



Hon Rodney Hide

3 December 2009

Decisions to complete the legislative
framework for Auckland governance

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This paper summarises the decisions of Cabinet which will result in a third Bill for the reform of Auckland's local government coming before parliament.



The papers considered by Cabinet are to be published as soon as possible on www.dia.govt.nz.

The two previous Bills have been about the 'what' - the structure Auckland's new Council will have – and the 'who' – the power and roles of the mayor, councillors and local board members.

This Bill is about the 'how'. It:

- transfers Auckland's assets and liabilities to the new Council.
- protects the interests of staff who move from the old councils to the new Council.
- gives the new Council the powers it needs to be up and running on 1 November 2010, while ensuring that change can be made smoothly.

The third bill begins a year-long count-down to the new structure. Next year, eight councils will be replaced with one and, after 50 years of meandering debate, regional and local issues will be managed together.

Less than a year from now, Aucklanders get to vote for a mayor and councillors for all Aucklanders and for local boards with real local authority. The Auckland Council will be a new council with the size and authority to serve Aucklanders' needs. The new local boards will handle purely local matters, and regional matters will be in the hands of the mayor and councillors, who must take account of local boards' views.

The third Auckland Bill will complete the legislative framework and finalise the arrangements for moving from the old to the new Greater Auckland.

The decisions announced in this document complete the blueprint for a greater Auckland. In little less than a year, it will happen.

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Issue: Governance framework and elections

Local government is about democracy. The changes in Auckland are intended to enhance the effectiveness of citizens' participation in democracy, by providing for a council with strong regional and local decision-making ability. The introduction of the new local boards means it would not make sense to also have the old 'community boards'. Aucklanders also need to know about their rights to vote for the new mayor, councillors and local boards, and to be assured that the new council will not make any sudden or inappropriate changes.

Decisions

- The Auckland Transition Agency (ATA) will be responsible for a public information campaign explaining the new governance structures, at the time of the 2010 elections in Auckland.
- The electoral expense limit will be increased for constituencies exceeding one million in total population (not just registered voters). The limit is now \$70,000 for a population over 250,000. It will be increased to \$100,000, plus 50 cents for each registered voter for constituencies exceeding one million. There are now about 960,000 registered Auckland voters. Mayoral candidates will be able to spend about \$580,000.
- There will be no community boards in Auckland.
- There will be no new reorganisation proposals for Auckland for 3 years, to ensure there is no disruption to the new arrangements and they have the opportunity to settle in.
- Proposals for major changes to local board boundaries must be referred to the Local Government Commission.
- First Past the Post will be used in 2013 for the election of mayor, councillors and local board members in Auckland, as in 2010.
- A single set of rules will apply to the erection of election hoardings across the Auckland Council area for the 2010 elections.

References

- AGR Min (09) 8/1 Governance Framework for the Auckland Council: Policy for Inclusion in the Third Bill.
- CAB Min (09) 41/16 Local Government (Auckland Law Reform) Bill: Outstanding Policy Issues.
- AGR (09) 25 Local Government (Auckland Law Reform) Bill: Outstanding Policy Issues.

Issue: Local boards

Parliament has already passed legislation to create two decision-making groups in the new Auckland council – the governing body made up of the mayor and councillors, and the local boards which have specific decision-making responsibilities in their own right as well as responsibilities that may be delegated to them by the governing body.

Local boards are a new form of local government. There have never been local boards before, anywhere in the country. They have more power than the former community boards. Local boards are responsible for making decisions about 'purely local matters', and for communicating the interests and preferences of the people in their area in respect of the strategies, policies, plans and bylaws of the Council.

The governing body (the mayor and councillors) allocates responsibility for any particular decision to either itself or the local boards by applying a set of principles set out in law. Non-regulatory decisions are to be allocated to local boards unless the nature of the activity is such that decision-making on an Auckland-wide basis will better promote the well-being of the communities across Auckland.

The Council is required to publish in its Long Term Council Community Plan (LTCCP), and in each annual plan, the decision-making responsibilities that have been allocated to the local boards, so that the people of Auckland know where the responsibility lies.

The Government believes it is important that the local boards are up and running from 1 November 2010. The Auckland Transition Agency will therefore make an initial allocation of the activities for which the local boards will be responsible, using the principles set out in legislation. The allocation will be published before the Auckland Council is established, and will be in place until the new Council has developed its own planning documents and completed its own allocation process.

Decisions

- Local boards able to propose mechanisms to generate additional revenue to fund discretionary activities/initiatives in their area. For example, the local board can propose a local targeted rate for local activities and amenities.
- Any disputes between the mayor and councillors and a local board will be managed through a process of binding resolution by the Local Government Commission.
- The Bill will identify relevant sections of other Acts that apply to local boards and their members, including in the Local Government Act 2002, Local Electoral Act 2001, Ombudsmen Act 1975, Local Authorities (Members Interest) Act 1968, and Local Government Official Information and Meetings Act 1987.

- Chairpersons of the Auckland local boards will be authorised to preside at citizenship ceremonies.
- Councillors may not also be members of local boards.
- Employees of the Auckland Council may not also be members of local boards.

References

- CAB Min (09) 41/16 Local Government (Auckland Law Reform) Bill: Outstanding Policy Issues.
- AGR (09) 25 Local Government (Auckland Law Reform) Bill: Outstanding Policy Issues.
- CAB Min (09) 39/6A Local Government (Auckland Law Reform) Bill: Planning, Reporting, Rates and Local Boards.
- CAB (09) 637 Local Government (Auckland Law Reform) Bill: Planning, Reporting, Rates and Local Boards.

Issue: Council- Controlled Organisations (CCOs) and other council entities

There are currently over 300 council-owned or council-funded entities with some form of corporate or business-like structure, spread across the existing eight councils in Auckland. Forty-one of these are council-controlled organisations (CCOs), primarily companies or trusts that have been established for community, service delivery or commercial purposes.

The Government has asked the Auckland Transition Agency to review and rationalise the wholly-council owned entities prior to 1 November 2010, and to develop proposals for a consolidated structure for the new Auckland Council.

The Government has already approved three CCOs for Auckland: the Regional Transport Authority, Watercare Services Ltd and the Waterfront Development Agency. We expect that the stocktake and review of council-owned entities that the ATA is undertaking will result in the establishment of a small number of new CCOs, primarily based on the rationalisation of like activities that presently operate independently from local authorities through CCOs, trusts or business units. Any of the existing 300 council entities that are not affected by the new CCO structure will simply transfer, as is, to the Auckland Council on 1 November 2010.

The objective of the exercise is to group and integrate like activities and entities to achieve the regional effectiveness of operation which underpins the governance reforms. There will be little corporatisation of activities that are not already in some form of corporate or business-like structure. In particular, the exercise does not involve privatisation of council assets or activities. The Government is looking for effectiveness and efficiency in service delivery while also providing for the Auckland Council to remain democratically accountable for the delivery of those services.

Decisions

- The criteria for assessing proposals for any new CCOs include:
 - to address inconsistencies in service delivery methods across the existing councils to achieve a consistent approach for the Auckland Council; and
 - to eliminate multiple CCOs with the same purpose to provide the Auckland Council with a consolidation of the entities.
- The Government has agreed in principle to a CCO structure and governance framework proposed by the ATA, to allow the ATA to proceed with consultation on the structure.
- The proposed structure consists of the 3 CCOs already approved (Watercare Services Ltd, the Regional Transport Authority and a Waterfront Development Agency) and 4 new CCOs for:
 - Economic Development, Tourism and Events;
 - Property Holdings and Development;
 - Major Regional Facilities; and

- Council Investments.
- Once the ATA has finalised consultation with affected parties on its proposals for each of these CCOs, the Government will consider the proposal and, if approved, the proposal will be implemented.
- Entities unaffected by the CCO structure will transfer, as is, to the Auckland Council on 1 November 2010.
- The existing accountability framework for substantive CCOs will be enhanced.
- For substantive CCOs (other than the Regional Transport Authority) the Auckland Council will be able to require a long-term plan setting out how the CCO intends to:
 - manage, maintain and invest in its assets;
 - maintain or improve service levels;
 - respond to population growth and other changing environmental factors;
 - give effect to Auckland Council strategy, plans and priorities, including the spatial plan.

(A substantive CCO is: "A CCO wholly-owned by the Auckland Council and either undertaking major service delivery functions, or owning or managing assets with a value of more than \$10 million.")
- The Council may require the Statement of Intent of a substantive CCO to tell how the CCO contributes to the Council's and Government's wider objectives and priorities for Auckland.
- Quarterly reporting may be required against a substantive CCO's Statement of Intent.
- The Auditor-General will be required to undertake regular service performance reviews of the Council and its CCO's activities.
- Any new entities agreed by Cabinet will remain in place until July 2012, when the Auckland Council has completed consultation on its first full LTCCP.
- Elected members of the Auckland Council may not be appointed to the Boards of substantive CCOs, except for the Regional Transport Authority.

References

- CAB Min (09) 41/16 Local Government (Auckland Law Reform) Bill: Outstanding Policy Issues.
- AGR (09) 25 Local Government (Auckland Law Reform) Bill: Outstanding Policy Issues.
- AGR Min (09) Local Government (Auckland Law Reform) Bill: Entities, Assets and Liabilities, Taxation and Staff.
- AGR (09) 21 Local Government (Auckland Law Reform) Bill: Entities, Assets and Liabilities, Taxation and Staff.
- CAB (09) 722 Auckland Transition Agency Proposals for the Structure of Council-Controlled Organisations for the Auckland Council.
- CAB Min (09) 42/21 ATA Proposals for the Structure of CCOs for the Auckland Council.

Issue: Water regulatory powers

Efficiency gains from better governance of water activities are an important reason for the establishment of the Auckland Council.

Current arrangements for the delivery of Auckland's water services are complex. Watercare provides bulk water and wastewater services to each of the councils. In turn, each council provides water services to their consumers. Some councils do this directly through council operations, while others provide these services indirectly through arms-length organisations.

In future, Watercare, as a council controlled organisation, will be responsible for all drinking water and wastewater services in Auckland, on behalf of the Auckland Council.

Decisions

- From 1 November 2010, Watercare Services Ltd will be owned by the Auckland Council, and will deliver all reticulated drinking and wastewater services in Auckland.
- Until 1 July 2012, Watercare will retain its current status as a council organisation, and from 1 July 2012 Watercare will become a council-controlled organisation of the Auckland Council.
- From 2015, the Auckland Council will be able to determine the governance arrangements and asset ownership for the delivery of water services.
- The water and wastewater-related assets and liabilities of the current Auckland councils, and their subsidiaries, will transfer to Watercare.
- The statutory obligation on Watercare to maintain prices at minimum levels consistent with effectively managing its assets will be retained.
- The current legislative prohibition on Watercare paying any dividend to its owner will be retained.
- Any decisions on water and wastewater pricing will be left to the Auckland Council and Watercare, and be subject to any Auckland Council's policies and direction through the Statement of Intent.
- The Auckland Metropolitan Drainage Act 1960 and North Shore Drainage Act 1963 will be repealed.
- Watercare will not be able to make bylaws, but will be able to propose bylaws to the Auckland Council.
- The administration and enforcement of the current Auckland trade wastes bylaws will be Watercare's responsibility from 1 November 2010 until 2015 or until the Auckland Council has reviewed the bylaws and confirmed, amended or revoked them..
- The powers available to local authorities under the Local Government Act 1974 and the Local Government Act 2002 for the administration and enforcement of water and wastewater matters will be available to Watercare together with relevant powers currently available under the Auckland Metropolitan Drainage Act 1960 (other than the powers to appoint enforcement officers and to compulsorily acquire land).

- The Auckland Council will be required to appoint sufficient enforcement officers for Watercare to undertake its statutory responsibilities .
- Watercare will be deemed a local authority for the purposes of the Public Works Act 1981.
- The current restriction on Watercare's rates liability will continue to apply to Watercare's water and wastewater assets in Auckland, and will also apply to its assets in the Waikato.
- The Auckland Council will retain the obligation to assess water and other sanitary services, with appropriate use being made of Watercare's skills and experience.

References

- CAB Min (09) 37/12 Auckland Governance: Water Issues.
- AGR (09) 18 Auckland Governance: Water Issues.
- CAB (09) 720 Local Government (Auckland Law Reform) Bill: Water Regulatory Powers.
- CAB Min (09) 42/20 Local Government (Auckland Law Reform) Bill: Water Regulatory Powers.

Issue: Planning and rating systems

One of the aims of setting up the new Auckland Council is to simplify planning and rating. One rating system, one rates bill for ratepayers, and one plan for Auckland, with consequent benefits for people working across the city will be among the results of 'making Auckland greater'. In doing this it is important to protect people from sudden change, and make sure that there is an orderly process to make 'one out of many'.

Decisions

- There will be interim planning and reporting through to the end of June 2012.
- On 1 July 2012 there will be one long-term plan for all Auckland. The Auckland Transition Agency is preparing an annual plan for the eight months after the Auckland Council comes into being. ATA is also preparing a combined LTCCP based on existing councils' LTCCPs.
- On 1 July 2012 there will be a single rating system across Auckland. There will be interim rating through to 2012. This means you will be paying rates on the same basis you do now until then. The Council will make decisions on what rates apply where. This will be based on the long-term plan and fully consulted with residents.
- There will be a standard planning and reporting regime for the Auckland Council from 1 July 2012.
- A single 16 month 'annual' report will be produced by existing council-controlled organisations that are to be disestablished on 31 October 2010.
- The interim planning document being developed by the ATA for the first 8 months of the Auckland Council will be the Long Term Council Community Plan (LTCCP) for the Council to June 2012 (with prospective activity and financial information to 2019), as well as being the annual plan to June 2011.
- An Auckland valuation roll as at 1 September 2011 is to be prepared, in order to implement a single integrated Auckland Council rating policy from 1 July 2012.
- The valuation system for the initial valuation roll will be capital value.
- The introduction of the new rating system will be managed to protect ratepayers, particularly those on low and fixed incomes, and small businesses, from any sudden and significant increases in rates. The Bill will allow the Auckland Council to spread the impact of significant changes in rates (both increases and decreases) over 3 years.
- The Auckland Council will collect rates in 2010/11 on the basis set by existing councils. Funds from water supply and wastewater rates will be transferred to Watercare.
- The Auckland Council will assess 2011/12 rates for each property as a uniform percentage variation from the 2010/11 rates, less any 2010/11 water and wastewater rates assessed.

- Existing council rates remission and postponement policies will remain in force, within the former districts, until 30 June 2012 unless they are changed sooner by the Auckland Council.
- The scheduled 2010 revaluations for Rodney District and Waitakere City will be cancelled as unnecessary.
- The governing body of the Auckland Council can decline a targeted rate proposal from a local board for 2011/12 where it would be impractical or unreasonably expensive to implement it that year.
- The Auckland Council can still charge rates or use rates revenue as security for loans in the normal manner.

References

- CAB Min (09) 39/6A Local Government (Auckland Law Reform) Bill: Planning, Reporting, Rates and Local Boards.
- AGR Min (09) 12/2 and AGR (09) 23 Cabinet paper: Local Government (Auckland Law Reform) Bill: Planning, Reporting, Rates and Local Boards.

Issue: Māori representation and participation

The Government has decided to enhance the participation of Māori in Auckland Council decision-making through the establishment of an Independent Statutory Board. The decision acknowledges the role of Māori in providing for the initial establishment of Auckland, their status as the first people of New Zealand, their specific interests in land, conservation, and heritage, and the impact of council decision-making on their communities and cultural well-being.

Decisions

- The role of mana whenua (those with traditional authority in an area) and taura here (Māori whose traditional iwi ties are outside the area) in the governance of Auckland will be set out in law, with the establishment of an independent statutory board.
- The statutory board will promote social, economic, environmental, and cultural issues of significance for the mana whenua and taura here of Auckland to assist the Auckland Council in its decision making, and in carrying out existing legislative requirements.
- There will be up to 9 members of the statutory board. Up to 7 will be mandated representatives of recognised mana whenua groups within the Auckland Council boundaries that wish to participate and two taura here representatives appointed by mana whenua Board representatives.
- The statutory board will (among other things), be able to appoint persons to sit on the Auckland Council Committee(s), in particular those that deal with the management and stewardship of natural and physical resources..
- The Minister of Māori Affairs will have statutory responsibility for ensuring that the representatives of recognised mana whenua groups put forward to participate on the statutory board have been formally mandated by those recognised mana whenua groups.

References

- CAB Min (09) 39/26 Options for Māori Participation Models for Auckland Governance.
- CAB (09) 656 Options for Māori Participation Models for Auckland Governance.
- CAB Min (09) 30/9 Local Government (Auckland Council) Bill: Options for Māori Representation and participation.
- CAB (09) 482 Local Government (Auckland Council) Bill: Options for Māori Representation and Participation.

Issue: Pacific and ethnic participation

Pacific and ethnic people and their cultures help make Auckland a great city. They are under-represented on existing councils, and often have particular needs, concerns, and opportunities that may not be fully understood by councils.

Decisions

- A Pacific advisory panel and an Ethnic advisory panel will be established by legislation, for the first term of the Auckland Council.
- After the first term, the Council may determine its own arrangements to facilitate Pacific and ethnic peoples' participation in Council decision-making processes.

References

- CAB Min (09) 41/17 Pacific and Ethnic Participation in Auckland Governance.
- AGR (09) 24 Pacific and Ethnic participation in Auckland Governance.

Issue: Employment and staff issues

The changes to Auckland local government are about the way the city is organised, and the way decisions are made. Central government has not directed the Auckland Council in any way about decisions it may make in the future in negotiation with its staff.

Some positions (such as the 8 Chief Executive roles) will definitely go. The Auckland Transition Agency is working through issues and talking to staff and their unions. There is no requirement for staff numbers to be reduced, and existing council services will still be required. Better organisation as a result of one council may lead to a reduction in the need for staff. All staff members' employment agreement protections remain in place.

Staff transferring to the Auckland Council need to have their existing working conditions protected as far as possible so they are the same on day one of the new council as they were on the last day of the old. Staff who are surplus need to have their options made clear, their rights protected, and their entitlements delivered.

Decisions

- The Bill will provide for continuous service for leave and other entitlements, for employees from existing councils and CCOs who are either transferred or appointed to positions in the new Auckland Council/CCOs.
- There will be a technical redundancy clause to avoid entitlement to redundancy solely as a result of a change in employer.
- Employees confirmed in a similar role will retain the same terms and conditions of employment, unless otherwise agreed.
- The Bill will provide for transfers of staff who have not been declared surplus, and arrangements for staff declared surplus.
- Union members who are, or will be, employed by the new employer will be deemed to be employees of the new employer for the exercise of all rights and duties associated with collective bargaining in the period up to 1 November 2010. This means that unions can initiate bargaining on behalf of those union members and that those union members are able to ratify any outcome.
- Where employees covered by an existing collective agreement move to more than one new employer, each new employer and its employees become party to a single employer collective agreement based on the original collective agreement those employees were covered by. This may result in one employer being party to a number of collective agreements.

References

- AGR Min (09) 12/1 Local Government (Auckland Law Reform) Bill: Entities, Assets and Liabilities, Taxation and Staff.
- AGR (09) 21 Local Government (Auckland Law Reform) Bill: Entities, Assets and Liabilities, Taxation and Staff.
- CAB Min (09) 41/16 Local Government (Auckland Law Reform) Bill: Outstanding Policy Issues.
- AGR (09) 25 Local Government(Auckland law reform) Bill: Outstanding Policy Issues.

Issue: Assets and liabilities

Everything a present council owns or owes needs to be accounted for, and the Auckland Council needs to take over responsibility.

Decisions

- All assets and liabilities of the existing Auckland local authorities and their Council Controlled Organisations (CCOs) will transfer to the new Auckland Council on 1 November 2010, except where the Government has agreed to alternative arrangements in respect of specific CCOs.
- A statutory moratorium will be placed on the sale of shareholdings, land or buildings used or designated for service delivery, and other land and buildings with a value over \$250,000 until the Auckland Council has completed an LTCCP process (1 July 2012).
- The moratorium does not apply to asset sales already programmed in the LTCCPs of existing councils, or operational equipment and plant made surplus by the rationalisation to a new council structure.
- All charges over rates and rates revenue made by the existing Auckland local authorities will be transferred to Auckland Council, and ranked equally with each other.
- Specific transitional tax accommodations will ensure that the restructuring is tax-neutral.

References

- AGR Min (09) 12/1 Local Government (Auckland Law Reform) Bill: Entities, Assets and Liabilities, Taxation and Staff.
- AGR (09) 21 Local Government (Auckland Law Reform) Bill: Entities, Assets and Liabilities, Taxation and Staff.

Issue: interim funding matters

Local government activity is funded in different ways – primarily rates, fees and levies, and borrowing. Generally councils cannot borrow in foreign currency, but it has been suggested that one of the benefits of the new Auckland Council would be that as such a large institution it would be able to save money by doing so.

In the change-over to the new council it needs to be clear what happens to levies paid by developers to councils and to fees that have been set by existing councils.

Decisions

- Auckland Council will **not** be exempt from the prohibition on borrowing in foreign currency, but this to be reviewed once the work on a local government bond bank is completed. A bond bank could be used to give local councils throughout the country access to funds on more favourable terms and conditions.
- The third Bill will clarify the use and refund of development contributions required or collected under existing development contributions policies, and the development contributions process for water and wastewater.
- Development contributions for transport network purposes will be set, assessed, and collected by the Auckland Council, and passed to the Regional Transport Authority.
- The Auckland Council will collect development contributions under each existing council's development contributions policy, subject to existing reimbursement requirements.
- The Bill will preserve non-regulatory fees and charges set by existing councils until they are changed by the Auckland Council or a local board.

References

- CAB Min (09) 41/16 Local Government (Auckland Law Reform) Bill: Outstanding Policy Issues.
- AGR (09) 25 Local Government (Auckland Law Reform) Bill: Outstanding Policy Issues.
- CAB Min (09) 39/6A Local Government (Auckland Law Reform) Bill: Planning, Reporting, Rates and Local Boards.
- AGR Min (09) 12/2 and AGR (09) 23 Cabinet paper Local Government (Auckland Law Reform) Bill: Planning, Reporting, Rates and Local boards.

Issue: Transition arrangements

It is important that all the powers of existing councils are transferred to the Auckland Council, and that decisions already in place are maintained until they can be changed, if needed, by the Auckland Council. Change needs to happen in an orderly and predictable way, so citizens will know what is happening and have a chance to ask questions, and make their views known.

Decisions

- Bylaws in existence at the abolition of the existing councils will be transferred to the Auckland Council, for review within 5 years.
- Transport-specific bylaws will transfer to the Regional Transport Authority.
- Policies of the existing Auckland councils become the policies of the Auckland Council and remain in effect for a maximum of 5 years in each existing local authority area, until the Auckland Council establishes new policies.
- All statutory officers warranted by existing Auckland local authorities, and employed or contracted by the new Auckland Council (or by the Regional Transport Authority), may exercise those warrants for the new Council (or for the RTA) until such time as the warrants are confirmed, amended, or revoked by the Council.
- The Waitakere Licensing Trust and Portage Licensing Trust elections will be held using FPP.
- The Bill will provide for the transfer of RMA and waste minimisation responsibilities to the Auckland Council, to provide continuity in resource consent processing, plan change processing and similar duties.
- Transitional provisions will be made for continuity of operations under the Building Act 2004, Civil Defence Emergency Management and the Forest and Rural Fires Act 1977.
- The Bill will include provisions to reflect the effect of governance changes on Auckland's local, private and provincial Acts.

References

- CAB Min (09) 38/9 Local Government (Auckland Law Reform) Bill: Interim and Transitional Provisions.
- AGR Min (09) 11/1 Local Government (Auckland Law Reform) Bill: Interim and Transitional Provisions.
- AGR (09) 19 Local Government (Auckland Law Reform) Bill: Interim and Transitional Provisions.
- AGR Min (09) 11/2 Local Government (Auckland Law Reform) Bill: Local, Private and Provincial Acts: Transition Issues.
- AGR (09) 20 Local Government (Auckland Law Reform) Bill: Local, Private and Provincial Acts: Transition Issues.