

DRAFT FOR CONSULTATION

Auckland Council (Auckland Future Fund) Bill

Local Bill

Explanatory note

General policy statement

The governing body of the Auckland Council (the **governing body**) has established the Auckland Future Fund (the **AFF**) as part of the Auckland Council's Long-term Plan 2024–2034.

The governing body has resolved to promote a local Bill with the purpose of ensuring that the AFF is a long-term financial investment for the benefit of the current and future communities of the Auckland region.

The Bill aims to foster public confidence in the administration of the AFF, while enabling the Auckland Council to retain the flexibility to make decisions about the entity or body that holds and manages the AFF and the nature and structure of the AFF. The Bill does this by—

- safeguarding in statute the key principles for governing and managing the AFF and for distributing funds from the AFF; and
- ensuring that decisions about investment of the AFF are made on a prudent and commercial basis.

On 16 May 2024, the governing body resolved—

- that the purposes of the AFF will be—
 - to protect the real value of the Auckland Council's intergenerational assets so that they can continue to benefit future generations; and
 - to provide an enhanced return to the Auckland Council to fund services and infrastructure:
- that the AFF will be established as a trust with strict protections requiring its assets to be managed and applied with the intent of maintaining or increasing the real value of its capital over the medium term:

- to initially capitalise the AFF with the Auckland Council's shareholding in Auckland International Airport Limited, with an amendment to the Auckland Council's Auckland Airport Shareholding Policy to enable the sale of those shares to achieve the purposes of the AFF:
- that the AFF may be further capitalised with other assets or funds in the future.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force on the day after Royal assent.

Part 1

Preliminary provisions

Clause 3 sets out the purpose of the Bill, which is to ensure the AFF continues as a long-term financial investment for the benefit of the current and future communities of the Auckland region.

Clause 4 defines the terms used in the Bill. Key terms include Auckland Future Fund, Council, and structures for governing and managing the AFF.

Clause 5 clarifies that decisions of the Auckland Council made under the Bill are made by the governing body.

Clause 6 provides that legislation applicable to the Auckland Council's financial management, accountability, and use of funds applies to Auckland Council decisions about the AFF. *Clause 6* also provides that if there is any inconsistency between the Bill and other specified legislation, the Bill prevails.

Part 2

Auckland Future Fund

Governance and management

Clause 7 requires the Auckland Council to put in place structures for governing and managing the AFF. The structures must comply with *clauses 8 to 12*. The structures may be implemented internally within the Council or externally through 1 or more trusts or other entities.

Clause 8 sets out the principles for governing and managing the AFF. The AFF must be governed and managed for the benefit of the current and future communities of the Auckland region and with the intent of maintaining or increasing the real value of its capital over time.

Investments

Clause 9 sets out the requirements for investing the assets of the AFF. *Clause 9(1)* provides that decisions about investing the assets of the AFF may be made only by a person who is—

- appropriately qualified; and
- duly designated or appointed to make investment decisions; and
- acting independently of members of the Auckland Council and those members' personal or political interests for the purposes of making the investment decision.

Distributions

Clause 10 provides that a decision about distributing the assets of the AFF may be made only by a person specified in *clause 9(1)*. *Clause 10* enables the Auckland Council to impose additional requirements in relation to distributions of the assets of the AFF.

Clause 11 applies if a distribution from the AFF is proposed to be made other than in accordance with the principles set out in *clause 8*. If *clause 11* applies, the Auckland Council may resolve, by a resolution approved by not less than 75% of its members, that—

- the AFF can be distributed in a way that will achieve a benefit that is better for the current and future communities of the Auckland region than maintaining or increasing the real value of the capital of the AFF; and
- reducing the real value of the capital of the AFF is the best available means of achieving that benefit.

The Auckland Council may make a resolution under *clause 11* only if the proposed distribution is explicitly provided for in its long-term plan and was properly consulted on.

Clause 12 provides that the Auckland Council and entities approved by the Council may receive distributions from the AFF.

Dr Carlos Cheung

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Auckland Council (Auckland Future Fund) Act **2024**.

2 Commencement

This Act comes into force on the day after Royal assent.

**Part 1
Preliminary provisions****3 Purpose**

The purpose of this Act is to ensure the AFF continues as a long-term financial investment for the benefit of the current and future communities of the Auckland region.

4 Interpretation

(1) In this Act, unless the context otherwise requires,—

Auckland Future Fund or **AFF**—

- (a) means the fund established by the Council as part of its Long-term Plan 2024–2034; and
- (b) includes—
 - (i) any funds or assets (or both) that the Council adds to the AFF; and
 - (ii) capital and income retained in the AFF

Auckland region means the region of the Council

Council means the territorial authority established by section 6(1) of the Local Government (Auckland Council) Act 2009 as the Auckland Council

structures for governing and managing the AFF means organisational structures for governing and managing the holding, direction, and operation of the AFF.

(2) Unless the context requires another meaning, terms and expressions used and not defined in this Act, but defined in the Local Government Act 2002, have the same meaning as in that Act.

5 Decisions of Council

In this Act, decisions of the Council are made by the **governing body** (as defined in section 4(1) of the Local Government (Auckland Council) Act 2009).

6 Relationship between this Act and other legislation applicable to Council financial management

- (1) The following legislation applies to Council decisions in relation to the AFF:
 - (a) the Local Government Act 2002;
 - (b) any other legislation applicable to the Council's financial management, accountability, and use of funds.
- (2) If there is any inconsistency between this Act and the legislation specified in **subsection (1)**, this Act prevails over that other legislation.

Part 2 Auckland Future Fund

Governance and management

7 Governance and management of AFF

- (1) The Council must put in place structures for governing and managing the AFF.
- (2) The structures for governing and managing the AFF—
 - (a) must comply with **sections 8 to 12**; and
 - (b) may be implemented—
 - (i) internally within the Council; or
 - (ii) externally through 1 or more trusts or other entities.

8 Principles for governing and managing AFF

The AFF must be governed and managed—

- (a) as a long-term fund for the benefit of the current and future communities of the Auckland region; and
- (b) with the intent of maintaining or increasing the real value of its capital over time.

Investments

9 Investment decisions

- (1) An investment decision about the assets of the AFF may be made only by a person who is—
 - (a) appropriately qualified; and
 - (b) duly designated or appointed to make an investment decision about the assets of the AFF; and
 - (c) acting independently of members of the Council and those members' personal or political interests for the purposes of making the investment decision.

- (2) **Subsection (1)(c)** applies whether or not the person is an employee of the Council acting in the course of their employment.
- (3) An investment decision may result in the AFF being invested outside of the Auckland region.
- (4) Section 97 of the Local Government Act 2002 does not apply to an investment decision.

Distributions

10 Distributions of AFF

- (1) A decision about distributing the assets of the AFF may be made only by a person specified in **section 9(1)**.
- (2) The Council may impose additional requirements in relation to distributions of the assets of the AFF.

11 Council may resolve to allow particular proposed distribution

- (1) This section applies to a distribution from the AFF that is proposed to be made other than in accordance with the principles set out in **section 8 (a proposed distribution)**.
- (2) The Council may resolve, by a resolution approved by not less than 75% of its members who are entitled to vote and who vote on the resolution, to allow the proposed distribution on the grounds that—
 - (a) the proposed distribution will achieve a benefit that is better for the current and future communities of the Auckland region than maintaining or increasing the real value of the capital of the AFF; and
 - (b) reducing the real value of the capital of the AFF is the best available means of achieving that benefit.
- (3) The Council must not make a resolution under **subsection (2)** unless—
 - (a) the proposed distribution is explicitly provided for in its long-term plan; and
 - (b) the proposal to make the resolution was included in a consultation document prepared in accordance with section 93C or 93D (as applicable) of the Local Government Act 2002 and section 93E of that Act.

12 Who may receive distributions from AFF

The following entities may receive distributions from the AFF:

- (a) the Council;
- (b) an entity approved by the Council.