

Submission on the Local Government (Auckland Law Reform) Bill

To the Auckland Governance Legislation Select Committee

1. Introduction

1.1 This submission is from Community Waitakere Charitable Trust. We are a charitable trust dedicated to achieving our vision of thriving, connected communities in Waitakere that are based on sustainable principles. We have a twenty five year history of supporting and strengthening community organisations, building and maintaining relationships with central and local government and communities, undertaking and supporting community development initiatives and fostering collaborative actions that achieve our vision.

The values that we hold are;

- To act with integrity
- To support sustainability
- To honour Te Tiriti o Waitangi
- To inspire
- To partner
- To be inclusive

1.2 Our organisation is recognised by many as a key linkage between national, regional and local networks. We provide the 'glue' which joins diverse community organisations with each other and with local and central government agencies and funders. This function enables the sharing of resources, knowledge and networks across a broad sector.

1.3 In this submission we address our comments principally on the following issues:

- The lack of definition in local board functions and resourcing;
- The restructuring of Watercare;
- The potential for privatisation of council owned assets and services;
- The establishment of a Maori Board;
- The establishment of a Pacific and Ethnic Advisory panels for Auckland;
- The Regional Spatial plan;
- Auckland Transport;
- The review of Council's service performance by the Auditor General;
- The electoral system for Local Body elections; and
- The role of Central Government within Local Government functions.

- 1.4 We reiterate our grave concerns on the lack of sufficient timeframes for adequate discussion and dissemination of information on the most significant reform of local government arrangements in the Auckland Region. The timing of the release of this Bill over the holiday period has disadvantaged many citizens and organisations from having sufficient time to digest the proposed changes and consider the implications from a community point of view.
- 1.6 The collaborative method of working that has developed over a long period between the Waitakere City Council, community organisations, local businesses and citizens is renowned nationally and internationally. This has been established as “The Waitakere Way”. We have raised the importance of this way of working within our previous two submissions and reiterate the importance that this collaborative way of working is established as a ‘best practice’ model for the new Auckland Council.
- 1.7 What follows is a summary of our key concerns and recommendations on the third Bill. We wish to speak to our submission as part of the Select Committee Process.

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2. Summary of Key Submission Points

2.1 Local Boards

No roles, functions or resourcing for the proposed Local Boards has been established within the proposed legislation. This responsibility has been assigned to the Auckland Transition Authority to determine the roles and functions and to the new Auckland Council to determine allocation of local and regional issues.

Local Boards will play an extremely important role in bridging the gap between elected representatives, Council officials and community. It is our consideration that the responsibilities that local board members will carry must be defined in legislation so that there is clear understanding of the roles and functions and to ensure these roles and functions are not manipulated or amended upon subsequent changes of councillors and council representatives. Our organisation also considers that a clearly defined structure of representation for Local Boards within the Auckland Council is necessary, particularly in the development of regional strategies and policy statements.

Defining what is best done regionally and what is best done locally is not a straightforward task. Elements of each are inherent within most local government functions and are often shaped by the specific local environment they exist within. Community Waitakere recommends that only those issues and roles not able to be achieved locally be allocated regionally. We recommend that a clear process is identified within the legislation to support the decision to allocate matters to a regional rather than a local basis.

The silence of the legislation on the matter of adequate resourcing for the proposed Local Boards is also of concern to Community Waitakere. It is assumed that the Local Board members will be the principal conduit between the Auckland Council and the community; therefore it is vital that the calibre of members on the Local Board is equal to this task. Adequate resourcing for these boards is therefore imperative in order to attract people with appropriate skills and experience, particularly in the complex task of building and maintaining relationships across many sectors and agencies. Community Waitakere seeks that resourcing appropriate for Local Boards be legislated to mitigate risk of resourcing being withdrawn as circumstances and key personnel change.

Community Waitakere recommends that minimum functions of Local Boards are set out in legislation, with maximum functions enabled to evolve over time via a process of two-way dialogue and decision making between the Auckland Council and each individual Local Board. We further recommend that a set proportion of the rates collected by the Auckland Council be returned to each Local Board for both their statutory roles and for discretionary use.

2.2 Watercare Services Limited

Under the proposed Legislation, (Clause 71) Watercare Services Limited is only required to take into account any policies of and any direction given by the new Auckland Council until 30 June 2015. The legislation is silent on any direction for this Council Controlled Organisation following this date.

The adequate provision of water is a basic human right. Community Waitakere is concerned about the possibility of this core Council service becoming privatised. The provision and maintenance of water supply by Watercare Services Limited amounts to a monopoly and we question what accountability and transparency this entity will have in future to the public. Given that the major basis for the change in governance structure has been widely promoted within the media as one of greater transparency and accountability to ratepayers by the Council, it would appear that this is not happening where Watercare Services Limited is concerned. This is clearly evidenced by Clause 67 which provides that the information provisions of the Local Government Official Information and Meetings Act 1987 only apply to Watercare Services Limited until 30 June 2012. Community Waitakere asks what guarantees of access to this information does the Auckland public have after this date.

Community Waitakere also questions the inability of elected Council officers to sit on the Board of Watercare Services Limited, as noted under Clause 72. Although we appreciate that the potential exists for conflicts of interest these can be managed through proper processes. Having citizen elected representatives able to act as Directors on the board could provide some public accountability and community input into any decisions reached.

We also raise concerns that in this legislation the majority of reporting and adherence to Council policies is only required of Watercare until 30 June 2012, as per Clauses 65-70. Following this date there is no guidance provided as to;

- Requirement for reporting;
- Clarification of how funds are obtained;
- Pricing;
- Limits to business functions;
- Requirement for asset management planning for following financial years so that maintenance, upgrades and renewal of assets is demonstrated;
- The preparation of different funding options within an indicative funding plan that identify pricing and how any surplus funds will be distributed.
- Provision of a statement of intent by Watercare Services Limited which considers written submissions made by Auckland Council.

We oppose the underlying agenda of this Bill to move towards privatisation of core Council services such as the provision of water and oppose the Central Government interference within the structural organisation of Community Controlled Organisations and election of Directors.

It is acknowledged that additional accountability requirements on substantive Community Controlled Organisations (CCO's) are established under Clause 47 (2). However, we note that this requirement is only for CCO's that are **wholly** owned by the Council. Should CCO's such as Watercare Services Limited become privatised, our concern, as outlined above, is that such entities will no longer be required to adhere to these additional accountability requirements.

Community Waitakere recommends that Watercare Services Limited be required to adhere to all current and additional accountability requirements of Council and that a total of half of the member of the Board of Directors of Watercare Services Limited be publicly elected representatives.

2.3 Council Controlled Organisations (CCO's)

It is noted that this Bill under Clause 24, amends the Local Government (Tamaki Makaurau Reorganisation) Act 2009 to allow for the Minister of Local Government, rather than democratically elected local politicians, to decide on which Council Controlled Organisations to establish (35G), and to appoint their initial directors (35H). This opens the door for politically-motivated, hand-picked appointees on boards of CCO's, with the establishment of a pro-business, 'profit before people' driven environment in place before the new Auckland Council is able to have any influence.

Approximately 65-75% of the budget of the new Auckland Council will be controlled by CCO's. Given the reduced accountability requirements that both Auckland Transport and Watercare Services Limited will be subject to, the ability for the new Auckland Council to retain control over CCO's will be limited.

Community Waitakere opposes the election of Directors of the CCO's by Central Government Ministers and recommends that this responsibility rests with the elected Members of the new Auckland Council.

Community Waitakere also opposes the Minister of Local Government assuming the responsibility for the decision on what Council functions are to be carried out by CCO's and to establish the CCO's. This should also be the responsibility of the Council.

2.4 Establishment of Maori Board for Tangata Whenua

Community Waitakere has argued throughout the Auckland Governance restructuring process for true and meaningful Maori representation on the new Auckland Council, calling for a minimum of three Maori seats on the Auckland Council which would have resulted in a true partnership of governance under the Treaty of Waitangi's guarantee of Rangatiratanga to the Maori people.

Community Waitakere does not consider that the proposed Maori Board for Tangata Whenua (Part 7) adequately provides a true, governance partnership for Maori.

The Auckland Council is only required under this legislation only to "consult on matters affecting Mana Whenua and Maori of Tamaki Makaurau", and "take into account" the proposed Maori Boards advice for reflecting Mana Whenua and Tangata Whenua input in the council's strategies, policies and plans. It is our view that this results in a watered down version of true consultation and representation within the decision making process.

We oppose the involvement of Central Government in the selection of the panel for appointing the members for the Maori Board, and consider that selection of panel members should be a role of Tangata Whenua to determine.

Community Waitakere furthermore questions the ability of the Auckland Council to restrict the Maori Board in seeking advice or consultation on information given to the Board by the Auckland Council (Clause 72). Restricting the activity of the proposed Maori Board in such a manner appears to weaken democratic processes.

Our organisation notes that limitation to two Board representatives on Council committees dealing with the management and stewardship of natural and physical resources. Such limitation again confines the democratic process of the proposed Maori Board.

We do, however, applaud the Council funding of the board and the meeting of all administrative costs incurred.

Community Waitakere recommends that a stronger requirement for the Auckland Council to adhere to recommendations of the Maori Board is contained within the legislation in order that the input of Mana Whenua and Maori of Tamaki Makaurau is adequately reflected in Council strategies and policy. We also reiterate our call for guaranteed Maori seats on the new Auckland Council.

2.5 Privatisation and/or sale of Council owned assets

Community Waitakere notes the repealing of the Local Government Auckland Amendment Act 2004 under Clause 49 of this Bill.

Under Section 28 of the Local Government (Auckland) Act 2004, restrictions are placed on disposal of Council shares in Ports of Auckland Limited and a special consultative process is required in relation to any proposed sale of shares.

We raise concerns about the repeal of such requirements, again querying the apparent agenda for future privatisation of such Council owned assets without the need to consult with the public shareholders.

We note the moratorium on the sale of strategic assets until 1 July 2012, as contained within Clause 62, but are concerned that this moratorium is only for a short period of time following the new Council being elected.

Community Waitakere recommends that the new Auckland Council be required to follow a consultative process, as contained within Section 28 of the Local Government (Auckland) Act 2004, for any proposed sale or privatisation of Council owned or Council controlled assets and services.

2.6 Auckland Transport

Clause 75 (3) of the proposed legislation states the Council may not require Auckland Transport to prepare and adopt a 10 year plan under subsection (2)(c). We believe that the removal of this requirement will result in less local and community input into strategic planning for Auckland Transport and greater Central Government focus.

Under Clause 45, the number of elected Council representatives on the Auckland Transport Board is restricted to 2 members out of the total 6-8 member board. This restriction limits the ability for the public to be adequately represented through their elected members. Our organisation recommends that a minimum of 3 elected Council representatives be able to sit on Auckland Transport Board in order that the input of residents is represented.

Community Waitakere acknowledges the intent of Clause 44 which sets out operating principles for Auckland Transport and will provide some accountability in terms of social, environmental and economic responsibility to the Directors.

2.7 Establishment of Pacific and Ethnic Advisory Panels for Auckland

Clause 111 provides for the establishment of Pacific and Ethnic Advisory Panels for the new Auckland Council. Our organisation is in favour of this initiative, considering that this provides for a greater engagement with these communities. However, we oppose the temporary nature of the panels, with dissolution of the advisory boards scheduled for 1 November 2013. Given the rapid growth evident in both Pacific and ethnic populations within Auckland, Community Waitakere recommends that these Advisory Panels be established as permanent entities.

2.8 Regional Spatial Plan

Community Waitakere commends the requirement for the new Auckland Council to prepare a Regional Spatial Plan (Part 6, Clause 66). We recommend that the principles of place shaping are a key component within the creation of such plans, that is “the creative use of powers and influence to promote general wellbeing of a community and its citizens”¹, and that proactive measures are built into legislation for the Regional Spatial Plan which focus equally on outcomes and building and maintaining strong community/council relationships.

The organisation questions the strong emphasis within the legislation on economic growth and development as opposed to environmental guardianship, sustainable planning and social outcomes. This raises the possibility of loss of current environmental and social initiatives such as the Waitakere Ecocity identity and the Wellbeing Collaboration Project.

We are concerned that this economic focus detracts from the leading role that local government needs to play in achieving positive social and environmental outcomes. We do not consider that there is an adequate social aspect/social infrastructure component to the Regional Spatial Plan. This is out of line with current international trends where an increasing number of major Australian, Canadian and UK Councils are placing social infrastructure as a central component of planning.

Furthermore, the legislation is silent on the frequency of review of the Spatial Plans. We recommend that a timetable for review is contained within the legislation.

2.9 Council’s service performance review by Auditor General

Clause 84 (1) states that “The Auditor-General must, from time to time, review the service performance of the Council and each of the Council Controlled Organisations (CCO’s).

Community Waitakere considers that this does not provide adequate structure as to the frequency, duration and focus on such reviews, nor does it provide guidance as to the ability for public comment/consultation. We recommend that guidelines on these matters are established within the legislation, thereby providing another level of accountability and transparency.

2.10 Limitation on alternative reorganisation proposals to Local Government Commission

Under Clause 59, any proposal for reorganisation of the new Auckland Council being made to the Local Government Authority is prohibited until after the 2013 election.

Community Waitakere has concerns that this restricts the right for communities and residents to make decisions on governance of their areas.

We recommend that Clause 59 is removed in entirety from the legislation in order that the democratic right of residents to effect changes within their areas is maintained.

2.11 Electoral System for Local Body elections

Clause 60 of the legislation requires that first past the post electoral system is maintained in place for the next two Council elections. Given that a large number of submissions over the restructuring process have recommended that the system of Single Transferrable Vote (STV) replace the current FPTP, Community Waitakere considers that this Clause also restricts the democratic process of residents to decide on governance matters.

The organisation recommends that Clause 60 be removed in entirety from the legislation and that should the majority of residents seek to have the electoral system changed, that this be able to occur following due process.

¹ Lyons Inquiry into Local Government in the UK 2007. Place Shaping: a shared ambition for the future of local government. 2007.

3. Synopsis of Recommendations

Part Three

Clause 24

Community Waitakere Charitable Trust opposes the new sections 35G, 35H and 35I proposed to be inserted into the Local Government (Tamaki Makaurau Reorganisation) Act 2009, and submits that the directors of CCOs should be appointed by elected local politicians.

Clause 44

Community Waitakere supports Clause 44 in the establishment of operating principles for Auckland Transport and accountability in terms of social, environmental and economic outcomes to the Auckland Transport Board of Directors.

Clause 49

Community Waitakere submits in opposition to clause 49 and supports a provision to retain section 28 of the Local Government (Auckland) Amendment Act 2004. Community Waitakere recommends that the new Auckland Council be required to follow a consultative process, as contained within Section 28 of the Local Government (Auckland) Act 2004, for any proposed sale or privatisation of Council owned or Council controlled assets and services.

Clause 59

Community Waitakere opposes Clause 59 and seeks to have this removed in entirety from the legislation in order that the democratic right of residents to effect changes within their areas is maintained.

Clause 60

Community Waitakere opposes Clause 60 and seeks to have this removed in entirety from the legislation. Should the majority of residents seek to have the electoral system changed, that this be able to occur following due process.

Clause 62

Community Waitakere opposes clause 62 and seeks that the legislation include the requirement for the new Auckland Council to follow a consultative process, as contained

within Section 28 of the Local Government (Auckland) Act 2004, for any proposed sale or privatisation of Council owned or Council controlled assets and services.

Clause 65

Community Waitakere opposes Clause 65 and submits that it be removed in entirety.

Clause 66

Community Waitakere opposes Clause 66 and submits that it be removed in entirety.

Clause 67

Community Waitakere opposes Clause 67 and submits that it be removed in entirety. We recommend that the requirement for Watercare Services Limited to adhere to all current and additional accountability requirements of Council be legislated. We further submit that that the information provisions of the Local Government Official Information and Meetings Act 1987 apply to Watercare Services Limited for perpetuity.

Clause 71

Community Waitakere opposes Clause 71 and seeks to have it removed from the Bill.

Clause 72

Community Waitakere opposes Clause 72 and submits that that a total of half of the member of the Board of Directors of Watercare Services Limited be publicly elected representatives.

Clause 73

Community Waitakere opposes Clause 73 and seeks to have it removed in entirety from this legislation.

Clause 111

Community Waitakere submits that Clause 111 be amended so that the proposed Pacific Island and Ethnic Advisory Panels are established on a permanent basis.

Part Four

Clause 45

Community Waitakere submits in opposition to the new section 45 and supports that at least half of the Auckland Transport board members being elected councillors.

Part Six

Clause 66

Community Waitakere seeks to have this clause amended so that a greater importance and weight is placed on social and environmental aspects and infrastructure within the legislation.

Part Seven

Community Waitakere submits in opposition to the new Part 7 supports both elected and mana whenua appointed voting representatives on the Auckland Council.

Part Eight

Clause 76

Community Waitakere suubmits in opposition to Clause 76 and recommends that a minimum of half CCO Board members be elected representatives.

Clause 83

Community Waitakere opposes Clause 83 which requires that the current ward boundaries, number of ward representatives, and local board boundaries must be maintained until after the 2013 election, irrespective of the wishes of the residents.

Clause 75 (3)

Community Waitakere opposes Clause 75 (3) and submits that this be removed from the legislation.

Clause 84

Community Waitakere seeks to have Clause 84 (1) amended that processes, timing, procedures and guidance for public comment/consultation are clearly outlined within the legislation.

Pat Watson

Manager

Community Waitakere Charitable Trust