

OFFICE OF THE MINISTER OF LOCAL GOVERNMENT

Chair  
Cabinet

**ORAL ITEM: AMENDMENTS TO LOCAL GOVERNMENT (AUCKLAND COUNCIL)  
BILL**

**Proposal**

1. This paper provides information for an oral item seeking Cabinet decisions on proposed amendments to the Local Government (Auckland Council) Bill (the Bill) to be made by means of a Supplementary Order Paper (SOP) during the Committee stages of the Bill scheduled for 15 to 17 September 2009.
2. The issues on which decisions are sought are:
  - (a) the northern boundary of Auckland; and
  - (b) the southern boundary of Auckland; and
  - (c) transitional planning and reporting arrangements for the existing Auckland local authorities and new Auckland Council.

**Background – Auckland Boundaries**

3. On 4 May 2009, Cabinet:

"25 agreed to include in the second Bill [Local Government (Auckland Council) Bill] an alternative southern boundary for the Auckland Council geographical area which would retain the current boundaries of the Auckland Region, ...except for moving the area bordering the Firth of Thames into the Waikato Region;"

[CAB Min (09) 15/11]

4. The Bill, as introduced on 13 May 2009, included provisions reflecting that decision.

5. On 3 August 2009, Cabinet:

"14 agreed that

"14.1 The Local Government Commission be required to determine the Northern Boundary of Auckland so that, so far as practicable, the boundary splits the Rodney District so that only the clearly urban and peri-urban part from Orewa (area C on attached map) is included in Auckland, with the balance included in Kaipara District and Northland Region;

"14.2 The Local Government Commission is required to determine the southern boundary of Auckland that, as far as practicable, the boundary includes in Auckland that part of Franklin north of the current regional boundary, with the exclusion of Mangatangi and Mangatawhiri catchments (as currently provided in the Bill);

"15 agreed that the issue of the future governance of the coastal area of Franklin around Kaiaua be left to the Local Government Commission to determine."

[CAB Min (09) 27/10]

6. These latter decisions are consistent with amendments to the Bill recommended by the Auckland Governance Legislation Committee in its report to Parliament. The Bill is scheduled for Second Reading, Committee stages and Third Reading in the week beginning 14 September 2009

#### **Comment – Auckland Boundaries**

7. Changes to local government boundaries, like other boundary issues, are always contentious and every proposal is likely to have vocal opponents. This is exacerbated in the case of unitary authority boundaries because the considerations and criteria for effective governance of regional functions are likely to be in tension with those for territorial authority responsibilities.

#### *Northern Boundary*

8. In respect of the northern boundary of Auckland, the original 4 May 2009 decision represented Government acceptance of strong arguments advanced by the Royal Commission on Auckland Governance (Royal Commission) for retaining the current regional boundary. The August Cabinet and Select Committee decisions to exclude a large part of Rodney District were primarily a response to vocal opposition to inclusion in Auckland from across that district. These decisions represented a compromise between that opposition and the very obvious strong metropolitan links and urban characteristics of the southern part of the District.
9. It has become apparent since the Select Committee report that much of the opposition was to the inclusion of any part of Rodney in Auckland rather than inclusion of just the northern, less clearly urban, part. There is clearly as much opposition to boundaries that split communities within Rodney District as there is to the inclusion of the district within Auckland. It is apparent that many of those who opposed the inclusion of Rodney would prefer the entire district to be included in Auckland to the splitting of the district.
10. It is also apparent that there is a significant body of opinion that supports the inclusion of all of Rodney in Auckland. The inclusion of all of Rodney in Auckland was seen as the best option for effective regional governance by not only the Royal Commission but also by officials across all Government Departments that expressed a view, and by the Auckland Transition Authority (ATA).
11. A number of alternative approaches to splitting Rodney between Auckland and Kaipara District have been suggested. While these may have potential to meet the preferences and concerns of particular groups or individuals, they are equally likely to engender fresh opposition from other affected interests. Adoption of a third position on this issue would, I believe, be damaging to the credibility of the Auckland governance reform process.
12. In my view the only viable options open to the Government are:
  - (a) to return to the original policy position that all of Rodney District should be included in Auckland; or
  - (b) to accept the Select Committee's recommendation to split Rodney District along the lines agreed by Cabinet in August.
13. In my view, option (a) is clearly best for the effective long-term governance of Auckland. However, given the importance of this decision, it is important that it is made by Cabinet.

### *Southern Boundary*

14. The Royal Commission considered four options for the southern boundary of Auckland and, while recognising that none was unproblematic, recommended that Auckland include all of Franklin District north of the Waikato River, apart from a small area around Kaiaua on the Firth of Thames. The Royal Commission recognised that this would mean that the Waikato River catchment would be split between Auckland and the Waikato Region. It recommended that this be addressed by including the whole of the catchment in the Waikato Region for catchment management purposes.
15. This proposal was rejected by Cabinet in its 4 May 2009 decision, on the basis it would:
  - create bureaucratic complexity and confusion, and impede the integrated management of the catchment;
  - not fit with the catchment-based management framework under the Resource Management Act 1991 (RMA);
  - complicate arrangements for co-management of the Waikato River (subject to the Waikato-Tainui Treaty of Waitangi settlement process) through the need to involve the Auckland Council in those arrangements; and
  - not align with the Government's stated objectives of simplifying and streamlining planning and consenting processes under the Resource Management Act 1991.
16. Cabinet instead opted for a southern boundary based largely on the existing regional boundary which, in turn, largely follows the catchment boundary. Officials' advice was that this option would:
  - simplify the statutory framework by aligning plans, policy statements and their overlaps;
  - simplify the matters requiring consideration as part of the investigation of the integrated planning framework for the Auckland Council recommended by the Royal Commission;
  - support transport planning and funding consistency; and
  - retain significant flood mitigation assets, and access arrangement for these, under the control of Environment Waikato.
17. This boundary was included in the Bill as introduced. It was subsequently confirmed in the 3 August 2009 Cabinet decision and in the Select Committee's recommendation in reporting back the Bill.
18. Despite this, there has been lobbying and criticism of this boundary on the basis that it will divide communities of interest within Franklin District. Opposition has also noted that residents between the proposed boundary and the Waikato River, who have previously accessed council services and facilities in Pukekohe, will need to travel much further to access those services because Waikato District Council's nearest service centre is in Huntly.
19. This issue is a clear demonstration of the tension between governance criteria for boundaries for regional, largely resource management, functions and territorial authority boundary considerations. The catchment boundary, on which the proposals in the Bill are based, is clearly the most appropriate boundary for regional functions. That boundary does, however, divide communities of interest relevant to the provision of services and facilities at territorial authority level.

20. The alternative boundary advocated to avoid that outcome is that recommended by the Royal Commission i.e. the inclusion in Auckland of all of Franklin District that is north of the Waikato River (with the exception of the Kaiaua area) This would mean that a significant portion of the Waikato River catchment would be included in Auckland.
21. The Royal Commission's proposal to address this outcome was to give the Waikato Regional Council jurisdiction over that area for catchment management purposes. This approach has three major weaknesses:
- (a) distinguishing between "catchment management" responsibilities and other regional council responsibilities under the Resource Management Act 1991 and other legislation creates arbitrary and artificial distinctions between activities that are best undertaken in an integrated manner;
  - (b) this approach will complicate, rather than simplify, governance in the affected area; and
  - (c) it raises issues concerning the rating liability to Waikato Regional Council, and electoral representation on that council, for ratepayers who are within its jurisdiction for only some functions.
22. These issues might be addressed if the Auckland Council has primary accountability for all regional responsibilities in this area and there is reliance on joint or collaborative approaches between the two councils for the management of the catchment. Such arrangements operate elsewhere (e.g. a small part of the Waitaki catchment is within the jurisdiction of Otago Regional Council) with mixed success. The pressures of horticultural intensification and demand for lifestyle blocks on the urban fringe, within the context of a sensitive co-management arrangement, are likely to pose a significant challenge to the long-term effectiveness of such arrangements.
23. In my view, territorial authority services and facilities are more amenable to joint and collaborative arrangements than regulatory resource management responsibilities. Cross boundary arrangements to share access to facilities such as libraries are not uncommon between territorial authorities. In addition, if the current boundary proposal is confirmed, the Waikato District Council could negotiate to share an Auckland Council service centre in Pukekohe if it does not consider the additional jurisdiction justifies its own facilities in somewhere like Tuakau.
24. For these reasons, I continue to support the southern boundary previously agreed by Cabinet and provided for in the Bill. However given the sensitivity of this matter, I ask Cabinet to again weigh and decide between the merits and disadvantages of these two options for the southern boundary of Auckland:
- (a) the southern boundary currently provided in the Bill, based on the existing regional boundary with the exception of the Mangatawhiri and Mangatangi catchments and the area around Kaiaua; or
  - (b) a southern boundary that would include in Auckland all that part of Franklin north of the Waikato River (with the exception of the area around Kaiaua).

#### **Background – Transitional planning**

25. The Local Government (Tāmaki Makaurau Reorganisation) Act 2009 (the Act) provides for the disestablishment of the existing Auckland local authorities and establishment of the Auckland Council on 1 November 2010

26. The existing local authorities have raised issues concerning their obligations, under the Local Government Act 2002, to prepare annual plans for the financial year commencing on 1 July 2010. The issues are:
- the scope of the 2010/11 annual plans – whether these should apply only to the 4 months until the existing councils are disestablished, or for the full 2010/11 financial year; and
  - whether the “normal” requirement to follow the special consultative procedure should apply to the 2010/11 annual plans.
27. Additional, related issues have arisen through departmental discussions with the ATA and consideration of the initial allocation of local board responsibilities as described in the Select Committee recommendations on the Bill. These issues include:
- how best to meet the requirements for the Auckland Council to have documents that function as an annual plan for the 8 months from 1 November 2010 to 30 June 2011, and a long term council community plan (LTCCP) for the Auckland Council from 1 November 2010 to 30 June 2011;
  - who should be responsible for preparing these documents;
  - the process and deadline for preparing these documents; and
  - how to ensure these documents are made fit for purpose (e.g. reflect structure of Auckland Council, identification of “local activities” for local boards purposes etc).
28. A further issue is whether the compliance costs of councils preparing separate annual reports for the 2009/10 annual year and the 4 months of the 2010/11 year are justified, or whether a single report for the 16 month period would suffice.
29. These issues can be addressed in amendments to the Act through a SOP to the Bill during the Committee stage.

#### **Comment - Transitional planning**

30. Departmental discussions with officials from the ATA and Office of the Auditor-General (OAG) have highlighted the need for the initial planning documents for the Auckland Council to reflect, as closely as possible, all decisions taken concerning the structure and organisation of that Council. While these documents will be largely based on the information presented in the LTCCPs adopted by the existing councils this year, that information will require significant reorganisation and refinement if it is to meet the needs of the new Council. It is not realistic to expect this to be achieved by the eight existing councils or for it to be completed in June 2010 when the 2010/11 annual plans are required to be adopted.
31. This means that that initial planning documents for the Auckland Council will need to be prepared separately, and later, than the existing councils’ annual plans for the first 4 months of 2010/11. These factors also confirm that the initial planning documents for the Auckland Council need to be prepared by the ATA on behalf of the Auckland Council, rather than by the existing councils under ATA oversight.
32. It is desirable to clarify in the current Bill that the existing councils’ annual planning requirements for 2010/11 relate only for the four months up to their disestablishment on 31 October 2010. It will also be necessary to clarify that, notwithstanding the four month scope of the annual plans, existing councils will be expected to set their 2010/2011 rates on a 12 month basis to ensure revenue during the first 8 months of the Auckland Council.

33. Although the detailed content and process for developing the Auckland Council planning document requires further development and will be covered in the third Bill, it is desirable that the current legislation clarify that this will be a separate document, and will be prepared by the ATA by 31 October 2010.
34. The 4 month annual plans for existing councils will have limited scope. They will generally reflect the service levels, expenditure programmes, and indicative budgets included as year 2 in the LTCCPs on which councils consulted their communities earlier this year. It is therefore proposed that, provided the annual plans are consistent with those LTCCPs (except for more accurate updated budgets) councils will not be required to follow the special consultative procedure to adopt them. This will avoid unnecessary compliance costs, and also avoid public confusion and distraction by a relatively meaningless process close to the local authority elections.
35. It is proposed that the Act be amended, by way of an SOP to the Bill, to clarify that:
- the Auckland councils must adopt a 2010 annual plan for the period from 1 July to 31 October 2010 only; and
  - that they do not need to follow the special consultative procedure to adopt the annual plan provided it does not propose any change to the service levels or expenditure programmes in their adopted LTCCP.
- It will be necessary to clarify that, notwithstanding the four month scope of the annual plans, existing councils will be expected to set their 2010/2011 rates on a 12 month basis to ensure revenue for the first 8 months of the Auckland Council.
36. The SOP will ensure that the Local Government Commission's determinations of Auckland boundaries will provide for the 2010/11 planning requirements of those areas of existing councils being transferred to other councils outside Auckland.
37. It is also proposed that the SOP clarify that a single "annual report" may be prepared for the last 16 months operations of the existing councils, rather than a report being required for the 2009/10 financial year and another one for the four months they will exist from 1 July 2010. This will avoid significant duplication of effort and costs that would not add to accountability in these circumstances. Again, specific detail will be included in the third Bill.

#### Consultation

38. The Ministries of Economic Development, Transport, Environment, Social Development, and Pacific Island Affairs, Te Puni Kōkiri, Treasury, the Department of Building and Housing, and the Department of the Prime Minister and Cabinet have been informed of the content of this paper.
39. The proposals in relation to transitional planning and reporting have been discussed and agreed with officials of the Auckland Transitional Agency and the Office of the Auditor-General. Officers of the existing Auckland local authorities have been informed of the proposals.

#### Financial Implications

40. The proposals in this paper have no financial implications.

#### Legislative Implications

41. Subject to Cabinet agreement, a Government SOP to the Bill will be required to implement the proposals in this paper in relation to transitional planning and reporting. If Cabinet decides on options other than what is currently in the Bill in respect of the northern and/or southern boundary, those decisions would also be implemented through the SOP.

### Compliance Cost Statement

42. Not required.

### Regulatory Impact Statement

43. Not required.

### Publicity

44. If Cabinet agrees to northern and/or southern boundaries for Auckland that differ from those currently in the Bill, those decisions should be announced as early as possible by the Prime Minister. No public announcement of decisions on transitional planning and reporting is necessary. The chief executive of the Department of Internal Affairs will communicate those decisions to the Auckland local authorities.

### Recommendations

45. I recommend that Cabinet:

1. note that the northern and southern boundaries of Auckland recommended in the Auckland Governance Legislation Committee's report on the Local Government (Auckland Council) Bill (the Bill) are consistent with Cabinet decisions on 3 August 2009;

#### *Northern Boundary*

2. Either

2.1. agree that the Bill be amended to reinstate the previous provision for the northern boundary of Auckland to be based on the existing northern boundary of the Auckland region, thereby including all of Rodney District within Auckland;  
*(Preference of Minister of Local Government)*

Or

2.2. agree that the northern boundary of Auckland should remain as recommended in the Auckland Governance Legislation Committee's report on the Bill, thereby including the northern part of Rodney District in Kaipara District and Northland Region;

#### *Southern Boundary*

3. Either

3.1. agree that the southern boundary of Auckland should remain as recommended in the Auckland Governance Legislation Committee's report on the Bill (i.e. based on the existing southern boundary of the Auckland region, with the exception of the Mangatawhiri and Mangatangi catchments and the area around Kaiaua);  
*(Preference of Minister of Local Government)*

Or

3.2. agree that the Bill be amended to provide for a southern boundary that would include in Auckland all that part of Franklin north of the Waikato River (with the exception of the area around Kaiaua), as recommended by the Royal Commission on Auckland Governance;

#### *Transitional planning and reporting*

4. note that it is desirable to clarify, in the Bill, the obligations of existing Auckland local authorities in terms of annual plans and annual reports for the 2010/11 year;

5. **agree** to amendments to the Bill to:

- 5.1. clarify that existing Auckland councils must prepare 2010/11 annual plans only for the four months up to their disestablishment on 31 October 2010;
  - 5.2. provide that, so long as these plans are consistent with councils' 2009-19 long term council community plans, they do not need to use the special consultative process to adopt them;
  - 5.3. clarify that the existing councils must set 2010/11 rates on a 12 month basis;
  - 5.4. clarify that documents to meet the planning requirements of the Auckland Council for the first 8 months of its existence (1 November 2010 to 30 June 2011) will be prepared by the Auckland Transition Agency prior to the establishment of that council;
  - 5.5. provide that the existing councils are not required to produce separate annual reports for the 12 months of 2009/10 and the four months of 2010/11 but can produce a single report for the 16 month period; and
  - 5.6. provide that annual planning for the last 8 months of 2010/11, for areas of existing councils to be included in other councils outside Auckland, must be covered in Local Government Commission determinations in relation to those areas;
6. **note** that the third Auckland governance Bill will include further, more detailed, provisions relating to the planning and rating requirements for the Auckland Council for the period 1 November 2010 to 30 June 2011;

*Legislation*

7. **agree** that decisions under item 2.1 (if agreed), item 3.2 (if agreed) and item 5 will be implemented by means of a Government SOP to the Bill;

*Publicity*

8. **agree** that decisions under item 2.1 (if agreed) and/or item 3.2 (if agreed) should be announced by the Prime Minister as early as possible; and
9. **agree** that no public announcement of decisions under item 5 is necessary, but the chief executive of the Department of Internal Affairs will communicate those decisions to the Auckland local authorities.

Hon Rodney Hide  
MINISTER OF LOCAL GOVERNMENT

14 Sept 09