

AIDE MEMOIRE FOR CABINET 1 DECEMBER

AUCKLAND TRANSPORT: STRATEGY FUNDING AND GOVERNANCE

Background

On Monday 1 December Cabinet will make decisions about strategic funding and governance proposals in relation to Auckland transport.

Cabinet Business Committee (CBC) has recommended that the new Auckland Regional Transport Authority (ARTA) “will be governed by a Board made up of a majority of members appointed by the Auckland Regional Council and a minority appointed by territorial authorities jointly (i.e. not one representative per authority)” [recommendation 9.2.6, CBC Min (03)9/8 refers].

Last Friday, Auckland proposed a variant whereby the Board of ARTA would be appointed by an “Electoral College” made up of eight ARA appointees plus seven territorial authority appointees (presumably one per authority).

We understand that this variant affects the **board appointments process only** – all other arrangements (functions, accountability, funding) remain as agreed by CBC.

Issue

Does the board appointments mechanism proposed by Auckland (i.e. electoral college) have any significant benefits/risks compared to the model agreed by CBC?

Benefit

A well-functioning Electoral College could potentially result in a more balanced set of appointments (in terms of skill mix, complementarities, etc.) than separate ARC / territorial authority appointments. The gain is marginal, however: if the relationships between the parties are positive, similar appointments could be expected regardless of which mechanism is used. (Conversely, self-interested behaviour by the parties is likely to lead to a divided board, regardless of the mechanism used.)

Risk

Provided the behaviour of the parties (ARC and territorial authorities) is positive and focussed on making ARTA work well, we see no important difference between the two appointments mechanisms.

Risks arise only in the event that the parties behave negatively, focussing on their separate interests at the expense of a well-functioning ARTA, and resulting in a divided Board. In this event we see two important risks:

Chair appointment

There is a risk that a Chair appointed by an Electoral College could end up having a problematic working relationship with ARC. We see this relationship as critical.

Recommendation

Under the Electoral College proposal, the Chair should be appointed by the ARC.

If Cabinet decides to support the Electoral College proposal, we suggest that you table an additional recommendation:

“**agree** that the Chair of ARTA will be appointed by the Auckland Regional Council”

“Failsafe” mechanism

Arrangements to apply in the event that the ARTA Board is grossly dysfunctional or non-performing will be included in the proposed report back to POL by 10 March 2004.

However, if an Electoral College appointments process is used, there is a risk of “stalemate”. For example, there is a risk that a (divided) Electoral College might appoint individuals whose effect on the functioning of the Board as a whole was disruptive and negative. If the ARC – which is ultimately accountable for the performance of ARTA – then dismissed the Board, the Electoral College might re-appoint the same individuals, resulting in impasse.

(A similar risk applies to a separate ARC/territorial authority appointments regime; however, it is heightened somewhat by the fine (8+7) balance of the Electoral College regime.)

A possible solution might be for the Crown to reserve the power to dismiss the ARTA Board under certain conditions, and/or appoint a Commissioner. This requires further work, however.

Recommendation

Under the Electoral College proposal, careful consideration needs to be given to the “failsafe” arrangement to apply in the event that the ARTA Board is grossly dysfunctional or non-performing, including consideration of the Crown’s role.

If Cabinet decides to support the Electoral College proposal, we suggest that you table an additional recommendation:

“**agree** that the report to POL on 10 March 2004 will include proposals designed to prevent the possibility of an impasse between the Electoral College as the body responsible for appointing the ARTA Board and the ARC as the body to whom ARTA is accountable”.

Conclusion

Aside from the above two risks, we see no fundamental difference between the two appointment mechanisms under discussion.