

CONSTRUCTION PRELIMINARY AND GENERAL >>UPDATE

In this issue:

Supreme Court decision on breach of a vendor's warranty
[Read more](#)

A small loophole in the 'long stop' provision in the Building Act?
[Read more](#)

Auckland 'Super City'—turbulent times ahead for suppliers
[Read more](#)

The rectification of defects
[Read more](#)

SUBSCRIBE HERE >>

Sign up and stay informed

Auckland 'Super City'—turbulent times ahead for suppliers

For suppliers of goods or services to the existing councils in Auckland, the times ahead look turbulent for their businesses, with both threats and opportunities. Many will have invested huge amounts of time and effort over recent years in securing contracts, developing relationships, and positioning themselves as providers to one or more of the councils. But will these contracts and relationships survive the transition from the existing councils to the new Auckland Super City structure? And how should current suppliers position themselves for the inevitable opportunities?

The new Auckland Council, local boards, and several super-sized Council-controlled organisations (such as Watercare Services Limited and Auckland Transport) will be established over the coming year to replace the existing governance structure, with a 'go live' date of 1 November 2010. While a number of projects have been either suspended or slowed down pending the creation of the Super City, other streams of work have increased as councils balance the transition, doing their day-to-day activities, and meeting community expectations for the coming year.

Effects on existing contracts

While it is expected that existing contracts with the current councils will be honoured, the Auckland Transition Agency (the body established to manage the transition) is currently carrying out a stocktake and assessment of all contracts.

CONSTRUCTION >> UPDATE CONT...

Suppliers would be wise to have any current contracts that continue past 1 November 2010 checked by their lawyers, to assess the extent to which the contracts may be assigned to the new Auckland Council.

Tenders and similar processes that are currently underway should generally continue, subject to the powers of the Auckland Transition Agency.

On 31 October 2010, all the assets, liabilities, and responsibilities of the local authorities (including Council-controlled organisations) and the Auckland Transition Agency will be passed to the new Auckland Council. This will include any contracts that are current at that date. Any contracts to be entered into after that date will need to be made with the new Auckland Council.

Streamlining procurement processes

One of the outcomes sought by the Auckland Transition Agency is for the new Auckland Council to achieve greater efficiencies and as a result be more effective. The aim is for the new governance system to deliver maximum value to ratepayers, both in terms of the cost and the quality of service delivery.

To assess the potential for greater efficiencies achievable from the restructuring, the Royal Commission had a financial analysis report prepared by Taylor Duignan Barry. This report identified a number of aspects of the new Auckland Council structure that would contribute to efficiency gains. Many of these will have impacts on suppliers.

For example, the total expenditure of the new Auckland Council will be more than three times that of the largest current council—the Auckland City Council. By consolidating expenditure volumes and values, the new Auckland Council's buying power will be substantially larger than that of any of the existing councils. A more centralised approach

FOR MORE INFORMATION

Grant Hewison
SENIOR ASSOCIATE | AUCKLAND

DDI 09 375 1170

grant.hewison@kensingtonswan.com

Stuart Robertson
PARTNER | AUCKLAND

DDI 09 375 1151

stuart.robertson@kensingtonswan.com

Mary Haggie
PARTNER | WELLINGTON

DDI 04 915 0780

mary.haggie@kensingtonswan.com

will mean that the Auckland Council will need to buy roughly the same amount, but will want to pay less.

Overall, it is expected the new procurement processes will streamline the current processes, the contracts will be bigger and more complex, and there will be fewer suppliers. Contractors need to make sure they have a clear understanding of the new procurement processes and how they will meet the demands and expectations of the new Auckland Council and Council-controlled organisations.

Further impacts on smaller suppliers

The impacts of the new processes are likely to be felt most keenly by suppliers to the peripheral cities of Manukau, Waitakere, North Shore, Franklin, and Rodney. A study completed by University of Auckland public economics lecturer, Rhema Vaithianathan, suggested that there would be a centralisation of resources within central Auckland and falls in GDP with job losses in the outlying cities and districts. In particular, she predicted council contracts that currently go to small local businesses in the peripheral areas would be lost. These contracts would be centralised and would probably go to larger firms which could

CONSTRUCTION >> UPDATE CONT...

operate across the entire region, or even nationally or internationally.

What should you do?

Suppliers of goods or services to the existing councils in Auckland will need to understand and plan ahead to deal with changes that will come with the new Auckland Super City structure. This will include checking current contracts and adapting to meet the demands of more formal and consolidated procurement processes. Internally, suppliers should develop tendering processes to manage the larger-scale projects and consider collaboration or mergers with other service providers to maximise future opportunities. By anticipating and planning for the new structure, suppliers will be best placed to ensure survival beyond 1 November 2010.

For advice on what the Super City may mean for your business or for assistance in reviewing your current contracts, contact a Kensington Swan expert

Written by Dr Grant Hewison, a Senior Associate at Kensington Swan specialising in Local Government matters, and Simone Locke, a Solicitor in the Construction team.

CONSTRUCTION >> UPDATE CONT...

Start a conversation with us...

Your team of specialists at Kensington Swan are on top of the issues and can provide you with practical advice on operating in today's dynamic business environment.

If you would like further information about these articles or any other construction law issue, contact any of Kensington Swan's specialist Construction team.

Auckland

Chris Booth

Partner

Phone: +64 9 375 1143

chris.booth@kensingtonswan.com

Paul Buetow

Partner

Phone: +64 9 375 1114

paul.buetow@kensingtonswan.com

Stuart Robertson

Partner

Phone: +64 9 375 1151

stuart.robertson@kensingtonswan.com

Duncan Halliwell

Senior Associate

Phone: +64 9 915 3364

duncan.halliwell@kensingtonswan.com

Kelly Wilshire

Senior Associate

Phone: +64 9 375 1116

kelly.wilshire@kensingtonswan.com

Wellington

Andrew Skelton

Partner

Phone: +64 4 498 0857

andrew.skelton@kensingtonswan.com

Mary Haggie

Partner

Phone: +64 4 915 0780

mary.haggie@kensingtonswan.com

Sherwyn Williams

Consultant

Phone: +64 4 498 0882

sherwyn.williams@kensingtonswan.com

Abu Dhabi

Richard Cathie

Consultant

Phone: +971 55 482 7418

richard.cathie@kensingtonswan.com

