

CAN OTHERS LEARN FROM THE RESTRUCTURING OF LOCAL GOVERNMENT IN AUCKLAND?

A paper for the Forum of Federations Roundtable on Metropolitan Governance, Brisbane, August 2010.

Introduction

This paper complements the presentation to the Forum of Federations Roundtable on Metropolitan Governance which took place in Brisbane in August 2010. It provides a brief overview of the restructuring of local governance in metropolitan Auckland and highlights the distinctive elements of the new arrangements which may be of interest to academics and practitioners in the field of Metropolitan Governance.

Issues covered in the paper include:

- the Mayor's role
- Council controlled organisations (CCOs) (arms length delivery)
- the role of local boards.

The paper offers a prognosis that the potential for Auckland to step up to being an internationally significant metropolitan centre will critically depend on:

- public confidence in the new structures
- the political skills and understanding of the initial Mayor
- ensuring that the Council exercises its governance over CCOs in a way which clearly demonstrates they are democratically accountable, and that elected members understand their role
- how the new Council handles the relationship with local boards.

Why Restructure Again?

Local governance in the Auckland region underwent a major restructuring in 1989 when 30 territorial local authorities (boroughs, cities) a number of ad hoc entities and one regional authority were replaced by four city councils, three district councils and one regional council. Further restructuring took place in 1992 when the powers and functions of the regional council were diminished (its major assets and liabilities, primarily bulk water and wastewater and the ports of Auckland, were transferred to a special purpose body created for the purpose, and legislation effectively excluded the regional council from a role in economic and community development).

Further restructuring was triggered by concern at the relatively poor performance of the Auckland regional economy relative to its peers, especially in Australia, and the widespread perception that existing local government entities were unable to take and implement major regionwide decisions, especially in infrastructure.

In 2007 the then Labour led government established the Royal Commission on Auckland Governance with a brief to report on the local government arrangements required in the Auckland region over the foreseeable future "in order to maximise, in a cost-effective manner: (a) the current and future well-being of the region and its communities; and (b) the region's contribution to wider national objectives and outcomes."

The New Arrangements

The Royal Commission report recommended a single unitary council¹ for the Auckland region with the sole power to employ staff, levy rates and deliver services. The existing territorial authorities were to remain in place as a form of subsidiary entity exercising such decision-making powers as the Auckland Council delegated to them (with an expectation generally they would exercise decision-making powers on matters which were local rather than regional).

The government response was to support the establishment of a single unitary council with the sole power to employ staff, levy rates and deliver services, but to depart from a number of the Royal Commission's other recommendations.

The new arrangements for Auckland are:

- A single unitary council made up of a governing body (a Mayor elected at large plus 20 councillors elected from 7 two member and 6 one member wards).
- 21 local boards comprising between five and nine elected members and with each board fully within the boundary of a single ward.
- All decision-making vested in the parent body except to the extent that it delegates decisions to local boards. There is an expectation that generally decisions on matters which are local rather than regional in their impact will be delegated.
- All staff employed by the parent body (technically, under New Zealand legislation, a council has only one direct employee, its chief executive officer, who in turn employs all other staff) including the staff whose role is to advise local boards.
- Seven council controlled organisations² (CCOs) will be responsible for the great majority of service delivery - transport planning, regional and local roads and public transport (Transport Auckland), bulk and retail water and wastewater (Watercare Ltd), regional facilities (museums, art galleries stadia etc), property, investment (including 22% of Auckland International airport Ltd and 100% of Ports of Auckland Ltd), economic development, events and tourism and the Auckland waterfront development agency.

One consequence of the new arrangements is that representation ratios (that is the ratio of residents to elected members) across Auckland will increase significantly.

Representation ratios range between approximately 8000:1 and 21,000:1 for elected

¹ New Zealand local government legislation recognises two principal types of local authority; regional councils whose primary function is environmental planning and monitoring and territorial authorities whose primary role is service delivery including district planning. Unitary councils within their districts exercise the functions of both regional councils and territorial authorities.

² CCOs are companies, trusts or other forms of separate entity which are controlled by one or more councils - control being the right to appoint 50% or more of the board or exercise 50% or more of the vote at any general meeting of members.

members on the existing territorial local authorities. For the new Auckland Council the representation ratio will be approximately 65,000:1. Even for the local boards, which are intended to preserve and promote local democracy, the representation ratio will average 10,000:1. There is a significant risk that the new Auckland Council will be seen as more remote and less democratically accountable/accessible than the current councils.

The Mayor

The Royal Commission did not favour the idea of an executive mayor, taking the view that the mayor should be required to gain council support for any proposals he or she wished to advance. The government did not formally reject that view but the totality of the powers which it has legislated for the Mayor create the prospect of strong mayoral led cabinet government. The Mayor's role and powers include to:

- Appoint the deputy mayor and the chairs of council committees and crucially to "establish committees", a power which will enable the mayor to determine how many committees the council should have in what subject areas and with what terms of reference.
- Lead the development of Council plans, policies and budgets for consideration by the governing body.
- Articulate and promote a vision for Auckland and provide leadership for the purpose of achieving objectives that will contribute to that vision.
- Establish processes and mechanisms for the Auckland Council to engage with the people of Auckland.

In another new departure for New Zealand, the Mayor also has the power to establish a separate mayoral office within a budget of not less than 0.2% of the council's total budgeted operating expenditure for the year.

The mix of powers, and dedicated resourcing, provide the very real opportunity for the emergence of a strong mayor but that is not guaranteed. It will depend crucially on the vision, understanding and political skills of whoever first holds the office.

What's Distinctive?

Although the Auckland Council will have a number of unusual features, the two which stand out as distinctive when comparing Auckland's structure with that of other metropolitan centres within Westminster tradition countries are the decision that virtually all service delivery should take place through a series of council controlled organisations (CCOs), and the role and powers of local boards - potentially significant local decision-makers but with no resources of their own to command.

Each of these arrangements raises its own distinctive set of issues which will not only need to be well-managed if the Auckland Council is to meet expectations, but should also be of very real interest for other metropolitan governments.

The Issues: CCOs

The widespread initial reaction to the government announcement that the bulk of service delivery was to take place through seven CCOs, with initial directors appointed by the Minister of Local Government and, in the case of Auckland Transport, by that minister in

conjunction with the Minister of Transport was that this was a significant loss of democratic control. It was widely characterised as the Minister placing most of Auckland's significant assets under the control of his 'mates', remote from any influence by the Council, and with the implication this was a first step towards privatisation.

In part, this reflected the nature of the transition process which the government had put in place. All existing councils are to go out of existence at midnight on 31 October. The new council and the CCOs all come into existence on 1 November. The CCOs, as separate legal entities, need to have their directors and/or trustees in place the moment they come into existence. From a purely practical perspective it was therefore impossible for the new Auckland Council to appoint the initial directors - it would simply not be in existence soon enough.

Public concerns ran deeper than this. For example, Auckland Transport is to have full control over all roading and transport matters including local roads and the associated decisions on things like street furniture, pedestrian crossings, traffic calming, street trees and much more besides. The New Zealand experience is that this set of issues is one of the most sensitive in local government and one on which local communities are most likely to demand the right not only to have a say but to influence the decisions taken.

Government has recognised the need to mollify public concerns over CCOs. First it has made it very clear that not only does the Auckland Council have the right to appoint all subsequent CCO directors but it also has the right, at any time, to remove any or all of the initial CCO directors (in this case, it was simply making clear what was already the right of the Auckland Council, but a right which was clearly not understood either by the public or by at least some existing local government politicians). Next, it legislated to ensure that Auckland Transport had the power to delegate decision-making and this power encompassed local boards. It combined this with strengthening the Council's control over Auckland Transport to make it very clear that the Council's views on delegation and related matters should prevail.

These concerns, and a number of others which have been raised in public debate, all go to the question of governance - who has the right to set the framework within which the boards of CCOs function, and how are those boards held accountable? Clearly, a significant majority of people in Auckland (or least of those who expressed an opinion) strongly believed that the Council's influence would be minimal.

In practice almost the opposite is the case. New Zealand has one of the most sophisticated and well-developed regimes for the governance of council controlled arms-length entities of any local government jurisdiction. It was not so much the product of a farsighted concern by central government to protect local democracy whilst at the same time giving councils power to use a range of different legal entities, as the serendipitous consequence of central government reforms which took place in the 1980s. The government of the time embarked on a major programme of corporatising state-owned trading activities - typically as companies known as state-owned enterprises and with their own separate legislation to supplement Companies Act requirements. Naturally, ministers were concerned to ensure that they could retain ultimate control, including control over significant business and other decisions. In order to do this they put in place the following mechanisms:

- A statutory requirement for the preparation, annually, of what is known as a statement of intent which amongst other things spells out the nature of the business or businesses in which the entity will be engaged, its financial and non-financial performance targets (including financial ratios), its reporting regime, the

conditions under which it may establish subsidiaries or acquire interests in other entities and such other matters as may be agreed between the shareholding ministers and the board. The SOE Act requires the board to manage the business in accordance with the statement of intent.

- An annual cycle of reporting and accountability commencing with what is known as the ministers' letter of expectations.
- A specialist monitoring and oversight agency (now) within the Treasury and known as the Crown Ownership Monitoring Unit (COMU).

Reform of local government in the late 1980s was seen as part of the government's wider reform programme. Accordingly it was natural both that government should encourage (and in some cases require) councils to use commercial structures where appropriate, it was also natural that the statutory elements of the SOE provisions were broadly followed in the legislation governing what are now known as council controlled organisations including the requirement for a statement of intent along lines similar to those for an SOE but including also a provision that a council may, at any time, resolve to amend the statement of intent and the Board of Directors must adopt any such change.

The result is a regime which gives elected members effective control over their council's CCOs PROVIDED THAT elected members have a sufficient understanding of governance, and of the need for that role to be supported by appropriate expert advice, so that they exercise their governance role appropriately. The proviso is significant. There is strong anecdotal evidence that many councillors do not have a sufficient understanding of governance generally, or of the specifics of the CCO regime, to exercise influence which the legislation gives them.

From a local democratic perspective, especially with large undertakings, the CCO regime almost certainly gives capable councillors a greater degree of influence than they would have if the same undertaking remained as a business unit of the council. In part this is a function of the significant scope which New Zealand legislation gives to the CEO of a council to manage its undertakings on behalf of the Council, and of the relative lack of specific requirements for transparent reporting business unit by business unit.

The Issues: Local Boards

Local boards are, in effect, a second tier of local government for Auckland. Legally they are unincorporated elements within the structure of the Auckland Council itself. Legislation contemplates that the staff and other advisory services they require will be provided by the Auckland Council, with staff accountable to the chief executive of the Auckland Council.

Local boards are intended to take decisions on local matters of a non-regulatory nature³ (legislation also allows the Auckland Council to delegate regulatory matters to local boards - common sense would suggest that, for example, local planning decisions should be delegated). The principles governing how non-regulatory decisions should be allocated as between the Auckland Council and local boards are set out in full because of their significance. They are:

³ it is also intended they have the power to recommend the making, amendment or revocation of local bylaws - but only the Auckland Council has the legal authority to take the actual decisions.

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 [that is the mayor and 20 councillors] 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.

Delegation of decision-making on local matters is to be accompanied by budgetary provision out of which to fund the activities required to implement those decisions. Again, the statutory provision is quoted in full because of its significance:

- (1) To provide predictability and certainty about levels of funding for local boards, the Auckland Council must adopt a local boards funding policy.
- (2) The local boards funding policy must set—
 - (a) the formula by which the total funds allocated by the Council for meeting the cost of funding local activities are to be allocated to each local board; and
 - (b) the formula by which the total funds allocated by the Council for meeting the cost of funding the administrative support to local boards are to be allocated to each local board.
- (3) The local boards funding policy must also identify any funding (except funding dedicated to particular purposes) that may be available to local boards for local activities and the criteria or process by which it may be allocated to them.
- (4) The formula referred to in subsection (2)(a) must allocate funds between the local boards in a way that provides an equitable capacity for the local boards to enhance the well-being of the communities in each of their local board areas, having regard to the following factors:
 - (a) the level of dependence on local government services and facilities in each local board area (as informed by the socio-economic, population, age profile, and other demographic characteristics of each local board area); and
 - (b) the costs of achieving and maintaining the identified levels of service provision for local activities in each local board area; and
 - (c) the rates revenue and any other revenue derived from each local board area in relation to local activities; and
 - (d) any other factor identified by the Auckland Council as significantly affecting the nature and level of services needed in each local board area (for example, the geographic isolation of a particular local board area).
- (5) The formula referred to in subsection (2)(b) must allocate funds between the local boards in a way that provides equitable resources and support to each local board, having regard to the following factors:
 - (a) the number of elected members on each local board; and
 - (b) the size of each local board area; and
 - (c) any other factor identified by the Auckland Council as significantly affecting the operational costs of each local board; and
 - (d) the funding amount allocated to each local board under subsection (4).

Among the tasks of the body managing the transition to the new Auckland Council, the Auckland Transition Agency (ATA), is determining the initial allocation of non-regulatory decision-making as between the Auckland Council and local boards, and establishing the initial local boards funding policy - again this is being done by a body which has no democratic mandate simply because those policies need to be in place on day one of the new council.

Campaigning is currently underway for election to the Auckland Council and to local boards. The ATA has not yet published any decisions on either delegation of non-regulatory decision-making or on the initial local boards funding policy. As a consequence, there is still a significant degree of confusion about exactly how influential the local boards are likely to be in practice, or the extent to which the funding policy will adequately support implementation of the decisions they will be empowered to make.

There is clearly significant scope for disagreement between one or more local boards and the Auckland Council on the delegation of non-regulatory decision-making, decisions on local bylaws, and on local boards funding - especially the principles by which the provision for local board funding is divided among different local boards (as will be clear from the legislation quoted above, there is clearly a high degree of scope for different views on what the funding arrangements should deliver). The government has recognised the potential for disagreement and legislated so that local boards can refer any dispute over the delegation of decision-making, or local bylaws, to the Local Government Commission for determination and also set out the process which the Commission must follow in dealing with any such reference. There is no equivalent provision for resolving differences over local boards funding - which presumably will therefore default to the political arena.

New Zealand does not have a tradition of strong party political control within local government either generally or within individual councils. One risk, which will clearly need to be well managed, is that the parochialism which has characterised Auckland's politics at the regional level for many years will simply be translated to the Auckland Council table⁴. The nature of the provisions for local boards potentially exacerbates this risk, especially given the virtual certainty that the amount the Auckland Council allocates for local boards funding will be seen as falling short of requirements and may be seen by some local boards as unfairly favouring others. Ward councillors may face strong pressure from the local board or boards within their ward to 'bring home the bacon'.

Associated with the potential risks for the structure to result in a number of requests to the Local Government Commission for determinations on decision-making matters (which could quickly overload a relatively under resourced Commission), and promote parochialism around the Council table is the position of staff whose role is to advise local boards. Those staff will be employed by and be accountable to the chief executive of the Auckland Council. Local boards will wish to receive, and should receive, 'free and frank advice' most especially on matters where there may be a significant difference of opinion between one or more boards and the Auckland Council. Staff could be placed in a virtually untenable situation if they are required to give 'free and frank advice' to a local board which is in conflict with the Auckland Council, whilst they are employed by, accountable to, and dependent on the Auckland Council chief executive in their employment.

⁴ The experience with restructurings such as Toronto and Ottawa emphasises the risk that ward based councils with no built in discipline to control the tendency of ward members' advocacy for their wards to dominate decision making can become dysfunctional.

One possible option which has been raised but not yet seriously addressed is the establishment of an Auckland Local Boards Association as an Auckland equivalent of London Councils, the body which represents the collective interests of London's 32 boroughs and the City of London in their dealings with the Mayor of London, the Greater London Authority and Whitehall. Such an entity would be able to play a role in mitigating differences amongst local boards themselves on matters such as funding policy, and between local boards and the Auckland Council. It should also be able to act as the employer of key local board advisory staff thus resolving that potential conflict. Equally importantly it should also be able to reduce, significantly, the transaction costs which the Auckland Council and especially the Mayor will face if required to deal separately with 21 local boards - the statutory responsibilities on the Mayor in particular in relation to local boards could result in much of his time being diverted from the regional, national and international matters which should be his primary role, to dealing with 21 sets of relative minutiae.

Prognosis

On the optimistic side, the changes offer the potential for Auckland to step up to being an internationally significant metropolitan centre with a much increased contribution to New Zealand's economic, cultural and social well-being.

Whether it realises that potential will be critically dependent on public confidence in the new structures (and there are obvious difficulties, for example, in terms of representation ratios and current perceptions of the democratic accountability of CCOs). It will also depend on the political skills and understanding of the initial Mayor. If he (and it will be a he)⁵ understands the potential of the mayoral office and has the skills to create genuine mayoral led cabinet governance, then the potential risk of the Auckland Council becoming bogged down in parochial politics should be manageable.

Building public confidence in the new Auckland Council will depend not only on the skills of the Mayor, but on ensuring that the Council exercises its governance over CCOs in a way which clearly demonstrates they are democratically accountable, and that elected members understand their role. If the Council is able to do this, then it should set an extremely valuable precedent for other large local authorities.

Finally, a major challenge for the new Auckland Council, and one which will be crucial to establishing its democratic legitimacy, will be how it handles the relationship with local boards. In an ideal world the Auckland Council will understand that its primary role and influence is intended to be regional, national and international, and that local matters are best left to local boards - not just for reasons of local democracy, but to remove the 'clutter' from the Council table. Achieving this will require the Auckland Council amongst other things to find effective ways of enabling local boards to work as a collective on matters which are of collective concern, and to manage the potentially enormous transaction costs of dealing with 21 local boards.

⁵ Update as at October 2010: Len Brown was elected Mayor in the October local body elections.