

## **LEGAL UPDATE ON AUCKLAND GOVERNANCE: APRIL 2009 - SUPER-TANKER AUCKLAND NEEDS ALL HANDS ON DECK**

Despite the very public wrangling of various mayors in the Auckland region, the government's high level decisions on the future shape of Auckland have been made and there seems little point in further discussion as to what might have been. Although there may be some tinkering around the edges, the government clearly intends to move forward with its own super city structure and appears equally adamant that the new governance structure will be in place for the local body elections in 2010. This means that from October next year one unitary Auckland Council will have been formed to replace the region's 8 existing local authorities.

The amalgamated Auckland "super" Council will represent a city of approximately 1.4 million people with some 6000 staff, a combined group asset value of approximately \$27.4 billion, and operating expenses of approximately \$1.6 billion per annum. Compare that to the total group assets of Fonterra at approximately \$14.4 billion and Telecom at approximately \$7.4 billion and you begin to get an appreciation of the sheer size and scale of the proposed Auckland Council. The size of the task required to complete the proposed amalgamation by October 2010 should not be underestimated.

The first step in the creation of the government's super city will be the appointment of an Establishment Board as recommended by the Royal Commission. The Department of Internal Affairs has confirmed that draft legislation constituting the Establishment Board is expected in the next few weeks. It's possible that in order to form the Establishment Board quickly, standard parliamentary processes will be constrained, for example, a bill could be passed under urgency or with limited or no select committee consultation process. It is not necessarily the case that this initial legislation will be straightforward. For example, the government decisions envisage that the Establishment Board will provide some constraint on the actions of the existing councils. However, it has not been explained what the nature of that constraint will be, or how any powers to limit what the councils can do in the transitional period will be exercised.

Given the work streams that the Establishment Board will be tasked with completing by October next year, (the likely ambit of which has been set out in the Royal Commission's Report), this legislation cannot be passed quickly enough. It is likely that the Establishment Board (supported by a Transition Management Group consisting of the chief executive officers of each of the Auckland councils and council staff as appropriate) will be the busiest people in Auckland over the next 18 months. In broad terms they will be responsible for:

- Preparing the overall transition programme
- Designing the proposed structure of the Auckland Council
- Preparing and facilitating the transfer of staff to the Auckland Council
- Developing the detailed design of a unified service environment, processes and system requirements
- Establishing the financial policies of the Auckland Council
- Developing asset management policies and conducting a stock take of combined assets
- Undertaking preparatory work for new planning, consenting and consultation systems
- Reviewing all existing council controlled organisations and establishing a management policy for those organisations
- Oversight of current council decision-making to avoid any unwarranted commitment of public finances and exercising the – so far undefined – power to constrain the actions of the existing councils
- Oversight of the delivery of key projects – including Rugby World Cup 2011
- Ensuring ongoing and regular dialogue with central government and with the existing mayors of the local authorities.

There is a significant amount of work to be done over and above the work streams that fall under the remit of the Establishment Board. It is expected that the balance of the legislation creating Auckland Council will encompass all remaining provisions required to constitute the new Auckland Council and dissolve the existing local authorities. Given the current political debate surrounding the appropriate scope of powers to be given to the local boards and the integration of the 3 waters (water, wastewater and stormwater) into one council controlled organisation, the passage of this tranche of legislation is likely to involve a contentious select committee process.

The Local Government Commission is required to finalise the boundaries of the Auckland Council, the boundaries of the wards within the Auckland Council and the number and boundaries of the local boards within the Council. This work has to be completed by April next year.

The transition of approximately 6,000 staff from the 8 existing councils to the Auckland Council by October 2010 is ambitious. Not only does the Royal Commission envisage a new organisational structure under the Auckland Council, but also standardised human resource and remuneration policies and a single payroll system. The Royal Commission expressly recognised that this represents a “fundamental shift in the working practices and organisational culture in Auckland’s local government”.

Genuine consultation with affected staff under the Employment Relations Act 2000 will require careful planning and synchronisation between the territorial authorities to ensure that a full and fair process is undertaken.

The Royal Commission had initially envisaged that the shell of the Auckland Council would be in place by October 2010 with the integration of service delivery to be completed over 4 years. This was considered an ambitious undertaking and, drawing on the lessons learned from previous Auckland restructures and overseas experience, the Commission warned of embarking on a rushed, under funded and under resourced restructuring exercise. Research undertaken by the Royal Commission on similar restructuring exercises undertaken in Toronto and Queensland indicated that full integration of services (and in particular IT systems) could take up to 10 years.

However, the government has elected to push ahead with an even more ambitious integration timetable whereby the core arrangements relating to the restructure will be largely completed by October 2010. The government has clearly stated that it is the job of the Establishment Board to complete the organisational restructuring required and that the newly formed Auckland Council should not be distracted or encumbered by this task.

Both the Royal Commission and the government have stressed that the existing territorial authorities are to continue with business as usual whilst not prejudicing the future of the Auckland Council. However they also expect the councils to co-operate fully with the Establishment Board and expect that council staff will play a vital role in providing expertise and institutional knowledge in the transition. It is possible that staff will be seconded to the Establishment Board and the expectation that each local council CEO will serve on the proposed Transition Management Group will inevitably create downwards pressure within their organisations as they endeavour to fulfil that role as well as their “business as usual” obligations.

Given the tightly compressed timeframe of the restructure this may place a significant stress on the resources of the territorial authorities and it seems unduly optimistic to hope that the Auckland Council will not have some significant legacy issues with which to grapple when it assumes the rudder of the super tanker in October 2010.

This article has been prepared for information purposes only and not as legal advice. For further information, please contact:

**David Thomson**

Partner  
DDI: 09 363 0750  
[david.thomson@buddlefindlay.com](mailto:david.thomson@buddlefindlay.com)

**Patrick Mulligan**

Partner  
DDI: 09 357 9396  
[patrick.mulligan@buddlefindlay.com](mailto:patrick.mulligan@buddlefindlay.com)

**Tony Dellow**

Partner  
DDI: 04 498 7304  
[tony.dellow@buddlefindlay.com](mailto:tony.dellow@buddlefindlay.com)

**Lisette Hood**

Special Counsel  
DDI: 09 358 7037  
[lisette.hood@buddlefindlay.com](mailto:lisette.hood@buddlefindlay.com)

**Vanessa Evitt**

Senior Associate  
DDI: 09 363 0584  
[vanessa.evitt@buddlefindlay.com](mailto:vanessa.evitt@buddlefindlay.com)

**Andrew Braggins**

Senior Associate  
DDI: 09 363 0583  
[andrew.braggins@buddlefindlay.com](mailto:andrew.braggins@buddlefindlay.com)

**Kathryn McLean**

Senior Associate  
DDI: 04 498 7343  
[kathryn.mclean@buddlefindlay.com](mailto:kathryn.mclean@buddlefindlay.com)

---

*If you have any questions on issues covered please contact the sender.*

*This article is provided for general information purposes only and not as legal advice.*

***Click here to unsubscribe** if you no longer wish to receive e-mail legal updates from Buddle Findlay.*