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**LG Law**

## Auckland Local Government Reforms Rolls On

### A summary of the report back to Parliament on the Local Government (Auckland Law Reform) Bill

On Monday the special Select Committee considering Auckland local governance legislation reported back to Parliament on the Local Government (Auckland Law Reform) Bill.

We reported on the Bill following its first reading in [December](#) of last year. The report back version can now be accessed at [http://www.parliament.nz/en-NZ/PB/SC/Documents/Reports/8/4/0/49DBSCH\\_SCR4748\\_1-Local-Government-Auckland-Law-Reform-Bill-112-2.htm](http://www.parliament.nz/en-NZ/PB/SC/Documents/Reports/8/4/0/49DBSCH_SCR4748_1-Local-Government-Auckland-Law-Reform-Bill-112-2.htm).

It was expected that the report back version of the Bill would take account of some 768 submissions expressing concerns that focused largely on the scope and governance of the proposed council-controlled organisations (CCOs) and the role of local boards. Some significant changes have been made, and it is expected that the Bill will be passed within a few weeks.

The report back version of the Bill is no less a nightmare than the original to summarise, but we will focus on the changes that have been made, recognising that there may be further last minute amendments during the enactment process as pressure is brought to bear on Government.

#### Local Boards

The Select Committee has resisted the pressure to make more prescriptive provisions for the allocation of functions between the governing body and local boards. Nor has it succumbed to calls for the initial allocation of functions to be taken out of the hands of the Auckland Transition Agency (ATA). Instead it provides an indicative list of the non-regulatory issues local boards can expect to make decisions about and suggests some limited delegation of decision-making in the transport area. It has also inserted a new clause that will preserve the ATA allocation of functions under section 17 of the Local Government (Auckland Council) Act 2009 (**Auckland Council Act**) until the Auckland Council adopts the 2012 Long-term Council Community Plan, except that the Council can allocate additional functions to local boards during the intervening period.

Although the initial membership of local boards was set at a minimum of 4 and a maximum of 9, and allocated accordingly by the Local Government Commission, for future reviews the number of members will be set between 5 and 12.

Local boards will be given an extended deadline for the completion of local board plans (31 October instead of 30 April in the year following a triennial election) to ensure adequate time for consultation. But local board agreements will be more closely proscribed, and local board plans must not be inconsistent with the strategies, plans and policies, and objectives of the governing body. The dispute settlement procedure whereby disputes

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between local boards and the governing body relating to allocation of decision-making, proposed bylaws or local board agreements will no longer apply to local board agreements so as to avoid the possibility of creating difficulties with the statutory time constraints on the adoption of LTCCPs and Annual Plans, which must include such agreements.

## Council-controlled organisations

The Local Government (Tamaki Makaurau Reorganisation) Act 2009 (**Reorganisation Act**) is amended by providing a new framework for the dissolution of existing CCOs. Provision is made to enable the allocation of assets, liabilities, rights and obligations to a variety of receiving entities including the Auckland Council and existing and new CCOs. A change is also made to the manner in which the proposed new CCOs are established. Instead of ATA being authorised by Order in Council to establish a new CCO, it will now do so as directed by Order in Council made on the recommendation of the Minister of Local Government.

The provisions relating to the appointment of directors have also been changed slightly. The Minister will still appoint the initial directors of the new CCOs, but it is made explicit that the Auckland Council, once in operation, can remove those directors at any time. It appears that some directorships may be left vacant allowing the Auckland Council to make some appointments at the outset. Apart from Auckland Transport elected members of the Auckland Council continue to be barred from being appointed as directors of a substantive CCO, as will members of local boards.

To address concerns about the accountability of CCOs a new provision requires the Auckland Council to have a specific accountability policy for its substantive CCOs, which is to be included in the LTCCP. Another new provision requires all substantive CCOs to act consistently with other plans (including a local board plan) or strategies of the Council to the extent specified in writing by the Council, and to give effect to the relevant aspects of the LTCCP. In addition the Auckland Council will be able to appoint the chair and deputy chair of each substantive CCO, except that an elected member may not be appointed chair or deputy chair of Auckland Transport.

The reference in the Reorganisation Act to the creation of a Waterfront Development Agency is amended to refer to a CCO "with responsibility for the development of Auckland's waterfront" because there is as yet no certainty as to the legal form of this entity. The process for establishing this CCO is now outlined in the Bill, and includes an Order in Council made on the recommendation of the Minister specifying its objectives, governance structure, and other details.

## Transport

The amendments proposed by the Select Committee to the Bill are intended to bring the creation of Auckland Transport in line with the arrangements intended for the other CCOs of the Auckland Council. This amendment would see the Auckland Council playing a greater role in determining Auckland Transport's operational parameters.

The Select Committee has recommended that the provisions of the Local Government Act 2002, as they relate to CCOs should apply to Auckland Transport, except for the provisions in relation to board membership and the duty to produce a 10-year plan, as those are already required of Auckland Transport. As a result of these changes Auckland Council will have a greater scope to influence the setting of Auckland Transport's operating objectives through approving its statement of intent and reviewing its quarterly reports. As well as this the Auckland Council will be able to draw up operating rules and appoint the chair and deputy chair of the organisation.

The Select Committee has sought a change to the Bill to replace the objectives statement for Auckland Transport with a purpose statement. This is intended to distinguish the statutory role of the organisation from those objectives agreed with Auckland Council through Auckland Transport's statement of intent.



Currently Schedule 2 of the Bill introduces the rules to govern the Board of Auckland Transport. That Schedule is deleted and replaced with a provision enabling the Auckland Council to determine rules for the operation of Auckland Transport. Certain provisions from Schedule 2 are retained where needed.

A number of the amendments proposed by the Select Committee are intended to clarify the role and function of Auckland Transport. In particular the Select Committee proposes a specific statement to be included in the Bill, that those functions and powers outlined for Auckland Transport are to be exercised by that organisation alone. The amendments make it clear that the Auckland Council may continue to act as a requiring authority in respect of areas that form part of the Auckland transport system, but only for purposes that are not transport-related. A specific mention is also included for Auckland Transport's ability to take on delegated powers from the New Zealand Transport Agency in relation to State Highways.

The Bill is amended so that the ownership of roads rests explicitly with the Auckland Council, and furthermore that the Auckland Council, rather than Auckland Transport, will be responsible for any land to be acquired for transport activities under the Public Works Act 1981, provided Auckland Transport agrees to the acquisition. A new section is also proposed to clarify Auckland Transport's ability under section 180 of the Resource Management Act 1991 (**RMA**) to transfer designations when financial responsibility for the work transfers to another requiring authority. Such a transfer is limited by the provision but would enable, amongst others, a transfer to the Auckland Council.

A final explicit provision in relation to functions and powers is that the Bill stipulates that Auckland Transport has the powers of a road controlling authority under the Land Transport Act 1998 and the rules made under that Act over the Auckland Transport System.

Rather than requiring a statutory review, Auckland Transport will be empowered to review, modify or repeal any bylaws in accordance with any requirements under which the bylaw was made. Finally, an amendment is made to reflect that statutory warrants issued by the Commissioner of Police under section 208 of the Land Transport Act are not deemed to be warrants issued by Auckland Transport.

## **Waste**

Concern was expressed by submitters about the tight deadline for the review of the existing transitional waste management plans, and this has been addressed by allowing the Auckland Council to take account of consultation work already undertaken by ATA. Work carried out by that agency and existing councils in preparing a draft waste management and minimisation plan can be regarded as contributing to the Council's obligations under the Waste Minimisation Act.

## **Water**

In addition to some amendments that clarify certain ambiguities in the Bill, the Select Committee has inserted several water service provisions that hold the Auckland water organisation more accountable to the Auckland Council.

The Select Committee wanted to affirm that even if after 2015 the Auckland Council chose not to use Watercare Services Ltd as their water and wastewater service provider, any assets owed by Watercare would have to be transferred back to the Council or to another council organisation. This addresses some concerns that submitters had in relation to the potential for privatisation of water services to occur.

The Bill is amended to make it clear that the Auckland water organisation does have the key power of being able to undertake work on public land. An additional provision has made it clear that the Auckland water organisation will have the functions, duties and powers of a local authority under the Public Works Act.



The Auckland Council is required under the Bill to consult with the Auckland water organisation when appointing enforcement officers. This requirement of consultation acknowledges the greater enforcement role the Auckland water organisation is likely to have and takes into account the beneficial information the Auckland water organisation will have regarding the number of enforcement officers required to carry out their functions.

The reference to 30 June 2015 has been removed from the provision requiring Watercare to take into account the policies of, and to comply with directions from, the Auckland Council when it is setting its prices for water and wastewater services. The removal of this unintended constraint that this date placed on the provision clarifies that the Auckland water organisation will continue to be constrained in what it charges for its water supply and wastewater services.

Under the new Bill substantive CCOs (which the Auckland water organisation will become on 1 July 2012) are subject to increased accountability. This comes in the form of the Auckland Council being required to adopt an accountability policy for substantive CCOs and substantive CCOs being required to give effect to the LTCCP and act consistently with any other specified plans and strategies of Council. Under the new Bill the Council may also impose additional accountability requirements on substantive CCOs.

Instead of referring to Watercare specifically in relation to giving effect to the LTCCP, the term "Auckland water organisation" has replaced it. This ensures that any future water services that may not be Watercare services are covered by the requirement to give effect to the LTCCP.

The requirement for the Auckland water organisation to keep charges for water supply and wastewater services at the minimum levels has been maintained in the new Bill and the select committee has clarified that purely by giving effect to the LTCCP the Auckland water organisation is not departing from this requirement.

## Spatial Plan

The Bill introduces a requirement for the Auckland Council to prepare and adopt a spatial plan to provide a long term strategy for Auckland, and has been amended to clarify that the spatial plan is intended to encompass the promotion of the economic, social, cultural and environmental well-being of communities in accordance with the RMA, the Land Transport Management Act 2003 and the Local Government Act 2002. The Auckland Council will also be required to consider the four well-beings when setting the strategic direction for Auckland. A new provision has been added to better define the purpose of the spatial plan in terms of setting a strategic direction, outlining a high level development strategy, enabling coherent and co-ordinated decision-making, and aligning the implementation plans, regulatory plans, and funding programmes of the Auckland Council.

A new provision is added, which clarifies that critical infrastructure includes services managed by network utility operators as well as cultural and social infrastructure, transport, open space, water supply and wastewater and stormwater. The environmental function of the spatial plan has been expanded so that nationally and regionally significant parks and open spaces are to be identified. The plan is to include regionally significant natural environmental constraints, regionally and nationally significant landscapes, areas of historical heritage value and natural features. The spatial plan also includes the ability for the Auckland Council to develop and be informed by a regional arts and cultural strategy and a regional recreation and sports strategy.

Another new provision requires the Auckland Council to engage with central government and infrastructure providers in developing and implementing the spatial plan. The Auckland Council is given more flexibility as to when it can amend the plan by removing the qualification relating to a significant change in circumstances, therefore helping to remove the risk of undermining the long term purpose of the spatial plan through constant amendments.

A provision has been inserted into the Bill to preserve the current effect of section 18 of the Waitakere Ranges Heritage Act 2008 while the Regional Growth Strategy remains in force. The Auckland Council must ensure



that the spatial plan provisions are not inconsistent with that Act. The spatial plan should also be consistent with the Hauraki Gulf Marine Park Act 2000. It is also noted that the relationship between the spatial plan and other national policy instruments will be investigated in the second phase of reforms being made to the RMA.

## Resource Management

The Bill provides for the continuation of regional plans, district plans and regional policy statements after 1 November 2010. The Select Committee has recommended that a new clause be included in the Bill to ensure that existing designations that specify a longer timeframe will continue for the term for which they were granted and will not be otherwise affected by the timeframes set out in the Bill. Designations that would otherwise lapse in accordance with section 184 and 184A of the RMA before 31 October 2010 are deemed to continue until 1 November 2015.

## Sale of Assets

The moratorium placed on the sale of assets is only subject to two minor amendments. An amendment will clarify the ability of the Auckland Council to transfer assets to its CCOs. How these assets are then dealt with is, the Select Committee comments, specified through the proposed accountability policy for CCOs. The second amendment is to include an exception that will allow disposal of an asset as a consequence of a public work. This second amendment is in addition to the current exception that allows a sale of assets where disposal is required for public works.

## Employment

To enable the employment provisions in the Bill to be more accessible and clearer, Part 4 has been inserted into the new Bill to deal with transitional issues of the Auckland Council specifically relating to employment.

An additional provision in Part 4 enables any staff transition activity that takes place before Part 4 has been enacted to be deemed as having been done in accordance with the Act so long as it would have complied with Part Four had it been law at the time the activity took place.

While employees can still utilise the protection of Part 6A of the Employment Relations Act 2000 under the Bill, this protection is limited to situations where the work performed by the defined group of workers is to be contracted out or sold to a third party, which is not the Auckland Council or any of its CCOs, or their subsidiaries.

To give further clarification on compensation, Part 4 as amended clarifies that no redundancy compensation would be payable to an employee who accepted a new position in the Auckland governance arrangements. This is regardless of whether the position is lower paid. Part 4 now specifies the minimum relocation compensation that is available, depending on distance differential, in the event that an employee's employment agreement did not include a minimum relocation provision, or the provision was less favourable.

The salary protection is now stated in Part 4 as being six months from either 1 November 2010 or the date of commencement of work in the substantive new position. This additional provision takes into account that some employees who are carrying out transitional work may not commence work in their new position until after 1 November 2010.

Part 4 also addresses the issue of collective employment agreements in relation to the transition by allowing advance collective bargaining that takes place before 1 November 2010 to replace existing collective agreements, and if no advance collective bargaining takes place before this transition date, transferring collective employment agreements to which employees are already bound.



## Remuneration

In terms of the remuneration of the incoming Council and community board members, a new clause is inserted in the Reorganisation Act. That clause requires the Remuneration Authority to issue an interim determination by 15 July 2010 for the remuneration of the Council and local board members. A subsequent amendment to the Bill provides that that interim determination would remain in force until a new determination is made under the provisions of the Local Government Act 2002.

## Community Funding

### *Funding arrangements during the transition period*

The ATA has recommended existing councils and community boards allocate contestable funding for the 2010/2011 year before 1 November 2010. Existing councils are responsible for disbursing those funds for the period between 1 July 2010 and 31 October 2010. After 31 October 2010 the Auckland Council will disburse funds in accordance with the decisions made by the former councils. All non-contestable funding and in-kind agreements for support of community groups will continue on the current terms and conditions until 30 June 2012 unless it is determined that there is no good reason to do so.

### *Local Board decisions on community funding*

Budgets in the planning document prepared by ATA will reflect any community funding which an existing council has already planned. Funding will be allocated by ATA between local boards and the governing body depending on whether the funding objectives are region wide or to address local needs. It is anticipated that local boards will have an increasing role and influence on funding decisions. Local boards will become responsible for decisions relating to contestable funding for community groups from 1 July 2011 and non-contestable support of local community groups from 1 July 2012. Local board decision-making will be guided by the priorities and preferences set out in the local board plan.

## Board promoting issues of significance for Mana Whenua and Maori of Tamaki Makaurau

To add clarity to the role of the Board to be established under the Auckland Council Act it is to be stated that the Board:

- is independent of the Auckland Council and mana whenua and mataawaka (Maori who live in Auckland and are not in a mana whenua group) groups;
- is a statutory entity;
- members must act in the interest of achieving the Board's purpose.

The existence of the Board does not relieve the Auckland Council of its obligations under other legislation that would require it to consult with Maori.

The obligation of consensus decision-making is to be replaced by the desirability of members of the Board reaching decisions by following the principles of consensus decision-making. The Board will be limited to a maximum of two members to sit on Auckland Council committees that deal with the management and stewardship of natural and physical resources. The Auckland Council and the Board will be required to meet at least four times a year under the Bill.

## Youth Engagement

Through its deliberations, the Select Committee received suggestions that the Bill be amended to reflect the importance of engaging with young people. The Select Committee has provided for this engagement through an

addition to the role of the Mayor under the Auckland Council Act to establish processes and mechanisms whereby the Auckland Council may engage with "persons too young to vote".

## Development Contributions

The requirement for obligations relating to existing development contributions held by or owed to existing local authorities to transfer to the Auckland Council is relocated to the transitional provisions of the Bill, and the specific provisions for the transfer of development contribution policies to the Auckland Council are deleted as they are considered to be adequately covered by the generic transfer provisions in the Auckland Council Act. We can only hope this assessment is correct given the already complex issues arising from the administration of development contribution policies.

Development contributions held or taken for water supply or wastewater services by the Auckland Council are to be transferred immediately to Watercare Services Ltd. As a consequence, if the development does not proceed or the relevant expenditure does not occur the water organisation would be responsible for reimbursing the Auckland Council for any refund it was required to make under section 209 of the Local Government Act 2002.

## Interim Arrangements

### *Planning Documents*

The Bill has been amended to make clear that while funding and financial policies in the planning documents prepared by ATA will continue to apply after 1 November 2010, they will only be applicable in the former districts of the existing Councils that have adopted them. New clauses clarify the status of planning documents prepared by ATA, providing that:

- the planning document will serve in the place of an LTCCP until 30 June 2012;
- the policies prepared by ATA will be the policies of the Auckland Council;
- the allocation of local board responsibilities and funding in the planning document will apply as if they had been allocated under the LTCCP;
- the planning document will serve as an annual plan until 30 June 2011; and
- the Auckland Council will be allowed to amend the planning document during this period, provided that the process for amending the LTCCP is used.

A new schedule will also be inserted into the Reorganisation Act to specify the content of the planning document, including an initial investment policy for the Auckland Council and an initial integrated Revenue and Financing Policy that represents a compilation of the policies of the existing Councils. The report back version of the Bill also clarifies that the Auckland Council will be responsible for completing final reports of the existing authorities for the period 1 July 2009 to 31 October 2010 and requiring that these reports be adopted by 31 March 2011.

### *Rating Arrangements*

The clauses regarding rates transition policies have been amended to require that a dollar limit be set for each year. This is in contrast to the Bill as introduced, which only required that the policy set out a percentage limit rather than a dollar limit. The policy may specify different rates increases/decreases but only where this achieves a neutral outcome. The rating system used for the 2012/2013 year will be the capital value system.

A single transaction rate will be set for the 2011/2012 financial year for wastewater services and direct charging for water will be delayed in favour of a separate wastewater transition charge proportional to the 2010/2011 wastewater rates. These rates will be collected by the Auckland Council and paid to Watercare Services Ltd.

Local Boards are unable to propose targeted rating in the 2011/2012 financial year. A new clause requires the Auckland Council to adopt a new rates remission and postponement policy with effect from 1 July 2011 that may differ with respect to the areas of the former local authorities.

## Amendments to Auckland-related local and private Acts

Schedule 3 of the Bill deals with those Acts that are now spent, or require amendment as a result of the SuperCity changes, including local and private Acts. Changes are made to the amendments made to three of these Acts - the Auckland War Memorial Act 1996, the Auckland Regional Amenities Funding Act 2008 and the Museum of Transport and Technology Act 2000. The proposed amendments are to ensure the continued function of these Acts, and do not change their intent, nor the operations, structures and funding that they set out.

## Intention to Divide Bill

The Select Committee has been advised that it is the Government's intention to divide the Bill into three separate bills, upon its reading by the whole House. This will result in a bill dealing with amendments to the Reorganisation Act, a bill dealing with amendments to the Auckland Council Act, and a further bill to address outstanding sections of the Bill itself as introduced.

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