

STRATEGY AND COMMUNITY COMMITTEE

SUPPLEMENTARY AGENDA

5 August 2010

ITEM NO: 3A

REPORT



TO Strategy and Community Committee
ON 5 August 2010
FROM Lloyd Barton – Director: Customer Service
SIGNATURE

A handwritten signature in black ink, appearing to read "Lloyd Barton".

SUBJECT FUTURE OF AUCKLAND REGIONAL SERVICES TRUST (ARST) FUNDS
FILE REF AR/1/4

PURPOSE OF REPORT:

<input type="checkbox"/> Information only	<input type="checkbox"/> Strategic decision	<input checked="" type="checkbox"/> Policy decision	<input type="checkbox"/> Statutory process
<input type="checkbox"/> Community issue	<input type="checkbox"/> Contract decision	<input type="checkbox"/> Delegation	<input type="checkbox"/> Appointment
<input type="checkbox"/> Administrative matter			

IMPLICATIONS:

(i)	Is this matter significant in terms of Council's Policy on Significance? No
(ii)	Implications in terms of Vision Rodney? Yes, supports Outcome 2: <i>Vibrant...we will encourage creativity and diversity.</i>
(iii)	Implications in terms of Long Term Council Community Plan / Annual Plan? No
(iv)	Implications in terms of other Council Strategic documents or Council Policy? Yes, it may impact on Policy 1935.
(v)	Is a budget amendment required? No
(vi)	Have the views of affected or interested persons been obtained and is any further public consultation required? Having considered section 78 of the Local Government Act 2002 no further consultation is required. The views of the Community Arts Councils were considered at a council workshop on 22 July 2010. They have expressed a concern that Rodney artists may be disadvantaged if the control of locally held ARST funds is transferred to the new Auckland Council.

(vii)	Does a decision on this matter require Auckland Transition Agency approval? (yes / no / advice being sought?)
	No – for option / decision 1 Yes – for option / decision 2

FINANCIAL IMPLICATIONS:

Capital cost implications	None
Is it currently budgeted for?	Not applicable
Funding source of capital costs	Not applicable
Ongoing operational cost implications	None
Is it currently budgeted for?	Not applicable
Funding and rating impact (whether resulting from capital expenditure or arising directly)	Not applicable

SUMMARY:

This report follows a council workshop, attended by representatives of the Community Arts Councils (CACs), on the future use of the Auckland Regional Services Trust (ARST) Arts fund, held on 22 July 2010.

The workshop narrowed possible options to two, being to:

- retain the fund as a special reserve and seek that the new Auckland Council delegate decision making for distribution of interest to the Rodney and Hibiscus and Bays Local Boards; or
- completely or partially distribute the fund to specific and significant arts and culture projects within the Rodney District.

Should the second option be progressed, the Auckland Transition Agency requires a formal resolution from the Council to that effect, before it can consider the matter under the relevant provision of the Local Government Tamaki Makaurau Reorganisation Act 2009 (section 31(1)(b)).

RECOMMENDATION:

Either:

- (a) (i) **That the Council recognise that the Auckland Regional Service Trust, as a council created special reserve fund, will transfer to the Auckland Council and be separately identified and that the Council request that it be held for the benefit of arts and culture within the Rodney District, with the interest earned on the principal funds being distributed to Rodney artists as such, on an annual basis from 1 November 2010.**
- (ii) **That it be requested that the Auckland Council decisions on the distribution of the interest from that special reserve fund be delegated to the Rodney Local Board (Rodney Ward) and the Hibiscus and Bays Local Board (Hibiscus Coast Subdivision), on the basis that the ward and ward subdivision reflect the current jurisdictional area of Rodney District Council and that other territorial local authorities in Auckland have already distributed their funds to projects within their own districts.**

Or

- (b) That the Auckland Regional Services Trust fund, including principal and interest, be completely or partially distributed to fund significant projects in the area of arts and culture in the Rodney District prior to 1 November 2010. Such distribution is to be by competitive application, with the balance being retained as a special reserve fund to transfer to the Auckland Council.
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1.0 Background

On the dissolution of the Auckland Regional Services Trust on 1 November 1998, \$10 million was distributed to the territorial authorities in Auckland "to be held in trust to be applied to significant projects in the Auckland Region in the area of arts and culture" (section 707ZZZL(4)(b) of the Local Government Act 1974).

The initial allocation to Rodney District was \$628,182. The Council has made some distribution to arts projects, but with interest accrued, the Council holds \$636,000 in unallocated principal. Unless a decision is made to the contrary, the fund will be transferred to the new Auckland Council, on 1 November 2010. The Auckland Council will be the trustee and will be required to hold the fund for its statutory purpose.

2.0 Issues

Current policies

Current Council Policy with regard to the ARST fund states:

- *That the Auckland Regional Services Trust Arts Funds for Rodney District be maintained in a separate income earning account, with the capital being preserved and the income earned being used to fund significant projects in the area of arts and culture in the Rodney District.*
- *That five percent (5%) of the interest earned from the capital of the ARST fund be returned in the principal account annually.*
- *That the income earned from the funds be split between the Northern, Western, and Hibiscus Coast communities, based on the proportion of population in each of the areas, these proportions to be updated every three years in accordance with census figures.*
- *That a sub-committee made up of two members from each Community Arts Council (CAC), be formed when large and / or district wide applications are received, to assist local CACs to make an assessment.*
- *That the assessment of each application by the appropriate CAC is forwarded to the Arts Advisor to be presented to the Council for consideration.*

During the transition to the Auckland Council, the management of assets is subject to the LGATMR Act 2009. This Act places an obligation on all existing local government organisations to inform the ATA of any decision which may:

- c) *Have a significant negative impact on the assets or liabilities that are transferred to the Auckland Council as a result of the reorganisation.*

The ATA has the ability to decline a decision of an existing local government organisation.

The key issue is to determine how the fund should be managed in the future to facilitate the provision of arts and culture within Rodney District and to fulfil its statutory purpose in an efficient manner.

3.0 Options

Workshop Outcome

The options for the future use of the fund were discussed at a workshop with councillors, also attended by representatives from the Community Arts Council, on 22 July 2010. This narrowed the potential options to two, which are described as follows:

Option 1.

Under the first option the funds would be constituted as a "special reserve", on terms requiring the principal to be maintained, but with interest distributed to significant arts and cultural projects taking place within the Rodney District. The fund would be separately identified as such and transfer to Auckland Council on that basis.

It would be appropriate for Auckland Council decisions on the distribution of the interest from that special reserve fund to be allocated or delegated to the Rodney Local Board (Rodney Ward) and to the Hibiscus and Bays Local Board (Hibiscus Coast Subdivision), as the ward and ward subdivision reflect the current jurisdictional area of Rodney District Council. Responsibility for the allocation of the interest could be based on population. If this option is chosen, RDC would request that these Local Boards be given this decision-making responsibility.

Approval of the Auckland Transition Agency would not be required for this option in terms of sections 31(1) or 31(4) of the Local Government (Tamaki Makaurau Reorganisation) Act 2009 (the LGTMRA). The Auckland Council would simply receive the funds as a trustee, on the same basis as they are held by Rodney District Council, and be similarly required to apply them only to significant projects in the Auckland region in the areas of arts and culture. It is accepted that the Auckland Council has discretion as to the allocation and delegation of its decision making powers to local boards, but it is hoped that Rodney District Council's request for this power to rest with specific local boards (as mentioned above) will be seriously considered, given the significance of the fund in supporting arts and culture within the District to date and the expectations of our Community Arts Councils. It is noted that other territorial local authorities in Auckland have already distributed their funds to projects within their own districts.

Option 2.

Option 2 involves the complete or partial distribution of the principal to arts and culture projects in Rodney District of regional significance. We understand this approach would be similar to that taken by North Shore City and Waitakere City Councils.

A contestable application process would be followed, with Rodney District Council making a decision on the allocation of the fund prior to 1 November 2010, in line with the statutory requirements for application of the funds. Any balance of the fund not allocated would constitute the "special reserve" and transfer to the Auckland Council as outlined above in option 1.

While Rodney District Council is holding the funds as a trustee rather than in its own right, and therefore the impact of disbursement on the financial position of the Auckland Council is less than if the funds were held absolutely, a complete or partial distribution would trigger section 31(1)(b) for the LGTMRA. A formal request for approval to distribute the fund in totality or in part would therefore need to be made.

A 3rd option of establishing a separate entity (trust) to administer either the entirety or a part of the fund was also considered at the workshop, this being the preferred option of the Community Arts Councils. The legal advice received confirms that the statutory authority to do so (S707ZZZLA of the LGA74) was repealed from 1 July 2004. There is now no statutory authority for an alternative trustee. Since the workshop, legal advice has been received confirming that the distribution of the fund needs to be to specific projects (as in option 2) and cannot be to a separate entity which then distributes the fund.

Request to Auckland Transition Agency (ATA)

The outcome of the workshop was to clarify options 1 & 2 and pursue them with Auckland Transition Agency. It has been confirmed that only option 2 requires ATA approval. The ATA requires the Council to make a decision first, before considering the matter. This means that, should the Committee wish to pursue option 2, a formal decision will need to be made by the Committee and be presented to ATA for a decision under section 31(1)(b) of the LGTMRA.

Further advice received from Community Arts Councils (CACs)

Since the workshop on 22 July 2010, further advice has been received from Norman Nelson and Natalie Fuge, presidents of the Northern and Rodney CACs respectively. Their emails of 23 July and 25 July 2010 respectively, are attached (refer **Appendix 1**).

They have suggested essentially that the ARST fund be split, with the principal being proportioned between the Hibiscus Coast area and the North and West Rodney (the latter two equating to the new Rodney Ward). They suggest that the principal be distributed within the Hibiscus Area for specific projects (as there appear to be sufficient projects to fund in this area), but that the principal be retained in the West and North (Rodney Ward) providing interest for funding on an ongoing basis via a separate trust (although, as noted above, the distribution of proceeds to a separate trust is not possible).

While this may deal with the different circumstances of art and culture within Rodney's communities there is a risk that some members of the community may feel that they have been denied an opportunity for "one off funding" of a worthy arts/cultural project. Should distribution of the fund be pursued, it is recommended that it be done as a whole, rather than being restricted to particular parts of the District.

4.0 Conclusion

There are two options for the future use of the ARST. Maintaining it as a special reserve fund (option 1) does not require ATA approval. However, a letter to the new Auckland Council, recommending delegation of the distribution of the earnings to the Rodney and Hibiscus Coast / Long Bay (Hibiscus Coast Subdivision) Local Boards, would be appropriate. Complete or partial distribution of the fund (option 2) does require ATA approval prior to its implementation. Should the Committee wish to proceed with option 2, a formal resolution to that effect is sought. This will then be forwarded to the ATA for its consideration.

APPENDIX 1

-----Original Message-----

From: Norman & Lorraine Nelson [<mailto:nolonel@clear.net.nz>]

Sent: Friday, 23 July 2010 11:57 a.m.

To: Lloyd Barton

Subject: ARST Fund

Greetings Lloyd,

After yesterdays meeting, some more creative thinking.

Rodney becomes two areas, Hibiscus coast (42%) and west + north (58%) approx. Divide principal into 2 amounts in those proportions. HBC have said they would have no problem identifying enough significant projects to come up with applications for funding, say \$268000.

We now need a significant project for the remaining balance, say \$368000 so, North Rodney CAC apply to RDC for \$368000 to establish a permanent and secure fund for ongoing funding of significant projects in both the west and north wards using interest earned annually. The establishment of such a fund is in itself a Significant Project in the Auckland Region in the area of arts and culture, as required under the original act. Detail work such as writing protection for the principal sum into the constitution of the NRCAC plus other requirements like inflation proofing the principal, including representation from the west community etc., can be formulated.

This is a brief overview of how the fund can be distributed fairly and securely on a pro-rata population basis within the act.

Regards, Norman Nelson.

From: Neil & Natalie Fuge [mailto:nfuge@clear.net.nz]

Sent: Sunday, 25 July 2010 12:11 p.m.

To: Lloyd Barton

Cc: Suzanne Weld; Glennis Williams; Zane Taylor; Maureen Gresty; June Turner - rjturner@maxnet.co.nz (External); David Poole; Virginia Warriner

Subject: Fw: I've been thinking

to Lloyd Barton
Director Customer Services

Upon much consideration following our meeting with you last Thursday 22nd July. Two things strike me, first the West (south Kaipara) and North Rodney will become Rodney of the near future. Management of the ARST fund for their area presents absolutely no conflicts both areas want the same thing.

The Hibiscus Coast joins with East Coast Bays and Albany. The North Shore devolved their capital down to suitable Arts recipients. It is hard for me to imagine that with the short memories of Human kind, in next to no time limiting the ARST fund to the Hibiscus Coast region would become an anathema to the Hibiscus/Bays Local Board. I don't think that it would work for us in the long term trying to have the Local Board secure the fund just for Hibiscus Coast.

Here in the Hibiscus Coast there would be no problem finding suitable recipients with valid significant projects, we have in our area both Community performing Arts and Visual Arts establishments.

Why don't we look at the ARST fund being split in two on a per capita basis, the North/West area, if they prefer seek to have their portion managed by their Local Board whilst the East or Hibiscus Bays have their share of the capital suitably devolved down to significant projects which have an ongoing positive effect for their communities. (note the arts councils would be very opposed to the capital being spent on any projects perceived to have only short term significant effects). This way equity with our future partners the East Coast Bays would be achieved and any inequity between the two areas of the Local Board to which they both belong would be eliminated.

I note that Norm Nelson has come up with pretty much the same solution. We of the Community Arts Councils would be prepared to meet with Colin Dale at the appropriate meeting if this would be of help in achieving a positive end result.

Natalie Fuge
President
Rodney Community Arts Council