



Cabinet

CAB Min (09) 41/16

Copy No: 33

Minute of Decision

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Local Government (Auckland Law Reform) Bill: Outstanding Policy Issues

Portfolio: Local Government

On 23 November 2009, following reference from the Cabinet Committee on Implementation of Auckland Governance Reforms (AGR), Cabinet:

Background

- 1 **noted** that the Local Government (Auckland Law Reform) Bill (the Bill):
 - 1.1 has a category 4 priority (to proceed to a select committee in 2009) on the 2009 Legislation Programme;
 - 1.2 is planned for introduction in late 2009;

Reporting and funding

ATA reporting

- 2 **agreed** that a single 16 month "annual report" be authorised for the Auckland Transition Agency (ATA), which is to be disestablished on 31 October 2010;

Borrowing in foreign currency

- 3 **noted** that the ATA has proposed that the Auckland Council be exempted from the prohibition on borrowing in foreign currency in section 113 of the Local Government Act 2002 (the Act);
- 4 **agreed** that the prohibition on borrowing in foreign currency in the Act should apply to the Auckland Council, with this to be reviewed once the work on a local government 'bond bank' is completed;

Development contributions

- 5 **noted** that all seven territorial authorities in Auckland make use of development contributions (applied differently and set at different levels), and that these represent a significant source of revenue for infrastructure expenditure across Auckland;

- 6 **noted** that on 2 November 2009, Cabinet agreed that existing territorial authority development contribution policies will transfer to the new Auckland Council, and be applied until a new development contribution policy is adopted from 1 July 2012 [CAB Min (09) 39/6A];
- 7 **noted** that further provisions are required in the Bill to clarify the use and refund of development contributions required or collected by existing Auckland territorial authorities before 1 November 2010, and after 1 November 2010 by the Auckland Council, under the existing development contributions policies transferred to it;
- 8 **noted** that all water and wastewater assets will transfer to Watercare on 1 November 2010, and that Watercare has indicated that it will use Network Upgrade Charges from 1 July 2011 to charge for water and wastewater infrastructure costs driven by growth;
- 9 **agreed** that, in respect of development contributions required or received by existing territorial authorities or the Auckland Council in the period to 1 July 2011 for the water and wastewater infrastructure costs driven by growth, the Bill provide for the Auckland Council to:
- 9.1 retain all funds received, and not already expended by 1 July 2011, until 1 July 2019 (the term of the current long-term council community plans), and provide for those funds to be drawn down by Watercare for the capital expenditure they were collected for (and for the transfer of all physical water and wastewater assets vested in the Auckland Council between 1 November 2010 and 1 July 2011 to Watercare);
- 9.2 refund development contributions held by the Auckland Council, in accordance with the Local Government Act 2002 (the Act), as required;
- 10 **agreed** that the Bill provide that Watercare may not "double dip" by requiring a Network Upgrade Charge where:
- 10.1 a development contribution has been paid to a local authority for the same purpose and development; or
- 10.2 a condition has been imposed under section 108(2)(a) of the Resource Management Act 1991 (for a financial contribution) in relation to the same development for the same purpose;
- 11 **noted** that all other reserves, and network infrastructure and community infrastructure assets to which the development contributions provisions of the Act apply, will transfer to the Auckland Council on 1 November 2010 [CAB Min (09) 39/6];
- 12 **agreed** that, in respect of development contributions for territorial authority transport network purposes, the Bill:
- 12.1 provide for the Auckland Council to continue to set, assess, and collect development contributions, and pass these to the Regional Transport Authority (as part of the Auckland Council funding stream) for transport network infrastructure to be constructed;
- 12.2 specify the requirements and process to achieve this, within the intent of the current Act;

- 13 **agreed** that the Bill contain provisions to clarify, for the avoidance of doubt, that the Auckland Council may continue to require development contributions for capital expenditure on all territorial authority reserve, network infrastructure, and community infrastructure assets under Subpart 5 of the Act, where it retains ownership of those assets, despite those assets being managed by a Council-controlled organisation (CCO);

Accountability and monitoring of CCOs

- 14 **noted** that there will be a number of CCOs in the Auckland governance structure, some of which will be responsible for delivering key services to the people of Auckland, or owning or managing substantial assets on their behalf;
- 15 **noted** that the Act includes a governance and accountability framework for CCOs;
- 16 **agreed** that it is vital that the Auckland Council has staff with the necessary knowledge, experience, and skills to undertake effective ongoing CCO monitoring and relationship management, to ensure the delivery of service against Auckland Council and Local Board goals and objectives;
- 17 **noted** that the Minister of Local Government intends to advise the ATA that it must ensure appropriate resources for such a monitoring function and relationship management are included in the design of the Auckland Council organisation structure;
- 18 **agreed** that it is appropriate to enhance the existing accountability framework for substantive CCOs, being CCOs that are wholly-owned by the Auckland Council and either undertake major service delivery functions, or own or manage assets with a value of more than \$10 million;
- 19 **noted** that the Auckland Council could adopt a strengthened approach within the Act's current CCO accountability framework, if it wished;
- 20 **agreed** that the Auckland Council should be encouraged to optimise the use of the existing CCO accountability mechanisms in the Act;
- 21 **agreed** that the Bill provide for the Auckland Council to be able to require, in respect of a substantive CCO, at its discretion:
- 21.1 a long-term plan covering a minimum 10 year period that would set out how the CCO intends to:
 - 21.1.1 manage, maintain and invest in its assets;
 - 21.1.2 maintain or improve service levels;
 - 21.1.3 respond to population growth and other changing environmental factors;
 - 21.1.4 give effect to Auckland Council strategy, plans and priorities, including the spatial plan;
 - 21.2 additions to a CCO Statement of Intent (SOI) to include a narrative on how the CCO contributes to and/or aligns with the Council's, and where appropriate the government's, wider objectives and priorities for Auckland (for example, spatial plan);

- 21.3 quarterly reporting against the CCO's SOI;
- 22 **agreed** that paragraph 21.1 above not apply to the Regional Transport Authority, as it will have a statutory duty to prepare a 10 year Regional Land Transport Programme;
- 23 **agreed** that the oversight of the performance of all Auckland Council service activities be achieved through a combination of review by the Auditor-General, and mechanisms established by the Auckland Council for the monitoring of substantive CCOs and the review of its own efficiency and effectiveness;
- 24 **agreed** that the Bill require the Auditor-General to undertake a regular service performance review of Auckland Council and its CCO's activities;

Elections

Election hoardings

- 25 **noted** that there are inconsistencies in the rules, restrictions, and conditions applying to the erection of election hoardings between local authority areas across Auckland, that would potentially be confusing for candidates in the Auckland 2010 local government elections;
- 26 **agreed** that:
- 26.1 the Bill provide a Schedule of rules, restrictions, and conditions applying to the erection of election hoardings across the Auckland Council area for the 2010 elections;
- 26.2 existing local authorities be authorised to advise the electoral officer of local authority-owned sites on which election hoardings may be erected, in accordance with the Schedule;

Election publicity

- 27 **noted** that on 3 August 2009, Cabinet agreed in principle, subject to a further report to AGR on election publicity matters, to a public information campaign in connection with the 2010 elections in Auckland [CAB Min (09) 27/10];
- 28 **noted** that adequate, concise, and easily understandable information will need to be provided to Auckland voters explaining the new governance structures of the Auckland Council;
- 29 **agreed** that the ATA be responsible for the delivery of the election information campaign, and that the costs for this be included in the loan agreement with the Crown;
- 30 **noted** that detailed costings for the election information campaign will be provided to monitoring Ministers prior to draw down of funding being approved;

Election expenses

- 31 **noted** that existing electoral expense maxima in the Local Electoral Act 2001 do not contemplate the size and scale of the Mayoral constituency in the Auckland Council elections (approximately 950,000 voters and a population of 1.4 million);

- 32 **agreed** that the Local Electoral Act 2001 be amended to provide that:
- 32.1 where the population of a constituency exceeds one million, the electoral expense limit is increased to \$100,000 plus 50 cents for each registered voter;
- 32.2 the amount per registered voter is able to be amended by Order in Council;

Local boards

Chairs and citizenship ceremonies

- 33 **agreed** that regulation 7(1)(a) of the Citizenship Regulations 2002 be consequentially amended to include chairpersons of the Auckland local boards in the list of people who would be authorised to administer the oath/affirmation of allegiance at citizenship ceremonies;

Membership of local boards

- 34 **noted** that currently territorial authority councillors are able to be appointed as members of community boards under the Local Electoral Act 2001;
- 35 **agreed** that:
- 35.1 the complementary roles of the governing body and local boards make it inappropriate for councillors to be members of local boards;
- 35.2 provision be included in the Bill to amend the Local Government (Auckland Council) Act 2009 to clarify that all local board members will be elected, not appointed;
- 36 **agreed** that section 41(5) of the Act apply to local board members, so that employees of the Auckland Council, if elected to a local board, must resign from the Auckland Council before taking up the position as a member of a local board;

Employment matters

- 37 **agreed** that the Bill provide for:
- 37.1 union members who are, or will be, employed by the new employer will be deemed to be employees of the new employer for the exercise of all rights and duties associated with collective bargaining in the period up until 1 November 2010;
- 37.2 where employees covered by an existing collective agreement move to more than one new employer, each new employer and its employees become party to a single employer collective agreement based on the original collective agreement those employees were covered by, and that:
- 37.2.1 this requirement is only binding on and enforceable by those employees who transition from an existing local government organisation pursuant to these provisions, and who perform work covered by the existing collective agreement; and
- 37.2.2 a union that is party to such a collective agreement is empowered to give notice of the early expiry of such an agreement at any time after 1 November 2010;

Miscellaneous issues

- 38 **agreed** that the Bill clarify that the chief executive of the Auckland Council may, before the Auckland Council is formally established on 1 November 2010, call for the first meeting of the new Auckland Council to be held during the period 1-8 November 2010;
- 39 **agreed** that, for the avoidance of doubt, the Bill clarify section 35(3) of the Local Government (Tamaki Makaurau Reorganisation) Act 2009 to ensure that any consequential effects of the dissolution of the existing local authorities do not trigger contractual default or enforcement events;

Subsequent issues

- 40 **authorised** the Prime Minister, the Minister of Transport, and the Minister of Local Government to make decisions on any other issues that arise relating to the final form of the Bill for introduction;
- 41 **noted** that any decisions made in accordance with paragraph 40 above will be noted in the paper to the Cabinet Legislation Committee seeking approval for the introduction of the Bill;

Legislation and publicity

- 42 **agreed** that the proposals in the above paragraphs form part of the Bill, which is planned for introduction in December 2009;
- 43 **noted** that the Minister of Local Government intends to submit the Bill to the Cabinet Legislation Committee on 10 December 2009 for approval for introduction;
- 44 **authorised** the Cabinet Legislation Committee to have Power to Act at its meeting on 10 December 2009 to take decisions on the Bill;
- 45 **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 and the Minister of Transport, in consultation with the Prime Minister's office and the Associate Minister of Local Government;
- 46 **agreed** that the Minister of Local Government advise the ATA of Cabinet's decisions in relation to the paper under CAB (09) 691.

Rebecca Kitteridge
Secretary of the Cabinet

Reference: CAB (09) 691; AGR Min (09) 13/2

Distribution: (see over)