

Local Government (Auckland Council) Amendment Bill

Government Bill

As reported from the committee of the whole House

This bill was formerly part of the Local Government (Auckland Law Reform) Bill as reported from the Auckland Governance Legislation Committee. The committee of the whole House has further amended the bill and divided it into the following bills:

- Local Government (Tamaki Makaurau Reorganisation) Amendment Bill comprising clauses 1 and 2, Part 1, and Schedule 1
 - This bill comprising Part 2 and Schedule 2
 - Local Government (Auckland Transitional Provisions) Bill comprising Parts 3AA, 3, 4, and 5, and Schedule 3
-

Local Government (Auckland Council)
Amendment Bill

Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

~~text deleted~~

Hon Rodney Hide

Local Government (Auckland Council) Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Local Government (Auckland Council) Amendment Act **2010**.

2 Commencement

- (1) **Sections 32 to 42, 45, and 46** come into force on 1 November 2010. 5
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

.

27 Principal Act amended

This Part amends the Local Government (Auckland Council) Act 2009. 10

27A Purpose of this Part

- (1) The purpose of this **Part** is to resolve further matters relating to the reorganisation of local government in Auckland.
- (2) To this end, this **Part** amends the principal Act by adding provisions to— 15
 - (a) provide further details of the relationship between the Council’s governing body and its local boards; and

- (b) establish arrangements for the management of transport and water supply and wastewater services for Auckland; and
- (c) provide for the development of a spatial plan for Auckland; and 5
- (d) establish a board to promote issues of significance for mana whenua groups and mataawaka of Tamaki Makaurau; and
- (e) clarify arrangements relating to council-controlled organisations, development contributions, representation reviews, and other miscellaneous matters. 10

28 Commencement

Section 2(1) is amended by omitting “the close of”.

29 New section 3 substituted

Section 3 is repealed and the following section substituted: 15

“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 20
- “(ba) to provide the Local Government Commission with the necessary functions and powers to determine certain matters in relation to the Council; and 25
- “(c) to establish arrangements for the management of transport and water supply and wastewater services for Auckland; and 30
- “(ca) to require the Auckland Council to adopt a spatial plan for Auckland; and
- “(d) to establish arrangements to promote issues of significance for mana whenua groups and mataawaka for Tamaki Makaurau; and 35
- “(f) to set out requirements relating to substantive council-controlled organisations.”

30 Interpretation

Section 4(1) is amended by inserting the following definitions in their appropriate alphabetical order:

“**Auckland Transport** means the entity established ~~under~~ by
section 38 5

“**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 50**); 10
and

“(ii) a council-controlled organisation of the Auckland Council that provides water supply or wastewater services, or both, in Auckland

“**local board plan** means the plan referred to in section 20 that 15
each local board is required to adopt

“**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: 20

“(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 25
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 30

“(b) are not in a mana whenua group

“**selection body** means the body established by **clause 2 of Schedule 3**

“**substantive council-controlled organisation**—

“(a) means a council-controlled organisation that is either 35
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 5
- ~~“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 the water supply network or wastewater network, as the case may be, within Auckland; or 10~~
- ~~“(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 15~~
- ~~“water supply and wastewater services—~~
- ~~“(a) includes both bulk and retail supply and services; but 20~~
- ~~“(b) does not include—~~
- ~~“(i) water supply or wastewater schemes that are independent of a water supply network or wastewater network, as the case may be, within Auckland; or 25~~
- ~~“(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— 30~~
- and water supply or wastewater services, water supply services, and wastewater services have corresponding meanings.”

31 Relationship between this Act and Local Government Act 2002 and Local Electoral Act 2001 35

- (1) The heading to section 5 is amended by omitting “**and Local Electoral Act 2001**” and substituting “, **Local Government**

Act 1974, Local Electoral Act 2001, and Land Transport Management Act 2003”.

- (2) Section 5 is amended by omitting “the Local Electoral Act 2001,” and substituting “the Local Government Act 1974, the Local Electoral Act 2001, the Land Transport Management Act 2003,”. 5

32 Auckland Council established

Section 6(3) and (4) are repealed.

33 Decision-making of Council shared between governing body and local boards 10

Section 7 is amended by adding the following subsection as subsection (2):

- “(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.” 15

34 Mayor of Auckland

(1A) Section 9(2)(b) is amended by adding “, including those too young to vote”.

- (1) Section 9(7)(a) is amended by omitting “(3)(b)) of this section” and substituting “(3)(b) of this section”. 20

35 Membership of local boards

(1AA) Section 11(1) is amended by omitting “The number” and substituting “The initial number”.

(1AB) Section 11 is amended by inserting the following subsection after subsection (1): 25

“(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 and **section 83** of this Act: 30

“(b) as part of a reorganisation proposal under the Local Government Act 2002 and **section 13A** of this Act.”

- (1) Section 11(2) is repealed and the following subsection substituted:
- “(2) Members of a local board—
- “(a) must be elected in accordance with the Local Electoral Act 2001; and 5
- “(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.”
- ~~(1A) Section 11(4) is amended by omitting “applies” and substituting “and any regulations made under that Act apply”.~~ 10
- (1A) Section 11(4) is amended by omitting “subsections (2) and (3), the Local Electoral Act 2001 applies” and substituting “(2)(a) and (3), the Local Electoral Act 2001 and any regulations made under that Act apply”.
- (2) Section 11 is amended by adding the following subsections: 15
- “(5) Without limiting subsection (4)(a), a person is a ratepayer elector for a local board area if the address for which the person is registered as a parliamentary elector is outside the local board area and—
- “(a) the person is identified in the Council’s valuation roll as the sole ratepayer in respect of a rating unit within the local board area; or 20
- “(b) the person is nominated to be enrolled as a ratepayer elector in respect of a rating unit within the local board area, owned by 1 or more ratepayers, none of whom is qualified as a residential elector within the local board area. 25
- “(6) To avoid doubt,—
- “(a) sections 19F and 19H of the Local Electoral Act 2001 do not apply to a local board: 30
- “(b) sections 117 and 117A of the Local Electoral Act 2001 apply to a local board.”
- 36 New section 11A inserted**
- The following section is inserted after section 11:
- “11A Indemnification and liability of local board members 35**
- “(1) Sections 43, 46, and 47 of the Local Government Act 2002 apply to a member of a local board, with any necessary modi-

fications, 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.” 5

36A Functions, duties, and powers of local boards

(1) Section 13(2)(d) is amended by adding “or Auckland Transport under **section 45B**”.

(2) Section 13(2)(f) is amended by adding “or Auckland Transport under **section 45B**”. 10

37 New section 13A inserted

The following section is inserted after section 13:

“13A Local boards may be subject of reorganisation proposal

“(1) A reorganisation proposal may deal with 1 or more of the following matters: 15

“(a) the establishment of a local board area:

“(b) the abolition of a local board area:

“(c) the alteration of the boundaries of a local board area:

“(d) the union of 2 or more local board areas.

“(2) Sections 24 to 26 and Schedule 3 of the Local Government Act 2002 apply to a proposal under **subsection (1)** as if the local board area or areas were the district of a local authority or the districts of local authorities, as the case may be. 20

“(3) To avoid doubt, the Auckland Council remains the affected local authority for the purposes of any proposal.” 25

38 Decision-making responsibilities of governing body

Section 15(1) is amended by inserting the following paragraphs after paragraph (c):

“(ca) the decision making of the Auckland Council in relation to the governance of its council-controlled organisations; and 30

“(cb) the decision making of the Auckland Council in relation to transport objectives for Auckland and transport funding for Auckland; and”.

39 Decision-making responsibilities of local boards

Section 16 is amended by adding the following subsection:

- “(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.” 5

39A New heading inserted before section 18

The following heading is inserted before section 18: “*Identification of local activities and allocation of funding*”. 10

39B Heading before section 19 repealed

The heading before section 19 is repealed.

39C New section 19A inserted

The following section is inserted after section 19:

“19A Estimated local board funding allocation ~~to~~ must be included in LTCCP and annual plan 15

- “(1) The LTCCP and each annual plan of the Auckland Council must include the estimated local board funding allocation for each local board for each year to which the plans relate.

“(1A) The Auckland Council must include its first estimated local board funding allocation under this section in the plans no later than the date that the LTCCP for the period commencing 1 July 2012 is adopted. 20

- “(2) In this section, **local board funding allocation** means the total funds in respect of which a local board has decision-making discretion, allocated in accordance with the Council’s local boards funding policy adopted under section 19.” 25

40 Local board plans

(1AA) Section 20(1)(a) is amended by omitting “30 April” and substituting “31 October”. 30

- (1) Section 20(3) is repealed and the following subsection substituted:

“(3) A ~~local plan~~ 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 5
- “(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 10
- “(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.”
- (1B) Section 20(4)(b)(ii) is amended by omitting “standard” and substituting “default”. 15
- ~~(1C) Section 20(4)(b)(iii) is amended by omitting “budget” and substituting “funding allocation”.~~
- (1C) Section 20(4)(b)(iii) is repealed and the following subparagraph substituted: 20
- “(iii) the estimated funding allocation for the local board for the following year included in the LTCCP under **section 19A**; and”.
- (1D) The definition of **standard levels of service** in section 20(5) is repealed and the following definition substituted: 25
- “**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 LTCCP (in accordance with clause 2(2)(a) of Schedule 10 of the Local Government Act 2002)”. 30
- (2) Section 20 is amended by adding the following subsection:
- “(6) In subsection (3)(d)(ii), **local revenue source** includes— 35
- “(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.”

40A New section 21 substituted

Section 21 is repealed and the following section substituted:

“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. 5
- “(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— 10
- “(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 section 31:
 - “(c) the implementation or enforcement of bylaws made by the Council as a result of a proposal from the local board. 15
- “(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: 20
- “(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 25
 - “(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. 30
- “(5) For the purposes of **subsection (2)(a)**, a local board agreement must state, in relation to the local activities to be provided in the local board area in the year to which the agreement relates,— 35
- “(a) the intended levels of service provision for each activity, including the performance targets and other meas-

- ures by which the actual levels of service provision may meaningfully be assessed; and
- “(b) the estimated expenses of achieving and maintaining the intended levels of service provision, including the estimated expenses associated with maintaining the service capacity and the integrity of assets; and 5
- “(c) how any expenses in excess of the local board’s estimated funding allocation under **section 19A** are to be met (including the estimated revenue levels, the other sources of funds, and the rationale for their selection in terms of section 101(3) of the Local Government Act 2002).” 10

40B Local board agreements to be included in LTCCP and annual plan

(1AA) The heading to section 22 is amended by omitting “to” and substituting “must”. 15

- (1) Section 22(4) is repealed.

40C Local board may propose bylaws

Section 24(2)(a) is repealed and the following paragraphs substituted: 20

- “(a) the enactment under which the proposed bylaw is to be made authorises the making of the bylaw; and
- “(ab) the proposed bylaw complies with the applicable statutory requirements of that enactment and any other relevant enactment; and” 25

40D Local board must consult on proposed bylaw

- (1) Section 25(3) is amended by omitting “make the bylaw” and substituting “adopt the bylaw by resolution”.
- (2) Section 25(4)(a) is amended by omitting “make the bylaw” and substituting “adopt the bylaw by resolution”. 30
- (3) Section 25(5) is repealed and the following subsection substituted:
- “(5) Where the Auckland Council adopts a bylaw under ~~subsection (3) or (4)(a)~~ under **subsection (3) or (4)(a)** a bylaw that is made under the Local Government Act 2002, the require- 35

ments of sections 86, 155, and 156 of that Act are deemed to be satisfied in respect of that bylaw.”

40E Heading above section 29

The heading above section 29 is amended by adding “*and their members*”.

5

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

(1) The heading to section 29 is amended by adding “**and their members**”.

(2) Section 29 is amended by omitting “local board” in the first place where it appears and substituting “local board and its members”.

10

(3) Section 29 is amended by adding “and its members were members of the local authority”.

(4) Section 29 is amended by adding the following subsection as subsection (2):

15

“(2) To avoid doubt, section 235 of the Local Government Act 2002 (which relates to contraventions of Schedule 7 of that Act) applies to members of local boards as if they were members of a local authority.”

20

42 New sections 32A and 32B inserted

The following sections are inserted after section 32:

“32A Powers of Minister in relation to local board

The Minister may exercise the powers in sections 254 to 257 of the Local Government 2002 in relation to a local board and, for that purpose, those sections and Part 1 of Schedule 15 of that Act apply, with any necessary modifications, as if a local board were a local authority.

25

“32B Application of certain Acts to local boards

“(1) The Ombudsmen Act 1975 applies to a local board as if the board were listed in Part 3 of Schedule 1 of that Act.

30

“(2) The Local Government Official Information and Meetings Act 1987 applies to a local board as if the board were listed in Part 1 of Schedule 1 of that Act.

“(3) The Local Authorities (Members’ Interests) Act 1968 applies to a local board as if the board were listed in Part 1 of Schedule 1 of that Act.”

43 Local Government Commission to determine boundaries of Auckland 5

(1) Section 33(2)(c) is amended by omitting “the Schedule” and substituting “Schedule 1”.

(2) Section 33(7) is amended by omitting “, section 19, and the Schedule” and substituting “and Schedule 1”.

44A New section 35A 10

The following section is inserted after section 35:

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

“(1) In this section,—

“**determination** means the determination made by the Local Government Commission under section 34 15

“**order** means the Order in Council that made the Local Government (Auckland Wards and Local Boards) Determination 2010 (*Gazette*, 2010 p 856) and that gives effect to the determination. 20

“(2) Clauses 4(k), 5(k), 6(r), and 7(18) of the order are amended by omitting ‘Te Irirangi’ and substituting in each case ‘Howick’.

“(3) The amendments made to the order by **subsection (2)** have effect as if they had been included in the determination.

“(4) To avoid doubt, this section applies subject to **sections 13A and 83(3)**.” 25

45 New Parts 4 to 8 substituted

Part 4 is repealed and the following Parts are substituted:

“Part 4

“Transport management for Auckland 30

“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 4 of the Public Transport Management Act 2008) within Auckland; and 5
- “(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— 10
- “(i) State highways:
- “(ii) railways under the control of New Zealand Railways Corporation:
- “(iii) off-street parking facilities under the control of the Council: 15
- “(iv) airfields
- ~~“board of directors or board means the board of directors of Auckland Transport~~
- “**director** includes the chairperson and the deputy chairperson of the board of directors of Auckland Transport 20
- “**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. 25
- “(2) In this Part, unless the context requires another meaning, **land transport, regional land transport programme, and State highway** have the same meanings as in section 5(1) of the Land Transport Management Act 2003. 30
- “Auckland Transport*
- “**38 Establishment of Auckland Transport**
- “(1) This section establishes Auckland Transport.
- “(2) Auckland Transport is—
- “(a) a body corporate with perpetual succession; and 35
- “(b) a council-controlled organisation of the Auckland Council.

“(4) For the purposes of the Local Government Act 2002, Auckland Council must be treated as if it were the sole shareholder of Auckland Transport.

“**38A Purpose of Auckland Transport**

The purpose of Auckland Transport is to contribute to an effective and efficient land transport system to support Auckland’s social, economic, environmental, and cultural well-being. 5

“**38B Operating principles**

~~In meeting its principal objective under section 59 of the Local Government Act 2002 and performing its functions and exercising its powers~~ 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— 10 15

“(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— 20

“(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 25

“(e) ensure that it acts in a transparent manner in making decisions under this Act and the Land Transport Management Act 2003.

“**38C Status and powers of Auckland Transport**

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“(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. 35

“(2) **Subsection (1)** is subject to the rest of this Act.

“**38D 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)**. 5

“(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 10

“(d) any rules made by the Auckland Council under **section 42C** 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): 15

“(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. 20

“Governing body of Auckland Transport

“**38E Governing body of Auckland Transport**

“(1) The governing body of Auckland Transport is the board of directors. 25

“(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 30

“(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 35

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
- “(5) The powers and functions of Auckland Transport are not affected by any vacancy in the membership of the board of directors. 10

“**38F 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. 15
- “(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)— 20
- “(a) the nature of Auckland Transport; and
 - “(b) the nature of the action; and 25
 - “(c) the position of the director and the nature of the responsibilities undertaken by him or her.

“Functions, powers, etc, of Auckland Transport

“**41 Functions of Auckland Transport**

- The functions of Auckland Transport are to— 30
- “(a) prepare the regional land transport programme 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— 35

- “(i) performing the statutory functions and exercising the statutory powers set out in **section 42** 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 42A**; and 5
- “(d) carry out research and provide education and training in relation to land transport in Auckland; and
- “(e) undertake any other transport functions that the Auckland Council may lawfully direct it to ~~exercise~~ perform or delegate to it (for example, management of off-street parking facilities owned by the Council); and 10
- “(ea) without limiting **paragraph (e)**, undertake any transport functions ~~conferred expressly~~ expressly conferred on the Auckland Council by any enactment (for example, under a local Act) that the ~~Auckland Council may lawfully direct Auckland Transport~~ Council may lawfully direct it to perform or delegate to it; and 15
- “(eb) 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 20
- “(f) 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. 25
- “42 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: 30
- “(a) the functions and powers of a local authority and an enforcement authority under the Transport Act 1962 for the purposes of prosecuting stationary vehicle offences:
- “(b) the powers of a local authority under section 72 of the Transport Act 1962: 35
- “(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 sections 591 ~~(except the power under subsection (1)(a))~~, ~~591A, and 684 of the Local Government Act 1974~~, 591A, and 684 of the Local Government Act 1974 (except the power conferred by section 591(1)(a)) of that Act: 5
- “(e) the functions and powers of a local authority, a territorial authority, ~~or a controlling~~ and a controlling authority under Part 4 of the Government Rounding Powers Act 1989: 10
- “(h) 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 the use of special vehicle lanes within Auckland: 15
- “(ha) 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: 20
- “(i) 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 ~~those~~ the power conferred by section 147) of that Act:
- “(j) 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 and concession agreements: 25
- “(k) the functions and powers of a regional council under the Public Transport Management Act 2008 in relation to public transport planning and regulation within Auckland. 30
- “(2) For the purposes of **subsection (1)**, the enactments referred to in that subsection apply with ~~at~~ any necessary modifications.
- “(3) For the purposes of **subsection (1)(h)**, 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 Transport Act 1962 in relation to a special vehicle lane, and, for that purpose,— 35

- “(a) section 177 of the Local Government Act 2002 applies to an appointment with ~~at~~ any necessary modifications; and
- “(b) each person must be treated as an enforcement officer within the meaning of section 5(1) of that Act. 5
- “(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.
- “(6) **Subsection (1)(c)** is subject to **section 42B**.
- “**42A Auckland Transport is requiring authority** 10
- “(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 15
- “(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. 20
- “(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 25
- “(b) subject to **subsection (3) and section 42B(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— 30
- “(a) a Minister of the Crown; or
- “(b) the New Zealand Transport Agency; or 35
- “(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 ~~it receives~~ they receive under **subsection (3)**.
- “(5) In **subsection (2)**, **activity** has the ~~meaning given same~~ meaning as in section 5(1) of the Land Transport Management Act 2003. 5
- “(6) This section is subject to **section 42B**.
- “**42B Limitations on Auckland Transport acting under section 42(1)(c) or 42A** 10
- “(1) **Subsection (2)** applies if Auckland Transport, acting under **section 42(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. 15
- “(3) **Subsection (4)** applies if—
- “(a) Auckland Transport, acting under **section 42A** 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 20
- “(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. 25
- “(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. 30
- “(5) **Subsection (4)** prevails over sections 185 and 186(2) and (4) of the Resource Management Act 1991. 35

*“Auckland Council’s role in transport matters***“42C 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— 5
- “(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. 10
- “(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. 15
- “(4) **Subsections (2) and (3)** are for the avoidance of doubt.

“43 Council prohibited from performing functions and exercising powers conferred on Auckland Transport under sections 42 and 42A

- “(1) The Auckland Council must not perform any function or exercise any power that this Act has conferred upon Auckland Transport under **section 42**. 20
- “(1A) 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 42A(1)**. 25
- “(2) **Subsection (1)** applies unless Auckland Transport delegates the performance of a function or the exercise of a power of the function or the exercise of the power to the Auckland Council under **section 45B**.
- “(3) **Subsection (2)** applies unless Auckland Transport transfers the designation concerned to the Council under **section 42A(3)**. 30
- “(4) Nothing in this section prevents the Auckland Council from performing the functions or exercising the powers of a local authority described in **section 42(1)(i)**, or performing the functions or exercising the powers of a requiring authority under the Resource Management Act 1991, in respect of an 35

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).

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“(5) **Subsection (3) (4)** applies whether the Council is performing the function or exercising the power as the owner of a road or other land, or otherwise.

“**43A Council’s powers under Public Works Act 1981 fettered for works relating to Auckland transport system**

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“(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 42B(2) or (4)** in relation to that land.

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“(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 ~~for any transport-related purpose of the Auckland transport system~~ 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.

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“**43B 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.

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

*“Miscellaneous provisions relating to Auckland
Transport*

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“**45A 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

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“(b) the occasion for the person’s acts, or for his or her appointment, had not arisen or had ended.

“45B 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— 5
- “(a) the power to approve or adopt any policy, plan, or programme that it is required to ~~consult on~~, consult on using the special consultative procedure (for example, the regional land transport programme under the Land Transport Management Act 2003 and the regional public transport plan under the Public Transport Management Act 2008); and 10
- “(b) the power to make a bylaw under any enactment referred to in **section 42(1)**; and 15
- “(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. 20
- “(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)**. 25
- “(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. 30
- “(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 Coun- 35

cil, or the committee or person that made the delegation, exercise or perform them in the same way and with the same effect as ~~Auckland Transport could itself have~~ if Auckland Transport itself had exercised or performed those responsibilities, duties, functions, or powers. 5

“(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. 10

“(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. 15

“**46 Restriction on borrowing**

Auckland Transport must not borrow any funds without the written agreement of the Auckland Council. 20

“**48A 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. 25

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

“**Part 5**

“**Water supply and wastewater services
for Auckland**

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“**49 Obligations on 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 wastew-

- ater 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 5
- “(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. 10
- “(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). 15
- “49A Auckland water organisation must give effect to LTCCP 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 LTCCP. 20
- “(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 75A** authorises non-compliance with **section 49** by an Auckland water organisation. 25
- “49B 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. 30
- “(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 35

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 ~~that was~~ held by Watercare Services Limited on 1 November 2010. 5

“49C **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 10
“(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.

“Auckland water organisation may propose bylaws 15

“50 **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. 20
- “(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: 25
- “(a) the proposed bylaw is a bylaw relating to the management ~~and supply~~ or supply of water supply or wastewater services; and
- “(ab) the specified enactment under which the proposed bylaw is to be made authorises the making of the bylaw; 30
and
- “(ac) the proposed bylaw complies with the applicable statutory requirements of that enactment and any other relevant enactment; and
- “(b) the proposed bylaw is not inconsistent with any strategy, 35
policy, plan, or bylaw of the Council; and

- “(c) 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: 5
- “(b) does not meet the requirements of **subsection (2)**, it must give written notice of its decision (with reasons) to the organisation.
- “**51 Auckland water organisation must consult on proposed bylaw** 10
- “(1) This section applies if an Auckland water organisation has received notice under **section 50(3)(a)** from the governing body of the Auckland Council in respect of a bylaw that the organisation has proposed. 15
- “(2) The organisation must confirm ~~or modify~~ 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. 20
- “(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. 25
- “(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 50(2)**, adopt the bylaw by resolution; 30
or
- “(b) if not satisfied that the proposed bylaw meets the requirements of **section 50(2)**, give notice to the organisation under **section 50(3)(b)**. 35
- “(5) Where the Auckland Council adopts a bylaw under ~~**subsection (3) or (4)(a)**~~ 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.

“Powers of Auckland water organisation

- “52A Powers of Auckland water organisation under Local Government Act 1974** 5
- 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): 10
- “(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): 15
 - “(d) section 461 (further provisions with respect to private drains):
 - “(e) section 462 (council may declare private drain to be public drain): 20
 - “(f) section 467 (unlawful connection of private drain):
 - “(g) section 468 (tree roots obstructing public drains).
- “52B 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): 25
- “(a) section 171 (general power of entry): 30
 - “(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). 35

“53 Construction of works on roads and public land by Auckland water organisation

“(2) 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 5

“(b) for the purposes of any work carried out under **paragraph (a)**, open or break up any road or public land; and 10

“(c) alter, repair, or remove that infrastructure or any part of that infrastructure.

“(3) However, an Auckland water organisation must exercise the powers under **subsection (2)** in accordance with any reasonable conditions that the person who has jurisdiction over the road or land imposes. 15

“54 Notice requirement

“(1) Except as provided in **section 57**, 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. 20

“(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.

“55 Auckland water organisation to be notified of conditions 25

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 53(3)**. 30

“56 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 53(3)** within the 20-working day period referred to in **section 55**, those conditions may not be imposed, and the organisation may commence work. 35

“57 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 54(1)** before commencing the work; but

“(b) must give the information required by **section 54(2)** to the person who has jurisdiction over the road or land as soon as practicable after commencing the work.

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“59 Appeals by Auckland water organisation to District Court

“(1) An Auckland water organisation may appeal to a District Court against all or any of the conditions imposed under **section 53(3)** by the person who has jurisdiction over the road or land.

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“(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.

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“(3) In its determination of any appeal, a District Court may confirm, modify, or cancel any or all of the conditions imposed.

“(4) The decision of a District Court in the determination of an appeal under this section is final.

“59A Council to appoint enforcement officers

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“(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.

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“(2) ~~When~~ 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 ~~before making its decision~~ to ensure that sufficient officers are appointed to enable those organisations to perform their functions under this Act.

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*“Nuisances created by Auckland water
organisation***“60 Abatement of nuisances created by Auckland water
organisations**

- “(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.

*“Rating of ~~certain~~ land and assets owned
by Auckland water organisation*

“61 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 ~~in~~ within Auckland. 5
- “(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. 10
- “(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. 15

“Offences and liability for damage

“64AA Offence to ~~not~~ not to comply with any of sections 53, 54, and 57

- “(1)** An Auckland water organisation ~~who~~ that fails to comply with any of **sections 53, 54, or 57 and 57** commits an offence. 20
- “(2)** An Auckland water organisation ~~who~~ that commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding \$10,000. 25
- “(3)** In addition to any penalty imposed under **subsection (2)**, a court may make any order relating to compensation that it thinks fit.

“64 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 summary conviction to a fine not exceeding \$20,000 ~~who, wilfully or negligently, carries~~ who wilfully or negligently carries out work on, or in relation to, a water supply or wastewater asset 35

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). 5

“(2) It is not an offence under **subsection (1)** if the work concerned—

“(a) is authorised by a valid consent granted by or under— 10

“(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. 15

“(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. 20

“(4) A person who commits an offence under this section may, in addition to, or instead of, the 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. 25

“**64A 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: 30

“(a) a protective work; or

“(b) a water supply or wastewater work; or

“(c) a water race; or

“(d) a drainage work; or 35

“(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 on indictment to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$20,000, or to both. 5
- “(3) Every person commits an offence who negligently destroys, damages, stops, obstructs, or interferes with a work or property and is liable on summary conviction to a fine not exceeding \$20,000.
- “**64B Liability for damage by wilful or negligent behaviour towards water supply or wastewater work** 10
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,— 15
- “(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 by ~~the stoppage,~~ because of the stoppage, obstruction, or interference. 20
- “Council ~~to~~ must consult other Auckland water organisations when assessing water and other sanitary services* 25
- “**65 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. 30
- “(2) In addition to acting under section 128 of that Act, the Council must consult each Auckland water organisation that is not a local authority in making its assessment.

“Part 6**“Spatial planning for Auckland****“66 Spatial plan for Auckland**

- “(1) The Auckland Council must prepare and adopt a spatial plan for Auckland. 5
- “(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.
- “(2A) For the purposes of **subsection (2)**, the spatial plan will— 10
- “(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~~ high-level development strategy that will achieve that direction and those objectives: and 15
- “(c) enable coherent and co-ordinated decision making by 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 20
- “(d) provide a basis for aligning the implementation plans, regulatory plans, and funding programmes of the Auckland Council.
- “(3) The spatial plan must— 25
- “(m) recognise and describe Auckland’s role in New Zealand; and
- “(n) visually illustrate how Auckland may develop in the future, including how growth may be sequenced and how infrastructure may be provided; and 30
- “(o) provide an evidential base to support decision making for Auckland, including evidence of trends, opportunities, and constraints within Auckland; and
- “(p) identify the existing and future location and mix of— 35
- “(i) residential, business, rural production, and industrial activities within specific geographic areas within Auckland; and

- “(ii) ~~critical infrastructure services and 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 5
- “(q) identify nationally and regionally significant—
 - “(i) recreational areas and ~~open space areas~~ open-space areas within Auckland; and 10
 - “(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 15
 - “(iv) landscapes, areas of historic heritage value, and natural features within Auckland; and
- “(r) 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. 20

“66A 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. 25
- “(2) The Auckland Council must adopt the spatial plan in accordance with the special consultative procedure. 30
- “(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— 35
 - “(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— 5
- “(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. 10
- “(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. 15

“Part 7

“Board promoting issues of significance for mana whenua groups and mataawaka of Tamaki Makaurau 20

“67 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— 25

- “(a) promoting cultural, economic, environmental, and social issues of significance for—
- “(i) mana whenua groups; and
- “(ii) mataawaka of Tamaki Makaurau; and 30
- “(b) ensuring that the Council acts in accordance with statutory provisions referring to the Treaty of Waitangi.

“67A Board independent

- “(1) The board is a body corporate separate from—
- “(a) the Auckland Council; and 35
- “(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 5
 - “(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 10 purpose and must not act in any other interest.

“**68 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 15 Minister of Māori Affairs and the Auckland Council the name or the new name as soon as practicable.

“**69 Board’s general functions**

- “(1) The board’s general functions are—
 - “(a) to act in accordance with its purpose and functions and 20 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 25 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: 30
 - “(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 ~~no less than~~ at least 4 times in each financial year to discuss the board’s performance of its functions.

“**70 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. 5

“(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. 10

“(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 15

“(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. 20

“(5) The board must act in accordance with a delegation that it has accepted.

“**71 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. 25

“(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. 30

“**72 Auckland Council information provided to board**

“(1) The board may not exercise its powers in **section 71** if doing so would disclose information that—

- “(a) is known to the board because the Auckland Council provided it to the board; and
- “(c) 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. 5
- “(2) When the board is deciding whether **subsection (1)(c)** 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)(c)** applies to information that the Council provided to the board, it must tell the board of its decision and the reasons for its decision. 10
- “**73 Auckland Council’s duties to board** 15
- “(1) The Auckland Council must— 15
- “(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: 20
- “(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: 25
- “(e) make an agreement under **clause 20 of Schedule 3** 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. 30
- “(2) The Council’s duties under this section do not relieve it of any duties it has under any other enactment to consult with Māori.
- “(3) The Council and the board must meet ~~no less than~~ at least 4 times in each financial year to discuss the Council’s performance of its duties. 35

- “74 **Schedule 3 applies to board**
Schedule 3 applies to the board.

“Part 8
“Miscellaneous

- “Substantive council-controlled organisations* 5
- “75AA **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. 10
- “(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: 15
- “(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: 20
- “(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: 25
- “(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: 30
- ~~“(e) set out any circumstances in which each substantive council-controlled organisation must conduct its business as if it were subject to Part 7 of the Local Government Official Information and Meetings Act 1987:~~ 35
- “(f) identify or define any strategic assets in relation to each substantive council-controlled organisation and set out any requirements in relation to the organisations’ or organisation’s management of those assets, including the process by which the organisation may approve major transactions in relation to them. 35

- “(3) A policy under this section—
- “(a) may be adopted by the Council as part of its LTCCP:
 - “(b) must be included in the Council’s LTCCP:
 - “(c) may be amended only as an amendment to the LTCCP.
- “75 **Council may impose additional accountability requirements on substantive council-controlled organisations** 5
- “(2) 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: 10
 - “(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: 15
 - “(c) prepare and adopt a plan covering a period of at least 10 years that describes how the organisation intends to— 20
 - “(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: 25
 - “(d) ~~require a substantive council-controlled organisation to conduct some or all of its business as if it were subject to Part 7 of the Local Government Official Information and Meetings Act 1987:~~ 30
 - “(e) ~~prescribe requirements for the management of assets of a substantive council-controlled organisation~~ 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. 35
- “(3) The Council may not require Auckland Transport to prepare and adopt a plan under **subsection (2)(c)**.

- “(4) This section does not limit or affect the application of Part 5 of the Local Government Act 2002 to a substantive council-controlled organisation.
- “**75A Substantive council-controlled organisations must give effect to LTCCP and act consistently with other specified plans and strategies of Council** 5
- “(1) Each substantive council-controlled organisation must give effect to the relevant aspects of the LTCCP.
- “(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. 10
- “**76 Councillors and local board members prohibited from appointment as directors of substantive council-controlled organisations** 15
- “(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 20
- “(b) a member of a local board.
- “(2) **Section 38E(2)(a)** prevails over this section.
- “**76A Director of substantive council-controlled organisation elected to Council or local board must resign before taking up position** 25
- 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. 30

“76B Council may appoint ~~chair and deputy chair~~ chairperson and deputy chairperson of substantive council-controlled organisation

- “(1) The Council may appoint the ~~chair and deputy chair~~ chairperson and deputy chairperson of each substantive council-controlled organisation. 5
- “(2) However, the Council must not appoint a member of its governing body as the ~~chair or deputy chair~~ chairperson or deputy chairperson of Auckland Transport.
- “(3) This section prevails over any provision to the contrary in an organisation’s constitution. 10

“Council-controlled organisations must hold specified meetings in public

“76C Council-controlled organisations must hold specified meetings in public 15

- “(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)**,— 20
- “(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. 25
- “(3) The statement of intent must also specify how the meetings will be publicly notified (for example, by notice in 1 or more newspapers). 30
- “(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. 35
- “(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.

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“Disputes between local boards and governing body

“77 Disputes about allocation of decision-making responsibilities or proposed bylaws

“(1) Subsection (2) applies if— 10

“(a) 1 or more local boards is 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— 15

“(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. 20

“(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. 25

“(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.

“78 Local Government Commission to determine disputes

“(1) Promptly after receiving an application under section 77(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. 30

“(2) After receiving the information from the mayor and the chief executive, the Commission must— 35

- “(a) consider the information it has received from them, and from the local board or boards concerned under **section 77(4)**; and
- “(b) determine the matter, having regard to—
- “(i) the requirements of this Act; and 5
 - “(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 10 on reasonable grounds to be relevant.
- “(3) For the purposes of making a determination, the Commission—
- “(aa) must treat the matter as urgent; and
 - “(a) may make any ~~enquiries~~ inquiries that it considers appropriate; and 15
 - “(b) 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 20 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)** 25 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 LTCCP; and
 - “(b) the Commission determines that the LTCCP should be 30 amended.
- “(7) The Council must amend the LTCCP to the extent necessary to give effect to the determination and may do so without further authority than this section.

“79 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 78** to a committee of the Commission or a member of the Commission. 5
- “(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. 10
- “(3) **Subsection (2)** applies subject to any direction given or condition imposed by the Commission.

“Development contributions

“80 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. 15
- “(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. 20
- “(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. 25
- “(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. 30

“81 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 35

2002 are not affected by any arrangements it has for another person or organisation to manage—

“(a) reserves:

“(b) network infrastructure:

“(c) community infrastructure.

5

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

“Prohibition on establishment of community boards

“82 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.

10

“Review of representation arrangements

“83 Review of representation arrangements under Local Electoral Act 2001

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“(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

20

“(b) subsequent determinations at least once in every period of 6 years after that first determination.

“(2) However, if Auckland is required to be divided into 1 or more Māori wards for the purposes of the 2013 triennial general elections, the Council must make its first determination no later than 8 September 2012 and subsequent determinations at least once in every period of 6 years after that first determination.

25

“(3) For the purposes of any review, the Local Electoral Act 2001 applies with any necessary modifications and as if the following paragraphs were added to section 19H(1) of that Act:

30

“(e) whether a local board area should be subdivided for electoral purposes or, as the case may be, whether it should continue to be subdivided for electoral purposes; and

35

- “(f) whether the boundaries of any subdivision of a local board area should be altered; and
- “(g) the number of members of any local board; and
- “(ga) the name of any local board; and
- “(h) if a local board area is to be subdivided or continue to be subdivided,— 5
- “(i) the proposed name and the proposed boundaries of each subdivision; and
- “(ii) the number of members proposed to be elected by the electors of each subdivision.’ 10

“Auditor-General to review Council’s service performance

- “84 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. 15
- “(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. 20
- “(4) Nothing in this section limits or affects the powers of the Auditor-General under the Public Audit Act 2001.

“Council employee elected to local board must resign before taking up position” 25

- “85 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. 30

“Representation on port company board

“86 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. 5

46 New Schedules 2 and Schedule 3 added

The **Schedule 3** set out in **Schedule 2** of this Act is added.

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Schedule 2	s 46
New Schedule 3 added to Local Government (Auckland Council) Act 2009	
Schedule 3	s 74 5
Provisions relating to board promoting issues of significance for mana whenua groups and mataawaka of Tamaki Makaurau	
Appointment to membership and cessation of membership	10
1 Board's membership	
(1) The board consists of 9 members appointed under clauses 5 to 8.	
(2) The membership is composed of—	15
(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.	20
(3) 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.	25
(4) The selection body's sole function is to appoint members to the board.	
(5) In appointing members to the board, the selection body—	
(a) must be guided only by the board's purpose, functions, and powers; and	30
(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 appropri- ate.	
(6) The selection body ceases to exist when it has performed its function.	35

Schedule 3—*continued*

- (7) 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. 5
- (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

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- (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.
- (3) 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. 15
- (4) 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

20

- (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: 25
- (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 Securities Act 1978, or the Securities Markets Act 1988, or the Takeovers Act 1993: 30

Schedule 3—*continued*

- (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— 5
- (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: 10
- (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: 15
- (h) a current Auckland councillor or current local board member:
- (i) a person who is disqualified under another Act.
- 6 Selection body chooses mataawaka representatives for board** 20
- (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 25
- (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. 30
- (3) The selection body must apply **clause 5** when choosing the 2 mataawaka representatives.

Schedule 3—*continued*

**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. 5
- (3) The selection body must apply **clause 5** when choosing the 7 mana whenua group representatives.

8 Process for appointing members

- (1AA) 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. 10
- (1) 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. 15
- (2) The selection body must give copies of the certificates of appointment to—
 - (a) the Minister of Māori Affairs; and
 - (b) the Auckland Council. 20
- (3) The selection body must complete the process in this section at least 2 months before the ending of the terms of office of the members of the board. 25

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:
 - (aa) he or she becomes disqualified under **clause 5(2)**: 30
 - (a) he or she is removed under **clause 10**:
 - (b) his or her term of office ends:
 - (c) he or she dies:
 - (d) he or she resigns.

Schedule 3—*continued*

- (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
- (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. 10
- (6) A replacement member's term of office is the uncompleted term of the member he or she replaces. 15
- (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 70**. 20
- (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). 25
- (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 30
 - (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— 35

Schedule 3—*continued*

- (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. 5

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. 10
- (2) The chairperson and the deputy chairperson each hold office until the earlier of—
 - (a) the passage of 3 years: 15
 - (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. 20

13 Setting up meetings

- (1) The board—
 - (a) must hold 6 meetings a year; and 25
 - (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: 30
 - (b) the chairperson must give the notice:
 - (c) the notice must be given to each member:

Schedule 3—*continued*

- (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. 5
- (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. 10
The properly kept and approved minutes are prima facie evidence of the business transacted at the meetings.
- (3) A member has the right to attend any meeting, unless lawfully excluded.
- (4) A member unable to attend a meeting in person may attend by way of an electronic means. 15
- (5) The quorum for meetings is 5 members, who must include the chairperson or deputy chairperson.
- (6) A meeting is properly constituted if a quorum is present.
- (7) At least a quorum must be present during the whole of the time at which the business is transacted at the meeting. 20
- (8) The board may invite to meetings any advisers who the board considers necessary to facilitate the efficient transaction of the meeting's business.
- (9) The board may implement rules and procedures to ensure that it reaches decisions following— 25
- (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. 30

Schedule 3—*continued*

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— 5
- (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— 10
- (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. 15

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. 20
- (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 25
 - (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 30
 - (d) must make a recommendation to the board.
- (3A) 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 35

Schedule 3—*continued*

- (c) other board members.
- (4) The Auckland Council must act in accordance with the information provided to it by the independent expert.
- 18 Expenses** 5
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** 10
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— 15
(a) the board's operations; and
(b) the board's secretariat; and
(c) establishing committees under **section 71**; and 20
(d) seeking and obtaining advice under **section 71**.
- (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. 25
- (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**. 30
- (5) The board and the council must negotiate the agreement in good faith.

Schedule 3—*continued*

- (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. 5

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. 10

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 15
 - (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 20
 - (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 25
 - (e) may be interested in the matter because this Act so provides; or
 - (f) is otherwise directly or indirectly interested in the matter. 30
- (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

Schedule 3—*continued*

- (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 5
- (d) if this Act provides that he or she is not interested, despite this clause.
- 23 Obligation to disclose interest** 10
- (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. 15
- (3) A standing disclosure ceases to have effect if the nature of the interest materially alters or the extent of the interest materially increases. 20
- 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 25
- (b) the Auckland Council.
- 25 What must be disclosed**
- The details that must be disclosed under **clause 24** are— 30
- (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or

Schedule 3—*continued*

- (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 5
- (b) must not sign any document relating to the entry into a transaction or the initiation of the matter; and 10
- (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. 15 20
- (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. 25
- (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. 30

Schedule 3—*continued*

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: 5
- (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: 10
 - (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. 15
- (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. 20
- (2) A delegate who purports to perform a function or exercise a power under a delegation— 25
- (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

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

Schedule 3—*continued*

- (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. 5

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 10
- (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— 15
 - (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. 20
- (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. 25
- (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. 30

Schedule 3—*continued*

- (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 5
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** 10
- (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. 15
- (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 20
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 25
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 30
- (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.

**Local Government (Auckland Council)
Amendment Bill**

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Legislative history

2 June 2010

Divided from Local Government (Auckland Law Reform) Bill (Bill 112–2) by committee of the whole House as Bill 112–3B
