

Local Government (Auckland Council) Bill

Government Bill

Explanatory note

General policy statement

Background

Governance arrangements for the Auckland Region have been a cause of concern for at least the past 50 years. Successful government of Auckland requires the management and resolution of both regional and local issues. Having different councils manage these different interests has increased tension and slowed resolution of problems, particularly as the Auckland population has continued to increase.

Auckland is home to some of the most important commercial, educational and business organisations in the country. It is the region where nearly one-third of the population of New Zealand choose to live. But Auckland's potential is restricted by the fragmented way the city is run. Regional issues get tangled up in the competing interests of local councils. Community matters get tangled up in local councils' focus on the Auckland-wide issues.

A succession of Government attempts at reform, from the establishment of the Auckland Regional Authority in 1963, through to the reforms of the late 1980s, which saw widespread amalgamation and the establishment of the Auckland Regional Council, to the enhanced planning and participation provided for in 2002 legislation,

have failed to provide enduring solutions. Changes focused on particular sectors or aspects such as transport and ownership of regional assets have not been enough to provide Auckland with the governance it needs to succeed.

The previous Government commissioned a Royal Commission of Inquiry into Auckland's Governance (**Royal Commission**). It reported to the Government on 25 March 2009, recommending the concept of one council for Auckland, and enhanced powers for the Mayor. The Government agreed with these recommendations but has rejected the Royal Commission recommendation for 6 local councils in favour of local boards, which enhance community participation and local democracy.

Legislation is required to give effect to the Government's decisions on Auckland local governance. At least 3 Bills are anticipated. This is the second of those Bills.

Auckland currently has 7 local councils and 1 regional council. This legislation and the Local Government (Auckland Reorganisation) Bill begin the process of transitioning existing councils to one Auckland Council to create a vision, a plan, and to manage assets and deliver core services. Local democracy is also intended to be enhanced through the new local boards, which will link communities to the new council.

This Bill provides for the governance structure of the Auckland Council, including—

- the high level framework for the structure of the Auckland Council—8 members elected at large and 12 members from wards, and in the order of 20 to 30 local boards including their high level functions; and
- direction and provision of powers for the Local Government Commission (**LGC**) to determine the boundaries of the wards of the Auckland Council and the local boards, and the number of local boards and their membership; and
- providing powers and functions for the LGC to develop a re-organisation scheme for the partition of the Franklin District and the Franklin District Council between the Auckland Council and the Waikato District Council.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. *Part 2* (which establishes the Auckland Council) comes into force on 1 November 2010. The rest of the Bill comes into force on the day after the date on which it receives the Royal assent.

Part 1

Preliminary provisions

Clause 3 sets out the purpose of the Bill.

Clause 4 is the interpretation clause.

Clause 5 defines Auckland.

Clause 6 sets out the relationship between this Bill, the Local Government Act 2002, and the Local Electoral Act 2001. This Bill prevails if there is any inconsistency.

Part 2

Auckland Council

Clause 7 establishes a unitary authority for Auckland to be known as the Auckland Council. *Subclause (3)* states that the Council is the same body as that established under **section 9 of the Local Government (Auckland Reorganisation) Act 2009**.

Clause 8(1) requires the governing body of the Auckland Council to comprise a mayor and 20 members elected in accordance with the Local Electoral Act 2001. *Subclauses (2) and (3)* set out how the Mayor and members must be elected.

Clause 9 deals with the role of the Mayor and the powers that he or she may exercise as a result of holding the mayoral office. Under *subclause (3)*, the Mayor may appoint a Deputy Mayor, appoint the chairperson of each committee of the Council, and establish and maintain an appropriately staffed office of the Mayor.

Clause 10 requires the establishment of local boards for each local board area (as determined by the Local Government Commission under *clause 19*) for the purposes of—

- enabling democratic decision making by, and on behalf of, communities within the local board area; and

- facilitating local input into the decision-making processes of the Council; and
- identifying local preferences in relation to matters of predominantly local significance.

Clause 10(2) sets out the role of local boards.

Clause 11 sets out the status of local boards: a local board is an unincorporated body, is not a local authority, a community board, or a committee of the Council, and may not acquire, hold, or dispose of property or appoint, suspend, or remove employees.

Clause 12 deals with the membership of local boards. The number of members is determined by the Local Government Commission (*see clause 19(1)(d)*) and must be elected in accordance with the Local Electoral Act 2001. A local board area may be subdivided for electoral purposes and, if so, the electors of each subdivision must elect at least 1 member of the local board.

Clause 13 sets out the functions, duties, and powers of local boards.

Clause 14 applies Part 1 of Schedule 7 (other than clauses 15 and 32AA to 36) of the Local Government Act 2002 to a local board, with all necessary modifications, as if the local board were a local authority. That schedule deals with the matters described in section 48 of that Act (including remuneration and conduct of members and meeting procedures).

Clause 15 authorises the Auckland Council to delegate to a local board any of its responsibilities, duties, and powers except the powers described in clause 32(1)(a) to (f) of Schedule 7 of the Local Government Act 2002. Under *subclause (3)*, the Council, in determining whether to make a particular delegation, must weigh the benefits of reflecting local circumstances and preferences (through a delegation) against the importance and benefits of a single approach across Auckland (through itself retaining the responsibility, duty, or power concerned). A local board may delegate any of its responsibilities, duties, and powers delegated to it by the Council to a subcommittee or person, subject to any conditions, limitations, or prohibitions imposed on the local board by the Council when making the original delegation (*see subclauses (4) and (5)*).

Clause 16 requires the Council to provide the necessary administrative and other facilities for each local board to carry out its functions and perform its duties.

Clause 17(1) requires the Council to pay the expenses of each local board incurred in performing and exercising its responsibilities, duties, and powers. However, under *clause 17(2)*, the Council may fix a limit within which a local board may incur expenses, and the local board must not incur expenses above that limit without the prior approval of the Council.

Part 3

Transitional arrangements

Subpart 1—Local Government Commission

Clause 18(1) requires the Local Government Commission to determine the boundaries of Auckland no later than 1 March 2010. *Subclause (2)* sets out certain criteria that the Commission must comply with when making a determination in relation to the southern boundary of Auckland. This includes the requirement to realign the existing boundary in relation to the Mangatawhiri River and Mangatangi Stream catchments and that part of the existing Franklin District situated between the Mangatangi Stream catchment and the Firth of Thames.

In making determinations under this clause, the Commission may undertake the investigations and consult the persons that it thinks desirable, but is not required to consult any person (*see subclause (3)*).

Clause 19(1) requires the Local Government Commission to determine the following matters no later than 1 March 2010:

- the names and boundaries of the 12 wards of Auckland; and
- number and names of local board areas within Auckland; and
- the boundaries of each local board area and the electoral subdivisions, if any, of each of those areas; and
- the number of elected members of the local board for each of the local board areas and, if the local board areas are subdivided for electoral purposes, the number of members to be elected by the electors of each subdivision.

The remainder of the clause sets out the criteria by which the Commission must make its determinations.

Clause 20(1) and (2) provides the process and date by which determinations made by the Local Government Commission under

clauses 18 and 19 are given effect (Orders in Council). *Subclauses (4) and (5)* apply certain provisions of Schedule 3 of the Local Government Act 2002 to any determination of the Commission's in relation to the southern boundary of Auckland given effect to under *subclause (1)*. Schedule 3 of the Local Government Act 2002 deals with the reorganisation of local authorities.

Orders in Council must be made before 10 April 2010 (*see subsection (7)*).

Subpart 2—Consequential amendments

Clause 21 amends clause 6(1) of Schedule 7 of the Local Government Act 2002, which provides for the Remuneration Authority to determine the remuneration, allowances, and expenses payable to, for example, mayors, deputy mayors, chairpersons of local authorities, and chairpersons of committees of local authorities and community boards. The amendment will allow the Remuneration Authority to also determine the remuneration, allowances, and expenses payable to chairpersons and members of local boards and chairpersons of committees of local boards.

Part 4

Amendments to Local Government (Auckland Reorganisation) Act 2009

Clause 22 states that Part 4 amends the **Local Government (Auckland Reorganisation) Act 2009**.

Clause 23 amends section 13(1), which sets out the functions, duties, and powers of the Auckland Transition Agency, by adding the requirement that the Agency approve a process for, and oversee, the planning and management of the integration of Auckland's water supply and wastewater services by Watercare Services Limited (acting under *new section 30A* (as inserted by *clause 24*)).

Clause 24 inserts a *new section 30A*. The new section requires Watercare Services Limited to plan and manage integration of water supply and wastewater services in Auckland—

- under the oversight of the Transition Agency; and
- in accordance with the process approved by the Transition Agency (*see clause 23*); and

- in a way that ensures that Watercare Services Limited becomes the provider of integrated water supply and wastewater services to Auckland.

The *Schedule* sets out matters to be addressed (or that may be addressed) by the Local Government Commission when making a determination under *clause 18(1)* in relation to the southern boundary of Auckland.

Regulatory impact statement

Executive summary

Governance arrangements for the Auckland Region have been a cause of concern for at least the last 50 years. Auckland local government arrangements are important for the citizens of Auckland and the prosperity of Auckland. An Auckland Council with a second tier of between 20 and 30 local boards is recommended. It is also proposed that the Auckland Council be led by a mayor with governance powers.

Adequacy statement

The Regulatory Impact Analysis Team (**RIAT**) considers that the proposals relating to Auckland's future governance arrangements are economically significant. RIAT has not assessed the regulatory impact statement because it was prepared after Cabinet's decisions were made.

Status quo and problem

Current situation

The current local government arrangements for Auckland involve the Auckland Regional Council (**ARC**), 7 territorial local authorities and 30 community boards.

Problem definition

Governance arrangements for the Auckland Region have been a cause of concern for at least the last 50 years. The tension between regional and local interests has amplified the challenges associated with a large and rapidly growing urban population. A succession of Governments have attempted reform but the results have failed to

provide enduring solutions. These have included both changes to governance structures and changes focused on particular sectors or aspects, such as transport and ownership of regional assets.

Royal Commission

The previous Government established a Royal Commission to address concerns about the governance arrangements for the region. It reported back to the Government on 25 March 2009 with recommendations for Auckland local governance. The Royal Commission noted 2 broad systemic problems evident in current Auckland local government arrangements—

- regional governance is weak and fragmented; and
- community engagement is poor.

The Royal Commission noted that “Auckland’s regional council and seven territorial authorities lack the collective sense of purpose, constitutional ability, and momentum to address issues effectively for the overall good of Auckland. Disputes are regular among councils over urban growth and the development and sharing of key infrastructure, including roads, water and waste facilities, and cultural and sporting amenities. Councils cannot agree on, or apply, consistent standards and plans. Sharing of services among councils is limited, yet there is scope for so much more activity in this area”.

Role of local government

The Royal Commission noted that “while growth and prosperity are not created in local or central government offices, the settings provided by both, working together, are important. Lowering regulatory and delivery costs for businesses and individuals, improving infrastructure, and promoting innovation will help make Aucklanders more productive. Protecting Auckland’s natural environment and adopting measures to improve the built environment and public realm makes Auckland more attractive to residents and visitors, and better able to compete as an international city”.

The Royal Commission also noted that “how local government is structured is important in determining what gets done—and what does not—in Auckland. Governance arrangements affect the capacity to plan and make strategic investments on an integrated, region-wide basis, and the ability to solve the larger and longer-term

challenges effectively. Governance arrangements affect how much access people and communities have to the system and their ability to influence decisions about what services and initiatives they value”. The Royal Commission noted that “the cost of not substantially improving Auckland’s response to the challenge of urban growth will be too high for Auckland and for New Zealand”.

Need for structural change

The Royal Commission noted that there is no lack of good intent and noted the work done by Auckland’s councils over the past 18 months to advance the One Plan—a single strategic framework and action plan, which sets a clear direction for how the region plans to achieve sustainable development, with a focus on the region’s infrastructure. In terms of regional leadership, the Royal Commission noted that “regional governance should not have to rely for its success on voluntary agreements or the special skills of individual leaders, but should be built on a sounder footing”.

Objectives

The primary objective is to provide for democratic and effective local government in Auckland and, in particular, to maximise, in a cost effective manner,—

- the current and future well-being of Auckland and its communities; and
- Auckland’s contribution to wider national objectives and outcomes.

Alternative options

Broadly there are 2 alternative approaches to the status quo. They are—

- retain a regional council and territorial authorities and change the structures and relationships between the two tiers; and
- use the Royal Commission model.

Retain regional council and territorial authorities and change structures and relationships between 2 tiers

This option would retain a regional council and a number of territorial authorities. There are a number of permutations of this option. For example, the roles and responsibilities between the 2 tiers could be changed and the number of territorial authorities could be increased or decreased.

The Royal Commission considered a range of options relating to retaining a regional council and territorial authorities. However, it decided they were not feasible because having separate council entities would not resolve existing tensions and competition between councils, and did not address the need “to create a common identity and purpose for the region”.

Full Royal Commission model—unitary authority with 6 second-tier local councils

The Royal Commission proposed a unitary authority with 6 second-tier local councils. This would have the benefits of the unitary authority model, which would resolve existing tensions and competition between councils and provide a common identity and purpose for the region.

The proposed role of the second-tier local councils centred on service delivery at the local level, local engagement, and “place-shaping”. The Royal Commission proposed the following second-tier arrangements:

- a second tier of 6 councils, along similar lines to the current territorial authority boundaries; and
- the primary role of the councils to be one of focusing on local engagement and the delivery of quality local services; and
- a degree of independence and discretion in the delivery of services and “place-shaping” to enable the councils to respond to local needs and preferences; and
- a very wide range of functions to be performed by local councils; and
- no ability of the councils to set rates or employ staff (funding and staff allocation to be the responsibility of the Auckland Council).

A key rationale for the design of the second tier is that the Royal Commission considers that much of Auckland local government works and should be retained. There are 2 key problems with the Royal Commission's recommendations relating to the second tier of the unitary authority. The first is that the structure would result in a loss of local democratic voice and the second is that it would result in poor alignment between some functions proposed at the first and second tiers of governance.

Options that addressed the key problems with the Royal Commission's recommendations relating to the second tier are set out in a continuum of options (*see* figure 1 below).

The Royal Commission estimated that efficiency gains of between \$76 million to \$113 million per year could be made under this option. It noted that the gains would be from having unified services (eg, back office functions like human resources). The Royal Commission estimated that the integration costs have been assessed to range in total between \$120 million and \$240 million over a 4-year implementation time frame.

The Royal Commission has not estimated the benefits to Auckland arising from their proposals for Auckland governance. However, it noted that there are "wider costs associated with not taking action. Failure to take action will result in citizens and businesses continuing to incur high transaction costs in dealing with councils, in important decisions either not being made or made too late, and in central government being unable to develop an effective partnership with Auckland local government".

The Government considers the Royal Commission's proposed second tier has significant weaknesses. First, the Royal Commission proposed that the second tier should consist of 6 local councils. These would have been as large as the current territorial authorities, although would have had less powers than the existing councils. This proposal would have reduced local democracy, and reduced access to citizens and ratepayers to have a meaningful role in decisions affecting their local area.

Secondly, the Royal Commission proposed a range of functions for local councils that would have constrained the ability of the Auckland Council to make regionally significant decisions. The Government is of the view that to strengthen regional governance and reduce fragmentation, regionally significant decisions should be made by the

Auckland Council. This includes, for example, decisions on local roads, which are an important part of the regional roading network.

Thirdly, the Royal Commission proposed that some regulatory functions should be undertaken by the Auckland Council and others should be undertaken by the local councils. However, the Government considers that decisions on national regulation frameworks, such as under the Building Act 2004 and food regulations should be applied consistently across the region. There is little benefit in local variation in the application of such regulations and they are not designed to be applied differently in different communities. There are also clear benefits in reduced compliance and transaction costs for citizens having a consistent application of the regulations.

Fourthly, the Royal Commission's local councils would have been directly elected from within their wards but would have been subordinate in key functions, including service delivery to the Auckland Council. They would have been conflicted between their responsibilities as representatives of their constituents to do what the constituents want and the obligation that functions, powers, and duties performed or exercised by local councils must comply with all adopted plans and policies of the elected Auckland Council. This conflict would not have been resolved by the Royal Commission's proposal to legislate for a 3-yearly governance agreement.

Finally, the Royal Commission's 6 local councils would have been responsible to their constituents for service delivery in their areas but would be funded for these by the Auckland Council. There would, therefore, have been a disconnect between representation and taxation.

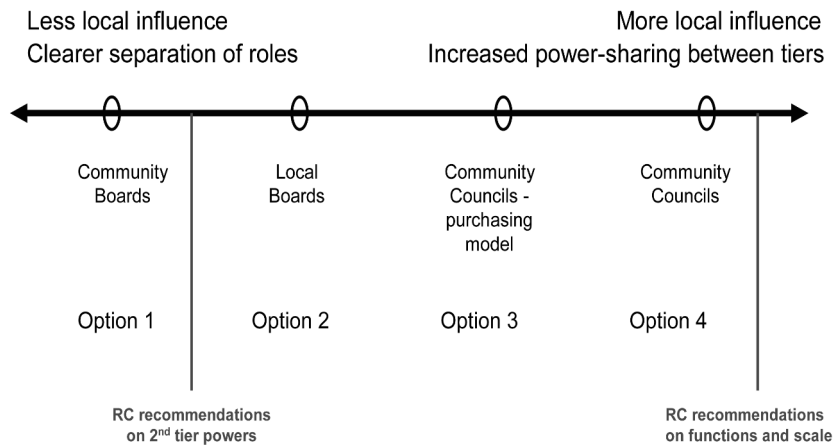
Other options for second tier

Spectrum of options

A spectrum of other options for the second tier were considered (*see* figure 1 below) ranging from community boards with an advocacy role to community councils that are close to current territorial authorities. Options 1, 3, and 4 were not considered optimal. Option 1 provides insufficient decision making at the lower level, whereas options 3 and 4 would create a new form of constrained territorial authority, which could lead to the re-emergence of tensions between councils in the region. Option 2 is the preferred option.

Figure 1: Continuum of options for the second tier of Auckland governance.

Continuum of Options



Preferred option

Part of Royal Commission model—unitary authority with alternative second-tier arrangements

A unitary authority is the preferred overarching Auckland local governance arrangement. As noted by the Royal Commission, retaining separate council entities would not resolve existing tensions and competition between councils and does not address the need to create a common purpose for the region.

The preferred option is to implement part of the Royal Commission's proposed model, an Auckland Council that is a unitary authority, with alternative second-tier arrangements. The proposed second-tier arrangements are to create approximately 20 to 30 local boards that would—

- have a local advocacy role and input into the Auckland Council's plans; and
- develop local policies for local issues; and
- be able to influence the Auckland Council by negotiating with the Auckland Council for additional services with potentially

commensurate adjustment to the rates liability for the local area.

The second tier of 20 to 30 local boards has the following advantages:

- strong local voice; and
- clear separation of regionally significant decision making and local decision making; and
- would reflect communities of interest; and
- clear role for local representatives that reflects local preferences on local issues; and
- supports strong leadership by the Auckland Council on regional issues.

The disadvantages of the proposed second-tier approach of 20 to 30 local boards is that the number of local boards may appear inefficient and there could be difficulties because staff employed by the Auckland Council would work with the local board. The second tier recognises the trade-offs between local representation and efficiency. For example, while multiple boards may require greater resources than smaller numbers, the benefits for local democracy outweigh the additional costs. The possible tensions arising from staff employed by the Auckland Council doing work for local boards can be managed by having clear accountability processes in place.

Changes to the local government legislative framework are needed to implement the proposed structures because there are a number of differences between the existing local government framework and legislation is needed to implement the Auckland Council changes. The mayoral model proposed by the Royal Commission and agreed to by the Government is a new form of mayor that does not fit into the existing legislative framework.

Mayoral option

The preferred mayoral option is the one the Royal Commission recommended. It is a Mayor of Auckland elected at large by the people of Auckland. It also recommended that the Mayor should be given additional powers and duties, on the basis that effective leadership requires sufficient powers and resources to fulfil duties. The powers and duties of the Mayor would be limited to appointment of a Deputy Mayor and committee chairs, proposal of the

Auckland Council budget and strategic direction, and establishment and maintenance of an appropriately staffed Mayoral office.

Under the Royal Commission's model, the Mayor of Auckland will be expected to chart and lead an agenda for Auckland. However, all policy will need approval of the Auckland Council.

Efficiency gains

The Auckland local governance changes are expected to produce savings in terms of council expenditure and for these savings to be passed on to council service users. The Royal Commission estimates of efficiency gains for their model have not been examined further, however, under the preferred option it is expected that there would be efficiency gains from using unified services (eg, back office functions like human resources).

Significant savings from the current arrangements are anticipated through—

- economies of scale and skills with the Auckland Council having the service delivery role across the region; and
- Auckland Council providing back of office functions for the local boards.

As noted above, the Royal Commission has not estimated the benefits to Auckland arising from their proposals for Auckland governance. These arise from providing more efficient and effective governance in Auckland.

Implementation and review

The overarching timetable for implementation is—

- enactment of first Bill in May 2009; and
- appointment of Board of Auckland Transitional Agency (ATA) as early as possible after enactment of first Bill; and
- enactment of second Bill by 24 September 2009; and
- introduction of third Bill in October 2009; and
- appointment of an electoral officer by November 2009; and
- enactment of third Bill by May 2010; and
- local authority elections in October 2010 to elect the Mayor and councillors for the Auckland Council and members of local boards; and

- rationalisation of, and transition to, the new core arrangements significantly completed by October 2010; and
- establishment of structures for Auckland Council by 1 November 2010; and
- development of a new unified rating system as part of a new planning and budgeting cycle from 2012.

Legislation

Legislation is required to give effect to the Government's decisions on Auckland local governance. At least 3 Bills are anticipated. This is the second of those Bills.

Transition

The size and scope of the transition to the Auckland Council is very large, involving the replacement of 8 local authorities with 6 300 staff, \$27.2 billion in assets, and annual revenue of \$2.3 billion.

Monitoring and evaluation

ATA will report to the Minister of Local Government. There is also a Cabinet Committee for Auckland that will monitor the transition progress at a high level. In addition, the Secretary for Local Government will monitor the work of the Establishment Board and will report to the Minister of Local Government at regular intervals.

Consultation

The Royal Commission conducted an extensive consultation programme involving a public submission process, which resulted in more than 3 500 written submissions and formal hearings conducted in 9 locations throughout the region, including Waiheke Island and Great Barrier Island (these involved hearing nearly 550 submitters presenting over 27 hearing days). It also undertook a Māori consultation programme.

The Royal Commission carefully considered the submissions it received on Auckland governance. A summary of the submissions received by the Royal Commission is provided on its website www.royalcommission.govt.nz. The Royal Commission noted that "suggestions were wide ranging, relating, variously, to the number

and sizes of councils, mayoral powers, representation and participation arrangements, council administration, urban design, social and environmental responsibilities, and the role of council entities such as Watercare Services Ltd or the Auckland Regional Transport Authority. When all the combinations of views on these elements are considered, the evidence presented almost every conceivable shade of opinion for the Commission's consideration".

Departments

A number of agencies were involved in providing advice to Ministers on the Royal Commission's recommendations and on an initial high-level Government response: The Department of Internal Affairs led this process in consultation with the Ministries of Economic Development, Environment, Transport, and Social Development, the Treasury, the Department of Building and Housing, and Te Puni Kōkiri. All these Government agencies support the recommended transition option. The Department of the Prime Minister and Cabinet was kept informed of developments.

Hon Rodney Hide

Local Government (Auckland Council) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Local Government (Auckland Council) Act **2009**.
- 2 Commencement** 5
 - (1) **Part 2** comes into force on the close of **1 November 2010**.
 - (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Part 1 Preliminary provisions

3 Purpose of Act

The purpose of this Act is—

- (a) to make further provision for the Auckland Council established under **section 9 of the Local Government (Auckland Reorganisation) Act 2009**, including setting out the matters in relation to its structure and functions, duties, and powers that differ from the general provisions applying to local authorities under the Local Government Act 2002; and 5 10
- (b) to provide the Local Government Commission with the necessary functions and powers to determine certain matters in relation to the Council; and
- (c) to amend certain enactments. 15

4 Interpretation

- (1) In this Act, unless the context otherwise requires,—

Auckland has the meaning given in **section 5**

Auckland Council or **Council** means the Auckland Council established under **section 7** 20

local board means a local board established under **section 10**

local board area means an area specified by Order in Council under **section 20** as a local board area

Local Government Commission means the Local Government Commission continued under section 28 of the Local Government Act 2002 25

Mayor means the Mayor of Auckland.

- (2) Unless the context otherwise requires, terms and expressions used and not defined in this Act, but defined in the Local Government Act 2002, have the same meaning as in that Act. 30

5 Meaning of Auckland

- (1) In this Act, unless the context otherwise requires, **Auckland** means the area described as the Auckland region in the Local

Government (Auckland Region) Reorganisation Order 1989 (*Gazette* 1989, p 2247).

- (2) **Subsection (1)** is subject to any instrument (for example, an Order in Council) redefining or altering that area.

6 Relationship with Local Government Act 2002 and Local Electoral Act 2001 5

If there is any inconsistency between this Act and the Local Government Act 2002, the Local Electoral Act 2001, or any regulations made under those Acts, this Act prevails.

Part 2 10
Auckland Council

7 Auckland Council established

- (1) This section establishes a territorial authority for Auckland to be known as the Auckland Council.
- (2) The Auckland Council has, in relation to Auckland, the responsibilities, duties, and powers of a regional council. 15
- (3) The Auckland Council is the same body as that established under **section 9 of the Local Government (Auckland Reorganisation) Act 2009**.
- (4) Part 2 of Schedule 2 of the Local Government Act 2002 is consequentially amended by omitting the item relating to the Auckland Council and substituting the following item: 20

Auckland Council **section 7** of the Local Government (Auckland Council) Act **2009**

8 Governing body of Auckland Council

- (1) The governing body of the Auckland Council must comprise a mayor and 20 members elected in accordance with the Local Electoral Act 2001. 25
- (2) The Mayor must be elected by the electors of Auckland as a whole.
- (3) The members of the Auckland Council must be elected as follows: 30
- (a) 8 members elected by the electors of Auckland as a whole:

- (b) 12 members elected on the basis of 1 member elected by the electors of each of 12 wards.

9 Mayor of Auckland

- (1) The role of the Mayor is to—
- (a) articulate and promote a vision for Auckland; and 5
- (b) provide leadership for the purpose of achieving objectives that will contribute to that vision.
- (2) Without limiting **subsection (1)**, it is the Mayor's role to develop proposals for the draft long-term council community plan and the draft annual plan for consideration by the Council. 10
- (3) For the purposes of **subsections (1) and (2)**, the Mayor has the following powers:
- (a) to appoint the Deputy Mayor;
- (b) to appoint the chairperson of each committee of the Council and, for that purpose, may appoint himself or herself; 15
- (c) to establish and maintain an appropriately staffed office of the Mayor.
- (4) The Mayor must exercise the power in **subsection (3)(c)**— 20
- (a) in consultation with, and acting through, the Council's chief executive; and
- (b) within the budget in the annual plan adopted for that particular expenditure.
- (5) The Mayor must not delegate any of his or her powers under **subsection (3)**. 25
- (6) The Mayor is an ex officio member of every standing committee and subcommittee of the Auckland Council.

10 Local boards

- (1) A local board must be established for each local board area for the purposes of— 30
- (a) enabling democratic decision making by, and on behalf of, communities within the local board area; and
- (b) facilitating local input into the decision-making processes of the Council; and 35

- (c) identifying local preferences in relation to matters of predominantly local significance.
- (2) Accordingly, the role of a local board is—
- (a) to represent, and act as an advocate for, the residents and ratepayers of the local board area; and 5
- (b) to make recommendations about matters affecting the local board area; and
- (c) to exercise the powers and perform the functions and duties described in **section 13**.
- 11 Status of local boards** 10
- (1) A local board is an unincorporated body.
- (2) A local board is not a local authority, a community board, or a committee of the Council.
- (3) A local board may not—
- (a) acquire, hold, or dispose of property; or 15
- (b) appoint, suspend, or remove employees.
- Compare: 2002 No 84 s 51
- 12 Membership of local boards**
- (1) The number of members for each local board is determined by the Local Government Commission under **section 19(1)(d)**. 20
- (2) Members of a local board must be elected in accordance with the Local Electoral Act 2001.
- (3) A local board area may be subdivided for electoral purposes and, if so, the electors of each subdivision must elect at least 1 member of the local board. 25
- (4) If a local board area is not subdivided for electoral purposes, the members of the local board must be elected by the electors of the area as a whole.
- (5) For the purposes of **subsection (2)**, the Local Electoral Act 2001 applies— 30
- (a) with any necessary modifications; and
- (b) as if any reference in that Act to a community were a reference to a local board area (within the meaning of this Act); and

- (c) as if any reference in that Act to a community board were a reference to a local board (within the meaning of this Act).

13 Functions, duties, and powers of local boards

- (1) A local board has the following functions and duties: 5
- (a) to perform the functions and duties, and to exercise the powers, conferred on a local board by or under this Act:
 - (b) to perform the functions and duties, and to exercise the powers, conferred on a local board by or under any other enactment: 10
 - (c) to reach agreement with the Council in respect of service levels, local facilities, and funding arrangements within its local board area:
 - (d) to monitor and review the services and facilities provided by the Council within its local board area: 15
 - (e) to consider and report on any matter of interest or concern to the local board, whether or not referred to it by the Council:
 - (f) to communicate with community organisations and special interest groups within its local board area: 20
 - (g) to undertake any other responsibilities or duties that are delegated to it by the Council under **section 15**.
- (2) A local board has the following powers:
- (a) the powers that are delegated to it by the Council under **section 15**; and 25
 - (b) the powers that are conferred on it by or under this Act or any other enactment.

14 Application of Schedule 7 of Local Government Act 2002 to local boards

Part 1 of Schedule 7 (other than clauses 15 and 32AA to 36) of the Local Government Act 2002 apply to a local board, with all necessary modifications, as if the local board were a local authority. 30

15 Delegations

- (1) The Council may delegate to a local board any of its responsibilities, duties, and powers except the powers described in 35

clause 32(1)(a) to (f) of Schedule 7 of the Local Government Act 2002.

- (2) Nothing in **subsection (1)** restricts the Council's power to delegate to a local board the power to do anything precedent to the exercise by the Council (after consultation with the local board) of a power referred to in that subsection. 5
- (3) In determining whether to make a particular delegation, the Council must weigh the benefits of reflecting local circumstances and preferences (through a delegation) against the importance and benefits of a single approach across Auckland (through itself retaining the responsibility, duty, or power concerned). 10
- (4) A local board may delegate any of its responsibilities, duties, and powers delegated to it by the Council to a subcommittee or person. 15
- (5) **Subsection (4)** is subject to any conditions, limitations, or prohibitions imposed on the local board by the Council when making the original delegation.
- (6) A local board to which the Council has delegated responsibilities, duties, or powers, or a subcommittee or person to which or to whom a local board has delegated responsibilities, duties, or powers, may, without confirmation by the Council or the local board (as the case may be), exercise or perform the responsibilities, duties, or powers in the same manner and with the same effect as the Council could itself have exercised or performed them. 20 25

16 Council to provide administrative and other facilities for local boards

The Council must provide the necessary administrative and other facilities for each local board to carry out its functions and perform its duties. 30

17 Expenses of local boards

- (1) The Council must pay the expenses of each local board incurred in performing and exercising its responsibilities, duties, and powers. 35

- (2) However, the Council may fix a limit within which a local board may incur expenses under **subsection (1)**, and the local board must not incur expenses above that limit without the prior approval of the Council.

Part 3

5

Transitional arrangements

Subpart 1—Local Government Commission

18 Local Government Commission to determine boundaries of Auckland

- (1) The Local Government Commission must, no later than **1 March 2010**, determine the boundaries of Auckland. 10
- (2) In making a determination under **subsection (1)** in relation to the southern boundary of Auckland, the Commission must—
- (a) ensure that the southern boundary of Auckland follows, as closely as practicable, the existing boundary of the Auckland region except that the following areas must, as far as practicable, be excluded (and consequently included in the Waikato district and Waikato region): 15
- (i) Mangatawhiri River and Mangatangi Stream catchments: 20
- (ii) that part of Franklin District situated between the Mangatangi Stream catchment and the Firth of Thames; and
- (b) determine all matters arising from the boundary adjustment it is required to make under **paragraph (a)** (for example, the transfer of responsibilities and assets); and 25
- (c) without limiting **paragraphs (a) and (b)**, act in accordance with the **Schedule**.
- (3) For the purposes of making a determination, the Local Government Commission— 30
- (a) may undertake the investigations and consult the persons that it thinks desirable; but
- (b) is not required to consult any person.
- (4) The Commission may amend a determination made under this section if satisfied that— 35
- (a) some further or other provision is necessary to enable, or better enable, the intention of the determination; or

- (b) some provision of the determination is no longer relevant or appropriate to the intention of the determination.
- (5) Despite **subsection (4)**, if the amendment relates to a map or plan, the Commission may amend the map or plan, without further authority than this subsection, but must give notice of the amendment in the *Gazette*. 5
- (6) For the purposes of **subsection (2)**,—
- Auckland region** means the area described as the Auckland region in the Local Government (Auckland Region) Reorganisation Order 1989 (*Gazette* 1989, p 2247) 10
- Waikato district** means the area described as the Waikato district in the Local Government (Waikato Region) Reorganisation Order 1989 (*Gazette* 1989, p 2460)
- Waikato region** means the area described as the Waikato region in the Local Government (Waikato Region) Reorganisation Order 1989 (*Gazette* 1989, p 2460). 15
- 19 Determinations of Local Government Commission (other than boundaries of Auckland)**
- (1) The Local Government Commission must, no later than **1 March 2010**, determine— 20
- (a) the names and boundaries of the 12 wards of Auckland; and
- (b) the number and names of local board areas within Auckland; and
- (c) the boundaries of— 25
- (i) each local board area; and
- (ii) electoral subdivisions, if any, of each of those areas; and
- (d) the number of elected members of the local board for each of the local board areas and, if the local board areas are subdivided for electoral purposes, the number of members to be elected by the electors of each subdivision. 30
- (2) In making a determination under **subsection (1)(a)**, the Commission must ensure that the boundaries,— 35
- (a) so far as is practicable, provide effective representation of communities of interest within Auckland; and

- (b) so far as is practicable, provide fair representation to the electors of each of the 12 wards; and
- (c) so far as is practicable, coincide with boundaries of local board areas; and
- (d) coincide with the boundaries of the current statistical meshblock areas determined by Statistics New Zealand and used for parliamentary electoral purposes. 5
- (3) In making a determination under **subsection (1)(b), (c), or (d)**, the Commission must ensure that—
- (a) there are no fewer than 20 but no more than 30 local board areas; and 10
- (b) there are no fewer than 4 but no more than 9 members for each local board; and
- (c) so far as is practicable, the boundaries of local board areas, and any electoral subdivisions, and the number of members to be elected, provide effective representation of communities of interest within Auckland; and 15
- (d) the subdivision of any local board area for electoral purposes provides fair representation for the electors of the local board area; and 20
- (e) the local board area boundaries, or subdivisions of those areas for electoral purposes, coincide with the boundaries of the current statistical meshblock areas determined by Statistics New Zealand and used for parliamentary electoral purposes; and 25
- (f) so far as is practicable, local board area boundaries coincide with ward boundaries; and
- (g) a local board area is constituted for the Waiheke Island community; and
- (h) a local board area is constituted for the Great Barrier Island community. 30
- (4) However, if the Commission considers that effective representation of communities of interest so requires, the number of local board areas may be set in a way that does not comply with **subsection (3)(a)**. 35
- (5) For the purposes of giving effect to **subsection (2)(b)**, the Commission must ensure that the population of each ward divided by the number of members to be elected by the ward produces a figure no more than 10% greater or smaller than the

population of Auckland divided by the total number of elected members (other than members elected by the electors of Auckland as a whole and the Mayor).

- (6) For the purposes of giving effect to **subsection (3)(d)**, the Commission must ensure that the population of each subdivision divided by the number of members to be elected by the subdivision produces a figure no more than 10% greater or smaller than the population of the local board area divided by the total number of elected members of the local board. 5
- (7) However, if the Commission considers that effective representation of communities of interest so requires, wards and subdivisions may be defined, and membership distributed between them, in a way that does not comply with **subsection (5) or (6)**, as the case may be. 10
- (8) **Section 18(3) to (5)** applies to any determination made under this section as if it were a determination to which **section 18** applied. 15

20 Order in Council to give effect to determinations

- (1) A determination made under **section 18(1) or 19(1)**—
 (a) is given effect to by Order in Council; and 20
 (b) has effect on and from **1 November 2010**.
- (2) A determination amended under **section 18(4)**—
 (a) is given effect to by Order in Council; and
 (b) has effect on and from the date specified for this purpose by the Order in Council. 25
- (3) If a determination does not specifically provide for a matter that the Secretary for Local Government considers to be necessary, desirable, or incidental as a consequence of the determination,—
 (a) the Secretary must consult the Commission about the inclusion of the matter in the Order in Council; and 30
 (b) the matter may be included in the order if considered appropriate by the Governor-General in Council.
- (4) Clause 67 of Schedule 3 of the Local Government Act 2002 applies in respect of a determination made under **section 18(1)** in relation to the southern boundary of Auckland that is 35

- given effect to by Order in Council, except to the extent that the determination provides that the clause is—
- (a) amended in its application by the determination; or
 - (b) declared not to apply.
- (5) Clauses 59, 60, 61, 64, 65, and 68 to 70 of Schedule 3 of the Local Government Act 2002 apply to a determination made under **section 18(1)** in relation to the southern boundary of Auckland that is given effect to by Order in Council. 5
- (6) For the purposes of **subsections (4) and (5)**, Schedule 3 of the Local Government Act 2002 applies— 10
- (a) with any necessary modification; and
 - (b) as if every reference to a reorganisation scheme or scheme were a reference to a determination made under **section 18(1)** in relation to the southern boundary of Auckland. 15
- (7) An Order in Council under **subsection (1)**—
- (a) must be made before **10 April 2010**; and
 - (b) is not a regulation for the purposes of the Regulations (Disallowance) Act 1989 or the Acts and Regulations Publication Act 1989. 20

Subpart 2—Consequential amendments

21 Amendment to Local Government Act 2002

Clause 6(1) of Schedule 7 of the Local Government Act 2002 is amended by adding the following paragraphs:

- “(e) chairpersons and members of local boards (as defined in **section 4(1) of the Local Government (Auckland Council) Act 2009**): 25
- “(f) chairpersons of committees of local boards (as defined in **section 4(1) of the Local Government (Auckland Council) Act 2009**).” 30

Part 4
Amendments to Local Government
(Auckland Reorganisation) Act 2009

- 22 Principal Act amended**
This Part amends the **Local Government (Auckland Re- 5**
organisation) Act 2009.
- 23 Functions and duties of Transition Agency**
Section 13(1) is amended by inserting the following para-
graph after **paragraph (c)**:
“(ca) to approve a process for, and oversee, the planning and 10
management of the integration of Auckland’s water
supply and wastewater services by Watercare Services
Limited (acting under **section 30A**):”.
- 24 New section 30A inserted**
The following section is inserted after **section 30**: 15
- “30A Watercare Services to plan and manage integration of
water supply and wastewater services**
Watercare Services Limited must plan and manage the integra-
tion of water supply and wastewater services in Auckland—
“(a) under the oversight of the Transition Agency; and 20
“(b) in accordance with the process approved by the Transi-
tion Agency under **section 13(1)(ca)**; and
“(c) in a way that ensures that Watercare Services Limited
becomes the provider of integrated water supply and
wastewater services to Auckland.” 25
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Schedule		s 18(2)(c)
Matters to be addressed by Local Government Commission when making determination under section 18(1) in relation to southern boundary of Auckland		5
1	Interpretation	
	In this schedule,—	
	local authority means Auckland Council, Franklin District Council, Waikato District Council, or Waikato Regional Council, as the case may be	10
	local authorities means Auckland Council, Franklin District Council, Waikato District Council, and Waikato Regional Council.	
2	Determination	15
	The determination may deal with 1 or more of the following matters:	
	(a) the apportionment and transfer of assets or liabilities or both, or a class or classes of assets or liabilities or both, from Franklin District Council to Auckland Council, Waikato District Council, or Waikato Regional Council:	20
	(b) the transfer of the provision of services, or a class or classes of services, from Franklin District Council to Auckland Council, Waikato District Council, or Waikato Regional Council:	25
	(c) the transfer of employees, or a class or classes of employees of Franklin District Council to Auckland Council, Waikato District Council, or Waikato Regional Council:	
	(d) the transfer of a statutory obligation from Franklin District Council to Auckland Council, Waikato District Council, or Waikato Regional Council:	30
	(e) the transfer of a function, duty, or power from Franklin District Council to Auckland Council, Waikato District Council, or Waikato Regional Council:	35
	(f) any matter incidental to, or required for the purpose of, any of the transfers in paragraphs (a) to (e) :	

-
- (g) the division of Waikato district or Waikato region into wards or constituencies:
- (h) the administration of an existing, proposed, or operative district plan or regional plan under the Resource Management Act 1991: 5
- (i) the system of rating to be in force in Waikato district or Waikato region, which may provide that—
- (i) for a specified period, different rating systems apply to all rates, or to the kinds of rates that are specified in the determination or set and assessed in the new parts of Waikato district or Waikato region or across the entire Waikato district or Waikato region: 10
- (ii) for a specified period (but no longer than 5 years), different rating systems may be applied to all rates in the Waikato district or Waikato region, or to specified rates, set and assessed in the new parts of Waikato district or Waikato region or across the entire Waikato district or Waikato region. 15 20
- 3 Objectives**
- When making the determination, the Local Government Commission must—
- (a) satisfy itself that the determination will maximise, in a cost effective manner, the current and future well-being of the local authorities and the communities concerned; and 25
- (b) have regard to—
- (i) the area of impact of the responsibilities, duties, and powers of the local authorities; and 30
- (ii) the area of benefit of services provided; and
- (iii) any other matters that it considers appropriate.
- 4 No compensation payable if responsibility transferred**
- Unless **clause 5** applies, if provision is made in the reorganisation scheme for a responsibility to be transferred to, or assumed by, a local authority, provision may not be made for the 35

payment of compensation to the local authority from which that responsibility is transferred or assumed.

5 Payment if undertaking transfer

- (1) If a reorganisation plan provides for the transfer of a trading undertaking from a local authority (**transferor**) to another local authority (**transferee**), the transferor may request the Commission to determine whether any payment for the transfer of that trading undertaking should be made by the transferee to the transferor, and, if so, the amount of the payment. 5
- (2) The Commission may, in considering a request under **sub-clause (1)**, require the local authorities concerned to each appoint an independent person as an assessor to report to the Commission on whether any payment should be made. 10
- (3) The costs incurred by assessors must be met jointly by the local authorities appointing the assessors. 15
- (4) In making a determination under this clause, the Commission may attach the conditions that it considers desirable.