

AUCKLAND GOVERNANCE LEGISLATION COMMITTEE: LOCAL GOVERNMENT (AUCKLAND LAW REFORM) BILL – LABOUR MINORITY REPORT (DRAFT)

Introduction

This is the third and final Auckland Bill. It represents the culmination of the Government's proposals and has profound implications for the future of Auckland. It is therefore appropriate to not only address the specific measures contained in the Bill, but also the context from which these measures have emerged.

Background

This may be the third bill, but it is only the second occasion that members of this committee have had an opportunity to hear and consider the views of the public. The first Bill was rammed through the House under urgency. No one was consulted over the recommendations of the Royal Commission and no one was given a say over the resulting Government proposal. Legislation was tabled and passed. The second Bill did come before this select committee. However, it soon became clear that the Government was not prepared to listen to the concerns voiced by submitters. The recommendation for Maori seats was dropped by the Government after the Minister threatened to resign, preempting the deliberation and recommendations of this committee. Government responded to the widespread public concern about the over-centralisation of power in the Auckland Council by promising to empower local boards but this has not happened. The Government's course has resulted in a loss of confidence, and outright opposition to its super city model, registered by Aucklanders on talk-back radio, through letters to the editor and in a range of opinion polls. The goodwill and high expectations generated by the Royal Commission have dissipated as concern has mounted about the loss of democracy.

Missed Opportunity

This process of reform was intended to free our largest city from political gridlock. Unfortunately, the focus of the Government has been so narrow as to close out the opportunity for enduring and positive change. This process was about ensuring Auckland's future as an internationally competitive city and region. It was about ensuring the future of Aucklanders. Instead, the Government has delivered a structure that centralises power in the hands of a few.

Major concerns

Labour members of the committee agree on the need for change. The need to reform Auckland's governance structures is obvious; the many problems that face the region are universally discussed and widely agreed. Labour agrees that a unitary authority model is the most appropriate—one council, one mayor, one plan. However this should not come at the expense of community, transparency and accountability.

Some of the amendments in this report will make the Bill more workable. Labour members have worked to improve the Bill within the strict policy constraints imposed by

the Government. However, Labour still holds serious reservations concerning the policy direction adopted by the Government. That is why we have submitted a minority report.

Below outlines the major areas of concern for Labour members of the Auckland Governance Legislation Committee:

Council-Controlled Organisations

Aucklanders have been given no choice about which if any of the operations of the Auckland Council are to be run by arms-length commercial entities. This is unique in New Zealand local government. We remain unpersuaded that it should be done in Auckland, and believe these important decisions should be made by the first elected Auckland Council. Instead of putting in place caretaker arrangements that would allow continuity in the delivery of services, this Bill corporatises much of Auckland local government with no democratic mandate.

The Government says it is simply consolidating the 41 council or council-controlled organisations (CCOs) currently operating in the Auckland region into seven CCOs: three statutory organisations created in this Bill and four created by the Transition Agency. However the new CCOs will be larger than any existing CCO. For example, the operation of Watercare will be significantly extended to bulk and retail water services for the entire region. Taken together, 75 per cent of council activities and assets could be kept at arms length, leaving the Auckland Council and Mayor with few mechanisms to address the concerns of ratepayers. As the Minister himself admits in a Cabinet paper, “CCOs will play a greater role in service delivery for the Auckland Council than for any other council in the country”.

Labour believes that mega-CCOs being created by the Government will wield much of the power in the new Auckland. The accountability mechanisms being put in place will not be sufficient to alter this fact. What is more, the approach risks replacing the decision making silos of eight councils with one council and seven CCOs.

Auckland Transport

We have particular concerns regarding the Auckland Transport CCO. It will be larger than any existing transport body in Auckland (and larger than the one contemplated by the Royal Commission), with the powers to make bylaws, and an annual budget of \$1 billion soaking up 54% of rates. However, there is no evidence that running Auckland transport as a CCO would be any more efficient than running it in-house. No other council in New Zealand has this arrangement. These reservations were shared by four Government departments – the Treasury, Department of Internal Affairs, Ministry of Economic Development and Ministry for the Environment – who advised against setting up the transport agency as a CCO. They argued that it lacked transparency and accountability to the ratepayers. It is also clear that the accountability mechanisms provided for in the Bill are insufficient.

Powers of Local Boards

The Government rejected the Royal Commission's recommendation of six local councils of sufficient size, capability and power to be an effective counter-balance to the new Auckland Council. The Royal Commissioners argued that to retain a strong community voice and active role in place shaping the local councils needed significant decision making powers. The Government rejected this model and replaced the Royal Commission's local councils with 'local boards' that have more in common with the current community boards.

This policy choice by the Government has made the super city model unbalanced with too much power in the centre, and too little with the community. The first risk is that the 20-member Council will be distracted by too much that is local and will lose its strategic regional focus. The second is that elected councillors will be unable to adequately engage because of the sheer scale of demand, and this will increase the reliance on unelected officials, thereby further undermining democratic accountability.

The principle differences between community boards and the new local boards are that local boards exist by virtue of statute (rather than at the discretion of the territorial authority); they have a local board agreement; the ability to *propose* bylaws; and a binding dispute resolution process. These enhancements are of a procedural nature in so far as they set out a process whereby local boards can be given powers or can dispute the allocation. The Act does not provide for an explicit minimum set of substantive activities. The powers of local boards will be determined by the unelected Auckland Transition Agency in the first instance and then subsequently by agreement between the local board and Auckland Council, or determination by the Local Government Commission if agreement cannot be reached.

The result is an extremely weak form of subsidiarity. The local boards have no ability to make by-laws. They are likely to have little say over the operations to be corporatized as CCOs. The Local Government (Auckland Council) Act sets out the principle that the Auckland Council should delegate powers to the local boards, but at the same time enshrines broad exceptions that will give the Council discretion not to delegate if it deems decisions would better be made regionally.

We have seen from the community board experience that without clear mandates the effectiveness of these bodies is not assured. While their existence and coverage is guaranteed by statute, their powers are not. The risk that they will operate as "talkshops" is real. Local boards need real decision-making powers. They need certainty about those functions. Despite the overwhelming number of submissions calling for this, the Government has refused to act.

Privatisation Risk

The Auckland Regional Council warned that by transferring Auckland's assets to CCOs a future council could sell off strategic assets without consulting the public as is currently required under the Local Government Act 2002. This Bill also removes the requirement for a referendum before selling shares in the Ports of Auckland.

The Local Government Act 2002 protects strategic assets, such as shares in ports and airports, by placing special consultation requirements on the Council before they can be sold. This protection will be circumvented by placing assets into CCOs, which (after the moratorium expires on 1 July 2012) have no obligations to consult the public before sale.

Viewed alongside measures taken in other legislation, the objective to weaken the protection of assets is clear. Aucklanders do not want to see their community assets sold off. We believe the safeguards against the sale of assets should be retained.

Maori Advisory Board

This Bill introduces a Maori Advisory Board. While we have worked hard to ensure this Board is more effective, we have not altered our position. Labour believes there should be Māori seats on the new Auckland Council. Like Parliament itself and the Bay of Plenty Regional Council, these seats should be allocated on the basis of the number of Māori on the Māori roll.

Under Labour's plan there would be at least two Māori seats in Auckland. But it could be more. The number of Māori seats will depend on how many Māori there are on the Māori roll in the Auckland region.

Pacific Advisory Panel

Pacific advisory bodies exist in Manukau, Waitakere, Auckland Central and North Shore that Labour believes should be consulted by the new Auckland Council in order to form the proposed Pacific Advisory Panel. Labour supports the overwhelming evidence from submitters that Pacific communities should elect their own representatives on the panel based on current practices throughout the region. It should be the role of the Mayor and the Auckland Council to support, sponsor and provide resources for the panel to conduct its new roles and functions, rather than the Mayor appointing this panel.

Ethnic Advisory Panel

Labour supports the evidence from submitters that Ethnic communities have a strong contribution to make in the Auckland region and are one of the fastest growing population. Instead of the Mayor appointing members of the panel, Labour believes the ethnic communities ought to be widely consulted to elect their own representatives. Similarly to the Pacific panel, the Mayor and the Auckland Council should support, sponsor, and provide resources to allow the panel to conduct its role and functions.

Youth participation

We agree with submitters who called for the Bill to establish a Youth Council or similar mechanism to formalise youth participation in the Auckland Council. Encouraging young people to engage with local government is an important goal and we regret this proposal has not been taken up.

Campaign Spending Limit

This Bill increases the campaign spending limits from \$70,000 for a population over 250,000 to \$100,000 + 50c for each registered voter in constituencies exceeding one

million. For the mayoral race with 960,000 voters this will mean candidates will be able to spend \$580,000 in the last three months. This is a very significant increase that would benefit wealthy candidates and those with big business backing. We support a formula based on either an amalgamation of the spending limits of the current councils, or one based on the parliamentary limits. We are disappointed this report fails to address these concerns.

Lack of transparency on costs

Labour shares the concern expressed by submitters that the Government has not shared with ratepayers a cost-benefit analysis of the whole Auckland governance restructuring. Nor has it told Auckland ratepayers what the transition costs will be, and what effect the new structures will have on rates and water rates. This has reinforced the public perception that the changes are being done "to Aucklanders" rather than with or for them.

Conclusion

We agree Auckland's governance arrangements need reform. There is no question that changes must be made. Governance gridlock and indecision have for too long plagued the city. However the Government's approach will make Auckland's governance less transparent, less accountable, and less responsive to Aucklanders. Labour opposes this Bill because Aucklanders should be put at the centre of their local government. The Government's proposal too often withdraws from the local to the central; it shifts from community to corporate; and replaces the transparent with the opaque. This is the wrong approach. While some of the changes detailed in this report will no doubt make the Bill better, there are more fundamental concerns that remain unaddressed.