

Reprint  
as at 7 August 2020



## Local Government (Auckland Council) Act 2009

Public Act      2009 No 32  
Date of assent    22 September 2009  
Commencement    see section 2

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Department of Internal Affairs.**

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**1 Title**

This Act is the Local Government (Auckland Council) Act 2009.

**2 Commencement**

- (1) Part 2 comes into force on 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.

Section 2(1): amended, on 15 June 2010, by section 5 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

**Part 1**  
**Preliminary provisions**

**3 Purpose**

The purpose of this Act is—

- (a) to establish the Auckland Council as a unitary authority for Auckland; and
- (b) to set out the matters in relation to the Council's structure and functions, duties, and powers that differ from the general provisions applying to local authorities under the Local Government Act 2002 and certain other enactments; and
- (c) to provide the Local Government Commission with the necessary functions and powers to determine certain matters in relation to the Council; and
- (d) to establish arrangements for the management of transport and water supply and wastewater services for Auckland; and
- (e) to require the Auckland Council to adopt a spatial plan for Auckland; and

- (f) to establish arrangements to promote issues of significance for mana whenua groups and mataawaka for Tamaki Makaurau; and
- (g) to set out requirements relating to substantive council-controlled organisations.

Section 3: substituted, on 15 June 2010, by section 6 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### 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

**Auckland Transport** means the entity established by section 38

**Auckland water organisation**,—

- (a) until 1 July 2015, means Watercare Services Limited; and
- (b) on and after 1 July 2015, means—
  - (i) the Auckland Council (except in section 61); and
  - (ii) a council-controlled organisation of the Auckland Council that provides water supply or wastewater services, or both, in Auckland

**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 board plan** means the plan referred to in section 20 that each local board is required to adopt

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

**LTP** means the Auckland Council long-term plan



**mana whenua group** means an iwi or hapu that—

- (a) exercises historical and continuing mana whenua in an area wholly or partly located in Auckland; and
- (b) is 1 or more of the following in Auckland:
  - (i) a mandated iwi organisation under the Maori Fisheries Act 2004;
  - (ii) a body that has been the subject of a settlement of Treaty of Waitangi claims;
  - (iii) a body that has been confirmed by the Crown as holding a mandate for the purposes of negotiating Treaty of Waitangi claims and that is currently negotiating with the Crown over the claims

**mataawaka** means Māori who—

- (a) live in Auckland; and
- (b) are not in a mana whenua group

**mayor** means the mayor of Auckland

**selection body** means the body established by clause 2 of Schedule 2

**substantive council-controlled organisation**—

- (a) means a council-controlled organisation that is either wholly owned or wholly controlled by the Council and either—
  - (i) is responsible for the delivery of a significant service or activity on behalf of the Council; or
  - (ii) owns or manages assets with a value of more than \$10 million; and
- (b) includes Auckland Transport

**water supply and wastewater services**—

- (a) includes both bulk and retail supply and services; but
- (b) does not include—
  - (i) water supply or wastewater schemes that are independent of a water supply network or waste-water network, as the case may be, within Auckland; or
  - (ii) privately owned water supply or wastewater schemes; or
  - (iii) stormwater drainage services, except to the extent that any stormwater drainage infrastructure is also used for wastewater services under normal dry weather flow conditions—

and **water supply or wastewater services, water supply services, and wastewater services** have corresponding meanings.

- (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.

Section 4(1) **Auckland Transport**: inserted, on 15 June 2010, by section 7 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 4(1) **Auckland water organisation**: inserted, on 15 June 2010, by section 7 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 4(1) **local board plan**: inserted, on 15 June 2010, by section 7 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 4(1) **LTCCP**: repealed, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

Section 4(1) **LTP**: inserted, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

Section 4(1) **mana whenua group**: inserted, on 15 June 2010, by section 7 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 4(1) **mataawaka**: inserted, on 15 June 2010, by section 7 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 4(1) **selection body**: added, on 15 June 2010, by section 7 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 4(1) **substantive council-controlled organisation**: added, on 15 June 2010, by section 7 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 4(1) **water supply and wastewater services**: added, on 15 June 2010, by section 7 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### **4A Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Section 4A: inserted, on 10 May 2016, by section 4 of the Local Government (Auckland Council) Amendment Act 2016 (2016 No 19).

#### **5 Relationship between this Act and Local Government Act 2002, Local Government Act 1974, Local Electoral Act 2001, and Land Transport Management Act 2003**

If there is any inconsistency between this Act and the Local Government Act 2002, the Local Government Act 1974, the Local Electoral Act 2001, the Land Transport Management Act 2003, or any regulations made under those Acts, this Act prevails.

Section 5 heading: amended, on 15 June 2010, by section 8(1) of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 5: amended, on 15 June 2010, by section 8(2) of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

## 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) *[Repealed]*
- (4) *[Repealed]*

Section 6(3): repealed, on 1 November 2010, by section 9 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 6(4): repealed, on 1 November 2010, by section 9 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

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

- (1) 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.
- (2) A governance statement prepared by the Council for the purposes of section 40 of the Local Government Act 2002 must include a description and explanation of the matters referred to in subsection (1) of this section.

Section 7(2): added, on 1 November 2010, by section 10 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

### *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 LTP 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, including those too young to vote.
- (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.

Section 9(2)(a): amended, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

Section 9(2)(b): amended, on 1 November 2010, by section 11(1) of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 9(7)(a): amended, on 1 November 2010, by section 11(2) of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

### *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 purpose of local government to be given effect to within the local board area.

Section 10(b): replaced, on 5 December 2012, by section 43 of the Local Government Act 2002 Amendment Act 2012 (2012 No 93).

#### **11 Membership of local boards**

- (1) The initial number of members for each local board is determined by the Local Government Commission under section 34(1)(c).
- (1A) The number of members for each local board may be altered in either of the following ways, but must at all times be no fewer than 5 and no more than 12 members:
  - (a) as a consequence of a review carried out by the Council under the Local Electoral Act 2001;
  - (b) as part of a local government reorganisation under the Local Government Act 2002.
- (2) Members of a local board—
  - (a) must be elected in accordance with this Act and the Local Electoral Act 2001; and
  - (b) must elect a chairperson from among themselves using one of the systems of voting set out in clause 25(3) and (4) of Schedule 7 of the Local Government Act 2002.
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5) *[Repealed]*
- (6) *[Repealed]*

Section 11(1): amended, on 1 November 2010, by section 12(1) of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 11(1A): inserted, on 1 November 2010, by section 12(2) of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 11(1A)(a): amended, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Section 11(1A)(b): amended, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Section 11(1A)(b): amended, on 5 December 2012, by section 43 of the Local Government Act 2002 Amendment Act 2012 (2012 No 93).

Section 11(2): substituted, on 1 November 2010, by section 12(3) of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 11(2)(a): amended, on 10 May 2016, by section 5 of the Local Government (Auckland Council) Amendment Act 2016 (2016 No 19).

Section 11(3): repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Section 11(4): repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Section 11(5): repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Section 11(6): repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

### **11AA Prohibition on membership of more than 1 local board**

No person may be a member of more than 1 local board at the same time.

Section 11AA: inserted, on 10 May 2016, by section 6 of the Local Government (Auckland Council) Amendment Act 2016 (2016 No 19).

### **11AAB Nominations for more than 1 local board**

- (1) This section applies if the electoral officer has accepted a candidate's nomination for election to a local board.
- (2) The electoral officer must not accept a nomination of that candidate for election to another local board unless that candidate has complied with the provisions of subsection (3).
- (3) The candidate must, by written notice to the electoral officer,—
  - (a) specify all local boards to which he or she is seeking election; and
  - (b) for the purposes of section 11AAC(2), rank each local board specified under paragraph (a) in order of the priority that will apply if the candidate is declared to be elected to more than 1 local board (the **rankings**).
- (4) If subsection (3) applies, the candidate must—
  - (a) submit a candidate profile statement for each local board election; and
  - (b) state in each candidate profile statement the rankings he or she had made under subsection (3).

- (5) The information required under subsection (4)(b) does not count for the purposes of the word limit under section 61(2)(a) of the Local Electoral Act 2001.
- (6) In this section, **candidate profile statement** means a statement made in accordance with section 61 of the Local Electoral Act 2001.

Section 11AAB: inserted, on 10 May 2016, by section 6 of the Local Government (Auckland Council) Amendment Act 2016 (2016 No 19).

### **11AAC What happens if a person is elected to more than 1 local board**

- (1) This section applies if—
  - (a) section 11AAB(3) applies; and
  - (b) a person is declared to be elected to more than 1 local board (and remains so elected despite any recount under section 92 of the Local Electoral Act 2001 or petition under section 93 of that Act).
- (2) The person declared to be elected must be treated as having vacated office as a member of any local board that is ranked lower, in the notice given under section 11AAB(3), than another local board to which he or she is declared elected.
- (3) Sections 88B to 88E of the Local Electoral Act 2001 apply, with any necessary modifications, to any office treated as vacated under subsection (2) as if that office were treated as vacated under section 88A(2) of that Act.

Compare: 2001 No 35 s 88A

Section 11AAC: inserted, on 10 May 2016, by section 6 of the Local Government (Auckland Council) Amendment Act 2016 (2016 No 19).

### **11AAD Prohibition on candidacy for local board**

- (1) No member of a local board (**LB1**) may be a candidate for election as a member of another local board (**LB2**).
- (2) Subsection (1) does not apply if a general election of members of LB1 is to be held at the same time as an election of members of LB2.

Compare: 2001 No 35 s 58AA

Section 11AAD: inserted, on 10 May 2016, by section 6 of the Local Government (Auckland Council) Amendment Act 2016 (2016 No 19).

### **11A Indemnification and liability of local board members**

- (1) Sections 43, 46, and 47 of the Local Government Act 2002 apply to a member of a local board, with any necessary modifications, as if the member were a member of the Auckland Council.
- (2) However, a member of a local board can be liable under section 46 or 47 of that Act only in respect of a matter that is the responsibility of the member's local board.

Section 11A: inserted, on 1 November 2010, by section 13 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

**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 does not have separate legal standing from the Auckland Council and therefore, without limitation, may not—
  - (a) acquire, hold, or dispose of property; or
  - (b) enter into contracts; or
  - (c) appoint, suspend, or remove employees; or
  - (d) commence, or be a party to, or be heard in legal proceedings.
- (4) Nothing in this section limits the responsibility of a local board to make the decisions of the Auckland Council that are allocated to it in accordance with section 16.

Section 12(3): replaced, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Section 12(4): inserted, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

**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 or Auckland Transport under section 54; 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 or Auckland Transport under section 54.

Section 13(2)(d): amended, on 1 November 2010, by section 14(1) of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 13(2)(f): amended, on 1 November 2010, by section 14(2) of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).



### **13A Local boards may be subject of reorganisation proposal**

*[Repealed]*

Section 13A: repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

#### *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) 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 LTP 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.

Section 14(2): amended, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Section 14(3): amended, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

### **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—
    - (i) transport networks and infrastructure; and
    - (ii) any 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
  - (ca) the decision making of the Auckland Council in relation to the governance of its council-controlled organisations; and
  - (cb) *[Repealed]*
  - (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.

Section 15(1)(b): replaced, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Section 15(1)(ca): inserted, on 1 November 2010, by section 16 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 15(1)(cb): repealed, on 13 June 2013, by section 72 of the Land Transport Management Amendment Act 2013 (2013 No 35).

## **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.
- (3) In carrying out the responsibilities described in this section, a local board should collaborate and co-operate with 1 or more other local boards in the situations where the interests and preferences of communities within each local board area will be better served by doing so.

Section 16(3): added, on 1 November 2010, by section 17 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

## **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.

*Identification of local activities and allocation of funding*

Heading: inserted, on 1 November 2010, by section 18 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

**18 Local activities must be identified in LTP and annual plan**

*[Repealed]*

Section 18: repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

**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 as part of its long-term plan.
- (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.
- (6A) If the Auckland Council amends its local board's funding policy under section 93(4) of the Local Government Act 2002, only a significant amendment to the policy is required to be audited in accordance with sections 93D(4) and 94(1) of that Act.
- (7) The Auckland Council must adopt its first policy under this section no later than the date that the LTP for the period commencing 1 July 2012 is adopted.

Section 19(1): amended, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

Section 19(6): replaced, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Section 19(6A): inserted, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

Section 19(6A): amended, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Section 19(7): amended, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

## **19A Estimated local board funding allocation must be included in LTP and annual plan**

*[Repealed]*

Section 19A: repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

### *Local board plans and agreements*

## **20 Local board plans**

- (1) Each local board must adopt a local board plan—
- (a) no later than 31 October 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 LTP, 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 default levels of service for local activities; and
  - (b) an explanation of each variation from the default levels of services 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 funding allocation referred to in subsection (4)(b)(iii); or
    - (ii) exceeds the estimated funding allocation referred to in subsection (4)(b)(iii), but identifies how the expenses in excess of that allocation are proposed to be met from 1 or more local revenue sources.
- (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 clauses 4 and 5 of Schedule 10 of that Act to be included in the LTP—
      - (A) in relation to local activities; and

- (B) for the following year; and
- (ii) a description of any variation from the default levels of service provided for in the local board agreement for the current year; and
- (iii) the estimated funding allocation for the local board for the following year included in the LTP under section 19A; and
- (iv) the draft local board plan.

(5) In this section,—

**default levels of service** means the levels of service provision for local activities across Auckland that are—

- (a) funded in each local board funding allocation; and
- (b) specified in the LTP (in accordance with clause 4 of Schedule 10 of the Local Government Act 2002).

**following year** means the year commencing on the next 1 July.

(6) In subsection (3)(d)(ii), **local revenue source** includes—

- (a) a targeted rate for all or part of the local board area; and
- (b) a fee or charge relating to a local activity; and
- (c) any other revenue connected with a local activity.

Section 20(1)(a): amended, on 1 November 2010, by section 21(1) of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 20(2)(d): amended, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

Section 20(3): substituted, on 1 November 2010, by section 21(2) of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 20(4)(b)(i): amended, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

Section 20(4)(b)(ii): amended, on 1 November 2010, by section 21(3) of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 20(4)(b)(iii): substituted, on 1 November 2010, by section 21(4) of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 20(4)(b)(iii): amended, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

Section 20(5) **default levels of service**: substituted, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

Section 20(5) **standard levels of service**: repealed, on 1 November 2010, by section 21(5) of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 20(6): added, on 1 November 2010, by section 21(6) of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

## 21 Local board agreements

- (1) For each financial year, the Auckland Council must have a local board agreement (as agreed between the governing body and the local board) for each local board area.

- (2) A local board agreement must set out how the Auckland Council will, in the year to which the agreement relates, reflect the priorities and preferences in the local board's plan in respect of—
- (a) the local activities to be provided in the local board area;
  - (b) the responsibilities, duties, or powers delegated to the local board by the governing body under clause 36C of Schedule 7 of the Local Government Act 2002;
  - (c) the implementation or enforcement of bylaws made by the Council as a result of a proposal from the local board.
- (3) A local board agreement is not required to reflect the priorities and preferences in its local board plan in respect of the matters referred to in subsection (2) to the extent that 1 or more of the following apply:
- (a) the local board determines that the priorities and preferences in the 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 plan is, or has become, significantly inaccurate; or
  - (c) consistency with the plan would be contrary to any enactment.
- (4) A local board agreement must not be inconsistent with the adopted strategies, plans, policies, and objectives of the governing body.
- (5) For the purposes of subsection (2)(a), a local board agreement must, in respect of the local activities to be provided in the local board area in the year to which the agreement relates, include—
- (a) a statement of the intended levels of service provision that specifies—
    - (i) any performance measures specified in a rule made under section 261B of the Local Government Act 2002 for each activity described in clause 2(2) of Schedule 10 of that Act; and
    - (ii) the performance measures that the Auckland Council considers will enable the public to assess the level of service for major aspects of an activity for which performance measures have not been specified under subparagraph (i); and
    - (iii) the performance target or targets set by the Auckland Council for each performance measure; and
    - (iv) any intended changes to the level of service that was provided in the year before the year to which the agreement relates and the reasons for the change; and
  - (b) a funding impact statement in the form prescribed under the Local Government Act 2002 for inclusion in an annual plan under clause 20(2) of Schedule 10; and



- (c) a statement of how any expenses in excess of the local board's estimated funding allocation under section 19A of this Act are to be met (including estimated revenue levels and the other sources of funding).

Section 21: substituted, on 1 November 2010, by section 22 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 21(2)(b): amended, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Section 21(5): substituted, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

Section 21(5)(a)(ii): amended, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

## **22 Local board agreements must be included in LTP and annual plan**

- (1) For the purposes of consulting on each local board agreement to be included in the LTP, the consultation document adopted under section 93A(1)(a) of the Local Government Act 2002 must include content relating to each agreement.
- (2) For the purposes of consulting on each local board agreement to be included in an annual plan, the consultation document adopted under section 82A(3) of the Local Government Act 2002 must include content relating to each agreement.

(3) *[Repealed]*

(4) *[Repealed]*

Section 22 heading: amended, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

Section 22 heading: amended, on 1 November 2010, by section 23(1) of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 22(1): replaced, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Section 22(2): replaced, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Section 22(3): repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Section 22(4): repealed, on 1 November 2010, by section 23(2) of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

## **23 Monitoring and reporting**

- (1) Each local board must monitor the implementation of the local board agreement for its local board area.

(2) *[Repealed]*

(3) *[Repealed]*

Section 23(2): repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Section 23(3): repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

*Bylaws**[Repealed]*

Heading: repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

**24 Local board may propose bylaw***[Repealed]*

Section 24: repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

**25 Local board must consult on proposed bylaw***[Repealed]*

Section 25: repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

**26 Local board may propose amendment to bylaw***[Repealed]*

Section 26: repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

**27 Local board may propose revocation of bylaw***[Repealed]*

Section 27: repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

**28 Joint bylaw proposals***[Repealed]*

Section 28: repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

*Miscellaneous matters relating to local boards and their members*

Heading: amended, on 1 November 2010, by section 26 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

**29 Application of Schedule 7 of Local Government Act 2002 to local boards and their members**

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

Section 29 heading: amended, on 1 November 2010, by section 27(1) of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 29(1): replaced, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Section 29(2): replaced, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

### **30 Code of conduct**

*[Repealed]*

Section 30: repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

### **31 Delegations to local boards from governing body**

*[Repealed]*

Section 31: repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

### **31A Delegations by local boards**

*[Repealed]*

Section 31A: repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

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

*[Repealed]*

Section 32: repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

### **32A Powers of Minister in relation to local board**

*[Repealed]*

Section 32A: repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

### **32B Application of certain Acts to local boards**

*[Repealed]*

Section 32B: repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

## **Part 3**

### **Transitional arrangements**

*[Repealed]*

Part 3: repealed, on 5 December 2012, by section 43 of the Local Government Act 2002 Amendment Act 2012 (2012 No 93).

#### **Subpart 1—Local Government Commission**

*[Repealed]*

Subpart 1: repealed, on 5 December 2012, by section 43 of the Local Government Act 2002 Amendment Act 2012 (2012 No 93).

#### **33 Local Government Commission to determine boundaries of Auckland**

*[Repealed]*

Section 33: repealed, on 5 December 2012, by section 43 of the Local Government Act 2002 Amendment Act 2012 (2012 No 93).

#### **34 Local Government Commission to determine local board areas and wards**

*[Repealed]*

Section 34: repealed, on 5 December 2012, by section 43 of the Local Government Act 2002 Amendment Act 2012 (2012 No 93).

#### **35 Order in Council to give effect to determinations**

*[Repealed]*

Section 35: repealed, on 5 December 2012, by section 43 of the Local Government Act 2002 Amendment Act 2012 (2012 No 93).

#### **35A Local Government (Auckland Wards and Local Boards) Determination 2010 amended**

*[Repealed]*

Section 35A: repealed, on 5 December 2012, by section 43 of the Local Government Act 2002 Amendment Act 2012 (2012 No 93).

#### **Subpart 2—Consequential amendments**

*[Repealed]*

Subpart 2: repealed, on 5 December 2012, by section 43 of the Local Government Act 2002 Amendment Act 2012 (2012 No 93).

#### **36 Amendment to Local Government Act 2002**

*[Repealed]*

Section 36: repealed, on 5 December 2012, by section 43 of the Local Government Act 2002 Amendment Act 2012 (2012 No 93).

## Part 4

### Transport management for Auckland

Part 4: substituted, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### 37 Interpretation

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

**Auckland transport system—**

- (a) means—
- (i) the roads (as defined in section 315 of the Local Government Act 1974) within Auckland; and
  - (ii) the public transport services (as defined in section 5(1) of the Land Transport Management Act 2003) within Auckland; and
  - (iii) the public transport infrastructure owned by the Council; and
  - (iv) the public transport infrastructure owned by or under the control of Auckland Transport; but
- (b) does not include—
- (i) State highways;
  - (ii) railways under the control of New Zealand Railways Corporation;
  - (iii) off-street parking facilities under the control of the Council;
  - (iv) airfields

**director** includes the chairperson and the deputy chairperson of the board of directors of Auckland Transport

**New Zealand Railways Corporation** means the corporation constituted under section 4 of the New Zealand Railways Corporation Act 1981

**New Zealand Transport Agency** means the Crown entity established by section 93 of the Land Transport Management Act 2003.

- (2) In this Part, unless the context requires another meaning, **land transport**, **regional land transport plan**, and **State highway** have the same meanings as in section 5(1) of the Land Transport Management Act 2003.

Section 37: substituted, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 37(1) **Auckland transport system** paragraph (a)(ii): amended, on 13 June 2013, by section 72 of the Land Transport Management Amendment Act 2013 (2013 No 35).

Section 37(2): amended, on 13 June 2013, by section 72 of the Land Transport Management Amendment Act 2013 (2013 No 35).

### *Auckland Transport*

Heading: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### **38 Establishment of Auckland Transport**

- (1) This section establishes Auckland Transport.
- (2) Auckland Transport is—
  - (a) a body corporate with perpetual succession; and
  - (b) a council-controlled organisation of the Auckland Council.
- (3) For the purposes of the Local Government Act 2002, the Auckland Council must be treated as if it were the sole shareholder of Auckland Transport.

Section 38: substituted, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### **39 Purpose of Auckland Transport**

The purpose of Auckland Transport is to contribute to an effective, efficient, and safe Auckland land transport system in the public interest.

Section 39: substituted, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 39: amended, on 13 June 2013, by section 72 of the Land Transport Management Amendment Act 2013 (2013 No 35).

#### **40 Operating principles**

In meeting its principal objective (as a council-controlled organisation) under section 59 of the Local Government Act 2002, and in performing its functions, Auckland Transport must—

- (a) establish and maintain processes for Māori to contribute to its decision-making processes; and
- (b) operate in a financially responsible manner and, for this purpose, prudently manage its assets and liabilities and endeavour to ensure—
  - (i) its long-term financial viability; and
  - (ii) that it acts as a successful going concern; and
- (c) use its revenue efficiently and effectively, and in a manner that seeks value for money; and
- (d) ensure that its revenue and expenditure are accounted for in a transparent manner; and
- (e) ensure that it acts in a transparent manner in making decisions under this Act and the Land Transport Management Act 2003.

Section 40: substituted, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### **41 Status and powers of Auckland Transport**

- (1) For the purpose of performing its functions, Auckland Transport has—
  - (a) full capacity to carry on or undertake any activity or business, do any act, or enter into any transaction; and
  - (b) for the purposes of paragraph (a), full rights, powers, and privileges.
- (2) Subsection (1) is subject to the rest of this Act.

Section 41: substituted, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### **42 Auckland Transport's status as council-controlled organisation and application of Part 5 of Local Government Act 2002**

- (1) For the purposes of section 38(2)(b) of this Act, Part 5 of the Local Government Act 2002 applies to Auckland Transport with the modifications set out in subsections (2) and (3).
- (2) Section 60 of the Local Government Act 2002 must be read as if the following paragraphs were added:
  - (c) the provisions of Part 4 of the Local Government (Auckland Council) Act 2009; and
  - (d) any rules made by the Auckland Council under section 49 of the Local Government (Auckland Council) Act 2009.
- (3) Section 74 of the Local Government Act 2002 must be read as if the following subsection were inserted after subsection (1):
  - (1A) Part 7 of the Local Government Official Information and Meetings Act 1987 applies to Auckland Transport as if Auckland Transport were a local authority named in Schedule 2 of that Act, but only in relation to any meeting or part of a meeting at which Auckland Transport intends to make, or will make, a bylaw.

Section 42: substituted, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### *Governing body of Auckland Transport*

Heading: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### **43 Governing body of Auckland Transport**

- (1) The governing body of Auckland Transport is the board of directors.
- (2) The board of directors comprises—
  - (a) no fewer than 6 and no more than 8 voting directors, of whom 2 may be members of the governing body of the Auckland Council; and
  - (b) 1 non-voting director nominated by the New Zealand Transport Agency (who may be a person who is the holder of an identified office or position within the New Zealand Transport Agency).

- (3) The board, including its chairperson and deputy chairperson, must be appointed by the Auckland Council. However, the Council must not appoint a member of its own governing body as the chairperson or deputy chairperson of the board.
- (4) If the director referred to in subsection (2)(b) is the holder of an identified office or position within the New Zealand Transport Agency and ceases to hold that office or position, or is absent, a person authorised by that Agency may perform the director's role for the purposes of this Act until the director's successor is appointed or while the director is absent.
- (5) The powers and functions of Auckland Transport are not affected by any vacancy in the membership of the board of directors.

Section 43: substituted, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### **44 Duties of directors**

- (1) A director must not breach this Act or cause a breach, or agree to any breach by Auckland Transport, of this Act.
- (2) A director must, when acting as a director, act with honesty and integrity.
- (3) A director must, when acting as a director, act in good faith and not pursue his or her own interests at the expense of Auckland Transport's interests.
- (4) A director must, when acting as a director, exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances, taking into account (without limitation)—
  - (a) the nature of Auckland Transport; and
  - (b) the nature of the action; and
  - (c) the position of the director and the nature of the responsibilities undertaken by him or her.

Section 44: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### *Functions, powers, etc, of Auckland Transport*

Heading: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### **45 Functions of Auckland Transport**

The functions of Auckland Transport are to—

- (a) prepare the regional land transport plan for Auckland in accordance with the Land Transport Management Act 2003; and
- (b) manage and control the Auckland transport system in accordance with this Act, including by—
  - (i) performing the statutory functions and exercising the statutory powers set out in section 46 as if Auckland Transport were a local authority or other statutory body, as the case may be; and



- (ii) acting as a requiring authority under section 167 of the Resource Management Act 1991 in accordance with section 47; and
- (c) carry out research and provide education and training in relation to land transport in Auckland; and
- (d) undertake any other transport functions that the Auckland Council may lawfully direct it to perform or delegate to it (for example, management of off-street parking facilities owned by the Council); and
- (e) without limiting paragraph (d), undertake any transport functions expressly conferred on the Auckland Council by any enactment (for example, under a local Act) that the Council may lawfully direct it to perform or delegate to it; and
- (f) undertake or exercise any functions, powers, and duties in respect of State highways that the New Zealand Transport Agency may lawfully delegate to it; and
- (g) undertake any other functions that are given to it by this Act or any other enactment, or that are incidental and related to, or consequential upon, any of its functions under this Act or any other enactment.

Section 45: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 45(a): amended, on 13 June 2013, by section 72 of the Land Transport Management Amendment Act 2013 (2013 No 35).

#### **46 Functions and powers of Auckland Transport acting as local authority or other statutory body**

- (1) Auckland Transport has the following functions and powers in relation to the Auckland transport system:
  - (a) the functions and powers of a local authority and an enforcement authority under the Land Transport Act 1998 for the purposes of prosecuting stationary vehicle offences:
  - (b) *[Repealed]*
  - (c) the functions and powers of a council under Part 21 of the Local Government Act 1974, except—
    - (i) the power to name or alter the name of a road under section 319(j) of that Act; and
    - (ii) the functions and powers under sections 316(2), 319A, 319B, and 347 to 352 of that Act:
  - (d) the powers of a council under section 591 of the Local Government Act 1974 (except the power conferred by section 591(1)(a) of that Act):
  - (e) the functions and powers of a local authority, a territorial authority, and a controlling authority under Part 4 of the Government Rounding Powers Act 1989:

- (f) the functions and powers of an enforcement authority under the Land Transport Act 1998 in relation to prosecuting infringement offences under that Act that relate to—
    - (i) the use of special vehicle lanes within Auckland:
    - (ii) a failure to pay a public transport service fare:
  - (g) the functions and powers of a road controlling authority and a local authority under the Land Transport Act 1998 and any regulations or rules made under that Act:
  - (h) the functions and powers of a local authority to make and enforce bylaws under subparts 1 and 2 of Part 8 of the Local Government Act 2002 (except the power conferred by section 147 of that Act):
  - (i) the functions and powers of a public road controlling authority under Part 2 of the Land Transport Management Act 2003 in relation to road tolling schemes:
  - (j) the functions and powers of a regional council under Part 5 of the Land Transport Management Act 2003 in relation to public transport planning and regulation within Auckland.
- (2) For the purposes of subsection (1), the enactments referred to in that subsection apply with any necessary modifications.
  - (3) For the purposes of subsection (1)(f)(i), Auckland Transport may appoint persons to be enforcement officers in Auckland in relation to any offence against a bylaw made by Auckland Transport under the Land Transport Act 1998 in relation to a special vehicle lane, and, for that purpose,—
    - (a) section 177 of the Local Government Act 2002 applies to an appointment with any necessary modifications; and
    - (b) each person must be treated as an enforcement officer within the meaning of section 5(1) of that Act.
  - (4) Nothing in this section vests ownership of any road, land, or other property in Auckland Transport or affects the operation of section 316(1) of the Local Government Act 1974.
  - (5) Subsection (1)(c) is subject to section 48.

Section 46: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 46(1)(a): amended, on 10 May 2011, by section 100(3) of the Land Transport (Road Safety and Other Matters) Amendment Act 2011 (2011 No 13).

Section 46(1)(b): repealed, on 26 March 2015, by section 4(1) of the Local Government (Auckland Council) Amendment Act 2015 (2015 No 22).

Section 46(1)(d): amended, on 26 March 2015, by section 4(2) of the Local Government (Auckland Council) Amendment Act 2015 (2015 No 22).

Section 46(1)(f): replaced, on 26 March 2015, by section 4(3) of the Local Government (Auckland Council) Amendment Act 2015 (2015 No 22).

Section 46(1)(i): amended, on 13 June 2013, by section 72 of the Land Transport Management Amendment Act 2013 (2013 No 35).

Section 46(1)(j): amended, on 13 June 2013, by section 72 of the Land Transport Management Amendment Act 2013 (2013 No 35).

Section 46(3): amended, on 26 March 2015, by section 4(4) of the Local Government (Auckland Council) Amendment Act 2015 (2015 No 22).

Section 46(3): amended, on 10 May 2011, by section 100(3) of the Land Transport (Road Safety and Other Matters) Amendment Act 2011 (2011 No 13).

#### 47 Auckland Transport is requiring authority

- (1) Auckland Transport is deemed to be approved as a requiring authority, as a network utility operator, under section 167 of the Resource Management Act 1991 for the following purposes:
  - (a) constructing or operating or proposing to construct or operate roads in relation to the Auckland transport system; and
  - (b) the carrying out of an activity or a proposed activity (other than an activity described in paragraph (a)) in relation to the Auckland transport system for which it or the Auckland Council has financial responsibility.
- (2) For the purposes of subsection (1), Part 8 of the Resource Management Act 1991 applies—
  - (a) with any necessary modifications (and despite the fact that an activity described in subsection (1)(b) is not a network utility operation within the meaning of section 166 of that Act); but
  - (b) subject to subsection (3) and section 48(3).
- (3) If section 180(1) of the Resource Management Act 1991 applies to a project or work that is an activity described in subsection (1)(b), Auckland Transport may exercise the power under that section only by transferring the relevant designation to—
  - (a) a Minister of the Crown; or
  - (b) the New Zealand Transport Agency; or
  - (c) the New Zealand Railways Corporation; or
  - (d) the Auckland Council.
- (4) The New Zealand Transport Agency and the New Zealand Railways Corporation are prohibited from further transferring any designation that they receive under subsection (3).
- (5) In subsection (2), **activity** has the same meaning as in section 5(1) of the Land Transport Management Act 2003.
- (6) This section is subject to section 48.

Section 47: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

**48 Limitations on Auckland Transport acting under section 46(1)(c) or 47**

- (1) Subsection (2) applies if Auckland Transport, acting under section 46(1)(c) of this Act, decides to dispose of land not required for a road under section 345 of the Local Government Act 1974.
- (2) Auckland Transport must inform the Auckland Council, in writing, of its decision, and the Council must dispose of the land in accordance with the requirements of the Local Government Act 1974.
- (3) Subsection (4) applies if—
  - (a) Auckland Transport, acting under section 47 of this Act, decides to acquire or take land, which is required for a project or work, in accordance with section 186 of the Resource Management Act 1991; or
  - (b) by operation of sections 185(5) and (6) and 186 of the Resource Management Act 1991, the Minister of Lands is deemed to have entered into an agreement on behalf of Auckland Transport to acquire or lease land subject to a designation or requirement.
- (4) Auckland Transport must inform the Auckland Council, in writing, of its decision to apply for the compulsory acquisition of the land, or the deemed agreement, as the case may be, and any land taken or acquired as a result vests in the Auckland Council.
- (5) Subsection (4) prevails over sections 185 and 186(2) and (4) of the Resource Management Act 1991.

Section 48: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

*Auckland Council's role in transport matters*

Heading: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

**49 Council may make operating rules for Auckland Transport**

- (1) The Auckland Council may make rules by which Auckland Transport must operate, including rules in relation to—
  - (a) how the governing body of Auckland Transport must operate;
  - (b) how Auckland Transport must appoint and employ staff (including its chief executive);
  - (c) how Auckland Transport must acquire and dispose of significant assets.
- (2) A rule made under this section must not be inconsistent with the rest of this Act or Part 5 of the Local Government Act 2002.
- (3) Section 6(3)(d) of the Local Government Act 2002 applies to a rule made under this section.
- (4) Subsections (2) and (3) are for the avoidance of doubt.

Section 49: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

**50 Council prohibited from performing functions and exercising powers conferred on Auckland Transport under sections 46 and 47**

- (1) The Auckland Council must not perform any function or exercise any power that this Act has conferred upon Auckland Transport under section 46.
- (2) The Auckland Council must not act as a requiring authority in relation to any matter for which Auckland Transport has requiring authority status under section 47(1).
- (3) Subsection (1) applies unless Auckland Transport delegates the performance of the function or the exercise of the power to the Auckland Council under section 54.
- (4) Subsection (3) applies unless Auckland Transport transfers the designation concerned to the Council under section 47(3).
- (5) Nothing in this section prevents the Auckland Council from performing the functions or exercising the powers of a local authority described in section 46(1)(h), or performing the functions or exercising the powers of a requiring authority under the Resource Management Act 1991, in respect of an area that forms part of the Auckland transport system for a purpose that is not transport-related (for example, to regulate the use of a footpath, public space, or road reserve for liquor control purposes, or to designate a corridor that passes through a road).
- (6) Subsection (5) applies whether the Council is performing the function or exercising the power as the owner of a road or other land, or otherwise.

Section 50: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

**51 Council's powers under Public Works Act 1981 fettered for works relating to Auckland transport system**

- (1) The Auckland Council must exercise its powers as a local authority under the Public Works Act 1981 to acquire or dispose of land, as the case may be, if the Council has received notice from Auckland Transport under section 48(2) or (4) in relation to that land.
- (2) In any other case, the Auckland Council may exercise its powers as a local authority under the Public Works Act 1981 to acquire or dispose of land in relation to the Auckland transport system and for any transport-related purpose only if Auckland Transport has agreed to the acquisition or disposal of that land.

Section 51: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

**52 Council's jurisdiction in respect of roads defined more widely than in Local Government Act 1974**

- (1) Nothing in this Part limits or affects the Auckland Council's jurisdiction in respect of roads within the meaning of section 2(1) of the Land Transport Act 1998 that are not roads within the meaning of section 315 of the Local Government Act 1974.
- (2) This section is for the avoidance of doubt.

Section 52: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

*Miscellaneous provisions relating to Auckland Transport*

Heading: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

**53 Validity of directors' acts**

The acts of a person as a director, chairperson, or deputy chairperson of Auckland Transport are valid even though—

- (a) a defect existed in the appointment of the person; or
- (b) the occasion for the person's acts, or for his or her appointment, had not arisen or had ended.

Section 53: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

**54 Delegations**

- (1) Auckland Transport may delegate to a committee or an employee of Auckland Transport, or to the Auckland Council, any of its responsibilities, duties, functions, and powers except—
  - (a) the power to approve or adopt any policy or programme that it is required to consult on using the special consultative procedure; and
  - (ab) the power to approve or adopt a regional land transport plan or a regional public transport plan under the Land Transport Management Act 2003; and
  - (b) the power to make a bylaw under any enactment referred to in section 46(1); and
  - (c) the power to borrow money or purchase or dispose of any assets of Auckland Transport; and
  - (d) any duty to appoint a chief executive officer.
- (2) This section applies subject to any provision to the contrary in this or any other enactment.
- (3) Nothing in this section restricts the power of Auckland Transport to delegate to a committee or an employee of Auckland Transport, or to the Auckland Council, the power to do anything precedent to the exercise or performance by

Auckland Transport (after consultation with the committee, employee, or the Council) of any power or duty specified in subsection (1).

- (4) A committee or an employee of Auckland Transport, or the Auckland Council, may delegate any of its or his or her responsibilities, duties, functions, or powers to a subcommittee or person, subject to any conditions, limitations, or prohibitions imposed by Auckland Transport when making the original delegation.
- (5) A committee, a subcommittee, or an employee of Auckland Transport or the Auckland Council to which or to whom any responsibilities, duties, functions, or powers are delegated may, without confirmation by Auckland Transport, the Council, or the committee or person that made the delegation, exercise or perform them in the same way and with the same effect as if Auckland Transport itself had exercised or performed those responsibilities, duties, functions, or powers.
- (6) Auckland Transport may delegate to the Auckland Council, or any other organisation or person, the enforcement, inspection, licensing, and administration related to bylaws and other regulatory matters for which it is responsible.
- (7) To avoid doubt, no delegation relieves Auckland Transport of the liability or legal responsibility to perform or to ensure the performance of any function or duty.
- (8) A delegation to the Auckland Council may be made generally or specifically to the governing body or 1 or more local boards.
- (9) The delegation powers in this clause are in addition to any power of delegation Auckland Transport has under any other enactment.

Section 54: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 54(1)(a): replaced, on 13 June 2013, by section 72 of the Land Transport Management Amendment Act 2013 (2013 No 35).

Section 54(1)(ab): inserted, on 13 June 2013, by section 72 of the Land Transport Management Amendment Act 2013 (2013 No 35).

## **55 Restriction on borrowing**

Auckland Transport must not borrow any funds without the written agreement of the Auckland Council.

Section 55: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

## **56 Auckland Transport's jurisdiction in respect of roads defined more widely than in Local Government Act 1974**

- (1) Nothing in this Part confers jurisdiction on Auckland Transport in respect of roads within the meaning of section 2(1) of the Land Transport Act 1998 that are not roads within the meaning of section 315 of the Local Government Act 1974.

- (2) This section is for the avoidance of doubt.

Section 56: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

## Part 5

### Water supply and wastewater services for Auckland

Part 5: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### 57 Obligations of Auckland water organisation

- (1) An Auckland water organisation—
- (a) must manage its operations efficiently with a view to keeping the overall costs of water supply and waste-water services to its customers (collectively) at the minimum levels consistent with the effective conduct of its undertakings and the maintenance of the long-term integrity of its assets; and
  - (b) must not pay any dividend or distribute any surplus in any way, directly or indirectly, to any owner or shareholder; and
  - (c) is not required to comply with section 68(b) of the Local Government Act 2002; and
  - (d) must have regard for public safety (for example, the safety of children in urban areas) in relation to its structures.
- (2) However, subsection (1)(b) does not prevent an Auckland water organisation from making a taxable bonus issue (as defined in section YA 1 of the Income Tax Act 2007).
- (3) An Auckland water organisation does not breach its obligation under subsection (1)(a) merely by—
- (a) giving an infrastructure endorsement under section 20 of the Infrastructure Funding and Financing Act 2020; or
  - (b) accepting a transfer of eligible infrastructure under section 90 of that Act; or
  - (c) contributing funding to the construction of eligible infrastructure that has been, or is intended to be, transferred to that organisation under that section.

Section 57: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 57(3): inserted, on 7 August 2020, by section 161 of the Infrastructure Funding and Financing Act 2020 (2020 No 47).



**58 Auckland water organisation must give effect to LTP and act consistently with other specified plans and strategies of Council**

- (1) An Auckland water organisation must give effect to the relevant aspects of the LTP.
- (2) An Auckland water organisation must act consistently with the relevant aspects of any other plan (including a local board plan) or strategy of the Council to the extent specified in writing by the governing body of the Council.
- (3) However, nothing in this section or section 92 authorises non-compliance with section 57 by an Auckland water organisation.

Section 58: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 58 heading: amended, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

Section 58(1): amended, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

**59 Auckland water organisation may occupy certain Crown land without charge**

- (1) An Auckland water organisation is not required to pay rent to the Crown in relation to any land in an Auckland harbour on, over, or under which an existing wastewater asset is constructed or laid.
- (2) Nothing in subsection (1) affects any obligation an Auckland water organisation may have to comply with the Resource Management Act 1991 in relation to an existing wastewater asset (including any liability to pay for the occupation of a coastal marine area under any regulations made under that Act).
- (3) In this section, **existing wastewater asset** means a wastewater asset held by Watercare Services Limited on 1 November 2010.

Section 59: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

**60 Status of Auckland water organisation under Public Works Act 1981**

For the purposes of the Public Works Act 1981,—

- (a) an Auckland water organisation that is not a local authority is to be treated as if it were a local authority; and
- (b) a work authorised under this Part and undertaken by an Auckland water organisation that is not a local authority is to be treated as if it were a local work.

Section 60: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

*Auckland water organisation may propose bylaws*

Heading: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

**61 Auckland water organisation may propose bylaw**

- (1) An Auckland water organisation may propose to the governing body of the Auckland Council, in writing, that a bylaw relating to the management or supply of water supply or wastewater services be made by the Council under a specified enactment.
- (2) As soon as practicable after receiving a proposal under subsection (1), the governing body of the Auckland Council must decide whether the proposed bylaw meets the following requirements:
  - (a) the proposed bylaw is a bylaw relating to the management or supply of water supply or wastewater services; and
  - (b) the specified enactment under which the proposed bylaw is to be made authorises the making of the bylaw; and
  - (c) the proposed bylaw complies with the applicable statutory requirements of that enactment and any other relevant enactment; and
  - (d) the proposed bylaw is not inconsistent with any strategy, policy, plan, or bylaw of the Council; and
  - (e) the proposed bylaw can be implemented and enforced in a cost-effective manner.
- (3) If the governing body of the Auckland Council decides that a proposed bylaw—
  - (a) meets the requirements of subsection (2), it must give written notice of its decision to the organisation:
  - (b) does not meet the requirements of subsection (2), it must give written notice of its decision (with reasons) to the organisation.

Section 61: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

**62 Auckland water organisation must consult on proposed bylaw**

- (1) This section applies if an Auckland water organisation has received notice under section 61(3)(a) from the governing body of the Auckland Council in respect of a bylaw that the organisation has proposed.
- (2) The organisation must confirm the proposed bylaw using the special consultative procedure and, for that purpose, section 156(1) of the Local Government Act 2002 applies, with any necessary modifications, as if the organisation were a local authority and the bylaw were a bylaw being made under that Act.

- (3) If, after acting under subsection (2), the organisation confirms the proposed bylaw, it must give written notice of its decision to the governing body of the Auckland Council and the governing body must adopt the bylaw by resolution.
- (4) If, after acting under subsection (2), the organisation modifies the proposed bylaw, it must give written notice of its decision to the governing body of the Auckland Council and the governing body must,—
  - (a) if satisfied that the proposed bylaw meets the requirements of section 61(2), adopt the bylaw by resolution; or
  - (b) if not satisfied that the proposed bylaw meets the requirements of section 61(2), give notice to the organisation under section 61(3)(b).
- (5) Where the Auckland Council adopts under subsection (3) or (4)(a) a bylaw that is made under the Local Government Act 2002, the requirements of sections 86, 155, and 156 of that Act are deemed to be satisfied in respect of that bylaw.

Section 62: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### *Powers of Auckland water organisation*

Heading: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

### **63 Powers of Auckland water organisation under Local Government Act 1974**

An Auckland water organisation that is not a local authority has the powers of a council under the following sections of the Local Government Act 1974 in relation to its wastewater services (and those sections apply accordingly, with any necessary modifications):

- (a) section 451 (diversion, etc, of drainage works):
- (b) section 459 (council may require owners of land in certain cases to provide private drains):
- (c) section 460 (construction of private drains through adjoining premises):
- (d) section 461 (further provisions with respect to private drains):
- (e) section 462 (council may declare private drain to be public drain):
- (f) section 467 (unlawful connection of private drain):
- (g) section 468 (tree roots obstructing public drains).

Section 63: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

### **64 Powers of Auckland water organisation under Local Government Act 2002**

An Auckland water organisation that is not a local authority has the powers of a local authority under the following sections of the Local Government Act

2002 in relation to its water supply and wastewater services (and those sections apply accordingly, with any necessary modifications):

- (a) section 171 (general power of entry):
- (b) section 172 (power of entry for enforcement purposes):
- (c) section 173 (power of entry in cases of emergency):
- (d) section 181 (construction of works on private land):
- (e) section 182 (power of entry to check utility services):
- (f) section 186 (local authority may execute works if owner or occupier defaults).

Section 64: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

## **65 Construction of works on roads and public land by Auckland water organisation**

- (1) For the purposes of providing water supply or wastewater services in Auckland, an Auckland water organisation may—
  - (a) construct, place, and maintain water supply and wastewater infrastructure in, on, along, over, across, or under any road or public land; and
  - (b) for the purposes of any work carried out under paragraph (a), open or break up any road or public land; and
  - (c) alter, repair, or remove that infrastructure or any part of that infrastructure.
- (2) However, an Auckland water organisation must exercise the powers under subsection (1) in accordance with any reasonable conditions that the person who has jurisdiction over the road or land imposes.

Section 65: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

## **66 Notice requirement**

- (1) Except as provided in section 69, before an Auckland water organisation proceeds to open or break up any road or public land, the organisation must give to the person who has jurisdiction over the road or land written notice of the intention to carry out the work.
- (2) Every notice must specify the location of the proposed work, the nature of the work to be carried out, and the reasons for it.

Section 66: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

## **67 Auckland water organisation to be notified of conditions**

Not later than 20 working days after receiving written notice of the intention to carry out work, the person who has jurisdiction over the road or land must

notify the Auckland water organisation in writing of any conditions imposed under section 65(2).

Section 67: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

### **68 Failure to notify conditions**

If the person who has jurisdiction over the road or land fails to notify the Auckland water organisation of any conditions imposed under section 65(2) within the 20-working day period referred to in section 67, those conditions may not be imposed, and the organisation may commence work.

Section 68: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

### **69 Urgency**

If work is urgent and necessary because of any defective equipment or other emergency, an Auckland water organisation—

- (a) is excused from giving notice under section 66(1) before commencing the work; but
- (b) must give the information required by section 66(2) to the person who has jurisdiction over the road or land as soon as practicable after commencing the work.

Section 69: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

### **70 Appeals by Auckland water organisation to District Court**

- (1) An Auckland water organisation may appeal to the District Court against all or any of the conditions imposed under section 65(2) by the person who has jurisdiction over the road or land.
- (2) An appeal must be made not later than 45 working days after the date of notification of the conditions imposed or within any further time that the District Court may allow.
- (3) In its determination of any appeal, the District Court may confirm, modify, or cancel any or all of the conditions imposed.
- (4) The decision of the District Court in the determination of an appeal under this section is final.

Section 70: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 70(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 70(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 70(4): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

**71 Council to appoint enforcement officers**

- (1) The Council must appoint persons to be enforcement officers under section 177 of the Local Government Act 2002 for the purposes of ensuring compliance by any person with any exercise of a power conferred on an Auckland water organisation by this Part.
- (2) Before determining the number of persons to appoint as enforcement officers under that section, the Council must consult each Auckland water organisation that is not a local authority to ensure that sufficient officers are appointed to enable those organisations to perform their functions under this Act.

Section 71: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

*Nuisances created by Auckland water organisation*

Heading: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

**72 Abatement of nuisances created by Auckland water organisation**

- (1) Where any nuisance within the meaning of section 29 of the Health Act 1956 is created by an Auckland water organisation in the exercise of any powers conferred on it by this Act, the Director-General of Health may, by notice in writing to the organisation,—
  - (a) require the organisation to abate the nuisance; and
  - (b) specify the works to be done by the organisation in order to abate the nuisance and the time within which they must be done.
- (2) If the organisation considers the requirements specified in the notice to be unreasonable, impracticable, or unnecessary, it may, within 3 days after service of the notice on it, apply to the District Court for an order setting aside or modifying the notice. Pending the hearing of the application, the notice must be treated as suspended.
- (3) On the hearing of the application, the court, whose decision is final, must determine whether the notice should or should not be set aside or modified and, if the notice is not set aside, the time within which the organisation must comply with the notice or, as the case may be, with the modified notice.
- (4) If the organisation, within the time specified in the notice or, in the case of an application to the court, in the order of the court, fails to comply with the notice or order, the Medical Officer of Health under the Health Act 1956, without further notice to the organisation, may cause the nuisance to be abated and for that purpose may, with such assistance as may be necessary, enter on any land or premises of the organisation and execute or cause to be executed the necessary works.
- (5) All expenses reasonably incurred by the Medical Officer of Health in the abatement of a nuisance under subsection (4) are recoverable from the organisation as a debt due to the Crown.

Section 72: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

*Rating of land and assets owned by Auckland water organisation*

Heading: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

**73 Rating of land and assets owned by Auckland water organisation**

- (1) Subsection (2) applies to land owned by an Auckland water organisation and used for the purposes of providing water supply or wastewater services within Auckland.
- (2) The total amount of any rates assessed under section 13 or 16 of the Local Government (Rating) Act 2002 for the land must not exceed the amount of rates that would otherwise have been assessed if each of the rates had been assessed on the land value only of every rating unit liable for the rates.
- (3) For the purposes of the Local Government (Rating) Act 2002, a water supply or wastewater services asset that is owned by an Auckland water organisation and is situated in or on any land not owned by the organisation is deemed not to be rateable property.

Section 73: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

*Offences and liability for damage*

Heading: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

**74 Offence not to comply with any of sections 65, 66, and 69**

- (1) An Auckland water organisation that fails to comply with any of sections 65, 66, and 69 commits an offence.
- (2) An Auckland water organisation that commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$10,000.
- (3) In addition to any penalty imposed under subsection (2), a court may make any order relating to compensation that it thinks fit.

Section 74: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 74(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**75 Offences relating to carrying out work on water supply or wastewater assets of Auckland water organisation without notice**

- (1) Every person commits an offence and is liable on conviction to a fine not exceeding \$20,000 who wilfully or negligently carries out work on, or in relation to, a water supply or wastewater asset of an Auckland water organisation that is not a local authority without first—
  - (a) notifying the organisation of the intention to carry out the work; and

- (b) obtaining written authorisation from the organisation (which may include terms or conditions that the organisation thinks fit).
- (2) It is not an offence under subsection (1) if the work concerned—
  - (a) is authorised by a valid consent granted by or under—
    - (i) the Building Act 2004 (including the building code); or
    - (ii) the Resource Management Act 1991; or
  - (b) is carried out in accordance with a valid building, plumbing, or drainage consent.
- (3) It is a defence to an offence under subsection (1) if the work concerned—
  - (a) was necessary to avoid an emergency, or to mitigate or remedy the effects of an emergency; and
  - (b) was carried out by a person appropriately registered to undertake the work.
- (4) A person who commits an offence under this section may, in addition to or instead of the penalty for the offence, be ordered to pay the cost incurred by the Auckland water organisation in repairing the damage done to the water supply or wastewater asset by the offence.

Section 75: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 75(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **76 Offences relating to damage to water supply or wastewater assets of Auckland water organisation**

- (1) This section applies in relation to the following works or property that are vested in, or under the control of, an Auckland water organisation that is not a local authority:
  - (a) a protective work; or
  - (b) a water supply or wastewater work; or
  - (c) a water race; or
  - (d) a drainage work; or
  - (e) anything forming part of, or connected with, any water supply or wastewater work or property not referred to in paragraphs (a) to (d).
- (2) Every person commits an offence who wilfully destroys, damages, stops, obstructs, or interferes with a work or property and is liable on conviction to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$20,000, or to both.
- (3) Every person commits an offence who negligently destroys, damages, stops, obstructs, or interferes with a work or property and is liable on conviction to a fine not exceeding \$20,000.



Section 76: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 76(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 76(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**77 Liability for damage by wilful or negligent behaviour towards water supply or wastewater work**

A person who wilfully or negligently destroys, damages, stops, obstructs, or otherwise interferes with any water supply or wastewater works or property owned, constructed, acquired, or used by an Auckland water organisation that is not a local authority is liable for, as the case may be,—

- (a) the amount of the destruction or damage; or
- (b) the cost incurred by the organisation in removing the stoppage or obstruction; or
- (c) any loss or expenses incurred by the organisation because of the stoppage, obstruction, or interference.

Section 77: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

*Council must consult other Auckland water organisations when assessing water and other sanitary services*

Heading: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

**78 Council must consult other Auckland water organisations when assessing water and other sanitary services**

- (1) Subsection (2) applies to the Council when carrying out its duty under section 125 of the Local Government Act 2002 to assess the provision within Auckland of water and other sanitary services.
- (2) The Council must consult each Auckland water organisation that is not a local authority in making its assessment.

Section 78: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 78(2): amended, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

## Part 6

### Spatial planning for Auckland

Part 6: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### 79 Spatial plan for Auckland

- (1) The Auckland Council must prepare and adopt a spatial plan for Auckland.
- (2) The purpose of the spatial plan is to contribute to Auckland's social, economic, environmental, and cultural well-being through a comprehensive and effective long-term (20- to 30-year) strategy for Auckland's growth and development.
- (3) For the purposes of subsection (2), the spatial plan will—
  - (a) set a strategic direction for Auckland and its communities that integrates social, economic, environmental, and cultural objectives; and
  - (b) outline a high-level development strategy that will achieve that direction and those objectives; and
  - (c) enable coherent and co-ordinated decision making by the Auckland Council (as the spatial planning agency) and other parties to determine the future location and timing of critical infrastructure, services, and investment within Auckland in accordance with the strategy; and
  - (d) provide a basis for aligning the implementation plans, regulatory plans, and funding programmes of the Auckland Council.
- (4) The spatial plan must—
  - (a) recognise and describe Auckland's role in New Zealand; and
  - (b) visually illustrate how Auckland may develop in the future, including how growth may be sequenced and how infrastructure may be provided; and
  - (c) provide an evidential base to support decision making for Auckland, including evidence of trends, opportunities, and constraints within Auckland; and
  - (d) identify the existing and future location and mix of—
    - (i) residential, business, rural production, and industrial activities within specific geographic areas within Auckland; and
    - (ii) critical infrastructure, services, and investment within Auckland (including, for example, services relating to cultural and social infrastructure, transport, open space, water supply, wastewater, and stormwater, and services managed by network utility operators); and
  - (e) identify nationally and regionally significant—
    - (i) recreational areas and open-space areas within Auckland; and

- (ii) ecological areas within Auckland that should be protected from development; and
  - (iii) environmental constraints on development within Auckland (for example, flood-prone or unstable land); and
  - (iv) landscapes, areas of historic heritage value, and natural features within Auckland; and
- (f) identify policies, priorities, land allocations, and programmes and investments to implement the strategic direction and specify how resources will be provided to implement the strategic direction.

Section 79: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

### **80 Development, adoption, and implementation of spatial plan**

- (1) The Auckland Council must involve central government, infrastructure providers (including network utility operators), the communities of Auckland, the private sector, the rural sector, and other parties (as appropriate) throughout the preparation and development of the spatial plan.
- (2) The Auckland Council must adopt the spatial plan in accordance with the special consultative procedure.
- (3) The Auckland Council may amend the spatial plan, at any time, in accordance with subsections (1) and (2).
- (4) The Auckland Council must—
  - (a) make the spatial plan (including any amendments) available for inspection during working hours, free of charge, at—
    - (i) the office of the Auckland Council; and
    - (ii) any other places in Auckland that the Auckland Council, at its discretion, decides are appropriate; and
  - (b) make copies of the plan available, free of charge or for purchase at a reasonable price, from—
    - (i) the office of the Auckland Council; and
    - (ii) any other places in Auckland that the Auckland Council, at its discretion, decides are appropriate; and
  - (c) make copies of the plan available, free of charge, on an Internet site maintained by or on behalf of the Auckland Council.
- (5) The Auckland Council must endeavour to secure and maintain the support and co-operation of central government, infrastructure providers (including network utility operators), the communities of Auckland, the private sector, the rural sector, and other parties (as appropriate) in the implementation of the spatial plan.

Section 80: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

## Part 7

### Board promoting issues of significance for mana whenua groups and mataawaka of Tamaki Makaurau

Part 7: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### 81 Establishment and purpose of board

This Part establishes a board whose purpose is to assist the Auckland Council to make decisions, perform functions, and exercise powers by—

- (a) promoting cultural, economic, environmental, and social issues of significance for—
  - (i) mana whenua groups; and
  - (ii) mataawaka of Tamaki Makaurau; and
- (b) ensuring that the Council acts in accordance with statutory provisions referring to the Treaty of Waitangi.

Section 81: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### 82 Board independent

- (1) The board is a body corporate separate from—
  - (a) the Auckland Council; and
  - (b) the board's members; and
  - (c) the selection body; and
  - (d) the mana whenua groups represented on the selection body.
- (2) The board is independent of—
  - (a) the Auckland Council; and
  - (b) the mana whenua groups represented on the selection body.
- (3) The board is not required to accept direction from any person.
- (4) When members of the board are acting as members of the board, they must act in the interest of achieving the board's purpose and must not act in any other interest.

Section 82: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### 83 Board's name

- (1) The board may choose to name itself.
- (2) If the board names itself, it may change its name at any time.
- (3) If the board names itself, or changes its name, it must tell the Minister of Māori Affairs and the Auckland Council the name or the new name as soon as practicable.

Section 83: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### **84 Board's general functions**

- (1) The board's general functions are—
  - (a) to act in accordance with its purpose and functions and to ensure that it does not contravene the purpose for which it was established;
  - (b) to develop a schedule of issues of significance to mana whenua groups and mataawaka of Tamaki Makaurau, and give a priority to each issue, to guide the board in carrying out its purpose;
  - (c) to keep the schedule up to date;
  - (d) to advise the Auckland Council on matters affecting mana whenua groups and mataawaka of Tamaki Makaurau;
  - (e) to work with the Auckland Council on the design and execution of documents and processes to implement the Council's statutory responsibilities towards mana whenua groups and mataawaka of Tamaki Makaurau.
- (2) The board and the Council must meet at least 4 times in each financial year to discuss the board's performance of its functions.

Section 84: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### **85 Board's specific functions**

- (1) The board must appoint a maximum of 2 persons to sit as members on each of the Auckland Council's committees that deal with the management and stewardship of natural and physical resources.
- (2) If the Auckland Council asks the board to appoint a person or persons to sit as members on any other of the Council's committees, the board may do so.
- (3) The board must,—
  - (a) before making the appointments, seek the views of the Auckland Council as to the skills and experience that the Council would like the appointees to have; and
  - (b) when making the appointments, take the views of the Auckland Council into account.
- (4) The board must consider a request by the Auckland Council that the board accept the delegation of a function by the Council.
- (5) The board must act in accordance with a delegation that it has accepted.

Section 85: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### **86 Board's powers**

- (1) The board may consult any person who the board considers is likely to help the board in carrying out its purpose.

- (2) The board may establish the committees it considers necessary to enable it to carry out its purpose.
- (3) The board may seek the advice it requires to enable it to carry out its purpose.
- (4) The board has any other powers that it needs to carry out its purpose and that are consistent with this Part.

Section 86: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

### **87 Auckland Council information provided to board**

- (1) The board may not exercise its powers in section 86 if doing so would disclose information that—
  - (a) is known to the board because the Auckland Council provided it to the board; and
  - (b) is information that the Auckland Council would consider withholding under the Local Government Official Information and Meetings Act 1987 or the Privacy Act 1993 if the Council received a request for it.
- (2) When the board is deciding whether subsection (1)(b) applies to information that the Council provided to the board, it must make its decision on reasonable grounds.
- (3) When the Auckland Council decides that subsection (1)(b) applies to information that the Council provided to the board, it must tell the board of its decision and the reasons for its decision.

Section 87: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

### **88 Auckland Council's duties to board**

- (1) The Auckland Council must—
  - (a) provide the board with the information that the board needs to identify business of the Council that relates to the board's purpose:
  - (b) consult the board on matters affecting mana whenua groups and mataawaka of Tamaki Makaurau:
  - (c) take into account the board's advice on ensuring that the input of mana whenua groups and mataawaka of Tamaki Makaurau is reflected in the Council's strategies, policies, and plans:
  - (d) take into account the board's advice on other matters:
  - (e) make an agreement under clause 20 of Schedule 2 every year to provide the board with the funding it needs to carry out its purpose:
  - (f) work with the board on the design and execution of documents and processes that relate to seeking the input of mana whenua groups and mataawaka of Tamaki Makaurau.

- (2) The Council's duties under this section do not relieve it of any duties it has under any other enactment to consult Māori.
- (3) The Council and the board must meet at least 4 times in each financial year to discuss the Council's performance of its duties.

Section 88: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### **89 Schedule 2 applies to board**

Schedule 2 applies to the board.

Section 89: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

## **Part 8 Miscellaneous**

Part 8: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

### *Substantive council-controlled organisations*

Heading: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### **90 Council must have accountability policy for substantive council-controlled organisations**

- (1) The Council must adopt (using the special consultative procedure) a policy on the accountability of its substantive council-controlled organisations.
- (2) The policy must—
  - (a) include a statement of the Council's expectations in respect of each substantive council-controlled organisation's contributions to, and alignment with, the Council's objectives and priorities;
  - (b) include a statement of the Council's expectations in respect of each substantive council-controlled organisation's contributions to, and alignment with, any relevant objectives and priorities of central government;
  - (c) specify any reporting requirements that each substantive council-controlled organisation must undertake in addition to those required under Part 5 of the Local Government Act 2002 or this Act;
  - (d) specify any planning requirements that each substantive council-controlled organisation must undertake in addition to those required under Part 5 of the Local Government Act 2002 or this Act;
  - (e) identify or define any strategic assets in relation to each substantive council-controlled organisation and set out any requirements in relation to the organisation's management of those assets, including the process by which the organisation may approve major transactions in relation to them.

- (3) A policy under this section—
- (a) may be adopted by the Council as part of its LTP;
  - (b) must be included in the Council's LTP;
  - (c) may be amended only as an amendment to the LTP.

Section 90: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 90(3)(a): amended, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

Section 90(3)(b): amended, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

Section 90(3)(c): amended, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

**91 Council may impose additional accountability requirements on substantive council-controlled organisations**

- (1) The Council may require a substantive council-controlled organisation to—
- (a) include in its statement of intent a narrative on how the organisation will contribute to the Council's and, where appropriate, the Government's objectives and priorities for Auckland;
  - (b) deliver, no later than 1 month after the end of the first and third quarter of each financial year, a report on the organisation's operations during each quarter that includes the information required to be included by its statement of intent;
  - (c) prepare and adopt a plan covering a period of at least 10 years that describes how the organisation intends to—
    - (i) manage, maintain, and invest in its assets; and
    - (ii) maintain or improve service levels; and
    - (iii) respond to population growth and other changing environmental factors; and
    - (iv) give effect to the Council's strategy, plans, and priorities;
  - (d) comply with any specified requirements for the management of the assets of the organisation identified by the Council as strategic assets and processes for the approval of major transactions in relation to them.
- (2) The Council may not require Auckland Transport to prepare and adopt a plan under subsection (1)(c).
- (3) This section does not limit or affect the application of Part 5 of the Local Government Act 2002 to a substantive council-controlled organisation.

Section 91: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).



**92 Substantive council-controlled organisations must give effect to LTP and act consistently with other specified plans and strategies of Council**

- (1) Each substantive council-controlled organisation must give effect to the relevant aspects of the LTP.
- (2) Each substantive council-controlled organisation must act consistently with the relevant aspects of any other plan (including a local board plan) or strategy of the Council to the extent specified in writing by the governing body of the Council.

Section 92: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 92 heading: amended, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

Section 92(1): amended, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

**93 Councillors and local board members prohibited from appointment as directors of substantive council-controlled organisations**

- (1) The Council must not appoint a person to be a director of a substantive council-controlled organisation if the person is, at the time of the appointment,—
  - (a) a member of the governing body of the Council; or
  - (b) a member of a local board.
- (2) Section 43(2)(a) prevails over this section.

Section 93: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

**94 Director of substantive council-controlled organisation elected to Council or local board must resign before taking up position**

A director of a substantive council-controlled organisation who is elected to be a member of the governing body of the Council or a local board must resign from his or her position as a director of the council-controlled organisation before taking up his or her position as a member of the governing body of the Council or the local board.

Section 94: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

**95 Council may appoint chairperson and deputy chairperson of substantive council-controlled organisation**

- (1) The Council may appoint the chairperson and deputy chairperson of each substantive council-controlled organisation.
- (2) However, the Council must not appoint a member of its governing body as the chairperson or deputy chairperson of Auckland Transport.
- (3) This section prevails over any provision to the contrary in an organisation's constitution.

Section 95: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

*Council-controlled organisations must hold specified meetings in public*

Heading: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

**96 Council-controlled organisations must hold specified meetings in public**

- (1) The board of each council-controlled organisation of the Auckland Council must nominate, in its statement of intent for each financial year, 2 of its meetings during that year to be open to members of the public.
- (2) For the purpose of subsection (1),—
  - (a) 1 meeting must be held before 30 June each year for the purpose of considering comments from shareholders on the organisation’s draft statement of intent for the following financial year; and
  - (b) the other meeting must be held after 1 July each year for the purpose of considering the organisation’s performance under its statement of intent in the previous financial year.
- (3) The statement of intent must also specify how the meetings will be publicly notified (for example, by notice in 1 or more newspapers).
- (4) In respect of each meeting held in accordance with this section, the board must allocate a reasonable amount of time for members of the public attending the meeting to address the board in relation to the subject matter of the meeting.
- (5) Meetings held pursuant to this section shall be subject to the rules and requirements that normally apply to the meetings of the board of the council-controlled organisation (including, for example, under its constitution), provided that this section prevails in the event of any conflict between this section and the rules and requirements that normally apply to meetings of the board.

Section 96: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

*Disputes between local boards and governing body*

Heading: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

**97 Disputes about allocation of decision-making responsibilities or proposed bylaws**

- (1) Subsection (2) applies if—
  - (a) 1 or more local boards are dissatisfied with a decision of the governing body under section 17(1); or
  - (b) a local board is dissatisfied with a decision of the governing body under section 24(3)(b) or 27(3)(b).

- (2) The local board or boards concerned and the governing body must make reasonable efforts to reach a mutually acceptable and timely resolution of the dispute, having regard to—
  - (a) the requirements of this Act; and
  - (b) the current and future well-being of the communities of Auckland, and the interests and preferences of the communities within each affected local board area.
- (3) If, after acting under subsection (2), the dispute is still unresolved, the local board or boards may apply, in writing, to the Local Government Commission for a binding determination on the matter.
- (4) An application must be accompanied by copies of all reports, correspondence, and other information held by the local board or boards that are relevant to the matter.

Section 97: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### **98 Local Government Commission to determine disputes**

- (1) Promptly after receiving an application under section 97(3), the Local Government Commission must notify the mayor and the chief executive of the application and request them to provide, within 7 days, copies of all reports, correspondence, and other information held by them that is relevant to the matter.
- (2) After receiving the information from the mayor and the chief executive, the Commission must—
  - (a) consider the information it has received from them, and from the local board or boards concerned under section 97(4); and
  - (b) determine the matter, having regard to—
    - (i) the requirements of this Act; and
    - (ii) the current and future well-being of the communities of Auckland, and the interests and preferences of the communities within each affected local board area; and
    - (iii) any other matter that the Commission considers on reasonable grounds to be relevant.
- (3) For the purposes of making a determination, the Commission—
  - (a) must treat the matter as urgent; and
  - (b) may make any inquiries that it considers appropriate; and
  - (c) may (but is not obliged to) hold meetings with the local board or boards, the governing body, or any other person.
- (4) The Commission may apportion the actual and reasonable costs incurred by it in making a determination between the local board or boards and the governing

body as it thinks fit, having regard to the merits of the initial positions of the board or boards and the governing body.

- (5) Any costs apportioned to a local board under subsection (4) must be paid from the local board's budget.
- (6) Subsection (7) applies if—
  - (a) the Commission is required to determine a matter that relates to the content of an adopted LTP; and
  - (b) the Commission determines that the LTP should be amended.
- (7) The Council must amend the LTP to the extent necessary to give effect to the determination and may do so without further authority than this section.

Section 98: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 98(6)(a): amended, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

Section 98(6)(b): amended, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

Section 98(7): amended, on 27 November 2010, by section 50 of the Local Government Act 2002 Amendment Act 2010 (2010 No 124).

## **99 Local Government Commission may delegate duty to determine dispute**

- (1) The Local Government Commission may, in writing, either generally or in a specific instance, delegate its function under section 98 to a committee of the Commission or a member of the Commission.
- (2) A committee or member to whom a function is delegated under this section may carry out the function in the same manner and with the same effect as if the function had been conferred directly by this Act and not by delegation.
- (3) Subsection (2) applies subject to any direction given or condition imposed by the Commission.

Section 99: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

### *Development contributions*

Heading: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

## **100 Development contributions for transport infrastructure**

- (1) The Council may include in a policy under section 106 of the Local Government Act 2002 a requirement for development contributions to fund the Council's contribution to the total cost of capital expenditure by Auckland Transport.
- (2) Subsection (1) applies only if the capital expenditure is capital expenditure that could be funded by development contributions if it were incurred by the Council itself.

- (3) The Council may include the requirement as if—
  - (a) the total cost of the contribution provided by the Council were the total cost of the capital expenditure; and
  - (b) the capital expenditure were to be undertaken by the Council.
- (4) Subpart 5 of Part 8 of the Local Government Act 2002 applies, with any necessary modifications, to development contributions authorised by subsection (1).
- (5) This section applies despite anything to the contrary in the Local Government Act 2002.

Section 100: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

### **101 Development contributions for assets managed by other parties**

- (1) The powers of the Council to require development contributions under subpart 5 of Part 8 of the Local Government Act 2002 are not affected by any arrangements it has for another person or organisation to manage—
  - (a) reserves:
  - (b) network infrastructure:
  - (c) community infrastructure.
- (2) This section is for the avoidance of doubt.

Section 101: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### *Prohibition on establishment of community boards*

Heading: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

### **102 Prohibition on establishment of community boards**

Despite section 49 of the Local Government Act 2002, no community board may be established for any community within Auckland.

Section 102: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### *Review of representation arrangements*

Heading: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

### **103 Review of representation arrangements under Local Electoral Act 2001**

- (1) For the purposes of section 19H(2) of the Local Electoral Act 2001, the Council must make—
  - (a) its first determination no earlier than after the completion of the 2013 triennial general elections but no later than 8 September 2018; and
  - (b) subsequent determinations at least once in every period of 6 years after that first determination.

(2) *[Repealed]*

(3) *[Repealed]*

Section 103: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

Section 103(2): repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Section 103(3): repealed, on 8 August 2014, by section 77 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

#### *Auditor-General to review Council's service performance*

Heading: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

### **104 Auditor-General to review Council's service performance**

- (1) The Auditor-General must, from time to time, review the service performance of the Council and each of its council-controlled organisations.
- (2) Part 4 of the Public Audit Act 2001 applies to a review.
- (3) The Auditor-General may charge the Council for undertaking a review under this section and, for that purpose, section 42(2) to (5) of the Public Audit Act 2001 applies with any necessary modifications.
- (4) Nothing in this section limits or affects the powers of the Auditor-General under the Public Audit Act 2001.

Section 104: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### *Council employee elected to local board must resign before taking up position*

Heading: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

### **105 Council employee elected to local board must resign before taking up position**

An employee of the Council who is elected to be a member of a local board must resign from his or her position as an employee of the Council before taking up his or her position as a member of the local board.

Section 105: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### *Representation on port company board*

Heading: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

### **106 Representation on port company board**

For the purposes of section 6(1)(b) of the Port Companies Act 1988, any council-controlled organisation of the Auckland Council that holds equity securities

in a port company (within the meaning of that Act) must be treated as if it were a regional council.

Section 106: added, on 1 November 2010, by section 31 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

*Borrowing in foreign currency*

Heading: added, on 20 September 2011, by section 4 of the Local Government (Auckland Council) Amendment Act 2011 (2011 No 78).

**107 Borrowing in foreign currency**

Despite section 113 of the Local Government Act 2002, the Auckland Council may borrow or enter into incidental arrangements, within or outside New Zealand, in currency other than New Zealand currency.

Section 107: added, on 20 September 2011, by section 4 of the Local Government (Auckland Council) Amendment Act 2011 (2011 No 78).

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**Schedule 1AA**  
**Transitional, savings, and related provisions**

s 4A

Schedule 1AA: inserted, on 10 May 2016, by section 7 of the Local Government (Auckland Council) Amendment Act 2016 (2016 No 19).

**Existing membership of local boards not affected**

Nothing in section 11AA affects the current membership of any person who is a member of more than 1 local board at the commencement of the Local Government (Auckland Council) Amendment Act 2016.



## Schedule 1

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

s 33(2)(c)

#### 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.

## Schedule 2

### Provisions relating to board promoting issues of significance for mana whenua groups and mataawaka of Tamaki Makaurau

s 89

Schedule 2: added, on 1 November 2010, by section 32 of the Local Government (Auckland Council) Amendment Act 2010 (2010 No 36).

#### *Appointment to membership and cessation of membership*

#### **1 Board's membership**

- (1) The board consists of 9 members appointed under clauses 5 to 8.
- (2) The membership is composed of—
  - (a) 2 mataawaka representatives; and
  - (b) 7 mana whenua group representatives.

#### **2 Selection body's establishment and function**

- (1) A selection body is established when the persons chosen as mana whenua group representatives under clause 4 meet for the first time.
- (2) If a person on the selection body tells the Minister of Māori Affairs that he or she resigns, the Minister must notify the mana whenua group that nominated the person and ask the group to nominate a replacement.
- (3) The selection body's sole function is to appoint members to the board.
- (4) In appointing members to the board, the selection body—
  - (a) must be guided only by the board's purpose, functions, and powers; and
  - (b) is not subject to directions from the Auckland Council or any of its committees or councillors; and
  - (c) may seek advice from any source it considers appropriate.
- (5) The selection body ceases to exist when it has performed its function.
- (6) If the selection body is unable to perform its function, the Minister of Māori Affairs must appoint the members of the board as if the Minister were the selection body.

#### **3 Costs of selection process**

- (1) Each mana whenua group must meet the costs of mandating its representatives as persons on the selection body.
- (2) The Auckland Council must meet the costs of selecting members of the board.

**4 Minister gives notice that mana whenua group representatives needed for selection body**

- (1) The Minister of Māori Affairs must give written or electronic notice to mana whenua groups that mandated representatives of mana whenua groups are needed for the selection body.
- (2) The notice must state a time by which each group must tell the Minister the name of the person who is to be the group's mandated representative on the selection body.
- (3) Each mana whenua group that receives the notice may choose 1 person to be its mandated representative on the selection body.

**5 Qualifications of members**

- (1) To be a member of the board, a person must—
  - (a) be a natural person; and
  - (b) consent to being appointed to the board; and
  - (c) not be disqualified under subclause (2).
- (2) The following persons are disqualified from being members:
  - (a) a person who is under 18 years of age;
  - (b) a person who is an undischarged bankrupt;
  - (c) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, or the Financial Markets Conduct Act 2013, or the Takeovers Act 1993;
  - (d) a person who is subject to a property order under the Protection of Personal and Property Rights Act 1988;
  - (e) a person in respect of whom a personal order has been made under that Act that reflects adversely on the person's—
    - (i) competence to manage his or her own affairs in relation to his or her property; or
    - (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of his or her personal care and welfare;
  - (f) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for any other offence;
  - (g) a current member of Parliament;
  - (h) a current Auckland councillor or current local board member;
  - (i) a person who is disqualified under another Act.

Schedule 2 clause 5(2)(c): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

**6 Selection body chooses mataawaka representatives for board**

- (1) The selection body must choose the board's 2 mataawaka representatives.
- (2) The selection body must choose the mataawaka representatives by following a process that, at a minimum,—
  - (a) includes public notification of the process that the body proposes to use for choosing the representatives; and
  - (b) provides an opportunity for nominations to be received; and
  - (c) requires the body to take into account the views of mataawaka when choosing the representatives.
- (3) The selection body must apply clause 5 when choosing the 2 mataawaka representatives.

**7 Selection body chooses mana whenua group representatives for board**

- (1) The selection body must choose the board's 7 mana whenua group representatives.
- (2) The selection body may choose people on the selection body for the board.
- (3) The selection body must apply clause 5 when choosing the 7 mana whenua group representatives.

**8 Process for appointing members**

- (1) A person whom the selection body is proposing to appoint to the board must give a written certificate to the selection body stating that the person—
  - (a) is not disqualified under clause 5(2); and
  - (b) consents to being appointed to the board.
- (2) The selection body must give the members it chooses a certificate of appointment that—
  - (a) states the date on which the appointment starts; and
  - (b) is signed by at least 2 persons on the body.
- (3) The selection body must give copies of the certificates of appointment to—
  - (a) the Minister of Māori Affairs; and
  - (b) the Auckland Council.
- (4) The selection body must complete the process in this clause at least 2 months before the ending of the terms of office of the members of the board.

**9 Cessation of membership**

- (1) The term of office of a member of the board is 3 years.
- (2) A member of the board remains a member until the earliest of the following:
  - (a) he or she becomes disqualified under clause 5(2);
  - (b) he or she is removed under clause 10;

- (c) his or her term of office ends:
  - (d) he or she dies:
  - (e) he or she resigns.
- (3) A member may resign from the board by giving 4 weeks' written or electronic notice to—
- (a) the board; and
  - (b) the Minister of Māori Affairs.
- (4) If a member of the board dies or resigns or is removed under clause 10, the selection body must appoint a replacement member in the manner described in whichever of clause 6 or 7 applies.
- (5) However, if the member dies or resigns or is removed under clause 10 less than 12 months before polling day for the next election of the Auckland Council, the remaining members of the board may choose not to have a replacement member appointed before polling day.
- (6) A replacement member's term of office is the uncompleted term of the member he or she replaces.
- (7) Members may be reappointed.

## 10 Removal of members

- (1) A majority of the board may, at any time for just cause,—
- (a) remove a member appointed by the selection body:
  - (b) remove a member appointed as a member of an Auckland Council committee under section 85.
- (2) In subclause (1), **just cause** includes misconduct, inability to perform the functions of office, neglect of duty, and breach of any of the collective duties of the board or the individual duties of members (depending on the seriousness of the breach).
- (3) The removal must be made by written notice to the member (with a copy to the Minister of Māori Affairs and the Auckland Council).
- (4) The notice must—
- (a) state the date on which the removal takes effect, which must not be earlier than the date on which the notice is received; and
  - (b) state the reasons for the removal.
- (5) The board may remove a member with as little formality and technicality, and as much expedition, as is permitted by—
- (a) the principles of natural justice; and
  - (b) a proper consideration of the matter; and
  - (c) the requirements of this Act.

**11 No compensation for loss of office**

A member of the board is not entitled to any compensation or other payment or benefit relating to his or her ceasing, for any reason, to hold office as a member.

*Meetings*

**12 Chairperson and deputy**

- (1) The board must appoint a member to act as chairperson and a member to act as deputy chairperson at the first meeting after each ending of a term of appointment.
- (2) The chairperson and the deputy chairperson each hold office until the earlier of—
  - (a) the passage of 3 years;
  - (b) polling day for the Auckland Council.
- (3) When a member's term of appointment as chairperson ends, the member may be reappointed as chairperson, or may be appointed as deputy chairperson, more than once.
- (4) When a member's term of appointment as deputy chairperson ends, the member may be appointed as chairperson, or may be reappointed as deputy chairperson, more than once.

**13 Setting up meetings**

- (1) The board—
  - (a) must hold 6 meetings a year; and
  - (b) may hold as many more meetings as are necessary to enable it to carry out its purpose.
- (2) Notices of meetings must be given as follows:
  - (a) the notice must be given at least 5 working days before a meeting;
  - (b) the chairperson must give the notice;
  - (c) the notice must be given to each member;
  - (d) the notice must state the date, time, and place of the meeting;
  - (e) the notice must be given by hand, by post, or by an electronic means.
- (3) A member may waive the requirement of giving notice of a meeting to him or her.
- (4) A member may request leave of absence from a particular meeting.

**14 At meetings**

- (1) The board must keep and approve the minutes of its meetings. The properly kept and approved minutes are prima facie evidence of the business transacted at the meetings.
- (2) A member has the right to attend any meeting, unless lawfully excluded.
- (3) A member unable to attend a meeting in person may attend by way of an electronic means.
- (4) The quorum for meetings is 5 members, who must include the chairperson or deputy chairperson.
- (5) A meeting is properly constituted if a quorum is present.
- (6) At least a quorum must be present during the whole of the time at which the business is transacted at the meeting.
- (7) The board may invite to meetings any advisers who the board considers necessary to facilitate the efficient transaction of the meeting's business.
- (8) The board may implement rules and procedures to ensure that it reaches decisions following—
  - (a) the highest level of good-faith engagement; and
  - (b) consensus decision making.

**15 Members bound by decisions**

Members are bound by the decisions made by the board and must not take steps to undermine the decisions.

*Validity and invalidity***16 Appointments, meetings, and actions**

- (1) The appointment of a member is not invalid because of a defect in the appointment.
- (2) A meeting is not invalid if a member does not receive a notice of the meeting or does not receive it in time unless—
  - (a) the person responsible for giving the notice is proved to have acted in bad faith or without reasonable care; and
  - (b) the member concerned did not attend the meeting.
- (3) Nothing done by the board is invalid because of—
  - (a) a vacancy in the membership of the board at the time the thing was done; or
  - (b) the subsequent discovery of a defect in the appointment of a person acting as a member; or
  - (c) the subsequent discovery that the person was incapable of being a member.



*Remuneration, expenses, liabilities, and funding*

**17 Remuneration**

- (1) The Auckland Council must appoint an independent expert to inform it of appropriate fees for the Council to pay the members of the board.
- (2) The Auckland Council must appoint the independent expert as soon as practicable after it is elected.
- (3) The independent expert—
  - (a) must consider the board’s purpose, functions, and powers; and
  - (b) must discuss the matter with the Auckland Council and the board; and
  - (c) may discuss the matter with anyone else he or she considers necessary; and
  - (d) must make a recommendation to the board.
- (4) The independent expert must inform the board and the Auckland Council of the appropriate fee for—
  - (a) the chairperson; and
  - (b) the deputy chairperson; and
  - (c) other board members.
- (5) The Auckland Council must act in accordance with the information provided to it by the independent expert.

**18 Expenses**

A member of the board is entitled, in accordance with the fees framework (as defined in section 10(1) of the Crown Entities Act 2004), to be reimbursed for actual and reasonable travelling and other expenses incurred in performing his or her functions and duties as a member.

**19 Liabilities**

A member is not liable for anything done or omitted in good faith in the performance of the board’s functions or the exercise of its powers.

**20 Funding**

- (1) To enable the board to carry out its purpose, perform its functions, and exercise its powers, the Auckland Council must meet the reasonable costs of—
  - (a) the board’s operations; and
  - (b) the board’s secretariat; and
  - (c) establishing committees under section 86; and
  - (d) seeking and obtaining advice under section 86.

- (2) The board and the Council must make a funding agreement every year on the amount of money and the level of servicing that the Council is to provide to the board.
- (3) The agreement must include the board's work plan for the year.
- (4) The agreement must include—
  - (a) the fees payable to the board's members under clause 17; and
  - (b) provision for payment of reasonable expenses under clause 18.
- (5) The board and the Council must negotiate the agreement in good faith.
- (6) The agreement is to be made within a time that enables the board to continue to carry out its purpose without interruption.
- (7) The board or the Council may initiate a review of the funding agreement by giving a written or electronic notice to the other party stating the terms of the review.

#### *Conflict of interest disclosure rules*

### **21 Duty to act in good faith and not at expense of board's interests**

A member of the board must, when acting as a member, act in good faith and not pursue his or her own interests at the expense of the board's interests.

### **22 When interests must be disclosed**

- (1) In this clause, **matter** means—
  - (a) the board's performance of its functions or exercise of its powers; or
  - (b) an arrangement, agreement, or contract made or entered into, or proposed to be entered into, by the board.
- (2) A person is **interested** in a matter if he or she—
  - (a) may derive a financial benefit from the matter; or
  - (b) is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter; or
  - (c) may have a financial interest in a person to whom the matter relates; or
  - (d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or
  - (e) may be interested in the matter because this Act so provides; or
  - (f) is otherwise directly or indirectly interested in the matter.
- (3) However, a person is not interested in a matter—
  - (a) only because he or she is a member of a mana whenua group or mataawaka group; or
  - (b) because he or she receives an indemnity, insurance cover, remuneration, or other benefits authorised under this Act; or

- (c) if his or her interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence him or her in carrying out his or her responsibilities under this Act; or
- (d) if this Act provides that he or she is not interested, despite this clause.

### **23 Obligation to disclose interest**

- (1) A member who is interested in a matter relating to the board must disclose details of the interest in accordance with clause 24 as soon as practicable after the member becomes aware that he or she is interested.
- (2) A general notice of an interest in a matter relating to the board, or in a matter that may in future relate to the board, that is disclosed in accordance with clause 24 is a standing disclosure of that interest for the purposes of this clause.
- (3) A standing disclosure ceases to have effect if the nature of the interest materially alters or the extent of the interest materially increases.

### **24 Where and to whom disclosure of interest must be made**

The member must disclose details of the interest in an interests register kept by the board and to—

- (a) the chairperson or, if there is no chairperson or if the chairperson is unavailable or interested, the deputy chairperson; and
- (b) the Auckland Council.

### **25 What must be disclosed**

The details that must be disclosed under clause 24 are—

- (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
- (b) the nature and extent of the interest (if the monetary value cannot be quantified).

### **26 Consequences of being interested in matter**

A member who is interested in a matter relating to the board—

- (a) must not vote or take part in any discussion or decision of the board or any committee relating to the matter, or otherwise participate in any activity of the board that relates to the matter; and
- (b) must not sign any document relating to the entry into a transaction or the initiation of the matter; and
- (c) is to be disregarded for the purpose of forming a quorum for that part of a meeting of the board or committee during which a discussion or decision relating to the matter occurs or is made.

**27 Permission to act despite being interested in matter**

- (1) The chairperson of the board may, by prior written notice to the board, permit 1 or more members, or members with a specified class of interest, to do anything otherwise prohibited by clause 26 if the chairperson is satisfied that it is in the public interest to do so.
- (2) The permission may state conditions that the member must comply with.
- (3) The deputy chairperson may give the permission if there is no chairperson or if the chairperson is unavailable or interested.
- (4) The permission may be amended or revoked in the same way as it may be given.
- (5) The board must disclose an interest to which a permission relates in its annual report, together with a statement of who gave the permission and any conditions or amendments to, or revocation of, the permission.

*Delegation***28 Ability to delegate**

- (1) The board may delegate any of its functions or powers, either generally or specifically, to any of the following persons by resolution and written notice to the person or persons:
  - (a) a member or members:
  - (b) the executive officer or any other member of the secretariat:
  - (c) a committee:
  - (d) any other person or persons approved by the board:
  - (e) any class of persons that comprise any of the persons listed in paragraphs (a) to (d).
- (2) Subclause (1) does not apply to any functions or powers specified in this Act as not being capable of delegation.
- (3) The board must not delegate the general power of delegation.
- (4) A board member must not delegate the function of attending the board's meetings.

**29 Powers of delegate**

- (1) A delegate to whom any function or power of the board is delegated may, unless the delegation provides otherwise, perform the function or exercise the power in the same manner, subject to the same restrictions, and with the same effect as if the delegate were the board.
- (2) A delegate who purports to perform a function or exercise a power under a delegation—

- (a) is, in the absence of proof to the contrary, presumed to do so in accordance with the terms of that delegation; and
- (b) must produce evidence of his or her authority to do so, if reasonably requested to do so.

**30 Effect of delegation on board**

No delegation in accordance with this Act—

- (a) affects or prevents the performance of any function or the exercise of any power by the board; or
- (b) affects the responsibility of the board for the actions of any delegate acting under the delegation; or
- (c) is affected by any change in the membership of the board or of any committee or class of persons or by any change in an office holder, executive officer, or employee.

**31 Revocation of delegations**

A delegation under clause 28 may be revoked at will by—

- (a) resolution of the board and written notice to the delegate; or
- (b) any other method provided for in the delegation.

*Accountability*

**32 Reporting and audit**

- (1) The board must prepare an annual report.
- (2) The report—
  - (a) must include the dates and times of the board's meetings in the financial year; and
  - (b) must include a summary of the board's activities in the financial year; and
  - (c) may include anything else that the board wants to put in it.
- (3) The board must publish the report and provide copies to the Auckland Council and the selection body.
- (4) The obligations of the board under the Public Finance Act 1989 are the responsibility of the members of the board.
- (5) The board is a public entity as defined in section 5 of the Public Audit Act 2001.

*Servicing*

**33 Board's secretariat**

- (1) The board must have a secretariat to support it in carrying out its purpose.

- (2) The staff of the secretariat must be employed by the Auckland Council on terms and conditions no less favourable than those of staff employed by the Council to do jobs equivalent to those done by the staff of the secretariat.
- (3) The board and the Auckland Council must agree on the person to be appointed as the secretariat's executive officer.
- (4) The board instructs and directs the executive officer and the other staff of the secretariat in their roles.

### *Disputes*

#### **34 Resolution of disputes**

- (1) This clause applies to the following disputes, if the dispute cannot be resolved within a reasonable time:
  - (a) a dispute between the board and the selection body:
  - (b) a dispute between members of the board:
  - (c) a dispute between members of the selection body.
- (2) Depending on the parties to the dispute, the board and the selection body or the board or the selection body must try in good faith to agree on a process for resolving the dispute.
- (3) Processes that the board and the selection body or the board or the selection body may consider include, but are not limited to,—
  - (a) further negotiations:
  - (b) mediation:
  - (c) determination of the dispute by an independent expert.
- (4) If the board and the selection body or the board or the selection body remain unable to resolve the dispute,—
  - (a) the Minister of Māori Affairs must—
    - (i) give the dispute proper consideration, having due regard to the board's purpose and the principles of natural justice; and
    - (ii) take steps to resolve the dispute; and
  - (b) the board and the selection body or the board or the selection body must co-operate with the Minister.

## Reprints notes

### 1 *General*

This is a reprint of the Local Government (Auckland Council) Act 2009 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Infrastructure Funding and Financing Act 2020 (2020 No 47): section 161

District Court Act 2016 (2016 No 49): section 261

Local Government (Auckland Council) Amendment Act 2016 (2016 No 19)

Local Government (Auckland Council) Amendment Act 2015 (2015 No 22)

Local Government Act 2002 Amendment Act 2014 (2014 No 55): section 77

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150

Land Transport Management Amendment Act 2013 (2013 No 35): section 72

Local Government Act 2002 Amendment Act 2012 (2012 No 93): section 43

Criminal Procedure Act 2011 (2011 No 81): section 413

Local Government (Auckland Council) Amendment Act 2011 (2011 No 78)

Land Transport (Road Safety and Other Matters) Amendment Act 2011 (2011 No 13): section 100(3)

Local Government (Auckland Council) Amendment Act 2010 (2010 No 36)

Local Government Act 2002 Amendment Act 2010 (2010 No 24): section 50