (2009)</i>	2
2 Executive summary: Integrating democracy	3
4 Issues	5
4.1 Guiding principles	5
4.2 Mandate.....	5
4.3 Unnecessary departures.....	5
4.4 Strategic Planning	6
4.5 Spatial Plan.....	6
4.6 Council Controlled Organisations (CCO).....	6
4.6.1 Justification for CCOs?	6
4.6.2 Proposing rather than establishment, unless deemed essential	7
4.6.3 Inadequate management of CCOs.....	7
4.6.4 Integration	7
4.6.5 I primarily suggest that all CCO decisions await the new Auckland Council ..	8
4.6.6 I also suggest enhancements for Substantive CCOs	8
4.6.7 I express caution in rearranging CCOs and Trusts.....	8
4.6.8 It oppose some of the CCO provisions in this Bill.....	8
4.7 Independent oversight and regulation	9
4.8 Water	9
4.9 Land transport	10
4.10 Waterfront Development Agency	10
4.11 Local Board	10
4.11.1 Detail still lacking on relationships between Local Boards and Auckland Council.....	10
4.11.2 Still unclear how the Auckland Council will advise Local Boards.....	11
4.11.3 Targeted rates and fees.....	11
4.12 Representation.....	11
4.13 Reorganisation Proposals	12
4.14 Boundaries.....	12
4.15 Rating	13
4.16 Maori guardianship	13
4.17 Ethnic and Pacific Islander Board.....	13
4.18 Asset Sales.....	14

Good governance and democracy—are you engaged?

Submission by Flash Langley on the *Local Government (Auckland Law Reform) Bill (2009)* to the Auckland Governance Legislation Committee

4 Issues

4.1 Guiding principles

- P07. Participatory democracy, not just representational democracy. Strong public engagement is essential.
- P08. Effective governance and leadership; not solely looking at government or corporate management structures.
- P09. Openness and transparency delivering improved performance outcomes and increased engagement.
- P10. My submission on the Local Government (Auckland Council) Bill elaborates on many of the factors I see for success. The submission is still relevant, as the issues remain unresolved. I will supply a supplementary submission including its contents.
- P11. Avoiding a solution in search of a problem.
- P12. Risk management.
- P13. Integration.
- P14. What areas to focus on for effective outcomes.
- P15. Flexibility to adapt and improve.
- P16. I support LGA section 14 (1)(a)(i) ‘A local authority should conduct its business in an open, transparent, and democratically accountable manner’.
- P17. I support LGA section 12 (2) General powers of competence.
- P18. Sometimes these Bills are too prescriptive, achieving unintended outcomes.
- P19. This Bill presents an immense number of concerns; I only have time to express some of these concerns. (My silence is not passive agreement.)

4.2 Mandate

- P20. There is no mandate for these proposed reforms.

4.3 Unnecessary departures

- P21. Some of the Departmental advice suggests an approach of change, seeking to rely where possible on existing legislation used nationally. I support that in principle.
- P22. The government’s decisions appear to impose a lot of unnecessary deviations from existing legislation. There are immense risks in the government’s plans.

Good governance and democracy—are you engaged?

Submission by Flash Langley on the *Local Government (Auckland Law Reform) Bill (2009)* to the Auckland Governance Legislation Committee

4.4 Strategic Planning

- P23. Strategic planning documents can provide a basis for some stability and direction; particularly where there was strong public consultation and acceptance.
- P24. Strategic planning may provide some further direction for integrating and coordinating efforts.

4.5 Spatial Plan

- P25. I support strategic planning and integration. Would need to encompass four wellbeings.
- P26. At the moment this particular plan offers no benefits; or ties up the Council in a needless plan. It is not integrated with the wider planning framework very well.
- P27. Needs for detailed assessment, as may be obsolete or not suit RMA Stage 2 reforms.
- P28. Existing plans can be relied upon; perhaps with a hierarchy.

4.6 Council Controlled Organisations (CCO)

- P29. From a transition, operation and democracy standpoint, the current approach and the government's decisions are unnecessarily undermining the reform process.
- P30. Auckland Council needs to have the flexibility, both now and into the future, to consult with the people to democratically decide what arrangements, if any, best suit both governance and government needs.
- P31. The government has decided to try and consolidate in scope and number, as much as possible into CCOs.
- P32. The Royal Commission's plan was for a Transport CCO and a Water CCO established during the transition (as a proposal for the Auckland Council to begin with). Other CCOs may be investigated, but only as a groundwork proposal for the Auckland Council to consider.
- P33. The Local Government Act has strong obligations on creating, managing and disestablishing CCOs, involving public consultation and scrutiny. The current Bill undermines these and creates unnecessary problems.

4.6.1 Justification for CCOs?

- P34. There appears to be divergent opinions on whether or not CCOs are desirable, and their scope

Good governance and democracy—are you engaged?

Submission by Flash Langley on the *Local Government (Auckland Law Reform) Bill (2009)* to the Auckland Governance Legislation Committee

- P35. Functions absorbed within the Auckland Council will provide better integration. Perceived shortcomings can be addressed.
- P36. I do not consider the integration and transparency adequate for CCOs; though could be given more consideration if substantial enhancements are made. There is the possibility that perceived deficits could be partly mitigated.
- P37. As Auckland Council will be accountable for performance either way, it is preferable and appropriate that Auckland Council decides on structures; and if proceeding, utilise intense public scrutiny as provided for in the Local Government Act 2002 provisions for establishing or disestablishing CCOs.

4.6.2 Proposing rather than establishment, unless deemed essential

- P38. A strategy of the Royal Commission on Auckland Governance is quite different from the Governments. Firstly, they considered their plan adequate consulted on and suited for adoption as a complete package. Second, high quality implementation will be required. Third, where possible, not to bind the Auckland Council in its decision making. The transition focuses on documenting and proposing initial structures for the new Auckland Council to review, revise or adopt. Fourth, a staged approach is appropriate. They considered a Water and Transport CCO will need to be established, though remaining CCO proposals are for the Auckland Council to consider whether or not to establish during subsequent phases of the transition.
- P39. Government officials, when considering the Government's proposals, were acting on similar principles of avoiding binding the Auckland Council. So whilst Cabinet has agreed in-principle to establishment of particular CCO, the officials proposed that the appointment of directors should be done by the Auckland Council as soon as practical after taking office.
- P40. This Bill seems intent on establishing various CCOs and making appointments, prior to Auckland Council assuming accountability.

4.6.3 Inadequate management of CCOs

- P41. I believe the Auditor-General considers improvements can be made with both the management of CCOs (and where appropriate, contracting out). Specification defects often arise, such as inadequate and incomplete Statements of Intent. So whilst in theory a Statement of Intent may assist in the regulation of the CCO, in practice there are often gaps in setting and assessment. This Bill does not address this common risk.

4.6.4 Integration

- P42. In my opinion, This Bill does not adequately address integration issues, even for 'Substantive CCOs'.
- P43. Whilst the dual aims of the reforms were stated as reducing fragmentation and increased local democracy, it does not deliver the robust linkages required for effective local government and local governance.

Good governance and democracy—are you engaged?

Submission by Flash Langley on the *Local Government (Auckland Law Reform) Bill (2009)* to the Auckland Governance Legislation Committee

4.6.5 I primarily suggest that all CCO decisions await the new Auckland Council

- P44. I oppose the CCO provisions in this Bill.
- P45. I support that any decision regarding whether or not to establish CCOs, and on what terms, rests solely with the elected Auckland Council for democratic accountability. The provisions of the Local Government Act will apply allowing for public scrutiny.
- P46. Existing entities such as CCOs, Trusts, Council Organisations, will carry over.
- P47. I believe there is the likelihood that restructuring of some existing CCOs will be required.
- P48. Transition decisions in general should not pre-empt or bind the Auckland Council; nor set minimum timeframes constraining actions.

4.6.6 I also suggest enhancements for Substantive CCOs

- P49. To promote openness and transparency, I suggest that all Substantive CCOs shall also comply with Part 7 of the Local Government Official Information and Meetings Act. This is to ensure public access to meetings such as board meetings, as if it were a Local Authority. [This is important, despite it not being a feature of the Local Government Act nor the Companies Act.]
- P50. I suggest that Substantive CCOs must provide linkages for the general public to have input and access to the Board and decision making panels; and how that access will be accommodated. Considering general public, Maori representatives, ethnic representatives, Local Boards, and Auckland Council.
- P51. I suggest that for many Substantive CCOs, they need to show how they give effect to the Auckland Council strategies for significantly longer than 10 years. Even longer horizons need to be catered for.

4.6.7 I express caution in rearranging CCOs and Trusts

- P52. Caution for disestablishing CCOs or trusts. The Government has expressed an in-principle decision to reduce the number of Council entities, where practicable, during the transition to reduce perceived duplication. There may be some unintended side-effects.
- P53. Consolidating trusts or CCO's may impair support base. There are several CCOs or Trusts established as a means of providing governance and accountability to empower community initiatives, or a particular purpose such as sporting / cultural.

4.6.8 It oppose some of the CCO provisions in this Bill

- P54. I oppose the creating or restructuring of CCO in this Bill; that should wait for the new Auckland Council to decide. The specified CCO's established by this Bill do not get the care and attention required for their consideration, as compared with the Local Government Act 2002. Likewise I oppose the hasty option of delegated responsibility,

Good governance and democracy—are you engaged?

Submission by Flash Langley on the *Local Government (Auckland Law Reform) Bill (2009)* to the Auckland Governance Legislation Committee

whether to the ATA, the Minister, by Supplementary Order Papers or Orders—in-Council.

- P55. I oppose ministerial appointments of (interim) directors, which is anti-democratic. If there is a case for a short-term interim appointment, it would be better to have an electoral college or similar to manage appointments. Though apart from who appoints, my general concerns stand that the processes provided for in the Local Government Act are necessary and appear to be subverted.
- P56. All CCOs should be consistent with Local Government Act requirements, as a minimum to act in accordance with both the Statement of Intent and constitution. (This Bill appears to exclude acting in accordance with the entities constitution.)
- P57. All CCOs must give effect to the Auckland Council's strategic and operational plan, not just consider or take account of.
- P58. Government ministers have powers to change board appointees; perhaps the Auckland Council should have a similar power.
- P59. The Bill prohibits Auckland Councillors also being appointed as board members to a CCO. This is contrary to the Local Government Act where director appointment processes are moved by the Local Authority and consulted on. I believe it common practice that many Councils will appoint say two Councillors to the board to ensure a good communication linkage between the CCO and the Council. I too believe it important, even in cases where the Councillors may be as highly skilled as other Board members.

4.7 Independent oversight and regulation

- P60. In my opinion, the provisions for independent oversight and regulation need strengthening.
- P61. The Auditor-General needs to consider both effectiveness and efficiency, both quantitatively and qualitatively; to avoid sub-optimal assessments.
- P62. Apart from the Auditor-General auditing roles, still need an independent regulatory body to proactively investigate. This is because the Auckland Council, and some of its entities, are extremely large in the New Zealand context; sometimes being in a monopoly position. The Commerce Commission role is inadequate.
- P63. At the national level, SOEs have independent oversight (and they outcomes of SOEs have not always been desirable). Auckland suffers similar risks.

4.8 Water

- P64. I believe it important that Auckland Council can set the direction and issue instructions, particularly in setting pricing outcomes.

Good governance and democracy—are you engaged?

Submission by Flash Langley on the *Local Government (Auckland Law Reform) Bill (2009)* to the Auckland Governance Legislation Committee

4.9 Land transport

- P65. If Auckland Transport is formed (at some stage), I question whether it needs the general powers of competence; and why it should have by-law making powers.
- P66. Perhaps the by-law making powers are considering the potential volume of by-laws that may be enacted or reviewed. Though since Local Boards and other bodies will be required to propose or consult on by-laws, consistent provisions for the Transport should apply to maintain Councillor Accountability.
- P67. More than half the budget would be tied up with Auckland Transport. Whilst Auckland Councillors are ultimately accountable (or perceived as being accountable); the extent of influence is questionable if Auckland Transport is not required to give effect to Council strategic and operational plans.

4.10 Waterfront Development Agency

- P68. I oppose the formation of a Waterfront Development Agency. As discussed above for CCOs, whether or not one is needed should be considered by the Auckland Council with the public, using the Local Government Act processes. Nor did the Royal Commission recommend forming a Waterfront Development Agency.

4.11 Local Board

4.11.1 Detail still lacking on relationships between Local Boards and Auckland Council

- P69. This Bill has failed to effectively clarify the relationships between Local Boards and Auckland Council.
- P70. The Local Boards are in many ways still substantially similar to Community Boards. Though the aspirations of the Local Government Act 2002 have not been satisfied by Community Boards, as the Council's often fail to delegate meaningful authority. (Some councils have delegate substantial responsibility, empowering effective community boards). The Royal Commission recognised this when proposing their (somewhat weak) Community Councils.
- P71. Local Boards need a substantial role to be effective. As a starting point, they should have some meaningful minimum safeguards in legislation.
- P72. Greater emphasis needs to be placed on avoiding and minimising the predicted conflicts. Including timely mediation or conciliation.

Good governance and democracy—are you engaged?

Submission by Flash Langley on the *Local Government (Auckland Law Reform) Bill (2009)* to the Auckland Governance Legislation Committee

P73. The suggestions of recourse to the Local Government Commission is welcomed in principle. Though timeliness is not addressed. Also, other efforts should be available prior to resorting to arbitration with the Local Government Commission.

4.11.2 Still unclear how the Auckland Council will advise Local Boards

P74. The Local Boards require advice from Auckland Council. The conflicting responsibility of the Auckland Council CEO to the governance body of Auckland Council as well as Local Boards has not been resolved.

P75. Local Boards also require access to independent advice.

4.11.3 Targeted rates and fees

P76. Whilst targeted rates and fees could be an option for Local Boards; in principle it should generally not be required if the provisions for equitable capability are followed (though it is still unclear how the provisions in the Auckland Council Act will have effective outcomes.)

P77. There should be limits (or controls) on targeted rates and fees.

4.12 Representation

P78. The Auckland Council needs to be permitted to review its representation, after taking office.

P79. Regardless of timing, representation reviews will fail to meet fair representation requirements.

P80. The Local Government Commission, in its draft proposals, failed to achieve fair representation. This was an inevitable outcome of fixing Auckland Council to be exactly twenty Councillors. (Whereas the Local Electoral Act provides flexibility for between 6 and 30 members.) Increasing the number of Councillors will achieve fair representation (and improve effective representation).

P81. The Auckland Council and the electorate should not be confined to First Past the Post voting for a number of years. The Local Electoral Act provides for the ability to change the method of voting. Regardless of the imposed arrangements for the 2010 elections, when the Auckland Council takes office there should be flexibility to choose a voting system. This right should be made explicit to avoid doubt, and retracting the proposal for the 2013 elections to be on a mandated system.

P82. I opposed First Past the Post voting for the 2010 and 2013 elections.

Good governance and democracy—*are you engaged?*

Submission by Flash Langley on the *Local Government (Auckland Law Reform) Bill (2009)* to the Auckland Governance Legislation Committee

4.13 Reorganisation Proposals

- P83. It is democratically important that the rights to reorganisation proposals under the Local Government Act are not ruled out. It provides flexibility to fix hasty mistakes made during the transition. I oppose a statutory moratorium on reorganisation proposals, whether during or after the initial transition.
- P84. I believe that the reorganisation proposal requests by Franklin, Northern Rodney and Papakura should not be stymied. By whatever means, the proposals should be treated on their merits (in comparison with the pre-Supercity and the post-Supercity). This has only become an urgent issue due to the hasty Supercity reforms.

4.14 Boundaries

- P85. The Local Government Commission (in its draft proposals) indicated that the prescribed boundaries for Southern Auckland Region will not provide good or enduring governance.
- P86. There is no practicable boundary for Southern Auckland Region that complies with the Local Government (Auckland Council) Act.
- P87. I suggest a practicable Southern Boundary is north of the existing Papakura and Franklin districts. (Perhaps also encompassing Clevedon.)
- P88. The Northern Regional Boundaries remain contentious; should probably be moved south.
- P89. The Local Government Commission proposals incorrectly split the Papakura community of interest into urban and two rural sectors. Papakura should not be split. Whilst contrary to their guidelines, it was a product of the difficulties in achieving fair representation for Auckland Council Wards (due to the mandated 20 Councillors); as the Commission sought to boost numbers for the Franklin Ward by incorporating rural areas.
- P90. A side effect of the fixed number of Auckland Councillors, was also ward representation. In Papakura's case, the Commission proposed a two-member Auckland Council ward of Manurewa-Papakura with dissimilar communities of interest; again to try and meet the fair representation levels. However it is far from fair, with the Manurewa population outnumbering Papakura 2 to 1 it is unlikely Papakura would be represented. Whilst both distinct communities would have benefited from their own elected Ward Councillor(s), this was not proposed in the draft.

Good governance and democracy—*are you engaged?*

Submission by Flash Langley on the *Local Government (Auckland Law Reform) Bill (2009)* to the Auckland Governance Legislation Committee

4.15 Rating

- P91. Regardless of whether or not there are smoothing provisions, this Bill does not address the inevitable change in rating and associated fees that will eventuate; due to the rating system equalisation.
- P92. The choice of rating system should remain with the Auckland Council in consultation with its electorate.
- P93. If a rating system is to be investigated (for proposal rather than adoption during the transition), Annual Value will probably have more merit than Capital Value. Though all systems need evaluation.
- P94. How well the rating system is consulted on will probably be even more important than the rating system; both for change management and because both Annual Value and Land Value are used in various parts of the region.

4.16 Maori guardianship

- P95. I support Maori guardianship and protection of valuable things (both tangible and intangible).
- P96. I consider the proposed advisory boards lack both detail and effectiveness. They probably will not be very effectual as they can be too easily ignored or sidelined.
- P97. Seats from Maori Ward electorates will also be required.
- P98. Regardless of the structure (which is important); I reflect that Papakura District Council has a cooperative relationship with Maori representative groups, and provides funds to support the linkage. I endorse that meaningful cooperation and strengthening relationships.
- P99. The Royal Commission recognised that the ideals of the Local Government Act for promoting Maori capability and contribution to local governance, have not been fully realised; and that advisory roles suffered a similar fate to Community Boards in not being given meaningful opportunities to engage.

4.17 Ethnic and Pacific Islander Board

- P100. I support the board and that it needs linkages.
- P101. I oppose the sunset clause of one term. Leave the decision making to the Auckland Council in consultation with the public. (Otherwise make the term longer than one Council term or without a sunset clause.)

Good governance and democracy—are you engaged?

Submission by Flash Langley on the *Local Government (Auckland Law Reform) Bill (2009)* to the Auckland Governance Legislation Committee

4.18 Asset Sales

- P102. Greater assurances may be required for retaining assets in public ownership.
- P103. Greater assurance may be required for water, that public assets shall be retained in both public ownership and public control. (Some franchise arrangement limit public control.)