



Local Government (Auckland Council) Act 2009

Public Act 2009 No 32
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Commencement see section 2

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**Schedule
Matters to be addressed by Local Government
Commission when making determination in relation
to southern boundary of Auckland**

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Local Government (Auckland Council) Act 2009.
- 2 Commencement**
 - (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 (Tamaki Makaurau 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
- (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.

4 Interpretation

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

Auckland means the area within the boundaries determined by the Local Government Commission under section 33(1) (as that determination is given effect to by Order in Council under section 35(1))

Auckland Council or **Council** means the unitary authority established under section 6

governing body means the entity comprising the members of the Auckland Council (being the persons referred to in section 8(1))

local activities means the non-regulatory activities of the Auckland Council in respect of which a local board is allocated decision-making responsibility under section 17, including—

- (a) providing services; and
- (b) providing and operating facilities; and
- (c) providing funding and other support to groups and organisations

local board means a local board established under section 10

local board agreement means an agreement referred to in section 21

local board area means an area specified by Order in Council under section 35 as a local board area

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

LTCCP means the Auckland Council long-term council community plan

mayor means the mayor of Auckland.

- (2) Unless the context requires another meaning, 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.

5 Relationship between this Act and Local Government Act 2002 and Local Electoral Act 2001

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
Auckland Council**

*Auckland Council established as unitary
authority*

6 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.
- (3) The Auckland Council is the same body as that established under section 9 of the Local Government (Tamaki Makaurau 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:

Auckland Council section 6 of the Local Government (Auckland Council) Act 2009

7 Decision-making of Council shared between governing body and local boards

Despite section 41 of the Local Government Act 2002, for the purposes of carrying out its functions, responsibilities, and duties and exercising its powers as a territorial authority and a regional council,—

- (a) the Auckland Council has a two-tier governance structure comprising the governing body and the local boards; and
- (b) the decision-making responsibilities of the Auckland Council are shared between the governing body and the local boards in accordance with sections 14 to 23 of this Act.

Governing body

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.
- (2) The mayor must be elected by the electors of Auckland as a whole.

9 Mayor of Auckland

- (1) The role of the mayor is to—
- (a) articulate and promote a vision for Auckland; and
- (b) provide leadership for the purpose of achieving objectives that will contribute to that vision.
- (2) Without limiting subsection (1), it is the role of the mayor to—
- (a) lead the development of Council plans (including the LTCCP and the annual plan), policies, and budgets for consideration by the governing body; and

- (b) ensure there is effective engagement between the Auckland Council and the people of Auckland.
- (3) For the purposes of subsections (1) and (2), the mayor has the following powers:
 - (a) to establish processes and mechanisms for the Auckland Council to engage with the people of Auckland, whether generally or particularly (for example, the people of a cultural, ethnic, geographic, or other community of interest):
 - (b) to appoint the deputy mayor:
 - (c) to establish committees of the governing body:
 - (d) to appoint the chairperson of each committee of the governing body and, for that purpose, the mayor—
 - (i) may make the appointment before the other members of the committee are determined; and
 - (ii) may appoint himself or herself:
 - (e) to establish and maintain an appropriately staffed office of the mayor.
- (4) The mayor must exercise the power in subsection (3)(e)—
 - (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 (being an amount not less than 0.2% of the Council's total budgeted operating expenditure for that year).
- (5) The mayor must not delegate any of his or her powers under subsection (3).
- (6) The mayor is a member of each committee of the governing body.
- (7) To avoid doubt,—
 - (a) clause 17(1) of Schedule 7 of the Local Government Act 2002 does not apply to the election of the deputy mayor of the Auckland Council (unless the mayor declines to exercise the power under subsection (3)(b) of this section; and
 - (b) clause 25 of Schedule 7 of the Local Government Act 2002 does not apply to the election of the chairperson of a committee of a governing body, if the mayor exercises

- the power in subsection (3)(d) of this section in respect of that committee; and
- (c) clause 30 of Schedule 7 of the Local Government Act 2002 applies to the Auckland Council, except to the extent that the mayor exercises the power in subsection (3)(c) of this section.

Local boards

10 Local boards

A local board must be established for each local board area for the purposes of—

- (a) enabling democratic decision making by, and on behalf of, communities within the local board area; and
- (b) better enabling the promotion of the social, economic, environmental, and cultural well-being of communities within the local board area, in the present and for the future.

11 Membership of local boards

- (1) The number of members for each local board is determined by the Local Government Commission under section 34(1)(c).
- (2) Members of a local board must be elected in accordance with the Local Electoral Act 2001.
- (3) Sections 88A to 88F of the Local Electoral Act 2001 apply if, at any election, a person is declared to be elected as a member of the Auckland Council and either—
- (a) he or she is already a member of a local board; or
- (b) he or she is declared to be elected as a member of a local board.
- (4) For the purposes of subsections (2) and (3), the Local Electoral Act 2001 applies—
- (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).

12 Status of local boards

- (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 governing body.
- (3) A local board may not—
 - (a) acquire, hold, or dispose of property; or
 - (b) appoint, suspend, or remove employees.

13 Functions, duties, and powers of local boards

- (1) A local board has the functions, duties, and powers conferred on a local board by or under this Act or any other enactment.
- (2) Without limiting subsection (1), a local board—
 - (a) must exercise the responsibilities conferred on it by section 16(1); and
 - (b) must monitor and report on the implementation of the local board agreement for its local board area (in accordance with section 23); and
 - (c) must communicate with community organisations and special interest groups within its local board area; and
 - (d) must undertake any responsibilities or duties that are delegated to it by the governing body under section 31; and
 - (e) may consider and report on any matter of interest or concern to the local board, whether or not the matter is referred to it by the governing body; and
 - (f) may exercise any powers that are delegated to it by the governing body under section 31.

*Decision making***14 General scheme**

- (1) This section sets out the general scheme of sections 14 to 21. These are the provisions of this Act that set out how the Auckland Council, in its capacity as a local authority, makes its decisions. This section is by way of explanation only and does not limit or affect the other provisions of this Act or any other enactment.
- (2) Unlike other local authorities, both the governing body and the local boards are responsible and democratically accountable

for the decision making of the Auckland Council. Whether responsibility for making any particular decision rests with the governing body or 1 or more or all of the local boards depends on the nature of the decision being made.

- (3) Section 15 sets out the classes of decisions that the governing body must make. Section 16 sets out the classes of decisions that local boards must make. Both sections include a class of decisions in respect of non-regulatory activities of the Council. The governing body allocates responsibility for any particular decision in this class of decisions to either itself or the local boards by applying the principles set out in section 17. The results of the allocation must then be set out in the LTCCP and annual plans of the Council so that the people of Auckland, and any other persons, can easily determine whether the governing body or a local board is responsible for any particular decision of the Council.
- (4) To determine local wishes and priorities in relation to the non-regulatory activities for which a local board is allocated responsibility, the board must consult its communities. The local board does this by preparing a local board plan under section 20. This plan is used as a basis for the board to develop an annual local board agreement with the governing body under section 21 in which the nature, levels, and funding of the activities are set out.

15 Decision-making responsibilities of governing body

- (1) The governing body is responsible and democratically accountable for—
 - (a) the decision making of the Auckland Council in relation to any regulatory responsibility, duty, or power conferred on, or applying to, the Council under this Act or any other enactment (for example, the responsibilities, duties, or powers conferred on, or applying to, a local authority under the Resource Management Act 1991, the Health Act 1956, the Building Act 2004, and the Civil Defence Emergency Management Act 2002); and
 - (b) the decision making of the Auckland Council in relation to the non-regulatory activities of the Auckland Council

- that are allocated to the governing body in accordance with section 17; and
- (c) the decision making of the Auckland Council in relation to the establishment and maintenance of capacity to provide, or ensure the provision of, services and facilities (including local activities) by the Auckland Council; and
 - (d) the decision making of the Auckland Council in relation to compliance with section 101 of the Local Government Act 2002 (which relates to the financial management of a local authority); and
 - (e) the agreement reached with each local board (as set out in each local board agreement) in respect of local activities for the local board areas.
- (2) Before making a decision described in subsection (1)(a) to (d), the governing body must—
- (a) comply with any requirements of this Act; and
 - (b) comply with any requirements of the Local Government Act 2002 and any other enactment; and
 - (c) consider any views and preferences expressed by a local board, if the decision affects or may affect the responsibilities or operation of the local board or the well-being of communities within its local board area.

16 Decision-making responsibilities of local boards

- (1) Each local board is responsible and democratically accountable for—
- (a) the decision making of the Auckland Council in relation to the non-regulatory activities of the Auckland Council that are allocated to the local board in accordance with section 17; and
 - (b) identifying and communicating the interests and preferences of the people in its local board area in relation to the content of the strategies, policies, plans, and bylaws of the Auckland Council; and
 - (c) identifying and developing bylaws specifically for its local board area, and proposing them to the governing body under section 24; and

- (d) the agreement reached with the governing body (as set out in the local board agreement) in respect of local activities for its local board area.
- (2) In carrying out the responsibilities described in this section, a local board must comply with the requirements of sections 76 to 82 of the Local Government Act 2002 as if every reference in those sections to a local authority were a reference to a local board.

17 Principles for allocation of decision-making responsibilities of Auckland Council

- (1) Decision-making responsibility for any non-regulatory activity of the Auckland Council must be allocated by the governing body—
 - (a) to either the governing body or the local boards; and
 - (b) in accordance with the principles set out in subsection (2); and
 - (c) after considering the views and preferences expressed by each local board.
- (2) The principles are—
 - (a) decision-making responsibility for a non-regulatory activity of the Auckland Council should be exercised by its local boards unless paragraph (b) applies:
 - (b) decision-making responsibility for a non-regulatory activity of the Auckland Council should be exercised by its governing body if the nature of the activity is such that decision making on an Auckland-wide basis will better promote the well-being of the communities across Auckland because—
 - (i) the impact of the decision will extend beyond a single local board area; or
 - (ii) effective decision making will require alignment or integration with other decisions that are the responsibility of the governing body; or
 - (iii) the benefits of a consistent or co-ordinated approach across Auckland will outweigh the benefits of reflecting the diverse needs and preferences of the communities within each local board area.

18 Local activities must be identified in LTCCP and annual plan

- (1) The LTCCP and each annual plan must identify the non-regulatory activities of the Auckland Council for which decision-making responsibility is allocated to local boards under section 17.
- (2) For the purposes of clause 2 of Schedule 10 of the Local Government Act 2002, the activities must be grouped together (whether in 1 or more groups) separately from any other activity or group of activities of the Council.
- (3) The matters in subsection (1) must first be identified in the LTCCP adopted for the period beginning 1 July 2012, and in each subsequent LTCCP.

*Local boards funding policy***19 Local boards funding policy**

- (1) To provide predictability and certainty about levels of funding for local boards, the Auckland Council must adopt a local boards funding policy.
- (2) The local boards funding policy must set—
 - (a) the formula by which the total funds allocated by the Council for meeting the cost of funding local activities are to be allocated to each local board; and
 - (b) the formula by which the total funds allocated by the Council for meeting the cost of funding the administrative support to local boards are to be allocated to each local board.
- (3) The local boards funding policy must also identify any funding (except funding dedicated to particular purposes) that may be available to local boards for local activities and the criteria or process by which it may be allocated to them.
- (4) The formula referred to in subsection (2)(a) must allocate funds between the local boards in a way that provides an equitable capacity for the local boards to enhance the well-being of the communities in each of their local board areas, having regard to the following factors:
 - (a) the level of dependence on local government services and facilities in each local board area (as informed by

- the socio-economic, population, age profile, and other demographic characteristics of each local board area); and
- (b) the costs of achieving and maintaining the identified levels of service provision for local activities in each local board area; and
 - (c) the rates revenue and any other revenue derived from each local board area in relation to local activities; and
 - (d) any other factor identified by the Auckland Council as significantly affecting the nature and level of services needed in each local board area (for example, the geographic isolation of a particular local board area).
- (5) The formula referred to in subsection (2)(b) must allocate funds between the local boards in a way that provides equitable resources and support to each local board, having regard to the following factors:
- (a) the number of elected members on each local board; and
 - (b) the size of each local board area; and
 - (c) any other factor identified by the Auckland Council as significantly affecting the operational costs of each local board; and
 - (d) the funding amount allocated to each local board under subsection (4).
- (6) For the purposes of adopting a funding policy under subsection (1), section 102 of the Local Government Act 2002 applies, with any necessary modifications, and as if the following paragraph were added to subsection (4) of that section:
- “(g) a local boards funding policy”.
- (7) The Auckland Council must adopt its first policy under this section no later than the date that the LTCCP for the period commencing 1 July 2012 is adopted.

Local board plans and agreements

20 Local board plans

- (1) Each local board must adopt a local board plan—
- (a) no later than 30 April in the year immediately after the year of each triennial general election; and
 - (b) using the special consultative procedure.

- (2) The purpose of a local board plan is—
- (a) to reflect the priorities and preferences of the communities within the local board area in respect of the level and nature of local activities to be provided by the Auckland Council over the next 3 years; and
 - (b) to identify and describe the interests and preferences of the people within the local board area for the purposes of enabling the local board to communicate those interests and preferences for the purposes of section 16(1)(b); and
 - (c) to provide a basis for developing the local board agreement for each of the next 3 years; and
 - (d) to inform the development of the next LTCCP, particularly in relation to the identification of the non-regulatory activities of the Council for which decision-making responsibility should be allocated to the local board; and
 - (e) to provide a basis for accountability of the local board to the communities in the local board area; and
 - (f) to provide an opportunity for people to participate in decision-making processes on the nature and level of local activities to be provided by the Council within the local board area.
- (3) A local board plan must include—
- (a) a statement of the standard levels of service for local activities; and
 - (b) an explanation of each variation from the standard levels of service proposed for the local board area, if any; and
 - (c) an estimate of the additional cost or the saving associated with each variation, if any; and
 - (d) an indicative local board budget, incorporating the estimates referred to in paragraph (c), that either—
 - (i) does not exceed the estimated budget referred to in subsection (4)(b)(iii); or
 - (ii) exceeds the estimated budget referred to in subsection (4)(b)(iii), but identifies how the expenses in excess of that budget are proposed to be met (for example, by a targeted rate for all or a part of the local board area).

- (4) For the purposes of adopting a plan under subsection (1), section 83 of the Local Government Act 2002 applies as if—
- (a) the local board were a local authority and the local board area were the district of the local authority; and
 - (b) the statement of proposal referred to in subsection (1)(a) of that section required the inclusion of—
 - (i) the information that is required by clause 2(2) of Schedule 10 of that Act to be included in the LTCPP—
 - (A) in relation to local activities; and
 - (B) for the following year; and
 - (ii) a description of any variation from the standard levels of service provided for in the local board agreement for the current year; and
 - (iii) the estimated budget for the local board for the following year; and
 - (iv) the draft local board plan.
- (5) In this section,—
- following year** means the year commencing on the next 1 July
- standard levels of service** means the levels of service provision for local activities specified in the LTCCP in accordance with clause 2(2)(a) of Schedule 10 of the Local Government Act 2002.

21 Local board agreements

- (1) The Auckland Council must have a local board agreement for each local board area as agreed between the governing body and the local board.
- (2) As far as practicable, a local board agreement must be consistent with the local board plan adopted by the local board, except to the extent that 1 or more of the following applies:
- (a) the local board determines that the priorities and preferences in the local board plan no longer reflect the priorities and preferences of the communities in the local board area; or
 - (b) the governing body determines that the indicative budget in the local board plan is significantly inaccurate; or

- (c) consistency with the local board plan would be contrary to any enactment.
- (3) A local board agreement must state, in respect of the local activities to be provided in the local board area,—
- (a) the intended levels of service provision for each activity, including the performance targets and other measures by which the actual levels of service provision may meaningfully be assessed; and
 - (b) the estimated expenses of achieving and maintaining the identified levels of service provision, including the estimated expenses associated with maintaining the service capacity and integrity of assets; and
 - (c) how any expenses in excess of the local board's budget are to be met (including the estimated revenue levels, the other sources of funds, and the rationale for their selection in terms of section 101(3) of the Local Government Act 2002).

22 Local board agreements to be included in LTCCP and annual plan

- (1) The LTCCP and each annual plan of the Auckland Council must include the local board agreement for each local board area.
- (2) For the purposes of subsection (1), the Council must prepare a different statement of proposal for the annual plan for each local board area that includes in the draft annual plan—
 - (a) the information identified under section 18; and
 - (b) the draft local board agreement for the local board area.
- (3) Submissions on each version of the statement of proposal must be considered jointly by the governing body and the relevant local board.
- (4) Nothing in this section applies to a draft annual plan included in a statement of proposal in respect of the annual plan for the year immediately following a triennial election of local board members.

23 Monitoring and reporting

- (1) Each local board must monitor the implementation of the local board agreement for its local board area.
- (2) Each annual report of the Auckland Council must include, in respect of local activities for each local board area,—
 - (a) a comparison between the actual levels of service provision of the activities and the intended levels of service provision of the activities (as stated in the local board agreement for that year); and
 - (b) the reasons for any significant variance between the actual and the expected service provision.
- (3) Each local board must comment on the matters included in the annual report under subsection (2) in respect of its local board area and the Council must include those comments in the annual report.

*Bylaws***24 Local board may propose bylaw**

- (1) A local board may propose to the governing body, in writing, that a bylaw be made to apply only in, or in any part of, its local board area.
- (2) As soon as practicable after receiving a proposal under subsection (1), the governing body must decide whether the proposed bylaw meets the following requirements:
 - (a) the proposed bylaw complies with the applicable statutory requirements; and
 - (b) the proposed bylaw is not inconsistent with any strategy, policy, plan, or bylaw of the Council; and
 - (c) the proposed bylaw can be implemented and enforced within the local board's budget; and
 - (d) the proposed bylaw will not have any significant effect outside the local board's area.
- (3) If the governing body decides that a proposed bylaw—
 - (a) meets the requirements of subsection (2), it must give written notice of its decision to the local board;
 - (b) does not meet the requirements of subsection (2), it must give written notice of its decision (with reasons) to the local board.

25 Local board must consult on proposed bylaw

- (1) This section applies if a local board has received notice under section 24(3)(a) from the governing body in respect of a bylaw that the local board has proposed.
- (2) The local board must confirm the proposed bylaw using the special consultative procedure within the local board area and, for that purpose, section 156(1) of the Local Government Act 2002 applies, with any necessary modifications, as if the local board were a local authority and the bylaw were a bylaw being made under that Act.
- (3) If, after acting under subsection (2), the local board confirms the proposed bylaw, it must give written notice of its decision to the governing body and the governing body must make the bylaw.
- (4) If, after acting under subsection (2), the local board modifies the proposed bylaw, it must give written notice of its decision to the governing body and the governing body must—
 - (a) if satisfied that the proposed bylaw meets the requirements of section 24(2), make the bylaw; or
 - (b) if not satisfied that the proposed bylaw meets the requirements of section 24(2), give notice to the local board under section 24(3)(b).
- (5) The confirmation or modification of a proposed bylaw under this section satisfies the requirements of sections 86, 155, and 156(1) of the Local Government Act 2002 in respect of any bylaw to which subsection (3) or (4)(a) applies.

26 Local board may propose amendment to bylaw

- (1) A local board may propose to the governing body, in writing, that a bylaw that applies only in, or only in any part of, its local board area be amended.
- (2) For the purposes of subsection (1), sections 24 and 25 apply with any necessary modifications.

27 Local board may propose revocation of bylaw

- (1) A local board may propose to the governing body, in writing, that a bylaw that applies only in, or only in any part of, its local board area be revoked.

- (2) As soon as practicable after receiving a proposal under subsection (1), the governing body must decide whether the proposed revocation—
- (a) complies with the applicable statutory requirements; and
 - (b) is not inconsistent with any strategy, policy, or plan of the Council; and
 - (c) will not have any significant effect outside the local board's area.
- (3) If the governing body decides that a proposed revocation—
- (a) meets the requirements of subsection (2), it must give written notice of its decision to the local board;
 - (b) does not meet the requirements of subsection (2), it must give written notice of its decision (with reasons) to the local board.
- (4) If the local board receives notice under subsection (3)(a), section 25(2), (3), and (5) apply, with any necessary modifications, as if the proposed revocation were a proposed bylaw.

28 Joint bylaw proposals

- (1) Two or more local boards may propose to the governing body, in writing, that a bylaw be made to apply only in, or only in any part of, the local boards' areas.
- (2) For the purposes of subsection (1), sections 24 to 26 apply with any necessary modifications.

Miscellaneous matters relating to local boards

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

Part 1 of Schedule 7 (except clauses 15 and 32AA to 36) of the Local Government Act 2002 applies to a local board, with any necessary modifications, as if the local board were a local authority.

30 Code of conduct

Each member of each local board must comply with the code of conduct adopted by the governing body under clause 15 of Schedule 7 of the Local Government Act 2002.

31 Delegations

- (1) The governing body may 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.
- (2) However, nothing in subsection (1) restricts the governing body's power to delegate to a local board the power to do anything precedent to the exercise by the governing body of any power referred to in clause 32(1)(a) to (f) of that schedule.
- (3) In deciding whether to make a delegation, the governing body must weigh the benefits of reflecting local circumstances and preferences (through a delegation) against the importance and benefits of using a single approach across Auckland (through itself retaining the responsibility, duty, or power concerned).
- (4) A local board may delegate any of its responsibilities, duties, and powers delegated to it by the governing body to a subcommittee or person.
- (5) Subsection (4) is subject to any conditions, limitations, or prohibitions imposed on the local board by the governing body when making the original delegation.
- (6) A local board to which the governing body 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 governing body 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 governing body could itself have exercised or performed them.
- (7) No delegation under this section relieves the governing body or a local board of the liability or legal responsibility to perform or ensure performance of any function or duty.

32 Chief executive responsible for certain matters in relation to local boards

The chief executive of the Auckland Council is responsible to the Auckland Council for—

- (a) implementing the decisions of each local board; and
- (b) implementing each local board agreement; and

- (c) providing advice to each local board and its members; and
- (d) providing the administrative and other facilities for each local board necessary for the board to carry out its functions and perform its duties.

Part 3

Transitional arrangements

Subpart 1—Local Government Commission

33 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.
- (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 southern boundary of the Auckland region, except that—
 - (i) the Mangatawhiri River and Mangatangi Stream catchments must, as far as practicable, be excluded (and consequently included in Waikato district and Waikato region); and
 - (ii) that part of Franklin district situated between the Mangatangi Stream catchment and the Firth of Thames must, as far as practicable, be excluded (and consequently included in Waikato region and either Hauraki district or Waikato district); 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
 - (c) without limiting paragraphs (a) and (b), act in accordance with the Schedule.
- (3) In making a determination in relation to the remaining boundaries of Auckland, the Local Government Commission must ensure that, so far as is practicable and consistent with the boundary determined under subsection (2), the boundaries follow the boundaries of the Auckland region.

- (4) For the purposes of making a determination, the Local Government Commission—
- (a) may undertake the investigations and consult the persons that it thinks desirable; but
 - (b) is not required to consult any person.
- (5) The Commission may amend a determination made under this section if satisfied that—
- (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.
- (6) 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*.
- (7) In this section, section 19, and the Schedule,—
- Auckland region** means the area described as the Auckland region in the Local Government (Auckland Region) Reorganisation Order 1989 (*Gazette* 1989, p 2247)
- Franklin district** means the area described as the Franklin district in the Local Government (Auckland Region) Reorganisation Order 1989 (*Gazette* 1989, p 2267)
- Hauraki district** means the area described as the Hauraki district in the Local Government (Waikato Region) Reorganisation Order 1989 (*Gazette* 1989, p 2479)
- Waikato district** means the area described as the Waikato district in the Local Government (Waikato Region) Reorganisation Order 1989 (*Gazette* 1989, p 2469)
- Waikato region** means the area described as the Waikato region in the Local Government (Waikato Region) Reorganisation Order 1989 (*Gazette* 1989, p 2463).

34 Local Government Commission to determine local board areas and wards

- (1) The Local Government Commission must, no later than 1 March 2010,—
- (a) determine the number and names of local board areas within Auckland; and

- (b) determine the boundaries of—
 - (i) each local board area; and
 - (ii) electoral subdivisions, if any, of each of those areas; and
 - (c) determine 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; and
 - (d) for the purposes of the October 2010 triennial general elections, divide Auckland into wards and—
 - (i) determine the number, names, and boundaries of the wards; and
 - (ii) determine the number of elected members for each ward.
- (2) In making a determination under subsection (1)(a), (b), or (c), the Commission must ensure that—
- (a) there are no fewer than 20 but no more than 30 local board areas; and
 - (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
 - (d) the subdivision of any local board area for electoral purposes provides fair representation for the electors of the local board area; and
 - (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
 - (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.

- (3) 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 (2)(a).
- (4) In making a determination under subsection (1)(d), the Commission must—
- (a) ensure that the boundaries of the wards—
 - (i) so far as is practicable, provide effective representation of communities of interest within Auckland; and
 - (ii) so far as is practicable, coincide with boundaries of local board areas; and
 - (iii) coincide with the boundaries of the current statistical meshblock areas determined by Statistics New Zealand and used for parliamentary electoral purposes; and
 - (b) ensure that the boundaries of each ward, together with the number of elected members of each ward, so far as is practicable, provide fair representation to the electors of each ward; and
 - (c) include in its determination—
 - (i) a single-member ward based on the rural area of Rodney district (as that district is described in the Local Government (Auckland Region) Reorganisation Order 1989 (*Gazette* 1989, p 2253); and
 - (ii) a single-member ward, based on the area of Franklin district remaining within the boundaries of Auckland (as determined by the Commission in accordance with section 33(2)).
- (5) For the purposes of giving effect to subsection (2)(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.
- (6) For the purposes of giving effect to subsection (4)(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 popula-

tion of Auckland divided by the total number of elected members (other than the mayor).

- (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.
- (8) Section 33(4) to (6) apply to any determination made under this section as if it were a determination to which section 33 applied.

35 Order in Council to give effect to determinations

- (1) A determination made under section 33(1) or 34(1)—
 - (a) is given effect to by Order in Council; and
 - (b) has effect on and from 1 November 2010.
- (2) A determination amended under section 33(5)—
 - (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.
- (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
 - (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 33(1) that is 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 to 61, 64, 65, and 68 to 70 of Schedule 3 of the Local Government Act 2002 apply to a determination made under section 33(1) that is given effect to by Order in Council.
- (6) For the purposes of subsections (4) and (5), Schedule 3 of the Local Government Act 2002 applies—

- (a) with any necessary modifications; and
 - (b) as if every reference to a reorganisation scheme or scheme were a reference to a determination made under section 33(1).
- (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.

Subpart 2—Consequential amendments

36 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):
- “(f) chairpersons of committees of local boards (as defined in section 4(1) of the Local Government (Auckland Council) Act 2009).”

Part 4

Amendments to Local Government (Tamaki Makaurau Reorganisation) Act 2009

37 Principal Act amended

This Part amends the Local Government (Tamaki Makaurau Reorganisation) Act 2009.

38 Functions and duties of Transition Agency

- (1) Section 13(1) is amended by inserting the following paragraph after paragraph (c):
- “(ca) to 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 section 30A):”.

- (2) Section 13(1)(g) is amended by inserting the following subparagraph after subparagraph (iv):
- “(iva) preparing a planning document for the Auckland Council for the period 1 November 2010 to 30 June 2011 in accordance with section 19A; and”.
- (3) Section 13 is amended by adding the following subsection:
- “(5) Nothing in subsection (1)(ca) applies to stormwater drainage services.”

39 Appointment of electoral officer for October 2010 triennial general elections

Section 14 is amended by adding the following subsection:

- “(3) For the purposes of the October 2010 triennial general elections,—
- “(a) the elections for the Auckland Council will be held using the electoral system commonly known as First Past the Post (as defined in section 5(1) of the Local Electoral Act 2001); and
- “(b) the members of the Auckland Council (other than the mayor) must be elected by the electors of each ward of Auckland (as those wards and the number of members for each ward are determined by the Local Government Commission under section 34(1)(d) of the Local Government (Auckland Council) Act 2009 and given effect to by Order in Council under section 35 of that Act).”

40 New section 19A inserted

The following section is inserted after section 19:

“19A Preparation of planning document

- “(1) The Transition Agency must prepare a planning document for the Auckland Council for the period 1 November 2010 to 30 June 2011.
- “(2) The document must be treated as satisfying section 95 of the Local Government Act 2002—
- “(a) as that section applies to the Auckland Council as a local authority; and
- “(b) for the 2010/2011 financial year.

“(3) The Transition Agency must complete the document by 31 October 2010.”

41 Dissolution of Auckland Transition Agency

Section 27(3) is repealed.

42 New sections 29A to 29C inserted

The following sections are inserted after section 29:

“29A Obligations of existing local authorities in relation to 2010/2011 annual plan

“(1) This section applies in relation to the annual plan for the financial year commencing 1 July 2010 that each existing local authority is required to prepare and adopt under section 95 of the Local Government Act 2002.

“(2) The annual plan is only required to cover the period from 1 July 2010 to 31 October 2010 (being the period from the commencement of the financial year until the date on which each existing local authority is dissolved under section 35).

“(3) Despite section 95(2) of the Local Government Act 2002, the annual plan may simply be adopted by resolution of the existing local authority, but only if the plan is consistent with the financial statements and funding impact statement included in its long-term council community plan (LTCCP) for the 2010/2011 financial year.

“(4) An annual plan is not inconsistent with the financial statements and funding impact statement included in the LTCCP for the 2010/2011 financial year because—

“(a) the plan applies to a 4-month period; or

“(b) the plan reflects more accurate estimates of—

“(i) the costs of achieving and maintaining the levels of service provision identified in the LTCCP in respect of that year; or

“(ii) any other costs or expenses identified in the LTCCP in respect of that year; or

“(iii) any revenue or other income of the existing local authority identified in the LTCCP in respect of that year.

“(5) An existing local authority must consult the Transition Agency throughout the preparation of the annual plan.

- “(6) Except to the extent that it is modified by this section, section 95 of the Local Government Act 2002 applies to the annual plan.
- “(7) Nothing in subsection (5) limits or affects the obligations imposed on an existing local authority under section 29 or 31.

“29B Rates and other revenue mechanisms

- “(1) Each existing local authority must set each rate and any other revenue mechanism provided for in the funding impact statement included in the annual plan to which section 29A applies for the full financial year.
- “(2) Subsection (1) applies despite the annual plan only covering the 4-month period from 1 July 2010 to 31 October 2010.
- “(3) In setting each rate or other revenue mechanism, an existing local authority must ensure that the rate or mechanism is set at a level sufficient to meet—
- “(a) the amount of funds required from the mechanism (as set out in the funding impact statement) for the 4-month period; and
 - “(b) the amount of funds that would be required from the mechanism for the balance of the financial year, if the requirements identified in paragraph (a) continued for that period.

“29C Obligations of existing local authorities in relation to 2010/2011 annual report

- “(1) An existing local authority is not required to prepare and adopt an annual report for the 2009/2010 financial year.
- “(2) Instead, a report for the period 1 July 2009 to 31 October 2010 must be prepared for each existing local authority, and adopted by the Auckland Council.
- “(3) Sections 98 and 99 of the Local Government Act 2002 apply, with all necessary modifications, to a report prepared and adopted under subsection (2) as if the report were an annual report.”

43 New section 30A inserted

The following section is inserted after section 30:

“30A Watercare Services to plan and manage integration of water supply and wastewater services

- “(1) Watercare Services Limited must plan and manage the integration of water supply and wastewater services in Auckland—
- “(a) under the oversight of the Transition Agency; and
 - “(b) in accordance with the process approved by the Transition 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.
- “(2) For the purposes of subsection (1), Watercare Services Limited must formulate—
- “(a) a plan for the interim management, as from 1 November 2010, of stand-alone water and wastewater schemes within Auckland; and
 - “(b) detailed proposals for the long-term management and operation of those schemes for consideration by the Auckland Council and its local boards.
- “(3) Nothing in this section applies to stormwater drainage services.”
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Schedule

s 33(2)(c)

**Matters to be addressed by Local
Government Commission when making
determination in relation to southern
boundary of Auckland****1 Interpretation**

In this schedule,—

local authorities means the Auckland Council, the Franklin District Council, the Hauraki District Council, the Waikato District Council, the Auckland Regional Council, and the Waikato Regional Council

local authority means the Auckland Council, the Franklin District Council, the Hauraki District Council, the Waikato District Council, the Auckland Regional Council, or the Waikato Regional Council, as the case may be.

2 Determination

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 the Franklin District Council or the Auckland Regional Council to the Auckland Council, the Hauraki District Council, the Waikato District Council, or the Waikato Regional Council;
- (b) the transfer of the provision of services, or a class or classes of services, from the Franklin District Council or the Auckland Regional Council to the Auckland Council, the Hauraki District Council, the Waikato District Council, or the Waikato Regional Council;
- (c) the transfer of employees, or a class or classes of employees of the Franklin District Council or the Auckland Regional Council to the Auckland Council, the Hauraki District Council, the Waikato District Council, or the Waikato Regional Council;
- (d) the transfer of a statutory obligation from the Franklin District Council or the Auckland Regional Council to the Auckland Council, the Hauraki District Council,

- the Waikato District Council, or the Waikato Regional Council:
- (e) the transfer of a function, duty, or power from the Franklin District Council or the Auckland Regional Council to the Auckland Council, the Hauraki District Council, the Waikato District Council, or the Waikato Regional Council:
 - (f) any matter incidental to, or required for the purpose of, any of the transfers in paragraphs (a) to (e):
 - (g) the division of the Hauraki district, the Waikato district, or the 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:
 - (i) the rates to be set and assessed, over a specified period, in the parts of Hauraki district, Waikato district, or Waikato region that were formerly part of Franklin district (which may differ from the rates set and assessed in other parts of Hauraki district, Waikato district, or Waikato region):
 - (j) the matters to be included in the annual plan of the Hauraki District Council or the Waikato District Council for the 2010/2011 financial year, in relation to the parts of its district that were formerly part of Franklin district.

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
- (b) have regard to—
 - (i) the area of impact of the responsibilities, duties, and powers of the local authorities; and
 - (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 determination for a responsibility to be transferred to, or assumed by, a local authority, provision may not be made for the payment of compensation to the local authority from which that responsibility is transferred or assumed.

5 Payment if undertaking transfer

- (1) If the determination 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.
 - (2) The Commission may, in considering a request under subclause (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.
 - (3) The costs incurred by assessors must be met jointly by the local authorities appointing the assessors.
 - (4) In making a determination under this clause, the Commission may attach the conditions that it considers desirable.
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Legislative history

13 May 2009	Introduction (Bill 36–1)
13 May 2009	First reading and referral to Auckland Governance Legislation Committee
4 September 2009	Reported from Auckland Governance Legislation Committee (Bill 36–2)
15 September 2009	Second reading, committee of the whole House, third reading
22 September 2009	Royal assent

This Act is administered by the Department of Internal Affairs.
