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New Zealand Insights from the Restructuring of Local Government in the Auckland Region

Introduction

The New Zealand government is partway through a process of restructuring local government in the Auckland region. Auckland is New Zealand's only major metropolitan centre and with a population approaching 1.5 million people has approximately one third of the country's total population and also represents approximately one third of the country's economy.

The process began under a previous government with the establishment of a Royal Commission of Inquiry into the future governance of Auckland. The emphasis was very much on enhancing the region's capacity to take decisions on major regionwide strategic issues - spatial planning and regional land transport among them.

The election of a new government at the end of 2008, not long before the Royal Commission reported, changed the emphasis. As well as the focus on regionwide decision-making, the new Minister of Local Government, who comes from a minority party, has taken the opportunity to focus on what he regards as efficiency improving initiatives across the whole spectrum of local government within the region.

Currently Auckland local government comprises seven city or district councils, each responsible within their area for services such as infrastructure (the three waters; local roads), local arts, culture and recreation facilities, local regulation, local planning and community and economic development¹, and a single regional council responsible for overarching environmental management, including setting the planning frameworks within which local plans are developed, regional land transport planning, air and water quality and regional parks.

The government's proposals will replace the eight councils with a single council responsible for all local government services across the Auckland region. The community or local level will be the responsibility of some 19 local boards with no separate legal status (in formal terms they will be part of the Auckland council itself). Local boards will have decision rights over non-regulatory matters to the extent that the Auckland Council determines that they have no implications beyond the boundaries of the individual boards themselves. The Auckland Council will be the sole employer of staff, the sole rating authority, the sole asset owner and the sole deliverer or enabler of the delivery of services. It will determine the amount of funding available within individual local board areas to fund those service delivery issues over which local boards have decision-making power.

¹ note, in contrast to the situation in many jurisdictions, New Zealand's local authorities have no significant involvement in the funding, design or delivery of social services.

The structure is without parallel internationally. It is specifically based on the assumption that scale will promote consistency and efficiency in the delivery of services.

The Auckland Council will be comprised of a mayor elected at large on a first past the post basis, together with 20 councillors elected from wards - four from one member wards and 16 from two member wards. Each local board is entirely within the boundary of single ward.

The Mayor has greater powers than New Zealand mayors generally, but lesser powers than executive mayors in Europe or North America. The Mayor is to lead the development of council policies, plans and budgets for consideration by the council as a whole; may appoint the deputy mayor and committee chairs, establish committees of the Council (with the implication that this includes writing their terms of reference), and is to establish processes and mechanisms for the council to engage with the people of Auckland.

The great majority of council activity will be undertaken through a series of what are known as council controlled organisations - arm's-length entities constituted either as companies or as trusts, and with directors or trustees selected on the basis that they are 'fit for purpose'. The council will have oversight powers including agreeing what is known as the statement of intent which spells out what activities and how the CCO will undertake.

The dramatic nature of the changes, including the shift from autonomous bodies for providing community level local government, to bodies which in many ways are dependent on the parent council, has provided a unique opportunity to focus on the meaning and purpose of local government, and how it relates to the communities it serves.

This paper provides a brief overview of a number of the issues which are being highlighted by consideration of the Auckland restructuring and how it is likely to operate, especially in the post-global financial crisis context of fiscal stress on higher tiers of government. First, however, it provides brief background on structural change in New Zealand local government.

Background

For much of the 20th century, local government in New Zealand was small and extremely fragmented. Successive central governments sought to bring about change but invariably were defeated by a combination of New Zealand's short parliamentary term (three years) and local interests who typically were influential in both of New Zealand's principal political parties.

This changed with the election of the 1984 Labour government which began a program of very far-reaching public sector and economic reform. Most of its first term was focused on the central government public sector, and broader economic reform. In its second term it was strongly committed to re-forming local government. The basic ideological framework was what is known as 'public choice theory'. The purpose was to create efficient and transparent local government.

Over a very short period of time some 200 territorial authorities, and 600 special-purpose authorities, were reorganised into 12 regional councils (primarily responsible for environmental management) and 74 territorial local authorities responsible for local service delivery. Structural change was accompanied by significant legislative change including requirements for:

- Accrual accounting.

- A governance management split, with the council role being broadly defined as policy, and the local authority chief executive becoming the sole employer, with the responsibility for implementing policy. One purpose was to keep elected members out of interfering in the day-to-day operation of councils.
- A requirement for long-term financial planning with an implicit focus on comprehensive asset management planning.
- Local authorities were also given the power to establish what were originally known as local authority trading enterprises - local authority owned companies - with wide-ranging powers. These powers have matured. Councils have wide discretion to establish arm's-length entities to undertake commercial or non-commercial activity.

Overview - Insights from the Auckland Experience

The fact New Zealand's local government structure has been based on a relatively clear set of principles designed to result in 'efficient' local government, coupled with local government's long history of non-involvement in significant social service funding or delivery, has resulted in the Auckland restructuring providing a very useful laboratory for considering a number of the more fundamental questions about the role and function of local government. We have selected six areas for comment:

- The culture of structure.
- The role of the elected member.
- Fragmented metropolitan governance.
- Enabling/facilitating the delivery of social services.
- The place of arm's-length entities.
- Economic development.

The culture of structure

The restructuring in New Zealand local government generally in 1989 was, as noted, intended to produce more efficient local government. There was (and still is) a strong view within New Zealand that the best way of increasing efficiency within local government is amalgamation. The small size of New Zealand councils at the time gave more support for this view than would be warranted now. There was a very real belief that performance could be improved by mimicking what happened in the corporate sector - separation of governance and management; small rather than large governance bodies; accountability based on improved financial information; professional management charged to deliver the services and outcomes the community required.

The restructuring took place before widespread interest in public consultation and more importantly public engagement became general. At the time there was still a belief that democratic accountability should be exercised once every three years through the ballot box, rather than informally and on an almost daily basis through the interaction between elected members and citizens.

Structural arrangements were designed to facilitate this view of local government. In particular, New Zealand's local authorities became, on average, larger than is generally the case in many jurisdictions, especially in Europe. Associated with this, representation -

the ratio of residents to elected members, worsened dramatically. It is now not uncommon for the ratio to exceed 10,000:1.

From the early 1990s, there have been a number of attempts to improve the level of engagement between local authorities and their citizens, including statutory requirements for consultation which are gradually becoming more extensive - essentially requiring local authorities to make public the details of proposals they intend to adopt, and provide time for people to make written and if they wish oral submissions. There is a widespread belief, based on experience, that this process tends to be more honoured in form than in substance. In the December 2009 issue of *Public Sector*, the Journal of the New Zealand Institute of Public Administration, David Shand who was a member both of the Independent Commission of Inquiry into Local Government Rates, and of the Royal Commission on Auckland Governance observes, based on the many submissions he considered in those two roles, "consultation is generally perceived by citizens as a waste of time and not done genuinely".

Standing back and looking at the proposals for Auckland, and considering them against that general citizen perspective, it is hard to escape the conclusion that the fundamental problem is an inherently structural one. The New Zealand reforms created local government entities which were designed around the (hoped-for) efficient delivery of local government services, rather than around community engagement and the genuine representation of citizen interests. Despite many efforts to overcome the perceived failings of the consultative process, the New Zealand experience suggests that it is extremely difficult to refocus entities designed around the requirements for efficient service delivery back on community engagement and genuinely understanding and representing citizen interests. It simply does not appear to be part of the DNA of council organisations, especially when one of the design criteria has been separating policy and management so that elected members cannot have any direct involvement in how the council actually delivers services.

The role of the elected member

In some respects, this is a different but related dimension of the culture of structure. It is an issue which has been highlighted by public debate over the future structure of local government in Auckland.

One of the strongest themes in public submissions to the Royal Commission was the need to put the 'local' back into local government - the concern that citizens simply did not have the ability to influence council decisions. It has highlighted the issue of the role of the elected member - is it to act as Edmund Burke argued, as the representative of the electorate charged with exercising his or her judgement on behalf of the electorate and not being swayed by public opinion? Is it to act as the informed spokesperson for the electorate - essentially an approach of "I understand this community and know what it requires to meet its needs". Is it a role of facilitating engagement - working with the community and its different interests and acting as advocate/broker on the community's behalf to ensure that its many and different needs are met to the extent it is feasible to do so?

These are not just different approaches in the sense of operating styles. As we are realising in considering different options for the future structure of Auckland's local government (and for that matter other regions within the country), they have significant implications for the way local government itself is structured. The elected member operating within the expectations set by Edmund Burke could serve a very substantial constituency. The informed spokesperson could also serve a large constituency, but probably not so large. If the role of the elected member is to facilitate engagement then necessarily the constituency that member can serve is an order of magnitude smaller. In metropolitan centres in particular this almost certainly points to a three tier structure of local government. It certainly places a premium on the careful consideration of what is

required for the effective performance of the elected member's role, and of ensuring that the ratio of residents to elected members is appropriate to the elected member's expected role. In Auckland, this should mean a ratio in the order of 2000 or 3000:1. As currently proposed, the ratio is closer to 12,000:1 with serious indications for the ability of local boards to perform the role expected of them.

Fragmented metropolitan governance

This is the theme of the round table itself. We take it to refer to the very common situation, typical for example of most Australian state capitals, of the presence of a number of different democratically based entities with often competing and overlapping roles in the delivery of governance to part or the whole of the metropolitan area.

This was seen as very much the situation in Auckland, with one regional Council and seven territorial local authorities competing in the governance space along with the occasional intervention from central government (which, for example, plays a major role in roading). A principal purpose of the restructuring has been the objective of creating the capability to take and implement major regionwide strategic decisions.

Reflecting on the Auckland experience has caused us to wonder whether the issue is correctly described as fragmented governance or whether, instead, it is simply a failure to appropriately specify the level at which decisions should be taken. Some decisions are inherently regional in nature and require a mechanism which enables decisions not only to be taken but also to be implemented despite the probability of resistance from occasionally significant minorities - the obvious example being the NIMBY problem for much of infrastructure development. Other decisions are inherently best taken at the sub-regional or neighbourhood level.

The mere fact that within a metropolitan area there may be upwards of 20, 30 or 40 individual councils with responsibility for delivery of local government services is not in itself evidence of fragmentation. Indeed, many American commentators on local government would argue that a multiplicity of local authorities is an essential element in effect of local democracy; that people have the right to make choices about how they will be governed and choices can only be made if there are a number of different governing authorities.

The Auckland experience, and the reactions against the imposition of a single Council across the entire metropolitan area with responsibility not just for regional but also for much of local decision-making, provides grounds for rethinking the fragmentation issue. It suggests that instead of the implicit conclusion that fewer councils are needed, the emphasis should be on allocating decision rights to the appropriate level and ensuring that those decision rights are effective - here politics obviously come into play, including the reluctance often to accept strong regional decision-making - the contrast between Toronto and Ottawa on the one hand and London on the other is instructive.

Enabling/facilitating the delivery of social services

As noted, New Zealand local authorities have only a minimal role in the delivery of social services. Traditionally this has been the role of central government, partly because it owns the tax base required for funding social services, and partly because of long held understandings of the respective roles of central and local government.

The Auckland restructuring has provided an opportunity to rethink those roles in the context of what will best promote the social, cultural and economic well-being of the Auckland region. The Royal Commission in its report highlighted the wide differences in socio-economic status which characterise the region with extremes of wealth and poverty. In considering the relevance of this for the future local governance of Auckland it focused on the targeting and delivery of central government social services and

concluded that what was needed was closer collaboration between central and local government. In essence, central government has the money, and the infrastructure for designing and delivering a wide range of social services but it is local government which has the local knowledge, networks and influence required to ensure that services are well matched to need at the micro level.

The Royal Commission proposed an approach which would have amounted to co-management between central government and local government of central government's approximately \$12 billion annual expenditure on social services across the Auckland region. This was rejected by central government but the Commission's reasoning was given some weight with the result that the government has proposed the establishment of a Social Policy Forum chaired by the Minister of Social Development and involving the mayor of the Auckland Council, key councillors, and representatives of local boards to work together in improving targeting and delivery.

This approach has very little to do with ideological perspectives on the appropriate roles of different tiers of government, and a great deal to do with what is effective. It is gaining added urgency because of the global financial crisis and the resultant impact on the fiscal situation of many governments, including New Zealand's. Most governments now face a pressing need to reduce expenditure, or at least reduce the rate at which central government expenditure has been increasing as a proportion of GDP. It is a challenge which is complicated by increasing costs for reasons such as an ageing population, with an increasing real cost per capita in the delivery of an acceptable level of health care.

Cutting services is politically challenging. Finding ways of 'doing more with less' is much more palatable if it can be done. In social services the absolute requirement, if this is to be achieved, is the close local engagement which only local government can provide. In a way, New Zealand is fortunate that this need has coincided with the restructuring Auckland local government so that there is a very real opportunity to think through how best to bring about greater collaboration.

The place of arms length entities

Consistent with the emphasis on improving efficiency, New Zealand local authorities as part of the reforms in 1989 and the early 1990s were given the power to establish what were called local authority trading enterprises - local authority owned companies which could undertake for-profit activity. Initially these were used primarily for roading and transport related activities as the result of government regulatory requirements which effectively required that councils either divest themselves of public transport and certain roading related activities, or place them in arm's-length entities.

They have been used for a range of other activities as well, including holding council investments, property development, landfill joint ventures and the provision of professional services.

Councils have also been able to make use of trust structures for the management of the non-commercial activity. No specific legislative authority has been required for these. Instead, councils have been able to use general community development provisions, coupled with normal procurement activities - Funding trusts by purchasing services from them.

More recently, the legislative framework has been amended to ensure that it encompasses the full range of council related arm's-length entities. Instead of referring to local authority trading enterprises, the legislation now refers to council controlled organisations, which may be either companies or trusts or indeed other forms of economic entity, and where the Council exercises 50% or more of the voting rights at an annual meeting or has the right to appoint 50% or more of the governance board, council

controlled trading organisations (where in addition to council control, the entity is intended to undertake profit-making activity), and council organisations where the council does not exercise control but has the right to appoint some members of the governing body.

New Zealand appears to be more advanced than most other jurisdictions in setting the regulatory framework for council owned or controlled arm's-length entities. Most jurisdictions place their focus on how the local authority gains approval for the establishment of such an entity, rather than on how the entity itself operates once established. New Zealand focuses on how the Council exercises its ownership and/or governance rights once the entity is established.

The local government legislation has followed generally the provisions which the government has in place for the regulation of its own state-owned enterprises, including provisions requiring that directors or trustees are appointed on the base of 'fitness for purpose', and that the entity's activity is conducted in accordance with a statement of intent agreed between the council and the entity. This sets out a range of matters including the business or businesses in which the entity will be engaged, financial and non-financial reporting requirements, performance targets and the like.

The use of arm's-length entities is still relatively random. Many councils and their elected members resist the use of arms length entities because of a belief that they undermine democratic control. Often there is also quite considerable public resistance in the belief that placing a council activity in an arm's-length entity is the first step on the way to privatisation.

Careful analysis suggests that, contrary to belief, the use of arm's-length entities can increase democratic control over the activities involved. The basic reason is that the entity is directly accountable to elected members through processes such as negotiating a statement of intent, and reporting against it. This contrasts with the situation if the activity is part of the general business of the council in which case accountability is filtered through the chief executive and reporting will often not be activity specific.

What does appear to be the case is that most elected members have a poor understanding of corporate governance, and of what is involved in negotiating and monitoring effective performance agreements. This is a serious gap and one which needs to be addressed - amongst other things it raises concerns about the ability of elected members to monitor adequately the performance of core council where often much the same issues arise.

The Auckland restructuring will provide an excellent opportunity to revisit the role and governance of arm's-length entities and their relationship to the parent Council. The government has decided that most of the major service delivery activity of the Auckland council will be undertaken through council controlled organisations. This will place a premium on ensuring effective accountability, and that elected members properly understand what is involved in corporate governance.

It will also provide a very useful opportunity for an in-depth experience based analysis of the contribution which arm's-length entities can make to the difficult combination of efficiency in service delivery and effectiveness in meeting the community's needs.

Economic development

One objective behind the government interest in restructuring Auckland's local government is the improvement of the economic performance of the Auckland region.

Currently by comparison with its peers internationally, Auckland substantially underperforms. Economic development will be an important focus for the new council.

The activity is to be undertaken through a council controlled organisation with governance selected on a 'fit for purpose' basis and a statutory prohibition on elected members being appointed to the governing board. This reflects a belief that although local government has an important role in facilitating strategic economic development, typically elected bodies will lack the necessary experience and skills to identify and bring about the transformational changes required to achieve a step change in the rate of economic growth.

The Auckland Council, and the economic development CCO, will be exploring important issues in the relationship between structure, governance and commitment. Historically, in New Zealand, it has been difficult to get the effective engagement of the senior business community in economic development activity. Business people have often been prepared to take a role in the governance of what we term economic development agencies, but have seldom brought to that role the full engagement and commitment of the businesses they represent. Often this has been because the relationship between economic development agencies and councils has been seen as placing them too much under the umbrella of the council, so that they have been perceived as bureaucratic rather than entrepreneurial.

New work in New Zealand is emphasising the complementary roles of local government and the business sector (and for that matter other stakeholders) in strategic economic development. There is an emerging view that good economic development agencies are based on a combination of:

- Governance from the private sector (which can include the third sector and indigenous peoples) based on significant investment by the senior business sector - and ideally with the consequence that the economic development agency is seen as an integral part of businesses' strategic planning.
- Contract-based funding from local government specifying the higher-level outcomes which the community seeks.
- Effective integration with the local authority's long-term strategic planning especially in areas such as infrastructure.

The establishment of Auckland's economic development CCO is expected to provide valuable experience on how to move from what has been typically a business support function to one which is truly a strategic economic development function.

Conclusion

The Auckland restructuring is providing a very useful laboratory for testing a number of understandings about the role and function of local government and its relationship to higher tiers of government on the one hand and its communities on the other.

It provides a learning opportunity which we expect to be of value in other jurisdictions, especially in developed countries, which are themselves considering how best to deliver effective governance in a metropolitan environment.