



# Cabinet Committee on Implementation of Auckland Governance Reforms

AGR Min (09) 12/1

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## Minute of Decision

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### Local Government (Auckland Law Reform) Bill: Entities, Assets and Liabilities, Taxation and Staff

Portfolio: Local Government

On 29 October 2009, the Cabinet Committee on Implementation of Auckland Governance Reforms (AGR), having been authorised by Cabinet with Power to Act [CAB Min (09) 38/9A]:

- 1 noted that on 6 April 2009, Cabinet agreed:
  - 1.1 that the new Auckland governance structure should be a unitary Auckland Council at the regional level, together with local boards at the local (2<sup>nd</sup> tier) level [CAB Min (09) 12/7];
  - 1.2 to the proposed approach for the transition from existing local governance arrangements in Auckland to the new arrangements agreed by Cabinet [CAB Min (09) 12/8];
  - 1.3 to appoint an Establishment Board whose priorities are to:
    - 1.3.1 design, establish and transition to:
      - 1.3.1.1 a single unitary authority called the Auckland Council (including the supporting functions, policies, plans, budgets, structures, and infrastructure regarding building control, transport services and civil defence and emergency management);
      - 1.3.1.2 the 2<sup>nd</sup> tier governance arrangements (local boards);
    - 1.3.2 oversee the integration of water, wastewater, and possibly storm water services;
    - 1.3.3 maintain oversight of existing council decision making to:
      - 1.3.3.1 ensure uninterrupted delivery of services and momentum on key infrastructure projects;

- 1.3.3.2 consistency with new arrangements;
- 1.3.3.3 avoid unwarranted commitment of public finances;
- 1.3.3.4 communications;
- 1.3.4 maintain oversight for the Rugby World Cup and establish a Waterfront Development Agency;

[CAB Min (09) 12/8]

### Entities: the approach to transition

- 2 **noted** that there are over 100 council-controlled organisations/council controlled trading organisations (CCOs/CCTOs) in the Auckland region, primarily companies or trusts that have been established for community, service delivery, or commercial purposes;
- 3 **noted** the following two possible approaches to the transition of entities:
  - 3.1 Option A: transfer entities 'as is' to the Auckland Council;
  - 3.2 Option B: the Auckland Transition Agency (ATA) restructures wholly local authority-owned entities;
- 4 **agreed** to Option B (ATA restructures wholly local authority-owned entities), whereby:
  - 4.1 the ATA reviews and rationalises the wholly local authority-owned entities prior to 1 November 2010;
  - 4.2 any new entities agreed remain in place until July 2012, when the Auckland Council will produce its first full long term council community plan (LTCCP);
- 5 **agreed** that Cabinet consider any proposals for changes to wholly local authority-owned entities to mitigate the risks of Option B, as the existing legislation does not provide the ATA with a power to create new entities;
- 6 **agreed** to the following process for proposals for changes to wholly local authority-owned entities:
  - 6.1 ATA makes recommendations for changes, when they are available, to wholly local authority-owned entities;
  - 6.2 the assessment of these proposals include an assessment against the agreed criteria, identification of benefits, risk, and other consequences for consideration by Cabinet;
  - 6.3 Cabinet decisions on these proposals be given effect through Select Committee, Supplementary Order Paper, or Orders in Council processes;
  - 6.4 that the entities' structure developed by the ATA and approved by Cabinet remain in place until the Auckland Council has completed consultation, in conjunction with the development of its 2012 LTCCP, on any proposed changes to the entities' structure;

- 7.1 **noted** that on 15 October 2009, AGR agreed to the criteria to be used in assessing transitional matters for inclusion in the Local Government (Auckland Law Reform) Bill (the Bill) [AGR Min (09) 10/2];
- 7.2 **agreed** that, in addition to the criteria referred to in paragraph 7.1 above, the following criteria be used in assessing proposals for the establishment of new CCOs:
- 7.2.1 to address inconsistencies in service delivery methods across the existing local authorities to achieve a consistent approach for the new Auckland Council;
- 7.1.1 to eliminate multiple CCOs with the same purpose to provide the Auckland Council with a consolidation of the entities;
- 8 **noted** that it is anticipated that most of the ATA recommendations will be provided by March/April 2010;
- 9 **agreed** that the Bill provide for entities (CCOs/COs) unaffected by Cabinet decisions to transfer, as is, to the Auckland Council on 1 November 2010;
- 10 **agreed** that the Bill provide general transition provisions to:
- 10.1 provide certainty for the operation of each CCO, its staff, and any third party contracts;
- 10.2 reflect the change in the ownership interest to the Auckland Council;
- 10.3 recognise the new Auckland boundaries (particularly the southern boundary), and make provision for any issues arising;
- 10.4 remove any legislative constraints that may no longer be appropriate;
- 11 **agreed** that the Bill provide for:
- 11.1 CCOs to be established following decisions by Ministers;
- 11.2 board members to be appointed for staggered terms of up to three years, resulting in one third of each board being reappointed each year for the first three years;
- 12 **noted** that, consistent with provisions in the Local Government Act, the Crown Entities Act, and the Companies Act, the Auckland Council would be able to remove members by resolution, at any time and for any reason;
- 13 **agreed** that appointments, prior to 1 November 2010, to boards of CCOs created as a result of Ministers' decisions be made through the Cabinet Appointments and Honours Committee process;
- 14 **noted** that:
- 14.1 the board appointment provisions would also apply to the boards of the Regional Transport Authority and the Waterfront Development Agency;
- 14.2 a provision will be necessary in the Bill to ensure that the interim board of the Regional Transport Authority is able to adopt its statutory powers from 1 November 2010;

- 15 **agreed** that existing board members in entities that are unchanged, including existing Councillor board members, and those whose terms expire prior to 30 December 2010, remain in place until new appointments are made by the Auckland Council;
- 16 **noted** that Cabinet has agreed to the establishment of three specific council-owned entities:
- 16.1 Watercare, to deliver integrated water/wastewater services in Auckland [CAB Min (09) 15/11];
- 16.2 a Waterfront Development Agency, to deliver redevelopment of Auckland's waterfront [CAB Min (09) 12/7];
- 16.3 a Regional Transport Authority with responsibility for the delivery of all local authority transport functions [CAB Min (09) 30/10];
- 17 **noted** that three CCOs are affected by the integration of water/wastewater services under Watercare (Watercare, Metrowater and Manukau Water);
- 18 **noted** that Cabinet has considered separately issues relating to the treatment of assets and liabilities and the transition of staff in the water sector [CAB Min (09) 37/12];
- 19 **agreed** that the Bill contain provisions to empower the ATA to establish a Waterfront Development Agency;
- 20 **noted** that the majority of staff and resources affected by the establishment of the Regional Transport Authority are distributed between the eight existing Auckland local authorities;
- 21 **noted** that the decision to create a Regional Transport Authority affects the following three existing entities:
- 21.1 Auckland Regional Transport Authority (ARTA) (which Cabinet has agreed to disestablish [CAB Min (09) 30/10]);
- 21.2 Auckland Regional Transport Network Limited (ARTNL);
- 21.3 Auckland Regional Holdings Limited (ARH);
- 22 **noted** that the appointment of employees to positions in the Regional Transport Authority will be managed according to the change management plan determined by the ATA to apply to the new Auckland Council;
- 23 **agreed** that in respect of the ARTA and ARTNL, the Bill provide for:
- 23.1 the repeal of the relevant provisions of the Local Government (Auckland Amendment) Act 2004;
- 23.2 the transfer of assets and liabilities to the Regional Transport Authority;
- 24 **noted** that, while ARH is not a transport entity, two sections in the Local Government (Auckland Amendment) Act 2004 direct or constrain its operations and actions from a transport perspective;
- 25 **agreed** that the Bill provide for ARH to become a non-statutory CCO under Part 5 of the Local Government Act 2002;

- 26 agreed to repeal the ARH provisions in the Local Government (Auckland Amendment) Act 2004;

#### Assets and liabilities: the approach to transfer

- 27 agreed that the Bill provide for all assets and liabilities of the existing Auckland local authorities and their CCOs to transfer to the new Auckland Council on 1 November 2010, except where the Government has agreed to alternative arrangements in respect of specific CCOs to be created;

#### Asset sales in the period to 1 July 2012

- 28 agreed that a statutory moratorium be placed on the sale of the following assets until the Auckland Council has completed a LTCCP process (1 July 2012):
- 28.1 shareholdings;
  - 28.2 land or buildings currently used or designated for service delivery purposes, and other land and buildings with a value over \$250,000;
- 29 agreed that during the moratorium, the Bill provide for the lease, rental or other use of land and buildings formerly used by local authorities or their CCOs as offices, service centres, or for local service delivery purposes, that are identified as surplus to requirements;
- 30 agreed that the Bill clarify that the following asset sales may occur despite the moratorium:
- 30.1 asset sales already programmed in the LTCCPs of existing local authorities (including land sales as part of developments undertaken by existing property CCOs) or defined as a public work;
  - 30.2 operational equipment and plant made surplus by the rationalisation to a new council structure;

#### Airport shares

- 31 noted that the transfer of Manukau City Council's 10.05 percent shareholding and Auckland City Council's 12.75 percent shareholding in Auckland International Airport Limited would result, upon transfer, in the new Auckland Council becoming the owner of a 22.8 percent shareholding in the company, thereby being subject to the Takeovers Code;
- 32 agreed that the Bill provide a statutory exemption to the Takeovers Code in respect of the resulting Auckland Council shareholding of 22.8 percent of Auckland International Airport Limited;

#### Deeming provisions

- 33 agreed that the Bill contain provisions to achieve the operational aspects of transferring assets and liabilities to the new Auckland Council and its CCOs;

**Liabilities – charges over rates**

- 34 **agreed** that the Bill provide for all charges over rates and rates revenue made by the existing Auckland local authorities to be transferred to the new Auckland Council, and for them to be ranked equally with each other;

**Taxation approach**

- 35 **noted** that local authorities are generally exempt from income tax, although income received by local authorities as trustee, or from a CCO, a port company, an energy company, or from a local authority's port operations, is not exempt from income tax;
- 36 **agreed** that the key policy objective in providing transitional tax relief in legislation is to ensure that the restructuring does not attract any new tax obligation or grant any new tax benefit above and beyond that which was available under existing tax law;
- 37 **agreed** that the drafting of specific legislative tax accommodations for the Bill be required to:
- 37.1 provide for the tax-neutral transfer of assets and liabilities (or existing undertakings) of the current entities to the new entities, noting that when an entity transfers its assets and liabilities to another entity income tax, GST and gift duty consequences are likely to result;
- 37.2 preserve certain pre-existing tax privileges or benefits (such as imputation credits and losses), noting that when an entity changes its ownership structure or ceases to exist, any tax losses or imputation credits may be extinguished due to a breach in shareholder continuity;
- 37.3 clarify certain tax compliance obligations associated with return-filing, the payment of tax and registration, before and after the transition date;
- 38 **noted** that, subject to Cabinet's decisions in relation to the paper entitled "*Auckland Governance: Water Issues*" [CAB Min (09) 37/12], the tax implications for Watercare may need to be considered further;
- 39 **noted** that new entities in the Auckland governance structure agreed to by Cabinet may require their tax status to be determined;
- 40 **agreed** that provisions to give effect to their agreed tax status be included in the Bill;
- 41 **agreed** that the Minister of Local Government advise the existing local authorities and the ATA that the transitional taxation relief provisions set out in paragraph 37 above are intended to facilitate a smooth transition, and are not to be used to structure tax-advantaged arrangements;

**Employment / staff issues**

- 42 **noted** that the ATA intends that all existing employees of the existing councils and CCOs will have their future employment status determined by 1 November 2010;

43 agreed that some legislative provisions are necessary to ensure that there are clear processes in place for the treatment of existing employees who will continue in employment beyond the dissolution of the existing councils and the potential restructure/disestablishment of CCOs, on 1 November 2010;

44 agreed that the Bill provide for:

44.1 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;

44.2 a technical redundancy clause, to avoid entitlement to redundancy solely as a result of a change in employer;

44.3 a clause which provides for any employees of the existing Councils or CCOs who as at 31 October 2010 have not been declared surplus, and who either:

44.3.1 have been confirmed in continued employment in the same or a substantially similar role (with or without a change in location); or

44.3.2 have been transferred (rather than appointed) into a new or substantially different role;

to do so on the same terms and conditions of employment, unless otherwise agreed on 1 November 2010;

44.4 a fall back clause providing for any employees of the existing councils or CCOs who as at 31 October 2010 either:

44.4.1 have not been declared surplus; or

44.4.2 have not been confirmed in continued employment in the same or a substantially similar role (with or without a change in location); or

44.4.3 have not been transferred or appointed into a new or substantially different role in the Auckland Council or CCO;

to be transferred to the agency that has adopted the primary functions for which their current position is responsible, in the new Auckland governance structure, and to do so on the same terms and conditions of employment, unless otherwise agreed on 1 November 2010;

44.5 the interpretation of "new employment" for the purposes of the KiwiSaver Act 2006, and "new employer" for the purposes of the Employment Relations Act 2000, as they apply to this restructuring;

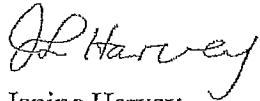
44.6 the power for the interim Chief Executives of the Auckland Council and the Regional Transport Authority, or the ATA acting on their behalf, to declare employees of existing councils/entities surplus to requirements from 1 November 2010, and that this declaration of surplus:

44.6.1 will be made in accordance with the provisions of the ATA's change management plan;

- 44.6.2 can be made at any time, but no later than 30 September 2010;
- 44.6.3 is binding on existing councils/entities, who would be responsible for giving effect to those decisions as they relate to their employees, and according to the terms and conditions of individuals' employment contracts;
- 44.6.4 is to be given effect and finalised by existing councils/entities before 31 October 2010;

#### Legislation and publicity

- 45 **agreed** that the proposals in the paper under EGI (09) 21 form part of the proposed Local Government (Auckland Law Reform) Bill planned for introduction in late 2009;
- 46 **noted** that communication of the government's decisions in relation to the content of the Bill will be made by the Minister of Local Government, in consultation with the offices of the Prime Minister and the Associate Minister of Local Government.



Janine Harvey  
Committee Secretary

Reference: AGR (09) 21

Proactively Released by the Minister of Local Government