



# Cabinet

CAB Min (09) 37/12

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## Minute of Decision

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### Auckland Governance: Water Issues

#### Portfolio: Local Government

On 19 October 2009, following reference from the Cabinet Committee on Implementation of Auckland Governance Reforms (AGR), Cabinet:

#### Background

- 1 **noted** that the Royal Commission on Auckland Governance (the Royal Commission) recommended that, in urban areas, all drinking water and wastewater services should be supplied by Watercare Services Limited (Watercare), owned by the Auckland Council;
- 2 **noted** that the Royal Commission recommended a relatively light-handed approach to regulating Watercare;
- 3 **noted** that on 6 April 2009, Cabinet agreed in principle that all drinking and wastewater services in urban areas should be delivered by Watercare as a council-controlled organisation (CCO) of the Auckland Council [CAB Min (09) 12/7];
- 4 **noted** that on 4 May 2009, Cabinet agreed that the second Bill provide for Watercare to undertake the integration of water and wastewater in Auckland, under the oversight of the Auckland Transition Authority (ATA) and in accordance with a process approved by the ATA [CAB Min (09) 15/11];
- 5 **agreed** that Watercare be included within the Local Government Act 2002 (the Act's) definition of "local government organisation", so that it is required to meet the same obligations and restrictions placed on all other council-owned water service providers;

#### Part 1: Watercare's status and ownership of assets

**noted** that the CCO framework would:

- 6.1 require the Auckland Council to appoint directors with the necessary expertise and experience to contribute to the achievement of its objectives;
- 6.2 require Watercare and the Auckland Council to develop an annual statement of intent (SOI);
- 6.3 require the Auckland Council to develop a monitoring regime and to disclose information on Watercare in its accountability documents;

- 7 **noted** that the Companies Act 1993 will ensure that the Auckland Council has the rights of shareholders, including the right to appoint directors, make decisions on major transactions, and to demand information to ensure that there is appropriate monitoring of the company;
- 8 **agreed** that from 1 November 2010, Watercare will be owned by the Auckland Council, and will deliver all reticulated drinking and wastewater services in Auckland;
- 9 **agreed** that until 1 July 2012, Watercare will retain its current status as a council organisation, and from 1 July 2012 Watercare will become a CCO of the Auckland Council;
- 10 **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;
- 11 **agreed** that the assets and liabilities of the current Auckland councils be transferred to Watercare as follows:
- 11.1 the assets and liabilities of Metrowater and Manukau Water;
  - 11.2 the combined wastewater and stormwater assets currently held by the Auckland City Council;
  - 11.3 the water and wastewater assets and liabilities of the Waitakere and North Shore cities and Rodney district;
  - 11.4 the water and wastewater assets and liabilities of the Franklin district to the extent that the related assets will be mainly used to provide services within the boundaries of the Auckland Council (with the balance of the assets being transferred to Waikato District and Waikato Regional Councils respectively);
  - 11.5 the water and wastewater assets of Papakura District Council and its responsibilities and obligations under the franchise agreement with United Water;
- 12 **noted** that the processes and protocols relating to the transition of water and wastewater staff will reflect the fact that Watercare is being expanded, rather than disestablished and merged with other water entities;

## Part 2: Regulatory options

- 13 **noted** that the Royal Commission recognised that Watercare would have increased monopoly power;
- 14 **noted** that the risks associated with Watercare's potential abuse of its monopoly position will be limited by the CCO governance framework and wider safeguards;
- 15 **noted** that the CCO framework and wider safeguards provided by the Office of the Auditor-General and the Commerce Act 1986 will provide an appropriate regulatory framework for Watercare;
- 16 **noted** that under the Local Government Act 2002, there are no statutory restrictions on how councils arrange their water activities or charge for water and wastewater;
- 17 **agreed** that the statutory obligation on Watercare to maintain prices at minimum levels consistent with effectively managing its assets be retained;

- 18 **agreed** that the current legislative prohibition on Watercare paying any dividend to its owner be retained;
- 19 **agreed** that any decisions on water and wastewater pricing be left to the Auckland Council and Watercare, and be subject to any Auckland Council's policies and direction through the SOI;
- 20 **noted** that some Rates Rebate recipients in areas where water and wastewater charges are currently recovered through rates will be eligible for a lower level of rebate as a result of these charges being levied directly by Watercare from 1 November 2010;
- 21 **noted** that consideration of the need for interim measures to address the issue raised in paragraph 20 above will be addressed in a further Cabinet paper dealing with initial rating and funding issues;

### Part 3: Watercare's regulatory powers

- 22 **agreed in principle**, subject to the report referred to in paragraph 22 below, to repeal the Auckland Metropolitan Drainage Act 1960 and the North Shore Drainage Act 1963, on the basis that:
- 22.1 these Acts contain many superseded and irrelevant provisions;
- 22.2 these Acts may double up on provisions provided by more contemporary legislation;
- 22.3 their continued existence will result in inconsistent water and wastewater policy within Auckland;
- 23 **directed** the Department of Internal Affairs, in consultation with the ATA and Watercare, to report back to AGR in November 2009 if Watercare requires any additional powers and responsibilities, with this work being based on the following principles:
- 23.1 Watercare be provided with an operating environment to enable it to undertake its role;
- 23.2 the powers and responsibilities extended to Watercare are consistent with the local government legislative framework, unless there is justification for different treatment;
- 23.3 any powers and responsibilities granted to Watercare be applied consistently throughout Auckland, unless there is adequate justification for different treatment; and
- 23.4 any proposals are considered against good governance criteria already agreed by Cabinet, notably democracy, efficiency and effectiveness [CAB Min (09) 8/10];
- 24 **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;

#### Part 4: Interim arrangements

- 25 **agreed, subject** to the decisions in paragraphs 17 and 18 above, to an interim arrangement, through either a sunset clause or inclusion as a temporary measure in another legislative vehicle, whereby the effects of key Watercare-specific provisions in the Local Government Act 1974 are retained until 30 June 2012, including the provisions regarding Watercare's statement of corporate intent, funding plan and asset management plan;

#### Legislative implications

- 26 **agreed** to repeal those Watercare-specific provisions contained in the Local Government Act 1974 that are unnecessary for the interim arrangements or ongoing governance of Watercare, and are not relevant to the work on Watercare's powers and responsibilities as detailed in paragraph 23 above;
- 27 **noted** that the proposals in the paper under CAB (09) 597 will form part of the proposed Local Government (Auckland Law Reform) Bill planned for introduction in November 2009;

#### Publicity

- 28 **noted** that communication of the government's decisions on the proposed Local Government (Auckland Law Reform) 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.

Secretary of the Cabinet

Reference: CAB (09) 597; AGR Min (09) 10/3

Distribution: (see over)

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