

## Auckland – The Jigsaw Fits Into Place

### The third Auckland Governance Bill is now before Parliament

Last week the Local Government (Auckland Law Reform) Bill (“the Bill”) was introduced into the House and had its first reading on 15 December. The Bill makes substantial amendments and additions to both the Local Government (Tamaki Makaurau Reorganisation) Act 2009 (“the TMR Act”) and the Local Government (Auckland Council) Act 2009 (“the Auckland Council Act”), and draws together the legislative package required to give effect to Auckland local governance reorganisation.

Submissions can be made to the Auckland Governance Legislation Select Committee until 12 February 2010, and the report back date for the Bill is 4 May 2010.

The Bill is a nightmare of detail and amendment that has to be tracked against the existing legislation, but the principal provisions are as set out below.

#### Role of Auckland Transition Agency

The Bill clarifies and strengthens the role of ATA in the lead up to the commencement of the Auckland Council. In particular it adds functions and duties relating to waste assessment, management and minimisation under the Waste Minimisation Act 2008; the proposal for an Ethnic Peoples Advisory Panel; the establishment of the Waterfront Development Agency; and arrangements for the initial operation of Auckland Transport.

The planning document ATA is required to prepare under section 13(1)(g)(iva) of the TMR Act is required to include specified accounting, funding, service level and financial information, including budgets for each local board area.

#### Local Boards

Members of local boards are elected in accordance with the Local Electoral Act 2001, and elect their own chairperson. Members are subject to the liability and indemnity provisions in the Local Government Act 2002 as if a member of a local authority, but only in respect of matters that are the responsibility of that member’s local board.

The powers of the Minister of Local Government to review or discipline a local authority set out in Part 10 of the Local Government Act 2002 (“LGA’02”) apply to local boards.

In the first Plan for the Auckland Council, to be prepared by ATA for the period 1 November 2010 to 30 June 2011, provision will be made for an initial allocation of decision-making responsibility for the non-regulatory activities of the Council between the governing body and local boards.

The Bill provides a method for resolving disputes where a local board is dissatisfied with the decision of the governing body in relation to the allocation of non-regulatory decision-making functions or in relation to a request to make or revoke a local bylaw. If reasonable efforts to agree do not resolve the dispute a local board may apply to the Local Government



Commission for a binding determination. The Local Government Commission then investigates and considers the matter before making a determination. This role may be delegated to a committee or member of the Commission.

No employee of the Council can be a member of a local board, and if elected to such a position must resign from the Council's employment before taking up the position.

## Elections

Presumably for the sake of consistency the Bill clarifies that not only the first election of the Auckland Council, but also the next election of the Waitakere and Portage Licensing Trusts will be held under the first past the post method.

Each existing territorial authority is required to make, or amend an existing bylaw, to provide for the rules and requirements relating to signs for the October 2010 triennial general elections, and in particular must identify all land owned by that authority on which signs may be erected for election purposes.

The Auckland Council representation arrangements stay in place until after the 2013 triennial general election, but must be reviewed no later than 8 September 2018 under section 19H of the Local Electoral Act 2001. That Act is amended to make provision for the review of the subdivision of a local board area along with the other representation arrangements required to be reviewed every 6 years under section 19H.

## Rating

The new Council will operate a capital value system for setting general rates, and the Chief Executive is required to make provision for a single integrated rating policy from 1 July 2012.

Provision is made for the Auckland Council to manage the changes to rating liability arising from the creation of a single rating system over a three-year period from 1 July 2012 to 30 June 2015 by introducing a Rates Transition Management Policy. The Policy can be used to set a maximum percentage change in rating for any rating unit in a rating year. An adjustment is made to affected rating units to keep the rates within this percentage, the effect of which can be to increase or reduce the actual rate charged.

The Auckland Council will collect and deal with the balance of rating matters for the 2010/2011 financial year, and must set a single transition rate for the 2011/2012 financial year. Watercare Services Limited ("WSL") will collect any such rate set for water supply and wastewater services.

The district valuation rolls, rating information databases and records of each existing local authority at 31 October 2010 remain in force for the areas to which they relate.

Rodney District Council and Waitakere City Council are excused from conducting the revision of their valuation rolls in 2010 for the purposes of a general revaluation.

All funding and financial policies that have effect only within the former districts of existing local authorities must be replaced by a single integrated policy no later than 2012.

## Council-controlled organisations (CCOs)

The Governor-General may, by Order in Council made on the recommendation of the Minister of Local Government, authorise ATA to establish one or more new CCOs of the Auckland Council. Such a recommendation may only be made where the Minister is satisfied it is necessary for the effective and efficient governance of Auckland, and does not inappropriately constrain the discretion and accountability of the Auckland Council. The Minister of Local Government may make the initial appointment of directors to a CCO established under this provision on the recommendation of ATA.

The Bill creates a new category of CCO in Auckland – the “substantive council-controlled organisation” (“SCCO”). An SCCO is a CCO that is wholly owned by the Council and is either responsible for the delivery of a significant service or has assets in excess of \$10 million. A SCCO (with the exception of Auckland Transport) may be required by the Council to include in its statement of intent a narrative on how it will contribute to the Council’s objectives and priorities for Auckland, provide a quarterly report, and adopt a 10-year planning document.

No sitting councillor may be appointed a director of a CCO.

The CCOs of any existing local authorities that continue in existence from 1 November 2010 must be named in the ATA planning document with any subsidiaries and a description of activities and performance measures. Any new CCO must be listed along with the instrument by which established and its objectives.

In addition to those CCOs specified in the Bill (WSL, Auckland Transport and a Waterfront Development Agency) the *Cabinet Decisions Paper* dated 3 December 2009 contemplates new CCOs for:

- Economic Development, Tourism and Events,
- Property Holdings and Development,
- Major Recreational Facilities, and
- Council Investments.

The Bill requires ATA to establish a new CCO to be known as the Waterfront Development Agency for the Auckland Council.

## Auckland Transport

Auckland Transport is established as a CCO of the Auckland Council with the objective of functioning in a way “that contributes to an affordable, integrated, safe, responsive, and sustainable land transport system for Auckland”. The Auckland Council is to be treated for the purposes of the Local Government Act 2002 as if it were the sole shareholder of Auckland Transport. ATA must as soon as possible appoint a Chief Executive for Auckland Transport with a term ending no later than 30 June 2012. The Ministers of Transport and of Local Government may appoint the initial directors of Auckland Transport on the recommendation of ATA.

Auckland Transport replaces the disestablished Auckland Regional Transport Authority and Auckland Regional Transport Network Limited. It is required to prepare the regional land transport programme for Auckland in accordance with the Land Transport Management Act 2003 as well as manage and control the Auckland transport system. It should be noted that the term ‘Auckland transport system’ excludes State Highways, railways, off-street parking facilities under the control of the Auckland Council, and airfields. Auckland Transport will have certain other statutory functions and duties as if it were a local authority including parking and traffic management, control of roads (except State Highways), and bylaws (roads and transport only). It may also have functions directed or delegated to it by the Auckland Council.

The current Auckland regional land transport **programme** remains in effect until 30 June 2012, but the Auckland Council must prepare and approve a new regional land transport **strategy** no later than 1 November 2016.

The Auckland Council can include in its development contribution policy provision for development contributions to fund its contribution to Auckland Transport’s capital expenditure.

The governing body will be a board of directors of between six and eight, two of whom may be elected members of the Auckland Council. The agreement of the Auckland Council is required to any borrowing by Auckland Transport. Despite the fact that Auckland Transport is a CCO the provisions of the Local Government Act 2002 that require the preparation of and adherence to a statement of intent do not apply to it. Instead its operating principles are set by the statute.

All statutory warrants relating to transport law are from 1 November 2010, deemed to have been issued by Auckland Transport and remain in force until confirmed, amended or revoked.



## Water

The provisions relating to water supply and wastewater services for Auckland apply to 'Auckland water organisations', which may be the Auckland Council (except in relation to proposing bylaws), Watercare Services Limited or a CCO of the Auckland Council that provides water supply or wastewater services in Auckland. However, until the end of June 2015 WSL retains a monopoly over integrated water and wastewater services in Auckland, and must remain in the ownership of the Auckland Council. Beyond that date the Auckland Council may decide at its discretion how it will provide water and wastewater services in Auckland.

The relevant assets and liabilities of the current Auckland councils and their subsidiaries will transfer to WSL. WSL loses its exemption from classification as a CCO, and until 30 June 2012 will be treated as a local government organisation for the purposes of subpart 1 - *Specific obligations to make assessments of water and sanitary services* of Part 7 of the LGA'02. No member of the Auckland Council can be a director of WSL. There are transitional provisions that apply to WSL until the end of June 2012, and until the end of June 2015 WSL must comply with any directions of the Auckland Council in setting the prices for its water and wastewater services.

Significantly any Auckland water organisation will be required to manage its operation "with a view to keeping charges for water supply and wastewater services at the minimum levels consistent with the effective conduct of its undertakings and the maintenance of the long-term integrity of its assets", and must not pay any dividend or distribute any surplus to its owner. In other words it must not be treated as a cash cow for the Council.

An Auckland water organisation will have the power to propose to the Auckland Council bylaws relating to the management of its services. If compliant with statutory requirements, not inconsistent with any Council provision, and capable of being implemented in a cost effective manner, the Council must advise accordingly. The bylaw must be confirmed using the special consultative procedure pursuant to the LGA'02. Until the Auckland Council makes a new Trades Waste Bylaw (and no later than 1 July 2015), WSL must administer and enforce the Auckland Regional Council Trade Wastes Bylaw 1991.

Water supply and wastewater services will be able to be constructed and maintained on private property in accordance with section 181 of the Local Government Act 2002 as if the Auckland water organisation were a local authority, and authority is also given for related infrastructure in roads following notice and in accordance with any reasonable conditions set by Auckland Transport. In addition the powers set out in the Local Government Act 1974 relating to drainage works will be available to an Auckland water organisation.

Land owned by an Auckland water organisation and used for water supply or wastewater services will be rated on land value only, despite the change to capital value rating.

## Spatial plan

The long anticipated spatial plan is provided for in the Bill as a requirement of the Auckland Council. Its purpose is to provide "an effective and broad long-term [20-30 year] strategy for growth and development in Auckland". As well as stating the strategic direction for Auckland and how it will get there the plan must set out "Auckland's role in New Zealand" and visually illustrate how Auckland may develop in the future. It must state broad objectives for land use, transport, other infrastructure, and environmental management, and identify critical infrastructure services and related investment. It will have a geographic component identifying the mix of residential, business and industrial activities in Auckland, as well as significant ecological sites for protection. It must act as a directional, integrating and co-ordination mechanism in relation to the Council's plans and policies.

The Council must prepare the plan pursuant to the special consultative procedure.

## Maori

Following on from the debate and controversy over the Government refusal to require Maori representation on the governing body of the Auckland Council, provision is made for the establishment of a board "to promote cultural,

economic, environmental, and social issues of significance for mana whenua and Maori of Tamaki Makaurau to assist the Auckland Council in making decisions, performing functions, and exercising powers”.

The Board will consist of nine members, two of whom are taura here representatives and seven mana whenua representatives. A selection body consisting of mandated representatives of mana whenua groups identified by the Minister of Maori Affairs will make the appointments to the Board. No Auckland Council or local board member is eligible for appointment.

The Board may choose its own name, and must appoint two persons to sit on each of the Council committees that deal with the management and stewardship of natural and physical resources. Otherwise its functions are advisory, although it may consult persons likely to help it carry out its purpose. The Auckland Council must provide the Board with information, consult on matters affecting tangata whenua and Maori of Tamaki Makaurau, fund the Board, and take into account its advice.

## Development contributions

As a result of the reallocation of some functions it has been necessary to include in the Bill a statement to the effect that the powers of the Auckland Council to require development contributions are not affected by arrangements for another party to manage Council-owned reserves, network or community infrastructure. Development contributions held by an existing local authority will transfer to the Auckland Council to be held for the purposes for which they were required.

The development contribution policies of each of the existing local authorities will form part of the development contribution policy of the Auckland Council and may be implemented within the former district of the authority that adopted it. However those policies must be amended by resolution of the Auckland Council to omit all provision for water and wastewater infrastructure from 1 July 2011. Those existing policies must be replaced by a single development contribution policy no later than 30 June 2012.

Development contributions for water or wastewater infrastructure made under existing development contribution policies will be held by the Auckland Council until 30 June 2019, or either refunded if required by sections 209 or 210 of the Local Government Act 2002, expended by the Auckland Council if it undertakes the relevant capital expenditure, or transferred to an Auckland water organisation that undertakes the relevant capital expenditure.

Development contributions for transport infrastructure made under existing development contribution policies will be held by the Auckland Council for the purposes for which they were required, or transferred to Auckland Transport as part of the Council’s funding if it undertakes the relevant capital expenditure.

## Property

A moratorium is imposed until 1 July 2012 on the sale, transfer or disposal of shareholdings, land or building used for service delivery purposes, or any other land or buildings with a current valuation of \$250,000 or more by the Auckland Council. There are exceptions for disposals contemplated in the current long-term council community plan of an existing local authority, included in the statement of intent of a CCO, required to effect or complete a public work, or in relation to operational plant or equipment identified as surplus to requirements.

## Employment provisions

The Bill makes provision for the review of the positions of existing employees of existing local authorities, Metro Water Limited, Manukau Water Limited, the Auckland Regional Transport Authority and Auckland Regional Transport Network Limited by the Chief Executive of the Auckland Council to decide whether each should be transferred to a new employer or terminated with the dissolution of those organisations. If the employment is to be transferred the Chief Executive decides, in consultation with the Chief Executives of Auckland Transport or WSL as the case may be where relevant, which organisation the person is to be transferred to and the whether or not the transfer will be on the same or different terms and conditions. The review must be completed and notified to concerned parties no later than 30 September 2010.

The provisions relating to transfer and redundancy are set out in new Schedules to the Auckland Council Act. An employee who is to be transferred becomes an employee of that new employer on 1 November 2010 on the same terms and conditions or on such terms and conditions as have been notified to them. Employment is to be treated as continuous.

No compensation for redundancy will be payable in the case of any employee offered a new position on substantially similar terms and conditions if the offer is declined, or accepted and given effect to. Where an offer of employment is made on terms and conditions that are not substantially similar, and that offer is declined, the employee is entitled to the compensation payable under the terms and conditions of their existing employment. If an offer of employment at a lower pay rate is accepted the employee is entitled to compensation in accordance with their prior terms and conditions of employment, or to payment at a similar rate until 30 April 2011. An employee required to relocate may also be entitled to compensation.

ATA will undertake the necessary review if the Chief Executive has yet to be appointed.

Negotiations to replace existing collective agreements from 1 November 2010 may be undertaken by the Chief Executive of the Auckland Council, Auckland Transport or WSL as the case may be. For the purpose of those negotiations individuals will be treated as if they were employees of their new employer and that new employer were a party to the collective agreement. Existing collective agreements will continue to apply to transferred employees as if the new employer is a party to the agreement until such time as they are renegotiated or expire. An employee continues to be bound only if the nature of the work they undertake for the new employer comes within the coverage clause of the collective agreement.

## **Bylaws**

The Bylaws of existing local authorities on the Auckland transport system are, from 1 November 2010, deemed to have been made by Auckland Transport and to apply in the area to which they formerly applied until confirmed, amended or revoked by Auckland Transport.

The Bylaws of existing local authorities on waste are from 1 November 2010 deemed to have been made by the Auckland Council and apply in the area to which they formerly applied until confirmed, amended or revoked by the Auckland Council. All such bylaws must be reviewed by the earlier of the date of review required under the Local Government Act 2002 or 30 June 2012.

All other Bylaws of existing local authorities are, from 1 November 2010, deemed to have been made by the Auckland Council and to apply in the area to which they formerly applied until confirmed, amended or revoked by the Auckland Council. All such bylaws must be reviewed by the earlier of the date of review required under the LGA'02 or 31 October 2015.

## **Transitional provisions**

### *Policies*

All policies of the existing local authorities that are required by statute (other than the LGA'02), regulation or rules are from 1 November 2010 deemed to have been made by the Auckland Council and remain in force in the area to which they applied until confirmed, amended or revoked. The Auckland Council must review each such policy no later than 31 October 2015.

### *Warrants*

All statutory warrants (other than those relating to transport law) issued by an existing local authority are from 1 November 2010 deemed to have been issued by the Auckland Council and remain in force until confirmed, amended or revoked.



### *Fees and charges*

Fees and charges set under section 150 of the Local Government Act 2002, or under any other Act for inspections or approvals, may be replaced on the recommendation of the Minister of Local Government by Order in Council made before 1 October 2010. Fees and charges of this nature that are not replaced by Order in Council remain in force for the area to which they apply until amended or replaced by the Auckland Council.

Other fees and charges set by existing local authorities remain in force for the area to which they apply until replaced or revoked by the Auckland Council.

### *Standing orders*

Standing Orders for the Auckland Council must be prescribed by Order in Council on the recommendation of the Minister of Local Government before 1 November 2010, and will remain in force until the Auckland Council adopts new standing orders.

### *Delegations*

As at 1 November 2010 the Chief Executive of the Auckland Council will hold "all the responsibilities, duties, and powers of the Council that any Act allows a local authority to delegate to an officer". The Chief Executive may in turn delegate to any officer or employee of the Auckland Council, including those appointed prior to that date. The Chief Executive retains those responsibilities, duties and powers until new delegations are made, but in any case no later than 30 June 2011.

### *Building consent authority*

The Auckland Council is made a Building Consent Authority under the Building Act 2004 from 31 October 2010, and remains so until properly processed as such under that Act, but in any case no later than 31 October 2011 or such date as may be extended by Order in Council.

### *Civil defence*

The existing Civil Defence Emergency Management Group established by the existing local authorities continues to function until replaced by the Auckland Council.

### *Fire authority*

Rural fire officers appointed by existing local authorities retain their office within their appointed areas until they are appointed by the Auckland Council, resign, or their term of appointment ends. Similar provisions apply to the Principal Rural Fire Officers whose positions may be terminated by the appointment of another person as the Principal Rural Fire Officer for the Auckland Council.

### *Resource Management*

All regional and district plans and any regional policy statement of existing local authorities operative immediately before 1 November 2010 are deemed to be the operative provisions of the Auckland Council and remain so until replaced by an operative plan or statement of the Auckland Council. All proposed regional and district plans and any regional policy statement of existing local authorities that has not been made operative by 1 November 2010 are deemed to be proposed provisions of the Auckland Council. Designations in existing district plans that have not lapsed continue to have effect until the Auckland Council includes a requirement for designations in its proposed district plan, but no later than 1 November 2015.

Plan changes or variations commenced but not yet completed by an existing local authority before 1 November 2010 continue to be processed as if commenced with the Auckland Council. All existing approvals and certificates of compliance continue to have effect as if granted by the Auckland Council.

The appeals already lodged against a change or variation lodged and publicly notified under sections 39 and 40 of the Local Government (Auckland) Amendment Act 2004 must be determined as if that Act had not been repealed and the Auckland Council had not adopted a spatial plan.

Provision is also made for continuity in respect of areas transferred out of the existing Auckland region as the result of boundary changes.

### *Waste*

The waste management and minimisation plans of existing local authorities are deemed to be the Auckland Council's waste management and minimisation plan.

## **Repeals and amendments**

There is a substantial list of statutory amendments to related legislation, and the Auckland Metropolitan Drainage Act 1960 is retired after long service to many masters.

No further reorganisation proposal may be made affecting Auckland until after the 2013 triennial general elections.

For a full copy of the Bill, go here:

[http://www.legislation.govt.nz/bill/government/2009/0112/latest/whole.html?search=ts\\_bill\\_local+government\\_resel&p=1](http://www.legislation.govt.nz/bill/government/2009/0112/latest/whole.html?search=ts_bill_local+government_resel&p=1)

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