

APPENDIX A: AUCKLAND LOCAL GOVERNMENT REFORMS

Background to the Government's Decisions

The Auckland local government reforms are being undertaken to resolve a number of issues that both the Government and the Royal Commission considered were inherent in the current local government structure, and that were restricting the Auckland region from reaching its potential. The explanatory notes to both the first and second Auckland Reform Bills set out the two broad systemic problems that the Royal Commission found in the current Auckland local government arrangements:

- Regional governance is weak and fragmented; and
- Community engagement is poor.

The explanatory notes go on to discuss the Government's reasons for responding in the way proposed, noting that:

- The current system of using different councils to manage regional and local issues “has increased tension and slowed resolution of problems”;
- Auckland's potential is restricted by the fragmented way that Auckland is run, with regional issues getting “tangled up in the competing interests of local councils”, and community matters getting “tangled up in the local councils' focus on the Auckland-wide issues”; and
- A succession of Government attempts at reform “have failed to provide enduring solutions.”

The explanatory notes state that the first and second Auckland Reform Bills begin the process of “transitioning existing councils to one Auckland Council to create vision, a plan, and to manage assets and deliver core services”.⁵⁹ They go on to state that the primary objective of the reform is to:⁶⁰

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

⁵⁹ Explanatory Note, Local Government (Auckland Council) Bill, 2.

⁶⁰ Ibid, 9.

- Auckland's contribution to wider national objectives and outcomes.

The Government's task in reforming Auckland governance, including the passage of the second and the third Auckland Reform Bills by May of 2010 in time for the new system to be in place for the 2010 Local Government elections, will not be an easy task. Its biggest concern will be achieving an appropriate level of community involvement in the reforms to ensure a sense of "buy-in", while maintaining the desired efficiencies that the changes are designed to make.

The Government says it is open to change, and will use the select committee process to ensure that the end result does not give undue weight to the need for cost savings and a single vision for Auckland at the expense of the "local" element of Local Government. Democracy is always inefficient, but ensuring buy-in from Aucklanders is essential. Two elements have been identified (in relation to earlier failed experiments with metropolitan government overseas) as causing local government reform failure: problems of legitimacy; and the manner in which the changes were constituted.⁶¹ Legitimacy requires the population to "recognize itself in [the reforms] and identify with them...because legitimacy is above all based on political, psychological and social elements constructed over a period of time"⁶². The Parliamentary process for the second and third Auckland Reform Bills provides an opportunity for legitimacy, and the reforms will be more democratic as a result.

Two issues in particular will require careful political management, to ensure that the constituents of Auckland are not alienated by the reforms in the lead up to the 2011 General Election. They arise as a result of the Government's decision to change the recommendations of the Royal Commission in relation to the second tier of governance and the issue of Maori seats on the new Auckland Council.

Designing the Second Tier

The functions and powers of local boards were not included in the first Auckland Reform Bill that was passed under urgency on 13 May 2009. Instead, the role of the local boards will be the subject of the Select Committee hearings into the second

⁶¹ Local Government Centre, AUT "Submission to the Royal Commission on Auckland Governance from the Local Government Centre" (April 2008) p. 7.

⁶² Ibid, 7.

Auckland Reform Bill, which is due to be passed by 24 September 2009, and their precise functions and powers are likely to be further defined in the third Auckland Reform Bill to be introduced in October 2009 and passed by May 2010. The Associate Local Government Minister (and now Chair of the Auckland Governance Select Committee), the Hon John Carter, has indicated that the Government is interested in the public's views on the design of the second tier, and that there are still a lot of details that have not yet been decided.⁶³

The Government's preferred solution of local boards has, however, been criticised as a clear departure from the Royal Commission's recommendation of six "local councils" with extensive functions. The Commission itself has criticised the Government's decision, through recent statements by Commission Chair, the Hon Justice Peter Salmon:⁶⁴

These 20-30 local boards would be too small to engage effectively with the local council. Twenty to thirty local councils will make it difficult for the Auckland Council to effectively oversee and monitor what is going on, and the temptation then of course, is to say we'll do it all ourselves. The Auckland Council would almost certainly become directly involved in local issues to the detriment of the important regional issues. Twenty to thirty local councils will be much more expensive to the ratepayers of Auckland than the six councils that we recommended. If local councils are to operate as useful entities and not just be advocates for their communities, they will need offices and staff, and that's going to involve considerable disruption, new facilities provided and additional expense.

The Government's explanation for the departure was that the Commission's recommendations "fail to provide for a coherent allocation of functional roles between the 1st and 2nd tiers."⁶⁵ Such an analysis is arguably correct. Having decided on a two-tier structure, the Royal Commission looked extensively at the issue of *how many* second tier councils/boards there should be, but neglected to adequately consider the link between functions and powers.

The Royal Commission determined that the "local councils" would not be local authorities under the 2002 Act (and would therefore have fewer powers than the existing councils), but that the new local councils would nevertheless have responsibility for local delivery of a wide range of functions (as set out in Schedule 3

⁶³ New Zealand Government "Taking the Next Step on Auckland's Future – with Your Help" (11 May 2009) Press Release.

⁶⁴ Radio New Zealand National, *Morning Report* (5 June 2009).

⁶⁵ Cabinet Paper "Royal Commission on Auckland Governance: Proposed High Level Response" (6 April 2009), paragraph 51.

of the Commission's proposed Bill, including processing building consents, graffiti removal, food premises licensing, animal control, maintaining local parks, etc.)

The Royal Commission's recommendations do not adequately deal with the link between functions and powers. If the second-tier entities are to be responsible to ratepayers for service delivery of the functions proposed by the Commission, they must have adequate powers to undertake these functions effectively. For example, the powers to levy rates employ staff and impose bylaws. The options proposed by the Government were limited to those options that provided for the proper alignment of functions and powers.

Justice Salmond has not yet provided an answer to this criticism. The Royal Commission Chair was recently quoted in *The Independent* as criticising the Government's choice of 20-30 local boards, noting that the six councils recommended by the Commission would not have resulted in the continuation of old rivalries, as "they would have limited powers, no assets of their own and staff would be accountable to the Auckland Council chief executive."⁶⁶ Justice Salmond does not, however, address the issue of how such councils with limited powers and no assets would carry out the functions that the Commission recommended they be responsible for.

The Auckland District Law Society agreed that functions and powers must be aligned in its recent submission to the Auckland Governance Legislation Select Committee hearings. The Society argued that the second Auckland Reform Bill must ensure that local boards are given sufficient powers to perform the functions given to them.⁶⁷

The Hon Rodney Hide responded to Justice Salmond's criticism by pointing out the failures of the Commission's model, noting that the six large councils proposed by the Commission "wouldn't have a role because they wouldn't have any staff or budget of their own, it would all be controlled by the Auckland Council."⁶⁸ The Minister went

⁶⁶ "The changing face of the super-city: is the Govt reshaping its reform?" (16 July 2009) *The Independent*.

⁶⁷ Bernard Orsman "Plea to give local boards real clout" (24 July 2009) *The New Zealand Herald*.

⁶⁸ Radio New Zealand National *Morning Report* (5 June 2009).

on to say that the key outcome for the Government is achieving the one mayor, one council structure, while preserving local representation. He stated that:⁶⁹

[We want] to set out in Statute the role of the local boards. That's where our work focus is concentrated on and that's why we're having the discussion with all Aucklanders, because for the Auckland Council to work, it needs to focus on the big regional issues, but we want the local boards picking up the local issues.

For this reason, the Government's preference of 20-30 second tier local boards is not completely at odds with the Royal Commission's dismissal of 20 second tier "councils", as the Commission was proposing a different role for the councils than the Government. The Royal Commission dismissed the 20-council model very quickly, noting that such a model would impose high transitional costs on ratepayers, cause major disruption to existing staff and services, require new headquarters and services centres to be established at high capital cost, and may result in councils that do not have the scale or capacity to deal with some functions, for example planning consents. In addition, the Commission considered that such a model risks the unitary authority being unable to effectively oversee all 20 local councils.

While these concerns are valid if the "local councils" are to be responsible for the many and varied service delivery functions proposed by the Commission, the Government, recognised that these problems do not arise if the second tier is given limited functions, and that local boards would be more effective at engaging with local communities if they covered a smaller geographic area.

The Government considered a number of options for the second tier that correctly aligned functions and powers, including the power to raise funds, as follows:

Community Councils

This option involved creation of a single council for region-wide issues, and "community councils" to deal with local issues. The community councils would have been similar to the existing local authorities, but have constrained powers such that the single regional body would be able to effectively implement policies and plans dealing with region-wide issues, such as transport and other infrastructure.

The option is similar to the status quo, but removes some of the current local authorities' powers. It is also similar to the Royal Commission's preferred model in

⁶⁹ Ibid

terms of the functions and scale of its proposed "local councils", but gives the councils the powers necessary to effectively implement their responsibilities at a local level.

The Government noted that it had "given serious consideration" to this option, but stated that it would be more costly, and could lead to the re-emergence of tensions between councils in the region. In other words, it is too similar to the status quo.

Community Councils - purchasing model

This structure is similar to the Community Councils model above, but with even greater constraints on the powers of the community councils. It was not further explained in the Government's cabinet papers or in the Royal Commission Report. The Government stated that it was "not consistent with the unitary council model and...involves inventing new powers and relationships at both regional and local levels."⁷⁰

Community Boards

This option involved one unitary council, with numerous community boards underneath. Under this option, the boards would be similar to the current community board structure, in that they would have very limited powers, and have the sole function of advocating for the local communities.

The Government rejected this option, noting that "insufficient powers are left at the local level."⁷¹

Local Boards

The Government's preferred option was therefore the one involving "local boards" with limited functions and powers. This option is similar to the Royal Commission's recommendations with respect to the powers given to the 2nd tier (very limited), but differs in that it does not seek to give the second tier the vast responsibilities suggested by the Royal Commission.

⁷⁰ Cabinet Paper "Royal Commission on Auckland Governance: Proposed High Level Response" (6 April 2009), paragraph 55.

⁷¹ Ibid, paragraph 55.

The need for a correlation between functions and powers creates a difficulty for the Government and also for submitters at the Select Committee. In order to strike the appropriate balance between efficiency and democracy, local boards must have more than a mere advocacy role, but the benefits of cohesiveness and integration require limited powers at the second tier. This will be a key consideration in determining the final design of the local government structure, and will likely require detailed, yet limited, delegations of power to local boards.

“It’s Not About Race, It’s About Rights”

The Government also rejected the Royal Commission's recommendation that there should be 3 Maori representatives on the Auckland Council. Instead, the Government noted that the Local Electoral Act 2001 allows for Maori wards and/or constituencies to be implemented by resolution of the Council, or by a poll of electors, where that is demanded by 5% of enrolled electors.

Currently, the Local Government Act 2002 requires local authorities to:

- Ensure they provide opportunities for Māori to contribute to decision-making processes (section 14(1)(d));
- Establish and maintain processes to provide opportunities for Māori to contribute to decision-making processes (section 81(1)(a));
- Consider ways in which they can foster the development of Māori capacity to contribute to decision-making processes (section 81(1)(b));
- Provide relevant information to Māori (section 81(1)(c)); and
- Where an option involves a significant decision in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, wāhi tapu, valued flora and fauna, and other tāonga (section 77(1)(c)).

Maori, including the Maori Party, will therefore need to consider the following:

- Whether these existing mechanisms allow for sufficient Maori representation;

- If not, the flaws inherent in these existing mechanisms; and
- A preferred model for ensuring Maori representation. If this is simply the Royal Commission recommendations, then the arguments will be straightforward. However, there may be other models proposed by Maori during the Select Committee process.

There will be some accommodation given to a minimum or guaranteed Maori voice, although it may not be in exactly the form recommended by the Royal Commission. The Prime Minister has stated that the Government's decision is not "set in stone" (New Zealand Herald, 4 May 2009), and the Auckland Governance Legislation Select Committee formed a subcommittee, chaired by National MP Tau Henare, to hear submissions from Maori at marae around Auckland in July. These moves suggest that a compromise is likely.

Indeed, the question of Maori representation within the new governance structure for Auckland has proven to be one of the most contentious issues facing the Government. Although the Prime Minister downplayed the impact of the 'Super City Hikoi' (Post Cabinet Press Conference, 25 May 2009⁷²), it is clear that there is considerable pressure on the Government to reconsider its decision not to adopt the Commission's recommendations for Maori seats on the Auckland Council. Examples of lobbying on the issue includes as follows:

- (a) **5 June:** Dr Pita Sharples said he remains hopeful the Government will allow Maori to have seats on Auckland's planned Super City council. Dr Sharples said he met the Prime Minister, John Key, and iwi leaders earlier that week to discuss Maori seats being part of the city's new infrastructure (Super Maori, Radio New Zealand Newswire — 05 06 2009 : 05:03:48)
- (b) **25 June:** Waitakere Council expressed its support for Maori representation on the Auckland Council, and all councils throughout New Zealand (Waitakere: Auckland Council should have Maori Seats Radio New Zealand Newswire — 25 06 2009 : 13:36:45 / City backs Maori seats, Western Leader, 30 June 2009).

- (c) **4 July:** The DominionPost reported that the issue of Maori seats on the new unified Auckland council would get a special hearing from a subcommittee set up to hear from Maori. The subcommittee of the Auckland Governance Legislation select committee would hear submissions at three marae in Auckland the following week (Maori seats hearing, Dom Post, 4 July)
- (d) **6 July:** The New Zealand Herald reported that Rodney Hide and his National Party coalition partner are philosophically opposed to Maori seats. On the other hand, Phil Goff is scathing of the Government's handling of the Super City and says the select committee process is a belated chance for Aucklanders to have a say. "Labour has always supported the idea of a unitary council, but supports stronger, more effective second-tier representation and all councillors elected by wards," he said. "It also supports Maori seats." (Governance Hearings for Super City under way, NZ Herald, 6 July)
- (e) **6 July:** Ngati Whatua told a select committee hearing that it would be evil for Maori not to have seats on the new Auckland Council. A Ngati Whatua trustee Ngarimu Blair told MPs the current council structure treats Maori like a risk needing to be managed. The Iwi's submission suggests two Maori seats on the Auckland super council, one from Ngati Whatua, and one from Tainui, elected by Maori roll voters. A Select Committee member and Labour MP the Hon Shane Jones says the iwi put forward a strong case. But the Committee's chair, the Hon John Carter says it would be inappropriate to comment on the issue yet. (Royal Ngati, Radio New Zealand Newswire — 06 07 2009 : 03:31:45)
- (f) **10 July:** Tainui also expressed its objection to refusal to allow Maori seats. The tribe's executive chairman, Tuku Morgan, said "We're investing significant amounts of money in this city and what do we get? Nil, none, korekau _ it's easy to find the words to describe nothing." (Tribe plans to spend \$80m on luxury hotel, NZ Herald, 10 July 2009).

⁷² Spike Mountjoy "PM's Presser: Super City Hiko "Non-Toxic"" (The Prime Minister's Post Cabinet Press Conference - Monday 25 May, 2009).

- (g) **10 July:** Morning vigils took place on the summit of Mt Eden this week by supporters of Maori seats on the proposed Auckland Council. The vigil coincided with the start of select committee hearings on the super city plans, with Maori representation on the new council among the issues being raised. Organiser Helen Te Hira says the idea to gather on one of Auckland's most iconic spots is a simple and effective way to keep attention on the issue that Maori want to be properly represented. (Maori seat supporters retreat to sacred mountain, Auckland City Harbour News, 10 July).
- (h) **13 July:** The New Zealand Herald reported that Waitakere and North Shore councils will wield new poll results at parliamentary committee hearings this week to turn up the heat against Government proposals for the Auckland Super City. Residents were divided on the issue of Maori seats, which the Waitakere council supports but were favoured by 42 per cent of those polled, compared with 44 per cent against. (Councils armed and ready, NZ Herald, 13 July).