Auckland Regional Council

Submission to the
Auckland Governance Legislation Committee:

Local Government (Auckland Law Reform) Bill

12 February 2010

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1. EXECUTIVE SUMMARY

The ARC has consistently supported the reform of Auckland's local governance. However, we are concerned that the reform is failing in its major objective, which is to strengthen regional governance. The explanatory note to the Local Government (Auckland Law Reform) Bill (the Bill) explains that the aim of the reform is:

> *"to create one Auckland, which has strong regional governance, integrated decision making, greater community engagement and improved value for money."*[1]

It is difficult to see how the arrangements proposed in this Bill, together with the previous two Acts and the proposal for the establishment of seven council controlled organisations (CCOs), will achieve this. It is also unclear how these arrangements will address Auckland's current governance problems, which largely relate to fragmented responsibilities for decision-making, funding and delivery.

By the time the Auckland Council's governing body has delegated decision-making responsibilities to local boards, and other responsibilities have been allocated to CCOs, the governing body will have very little left to make decisions about. When compared to the current ARC, the new governing body will have gained extra powers in the fields of district planning, bylaws, stormwater, and setting standard levels of service, but little else. The bulk of the governing body's time will be spent in negotiation with local boards and CCOs. This is hardly strong regional governance.

The ARC's major concern is that the proposals in the Bill do not support democracy, accountability and transparency, and therefore do not meet the criteria for good governance. They are inconsistent with the standard legislative framework for local government, and constrain the Auckland Council's ability to exercise effective leadership across the normal spectrum of local government activities. Cabinet has agreed to principles to guide the reform process that include meeting good governance criteria, allowing for effective leadership, and using the existing local government legislative framework wherever possible; it is unfortunate that these principles have not been adequately reflected in the Bill.

The Bill fails to provide clear authority, control and accountability linkages between the Auckland Council's governing body, its role to develop a spatial plan and associated strategies, the implementation of these plans, and the delegation and control of proposed CCOs to deliver the policies and strategies set by Council. The Bill also fails to provide any detail on the accountability of the CCOs to the local boards, or how the local boards and CCOs will work together. Clearly the CCOs as proposed will be undertaking activities that have considerable effects at the local level.

Furthermore, while the Bill provides a process allowing for the establishment of CCOs, no detail has yet been provided for 5 of the 7 organisations which are proposed. There is no requirement for public consultation, or any obligation on the Minister of Local Government to consider whether a CCO is the most appropriate vehicle to perform any given function.

The Auckland Council should be free to determine whether it wishes for any of its activities to be delivered through CCOs, in the same way that every other council in

[1] Local Government (Auckland Law Reform) Bill, explanatory note, p.2.

New Zealand is able to make decisions about the mode of delivery it uses for its activities, through the normal process set out in the Local Government Act 2002 (LGA 2002). The Auckland Council must be trusted as a competent body to make decisions relating to all aspects of its business, especially given that it will be accountable to the public for all of the expenditure and activities of the council and the CCOs. A structure must be created that allows the Auckland Council to exercise leadership across the normal spectrum of local government activities.

The area of most concern is transport. A separate, independent transport agency as proposed in the Bill is totally inappropriate. The establishment of this entity will not aid integrated decision-making. The transport agency will be spending more than half of the rates raised by the Auckland Council, but it is the democratically elected members who will be held accountable by the public for this expenditure and for the effective delivery of transport activities. The Bill should be amended to provide for all transport responsibilities to be allocated to the Auckland Council.

The Bill does not provide the necessary level of transparency and accountability appropriate for an agency such as Auckland Transport. If an independent transport agency is to be created, it should be accountable to the Auckland Council in the same way that a crown entity such as the New Zealand Transport Agency (NZTA) is accountable to the Minister of Transport.

The Bill prevents the Auckland Council from appointing the Chair and Deputy Chair of Auckland Transport, Auckland Transport will not be required to act in accordance with the requirements of its shareholder and the board will not be not explicitly accountable to the Auckland Council. Further, Auckland Transport will not be required to act in accordance with its statement of intent, or to give effect to the Regional Land Transport Strategy (RLTS) prepared by the Auckland Council. Auckland Council approval will not be required before Auckland Transport enters into transactions which create significant unbudgeted liabilities or commitments for the Auckland Council. In addition, unlike a local authority, Auckland Transport can undertake its activities in private.

This clearly does not strengthen regional governance. If a statutory transport agency is to be created, it is essential that the Bill is amended to provide a robust accountability framework, consistent with the overall aim of the reforms.

In addition to transport, the ARC's submission covers a wide range of other issues raised by the Bill, and includes the following recommendations:

Local Boards:

- The disputes resolution process involving the Local Government Commission (LGC) should be limited in its application to disputes relating to the allocation of decision-making responsibility to local boards, and local bylaws.

- Provisions related to local board plans and agreements should be changed so that:

    - local board plans must be adopted by September or October of the year following the triennial election, and cover the same three year period as the first three year period of the Long Term Council Community Plan (LTCCP),

    - local board plans are required to include budget information for the three year period,

- the local board agreement is considered to be the accountability document between the local board and the community rather than the local board plan.

Council Controlled Organisations (CCOs):

- The Auckland Council should be free to determine the structure of the Auckland Council group.

- The Auckland Council should be able to determine its own policy on the appointment of councillors to boards of CCOs.

- No legislative provision should be made prohibiting the Auckland Council from re-structuring its group structure at any time, and the general local government legislative framework should be relied upon.

- The criteria for establishment of CCOs by the Auckland Transition Agency (ATA) should be expanded so that CCOs must have a clear purpose, and a CCO must be the most appropriate model to achieve that purpose, before they are established.

- The waterfront development agency should be established in the same manner as other new CCOs using the process in the Bill.

- No legislative provision should be made that will constrain the Auckland Council's ability to determine the governance structure it uses in relation to its CCOs.

- Watercare should become a CCO of the Auckland Council from 1 November 2010, rather than 1 July 2012.

- Watercare's assets should be liable for rates based only on land value.

Other matters:

- The governing body of the Auckland Council should include two seats for Māori, elected on the basis of two Māori wards. This democratic representation should replace the proposed board promoting issues of significance for Mana Whenua and Māori.

- The requirement for the Auckland Council to develop a spatial plan should be removed from the Bill, and spatial planning for Auckland should be addressed through the review of the Resource Management Act 1991 (RMA).

- The Auckland Council should be able to determine which regional amenities it supports, the amount of support provided to amenities, and the mechanism by which funding is provided. The Auckland Regional Amenities Funding Act 2008 should be repealed.

- The caps on the funding levies in the Auckland War Memorial Museum Act 1996 and the Museum of Transport and Technology Act 2000 should be retained. In the event that the Auckland Regional Amenities Funding Act 2008 is not repealed, a cap on the funding levied under this Act must also be retained.

- The current prohibition on the disposal of shares in Ports of Auckland Limited without public input should be retained.

- Shares in Auckland International Airport Ltd should not be moved to a CCO without a legislative provision requiring consultation before disposal of those shares.

- The Bill should have a fair process for transferring employees, providing for transferring employees to transfer on their existing terms and conditions unless they agree otherwise.

- The current legislative provision requiring the ARC to continue to hold the Auckland Centennial Memorial Park should be transferred to the Auckland Council instead of being repealed.

- The Auckland Council's strategies should be consistent with the Waitakere Ranges Heritage Area Act 2008: section 18 of that Act should not be repealed.

In addition, the submission raises a large number of technical and operational matters which need to be addressed.

2. INTRODUCTION

The ARC supports the following principles, which were agreed by Cabinet as assessment criteria for decisions relating to Auckland's governance:

- *"They meet good governance principles of being democratic, efficient and effective;*
- *They are feasible to implement within desirable timeframes;*
- *They are consistent with other government programmes and initiatives;*
- *They recognise the Treaty of Waitangi.*
- *The existing local government legislative framework should apply wherever possible, unless changes are necessary.*
- *If new arrangements are necessary, they should:*
    - *aim to be similar to mechanisms in the present framework;*
    - *minimise compliance costs and be able to easily be implemented by the Auckland Council;*
    - *support 'business as usual' and minimise potential disruption to the continued delivery of services from 1 November 2010; and*
    - *minimise unnecessary and inefficient use of existing local authority resources over the transition period"*[2]

The paper to the Cabinet Committee on the Implementation of Auckland Governance Reforms expanded on the good governance principles, explaining that the principle of democracy involves:

> *"accountable and transparent decision making, effective leadership, stewardship, ratepayer and citizen redress"*[3]

Particularly important are the principles around good governance, involving accountability and transparency, effective leadership and integrated decision-making. Effective leadership requires sufficient empowerment for the Auckland Council to make and implement decisions and govern the region as a competent body i.e. without undue constraint. The ARC strongly agrees with Cabinet about the importance of reliance on the existing local government legislative framework, which has been tried and tested, and has the benefit of consistency with the rest of New Zealand.

The reforms arose from the need to address the following problems: the fragmented powers and accountabilities for funding and service delivery in Auckland; the heavy reliance on voluntary joint-decision making; and the imbalance between mandates and financial capability, which meant that funding often has not matched regional priorities. Regional outcomes have often been sacrificed for local or national priorities because many decisions and activities that are regional in nature have not made and delivered by regional agencies. Auckland has a good history of developing strategies, but it frequently fails to implement those strategies due to these governance problems and the complex legislative arrangements unique to Auckland.

A number of the Government's decisions in relation to Auckland's future governance have given effect to the objective of the reform, have addressed Auckland's governance problems, and give effect the principles identified above. However, this

[2] Cabinet Minute (09) 8/10 and (09) 37/7
[3] Cabinet Paper AGR (09) 17

is not consistently the case. The ARC's submission is based largely on areas of the Bill that do not give effect to the principles of good governance and consistency with the existing local government legislative framework, where Auckland's governance problems may actually be compounded, and where decisions have been made that will not achieve the objective of the reform.

The most concerning examples of inconsistency with the existing local government legislative framework ('Auckland exceptionalism') in the Bill include the following proposals:

- The requirement to have a regional transport agency
- Auckland Transport not being subject to the normal CCO provisions in the LGA 2002, and the unique arrangements for Auckland Transport that lack accountability
- Watercare not being subject to the normal CCO provisions in the LGA 2002 until 2012
- Changes to the Land Transport Management Act 2003 (LTMA) framework that apply only in Auckland
- The restrictions on appointment of councillors to the boards of CCOs
- The requirement for the Auckland Council to prepare a spatial plan
- The ability for unelected boards to levy the Auckland Council to support a number of regional amenities, with no cap on the maximum amount of the levy
- The movement of strategic assets into a CCO without public consultation
- The inability to change the number of members of the governing body through the normal representation review process set out in the Local Electoral Act 2001
- The requirement for the 2013 election to be conducted using First Past the Post.

Clearly these examples are inconsistent with the Cabinet decision that *"The existing local government legislative framework should apply wherever possible, unless changes are necessary."*[4]

3. SUBMISSION STRUCTURE AND TERMINOLOGY

The submission addresses a number of substantive policy issues, followed by a section on technical issues outlining operational and drafting issues across a range of topics, and a summary of recommendations.

Throughout the submission, the following abbreviations are used:

Auckland Regional Amenities Funding Act 2008	"Amenities Funding Act"

[4] Cabinet Minute (09) 37/7

Auckland Transition Agency	"ATA"
Auckland War Memorial Museum Act 1996	"Museum Act"
Land Transport Management Act 2003	"LTMA"
Local Government (Auckland Council) Act 2009	"Auckland Council Act"
Local Government (Auckland Law Reform) Bill	"the Bill"
Local Government (Tamaki Makaurau Reorganisation) Act	"Tamaki Makaurau Act"
Local Government Act 1974	"LGA 1974"
Local Government Act 2002	"LGA 2002"
Local Government Commission	"LGC"
Long Term Council Community Plan	"LTCCP"
Museum of Transport and Technology Act 2000	"MOTAT Act"
New Zealand Transport Agency	"NZTA"
Regional Land Transport Programme	"RLTP"
Regional Land Transport Strategy	"RLTS"
Resource Management Act 1991	"RMA"

In the body of the submission, all references to page numbers refer to page numbers in the Bill.

4. AUCKLAND TRANSPORT

4.1. TRANSPORT AGENCY SHOULD NOT BE ESTABLISHED

The Bill provides for Auckland Transport to undertake the transport functions of the existing Auckland territorial authorities, and of the Auckland Regional Transport Authority (ARTA).

The ARC is strongly of the view that a separate, independent transport agency as proposed in the Bill is totally inappropriate. The proposal to establish such an agency, in particular an agency with so much independence and so little accountability to its shareholder, raises very serious concerns.

In the ARC's view, it is essential that transport is the direct responsibility of the Auckland Council. There are a number of compelling reasons for reaching this conclusion.

The overarching objective of the governance reforms in Auckland was to simplify, streamline and integrate existing arrangements and decision-making, through reducing the number of parties involved.

The establishment of the Auckland Council, bringing together the existing seven territorial authorities and the ARC group, would achieve this objective by bringing together all local and regional transport functions within one organisation. The separation of the transport functions from the Auckland Council into a transport agency will not result in simplification, streamlining or improved efficiency.

The case for a transport agency, as articulated in the Minister of Transport's paper to Cabinet, is that a transport agency "will provide a level of focus on transport issues and continuity of decision-making that could not be provided by the full Auckland Council with its multiplicity of responsibilities."[5]

This is nonsense. The Auckland Council is exactly the body required to provide the necessary focus on transport. Transport is a very high profile issue and the new Auckland Council will wish to make rapid progress to address current problems and to deal with public unhappiness over delays in progressing critical improvements.

The Auckland Council will be held directly accountable by the public for ensuring such progress is made. The ARC's own experience over the last five years, as the sole shareholder in ARTA, is that it is very difficult to ensure effective delivery and responsiveness in an arm's length entity. The ARC's experience is that the public and the media do not direct their attention to appointed board members when things go wrong. They contact their political representatives and expect that they will make sure that problems are fixed.

The same is true in respect of accountability for the expenditure of public funds: it is not board members who are held to account by the public, it is the elected members who set rates. While it is proposed that the transport agency receive on street parking revenue, fines and potentially toll revenues, the majority of its funding will come from ratepayers and taxpayers. Public transport and roading will together account for a very significant portion of the expenditure of the Auckland Council.

[5] Cabinet paper Auckland Governance: Regional Transport Authority, page 1, paragraph 5

Advice provided by the Ministry of Transport to Cabinet estimated that expenditure on transport and roading accounts for 54% of rates revenue in Auckland.[6]

It is simply bizarre that the Government is proposing that an arm's length agency be given responsibility for more than half of the funding raised from Auckland ratepayers, particularly an entity with such substantial independence and so little accountability to its shareholder. It is difficult to imagine the Government agreeing to hand over more than half of its own tax revenue to such a body.

There are many other reasons why the establishment of a transport agency for Auckland simply does not make sense. In addition to the governing body of the Auckland Council, the transport agency will need to deal with 19 local boards, all of which will have a keen interest and involvement in transport and roading matters. The transaction costs associated with this structure are likely to be considerable, as is the potential for duplication and double handling.

There is also likely to be considerable potential for a conflict between the objectives of the Auckland Council, and those of the transport agency. The narrow transport only focus of the transport agency does not require any consideration of the wider land use and development objectives to which the Auckland Council must give consideration. There is clearly considerable potential for the achievement of transport objectives to ride roughshod over local and regional land use and development considerations, given the extensive powers allocated to the transport agency. In proposing the establishment of such an agency, it is clear that the Government sees transport as an end in itself rather than simply a means by which other objectives are achieved and supported.

There is also potential for disputes and confusion, with the Bill being unclear as to which party will have final decision rights in relation to some assets. For example, while the Bill allocates roading and transport powers in relation to squares and places to the transport agency, ownership of those areas and responsibility for non-transport functions will sit with the Auckland Council either directly or through one of the local boards. It is unclear which party would have final decision rights in the case of a conflict over uses for such areas. It will also be very confusing for the public as they try to work out which organisation to approach.

All of the government departments asked to comment on the establishment of a transport agency in Auckland made clear that they did not support the proposal. The Treasury, the Department of Internal Affairs, the Ministry for the Environment and the Ministry for Economic Development all considered that the benefits of allocating transport and roading functions to the Auckland Council outweighed those associated with any transport agency options.

These departments considered that allocating these functions to the Auckland Council would best satisfy the key reason for undertaking the Auckland governance reforms, that is, to enable integrated decision-making on regionally significant issues. Specifically, the allocation of transport functions to the Auckland Council was expected to improve horizontal integration, for example the land use and road planning, and vertical integration, for example, transport strategy, funding and service provision. The Treasury further noted that there was no clear or strong rationale for central government mandating a unique approach to transport decision-making in Auckland.

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[6] Cabinet paper Auckland Governance: Regional Transport Authority, Figure 1: Auckland Local Government Expenditure in 2008

The Department of Internal Affairs clearly expressed its views on accountability, advising Cabinet that it considered that "elected members, who are solely responsible for rating levels, need to be clearly accountable for transport funding decisions."[7]

Despite this advice, the Minister of Transport recommended, and his Cabinet colleagues agreed, that a transport agency should be established. Clearly, the decision was not made on the basis of a rigorous analysis of what is best for Auckland and needs to be overturned.

The ARC therefore recommends that the proposal for the establishment of a transport agency is removed, and that the Select Committee amends the Bill to provide for all transport and roading functions and responsibilities to be allocated to the Auckland Council.

4.2. ARRANGEMENTS FOR PROPOSED TRANSPORT AGENCY

While the ARC strongly opposes the establishment of a transport agency for Auckland, it is clear that the Government has already made up its mind that such an agency will be established.

It is the ARC's view that the provisions contained in the Bill for establishment and operation of Auckland Transport are inadequate and do not provide the necessary level of transparency, accountability and robustness which is essential for such an agency.

If the Select Committee recommends the establishment of Auckland Transport, the ARC is strongly of the view that a significant number of amendments need to be made to the provisions contained in the Bill. These amendments are discussed below.

4.2.1. Accountability Arrangements

If there is to be a transport agency, the arrangements for its establishment and operation need to be robust and give full effect to the principles of good governance which were agreed by Cabinet. In particular, the arrangements need to be consistent with the principle of democracy articulated in the paper to Cabinet Committee on the implementation of Auckland Governance Reforms.[8] That is "accountable and transparent decision making, effective leadership, stewardship, ratepayer and citizen redress".

Unfortunately, the proposed arrangements for the transport agency which are contained within the Bill fall a long way short of satisfying such a principle. The Bill provides for the establishment of an agency which will have significant statutory powers and functions, and which will consume more than half the region's rates, but which will not be accountable to the Auckland Council and ratepayers for its actions.

It will be able to undertake its activities in private, the only requirement for public meetings being when it is discussing bylaws. It will not be required to give effect to the RLTS prepared by the Auckland Council, only to be consistent with it.

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[7] Cabinet paper Auckland Governance: Regional Transport Authority, page 7, paragraph 34

[8] Paper to Cabinet Committee on the Implementation of Auckland Governance Reforms (AGR (09)17)

The Auckland Council will not appoint the Chair and Deputy Chair of the transport agency – this will be done by the board itself. The agency will receive all on-street parking revenues and fines and, potentially, tolling revenues. The only statutory restrictions on its activities will be that Auckland Council approval will be needed for it to borrow. However, this provision, while welcome in principle, will simply be an invitation for the lawyers to construct arrangements which are not technically borrowings.

However, while the Bill does not provide clear accountability arrangements for the transport agency to the Auckland Council, the Government has made sure that it will have a significant role. The Ministers of Transport and Local Government will appoint the transport agency's first board. The NZTA will have a non-voting director sitting on the board of the transport agency. The transport agency will also be required to ensure that its Regional Transport Programme is consistent with the Government Policy Statement (GPS).

The independence and lack of accountability of the proposed transport agency raises major concerns. It is appears unlikely that the Government itself would accept such arrangements if it were establishing such an agency for itself. A comparison of the proposed arrangements for the transport agency with those for a Crown agent, as set out in the Crown Entities Act 2004, makes interesting reading. There are a number of areas where the provisions for Crown agents, which cover such statutory entities as the NZTA, provide for significantly greater accountability to and control by Ministers. It is unclear why the Government would expect Aucklanders to accept arrangements which it itself is not prepared to contemplate in an organisation of a similar scope and nature.

It is also interesting to compare the likely scale of the proposed transport agency with that of NZTA. The Ministry of Transport estimated in its advice to Cabinet on the establishment of a transport agency that existing rates expenditure on transport totalled approximately $678 million in 2008. Assuming the same level of rates funding for the transport agency, and that NZTA would approximately match the rates contribution, transport agency expenditure would be approximately $1.356 billion per annum. By comparison, NZTA's expenditure in the year to 30 June 2009 totalled $1.899 billion.[9] The transport agency will also be responsible for approximately 7,800 km of local roads, compared with NZTA's responsibility for 10,906 km of State Highways.[10] The proposed transport agency will therefore be approximately 72% of the size of NZTA.

An organisation of this size and scale, spending public money, must have robust and transparent arrangements to ensure accountability to its shareholder and the public. The provisions in the Bill do not provide for this.

The ARC is strongly of the view that, if a transport agency is to be established, the Bill must be amended to provide for accountability arrangements consistent with those which the Government has for Crown agents such as NZTA. As a consequence, the ARC requests that the Select Committee amends the Bill as set out below.

[9] NZ Transport Agency Annual Report 2009
[10] New Zealand Transport Agency National Land Transport Programme 2009-12

Accountability

There are a number of provisions within the Crown Entities Act to ensure that Crown agents act in accordance with the requirements of the relevant Minister and are accountable to that Minister. These include section 26(2) which provides for the members of a statutory entity to be accountable to the responsible Minister for performing their duties as members, while section 49 requires that the board of statutory entity must ensure that the entity acts in a manner consistent with its objectives, functions, current statement of intent and its output agreement (if any).

The Bill, however, provides no explicit statutory accountability for the transport agency to the Auckland Council or any requirement for it to undertake its functions or exercise its powers in accordance with the requirements of its shareholder, the Auckland Council. For example, proposed sections 39 to 42 and 45 set out the objective, status and powers, functions and operating principles of the transport agency. However, none of these sections make any reference to the agency's statement of intent, the Auckland RLTS, nor is there is any reference to the requirements of the Auckland Council.

Further, proposed section 45(5) (page 41) states that the "board of directors must ensure that Auckland Transport acts in a manner consistent with its objective; and is accountable in accordance with this Act for the performance of its functions." There is no requirement for the board of directors of the transport agency to be accountable to the Auckland Council or to act in a manner consistent with its current statement of intent.

The ARC therefore recommends that sections 39 to 42 and 45 are amended to provide for the transport agency to act in accordance with its statement of intent and to give effect to the regional land transport strategy, and to include a requirement for the board of the transport agency to be accountable to the Auckland Council.

Material Transaction Provisions

As discussed above, the proposed transport agency will be a substantial organisation which will expend more than $1.3 billion of public funds annually. The Auckland Council, as the sole shareholder in the agency will be its major funder and the funder of last resort.

Proposed section 40 (page 37) of the Local Government (Auckland Council) Act (Auckland Council Act) provides for the transport agency to have "full capacity to carry on or undertake any activity or business, do any act, or enter into any transaction". The only constraint on this is the requirement for the transport agency to seek the approval of the Auckland Council under proposed section 46 to borrow funds.

The transport agency will be responsible for the delivery of a substantial programme of capital projects and services, many of which will require significant funding over long periods of time. As has been demonstrated with many transport projects, there is considerable potential for cost overruns and demand for additional funding. There is also potential for the agency to establish subsidiaries to undertake its activities.

As a consequence, the Auckland Council may find itself with financial commitments and obligations, which have been entered into by the transport agency without its knowledge. While NZTA will be a significant funder of the transport agency, NZTA has the ability to simply limit its funding. The Auckland Council, as the sole

shareholder and funder of last resort will not, however, be able to protect itself in this way.

The Crown Entities Act 2004 provides Ministers with a number of provisions which set limits on the commitments which Crown agents can enter into without the approval of the relevant Minister. For example, part 3 of the Crown Entities Act sets out the requirements for the formation and shareholding of Crown entity subsidiaries, while sections 160 to 165 place obligations on Crown entities in respect of securities, borrowing, guarantees, indemnities and derivatives. The Bill, however, contains no similar provisions in relation to the transport agency other than the approval of the Auckland Council to borrow. As noted above, while this provision is welcomed in principle, in the absence of any other controls it would simply result in lawyers for the transport agency working to find ways around the approval requirement.

If the Auckland Council were to establish its own subsidiary company, it could provide for such controls as part of the company's constitution. In the case of the establishment of ARTA and Auckland Regional Holdings (ARH), the Local Government (Auckland) Amendment Act 2004 provided for the ARC to establish rules for both ARTA and ARH. The rules effectively provided constitutions for each of the statutory entities. The Bill as currently drafted makes none of these tools available to the Auckland Council in respect of the transport agency.

While the Auckland Council should not be involved in the day to day operational activities of the transport agency, the Bill needs to make provision for the Auckland Council to have decision rights in matters which have the potential to create unbudgeted liabilities or commitments for it. This would be entirely consistent with the provisions available to Ministers though the Crown Entities Act 2004.

The ARC therefore recommends that the Bill is amended to require the transport agency to seek the approval of the Auckland Council before it enters into transactions which relate to the establishment or disposal of subsidiaries, securities, borrowing, guarantees, indemnities etc, and individual and related transactions which have the potential to create unbudgeted liabilities or commitments for the Auckland Council.

Policy Implementation

Section 103 of the Crown Entities Act 2004 provides for the responsible Minister of a Crown Agent to direct an entity to give effect to a government policy that relates to the entity's functions and objectives. However, the Bill contains no similar power for the Auckland Council.

The proposed transport agency will consume more than half of the rates revenue raised by the Auckland Council. Transport is also a very high profile issue. If a transport agency is to be established, it is essential that the Auckland Council has the power to direct the transport agency to give effect to a policy of the Auckland Council that relates to the transport agency.

The ARC therefore recommends that the Bill is amended to provide for the Auckland Council to direct the transport agency to give effect to a policy of the Auckland Council that relates to the transport agency.

Appointment of Directors

The Crown Entities Act 2004 provides for the responsible Minister to appoint the directors or "members" of a Crown agent. In practice, Ministers also appoint the chairperson of a Crown agent.

It would be expected that the right to appoint directors and the chairperson of the transport agency would sit with the Auckland Council, given that it is the agency's sole shareholder. While the appointment of directors by the Auckland Council in the longer term is provided for in the Bill, proposed section 35I of the Local Government (Tamakai Makaurau Reorganisation) Act (Tamaki Makaurau Act) provides that the Ministers of Transport and Local Government may appoint the initial directors of the transport agency (page 28). The terms of the directors appointed by Ministers will be staggered over three years.

This will mean that the Government will effectively set the direction for the transport agency over the first three years of its operation. This is inconsistent with the Cabinet decision to establish a transport agency, where Cabinet resolved that the Auckland Council appoint the directors of the transport agency as soon as possible after 1 November 2010[11]. It is also consistent with the response given by the Minister of Transport to Parliament on 13 November 2009 in which he advised that the appointment of the board of the transport agency would be a matter for the Auckland Council.[12]

While there may be some timing issues to work through, it is essential that the Auckland Council has the responsibility for appointing the directors of the transport agency as soon as possible after its inception. Only by doing this, can the Auckland Council set the long term direction and focus for the transport agency, and establish an effective working relationship with it. Initial appointments made by Ministers should therefore be limited to a maximum term of six months.

It is also essential that the Auckland Council appoints the chairperson and deputy chairperson of the transport agency board. Proposed section 45(3) of the Auckland Council Act (page 41) provides for the chairperson and deputy chairperson of the transport agency to be elected by the directors themselves. There will need to be a very effective working relationship between the Mayor and the chairperson of the transport agency, which can only be achieved by the Auckland Council being responsible for the appointment process.

The ARC therefore recommends that the Bill is amended to provide for the Auckland Council to appoint the directors of the transport agency as soon as possible after 1 November 2010, to limit the term of initial appointments made by Ministers to maximum of six months, and to provide for the Auckland Council to appoint the chairperson and deputy chairperson of the transport agency.

Appointment of Non-Voting NZTA Director

Proposed section 45(2)(b) of the Auckland Council Act (page 40) provides for the appointment of one non-voting director nominated by NZTA. While there will need to be effective communication between NZTA and the transport agency, the

[11] Cabinet Minute (09) 30/10, Auckland Governance: Regional Transport Authority, 14.2
[12] Parliamentary written question 18301 (2009)

appointment of a non-voting director to the board of transport agency raises a number of issues.

It is unclear exactly what the role of this director will be, and the obligations and responsibilities which will fall on him or her. For example, will this director be considered part of the board in respect of the obligations set out in proposed section 45(5) of the Auckland Council Act (page 41), given that the director does not have voting rights? These provisions require that the board ensures that the transport agency acts in accordance with its objective, and that it is accountable for the performance of the transport agency.

Is the role of the director to pass information between NZTA and transport agency? If so, this could be inconsistent with the general duties of directors not to use information which they have received as board members to further the interests of other parties. Or is the role of the director to attempt to influence the board of the transport agency in a direction consistent with NZTA's requirements? And when the director attends the transport agency's board meeting, is he or she expected to act in the interests of NZTA or the transport agency?

There are already more than adequate provisions proposed in the Bill to require the transport agency to take full account of the objectives of NZTA. In addition, NZTA has comprehensive and detailed procedures with which the transport agency will need to comply to secure funding.

And while effective communication and cooperation between NZTA and the transport agency will be essential, the proposal for a non-voting director is a confused and ill-thought through process for achieving it.

The ARC therefore recommends that the Bill is amended to remove the requirement in proposed section 45(2) of the Auckland Council Act (page 40) for the appointment of a non-voting director nominated by NZTA to the board of the transport agency.

4.2.2. Scope of the Auckland Transport System

Proposed section 37(1) of the Auckland Council Act (page 36) sets out the definition of the Auckland transport system. The approach taken in the Bill appears to be to describe the physical assets, infrastructure and services over which the transport agency would be able to exercise its powers and undertake its functions.

While this approach provides for the ownership of the bulk of transport assets to remain with the Auckland Council, which the ARC supports, it does raise some significant issues.

These issues include:

- Roads (s37(a)(i)) – this definition includes squares, places, bridges, drains, culverts etc. As noted above, these assets will have a wider range of uses than simply transport and it is unclear which party will have final decision making rights.

- Public transport services (s37(a)(ii)) – these include commercial services. It is unclear how the transport agency would perform its function to "manage and control the Auckland transport system in accordance with the Act" (s41(b))

- Public transport infrastructure (s37(a)(iii)) is not defined. Further, it is not clear whether the exclusions in subparagraph (b) take precedence over the main definition. As a result, it is not clear whether assets such as bus stops etc which are outside a road, or park and ride facilities etc are public transport infrastructure. Further, is the land underlying such facilities vested in the transport agency?

- Railway stations appear to be "public transport infrastructure" but are also arguably "railways". It is not clear how they are to be treated. Britomart Rail station track "fingers" are owned by KiwiRail while the underlying land is owned by Auckland City Council. Will the transport agency or the Auckland Council have responsibility for the lessor's obligations under the lease to KiwiRail?

- Footpaths which are outside the road reserve are not included within the definition of the Auckland transport system. Conflict is likely to arise between the Auckland Council and transport agency regarding the widening of roads and the consequential impact upon footpaths.

The approach of defining the transport system in terms of physical assets also creates the potential for activities which are not directly related to those assets to be overlooked. For example, there is potential for a reduced focus on activities such as travel demand management as a consequence of the proposed approach.

It is essential the definition of the Auckland transport system is clear and unambiguous to ensure that all parties are clear as to their rights and responsibilities, and who will make final decisions.

The definition contained in the Bill as currently drafted does not provide this clarity and needs to be revised. The ARC considers that a better approach would be to use an existing definition, for example, the definition of "Auckland regional land transport system" in section 4(2) of the Local Government (Auckland) Amendment Act 2004 which refers to land transport (as defined in the LTMA) within the Auckland region "managed by local authorities, ARTA and ARH". This definition, together with the functions set out in proposed section 42 of the Bill would provide greater clarity.

The ARC therefore recommends that the Bill is amended to revise and clarify the definition of the Auckland land transport system to ensure that the definition is unambiguous, and that all parties are clear as to their rights and responsibilities.

4.2.3. Roading Functions of the Transport Agency

Proposed section 42 of the Auckland Council Act (page 38) sets out the proposed functions of the transport agency. Proposed section 42(c)(i) appears to authorise the transport agency to lay out a road or alter the course of a road or increase or diminish the width of a road under section 319 of the Local Government Act 1974.

This power appears to provide the transport agency with the potential to cut across planning decisions of the Auckland Council. As noted above, these powers appear to run the risk that transport decisions will drive wider land use and urban development decisions, at both the regional and local levels. This is unacceptable. As noted above, the Bill currently provides no constraint over how the transport agency might exercise its powers in this area, for example, there is currently no requirement for the transport agency to undertake its functions in accordance with the wider objectives of the Auckland Council or its Statement of Intent. This must be addressed as recommended above. In addition, the specific powers provided for

within the proposed section 42(c)(i) must also be constrained to ensure compliance with the wider land use and development objectives of the Auckland Council.

The ARC therefore recommends that the Bill is amended to constrain the functions set out in proposed section 42(c)(i) to ensure that the transport agency complies with the wider land use and development objectives of the Auckland Council.

4.2.4. Transport Agency needs to meet in public

Proposed section 47(2) of the Auckland Council Act (page 41) provides for the transport agency to be subject to Part 7 of the Local Government Official Information and Meetings Act 1987 (LGOIMA). However, this relates only to any meeting or part of a meeting where the transport agency makes or intends to make a bylaw.

The consequence of this provision will be that the transport agency will be able to conduct all of its business, other than the making of bylaws, in meetings which exclude the public. ARTA is currently able to exclude the public from its meetings, however, roading and other existing territorial authority transport activities are required to be conducted in public unless there are valid grounds under LGOIMA to exclude the public. If the Bill proceeds as currently drafted, the full extent of the transport and roading business undertaken by the transport agency (aside from bylaws) will be debated in private by the agency's board.

This is a significant step backwards and is completely inconsistent with the principle of accountable and transparent decision-making. LGOIMA provides a range of grounds to exclude the public from meetings, which are more than adequate to meet the needs of the transport agency for confidentiality. These include the ability to exclude the public where commercial matters are being discussed.

The proposed transport agency will be a consumer of significant ratepayer and taxpayer funding and there must be transparency as to its decision-making. There is therefore no valid reason for excluding the transport agency from the application of Part 7 of LGOIMA for all of its business.

The ARC therefore recommends that proposed section 47(2) of the Auckland Council Act (page 41) is amended to require the application of Part 7 of the Local Government Official Information and Meetings Act 1987 to all of the business to be conducted by the proposed transport agency.

4.2.5. Transport Planning and Funding

The Bill as currently drafted proposes a number of amendments to the LTMA in respect of the arrangements for the planning and funding of transport in Auckland. These amendments are primarily set out in schedule 3 to the Bill.

In summary, the proposed amendments provide little or no opportunity for the Auckland Council to have any influence or control over the direction or decisions of the proposed transport agency. In addition, the proposed amendments deny the Auckland Council the powers and rights which continue to be provided to regional councils in the rest of New Zealand. The proposed amendments also remove the rights of other parties to participate in Auckland transport matters while enhancing the role of the NZTA. Again, it is of serious concern that the Government is proposing to deny Aucklanders the range of rights and powers which are available to the rest of New Zealand. The specific issues raised by the Bill and the ARC's recommendations in respect of each are set out below.

Disestablishment of Auckland Regional Transport Committee

Clause 49(2)(b) of the Bill (page 60) disestablishes the Auckland Regional Transport Committee. In addition, section 105 of the LTMA, which sets out the arrangements for regional transport committees, is to be amended so that the provisions do not apply in Auckland. This section of the LTMA provides, amongst other things, that a regional council must appoint members to represent the overall objectives of the LTMA, specifically economic development, safety and personal security, public health, access and mobility, environmental sustainability and cultural interests.

As a consequence, there will no longer be a statutory requirement for the Auckland Council to appoint members who represent these interests to participate in the development of the Auckland regional land transport strategy. However, the requirement to appoint members who represent these interests will continue to apply in the rest of New Zealand.

Again, it is concerning that there are different arrangements in Auckland than in the rest of New Zealand. If changes to representation are to be made, they should apply everywhere and be implemented through specific amendment to the LTMA rather than pushed though the back door by consequential amendments arising from Auckland governance arrangements.

The ARC therefore recommends that any change to the representation on regional land transport committees be undertaken as part of changes to the LTMA rather than through the Auckland governance reform process.

Approval of Auckland Regional Land Transport Programme

Under the existing provisions of the LTMA 2003, ARTA is required to prepare and approve the Regional Land Transport Programme (RLTP). This is at odds with the rest of New Zealand where the regional land transport committee prepares and the regional council approves the RLTP.

Proposed section 13(2) of the LTMA as amended by the Bill (page 155) perpetuates the existing Auckland situation by providing for the transport agency to both prepare and approve the RLTP. This is inappropriate for a number of reasons. Providing for the transport agency to both prepare and approve the RLTP is likely to mean that there will be very little rigour or scrutiny in the approval process.

The Auckland Council will be the major funder of the transport agency but it will only be consulted on the RLTP "if affected" (proposed section 18(ab), page 158). As noted above, it is estimated that the Auckland Council will spend approximately 54% of its rate revenue on transport and this revenue will form the major part of the funding for the Auckland RLTP. Auckland Council members will be accountable to the public for setting and collecting this revenue.

In addition, an RLTP must include a statement of the transport priorities for the region for the next 6 years. It is essential that the Auckland Council has the primary role in the final determination of those priorities, given its responsibilities for funding the transport agency, its overall land use and development responsibilities and objectives, and the need for accountability to ratepayers and the Auckland public.

Given this, it is essential that the Auckland Council has the responsibility for approving the Auckland RLTP. This would not give the Auckland Council any special rights but would bring it in to line with regional councils and ratepayers in the rest of New Zealand.

The ARC therefore recommends that proposed section 13(2) of the LTMA is amended to provide for the Auckland Council to approve the Auckland Regional Land Transport Programme.

Auckland Regional Land Transport Programme – giving effect to the ARLTS

Schedule 3 of the Bill proposes the removal of section 15(b) of the LTMA, thereby removing the requirement for the Auckland RLTP to "give effect to the Auckland regional land transport strategy". The Bill provides only for the RLTP to be "consistent with the GPS and the Auckland regional land transport strategy." This is a significant weakening of the existing provisions and effectively breaks any link between the funding provided by the Auckland Council and the application of that funding by the transport agency. It effectively removes any clear statement of the accountability of the transport agency to the Auckland Council in respect of implementing the RLTS.

This is a significant amendment to the existing arrangements and is strongly opposed by the ARC. The requirement for the Auckland RLTP to give effect to the Auckland regional land transport strategy must continue to be in place.

The ARC therefore recommends that proposed section 15(b) of the LTMA is amended to retain the requirement for the transport agency to give effect to the Auckland Regional Land Transport Strategy through the Regional Land Transport Programme.

5. LOCAL BOARDS

The ARC has consistently supported the establishment of local boards with meaningful roles and significant local responsibilities, as well as adequate funding to carry out their functions. We believe that local boards are an integral part of the unitary authority, and that the local boards must be empowered to deal with local issues, if local democracy is to be maintained. Delegation of local functions to local boards should be done in accordance with the principle of subsidiarity. Local boards will also need to have an effective "place-shaping" role which is not provided for within the Bill, but which will need to be addressed as part of the work currently being undertaken by the ATA.

We have some concerns about the detailed provisions relating to local boards in the Bill, and as legislated in the Auckland Council Act. A number of provisions in the Auckland Council Act were inserted as a result of the select committee process on that bill, and the ARC had no opportunity to submit on the detail of the provisions.

5.1. DISPUTES RESOLUTION

We appreciate the effort made by the Government to safeguard against the governing body removing roles and responsibilities from local boards, by adding a disputes resolution process involving the LGC (proposed section 77 of the Auckland Council Act, page 55).

However, we do not support this process being applied to disputes over local board agreements. We believe that it is inappropriate for the LGC to be determining disputes about a local authority's revenue and expenditure, as these decisions should be made by elected members. We also believe that it will be impractical for the LGC to determine disputes about local board agreements in the time available, because by the time the LGC has considered the dispute and made a determination, it is likely that the LTCCP or Annual Plan of the Council (which will include the local

board agreement) will need to have been adopted in order to strike the rates. It is unclear what the effect of the LGC's determination will be at that stage.

The ARC recommends that the disputes resolution process be limited in its application to disputes around the allocation of decision-making responsibility to local boards, and local bylaws.

5.2. LOCAL BOARD PLANS AND LOCAL BOARD AGREEMENTS

The ARC supports a requirement for local boards to prepare a three year plan and consult with the community on that plan. We support the intention that the local board plan will provide the basis for developing the local board agreements for those three years, and inform the development of the LTCCP. However, we have concerns around the detail of the drafting of section 20 of the Auckland Council Act.

First, the local board plan should cover the same three year period as the LTCCP, rather than commencing one year before the LTCCP, as proposed in section 20. This will solve the issues that surround the timing of the development of local board agreements. As currently drafted, each local board will be required to consult on and adopt their first local board plan by 30 April 2011, six months after being elected. This provides insufficient time for the significant amount of work that will need to go into preparation of these plans, if they are to be effective. As the special consultative procedure usually takes at least three months to complete, this means that the local boards will need to become familiar with their new roles and the Auckland Council, and develop priorities and write these into a plan that meets the legislative requirements within three months of being elected. This is impractical.

The legislation also assumes that the Auckland Council will be in a position to inform local boards of their standard levels of service and likely local board budgets immediately after the election, as this information will be necessary for plan preparation.

It will also be important for the local boards to maintain close relationships with a number of the CCOs, particularly Auckland Transport, the economic development, tourism and events CCO, and the Waterfront Development Agency (for the local board that includes this area). The local boards and CCOs will need to work together as well as with the governing body when setting annual budgets. This is likely to take some time.

We therefore recommend that local boards be required to adopt a local board plan by September or October of the year following triennial elections, which will then provide sufficient time for each plan to inform the development of the LTCCP in the following year. If local board members wish to make any immediate changes to priorities or budgets following their election, they could do so through the local board agreement process, just as elected members currently do through the annual plan process rather than the LTCCP.

Secondly, we believe that the local board plans should include the estimated budget for the local board for three years, rather than one year as currently required by section 20(4)(b)(iii) of the Auckland Council Act. This will be essential if the local board plan is to inform the development of local board agreements over the three year period, and if it is to inform the development of the LTCCP.

Thirdly, we believe that the local board agreement, rather than the local board plan, should form the accountability document between the local board and its community. The local board plan is based only on an estimated budget, while the local board

agreement is based on the actual budget. In addition, information in the local board agreement is presented in context with the overall rating impact, the activities of the governing body, other local board budgets, and funding and financial policies of the Auckland Council. By year three, circumstances or priorities may have changed so that a local board negotiates a local board agreement with the governing body that differs from the local board plan (as allowed under section 21(2) of the Auckland Council Act). Therefore we recommend that section 20(2)(e), which states that the local board plan will be the basis for accountability of the local board to the communities, be deleted, and that a similar clause be inserted in section 21, in relation to local board agreements.

The ARC recommends that the Bill provide for section 20 and 21 of the Auckland Council Act to be amended so that:

- **local board plans must be adopted by September or October of the year following the triennial election, and cover the same three year period as the first three years of the LTCCP,**

- **local board plans are required to include budget information for the three year period,**

- **the local board agreement is considered to be the accountability document between the local board and the community rather than the local board plan.**

6. WATERCARE

The ARC supports the integration of bulk and local water and wastewater functions and the creation of a single water and wastewater service provider. However, we have some concerns related to the governance arrangements proposed for Watercare, and the provisions required to ensure integrated planning.

6.1. ACCOUNTABILITY AND TRANSPARENCY

The ARC strongly supports the intention of making Watercare a standard CCO, subject to all the provisions of the LGA 2002. It is however unclear why this would not come into effect until 2012. We fail to see how the Cabinet's decision to not subject Watercare to the provisions of the LGA 2002 until 2012 gives effect to the principles of accountability, transparency and consistency with general local government legislation.

The only rationale offered in the Cabinet paper related to this decision was to "ensure a smooth transition for the integration of Auckland's water services". Most of the provisions that are to be retained until 2012 will have very little impact on the smoothness of the transition. For example, the provisions in the Bill mean that the Auckland Council will not be able to modify or approve Watercare's Statement of Intent (SOI) until 2012. If the Bill is enacted as drafted, Watercare will be able to write and approve its own SOI, and in doing so it will be able to choose whether or not to take into account any submission made by the Auckland Council on its funding plan and asset management plan. We question why any transition time at all is needed to come to an arrangement where a sole shareholder is able to approve or modify a subsidiary's SOI.

The ability to modify a CCO's SOI is one of the few mechanisms that allows a council to provide transparent guidance to a CCO. CCOs are unlike crown agents (e.g. NZTA, Housing New Zealand Corporation), where the Crown Entities Act 2004

enables the relevant Minister to require the crown agent to give effect to Government policy, and makes directors directly accountable to the Minister for the performance of their duties. Even if it is provided with the ability to modify Watercare's SOI, the Auckland Council will still have very few mechanisms by which to provide guidance to Watercare.

This will be important prior to 2012, because Watercare will be moving towards standardised pricing for water and wastewater during this time. Water and wastewater pricing have been very significant political issues in Auckland, and it will be extremely important for Watercare to be accountable to the governing body of the Auckland Council for its decisions in relation to pricing. We appreciate that the legislation states that Watercare must comply with any water pricing policies of the Auckland Council. However, the mechanism by which the Auckland Council will be able to ensure Watercare complies with any such direction is unclear.

We note that the transition to standardised water and wastewater pricing will be difficult because of the wide variation in charging mechanisms and prices across the region. For example, in some areas, wastewater charges are calculated on a volumetric basis, but in other areas there are either fixed charges or uniform annual rates for wastewater. The average wastewater bill (based on 200m^3 water consumption) ranges from $350 in Manukau to $774.74 in Rodney.[13]

One of the drivers of this reform process was the intention to achieve integrated customer service, enabling ratepayers to receive a single bill and conduct all business with the council at the same location. It will be important to deliver a single rates bill that includes water and wastewater charges, and for customers to be able to pay that bill at a council service centre. There will also need to be information sharing and a close relationship between the council and Watercare in relation to building and resource consents that have implications for water and wastewater services. Therefore Watercare should be a CCO of the Auckland Council during the period in which these crucial business processes are established to enable the council to require this customer service integration.

We also note that if Watercare is made a standard CCO under the provisions of the LGA 2002, this will remove the need for the Auckland-specific legislation included in clauses 65-70 of the Bill (pages 73-78). This would be consistent with the general local government legislative framework. It would also remove other issues, such as the specific inclusion of clause 66(a)(ii) (page 74), allowing Watercare to raise debt. This clause has been included despite the fact that it is generally more efficient for the Council to raise debt than for CCOs to do so.

We support the provision in the Bill for the Council to determine the mechanism by which it delivers water services from 2015. The ability to determine the mode of delivery for water and wastewater services will be essential to enable the Council to review and make improvements to water governance over the long term, and to ensure that governance and delivery arrangements remain appropriate in the future. As a competent entity, the Auckland Council must be trusted to make decisions about the mode of delivery it chooses to employ for all parts of its business, just as every other council in New Zealand is able to do.

The ARC recommends that Watercare become a CCO of the Auckland Council, with the LGA 2002 provisions relating to CCOs applying to Watercare from 1 November 2010, rather than 2012. The ARC therefore recommends that:

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[13] Auckland Water Group, *Auckland Water Industry Performance Review 2007/08*

- **clauses 65-70 (pages 73-78) of the Bill be removed, and**

- **clause 47(2), page 60 (which removes Watercare's exemption from being a CCO) come into force on 1 November 2010 rather than 1 July 2012.**

6.2. WATER AND WASTEWATER ASSETS RATEABLE ON LAND VALUE ONLY

The ARC supports proposed section 61 (page 47) of the Auckland Council Act which states that assets owned and used by an Auckland water organisation for providing water and wastewater services in Auckland are rateable based only on their land value. The Auckland ratepayers, who funded the Mangatangi and Mangatawhiri dams which will soon be in the Waikato region and Waikato district, have already suffered a grievance by losing governance over these dams. We believe it is important that this grievance is not enhanced by giving Waikato councils an ability to levy high rates based on capital value. While in the past, any rates in relation to these dams would have been received by Auckland councils and spent in Auckland, it will now be received by Waikato councils and spent in the Waikato. Because the two dams are situated in regional parkland that will be owned and administered by the Auckland Council, the costs to Waikato councils of providing services to the dams will be negligible.

The ARC recommends that proposed section 61 of the Auckland Council Act be retained.

7. WATERFRONT DEVELOPMENT AGENCY

The ARC supports the continuation of a specialist waterfront development agency for the Auckland CBD waterfront. Clause 18 (page 17) of the Bill proposes new section 19B of the Tamaki Makaurau Act, which requires the ATA to establish a Waterfront Development Agency with responsibility for development of the Auckland waterfront.

It is unclear why clauses relating to this agency have been inserted into the Bill, instead of using the process being used to create the other new Auckland Council CCOs, particularly given the absence from the Bill of any information about the waterfront agency's scope, objectives, or legal structure etc. In the absence of any of this detail, the ARC makes the following general points:

- Aucklanders are passionately interested in the future development of the waterfront, and it is vital that a waterfront development agency is accountable to the public.

- Significant public consultation has identified a number of important principles for Auckland's waterfront, including the importance of public open space. These are described in the Waterfront Vision 2040. The waterfront development agency must take these principles into account and have a mix of commercial and public good objectives.

It is also unclear why the name of the agency has been specified in the Bill, especially in view of the fact that an agency is normally a statutory entity, and the ATA process will presumably result in the establishment of the CCO as a company.

Further, the process undertaken by the ATA includes the development of a policy case for the creation of each CCO. A policy case for the waterfront development

agency still needs to be established, together with specific objectives and a clear scope and purpose.

The ARC recommends that clause 18 is deleted, and the waterfront development agency is established in the same manner as other new CCOs using the process in proposed section 35G of the Tamaki Makaurau Act (page 26 of the Bill).

8. GENERAL COMMENTS ABOUT CCOS

The Bill as currently drafted specifically provides for three CCOs for the Auckland Council: Watercare, Auckland Transport and a waterfront development agency.

In addition to the Bill, the Minister of Local Government has released a cabinet paper entitled *Auckland Transition Agency proposals for the structure of council-controlled organisations for the Auckland Council.* Comments on this cabinet paper are included here as we understand it is contemplated that some further provisions be added to the legislation during the Select Committee process.

It is understood that, in addition to the three CCOs listed above, CCOs will be established for:

- economic development, tourism and events;
- property holdings and development;
- major regional facilities; and
- council investments.

The ARC is unclear why it is proposed that the ATA establishes these CCOS in advance of 1 November 2010. In the ARC's view, the Auckland Council should be free to determine whether it wishes any of its activities to be delivered through CCOs, in the same way that every other council in New Zealand is able to make decisions about modes of delivery, through the normal process set out in the LGA 2002.

If, however, the process of establishment of these CCOs is to proceed, amendments need to be made to the criteria by which the Minister makes establishment decisions.

Proposed section 35G (page 26) of the Tamaki Makaurau Act provides for an Order in Council made on the recommendation of the Minister to authorise the ATA to establish one or more CCOs. The proposed section sets out the criteria which the Minister must satisfy in making such a recommendation. These criteria are that the establishment of the CCO is "necessary for the effective and efficient governance of Auckland; and does not inappropriately constrain the discretion and accountability of the Auckland Council".

These criteria are inadequate to determine whether a CCO should be established. In particular, a clear purpose needs to be defined for each proposed CCO, together with an assessment of whether a CCO is the most appropriate model to achieve that purpose. These additional criteria need to be included in proposed section 35G(3).

The Cabinet paper also includes the governance framework which the ATA proposes to establish for operation from 1 November 2010. The cabinet paper states that the framework will not be provided for in legislation. The ARC supports this decision, as it is appropriate that the Auckland Council is free to adapt and improve on the framework at its discretion.

Information released by the ATA detailing the assets which it is proposed be held in each of the proposed CCOs raises concerns as to how the CCOs might be established.[14] The proposed Major Regional Facilities CCO would contain a number of facilities currently held in trusts or which have their own separate legislation e.g. North Harbour Stadium, and Eden Park existing trusts. The Bill as currently drafted does not however make any provision for the disestablishment of such trusts or the repeal of relevant legislation. It is therefore unclear how the establishment of the proposed CCOs can be progressed in advance of the establishment of the Auckland Council.

With respect to the provisions in respect of CCOs contained in the Bill, the ARC supports proposed section 75 of the Auckland Council Act (page 54) that provides for additional accountability requirements for substantive CCOs. It is appropriate that the legislation provides for clear accountability to the Auckland Council with sufficient mechanisms to ensure that the CCOs deliver in accordance with the Auckland Council's strategic objectives and priorities, particularly as the Auckland public has not been consulted in the normal manner in relation to the delivery of services by CCOs instead of by the Auckland Council.

The CCOs and local boards will need to have close two-way working relationships, and the CCOs will also need to be accountable to the local boards. It is currently unclear how these relationships will work. One mechanism that could assist will be empowering the Auckland Council to provide direction to its CCOs including Auckland Transport and Watercare. The Auckland Council could then direct the CCOs to work with the local boards through the statement of intent and funding agreement processes, and address the importance of the relationships with CCOs in its delegations to local boards.

The Bill prohibits the Auckland Council from appointing councillors to boards of substantive CCOs. This should be a policy decision of Auckland Council in line with the LGA 2002 CCO governance provisions that apply in the rest of New Zealand, and it is therefore recommended that proposed section 76 of the Auckland Council Act (page 55) is deleted from the Bill.

The Bill provides for the Auckland Council to require substantive CCOs to prepare and adopt a 10 year plan describing how the organisation intends to manage its assets, service levels, respond to population growth, and give effect to the Council's strategy, plans, and policies. The regional transport agency is specifically exempted from this requirement by proposed section 75(3). The basis of this exemption is unclear, but we understand that it is on the basis that the transport agency will prepare the RLTP. The RLTP does not specifically address the issues provided for in proposed section 75(2)(c). Accordingly, the ARC recommends that proposed section 75(3) is deleted from the Bill.

There is no need to include a requirement that any new entities (CCOs) should remain in place until July 2012, when the Auckland Council will produce its first LTCCP.[15] While it is unlikely that the Auckland Council would seek to make structural changes in the initial 20 months of its existence, in principle the Council should be free to determine its own policies and structure. If the Auckland Council proposed to change the delivery of a significant activity from a CCO to another

[14] Auckland Transition Agency, Proposed Structure and Governance framework for CCOs, 3 December 2009

[15] Cabinet Minute: Local Government (Auckland Law Reform) Bill: Entities, Assets and Liabilities, Taxation and Staff (AGR Min (09) 12/1)

organisation, it would need to comply with the standard LGA 2002 process that includes the use of the special consultative procedure. This should be a sufficient safeguard to ensure that such a reorganisation would not be entered into needlessly. The ARC recommends that this decision is not reflected in the Bill.

The ARC recommends that the decision making on the creation of substantial new CCOs is deferred until after 1 November 2010 so that the Auckland Council is able to provide effective leadership in Auckland across the normal spectrum of local government activities.

The ARC further recommends:

- **That the criteria for establishment of CCOs set out in proposed section 35G(3) of the Tamaki Makaurau Act be expanded to provide for the Minister to satisfy himself or herself that that any CCO has a clear purpose, and that a CCO is the most appropriate model to achieve that purpose.**

- **That thhe provisions proposed in section 75 of the Auckland Council Act (page 54) which provide additional accountability requirements for substantive CCOs be retained, except for 75(3) which should be deleted.**

- **That proposed section 76 of the Auckland Council Act (page 55) is deleted, allowing the Auckland Council to determine its own policy on the appointment of councillors to boards of CCOs.**

- **That no legislative provision is made prohibiting the Auckland Council from re-structuring its group structure at any time, and that the general local government legislative framework is relied upon instead.**

- **That no legislative provision is made that will constrain the Auckland Council's ability to determine the governance structure it uses in relation to its CCOs.**

9. BOARD PROMOTING ISSUES OF SIGNIFICANCE FOR MANA WHENUA AND MĀORI

The ARC continues to support separate representation for Māori, and recommends that provision is made for two Māori wards within the Auckland Council, rather than establishment of an unelected board which provides input rather than representation. Māori representation should be on the same democratic basis as general wards, with two Māori ward members reflecting and representing the significance of Māori in the Auckland region.

The ARC has previously provided the Auckland Governance Legislation Committee with a map that illustrated potential Auckland Council wards, including two Maori wards.[16] The northern Maori ward had a population of 69,639 people and the southern ward had 66,924 people, similar to the size of populations of other wards proposed by the LGC.

The ARC acknowledges the important role of Mana Whenua in local government in Auckland, particularly in relation to council responsibilities under the RMA. The ARC has worked with Mana Whenua to establish the Tamaki Regional Mana Whenua

[16] ARC submission on the Local Government (Auckland Council) Bill, 26 June 2009.

Forum. We note that this Forum was established without the need for special legislation, and therefore we question whether proposed part 7 of the Auckland Council Act is necessary. One of the principles agreed by Cabinet to guide decision making in relation to these reforms was consistency with the general local government legislative framework. The establishment of this Board is inconsistent with the general local government legislative framework, which allows for councils to have Māori wards.

The ARC recommends that the provisions in the Bill related to the Board promoting issues of significance for Mana Whenua and Māori are deleted and replaced with provisions that establish two Māori wards.

10. SPATIAL PLAN

The ARC agrees that there is a pressing need for an overall strategic plan for the region that is able to align regional and district planning with infrastructure, investment, and other council and Government strategies, activities, services and programmes. The ARC believes that a spatial plan could provide an important vehicle for the Mayor to articulate a vision for the region in terms of place shaping, infrastructure, transport, economic development, environmental protection, and social wellbeing. The plan could then be an important tool to align the actions of the council, CCOs and government agencies.

A number of cities around the world have used a spatial plan or spatial development strategy as a tool to articulate and achieve their goals for urban development. For example, the London Plan includes the Mayor's vision for London as well as a strategy for sustainable development, an overarching spatial policy, a transport strategy, and policies related to social, economic, cultural and environmental outcomes.

The ARC is concerned that the spatial plan, as currently proposed in the Bill, is likely to fall short of what is required. The Bill states the functions of the spatial plan, but does not provide the linkages with other plans and legal processes that are required if the plan is to be implemented.

One of the key problems identified in the Royal Commission's process was that there is an abundance of strategies which have been jointly agreed between councils in Auckland[17], but that the region has failed to deliver on these strategies. The results in terms of tangible outcomes for Aucklanders have not always been apparent. The development of these kinds of strategies is time consuming and expensive, and the ARC has no wish to see another strategy written, consulted on, agreed, and then not implemented, particularly if the strategy does not replace or reduce work required on other strategies.

The Royal Commission cited the Regional Growth Strategy (RGS) as an example of a strategy where implementation had not been successful due to the need for coordinated action between many agencies. Implementation has also been hampered by the lack of a hierarchy between the RGS and other planning frameworks (under the RMA, LGA 2002 and LTMA). As currently drafted, the spatial plan will suffer from the same problems.

[17] For example, Regional Growth Strategy, One Plan, Auckland Sustainability Framework, Auckland Regional Economic Development Strategy, Metro Action Plan, Regional Open Space Strategy, Regional Settlement Strategy, Auckland Region Physical Activity and Sport Strategy

The establishment of CCOs for key parts of the Council's business (including transport, water, economic development, and waterfront development) means that the Auckland Council will be unable to simply choose to implement its spatial plan. Rather, it will continue to need to co-ordinate the actions of a range of agencies if implementation of the spatial plan is to be achieved. The Auckland Council could write a requirement for CCOs to give effect to the spatial plan into the CCOs' SOIs. However, in the case of transport, Auckland Transport is not required to act in accordance with its SOI under the current drafting of the Bill.

The lack of a hierarchy or clear set of linkages between the RGS and other planning frameworks has also been problematic. The other planning frameworks that would need to align in order for a spatial plan to be successfully implemented include the LTCCP/annual plan under the LGA 2002, transport strategies and programmes under the LTMA, and the Regional Policy Statement and district plans under the RMA. The linkages with the Hauraki Gulf Marine Park Act 2000 and the Waitakere Ranges Heritage Area Act 2008 also need to be addressed. We note that the Government has considered this issue, but has decided that linkages with other plans and legislative frameworks could be considered later.

If the spatial plan is to be successfully implemented, the ARC believes that Government and the Auckland Council (including the governing body, the local boards, and the CCOs) will need to give effect to it. There will need to be a requirement for the LTCCP, annual plan, local board agreements and CCOs' SOIs to give effect to the spatial plan. In addition, the RLTS and RLTP will also need to give effect to the spatial plan.

We note that Cabinet considered options for the spatial plan that included the following options:

1. Status quo (waiting for the second round of RMA reforms)
2. Changes to the LGA 2002 so that the LTCCP would contain the spatial plan
3. A statutory spatial plan that replaces other existing strategic plans
4. A statutory spatial plan with strengthened legislative linkages, so that the spatial plan influences planning under other legislation (LGA 2002, RMA and LTMA planning frameworks).
5. A statutory spatial plan with no additional or strengthened legislative linkages, with changes to be considered through the RMA reform process.

It is unclear why option 5 has been chosen by the Government for inclusion in the Bill, or why option 3 is the Government's preferred long-term view. The relative benefits of option 3 versus option 4 will be unclear until the second round of the RMA reform process has been completed. It could well be that the second round of the RMA reform process delivers a framework into which option 4 will fit far better than option 3.

Moreover, it is premature to pass legislation requiring the Auckland Council to work on a plan when the legislative framework for that plan is unclear. The Auckland Council could begin work on an expensive plan which later is found not to fit the bill. These reforms could leave the Auckland Council in a situation where the spatial plan has little influence or force, or alternatively, the spatial plan may need to be rewritten if policy work on the RMA develops in a manner inconsistent with current provisions.

We also note that the spatial plan, as currently proposed in the Bill, will involve consideration of policy objectives for land use, transport, infrastructure and environmental management, but no consideration of social, economic and cultural

policy objectives, or of matters such as protection of historic heritage. The spatial plan will need to consider these objectives if it is to be effective.

We also believe that there will need to be a requirement for the spatial plan to be consistent with the Hauraki Gulf Marine Park Act 2000 and the Waitakere Ranges Heritage Area Act 2008.

The ARC therefore recommends that the Select Committee either:

1. Completes work on the potential hierarchy of plans and linkages between the spatial plan and other planning frameworks (including RMA, LGA 2002 and LTMA plans/strategies), before passing legislation in relation to the spatial plan (i.e. before passing this Bill); or

2. Deletes the requirement in the Bill for the Auckland Council to develop a spatial plan, until work on the RMA reform is complete, at which time the Government could make an amendment to the Auckland Council Act or establish a national framework in the LGA 2002.

The latter option is likely to result in far better outcomes by delivering a planning framework that is well-considered. It also does not involve wasting public funds developing a plan that may need to be re-developed in the immediate future.

The Auckland Council will have every incentive to articulate a vision for the region as well as policies across a broad range of areas. We believe that, in the absence of a legislative provision requiring the Auckland Council to prepare a spatial plan, the Auckland Council will begin urgent work on an overarching strategic/spatial framework in the early part of its existence. It will need to have these policies clearly articulated to provide direction to its CCOs or require the CCOs to give effect to council policy. It will also need to set this high level strategic direction to inform the development of its first LTCCP, to integrate the rating policies of the existing councils, to inform decisions on the integration of district plans, and to inform policies and activities in areas such as open space and recreation, housing, property development, environmental protection, facilities, economic development, tourism, etc.

All councils need to develop a strategic direction following an election, and they currently all do this without specific legislation requiring them to do so. If proposed section 66 is removed from the Bill, the Auckland Council will be more likely to develop a strategic direction in a dynamic and meaningful way rather than doing so merely to comply with a legislative requirement.

We further note that including a requirement for the Auckland Council to prepare a spatial plan in legislation, but including no legislative hierarchy, adds a requirement or constraint on the council without any corresponding enablement or legislative benefit.

Accordingly, the ARC recommends that proposed section 66 of the Auckland Council Act is deleted, and that spatial planning for Auckland is addressed through the review of the RMA.

In the event that proposed section 66 is not removed from the Bill, the ARC recommends that proposed section 66(3)(f) is amended to require the spatial plan to include policy objectives for social, cultural and economic wellbeing and the protection of historic heritage.

10.1. SPATIAL PLAN AMENDMENTS

Proposed subsection 66(5) of the Auckland Council Act (page 50) allows the Auckland Council to amend the spatial plan only when there is a significant change in circumstances from those that existed when the plan was prepared or last amended, although a significant change is not specifically defined.

One of the goals of this reform process was to set governance arrangements that facilitate effective leadership for Auckland. If Mayors and councillors of the Auckland Council are not empowered to amend strategic plans as they see fit, it is unclear how the arrangements will ever facilitate effective leadership, or encourage high quality Mayoral candidates to stand for election. This restriction will lock successive mayors and councils into an overarching policy position that they may disagree with in a fundamental way. It will unduly constrain the Council, and is a significant departure from general local government legislation in New Zealand, where councils are empowered to develop and amend their strategic plans, usually only with restrictions on the maximum time between reviews.

The ARC recommends that, if section 66 is retained, that proposed subsection 66(5) be amended to simply state that the Auckland Council may amend the spatial plan at any time. The Auckland Council should be trusted, as a competent body, to judge when it is appropriate to amend the spatial plan.

11. REGIONAL AMENITIES

The ARC recognises the very important contribution made in Auckland by a number of regional arts, culture, history, rescue and sporting organisations. The ARC has provided funding for some of these organisations in the past and acknowledges the importance of public funding to these amenities.

11.1. AUCKLAND REGIONAL AMENITIES FUNDING ACT 2008

Proposed schedule 3 allows for the continued existence of the Auckland Regional Amenities Funding Act 2008 (Amenities Funding Act), but the case for its continuation needs to be re-evaluated. The Amenities Funding Act arose as a response to a collective action problem related to the region's governance structure. The problem was that some territorial authorities in the Auckland region were funding regional amenities while others were not, despite the benefit received by ratepayers across the region from the amenities. The creation of the Auckland Council effectively solves this problem.

We note that the National Party's view on the Auckland Regional Amenities Funding Bill was that it should no longer continue in existence once Auckland's local government structure had been reformed. In the select committee report on the Bill, the National Party minority view was as follows:

> *"The background to this bill is the significant deficiencies in the structure of local government in Auckland, which does not provide effectively for the provision of Auckland wide community services. As a consequence, the funding for a number of important public services covering rescue, water safety, arts, and heritage are in funding crisis.*
>
> *National considers that the bill does not provide a longterm mechanism for funding these services. The bill imposes a rate by Central Government legislation, which overrides the normal process of local government being accountable for their rates.*

> *The right answer to these problems lies in the reform of Auckland's local government structures and that is why we have supported the Royal Commission on Auckland Governance.*
>
> *The reality is that any reforms arising from the Royal Commission are some years away and that some interim funding mechanism is required to ensure these amenities and services survive. That is why National is supporting this bill only as an interim response.*
>
> *National will only support the bill beyond a second reading on the basis that there is a clear sunset clause no later than 1 July 2012. Such funding mechanisms are not good public policy and National does not wish this arrangement to have any permanence on New Zealand's statute books."* [18]

The ARC supports this view and strongly suggests that the Bill be amended to repeal the Amenities Funding Act, or at least to add a sunset clause. The ARC is dismayed that the Government would legislate to give effect to a decision that it has previously described as "not good public policy" which should not "have any permanence on New Zealand's statute books". We believe that Auckland deserves better. The Auckland Council should be trusted to determine the level of funding it provides to regional amenities, the mechanism to provide such funding, and which amenities it funds.

The ARC supports the provision of funding to regional amenities (and has funded some of the amenities in the past), but is opposed to the imposition by Government of a requirement on Auckland ratepayers to fund amenities that are selected by the Government, through a mechanism determined by the Government, rather than a reliance on normal local government processes. The fact that an unelected body is able to determine the level of this funding and the amount to be awarded to each recipient considerably worsens the matter.

The retention of this Act is at odds with the principles that the Cabinet agreed would be used to guide decisions related to the reform. In particular, it is not consistent with the general local government legislative framework, and it lacks accountability, transparency, and opportunities for ratepayer and citizen redress. Moreover, it unduly constrains the Council in its ability to make decisions in the best interests of Auckland and to provide effective leadership.

We also have concerns about the specific requirements and arrangements in the Amenities Funding Act. The Amenities Funding Act contains a complicated and expensive process for determining funding, which involves a Funding Board, an Electoral College, and an Amenities Board. In 2009 the Funding Board spent over $110,000 in administering the fund and carried forward a surplus of over $220,000.

While many of the amenities funded through the Amenities Funding Act provide very valuable services to Aucklanders, the amenities were to some degree self-selected, and the Auckland Council should be free to decide which amenities it supports. For instance, we note that no cultural organisations from a predominantly Māori, Pacific or Asian cultural background are funded under the Amenities Funding Act. We have further concerns that the Amenities Funding Act creates an incentive structure which encourages the amenities to become reliant on funding from the council, and that there is very limited ability to link funding to the performance of the amenities.

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[18] Local Government and Environment Committee (2008) Report on the Auckland Regional Amenities Funding Bill, pages 7-8.

The ARC recommends that the Amenities Funding Act is repealed.

11.2. MAXIMUM LEVY

The Amenities Funding Act, the Auckland War Memorial Museum Act (Museum Act) and the Museum of Transport and Technology Act (MOTAT Act) each established a board (the Auckland War Memorial Museum Board, the Museum of Transport and Technology Board and the Auckland Regional Amenities Funding Board) which is able to charge Auckland's territorial authorities a levy to support a number of regional amenities. Elected members are prohibited from being on any of the three boards. Very importantly, there is currently a cap on the amount that these unelected bodies are able to levy the councils.

The ARC is very strongly opposed to the proposals in schedule 3 (pages 171, 172, 175) of the Bill that remove the cap on the amounts that these unelected bodies will be able to levy the Auckland Council in order to support these regional amenities.

All other Auckland Council expenditure will need to be agreed through the LTCCP process, which allows for competing projects and programmes to be carefully prioritised. It also allows for public input through the special consultative procedure. However, in the case of funding for regional amenities, levies will be imposed on the Council, and not considered against competing priorities.

As drafted, the prohibition on elected members sitting on the Auckland War Memorial Museum Board, the Museum of Transport and Technology Board and the Auckland Regional Amenities Funding Board will extend to Auckland Council members. Despite this, under the changes proposed in the Bill, these boards will be able to levy the Auckland Council for any amount of money every year in order to support the amenities. Ratepayers will ultimately be required to pay the levy. If ratepayers are dissatisfied with the amount of the levy or the quality of service offered by the amenities in exchange for the funding, ratepayers will have virtually no recourse because they are unable to vote the boards out, and board members have little incentive to pay attention to public opinion. The proposal in the Bill amounts to taxation without representation and will be completely unacceptable to the ratepayers of Auckland.

We note that there is a process included in the Amenities Funding Act for an arbitration process in the event of a dispute between the Funding Board and Council representatives. However, this process involves an arbitrator who is required to take into account the duties of the Funding Board (involving providing "adequate, sustainable, and secure funding for specified amenities"), rather than any competing priorities for the funding or the impact on ratepayers. The correct people to be making these decisions are the elected representatives who are directly accountable to the ratepayers.

The ARC strongly recommends that the provisions removing the caps on the funding levies in the Museum Act and the MOTAT Act be deleted from the Bill. In the event that the Amenities Funding Act is not repealed, a cap on the funding levied under this Act must also be retained.

In the event that the Government does not choose to repeal the Amenities Funding Act, and that the funding cap is retained, the funding cap will still need to be reviewed. As presently drafted, the maximum amount of the levy is 2% of the combined revenue of territorial authorities. This cannot simply be translated as 2% of the Auckland Council's revenue, because the Auckland Council's revenue will also

include revenue that would historically have been received by the ARC. A policy case would need to be established if the maximum levy amount was to be increased.

One alternative would be to calculate the amount of the levy in the last financial year as a rate in the dollar of the total capital value of rating units in the region for that year. This rate could then be inserted into the Act as the maximum levy. This is the way the maximum levy for the Auckland War Memorial Museum is calculated in section 23(4) of the Museum Act.

In the event that the Government does not choose to repeal the Amenities Funding Act, the ARC recommends that funding cap should be reviewed to prevent an automatic increase in the amount of funding to include 2% of revenue that would historically have been received by the ARC.

Schedule 3 (pages 171, 172, 174) includes references to Franklin district in the Amenities Funding Act, the Museum Act, and the MOTAT Act. Franklin district will no longer exist and therefore these references are not required.

The Bill proposes to repeal section 5(4) of the MOTAT Act (page 175). This appears to be a typographical error. We envisage that only 5(4)(a) should be repealed and not 5(4)(b). Section 5(4)(a) relates to a function of the Electoral College, which would no longer continue in existence. Section 5(4)(b) relates to a function of the Museum of Transport and Technology Society, which will continue in existence, and therefore this sub-section should be retained.

The ARC recommends that:

- **The references to Franklin district that the Bill proposes to include in the Amenities Funding Act, the Museum Act, and the MOTAT Act are removed.**

- **The Bill does not repeal section 5(4)(b) of the MOTAT Act.**

12. OWNERSHIP OF STRATEGIC ASSETS

The ARC strongly believes that the public should be consulted before the sale of strategic assets, such as shares in the Ports of Auckland Limited (POAL) and Auckland International Airport Limited (AIAL). However, we note that, under the provisions of the Bill, which establishes a framework for strategic assets to be held by a new CCO, there will be no requirement for public consultation if the relevant CCO board decides to sell Auckland's public assets after 1 July 2012. This will be completely unacceptable to the Auckland public.

Shares in port and airport companies are considered to be strategic assets, according to the definition of strategic assets in the LGA 2002. The LGA 2002 places certain restrictions on the disposal of strategic assets that are held by local authorities (i.e. a decision to dispose of a strategic asset must only be taken if it is provided for in an LTCCP). This requires public consultation, using the special consultative procedure.

However, there is no legislative requirement for public consultation in relation to disposal of a strategic asset by a CCO. There is a requirement for consultation when a local authority establishes a CCO and transfers strategic assets to the CCO. However, in the case of the Auckland Council, the public has not explicitly been asked about whether they wish their port and airport shares to be held by a CCO rather than the Auckland Council, although this is likely to be the end result of the transition process.

Moreover, not only is the Government proposing to remove the general requirement for public consultation before disposal of Auckland's strategic assets, it is also removing the specific requirement for a poll to be held before the disposal of POAL shares. Clause 49 of the Bill (page 60) proposes to repeal the Local Government (Auckland) Amendment Act 2004 which includes the requirement for the poll.

The ARC believes that, because POAL is a strategic asset owned by Aucklanders and it is fundamental to Auckland's economy, it is vital for Aucklanders to have a say in relation to any proposal to dispose of POAL shares. The ARC believes that public ownership of this asset is extremely important to Aucklanders, and that public control over this waterfront area will remain important in the long term.

We believe the Bill should be amended in one of two ways:

1. by including a section that replicates section 28 of the Local Government (Auckland) Amendment Act 2004 in relation to POAL shares, and including a section that prevents the disposal of strategic assets by CCOs without public consultation; or

2. by amending the LGA 2002 to require public consultation before strategic assets are disposed of by CCOs.

The ARC recommends that the Bill is amended to ensure that strategic assets can only be sold following public consultation.

13. RATING

The ARC believes that a smooth transition between the rating policies of the outgoing councils and the rating policy of the Auckland Council is absolutely essential to the success of the reform.

The ARC supports the inclusion of clauses 78 to 80, which enable the Auckland Council to reduce the impact on ratepayers by phasing in changes over three years.

14. EMPLOYMENT PROVISIONS

The ARC supports the decisions announced by the Minister of Local Government that:

- Employees confirmed in a similar role will retain the same terms and conditions of employment, unless otherwise agreed.
- The Bill will provide for transfers of staff who have not been declared surplus, and arrangements for staff declared surplus.[19]

Unfortunately the Bill as drafted does not properly reflect these decisions. It is essential that proposed new section 35C of the Tamaki Makaurau Act (page 23) to be inserted by clause 24, and clause 53 (page 64) are amended so that the interim Chief Executive's review process can only be used to transfer an existing employee on different terms and conditions where those terms and conditions have previously been agreed by both parties.

[19] Rodney Hide: Decisions to complete the legislative framework for Auckland Governance, 3 December 2009

It is unclear why the Bill contains such a complex mechanism to deal with the employment provisions. Other local body and government reorganisations have been completed with relatively simple legislation to avoid technical redundancies, relying much more heavily on existing employment law. That approach would have avoided anxiety caused to staff by flawed and unnecessarily complex drafting.

The relationship between the process established by proposed new section 35C (page 23) or clause 53 for ARTA and ARTNL employees (page 64), and the provisions relating to compensation in the proposed new schedule 6 (page 18) or schedule 5 for ARTA and ARTNL employees (page 182) is unsatisfactory. These provisions as drafted enable the interim chief executive of the Auckland Council to transfer an existing local government employee to a new employer on 1 November 2010 on different terms and conditions without the agreement of that employee.

The ARC recommends that the Bill is amended to introduce a fair process for transferring employees by including a requirement that a transferring employee will transfer on the same terms and conditions unless they agree otherwise.

One way of achieving this would be to consolidate and substantially redraft all the provisions relating to employment. While this should achieve a coherent, and hopefully much simpler, approach, if substantially new provisions are inserted at this stage in the legislative process there will be no opportunity for consultation and input from the affected staff. Given the impact and importance of these provisions, this approach would not be satisfactory. Accordingly, the ARC recommends that the existing provisions are amended. A possible approach would be to amend the Bill as follows:

- amend proposed section 35C(4)(c) by inserting after the word "concerned" (line 2) the words "(as part of the written notice provided under subsection (b))" and amend subsection (iii) as follows:

  "(iii) if the employee's employment is to be transferred on different terms and conditions, of those proposed different terms and conditions, the requirement for the employees agreement to those different terms and conditions in order for employment to be transferred and the consequences for the employee if there is no such agreement."

- proposed schedule 5 (page 116) is amended by amending subclause (3) by deleting the words "becomes an employee … section 35C(4)(c)" and inserting:

  ":

  (a) if he or she accepts the notified terms and conditions (or other different terms and conditions proposed by the chief executive), becomes an employee of his or her new employer, on and from 1 November 2010, on such accepted terms and conditions;

  (b) if he or she does not accept the notified terms and conditions (or other different terms and conditions proposed by the chief executive), will be subject to further review and a decision by the chief executive under section 35C(1) taking into account the failure to reach agreement on the different terms and conditions of that person as a transferring employee to the relevant organisation."

Equivalent amendments would need to be made to the equivalent provisions in the Bill relating to ARTA and ARTNL.

Proposed new schedule 6 (page 118) or schedule 5 for ARTA and ARTNL employees (page 182) provides for compensation for transferring employees who are required to relocate. As presently drafted (clause 5), this compensation is available only to employees who are transferred to positions on different terms and conditions. This creates the situation where employees who transfer on the same or substantially similar terms and conditions apart from location are disadvantaged relative to employees who transfer on different terms and conditions.

The ARC recommends that proposed schedule 6 clause 5 (and the equivalent provision relating to ARTA and ARTNL employees) be amended to refer to all employees who transfer to a position at a different location.

Proposed section 6(c)(iii) of proposed schedule 6 (page 119) (and clause (6)(c)(iii) of schedule 5 for ARTA employees (page 183)) appear to disadvantage ARC, ARTA and ARH employees in comparison with employees of territorial authorities. While the clause is unclear, it appears to require consideration of the geographic boundaries of current employer's operations, when determining whether an employee's relocation is on substantially similar terms and conditions or not. These factors may be reasonable in the case of employees of territorial authorities, where there is a more compact geographic area. However, the geographic area covered by the ARC spans approximately 130km from north to south. The majority of staff work in Auckland's central business district. We also note that the intent of the clause is unclear and that it requires re-drafting.

The ARC recommends that proposed section 6(c)(iii) of proposed schedule 6 (page 119) (and the equivalent provisions for ARTA employees) are redrafted so that ARC, ARTA and ARH employees are not disadvantaged relative to employees of other local government organisations, when considering whether a relocation constitutes a change in the terms and conditions of employment.

Unlike proposed sections 35C and 35D of the Tamaki Makaurau Act (pages 23-24), clauses relating to ARTA and ARTNL employees come into force on 1 November 2010 (clause 2(1) of the Bill, page 10). This is inconsistent with the proposed review process that must be complete by 30 September 2010 (clause 53(4) page 65).

The ARC recommends that the Bill is reviewed and amended to ensure that provisions relating to employment provisions in Part 3 come into force the day after Royal assent.

15. WAITAKERE RANGES

In schedule 3 (page 163), the Bill proposes to repeal section 77 of the Local Government Amendment Act 1992. The ARC is very strongly opposed to the repeal of section 77(1) of this Act, which states that:

> *The Auckland Regional Council shall continue to hold, for the purposes of a scenic park and as a memorial to commemorate the completion in the year 1940 of the first 100 years of settlement and progress in the Metropolitan District of Auckland, the land known as "the Auckland Centennial Memorial Park" and any other land acquired by the Council or its predecessors for the purposes of that park.*

The 8,500 hectare Auckland Centennial Memorial Park was incorporated into the Waitakere Ranges Regional Park after it was inherited by the Auckland Regional Authority and then the Auckland Regional Council. The Waitakere Ranges Regional Park today spans over 17,000 hectares of rainforest and coastline. It is home to

many native species, and is steeped in natural and cultural heritage. It is one of two water catchment areas that provide most of Auckland's bulk water, containing four of Auckland's water supply dams. The Waitakere Ranges Regional Park is one of the region's most loved assets and offers stunning recreational opportunities within half an hour of central Auckland. In 2008 the Government passed the Waitakere Ranges Heritage Area Act, recognising the significance of the ranges, and the importance of protecting this prized area. On the ground the Auckland Centennial Memorial Park is a seamless part of the broader Waitakere Ranges Regional Park. It is predominately bush but includes part of the water catchment lands and infrastructure as well as our usual range of track, visitor and roading infrastructure.

It is unclear why the Government would wish to repeal this provision, rather than simply amending it to replace the references to the "Auckland Regional Council" with references to the "Auckland Council". The ARC believes that every effort should be made to protect this park for future generations of Aucklanders. The parkland is protected in perpetuity under the Local Government (Auckland Regional Parks) Order 2008 (2008/254), so the parkland cannot be sold, unless the Order in Council is changed.

If the Government's intention is to nationalise the park then this should be clearly stated so that the public has an opportunity to comment. The ARC's management of the park, especially its biosecurity and heritage programmes, are of international standard and there is a substantial budget and staff resource currently dedicated to running the park. The levels of service offered are higher than most national parks. If it was to be nationalised, the substantial cost of operation would be transferred to the crown. The parkland was acquired by the people of Auckland for the people of Auckland and therefore there would be a real question about compensation if the land was to be acquired by the Government for the people of New Zealand. We believe that there is a high degree of public support for continued regional ownership and stewardship of the Waitakere Ranges, and that nationalisation would be completely unacceptable.

The ARC recommends that the Bill is amended so that section 77(1) of the Local Government Amendment Act 1992 is not repealed, but that there is a simple amendment to replace the reference to "Auckland Regional Council" with "Auckland Council".

The ARC supports the proposed repeal of sections 77(2) and 77(3) of the Local Government Amendment Act 1992, which have been ineffectual since the repeal of the Auckland Centennial Memorial Park Act 1941 in 2002.

15.1. WAITAKERE RANGES HERITAGE AREA ACT

The ARC strongly supports the retention of the Waitakere Ranges Heritage Area Act 2008. It is extremely important to protect the Waitakere Ranges for future generations, and this Act is an important tool to assist with this protection.

The ARC is seriously concerned that schedule 3 of the Bill proposes to repeal section 18 of the Waitakere Ranges Heritage Area Act 2008 (page 176). Section 18 makes the following provisions:

> *(1) To the extent of any inconsistency, this Act prevails over the Auckland Regional Growth Strategy prepared under section 37SE of the Local Government Act 1974 (the strategy).*

> *(2) When amending the strategy, ARC must ensure that its provisions are not inconsistent with the purpose of this Act or the objectives.*

Every effort must be made to protect the Waitakere ranges and foothills, and the obligation for the region's strategic growth plan to be not inconsistent with the Waitakere Ranges Heritage Area Act 2008 must remain.

The ARC recommends that section 18 of the Waitakere Ranges Heritage Area Act 2008 be retained.

In the event that the select committee chooses to retain the requirement on the Auckland Council to prepare a spatial plan, the ARC recommends that section 18 of the Waitakere Ranges Heritage Area Act 2008 should be amended to refer to the spatial plan rather than the regional growth strategy.

16. TECHNICAL ISSUES

This section addresses a number of operational or technical issues. Due to the length of the Bill, the complexity of its structure, the number of issues covered, and the early deadline for submissions, not all the issues in the Bill have been addressed.

16.1. AUCKLAND TRANSPORT

Clause 19 of the Bill provides for a new section 21B(1)(b) to be inserted into the Tamaki Makaurau Act (page 18) to provide for the interim chief executive of the transport agency to "enter into contracts, leases and other agreements to enable Auckland Transport to operate efficiently and effectively on and from 1 November 2010".

The proposed transport agency will receive funding from the NZTA. To receive NZTA funding, the transport agency will need to ensure that it complies with the procurement procedures and processes that are set out in sections 24 to 26 of the LTMA.

The ARC recommends that the Select Committee amends proposed section 21B(3)(b) to provide for any contract, lease or other agreement to be determined consistent with the procurement requirements for NZTA which are set out in the LTMA.

16.2. LOCAL BOARDS

16.2.1. Budgets for 2010/11

We note that proposed section 2(2) of schedule 2 which is to be added to the Tamaki Makaurau Act (page 107) requires the ATA to identify budgets for each local board area for 2011/12, but not for 2010/11. Local boards will be elected in October 2010, however, given the current drafting, it appears they will not be given a budget until July 2011. To operate without any dedicated funding for the first eight months after election will be totally unacceptable to local board members and to the public because it amounts to a lack of local democracy. It is also unclear how activities required by statute such as the preparation of local board plans will be carried out without budget allocation.

The ARC recommends that section 2(2) of schedule 2 which is to be added to the Tamaki Makaurau Act is amended so that the ATA is required to set local board budgets for 2010/11 as well as 2011/12.

16.2.2. Local Revenue

Clause 40 (page 34) of the Bill amends section 20 of the Auckland Council Act by introducing the concept of a local revenue source. Although "local" is not defined, this allows a local board to include fees and charges in local board plans.

We do not support local boards having the ability to set local fees and charges. One of the purposes of this reform process was to standardise things such as rates, fees and charges across the region. Therefore it is unclear why this provision has been added, as it has the potential to lead to even greater differences in fees and charges across the Auckland region.

There could also be issues associated with the term "a fee or charge relating to a local activity" in section 40(2) of the Bill (page 34). This could potentially include

development contributions or financial contributions revenue. For the avoidance of doubt, we recommend that the section includes a clarification to state that development contributions and financial contributions should not automatically be received by local boards (although this revenue could be allocated to local boards by the governing body for community infrastructure or other local projects). Development contributions must be applied to the purpose they were taken for in the area they relate to.

Proposing local boards receive "any other revenue associated with a local activity" in section 40(2) (page 34) is problematic because the term is undefined. The term "any other revenue associated with a local activity" could potentially include all revenue collected by the Auckland Council, including rates, development contributions, grants, fees, charges and investment income, because at the lowest level this revenue all comes from people or organisations that are located in a particular local area. This clause must be deleted or redrafted to prevent conflict between local boards and the governing body. Otherwise local boards may be able to challenge the governing body's ability keep any revenue for its own purposes, and not pass it all on the local boards.

The ARC recommends:

- **that clause 40(2) be amended by removing the reference to "a fee or charge related to a local activity",**

- **that clause 40(2) be amended by removing the term "any other revenue connected with a local activity" and replacing it with a more specific term.**

16.2.3. Submission Process

Section 22(3) of the Auckland Council Act requires that submissions on the local board agreements contained in the Auckland Council LTCCP must be heard jointly by the governing body and the relevant local board. While the ARC supports this approach in principle, the drafting is likely to cause some practical problems. In some years, existing Auckland councils receive tens of thousands of submissions on their annual plans, and while not all submitters ask to be heard, the scheduling of submission hearings is already a complicated logistical exercise. Under the new provisions, if a submission covers matters raised in a number of different local plans, a submitter may be asked to attend multiple hearings, or alternatively the Auckland Council may have to schedule joint meetings of up to 19 boards and the governing body to hear submissions. The Auckland Council should be given flexibility to enable sensible solutions to these logistical problems on a case by case basis.

The ARC recommends that a new clause is inserted in the Bill repealing section 22(3) of the Auckland Council Act.

16.2.4. Local Bylaws

Auckland Council ability to accept bylaws proposed by local boards

Following a local board's proposal for a new bylaw, and following consultation on that bylaw, sections 24(2) and 27(2) of the Auckland Council Act require the governing body to determine whether the bylaw meets the following requirements:

a) It complies with applicable statutory requirements

b) It is not inconsistent with any strategy, policy, plan or bylaw of the Council

c) It can be implemented and enforced within the local board's budget

d) It will not have any significant effect outside the local board's area

If the bylaw meets these requirements, it must be accepted, and if not, the bylaw is rejected. The Auckland Council has no discretion to accept a bylaw even if it does not meet the requirements above. There may be situations where the Auckland Council would like to accept a new bylaw proposed by a local board, even where it is inconsistent with an existing bylaw that applies across a larger geographic area or a particular plan, or where there are significant effects outside the local board area, but these may be considered to be positive or neutral effects.

The ARC recommends that sections 24(2) and 27(2) of the Auckland Council Act be amended to enable the Auckland Council to consider a local board's proposal for a new bylaw and to make a decision to accept or reject the proposal, subject to the limitation that the proposal can only be rejected where the bylaw fails to meet the requirements (a) – (d) above.

Amendments and revocations of bylaws

Sections 24 to 28 of the Auckland Council Act provide for local boards to propose bylaws and propose amendments or revocations of bylaws. Under section 24 a local board may propose a bylaw to apply only in its local area. However, there is no ability for a local board to propose that an existing bylaw be amended or revoked where it applies to more than one local board area. Furthermore, even if all local boards wish to amend or revoke a bylaw to which they are subject, they have no legislative ability to apply to the governing body on this account.

Many existing bylaws, which will transfer to the Auckland Council, apply across current territorial authority areas and will therefore affect multiple local boards. As the legislation currently stands, local boards will be unable to propose that these bylaws be either amended or revoked for their areas. This may cause practical difficulties, especially if a local board wishes to propose a new bylaw for its area that may replace an existing bylaw which applies across a larger geographic area.

An amendment or revocation of a bylaw is subject to section 24 and therefore must be consistent with the Council's strategies policies and plans, and must not have a significant effect outside the local board's area. Within these limitations, local boards should be provided with the discretion to propose that bylaws be amended or revoked in their area, even if the bylaw continues to apply in other local board areas.

The ARC recommends sections 26(1) and 27(1) of the Auckland Council Act be amended, so that local boards are able to propose amendments or revocations to bylaws that apply to their local area and to a wider geographic area, where the amendment or revocation applies only to area of the local board(s) which initiated the proposal.

16.2.5. Local Board Co-operation

The ARC has concerns about clause 39 (page 34), which requires local boards to co-operate and collaborate with other local boards where the interests and preferences of communities within each local board area align. Under the Auckland Council Act, local boards will already have the ability to co-operate and collaborate, but it is unclear what the effect of creating a legislative requirement will have - there is a risk that this will create an obligation for local boards to act sub-regionally rather then locally.

The ARC recommends that clause 39 be deleted from the Bill, leaving local boards with the freedom – but not the requirement – to co-operate and collaborate.

16.2.6. Local Board Plans

The Bill should include an amendment to section 20 of the Auckland Council Act to correct the reference to 'LTCPP' in subsection (4)(b)(i) to LTCCP.

16.3. COUNCIL CONTROLLED ORGANISATIONS

16.3.1. Watercare Enforcement Officers

It is unclear why a requirement has been included in the Bill for the ARC to warrant Watercare's enforcement officers prior to 31 October 2010, under proposed section 29F of the Tamaki Makaurau Act (page 21). The ARC does not have the information to manage the responsibility to warrant enforcement officers, and will necessarily have to rely completely on the advice of Watercare.

The ARC recommends that proposed section 29F of the Tamaki Makaurau Act be deleted and that a new provision be included stating that all warrants issued by Watercare are deemed to have been issued by the Auckland Council on and from 1 November 2010 (similar to clause 97 of the Bill (page 92)).

16.3.2. Watercare's Ability to Occupy Crown Land

The ARC supports proposed section 52(2) of the Auckland Council Act (page 44), which subjects Watercare to the normal obligations any organisation would have under the RMA, if it wishes to occupy space in the coastal marine area.

The ARC recommends that this provision is retained in the Bill without alteration.

16.3.3. Transfer of Ownership Interests in CCOs and COs

Clause 23 (page 21) of the Bill which inserts proposed new section 35(1)(ba) into the Tamaki Makaurau Act states that "the interests of each local authority in any CCO or council organisation become the interests of the Auckland Council in the CCO or council organisation." We understand the aim of this proposed new section is to allow an existing local authority's ownership interest in a CCO or CO to be transferred to the Auckland Council.

While this objective is supported, we note that, in some cases, if a CCO or CO is not being wound up as part of the reorganisation, then the ownership interest of that CCO or CO may be transferred either to the Auckland Council or to a subsidiary of the Auckland Council. An example may be the transfer of various CCOs and COs to the proposed Economic Development, Tourism and Events Agency, the Property Holdings and Development CCO, the Major Regional Facilities CCO, or the Council Investments CCO.

The ARC recommends that proposed section is broadened to allow an existing local authority's ownership in a CCO to be transferred to either the Auckland Council, or to a CCO that is wholly owned or controlled by the Auckland Council.

16.3.4. Dissolution of Council Controlled Organisations

Clause 24 (page 21) of the Bill inserts proposed new section 35B into the Tamaki Makaurau Act, providing for the dissolution of terminating organisations and the transfer of that organisation's various rights and obligations to a receiving entity. We understand the aim of this proposed new section is to allow for the reorganisation of CCOs owned by existing local authorities, and the transfer of the assets and liabilities of those CCOs into either the Auckland Council or a new or existing CCO.

We support this objective. However, we note that although the proposed section works well when a CCO is being wholly transferred to either the Auckland Council or a new or existing CCO, it does not deal adequately with cases where:

(i) a CCO's various assets and liabilities are transferred to several different entities (such as the Auckland Council and CCOs). An example may be the assets of ARH, which may be transferred to the Auckland Council and the proposed Council Investments CCO and the Waterfront Development Agency CCO.

(ii) the assets and liabilities of an existing local authority are transferred to a CCO. Examples are the Auckland International Airport Ltd shares held by Auckland City Council, which may be transferred to the proposed Council Investments CCO, or Auckland City Council's waterfront assets which may be transferred to the Waterfront Development Agency CCO.

More generally, the current draft provisions do not appear to deal with the transfer of specific assets or liabilities, (which may include shares in CCOs) from existing to new entities.

The ARC recommends that the proposed section is amended to ensure that it can deal effectively with the transfer of assets and liabilities, as well as interests in CCOs, from existing local authorities and CCOs to the Auckland Council and new and existing CCOs.

16.3.5. Status of Existing Trusts

In addition, the Bill as currently drafted does not address the status of the many trusts that currently hold facilities or perform functions. While the ATA has proposed the creation of a Major Regional Facilities CCO for example, many of the regional facilities are held in trusts. Unless it is proposed to change the status of some of these trusts (which is not provided for in the Bill as it stands), it is unclear what role a regional facilities CCO could play. The proposed process for dealing with the transfer of specific assets and liabilities likewise does not address issues associated with trusts.

16.3.6. Status of Auckland Regional Holdings

Clause 49 of the Bill (page 60) repeals the Local Government (Auckland) Amendment Act 2004, while providing for the continuation of ARH. These provisions are inconsistent, as ARH is currently a statutory entity. This means that, as it is not a company, partnership, or trust, ARH will have no legal form after the repeal of the Local Government (Auckland) Amendment Act 2004.

We note that the ATA has proposed that ARH's current functions are divided between the waterfront development agency and the investment company.

The ARC therefore recommends that clause 49(2)(d) is deleted, allowing the status of ARH to be resolved through the ATA process, which will provide a mechanism for the transfer of assets and liabilities as required.

16.3.7. CCO Statements of Intent

Under the LGA 2002, all CCOs are required to have a SOI which is developed with input from the Council. It is unclear how the process will apply in the 2010/11 year where substantive new CCOs will be established part way through the financial year with no input from the new Auckland Council. There may need to be provision in the Bill to exempt the new CCOs from having an SOI immediately after their establishment on 1 November 2010, and providing sufficient time for the SOIs to be developed and approved by the Council. Alternatively, the provision could deem the Order in Council made under the proposed section 35G (page 26) of the Tamaki Makaurau Act to be the SOI until a new SOI is adopted by the CCO and approved by the Auckland Council. We understand that it is the ATA's intention that all CCOs will have SOIs developed as soon as possible, and we support this intention, simply noting timing difficulties.

The ARC recommends that a transitional provision is included in the Act, allowing CCOs sufficient time to develop their first SOI in consultation with the Auckland Council.

16.4. INFRASTRUCTURE AUCKLAND GRANTS

Clause 49 of the Bill (page 60) provides for the repeal of the Local Government (Auckland) Amendment Act 2004. We note that section 29(1)(c) and (d) of the Local Government (Auckland) Amendment Act 2004 assigns responsibility for the liability for stormwater grants to the ARC and transport grants to ARTA, following the dissolution of Infrastructure Auckland. Section 35 requires the ARC to provide funds to ARTA to enable ARTA to meet those liabilities.

The repeal of the Local Government (Auckland) Amendment Act 2004 creates an ambiguity about which entities are responsible for those Infrastructure Auckland grants. The majority of the remaining grants are to existing councils, and are rendered obsolete by the creation of the Auckland Council, although the rights and funding obligations for the grants will be managed by the Auckland Council. However, there are three grants outstanding totalling approximately $400,000 to other applicants for stormwater projects. These residual grants are over 5 years old, and it is unclear to what extent they are able to be used for the purpose originally intended.

Accordingly the ARC recommends that the Bill provides a sunset clause of 30 June 2011, after which these grants are written off if they have not been claimed.

16.5. BOARD PROMOTING ISSUES OF SIGNIFICANCE FOR MANA WHENUA AND MĀORI

We note that the Auckland Council will have the ability to initiate the development of Māori wards through the process set out in section 19Z of the Local Electoral Act 2001. The ARC supports the provision of Māori wards on the Auckland Council. It is unclear whether the Government's intention in providing for the Board promoting issues of significance for Mana Whenua and Māori ("the Board") established by proposed section 67 of the Auckland Council Act (page 51) is that the Board would continue to exist if and when Māori wards were established.

The ARC recommends that the Government clarify whether its intention is that the Board could exist concurrently with Māori wards on the Auckland Council, and either:

- **Include a clause to prevent both mechanisms operating at the same time, or**
- **Consider the interaction of the two mechanisms for Māori representation/input to Council decision-making, if they exist simultaneously.**

16.6. RATING

16.6.1. 2011/12 Targeted Rate

We support local boards having an ability to propose a local targeted rate, but have a concern that the governing body is only able to decline a proposal for a local targeted rate in 2011/12 if "it would be impractical or unreasonably expensive to implement the rate" (under section 84(2) page 84). We believe that the governing body must have more discretion than this to ensure that rates are affordable during the transition process and to consider the appropriateness of the local targeted rates that are proposed. For example, a local targeted rate implemented in 2011/12 would be included in the transition smoothing process, and be included in the maximum percentage increase. This may result in a funding shortfall in the general rate revenue in local board areas where targeted rates are implemented.

The ARC recommends that the grounds on which the governing body may decline a proposal for a targeted rate in 2011/12 are broadened.

16.6.2. Transition Smoothing Mechanism

The effects of any transition management policy for rating will not be known without extensive modelling. However, we suggest some changes be made to the transition policy provisions to enable the Auckland Council to better manage this process. First, there should be provision for a dollar limit on the increase limit as well as a percentage (e.g. a maximum change of either 10% or $20, whichever is greater). Secondly, there should be an option to have a different percentage decrease limit from the percentage increase limit. This would address the practical concern that a decrease cannot be more than 100 per cent while increase can be much larger. It could also help to manage issues related to the public acceptability of slowing large rates decreases.

The ARC recommends:

- **That there be provision for a dollar limit on the maximum rate increase and decrease limit as well as a percentage, e.g. a maximum change of either 10% or $20, whichever is greater.**
- **That there be an option to have a different maximum rates decrease limit from the maximum rates increase limit.**

16.6.3. Transition Rate

The application of the transition rate on a uniform percentage increase basis will need to specifically exclude rates for local infrastructure loans, to avoid inequitable changes for some ratepayers. Local infrastructure loans involve situations where a small group of ratepayers agree to pay for specific local infrastructure through a high

rate (e.g. an upgrade to a local road to service their properties), which can add up to $2,000 or $3,000 to their rates bill for a number of years. If the percentage increase for the transition rate is applied uniformly, the increase will be considerably higher for these ratepayers if based on total rate-take, but there is no justification for charging these ratepayers significantly more for the transition.

The ARC recommends that the transition rate be calculated on the total rating liability for each ratepayer excluding any rate charged for a local infrastructure loan.

16.6.4. Rates Remission Policies

As drafted, the Bill requires the ATA to prepare the Planning Document for the Auckland Council, which will involve consolidation of a number of funding and financial policies where it will not be practical for the Council to have more than one policy. In cases where it will be feasible to have the existing policies of the outgoing councils in operation for some time, these can continue to operate.

The Bill states that the Planning Document is to include the rates remission policies of all the outgoing councils. We do not believe this is practical and note that the legislation needs to be amended to either require the ATA to harmonise the rates remission policies in the Planning Document, or to require the Auckland Council to adopt a new rates remission policy before rates are struck in July 2011. If this is not done, the Auckland Council will be sending out a single rates bill to each rating unit in July 2011, but the ARC rates remission policy and the former territorial authority rates remission policy will both apply to that rates demand. This situation would be confusing and impractical.

The ARC recommends that the Bill requires the ATA to include a new rate remission policy for 2011/12 in the Planning Document.

16.7. TAX

The provisions in clause 108 on tax are extremely difficult to understand, and it is unclear whether it is possible to identify the tax status of the new CCOs from the Bill as currently drafted. As a general principle, the reorganisation of Auckland local government should be tax neutral. We note that the Cabinet paper on taxation proposed guiding principles in relation to tax that included a "no worse overall tax position than before the restructure."[20]

The ARC recommends that the Bill includes provisions allowing for the reorganisation of Auckland local government to be tax neutral.

16.8. PLANNING DOCUMENT

The ARC is concerned that the Auckland Council will not have the ability to amend the planning document that is prepared by the ATA for 2010/11 and 2011/12. The planning document is not defined in the Bill as the LTCCP of the Auckland Council, but instead the proposed amendment to section 19A of the Tamaki Makaurau Act (clause 17, page 16) states that the planning document is considered to satisfy the requirements that a local authority must have an Annual Plan and LTCCP for 2010/11 and 2011/12 respectively. It is unclear if the planning document is defined

[20] Cabinet Paper AGR (09) 12/1: Policy for Inclusion in the Third Auckland Bill: Entities, Assets and Liabilities, Taxation and Staff, page 18.

widely enough to substitute for the LTCCP - for example, it does not appear to satisfy the requirements of section 97 of the LGA 2002. In addition, if the Council wishes to amend the planning document, there does not appear to be a process the Council can follow to do so.

One of the principles agreed by Cabinet to guide the reform was that of good governance, including the facilitation of effective leadership. In order to exercise effective leadership, the initial Mayor, councillors and local board members of the Auckland Council will need the ability to amend the Council's budget, specify new priorities and allocate expenditure in their first two years of office. Therefore they must have the ability to amend the planning document.

The proposed new schedule 2 of the Tamaki Makaurau Act requires the ATA to include new policies on liability management, revenue and financing, and partnerships with the private sector in the planning document. Most other policies required under the LGA 2002 must also be included in the planning document, as consolidations of the existing councils' policies.

However, we note that the proposed new schedule makes no mention of either the significance policy or the investment policy, both of which are required under the LGA 2002. The Auckland Council must have a new significance policy, as it plays an important role in the local government decision making process, including influencing decisions on whether the special consultative procedure must be used for specific decisions, and the significance policies of the existing councils can not be logically combined. While the ATA may be able to rely on clause 1(1) of schedule 2 as authorisation to include these policies, this may not be sufficient if the ATA is unable to characterise the new significance policy as a 'consolidation' of the existing policies.

The ARC recommends:

- **That the planning document is defined as the LTCCP in the Tamaki Makaurau Act so that the new Council is able to amend it.**

- **That the significance policy and the investment policy are included in the proposed new schedule 2 of the Tamaki Makaurau Act.**

16.9. ANNUAL REPORT

The requirement to prepare a 16 month annual report for existing local authorities (in section 29C of the Tamaki Makaurau Act) will create additional costs for local authorities subsidiaries that are not terminating, such as the Ports of Auckland Limited. These entities are required to prepare a 12 month annual report to the end of June 2010, but are not required under the Bill to prepare a 16 month report. However, they will need to prepare and audit their accounts for the 16 month period, as part of the consolidation of the 16 month accounts of their parent. This requirement will be costly and needs to be reviewed.

The ARC recommends that section 29C of the Tamaki Makaurau Act is reviewed.

16.10. REPRESENTATION REVIEWS

Section 8 of the Auckland Council Act requires that the governing body has a mayor and 20 members. The requirement to have exactly 20 members has made it extremely difficult for the LGC to design wards and local board areas for the Auckland Council that provide fair representation (i.e. areas have a similar ratio of

population to elected members) and create areas based on coherent communities of interest. In its draft proposal, the LGC did not manage to meet the usual requirements of the Local Electoral Act 2001 for fair representation. Their task could have been made considerably easier by allowing some variation from the requirement for 20 members.

Every other territorial authority in New Zealand, when determining its representation arrangements every six years, is able to decide the appropriate number of members between a minimum of six and a maximum of 30. There is an opportunity for public submissions and appeals, and review by the LGC as part of the representation review process. Having some flexibility in the total number of members means that it is far easier to develop representation arrangements that provide for similar ratios of population to elected members, without severing communities of interest. It is unclear why the Auckland Council should not also be given this flexibility.

While provisions in the Auckland Council Act meant that the LGC did not have to meet the criteria for fair representation in its proposal, this will not be the case for the Auckland Council when it comes to review its representation (under clause 83 of the Bill (page 58)). The Auckland Council will face an extremely difficult task in redesigning its representation arrangements. If it is to stick to exactly 20 members, and if local board boundaries are to align with ward boundaries (i.e. every local board area is entirely within a single ward), and the requirements for fair representation in the Local Electoral Act 2001 are to be met, it will most likely be impossible to align wards and local boards with communities of interest.

It will be necessary to either:

1. repeal the requirement for exactly 20 members, or

2. give the Council an exemption from the requirement to comply with the criteria for fair representation (all wards being required to have a similar ratio of population to elected members), as was done for the LGC's proposal.

Option one is by far the superior option. Aucklanders deserve fair representation arrangements, just like all other New Zealanders, and the new representation arrangements for Auckland need to be at least as equitable as the ones they are replacing. While the policy case for rural areas to be over-represented on the Council has been established and given effect to in legislation, the policy case for doing away with the requirement for fair representation altogether would need to be established. Equality in representation is an important principle in any local government reorganisation, and is a fundamental tenet of democratic systems.

The ARC recommends that a new clause be inserted into the Bill that repeals section 8(1) of the Auckland Council Act. This would take effect after the LGC has made its determination, so there would still be 20 members on the Council for the first term.

16.11. ELECTORAL SYSTEM

Clause 60 of the Bill (page 71) requires that the October 2013 election use the First Past the Post electoral system. There is no justification for the inclusion of this requirement. There is already a section in the Tamaki Makaurau Act (section 13(3)(a)) that provides for the 2010 election to be held using the First Past the Post system, which is necessary because the Auckland Council will not exist prior to the election to make a decision of its own about the appropriate electoral system.

However, there is no need for the Government to legislate the electoral system to be used in the 2013 election.

Under the Local Electoral Act 2001, every other council in New Zealand is able to make a decision about the electoral system it will use, two years before the year in which the election will be held. The public also has the right to demand a poll about the electoral system that is to be used. One of the principles used to guide this reorganisation that was agreed by Cabinet was the importance of consistency with the general local government legislative framework. Clause 60 is clearly inconsistent with general local government law, and it unduly constrains the Council, and limits the democratic right of the Auckland public to demand a poll and start a process to change the electoral system.

The ARC recommends that Clause 60 be repealed and that the Auckland Council and the Auckland public are not constrained in their abilities to change the electoral system to be used in 2013.

16.12. ENACTMENTS AMENDED: SCHEDULE 3

The typographical error in relation to the Litter Act 1979 in schedule 3 (page 162) should be corrected. The Bill states that the definition of public authority in the Litter Act should be amended by omitting the Auckland Regional Authority, and substituting it with the Auckland Harbour Bridge Authority. The Auckland Harbour Bridge Authority no longer exists.

Schedule 3 of the Bill states that section 313 of the LGA 1974 will be repealed (page 163). Section 313 has already been repealed by the RMA in 1991.

The ARC supports the retention of the Mt Smart Regional Recreation Centre Act 1985 as provided in the Bill. This Act will provide the Auckland with the ability to host certain activities at Mt Smart Stadium as of right, which otherwise would be 'consented activities' or 'not permitted activities' under the Reserves Act 1977. These powers will be necessary if Auckland is to host Commonwealth Games events at Mount Smart Stadium.

The ARC recommends that:

- **The reference to the Auckland Harbour Bridge Authority to be inserted into the Litter Act 1979 be amended.**
- **The proposal to repeal section 313 of the LGA 1974 be deleted.**
- **No further amendments be made to the Mount Smart Regional Recreation Centre Act than those proposed in the Bill.**

16.13. REPEAL OF THE TAMAKI MAKAURAU ACT

Section 8 of the Tamaki Makaurau Act repeals the Tamaki Makaurau Act on the close of 1 November 2010. However, a number of the provisions are clearly intended to be in effect after this date, including provisions relating to the planning document (section 19A), the annual report, and rates (sections 29A to 29C).

The ARC recommends that the Tamaki Makaurau Act (including the provisions to be inserted by the Bill) is reviewed and section 8 is amended to ensure that any provisions requiring continuing effect are preserved.

16.14. BOUNDARY CHANGE AND RESOURCE MANAGEMENT ACT MATTERS

Clause 105 (page 97) makes arrangements relating to the application of regional plans, district plans and regional policy statements after the reorganisation. It deals with some of the issues arising as a result of southern regional boundary changes. However, it is unclear whether the Auckland Regional Policy Statement will continue to apply to territory that becomes part of the Waikato region, and vice versa. Section 81 of the RMA deals with the continuation of regional and district plans following a boundary adjustment, but not Regional Policy Statements. Regional Policy Statements have been through a thorough submissions and appeals process and must continue to apply to the areas to which they formerly applied.

Clause 105(10) (page 98) states that a *district* that gains territory as the result of a boundary change will inherit all matters under the RMA that relate to that territory, but does not state whether the same case applies when a *region* gains territory. The intent seems to be that the council that inherits the territory will be responsible for dealing with all consents, appeals, and plan changes that relate to that area. However, it is not clear what happens in the case of a plan change that relates to a wide area which will be split between the Auckland and Waikato region that is not yet operative (e.g. Franklin District Council's rural plan change 14).

Clause 105(11) (page 99) needs redrafting as the intent of the clause is unclear.

Clause 105(12) (page 99) needs to also make reference to Hauraki district, which will also gain territory under the boundary change.

The ARC recommends that clause 105 is redrafted to more clearly make arrangements related to the administration of RMA plans, regional policy statements, plan changes and appeals following the southern boundary changes.

17. SUMMARY OF RECOMMENDATIONS

Submission Section	ARC Recommendation	Specific Action Requested
TRANSPORT		
4.1	The Bill should be amended to remove the proposal for the establishment of a transport agency, and to provide for all transport and roading functions and responsibilities to be allocated to the Auckland Council.	Remove proposed sections 37-48, 75(3), 80, proposed schedule 2 of the Auckland Council Act (pages 36-41). Remove proposed sections 21A-21C and 35I of the Tamaki Makaurau Act (pages 17-19, 28). Amend clauses 50 and 52 and other references to Auckland Transport throughout the Bill. Ensure that existing provisions are able to effectively deal with the transfer of all transport and roading functions and responsibilities to the Auckland Council.
If there is to be a transport agency, the following recommendations are made:		
4.2.1	Accountability arrangements for the transport agency must be consistent with those which the Government has for Crown agents such as NZTA.	Amend the Bill to provide accountability arrangements for the transport agency that are consistent with those which the Government has for Crown agents.
4.2.1	The transport agency should be required to act in accordance with its statement of intent and give effect to the regional land transport strategy, and there should be a requirement for the board of the transport agency to be accountable to the Auckland Council.	Amend proposed sections 39 to 42 and 45 to provide requirements for the transport agency to act in accordance with its statement of intent, give effect to the RLTS and for the board to be accountable to the Auckland Council.
4.2.1	The transport agency should be required to seek the approval of the Auckland Council before it enters into transactions which relate to the establishment or disposal of subsidiaries, securities, borrowing, guarantees, indemnities etc, and individual and related transactions which have the potential to create unbudgeted liabilities or commitments for the Auckland Council.	Amend proposed section 40 (page 37) of the Auckland Council Act to require the transport agency to seek Auckland Council approval before it enters into transactions which relate to the establishment or disposal of subsidiaries, securities, borrowing, guarantees, indemnities etc, and individual and related transactions which have the potential to create unbudgeted liabilities or commitments for the Auckland Council.

Submission Section	ARC Recommendation	Specific Action Requested
4.2.1	The Auckland Council should be able to direct the transport agency to give effect to a policy of the Auckland Council that relates to the transport agency.	Insert a new clause into the Bill that provides the Auckland Council with the ability to direct the transport agency to give effect to a policy of the Auckland Council that relates to the transport agency.
4.2.1	The Auckland Council should be able to appoint the directors of the transport agency as soon as possible after 1 November 2010, and appoint the chairperson and deputy chairperson of the transport agency. The term of initial appointments made by Ministers should be limited to maximum of six months.	Amend proposed section 35I of the Tamaki Makaurau Act (page 28) so that the Auckland Council is able to appoint the directors of the transport agency as soon as possible after 1 November 2010, and so that the initial appointments made by Ministers are limited to a maximum of six months. Amend proposed section 45(3) of the Auckland Council Act (page 41) so that the Auckland Council is able to appoint the chairperson and deputy chairperson of the transport agency.
4.2.1	The requirement for the appointment of a non-voting director nominated by NZTA to the board of the transport agency should be removed.	Amend the Bill to remove the requirement in proposed section 45(2) of the Auckland Council Act (page 40).
4.2.2	The definition of the Auckland land transport system needs to be revised and clarified to ensure that the definition is unambiguous, and that all parties are clear as to their rights and responsibilities.	Amend proposed section 37(1) of the Auckland Council Act to clarify the definition of the Auckland land transport system and ensure all parties are clear as to their rights and responsibilities.
4.2.3	The transport agency should be required to comply with the wider land use and development objectives of the Auckland Council.	Amend proposed section 42(c)(i) of the Auckland Council Act (page 38) to ensure the transport agency is required to comply with the wider land use and development objectives of the Auckland Council.
4.2.4	The transport agency should be subject to Part 7 of the Local Government Official Information and Meetings Act 1987 for all of its business.	Amend proposed section 47(2) of the Auckland Council Act (page 41) to require the application of Part 7 of the Local Government Official Information and Meetings Act 1987 to all of the business to be conducted by the transport agency.

Submission Section	ARC Recommendation	Specific Action Requested
4.2.5	Any change to the representation on regional land transport committees should be undertaken as part of changes to the LTMA rather than through the Auckland governance reform process.	Amend clause 49(2)(b) of the Bill (page 60) that disestablishes the Auckland regional land transport committee. Amend the proposed amendments to section 105 of the LTMA (page 162). Recommend that changes to the representation on regional land transport committees be undertaken through a review of the LTMA.
4.2.5	The Auckland Council should be required to approve the Auckland RLTP.	Amend proposed section 13(2) of the LTMA to state that the Auckland Council (rather than Auckland Transport) is required to approve the Auckland RLTP.
4.2.5	The transport agency should be required to give effect to the Auckland RLTS through the RLTP.	Amend proposed section 15(b) of the LTMA to retain the requirement for Auckland's RLTP to give effect to the RLTS.
16.1	The interim chief executive of the transport agency should be required to act in accordance with NZTA's procurement requirements which are set out in the LTMA.	Amend proposed section 21B(3)(b) to provide for any contract, lease or other agreement to be determined consistent with the procurement requirements for NZTA which are set out in the LTMA.
LOCAL BOARDS		
5.1	The disputes resolution process involving the LGC should be limited in its application to disputes around the allocation of decision-making responsibility to local boards, and local bylaws.	Delete proposed section 77(1)(c) of the Auckland Council Act (page 55).

Submission Section	ARC Recommendation	Specific Action Requested
5.2	Provisions related to local board plans and agreements should be changed so that: • local board plans must be adopted by September or October of the year following the triennial election, and they cover the same three year period as the first three year period of the LTCCP, • local board plans are required to include budget information for the three year period, • the local board agreement is considered to be the accountability document between the local board and the community rather than the local board plan.	Insert a new section into the Bill amending sections 20 and 21 of the Auckland Council Act.
16.2.1	Local boards should be provided with a budget in 2010/11 as well as 2011/12.	Amend section 2(2) of schedule 2 which is to be added to the Tamaki Makaurau Act so that the ATA is required to set local board budgets for 2010/11 as well as 2011/12.
16.2.2	Local boards should not be empowered to levy fees and charges	Amend clause 40(2) (page 34) by removing the reference to “a fee or charge related to a local activity”
16.2.2	Drafting of the legislation should be tightened to ensure that local boards are not entitled to all revenue collected by the Auckland Council.	Amend clause 40(2) by removing the term “any other revenue connected with a local activity” and replacing it with a more specific term.
16.2.3	The Auckland Council should not be required to have a complicated joint hearings process in relation to the LTCCP.	Insert a new clause repealing section 22(3) of the Auckland Council Act.

Submission Section	ARC Recommendation	Specific Action Requested
16.2.4	The Auckland Council should be empowered to accept new bylaws proposed by local boards, in cases where they do not meet the requirements listed in proposed section 24(2) of the Auckland Council Act.	Amend proposed sections 24(2) and 27(2) of the Auckland Council Act, to enable the Auckland Council to consider a local board's proposal for a new bylaw and to make a decision to accept or reject the proposal. The ability to accept or reject the proposal should be subject to a limitation that the only grounds for rejecting the proposal should be where the bylaw fails to meet the following requirements: a) It complies with applicable statutory requirements b) It is not inconsistent with any strategy, policy, plan or bylaw of the Council c) It can be implemented and enforced within the local board's budget d) It will not have any significant effect outside the local board's area
16.2.4	Local boards should be able to propose amendments or revocations to bylaws that apply to their local area and to a wider geographic area, where the amendment or revocation applies only to area of the local board(s) which initiated the proposal.	Amend sections 26(1) and 27(1) of the Auckland Council Act by removing the word "only".
16.2.5	Local boards should have the freedom, but not the requirement, to co-operate and collaborate, given the risk that a requirement to co-operate may create an obligation for local boards to act sub-regionally rather than locally.	Delete clause 39 (page 34)
WATERCARE		
6.1	Watercare should become a CCO of the Auckland Council, subject to the LGA 2002 provisions relating to CCOs, from 1 November 2010, rather than 1 July 2012.	Delete clauses 65-70 (pages 73-78) of the Bill. Amend clause 2(1) and delete clause 2(2) of the Bill (page 10) so that clause 47(2) comes into force on 1 November 2010 rather than 1 July 2012.

Submission Section	ARC Recommendation	Specific Action Requested
6.2	Watercare's assets should be liable for rates based only on land value.	Retain proposed section 61 (page 47) of the Auckland Council Act without further amendment.
16.3.1	Warrants issued by Watercare for its enforcement officers should be deemed to be valid, rather than requiring the ARC to issue warrants for Watercare's officers and then deeming those to be valid.	Delete proposed section 29F of the Tamaki Makaurau Act (page 21). Insert a new provision stating that all warrants issued by Watercare are deemed to have been issued by the Auckland Council on and from 1 November 2010 (similar to clause 97 of the Bill (page 92)).
16.3.2	Watercare should be subject to the normal obligations any organisation would have under the RMA, if it wishes to occupy space in the coastal marine area.	Retain proposed section 52(2) of the Auckland Council Act (page 44) without alteration.
WATERFRONT DEVELOPMENT AGENCY		
7	The waterfront development agency should be established in the same manner as other new CCOs using the process in proposed section 35G of the Tamaki Makaurau Act (page 26).	Delete clause 18 (page 17).
COUNCIL CONTROLLED ORGANISATIONS		
8	The Auckland Council should be free to determine the structure of the Auckland Council group.	Defer decision making on the creation of substantial new CCOs until after 1 November 2010
8	If CCOs are to be established before 1 November 2010, the criteria for establishment of CCOs should be expanded so that the Minister must be satisfied that that any CCO has a clear purpose, and that a CCO is the most appropriate model to achieve that purpose, before the Minister recommends that an Order in Council be made to establish a CCO.	Amend proposed section 35G(3) of the Tamaki Makaurau Act (page 27) to add that the Minister must not recommend the making of an Order in Council unless he or she is satisfied that the CCO has a clear purpose that that a CCO is the most appropriate model to achieve that purpose.

Submission Section	ARC Recommendation	Specific Action Requested
8	The provisions which provide additional accountability requirements for substantive CCOs should be retained. Auckland Transport's exemption from the requirement to prepare and adopt a 10-year plan should be removed.	Retain the provisions in proposed section 75 of the Auckland Council Act, except for proposed section 75(3) which should be deleted (page 54).
8	The Auckland Council should be able to determine its own policy on the appointment of councillors to boards of CCOs.	Delete proposed section 76 of the Auckland Council Act (page 55)
8	No legislative provision should be made prohibiting the Auckland Council from re-structuring its group structure at any time, and the general local government legislative framework should relied upon instead.	Do not insert new provisions restricting the Auckland Council's ability to change its group structure.
8	No legislative provision should be made that will constrain the Auckland Council's ability to determine the governance structure it uses in relation to its CCOs.	Do not insert new provisions restricting the Auckland Council's ability to change the governance structure in relation to CCOs.
16.3.3	Make allowance for an existing local authority's ownership in a CCO to be transferred to either the Auckland Council, or to a CCO that is wholly owned or controlled by the Auckland Council.	Broaden proposed section 35(1)(ba) of the Tamaki Makaurau Act (page 21).
16.3.4	Ensure that the transfer of assets and liabilities, as well as interests in CCOs, from existing local authorities and CCOs to the Auckland Council and new and existing CCOs can effectively be dealt with.	Amend proposed section 35B of the Tamaki Makaurau Act (page 22).
16.3.6	The status of ARH should be resolved through the ATA process, which will provide a mechanism for the transfer of assets and liabilities as required.	Delete clause 49(2)(d)
16.3.7	Ensure CCOs have sufficient time to develop their first SOI in consultation with the Auckland Council.	Include a transitional provision providing sufficient time for CCOs to develop their first SOI in consultation with the Auckland Council.

Submission Section	ARC Recommendation	Specific Action Requested
BOARD PROMOTING ISSUES OF SIGNIFICANCE FOR MANA WHENUA AND MĀORI		
9	The Board promoting issues of significance for Mana Whenua and Māori should not be established, but provision should be made for two Māori wards on the Auckland Council instead.	Delete proposed sections 67-74 and proposed schedule 3 of the Auckland Council Act (pages 51-54 and 112-114). Insert a clause stating that the Auckland Council will have two Māori wards.
16.5	Clarify whether the intention is that the Board promoting issues of significance for Mana Whenua and Māori could exist concurrently with Māori wards on the Auckland Council (if established under the Local Electoral Act 2001), and either: • Include a clause to prevent both mechanisms operating at the same time, or • Consider the interaction of the two mechanisms for Māori representation/input to Council decision-making, in a situation where both exist at the same time.	Either undertake policy work on the respective roles of Māori ward representatives and the Board promoting issues of significance for Mana Whenua and Maori, or include a clause in the Bill to prevent both mechanisms operating at the same time.
SPATIAL PLAN		
10	The requirement for the Auckland Council to develop a spatial plan should be removed from the Bill, and address spatial planning through the review of the RMA instead.	Delete proposed section 66 of the Auckland Council Act (pages 49-51). Undertake further work on the planning framework through the RMA reform process and initiate further legislative amendments once that work is complete.
10	In the event that the requirement to prepare a spatial plan is not removed from the Bill, the ARC recommends that the functions of the spatial plan are amended to require the spatial plan to include policy objectives for social, cultural and economic wellbeing and protection of historic heritage.	Amend proposed subsection 66(3)(f) to require the spatial plan to include policy objectives for social, cultural and economic wellbeing and the protection of historic heritage.

Submission Section	ARC Recommendation	Specific Action Requested
10.1	Provide the Auckland Council with the ability to amend the spatial plan at any time.	Amend proposed subsection 66(5) (page 50) to state that the Auckland Council may amend the spatial plan at any time.
REGIONAL AMENITIES		
11.1	The Auckland Council should be able to determine which regional amenities it supports, the amount of support provided to amenities, and the mechanism by which funding is provided.	Insert a clause into schedule 3 that repeals the Auckland Regional Amenities Funding Act 2008. Delete the proposed amendments to the Amenities Funding Act that are currently in schedule 3.
11.2	The caps on the funding levies in the Museum Act and the MOTAT Act 2000 should be retained. In the event that the Amenities Funding Act is not repealed, a cap on the funding levied under this Act must also be retained.	In schedule 3, remove the following provisions: • Museum Act: changes to section 23 (pages 172-173) • MOTAT Act: changes to section 21 (page 175) • Amenities Funding Act: changes to section 34 (page 171) (if this Act is not repealed) Redraft more appropriate changes to section 34 of the Amenities Funding Act, as per the recommendation below.
11.2	In the event that the Government does not choose to repeal the Amenities Funding Act, the funding cap in the Act should be reviewed to prevent an automatic increase in the amount of funding to include 2% of revenue that would historically have been received by the ARC.	If the Amenities Funding Act is not repealed, amend section 34 so that the maximum amount of the levy is specified, and that the value does not increase as a result of the legislative reform process.
STRATEGIC ASSETS		
12	The current prohibition on the disposal of shares in Ports of Auckland Limited should be retained. Shares in Auckland International Airport Ltd should not be moved to a CCO without a legislative provision requiring consultation before disposal of those shares.	Insert a new clause into the Bill that replicates section 28 of the Local Government (Auckland) Amendment Act. Insert a new clause into the Bill preventing the sale of strategic assets by CCOs without public consultation.

Submission Section	ARC Recommendation	Specific Action Requested
RATING		
13	The Auckland Council should be able to reduce the impact on ratepayers by phasing in changes to rating policies over three years.	Retain clauses 78 to 80 (pages 81-82)
16.6.1	The grounds on which the governing body may decline a proposal for a targeted rate in 2011/12 need to be broadened.	Amend section 84(2) (page 84).
16.6.2	In relation to the rates smoothing mechanism, there should be provision for a dollar limit on the maximum rate increase and decrease limit as well as a percentage, e.g. a maximum change of either 10% or $20, whichever is greater. There should also be an option to have a different maximum rates decrease limit from the maximum rates increase limit.	Amend clause 78(2) (page 81) to allow for a change limit to have a dollar limit and a percentage limit, and to allow for the maximum decrease to be different from the maximum increase.
16.6.3	The transition rate should be calculated as a uniform percentage based on the total rating liability for each ratepayer, but the calculation of total rating liability should specifically exclude any rate charged for a local infrastructure loan.	Amend clause 83(3) to ensure the transition rate is calculated as a uniform percentage variation from the total rates liability for each rating unit, less any local infrastructure loans and any rates for water supply or wastewater services.
16.6.4	The Auckland Council will need a consolidated rates remission policy before rates are struck in July 2011.	Amend the new proposed schedule 2 of the Tamaki Makaurau Act by deleting proposed section 4(2)(d) and inserting a new requirement for the ATA to include an initial integrated rates remission policy of the Auckland Council in the planning document.

Submission Section	ARC Recommendation	Specific Action Requested
EMPLOYMENT PROVISIONS		
14	The Bill should have a fair process for transferring employees by requiring that a transferring employee will transfer on their existing terms and conditions unless they agree otherwise.	Amend proposed section 35C(4)(c) by inserting after the word "concerned" (line 2) the words "(as part of the written notice provided under subsection (b))" and amend subsection (iii) as follows: *"(iii) if the employee's employment is to be transferred on different terms and conditions, of those proposed different terms and conditions, the requirement for the employees agreement to those different terms and conditions in order for employment to be transferred and the consequences for the employee if there is no such agreement."* Amend proposed schedule 5 by amending subclause (3) by deleting the words "becomes an employee … section 35C(4)(c)" and inserting: *":(a) if he or she accepts the notified terms and conditions (or other different terms and conditions proposed by the chief executive), becomes an employee of his or her new employer, on and from 1 November 2010, on such accepted terms and conditions;* *(b) if he or she does not accept the notified terms and conditions (or other different terms and conditions proposed by the chief executive), will be subject to further review and a decision by the chief executive under section 35C(1) taking into account the failure to reach agreement on the different terms and conditions of that person as a transferring employee to the relevant organisation."*

Submission Section	ARC Recommendation	Specific Action Requested
		Equivalent amendments should be made to the provisions in the Bill relating to ARTA and ARTNL staff.
14	Compensation should be offered to all employees who are required to relocate, not only to employees who are required to relocate and are offered different terms and conditions.	Amend proposed schedule 6 clause 5 (and the equivalent provision relating to ARTA and ARTNL employees) to refer to all employees who transfer to a position at a different location.
14	ARC, ARTA and ARH employees should not be disadvantaged relative to employees of other local government organisations involved in the reorganisation, when considering whether a relocation constitutes a change in terms and conditions of employment.	Amend proposed section 6(c)(iii) of proposed schedule 6 (page 119) (and the equivalent provisions for ARTA employees).
14.1	Provisions related to the transfer of ARTA and ARTNL employees should come into force the day after Royal assent.	Amend clause 2 to ensure that provisions relating to employment provisions in Part 3 come into force the day after Royal assent.
PROPOSED REPEAL OF PROVISION RELATED TO THE WAITAKERE RANGES		
15	The current provision requiring the ARC to continue to hold the Auckland Centennial Memorial Park should be retained.	Amend schedule 3 (page 163) of the Bill so that section 77(1) of the Local Government Amendment Act 1992 is not repealed. Insert a provision to replace the reference to "Auckland Regional Council" in section 77(1) with "Auckland Council".
15.1	The requirements in the Waitakere Ranges Heritage Area Act 2008 for Auckland's regional growth strategy to be not inconsistent with the Waitakere Ranges Heritage Area Act 2008 and for the Act to prevail over the strategy should be retained. If legislation relating to the spatial plan is retained, these requirements should be amended to refer to the spatial plan rather than the regional growth strategy.	Amend schedule 3 (page 176) of the Bill to remove the clause that proposes to repeal section 18 of the Waitakere Ranges Heritage Area Act 2008.

Submission Section	ARC Recommendation	Specific Action Requested
INFRASTRUCTURE AUCKLAND GRANTS		
16.4	The status of existing Infrastructure Auckland grants is unclear.	Amend the Bill to include a sunset clause of 30 June 2011, after which Infrastructure Auckland grants are written off if they have not been claimed
TAX		
16.7	The reorganisation of Auckland's local government should be tax neutral.	Include provisions in the Bill allowing for the reorganisation of Auckland's local government to be tax neutral.
PLANNING DOCUMENT		
16.8	The planning document should be defined as the LTCCP in the Tamaki Makaurau Act so that the new Council is able to amend it.	Insert a new clause amending section 19A(2) of the Tamaki Makaurau Act that defines the planning document as the LTCCP.
16.8	The legislation should specify that the ATA must include a new significance policy and an investment policy in the planning document.	Amend section 4 of proposed new schedule 2 of the Tamaki Makaurau Act to include a requirement for the ATA to include a significance policy and an investment policy in the planning document.
ANNUAL REPORT		
16.9	The requirement for local authorities' subsidiaries to prepare and audit accounts for the 16 month period, as part of the consolidation of 16 month accounts of their parent, should be reviewed, as this will be costly.	Review section 29C of the Tamaki Makaurau Act.

Submission Section	ARC Recommendation	Specific Action Requested
REPRESENTATION REVIEWS		
16.10	The number of members of the Auckland Council must be able to be changed over time through the normal process in the Local Electoral Act 2001.	Insert a new clause into the Bill that repeals section 8(1) of the Auckland Council Act, to take effect after the LGC has made its determination on the representation arrangements for the first term of the Council.
ELECTORAL SYSTEM		
16.11	The Auckland Council and the Auckland public should not be constrained in their abilities to change the electoral system to be used in 2013 through the normal process in the Local Electoral Act 2001.	Delete clause 60 (page 71).
REPEAL OF THE TAMAKI MAKAURAU ACT		
16.13	The repeal date of the Tamaki Makaurau date should be reconsidered to ensure that provisions (including the new provisions in the Bill) are in force when required.	Review Tamaki Makaurau Act and amend section 8 to ensure that any provisions requiring continuing effect are preserved.
BOUNDARY CHANGE AND RESOURCE MANAGEMENT ACT MATTERS		
16.14	The Bill needs to more clearly make arrangements related to the administration of RMA plans, regional policy statements, plan changes and appeals following the southern boundary changes.	Amend clause 105 to clarify that regional policy statements will continue to apply to the territory to which they currently apply, and that regions that gain territory will inherit all matters under the RMA that relate to that territory. Redraft clause 105(11) to make the intent clear. Include a reference to Hauraki district in clause 105(12).
ENACTMENTS AMENDED AND MINOR ERRORS		
16.12	The Mount Smart Regional Recreation Centre Act must be retained.	Make no further amendments to the Mount Smart Regional Recreation Centre Act than those proposed in the Bill.

Submission Section	ARC Recommendation	Specific Action Requested
16.2.6	Fix minor errors	Insert a new clause amending section 20(4)(b)(i) of the Auckland Council Act to correct the reference to 'LTCPP'.
11.3		Remove the references to Franklin district that the Bill proposes to include in the Amenities Funding Act, the Museum Act, and the MOTAT Act.
11.3		Amend the Bill so that section 5(4)(b) of the MOTAT Act is not repealed.
16.12		Amend schedule 3 so that the reference to the Auckland Harbour Bridge Authority is not inserted into the Litter Act 1979 (page 162).
16.12		Delete the proposal in schedule 3 to repeal section 313 of the LGA 1974, which was repealed in 1991 (page 163).