



Cabinet

CAB Min (09) 42/20

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Minute of Decision

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Local Government (Auckland Law Reform) Bill: Water Regulatory Powers

Portfolio: Local Government

On 30 November 2009, following reference from the Cabinet Committee on Implementation of Auckland Governance Reforms (AGR), Cabinet:

Background

- 1 **noted** that Cabinet has made a number of decisions in relation to Watercare Services Ltd (Watercare), and in particular has agreed that Watercare's role will be broadened to provide retail water and wastewater services, in addition to its current role as the bulk supplier [CAB Min (09) 37/12; CAB Min (09) 41/16];

Work undertaken

- 2 **noted** that on 19 October 2009, Cabinet directed the Department of Internal Affairs to review the powers available to Watercare, in consultation with the Auckland Transition Agency and Watercare, and to report to AGR in November 2009 if Watercare requires any additional powers and responsibilities [CAB Min (09) 37/12];
- 3 **noted** that Watercare considers that it will require a range of powers to maintain public health and safety, and to minimise risk to Watercare's assets and to the environment;
- 4 **noted** that on 19 October 2009, Cabinet agreed to allow the Auckland Council to determine, from 2015, the governance arrangements and asset ownership for the delivery of water services, rather than fixing Watercare's form in legislation [CAB Min (09) 37/12];
- 5 **agreed** that, to provide the legislative flexibility for any successor to Watercare, any legislative provisions required for the delivery of bulk and retail water and wastewater in Auckland should apply to any "local government organisation" providing these services in Auckland (which could include Watercare or the Auckland Council, but not a private contractor);

Auckland Metropolitan Drainage Act 1960 and North Shore Drainage Act 1963

- 6 **noted** that on 19 October 2009, Cabinet agreed in principle, subject to further work, to repeal the Auckland Metropolitan Drainage Act 1960 (the AMDA) and the North Shore Drainage Act 1963 (the NSDA) [CAB Min (09) 37/12];

7 **confirmed** that the AMDA and the NSDA be repealed;

Section 28 of AMDA – Bylaws

8 **noted** that the AMDA gives Watercare the power to make bylaws to manage, regulate, and protect the infrastructure associated with its wastewater services;

9 **noted** that on 19 October 2009, Cabinet agreed that, if Watercare requires any bylaw-making powers under existing legislation, it should be subject to similar requirements to those enacted for local boards [CAB Min (09) 37/12];

10 **confirmed** that Watercare not be permitted to make bylaws;

11 **agreed** that Watercare be able to propose bylaws to the Auckland Council, with Watercare being responsible for the necessary consultation;

Section 35(3) of AMDA - Right to occupy land in tidal waters

12 **noted** that section 35(3) of the AMDA currently provides the ability for Watercare to occupy land free of rent in the coastal marine area, which enables it to access land and maintain its existing wastewater assets;

13 **noted** that the Auckland Regional Council regional coastal plan provides access in the coastal marine area to Watercare to access its wastewater infrastructure and to undertake maintenance, subject to conditions, and that the plan will become a plan of the new Auckland Council from 1 November 2010;

14 14.1 **noted** the proposal in the submission attached to CAB (09) 720 to create a new provision deeming existing Watercare wastewater assets to be lawful structures;

14.2 **authorised** a group of Ministers comprising the Minister of Local Government, the Minister for the Environment, the Attorney-General, and the Associate Minister of Local Government to take decisions on the issue of whether existing Watercare wastewater assets should be deemed to be lawful structures;

14.3 **invited** the Minister of Local Government to report back to Cabinet on the decisions by the group of Ministers;

15 **noted** that any new or major water or wastewater works are required to comply with the Resource Management Act 1991 (RMA), or any relevant instruments made under the RMA;

Section 36 of AMDA - General powers of Board

16 **noted** that section 36 of the AMDA provides Watercare with a range of powers, including the power to:

16.1 construct wastewater assets in roads ((1)(a));

16.2 enter upon any land adjacent to or reasonably required for obtaining access to the sites of main sewerage works, to obtain access to such main sewerage works ((1)(b)(ii));

16.3 construct main sewerage works on or under any land or buildings (subject to conditions) ((1)(c));

16.4 erect structures or machinery in connection with drainage and sanitation in, upon, or under any street, place, or reserve ((1)(d));

17 **noted** that Watercare considers that these powers are essential to its operations;

18 **noted** that section 181 of the Local Government Act 2002 (the LGA02) provides local authorities with similar powers to those in section 36 of the AMDA, with the exception that it does not specifically permit local authorities to access roads and other public places to construct, maintain and inspect its assets (these powers are located elsewhere);

19 **agreed** that the Local Government (Auckland Law Reform) Bill (the Bill) include provision for:

19.1 section 181 of the LGA02 to apply to Watercare as if Watercare were a local authority;

19.2 equivalent powers as currently contained in sections 36(1)(a), 36(1)(c), and 36(1)(d) of the AMDA (which would, among other things, provide Watercare the right to access roads or other public places to construct, maintain or inspect its assets);

Section 36A of AMDA – Abatement of nuisances

20 **noted** that the AMDA permits the Director-General of Health to give notice to Watercare to abate any nuisance in the performance of its powers under the AMDA;

21 **agreed** to retain a similar provision to section 36A of the AMDA, but that it be modified to relate to the performance of any of Watercare's powers;

Section 91 of AMDA – Watercare's rates liability

22 **noted** that the AMDA and the Auckland Regional Authority Act 1963 provide that Watercare is currently only required to pay rates on the unimproved value of the land on which its assets sit (not capital value);

23 **noted** that the restriction on rates to land value applies to Watercare's assets in Auckland, and would apply to its water storage dams in the Waikato;

24 **agreed** to retain the current restrictions on rates referred to in paragraph 22 above;

25 **agreed** that the restrictions on rates should continue to apply to Watercare's water and wastewater assets in Auckland, and be applied to Watercare's assets in the Waikato;

AMDA – Trade waste bylaws

26 **noted** that Cabinet has agreed that all existing Auckland bylaws, including trade waste bylaws, will be transferred to the Auckland Council, and must be reviewed and amended, revoked, or confirmed by 2015 [AGR Min (09) 11/1];

27 **agreed** that the Auckland Regional Council Trade Waste Bylaw, made under the AMDA, remain in force;

28 **agreed** that the administration and enforcement of the current Auckland trade waste bylaws 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;

- 29 **agreed** that the provisions contained in sections 75, 77, 79, 81, and 84 of the AMDA, as detailed in Appendix 1 to the paper under CAB (09) 720, be retained until 1 July 2015;
- 30 **agreed** that provision be given to allow sections 75, 77, 79, 81, and 84 of the AMDA to be repealed at an earlier date by Order in Council, once the Auckland Council makes new trade waste bylaws;

Local Government Act 1974

- 31 **noted** that Cabinet has agreed to repeal those Watercare-specific provisions contained in the Local Government Act 1974 (LGA74) relating to Watercare's current shareholding arrangements (section 707ZZZR) and shareholders' decision-making (section 707ZZS(2A)) [CAB Min (09) 37/12];
- 32 **noted** that Cabinet has agreed that the current LGA74 provisions which prohibit Watercare paying a dividend to its owners and require Watercare to charge minimum prices, will be repealed from the LGA74 and included in the Bill [CAB Min (09) 37/12];
- 33 **noted** that, in line with the intention to remove all aspects of the Watercare-specific provisions in the LGA74, those parts that are to continue will be placed in Auckland-specific legislation;
- 34 **agreed** to:
- 34.1 repeal sections 707ZZZR and 707ZZS(2A) and (f) of the LGA74 from 1 November 2010;
- 34.2 retain the remaining provisions in section 707ZZS of the LGA74 in the interim, with amendments, to be consequentially repealed on 30 June 2012;
- 35 **agreed** that the LGA74 provisions which deal with land drainage (included in Appendix 2 to the paper under CAB (09) 720) apply to Watercare as if it were a local authority;

Local Government Act 2002

- 36 **agreed** that Watercare or another Auckland local government organisation be empowered to exercise the powers in the LGA02 listed in Appendix 3 to the paper under CAB (09) 720, which includes:
- 36.1 general powers of entry onto land (section 171);
- 36.2 the power of entry for enforcement purposes (section 172);
- 36.3 the power of entry in cases of emergency (section 173);
- 36.4 the power to construct works¹ on private land (section 181);
- 36.5 the power to check utility services (section 182);
- 37 **agreed** that the powers agreed to in paragraph 36 above extend only to the provision of water and wastewater;

¹ "Works" includes work necessary for the supply of drinking water, trade waste disposal, land drainage sewerage, and stormwater.

38 **agreed** that Watercare not be given the following powers in Appendix 3 to the paper under CAB (09) 720:

38.1 section 177 – appointment of enforcement officers;

38.2 sections 189 and 190 relating to the compulsory acquisition of land;

39 **agreed** that, in relation to sections 125 to 129 of the LGA02, the Auckland Council retain the obligation to assess water and other sanitary services, but with appropriate use being made of Watercare's skills and experience;

40 **agreed** that, on the advice of Watercare, the Auckland Council be required to appoint sufficient enforcement officers necessary for Watercare to undertake its functions;

41 **agreed** that the Auckland Regional Council, in consultation with the Auckland Transition Agency, be required to appoint Watercare officers as enforcement officers prior to 1 November 2010 to ensure that Watercare has sufficient enforcement officers from 1 November 2010;

42 **agreed** that Watercare be deemed a local authority for the purposes of the Public Works Act 1981;

Section 225 offences relating to waterworks and network assets of Watercare Services Limited

43 **agreed** that section 225 of the LGA02 be amended to clarify that it relates to Watercare's network wastewater assets, as well as its water assets;

44 **agreed** not to provide stronger powers to protect Watercare's assets (instead relying on improvements in information and potential better practice resulting from the enactment of the Utilities Access Bill later in 2009);

Legislative implications

45 **noted** that Cabinet's decisions in relation to the paper under CAB (09) 720 will form part of the Bill, which is planned for introduction in December 2009;

Publicity

46 **noted** that communication of the government's decisions relating to 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.

Rebecca Kitteridge
Secretary of the Cabinet

Reference: CAB (09) 720; AGR Min (09) 14/1

Distribution: (see over)