

OFFICE OF THE MINISTER OF LOCAL GOVERNMENT

Chair
Cabinet Committee on Implementation of Auckland Governance Reforms (AGR)

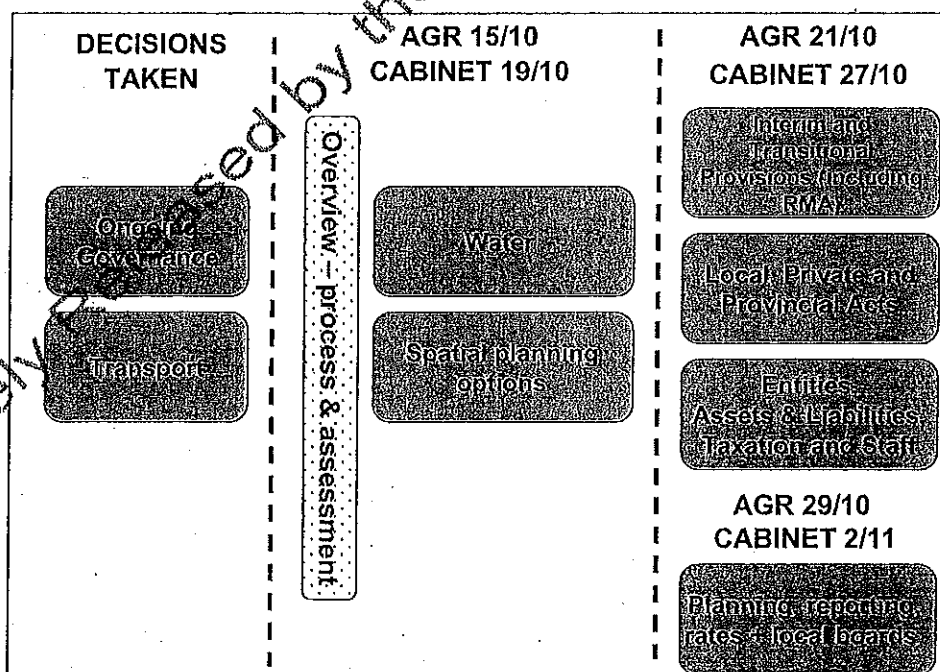
LOCAL GOVERNMENT (AUCKLAND LAW REFORM) BILL – OVERVIEW OF PROCESS AND ASSESSMENT OF ISSUES FOR INCLUSION

Purpose

1. The purpose of this paper is to:
 - provide an overview of the process of developing the Local Government (Auckland Law Reform) Bill (the Bill), including timing issues; and
 - confirm the criteria to guide the assessment of proposals to give effect to the Auckland Governance reforms and support the proposed transition process through to 1 November 2010.

This paper in the context of the policy decisions required for the Bill

2. This overview paper is one of a series of papers that seek policy decisions for the content of the Bill. Decisions have already been made on matters related to Transport (including the establishment of a regional transport authority) and ongoing governance matters [refer CAB Min (09) 30/10 and CAB Min (09) 31/9]. The diagram below sets out the remaining papers to be provided:



Executive Summary

3. The Local Government (Auckland Law Reform) Bill (the Bill) is the third piece of legislation in the Auckland Governance Programme. It will be an omnibus Bill amending the two earlier Acts and other legislation to give effect to Government decisions on Auckland governance.

4. Remaining policy decisions on the content of the Bill are required by early November 2009 to enable drafting and introduction of the Bill in early December 2009. This will enable the Select Committee to call for submissions prior to Christmas. This timing does not align with the Auckland Transition Agency's (ATA) implementation process, as their strategy development and design phase commences in November 2009.
5. As a result, it is likely there will be additional proposals and issues arising after the introduction, or even after the enactment, of the Bill that will require legislation to give effect to them. New proposals may arise from requests from the ATA for additional implementation mechanisms; issues raised in Select Committee; and initiatives arising out of other Government work programmes.
6. In addition to issues raised and dealt with through the Select Committee process, there are two ways to address this – Supplementary Order Papers (SOP) for any Cabinet decisions made prior to the Bill entering into the Committee on the Whole House stage; or through provision in the Bill for the making of Orders in Council in certain circumstances. Depending on the nature of the decisions either option is potentially controversial, as neither would be subject to public consultation or submission.
7. I propose that subsequent proposals and decisions be assessed against the existing criteria used to assess the content of all three pieces of Auckland governance legislation. These criteria include meeting good governance principles (democracy, and efficiency, and effectiveness); being feasible to implement; being consistent with Government programmes and initiatives; recognising the Treaty of Waitangi; and applying the existing local government legislative framework unless changes are necessary. Three additional transition-related criteria will also be applied – minimising compliance costs; supporting business as usual and minimising disruption to service delivery; and minimising unnecessary and/or inefficient use of resources.

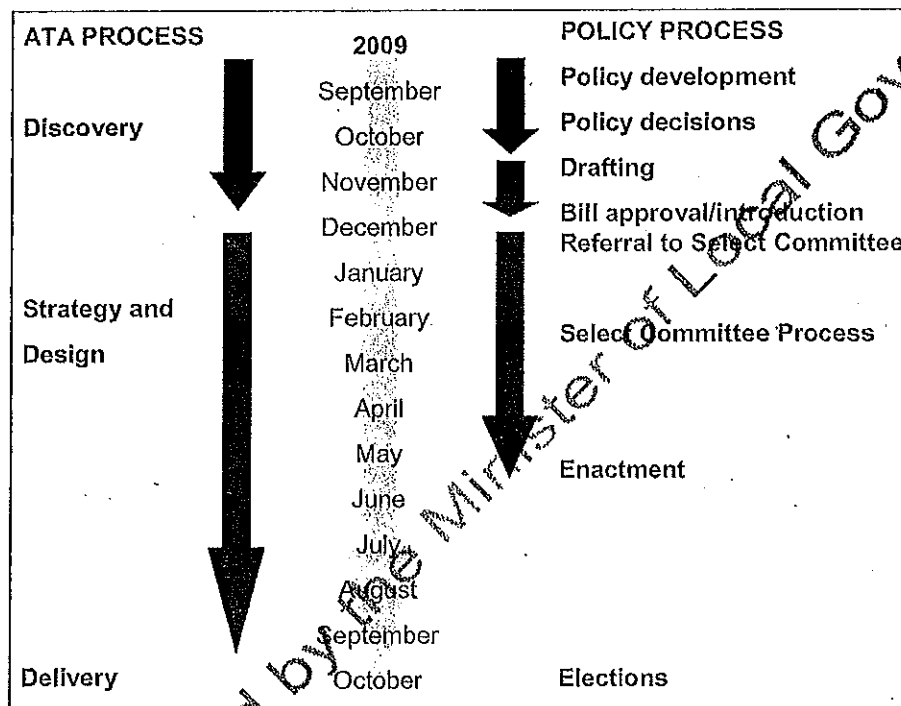
Background

8. The Royal Commission identified two broad systemic problems with Auckland local government arrangements:
 - regional governance is weak and fragmented; and
 - community engagement is poor.
9. Since March 2009, Cabinet has made a number of decisions relating to local government reform in Auckland. In the process of making these decisions Cabinet has agreed, and Ministers have articulated, the importance of a solution which includes:
 - strong regional governance (provision for the Auckland Council to make decisions about Auckland's future and be able to implement them);
 - greater community engagement;
 - local decisions on local activities;
 - improved connections across the region; and
 - improved value for money.
10. These decisions are reflected in the Local Government (Tamaki Makaurau Reorganisation) Act 2009 and the Local Government (Auckland Council) Act 2009.

11. The Department of Internal Affairs is currently co-ordinating the development of the Bill, which is the third piece of legislation in the Auckland Governance Programme. This Bill will be an omnibus Bill amending the two earlier Acts and other legislation to deal with the transition to the new Auckland Council and the implementation of Government decisions.

Process for developing the Local Government (Auckland Law Reform) Bill

12. As can be seen from the following diagram, the timeframe between the ATA implementation process and the policy process required to provide for enactment of the Bill by May/June 2010 do not align.



13. The ATA is currently in its "Discovery" phase which involves collecting and considering the range of information needed to develop a strategy, design an appropriate structure for, and implement a transition process to create the new Auckland Council.
14. The Bill must be introduced early in December 2009 to allow the Select Committee to call for submissions prior to the Christmas period to provide a fuller Select Committee process on the content of the Bill.
15. The main policy decisions will be required during October to provide adequate time for the development of drafting instructions and drafting by Parliamentary Counsel Office.
16. The difference between the timeframes for the ATA process and the development of the Bill creates a level of uncertainty because:
- the content of the Bill is being developed in advance of the ATA having all of the information it needs to design the new Council structure and transition process, making it difficult for the Department of Internal Affairs and other departments to determine the full range of transition provisions that may be needed to give effect to the new structure;

- existing Auckland councils and the ATA are heavily involved in the discovery process, thereby reducing the time available to focus on transition needs; and
 - the complexity of existing arrangements in Auckland may mean issues arise over a longer period that are not provided for in the Bill as introduced.
17. The level of certainty is also affected by ATA's advice about what will be delivered by the ATA on 1 November 2010 (day one of the new Auckland Council). The ATA advises that it expects to deliver a fully functioning Auckland Council and entities.
18. The ATA advises that it will be able to achieve a new Auckland Council structure with appointments to the top tiers of the Auckland Council and the new entities created, in addition to confirming many people in their present position in the Auckland Council e.g. librarians, service centres and swimming pools. It would also provide a "recipe book" to the new Auckland Council, outlining the model and the way to complete any outstanding transitional matters.

Dealing with uncertainty

19. The misalignment between the timeframe for the ATA process and the deadlines for finalising the content of the Bill significantly increase the likelihood of issues and proposals arising after the introduction of the Bill, and even after its enactment, which require legislation to give effect to them.
20. In addition to dealing with issues raised through the Select Committee process, there are two possible methods to implement Cabinet decisions on issues raised outside the framework of the Bill as introduced:
- if Cabinet makes further decisions before the Committee stages of the Bill, the Government can introduce a SOP. SOPs are generally only used to propose amendments to existing provisions in the Bill, the scope of which has already been subject to the Select Committee process. It would be controversial to introduce a SOP relating to a completely new matter, as this process provides no opportunity for public consultation and submission; or
 - Cabinet decisions made after the legislation is enacted could be given effect by Order in Council if such a mechanism is provided for in the Bill. Officials are investigating provision in the Bill for the making of Orders in Council in relation to certain matters. This method could also be controversial unless the issues dealt with this way are limited to technical and machinery matters.
21. To provide a consistent approach to the use of either method the following section proposes a set of criteria to be used to assess proposals to inform decision-making.

Criteria for assessing transition provisions for the Bill and new issues arising

22. The development of proposals for the content of the Bill is being assessed against the set of criteria agreed by Cabinet (CAB (09) 8/10 refers) for assessing the Royal Commission's recommendations. These criteria included that recommendations:
- meet **good governance principles** of being:
 - democratic – including accountable and transparent decision making, effective leadership, stewardship, ratepayer and citizen redress;
 - efficient and effective – including vertical alignment of strategic planning, funding, asset management and implementation (integrated decision-making), maximises value for money, alignment of costs and benefits, arrangements remain effective over time, economies of scale, and decision-makers taking a long-term view in their decision-making;
 - are **feasible to implement** within desirable timeframes – transitional arrangements should enable any new organisations to conduct business as usual and be in place by, or soon after, the Auckland elections in October 2010;
 - are **consistent with government programmes and initiatives** – including the resource management reforms and broader local government framework changes; and
 - recognise the **Treaty of Waitangi**.
23. Advice to date on the Auckland governance arrangements has also taken the approach that **the existing local government legislative framework should apply wherever possible, unless changes are necessary**, and if new provisions are necessary, they should aim to be similar to mechanisms in the present framework.
24. The application of the above criteria has informed policy decisions to date and is reflected in the content of the two Acts passed by Parliament. The application of the criteria to this Bill will be more transition-specific. For example, under the good governance principles the new Auckland Council is to be accountable to its citizens for its decisions, leadership, and stewardship from 1 November 2010. It should, therefore, be able to make decisions for all matters that it is accountable for from that date, unless this is not practicable.
25. Additional criteria will also be required for assessing proposals relating to the transition process itself. These are that transition arrangements should:
- minimise compliance costs and be able to easily be implemented by the Auckland Council;
 - support 'business as usual' and minimise potential disruption to the continued delivery of services from 1 November 2010; and
 - minimise unnecessary and inefficient use of existing local authority resources over the transition period.
26. The above criteria should also, to the extent relevant, be applied to the process for managing the transition from existing to new arrangements.

27. Any issues and proposals arising during the transition phase to 1 November 2010 should be assessed against the same criteria that have guided decisions on the three pieces of legislation. This will include:

- responses to ATA requests for additional powers or implementation mechanisms;
- issues arising during the Select Committee process; and
- amendments required as a result of other work programmes across Government.

ATA comment

28. The ATA advises that it supports this paper.

Consultation

29. The Treasury, Ministries of Economic Development, Transport, Environment, Social Development, the Department of Building and Housing, and Te Puni Kōkiri, were consulted on this paper. The ATA was consulted and has provided a comment for inclusion. The Department of the Prime Minister and Cabinet was informed of the content of the paper.

Financial implications

30. There are no financial implications arising from this paper.

Legislative Implications

31. The recommendations in this paper will guide the development of the proposed Bill planned for introduction in late 2009. The Bill has Category 4 status (to proceed to a Select Committee in 2009) on the 2009 Legislation Programme.

Regulatory Impact Analysis

32. A Regulatory Impact Statement has not been prepared for this paper as it is of a minor or machinery nature.

Publicity

33. Communication of Government decisions in relation to the content of the Bill will be co-ordinated by my office with the Office of the Prime Minister and the Office of the Associate Minister of Local Government. The ATA should be informed of Government decisions as soon as practicable.

Recommendations

34. I recommend that the Committee:

1. **note** that the Local Government (Auckland Law Reform) Bill is planned for introduction in late 2009 and that the Bill has a Category 4 status (to proceed to a Select Committee in 2009) on the 2009 Legislation Programme;
2. **note** that the Local Government (Auckland Law Reform) Bill is the third piece of legislation in the Auckland Governance Reform Programme and will be an omnibus Bill that amends the Local Government (Tamaki Makaurau Reorganisation) Act 2009, the Local Government (Auckland Council) Act 2009 and other legislation as appropriate to deal with the transition to the new Auckland Council and the implementation of Government decisions;

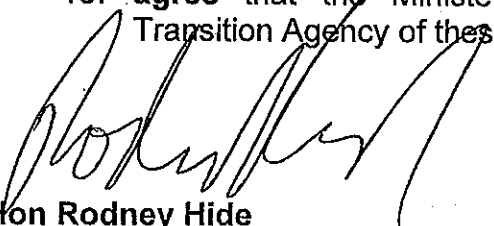
3. **note** that policy decisions on transport and ongoing governance matters have already been taken (CAB Min (09) 30/10 and CAB Min (09) 31/9 refer) and drafting instructions are currently being prepared for Parliamentary Counsel Office;
4. **note** that further policy decisions will be sought in two stages to release drafting instructions to Parliamentary Counsel Office on:
 - 4.1 Stage 1 – Overview
 - 4.2 Stage 1 – Water issues
 - 4.3 Stage 1 - Spatial planning options
 - 4.4 Stage 2 - Entities, assets and liabilities, taxation and staff;
 - 4.5 Stage 2 - Interim and transitional provisions (including Resource Management Act requirements);
 - 4.6 Stage 2 - Local, private and provincial Acts;
 - 4.7 Stage 2 - Planning, reporting, rates and local boards;
5. **note** that the uncertainty caused by the timing of the Auckland Transition Agency programme and the need to develop the Bill for introduction before the end of 2009 will likely result in further matters being referred to Cabinet during the Bill drafting period, or during the Select Committee process for resolution through that process, or by Supplementary Order Paper when the Bill returns to the House;
6. **agree** that the Department of Internal Affairs investigate the practicality of a limited Order in Council process to deal with transition issues arising after the enactment of the Bill;

Criteria and assessment of transitional matters

7. **agree** that the development of provisions for the Bill be assessed against the set of criteria agreed by Cabinet (CAB (09) 8/10 refers), with the addition of the following specific transition criteria:
 - 7.1 the existing local government legislative framework should apply wherever possible, unless changes are necessary. If new arrangements are necessary, they should:
 - 7.1.1 aim to be similar to mechanisms in the present framework;
 - 7.1.2 minimise compliance costs and be able to easily be implemented by the Auckland Council;
 - 7.1.3 support 'business as usual' and minimise potential disruption to the continued delivery of services from 1 November 2010; and
 - 7.1.4 minimise unnecessary and inefficient use of existing local authority resources over the transition period;
8. **agree** that the criteria in recommendation 7 will continue to be used to assess issues and proposals arising during the transition phase to 1 November 2010;

Legislation and publicity

9. **note** that the recommendations in this paper will inform the development of the proposed Local Government (Auckland Law Reform) Bill planned for introduction in late 2009; and
10. **agree** that the Minister of Local Government advise the Auckland Transition Agency of these decisions once they are confirmed.



Hon Rodney Hide
Minister of Local Government

Proactively Released by the Minister of Local Government