

Response submission to the Local Council Representation Review:

Boroondara City Council 2019

Overview

I support the Victorian Electoral Commission's preferred four-ward electoral structure consisting of three three-councillor wards and one two-councillor ward (Option A). The fact that it would most effectively accommodate anticipated uneven population growth and also avoid any requirement for boundary changes between scheduled representation reviews is important.

That Option A most effectively responds to a view of community interest conceived more broadly than that solely based upon where people reside has great merit. There has, in my view, been a pre-occupation in recent years with issues focused on immediate neighbourhoods to the detriment of broader systemic issues within the Council's jurisdiction that do not receive sufficient attention. This, I attribute to the overly narrow focus of geographic interest to which the current system of single councillor wards appeals. It generates an unnecessarily high level of parochialism which has often had dysfunctional consequences for the broader community.

I endorse the view that multi-councillor wards elect candidates through a proportional counting system provides multiple communities within a ward a better opportunity to elect a representative according to the proportion of support for their candidate. This means that multiple and overlapping communities of interest are able to be represented within the one ward.

As an elector in the current Maranoa ward I support the view that, as multi-councillor wards cover a larger area (then single councillor wards), they would not have the effect of fragmenting neighbourhoods in the manner so evident under the current system. The Whitehorse Road shopping centre in Balwyn, currently split between Maranoa and Maling wards, is a clear illustration of such fragmentation caused by present arrangements that would be remedied by the adoption of Option A.

That the proposed ward boundaries in Option A should substantially mirror the boundaries of the former Cities of Hawthorn, Kew and Camberwell is, in my view, of little consequence. The amalgamation of Councils took place some time ago now, in the mid 1990's. It was motivated, more than anything, by a quest for economic efficiencies in the delivery of municipal services, based on scale economies. Whether such efficiencies have actually been achieved is a moot point, but of no relevance to this inquiry.

Boroondara and party politics

It has been asserted that if Boroondara Council were to be elected in a system of multi-councillor wards, as is now proposed, that it would permit party politics to intrude into the affairs of the Council. It is a point that has been made many times over the years, including by several councillors at the Council meeting on 29 April 2019 which endorsed the Boroondara Council's response submission in opposition to Option A and in support of Option C. Prior to that, many of the preliminary submissions in support of the status quo (i.e. 10 single councillor wards) asserted as much, 32 in all on my count.

Many of those in support of the status quo declared this aspect of their opposition to multi-councillor wards in preliminary submissions in precisely the same language ("...multi-member wards can encourage party political affiliations...") which suggests they were responding to the call of an organised campaign. However, this is not to dispute the fact that these are sentiments genuinely held.

Three Boroondara councillors, the mayor (and Maling ward councillor), Jane Addis, Cynthia Watson (Maranoa ward) and Phillip Healey (Studley ward) also expressed these sentiments in their preliminary submissions.

The mayor, Jane Addis, wrote "...multi-member wards are not good for Boroondara because these could encourage party political affiliations..."

Councillor Watson wrote "I am in favour of keeping Boroondara a Single Member Ward (stet) as the representative model. Multi member ward favour candidates who are financially supported by political parties as you have to campaign in an area which is two to three times bigger than a Single Member ward."

Councillor Healey wrote "The need for financial and people resources to run a campaign in a multimember ward , that will most likely (be) three times larger in area, voters and dwellings, makes for a situation that takes the local out of local government and leads it open to sponsored candidates, most likely making the local government the domain of those parties that endorse and fund candidates in local governments as evidenced in other local governments where multimember wards are now in place."

The current MP for Kew, and my constituency member, Tim Smith, expressed similar sentiments in his preliminary submission in which he wrote in support of single-councillor wards and in opposition to multi-councillor wards which he said are inappropriate for Boroondara as they "...can encourage party political affiliations"

The underlying assumption in many submissions, and reinforced by submissions from these councillors and the member of parliament, is that party politics plays no part in the conduct of the day-by-day affairs of Boroondara City Council and that to keep things that way it is necessary that the system of single councillor wards should be maintained. The fact of endorsement of candidates by a registered political party is not the sole, nor the most important measure of party political influence or control over a council.

In my view, it is not possible to keep party politics out of local government, as those with a declared party-political affiliation will always be attracted to elected office, at all levels, and for a multiplicity of reasons. Many have used elected local government office as a step towards election to the state or federal parliament. Others have no more than a commitment to have party policy implemented at local level. The more relevant questions are whether party politics is present now in the City of Boroondara and whether, as currently practiced, it is a malign influence?

The view that the system of single councillor wards keeps party politics at bay in Boroondara, suggested in so many submissions to the Representation Review and by Boroondara councillors, is a

myth. The Council is heavily influenced, perhaps controlled, by Liberal Party interests. There is substantial evidence that this is the case.

Biographical details of each of the ten sitting councillors are provided on the Boroondara website, including memberships and associations. None of them declare membership of a registered political party. However, in recent months I have observed Councillors Watson, Sinfield and Healey, in blue campaign t-shirts, supporting the Liberal Party candidate for Kooyong, Josh Frydenberg, at street stalls in Boroondara. I observed Councillor Sinfield supporting the Liberal candidate for Kew, Tim Smith, in the 2018 Victorian election, at a street stall in East Kew and at pre-polling.

Councillor Watson is reportedly an executive member of the Victorian branch of the Liberal Party (see Royce Millar and Ben Schneiders, "Mormon influence rising in the Liberal party," *The Age*, 7 May 2018). Councillor Sinfield is recorded on Linked In as the Vice President of the Canterbury Branch of the Liberal Party. The fact that these councillors, a visible and well known presence in the community, should be active campaigners at federal and state level, show that their political concerns and commitments extend beyond Boroondara Council and local government matters.

I had heard reports that Mr Smith was observed publicly promoting the election of Felicity Sinfield at the Boroondara Council elections in 2016. There has been recent controversy about the deployment by local state members of parliament over the deployment of electorate office resources for party political purposes. I wrote to Mr Smith, on several occasions, to ask whether he and the resources of his electorate office, had been employed in campaigning on behalf of a candidate or candidates in the Boroondara Council elections in 2016.

In particular, I asked Mr Smith to advise on any candidate(s) he supported; the detail of his own involvement; the detail of the involvement of his electorate office; the resources expended; and whether any such campaigning was aligned in support of any registered political party and, if so, which one? I have not received a reply.

How does Liberal Party influence on Boroondara Council manifest itself?

Liberal Party influence over the Boroondara Council manifests itself in many ways. These include the character of the Council's advocacy at state government level, and its conduct of public forums.

Advocacy at state government level

Transport policy is one such area. The Council has not articulated a strong and soundly based view on two major roads projects which could foreseeably have significant adverse effects on residents in Boroondara. The first of these is the North East Link project, which is promoted by the Victorian government and supported by the Liberal Victorian Opposition. The second is the East West Link project, which is actively and visibly supported by the Liberal Opposition, including the Kew MP, Tim Smith. In my view, the Council has no stomach for contesting this territory against State Liberal Party confederates. It is highly unlikely that a Council elected in the manner proposed in Option A would behave in such a timid manner, and against the better interests of Boroondara residents and businesses.

Planning and building regulation is another area where the major regulatory powers lie with the Victorian government. There are many issues here where the Council has feigned "concern," but has not managed to mount an effective advocacy campaign in the interests of residents. One such case was a project the Council instigated in February 2016 to examine the impact of single new dwellings on the character of Boroondara. The Council invited public participation and about 1,000 submissions were received. However, the project was then quickly folded up by the Council without any opportunity for ongoing dialogue between the Council, those who made these submissions, and the broader community.

It was illustrative of the ever-present disposition of the Council to promote a sense of grievance within the community on matters where a state government of a competing party political flavour currently holds the whip hand, but where the Council reveals itself to be unwilling to pursue potential reform ideas in concert with its community. We are left only with a subliminal message on who to vote for at the next state election, which was probably the only purpose of the exercise all the long. In the meantime it wasted the time and commitment of those who, in good faith, sought to make a contribution on a very important issue which affects the day to day existence of every one of us.

My ward councillor, Cynthia Watson, in the wake of her election in 2016 declared "The risk of loss of amenity through inappropriate development, densification, traffic and parking (were the major issues of concern to her and that although) Not all of these issues can be fixed at local council level (but) we can be an advocate for our residents to state government on matters. Local government is a critical arm of governance." (See Leo DeGress Brown, 19 November 2016 <https://www.mormonnewsroom.org.au/article/cr-cynthia-watson-reflects-on-her-election-to-the-boroondara-city-council>)

Most residents of Boroondara would, I expect, agree with these sentiments. But Councillor Watson has not followed through with any commitment and action in this area, even resisting the conducting of a meeting on planning issues in her ward. Again, it is highly unlikely that this would be the outcome if three, or even two, councillors, were elected in the ward as proposed in Option A. There would be an underlying impetus to consult openly with the community, now so lacking.

Public forums

The Council conducts public forums from time to time on a range of matters. It is very sensitive to the range of matters that might be opened up in these forums.

It took its resistance to open discussion on transport policy issues to a new low during the 2018 state election period when it refused to host a "town hall meeting" conducted by the Metropolitan Transport Forum (MTF) in association with Leader Newspapers. The town hall meetings, sponsored by individual councils, commenced as early as April 2018.

The MTF is an affiliated group of councils which deals with transport policy issues, and of which Boroondara Council is a member. The town hall meetings in 2018, which did run in many other council areas across Melbourne, including neighbouring Banyule, Whitehorse, Stonnington and Yarra Councils, would have permitted parliamentary candidates in electorates in Boroondara to give presentations on their policies and also allow local electors in Boroondara to ask questions and

engage in dialogue with the candidates. It is possible that Liberal Party candidates were resistant to the idea of appearing at such a forum, and prevailed upon the Council to not run the town hall meeting in Boroondara.

It was interesting in that regard, to observe the Studley Ward councillor, Phillip Healey, together with a senior Boroondara transport manager, in attendance on 2 August 2018 at the MTF town hall meeting that was held by the City of Yarra at Richmond Town Hall. This, whilst Boroondara Council denied residents of Boroondara the opportunity to attend such an event in their own municipality. If Boroondara was to be comprised by multi-councillor wards would this situation obtain? Highly unlikely. There is almost certain to be sufficient support for opening up to discussion and effective program responses, the increasingly serious consequences for Boroondara of continuing to run transport with a model redolent of the 1950's rather than that required for the second decade of the 21st century.

Boroondara Council also takes an interest in community safety issues. For instance, it provides a modest level of grant funding to Boroondara Neighbourhood Watch and, from time to time, sponsors public forums on community safety with expert guest speakers. The Council arranged for such a forum to be held on 31 October 2018 in the lead-up to the 2018 Victorian election. It invited all sitting members of parliament from within Boroondara to attend (who, at that time, included four Liberal Party lower house representatives), but no lower house candidates from other parties were invited. When I expressed concern to the Council about that omission the Council responded that the election candidates were not known as nominations had not yet opened (nominations opened on 31 October).

However, as is typically the case pre-selected candidates from other parties were well known by that time, and election campaigning was well under way in electorates throughout Boroondara. It was also an election period charged with "law and order" issues, especially by the Liberal Party, where any semblance of balance in proceedings compelled the view that all candidates should have been invited to attend. Ms Bambi Gordon, the Victorian Chief Executive Officer of Neighbourhood Watch, one of three invited guest speakers at the forum, finally declined to attend because of concerns about the organisation of candidate attendance at the event by Council.

The episode left the uncomfortable flavour of party-political bias in operation.

One could again conclude that if Boroondara Council had been comprised of broader representation at the time, as is proposed in a system of multi-councillor wards, the electors in Boroondara would have been able to attend an MTF town hall meeting relevant to their concerns, and they would have also been able to attend a community safety forum where all the major political parties candidates were invited to attend.

The North East Hub

That there may be reciprocal benefits that flow between party political confreres at different levels of government is illustrated in the case of federal funding afforded recently to a major capital project of the Council's, the North East Hub. The North East Hub is a \$17.2 million community centre in Greythorn, including a childhood centre, kindergarten and services for seniors and was

committed as a project fully funded by the Council. It nevertheless received a \$3.2 million grant under the Commonwealth government's National Stronger Regions Fund, a program purportedly to assist disadvantaged regions to achieve growth, but widely criticised as a mechanism for pork barrelling. The grant was announced by the Member for Kooyong, Josh Frydenberg, in October 2016.

This episode is a good illustration how a national government of a particular political flavour may use grant funding to enhance their status in an electorate where the local government authority is able to dominate public discourse through its control of the local council.

Adverse trends in council conduct and administration since the last Representation Review

In my preliminary submission I provided several illustrations of adverse trends in council conduct and administration since the last Representation Review conducted prior to the 2008 Council elections. In my view, the pre-conditions for this conduct is firmly set by the current electoral system which facilitates a highly caucused council which eschews open debate and community involvement in decision-making. One of the illustrations I provided was that of the "rules" that now apply to Public Question Time at Council meetings. These are set out in the Meeting Procedure Local Law (see <https://www.boroondara.vic.gov.au/about-council/council-administration/policies-plans-and-strategies/meeting-procedure-local-law>) In short, they are designed to gag rigorous public questioning of the Council by residents and ratepayers.

The most egregious of the changes to the Local Law mean that questions may now only be on matters where there has been previous representations made in writing to the Council and which has been responded to in writing by the Council, or to be on the agenda of the current meeting of the Council. It requires little imagination to appreciate that this severely and arbitrarily narrows the range of matters that may be raised at public question time.

At the Council meeting on Monday 29 April 2019 I submitted the following two questions:

"Unavailability of key data related to the Council Budget (Agenda Item 7.5 Proposed Budget 2019-20 for Public Notice)

Why was the Attachment 1, the proposed Budget for 2019-20, which could be expected to include key disaggregated information on capital expenditure and fees and charges, not included in the meeting documentation available on the Council website? Will the Council undertake to provide this information on the website for future annual budgets no less than 10 days prior to such meetings?"

and

"Lighting on Council controlled sporting fields

Is the Council investing in lighting upgrades at Victoria Park, Kew, and at other sporting fields to provide for additional match play or training during evenings by organised sporting participants? If so, please advise of the precincts affected and the outlays involved."

Under the Meeting Procedure Local Law, as amended by the Council in 2015, these two questions, as originally put, were caught by yet another stricture in the rules. They were adjudged to be four questions, rather than two (the maximum number of questions admissible from one person at a meeting). Thus, my question on lighting on sporting fields was ruled inadmissible under the provisions of the Local Law, and no response was provided in the meeting.

One of the adverse consequences of the restrictions that now apply is that matters of significance in the form of questions are no longer able to be put in the open public forum of Council meetings. As a consequence, of this and other influences very few people now attend Council meetings to ask questions, or, from my observations, to hear council debates.

There are two other significant matters related to current Council processes, in addition to those I discussed in my preliminary submission, which are calculated by the Council to be restrictive in nature.

The Council refuses to include in the minutes of its meetings, or otherwise advise, of the names of sponsors of petitions which are presented to the Council. It also refuses to record in the minutes of meetings the names of members of the public who speak on agenda items at Council meetings. At first sight, these matters may appear to be of little consequence. But the effect is that it makes it more difficult, often impossible, for other members of the public to communicate with these fellow community members if they should wish to do so. It is true that the names of persons who contribute to formal processes, such as consultation and presentations on the annual budget, are recorded in minutes. But these are limited. The Council will often say that it is more than happy to speak to members of the public on matters of concern. But that is not the point, which is that in its record of meetings the Council should be facilitating, not inhibiting, contact between community members, which is the effect of its current practice. The Council needs to communicate with its community. But it is just as important for democratic process that Council processes should facilitate contact between members of the community. The Council, in its sly way, works daily to restrict or prevent that.

Again, it is understandable that the highly caucused nature of the current Council would wish to keep things that way. These processes are the way they are largely because, under the current electoral arrangements, the dominant culture is one of secrecy. One could anticipate a much greater impetus for transparency in Council processes and decision-making with the introduction of a system of election based upon multi-councillor wards, as proposed in Option A.

Indigenous recognition and reconciliation

The Council for many years had a Reconciliation Action Plan (RAP). As far as I am able to ascertain (relevant records are no longer available publicly on the Council website) the RAP was permitted to lapse without report or review. The Council then sought surreptitiously to eliminate the requirement at Council meetings for Acknowledgement of Country. It did so by varying the Councillor Code of Conduct to abolish the prevailing practice at a Special Council meeting on 13 February 2017. There was no prior discussion with the community that this was proposed. This amounted to a significant breach of faith with the community, having regard for the importance bestowed nation-wide, on this matter of social policy.

Community Satisfaction Surveys and measures of participation (engagement)

As reflected in its preliminary submission, Boroondara Council sets great store by the results of annual Community Satisfaction Surveys as a measure of support for the current electoral system, the subject of this review. This is quite a leap.

These surveys, by their nature, are not a meaningful measure of governance and the efficacy of the electoral system, or of what electors may think about these things. They are, for the main part, an assessment tool on performance in the delivery of council services and a potential identifier of measures to improve service delivery.

I would argue that, even as an assessment tool the survey is now severely limited and many of the measures of little use. For instance, the fact that "sealed local roads" should be taken as a core measure is problematic. Other measures, related to transport and ease of mobility, would appear to be of much greater contemporary relevance. It is notable that walking, cycling and congestion are not given any attention in the survey. I will, for the purposes of this submission, resist the temptation of picking further holes in it.

City of Boroondara is by any measure an extremely prosperous municipality. This being the case, any scope for underperformance is likely to remain underexposed by inefficient expenditures than is the case with poorer councils. In fact, poor money management is what I believe is going on now in many areas of Council responsibility. The annual community satisfaction surveys will not expose these failings either.

Boroondara Council interference in the 2019 Federal Election campaign

There has been media reportage in recent days that an independent candidate for Kooyong, Oliver Yates, received close attention from Boroondara local laws officers because he has been parking a trailer or trailers with election posters attached at various locations on major roads within the City of Boroondara. See, for instance, <https://www.abc.net.au/radio/melbourne/programs/mornings/oliver-yates-campaign-harrassment/11057672>. It is possible that other non-Liberal Party candidates have received similar attention from local laws officers where they have conducted street stalls at shopping centres and railway stations in the City of Boroondara.

As far as I know, the Council did not object to the Liberal candidate for Kew in the 2018 Victorian election parking a truck with very conspicuous signage at various locations on major roads in Boroondara during the course of his campaign. The photograph (Attachment A) shows the vehicle parked near the pre-polling booth in East Kew.

It needs to be asked whether heavy handed administrative/ enforcement action may, in important respects, be in contravention of the Victorian Charter of Human Rights and Responsibilities Act 2016. In particular, the Council may be in breach of Sections 15 and 16 of the Act, in denying freedom of expression or peaceful assembly and freedom of association, and, if this is the case, raises the possibility that Boroondara Council, as a responsible public authority, is in breach of Section 38 of the Act.

These recent events raise the deeply troubling question of how exposed the Boroondara Council administration may be to party-political pressure. This, hopefully, will become clearer in coming

days. The concern for the future, nevertheless, revolves around the question of what might a change to the electoral system do to protect Council processes from such influences? In this regard, it should be clear enough that if the elected councillors, taken as a whole, are representative of a broad spectrum of opinion, such influences are much less likely to prevail. Option A holds out this hope.

Conclusion

I believe it unlikely that party aligned candidates will ever be discouraged from competing for election by the design of the electoral system. Such participation may even be welcome. What must be disposed of now, however, is the illusion that Boroondara is free from party-political influence, and such freedom is the gift of the current electoral system. The reality is that the current tendency, facilitated by the system of single councillor wards is a party-centric oligarchy. It has resulted in significant harm in Boroondara. To underline the fact that this is not a unique situation, there have been cases where single party dominance of other councils and by other parties have had similarly deleterious effects. Multi-councillor wards have the beneficial effect of avoiding the damage of a winner take all mentality, so demonstrable today in the City of Boroondara. It propels a melding of views and actions; something that meets natural resistance in a system of single councillor wards.

I conclude where I started: That multi-councillor wards elect candidates through a proportional counting system which provides multiple communities within a ward a better opportunity to elect a representative according to the proportion of support for their candidate. This means that multiple and overlapping communities of interest are able to be represented within the one ward.

It is also clear that as multi-councillor wards cover a larger area do not fragment neighbourhoods as is the case with the current system. Option A is clearly the most just, democratic and effective proposal.

Ian Hundley

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7 May 2019

Att.

