

Rodney District Council Bill

Local Bill

Explanatory note

General policy statement

The purpose of this Bill is to constitute the Rodney District Council as a unitary authority. As such it will have the responsibilities, duties, and powers of a territorial authority and a regional council in respect of the Rodney district.

The Rodney district will retain the boundaries that it has had since the local government reorganisation in 1989. It will also retain its existing wards.

Because of time constraints, it is necessary to defer the local authority elections for Rodney for 1 year. There will be a general election in 2011 to cover a 2-year period, and triennial general elections will resume in 2013.

Consequentially, Rodney is excluded from the Auckland Region and the new Auckland Council.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides for the Bill to come into force on the day after the date on which it receives the Royal assent.

Clause 3 sets out the purpose of the Bill, which is to constitute the Rodney District Council as a unitary authority for the Rodney district.

Clause 4 is the general interpretation provision. One effect of the definitions is that the general boundaries of the Rodney district will be those set by the Local Government Commission in 1989 and amended in 1997, not the more recently defined boundaries of the proposed Rodney Ward of the proposed Auckland Council.

Clause 5 continues the current Rodney district and Rodney District Council, and gives it the responsibilities, duties, and powers of a regional council. The effect of this is to constitute the council as a unitary authority.

The 4 current wards put in place in 2007 are retained.

Special provision is made to address the seaward boundaries and exclude islands that will remain with the Auckland Council.

Clause 6 requires the Local Government Commission to consequentially amend its recent determinations in respect of the boundaries, wards, subdivisions, and local board of the Auckland Council.

Similarly the electoral officer for the Auckland Council is required to consequentially amend the electoral rolls for the Auckland Council.

Clause 7 defers the general election for Rodney District Council for 1 year. The terms of office of existing members will continue until October 2011, when a general election will be held. That election will elect members for 2-year terms, and the triennial general election cycle will recommence in 2013.

This is necessary because it is not possible for the electoral processes to be completed between the passage of this Bill and the standard triennial general election date of 9 October 2010.

Clause 8 removes Rodney District Council from the status of an “existing local authority” and Rodney Properties Limited from the status of an “existing local government organisation” for the purposes of the special legislation relating to the Auckland Council.

Clause 9 deals with the identification and transfer of Auckland Regional Council assets and liabilities to Rodney District Council consequential upon Rodney District Council taking on the role of a regional council within its district.

The assets and liabilities to be transferred are those that relate to regional council activities in the Rodney district and an appropriate proportion of the general assets and liabilities of the Auckland Regional Council, including interests in council controlled organisations.

Regional parks are not affected, and remain with the Auckland Regional Council.

If the Auckland Transition Agency and Rodney District Council cannot agree on the assets and liabilities, or their value, then the matter is to be resolved by the Local Government Commission.

Clause 10 relates to the re-documentation of contracts, leases, and other agreements entered into by the Auckland Transition Agency that involve or affect Rodney District Council.

Clause 11 provides for the adoption in 2 parts of the 2010/2011 Annual Plan of Rodney District Council.

Clause 12 deals with transitional matters relating to the Resource Management Act 1991.

Clauses 13 and 14 deal with transitional matters relating to the Land Transport Management Act 2003 and the Public Transport Management Act 2008.

Clause 15 removes any doubt that may exist about the validity of any actions taken under other Acts that may become redundant or inappropriate by the passage of this Bill.

The Local Government (Auckland Law Reform) Bill is currently going through the House. Assuming it passes with its current provisions, there will be a need to reinstate Rodney District Council in Schedule 2 of the Local Government Act 2002 because the proposed section 35A of the Local Government (Tamaki Makaurau Reorganisation) Act 2009 will remove that item.

Similarly, the reference to Rodney District Council in the proposed section 35J(5) of that Act would have to be removed, once it becomes law.

The following clause will also be required if the Bill passes in its current form:

Water assets

If an order in Council has been made under section 35J of the Local Government (Tamaki Makaurau Reorganisation) Act 2009 before this Act comes into force:

- (a) that Order is of no effect in respect of the assets, liabilities, rights, obligations, or other matters of the Rodney District Council; and

- (b) those things become the assets, liabilities, rights, obligations, or other matters of the Rodney District Council.
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Darien Fenton

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Rodney District Council Act **2010**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose

The purpose of this Act is to constitute the Rodney District Council as a unitary authority to provide local government for the Rodney district. 5

4 Interpretation

In this Act, unless the context otherwise requires,—

Rodney district means the Rodney district as described in the Local Government (Auckland Region) Reorganisation Order 1989 (*Gazette* 1989, p 2247 at 2253) and the Local Government Boundary Alteration Notice 1997 (*Gazette* 1997, page 1061); and extended in accordance with **section 5(4)** 10

Rodney District Council is the same council as constituted by the Local Government (Auckland Region) Reorganisation Order 1989 (*Gazette* 1989, p 2247 at 2253) 15

Auckland Transition Agency means the Transition Agency established by section 10(1) of the Local Government (Tamaki Makaurau Reorganisation) Act 2009. 20

5 Continuation of Rodney District Council and constitution as unitary authority

(1) This section continues a territorial authority for the Rodney district to be known as the Rodney District Council.

(2) The Rodney District Council has, in relation to the Rodney district, the responsibilities, duties, and powers of a regional council. 25

(3) The Rodney district has 4 wards as provided for in a determination of the Local Government Commission dated 28 March 2007. 30

(4) The seaward boundaries of the Rodney district are to be determined by the Local Government Commission as generally being the outer limits of the territorial sea, with appropriate adjustments determined by the Commission so as to—

- (a) exclude Great Barrier Island, Little Barrier Island, and the Mokohinau Islands and appropriate areas of sea adjacent to them; and
- (b) take account of, and adjust where appropriate, the seaward boundaries of other regions beyond mean low water springs. 5
- (5) There is a region which has the same boundaries as the Rodney district, and all the references to the Rodney district include the Rodney region.
- 6 Local Government Commission and electoral officer duties** 10
- (1) In order that the boundaries, wards, and local boards for Auckland do not include the Rodney district, the Local Government Commission must consequentially amend—
- (a) the Local Government (Auckland Boundaries) Determination 2010; and 15
- (b) the Local Government (Auckland Wards and Local Boards) Determination 2010.
- (2) The Local Government Commission may make such changes to wards, subdivisions of wards, and local boards of Auckland and determinations as it considers appropriate. 20
- (3) For the avoidance of doubt, this section applies despite section 33 of the Local Government (Auckland Council) Act 2009 and a further Order in Council may be made as contemplated by section 35 of that Act even though the date of 10 April 2010 has passed. 25
- (4) The functions, duties, and powers of the Local Government Commission are not affected by this Act, except as provided in this section and **sections 5 and 9**.
- (5) The electoral officer for the Auckland Council must consequentially amend the electoral rolls for the wards of Auckland and the subdivisions of those wards to give effect to the actions taken by the Local Government Commission under **subsection (1)**. 30

7 **Triennial general election deferred**

- (1) Despite section 10(2) of the Local Electoral Act 2001, there must not be a triennial general election for the Rodney District Council on 9 October 2010.
- (2) There must be a general election for Rodney District Council on 8 October 2011. 5
- (3) The next triennial general election for the Rodney District Council must be on the second Saturday in October 2013.
- (4) For the purposes of this Act and any other Act, the Local Government (Tamaki Makaurau Reorganisation) Act 2009 must be read as if— 10
- (a) section 3(7)(a) of that Act did not contain the word “entire”; and
 - (b) section 3(7)(b) contained the number “6” not the number “7”; and 15
 - (c) section 4(5) did not contain the word “Rodney”; and
 - (d) the definition of **existing local authority** in section 5(1) did not contain the words “Rodney District Council”; and
 - (e) section 9(4)(b) did not contain the words “Rodney District Council”. 20
- (5) For the purposes of this Act and any other Act, the Local Government (Auckland Council) Act 2009 must be read as if—
- (a) the definition of **Auckland** in section 4(1) did not include the Rodney district; and 25
 - (b) the definition of **Auckland region** in section 33(7) did not include the Rodney district.

8 **Status of Rodney District Council in relation to Auckland Council**

- On and from the commencement of this Act,— 30
- (a) the Rodney District Council ceases to be an existing local authority for the purposes of the Local Government (Tamaki Makaurau Reorganisation) Act 2009; and
 - (b) every council controlled organisation of the Rodney District Council ceases to be an existing local government organisation for the purposes of that Act. 35

9 Apportionment of assets and liabilities

- (1) The Auckland Transition Agency and Rodney District Council must identify—
- (a) those assets and liabilities of the Auckland Regional Council (other than regional parks) that relate to the exercise of the Regional Council’s functions, duties, and powers in respect of the Rodney district; and 5
 - (b) the appropriate proportion of the general assets and liabilities of the Auckland Regional Council (including shares in council controlled organisations) that should transfer to the Rodney district. 10
- (2) If the Transition Agency and the Rodney District Council cannot agree on the identification or quantification of any assets or liabilities to which **subsection (1)** applies, or the value of any of them, by the close of 30 September 2010, the matter is to be resolved by determination of the Local Government Commission, and clauses 69(2) to (5) of Schedule 3 of the Local Government Act 2002 apply as if an application had been made to the Commission under clause 69(2) on 1 October 2010. 15
- (3) The assets and liabilities identified or quantified under **subsection (1)** or determined under **subsection (2)** must be transferred to Rodney District Council on or before 1 November 2010, unless the Local Government Commission determines that the transfer should occur on a later date. 20
- (4) The transfer of any asset or liability required by **subsection (3)**— 25
- (a) is not to be treated as placing any person in breach of, or default under, any contract, or in breach of trust, or in breach of confidence, or as otherwise making the person guilty of a civil wrong; and 30
 - (b) is not to be treated as entitling any person to—
 - (i) terminate or cancel or modify a contract, an agreement, or an arrangement; or
 - (ii) enforce or accelerate the performance of an obligation; or 35
 - (iii) require the performance of an obligation not otherwise arising for performance; or
 - (iv) impose a penalty or increased charge; and

- (c) does not release any surety wholly or in part from all or any obligation; and
- (d) does not invalidate or discharge any contract or security; and
- (e) does not place any person in breach of an enactment, 5
or a provision of a contract that prohibits, restricts or regulates the assignment or transfer of an asset, right, or liability, or the disclosure of information.

10 Apportionment of contracts, leases and other agreements affecting Rodney District Council 10

Where any contract, lease, or other agreement entered into before the commencement of this Act under section 18 or 19 of the Local Government (Tamaki Makaurau Reorganisation) Act 2009 relates in whole or in part to the Rodney District Council or its district, the Auckland Transition Agency must negotiate with the other party or parties to the contract, lease, or other agreement, and with the Rodney District Council, for novation to Rodney District Council, or the addition of Rodney District Council as a party, or a new contract, lease, or other agreement with Rodney District Council, as the case may require. 20

11 Annual Plan

- (1) The annual plan of the Rodney District Council for the year commencing 1 July 2010 is valid even though it is in 2 parts and the first part covering the period to 31 October 2010 25
may have been adopted by resolution of the Council as contemplated by section 29A of the Local Government (Tamaki Makaurau Reorganisation) Act 2009.
- (2) The second part of the annual plan of the Rodney District Council covering the period 1 November 2010 to 30 June 2011 30
may be adopted by resolution of the Council before 1 November 2010; but in other respects section 95 of the Local Government Act 2002 applies to the annual plan.

12 Resource management

- (1) Terms defined in the Resource Management Act 1991 have the same meanings when used in this section. 35

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- (2) So much of the regional plan and the regional policy statement of the Auckland Regional Council that relates to the Rodney district and is operative immediately before the commencement of this Act is deemed to be the operative regional plan and regional policy statement of the Rodney District Council. 5
- (3) If any proposed regional plan or proposed regional policy statement of the Auckland Regional Council that relates to the Rodney district has not become operative by the commencement of this Act it is deemed to be the proposed regional plan or regional policy statement of the Rodney District Council. 10
- (4) If any regional plan change (including a private plan change request) or regional plan variation process of an Auckland Regional Council plan that relates to the Rodney district has been commenced but not yet completed before the commencement of this Act, then that plan change or variation process continues as if it had been commenced with the Rodney District Council; but it is to be concluded by the Auckland Regional Council (or persons appointed by the Auckland Regional Council as if they had been appointed by the Rodney District Council) and the status of the Rodney District Council as a territorial authority in respect of the change or variation is not affected. 15 20
- (5) Approvals, certificates of compliance, or other Resource Management Act 1991 matters that have been approved by the Auckland Regional Council and relate to the Rodney district continue to have effect as if granted by the Auckland Regional Council. 25
- (6) If any application for a consent under the Resource Management Act 1991 that relates to the Rodney district has been made to the Auckland Regional Council and not determined then that application is deemed to have been made to the Rodney District Council and any actions taken by the Auckland Regional Council in respect of the application are deemed to be the actions of the Rodney District Council; but the status of the Rodney District Council as a territorial authority in respect of the application is not affected. 30 35
- (7) Any designation of the Auckland Regional Council in the district plan is transferred to the Rodney District Council under section 180 of the Resource Management Act 1991 if it re-

lates to a project, work, or network utility operation for which financial responsibility is transferred to the Rodney District Council.

- (8) No regional growth strategy adopted by the Auckland Regional Council under section 37SE of the Local Government Act 1974 has any effect in respect of the Rodney district. 5

13 Land transport management

- (1) Terms defined in the Land Transport Management Act 2003 have the same meanings when used in this section.
- (2) So much of the Auckland regional land transport strategy prepared by the Auckland Regional Council under Schedule 7 of the Land Transport Management Act 2003 as relates to the Rodney district is the regional land transport strategy of the Rodney District Council. 10
- (3) So much of the regional land transport programme prepared by ARTA under Part 2 of the Land Transport Management Act 2003 as relates to the Rodney district is the regional land transport programme of the Rodney District Council. 15
- (4) Consultation and other actions of the Auckland Regional Council and ARTA taken under the Land Transport Management Act 2003 in the preparation of the regional land transport strategy or the regional land transport programme are to be taken as consultation or other actions by the Rodney District Council. 20

14 Public transport management 25

- (1) Terms defined in the Public Transport Management Act 2008 have the same meanings when used in this section.
- (2) So much of any Auckland regional public transport plan as relates to the Rodney district is the regional public transport plan of the Rodney District Council. 30
- (3) Consultation and other actions of ARTA taken under the Public Transport Management Act 2008 in the preparation of any regional public transport plan are to be taken as consultation or other actions of the Rodney District Council.

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- (4) All commercial public transport services that are registered with ARTA and relate to the Rodney district are deemed to be registered with the Rodney District Council.
- (5) Where a contracted public transport service operates wholly within the Rodney district, the contract for that service is with the Rodney District Council, and not ARTA. 5

15 Actions under other Acts not affected

For the avoidance of doubt, nothing in this Act affects the validity of anything done before the commencement of this Act under— 10

- (a) the Local Electoral Act 2001:
 - (b) the Local Government Act 2002:
 - (c) the Local Government (Tamaki Makaurau Reorganisation) Act 2009:
 - (d) the Local Government (Auckland Council) Act 2009: 15
 - (e) any other Act.
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