Updated Comments on the Local Government Auckland Law Reform Bill (the Third Bill)

Here are a number of points of ideas for a submission from Richard Northey on 1 February 2010.

1. General Points:

1.1 Government spokespeople regularly told us this 3rd Bill would clarify the important roles the new Local Boards would fulfill but it does not even clarify the principles and criteria for deciding on these roles. The Bill gives no specific powers at all to the local boards except to recommend local targeted rates, fees and bylaws. It should give the Boards a list of local specific powers either for six years or indefinitely so candidates can make an informed choice as to whether they have the skills, interests and time commitment that is a good fit for the boards' roles. There should be a similarly specified partial list of roles for the Auckland Council. Other roles would be allocated initially by the Transition Agency and then negotiated between the Council and the Boards. The Bill should be amended to specify that the local community aspects of services are determined by the Boards despite their generally having regional implications.

1.2 The Boards need to renamed local councils or community councils because they will be bigger, relate to more people and be more powerful than most District Councils in NZ.

1.3 The Bill establishes at least 7 CCOs : for Water (after 2012): Transport; the Waterfront; Economic Development, Tourism and Events; Property; Investments and Major Regional Facilities of which only Property and Investments have the clear single commercial focus for which this is clearly appropriate. For instance economic development needs a long-term strategic focus and one concentrating on just one of local government's well-beings, while Events is a short-term one-off focus linked equally to the social and cultural wellbeings and even the environmental one as to the economic one. The major regional facilities each have their own established, effective and distinctive cultures and identities and strong working relationships with their Councils, key stakeholders and audiences that probably would not suit an arm's length business-oriented lowest common denominator governance conglomerate. The Transport Body is given unnecessary and inappropriate powers to appoint its own chair and deputy chair and to make bylaws, which should be retained by the Auckland Council. The Auckland Transport System that they are responsible for is defined in the Bill in a way that includes street furniture, street trees, berms, footpaths and local safety and urban design features that should be defined as being the role of the Local boards, which are not yet even given any statutory right to be consulted by Auckland Transport about either its Statement of Intent or its decision-making about locally significant matters. Auckland Transport and Watercare and potentially other CCOs are unnecessarily largely exempted from the Local Government Official Information and Meetings Act which would enable their decision-making to be transparent if it was made by internal business units and Council Committees.

1.4 Decisions on whether to establish these CCOs and others or not should be democratic, transparent, and consultative decisions by the new Auckland Council rather than have their detailed roles and operational mechanisms determined by the Government. Their directors should be appointed by an electoral college of the existing councils and not appointed by Rodney Hide, and if this is not changed they must have the power immediately to review and replace where appropriate the members of these CCO Boards. The new Council should decide whether, who and how many elected councillors and local board members appointed to them

not the Bill's a ban on any elected members ever serving on them.

1.5 As recommended by the Royal Commission there should be a statutory Auckland Services Performance Auditor for Watercare and for any other CCOs acting as a monopoly service provider. The overworked office of the Auditor- General cannot give this role sufficient attention, lacks the power to intervene on monopolistic activities and is not necessarily attuned to Auckland's needs and views

1.6 There should be a provision for the Auckland Council, and probably for other NZ Councils to be able to borrow in foreign currency - the Auckland Council will face higher effective charges in limited financial markets otherwise.

1.7 Maori responses to the proposed advisory board demonstrate the clear need to provide in addition for 2 Maori Councillors on the Auckland Council elected from Maori Roll wards and to have appropriate real decision-making powers for Maori Councillors and the Maori board. Maori must have a structure that they have confidence and can engage with authentically and share in exercising real mana. Those appointed to Council Committees and other appropriate decision-making bodies must have a vote in order to have a voice beyond the tokenistic.

1.8 There are inadequate protections against the privatisation of key services and assets, which are only protected against sale until mid-2012 or 2015 in the case of Watercare.

1.9 There is still nothing at all about how Aucklanders can determine and be involved in social policy issues through the Auckland Council, Local Boards, or other democratically elected and accountable agencies. The Government is clearly preparing the ground for a 10-15% cut in social services spending but they obviously intend to make the decisions exclusively within the Cabinet rather than taking Auckland's diverse and challenging needs and views into account.

1.10 There is provision for Pasifika and Ethnic Advisory Boards which need ultimately to be appointed by the council rather than just by the Mayor as is proposed. There should also be provision for a Youth Council or Councils and for a Central Business District Advisory Board or Committee

2. Clause by Clause:

2.1 Clause 11 proposed section 13(1)(cc) and Clause 24 Section 35L should have the Ethnic and Pasifika panels appointed through the Council, not by the Mayor alone.

2.2 Clause 11 proposed section 13(1)(g)(ivb) should be deleted so that the new Council can decide whether and how it wants a waterfront development agency as a CCO.

2.3 Clause 12 Section 14 (3) (c) should refer to the Mt Wellington and Otara Licensing Trusts also.

2.4 Clause 15 section 18A(1)(c) should delete "being the capital value of the land so the Council can decide its own rating system e.g. the annual rental value as an option in setting rates.

2.5 Clause 17 Section 19(1A)(a). This should require the allocation of decision-making responsibilities for the boards and the Council to be done in consultation with existing Auckland local authorities and community boards. The bill should specify some specific roles for each of the Council and also for the boards, and also elaborate on the criteria in the second Act that the ATA must use in making this allocation e.g. the local aspects of regional services must be

determined by the Boards.

2.6 Clause 18 Section 19B should either be deleted so the new Council decides entirely on any waterfront development agency be amended to have the new Council, not the ATA, establish the Waterfront Development Agency and clarify that it is only for a section of the Waitemata waterfront contiguous with the CBD and for Westhaven.

2.7 Clause 24 Section 35F should be amended to require the Auckland Councils to be consulted about any proposals under this section to terminate particular existing council-controlled organisations.

2.8 Clause 24 Section 35G Gives the Cabinet and the Minister of local government the power to establish more and new Council Controlled Organisations and set out their objectives, governance, structure, and operation. These decisions should instead be made by the new Auckland Council or, if urgent, by Auckland's current Councils collectively.

2.9 Clause 24 Sections 35H and 35I. These are strongly opposed. In no circumstances should the Minister appoint the initial directors of any CCOs including Auckland Transport. The first preference would be for appointments to be made by an Electoral College of the existing Councils and a community board representative, the second preference appointed by the Regional Council and third preference by the Auckland Transition Agency on the recommendation of the Electoral College above. There should also be specific powers provided for the new Auckland Council to review all CCO director appointments any time its first or second year and to be able replace any without compensation.

2.10 Clause 24 Section 35L. There should be a statutory obligation to consult the existing Pasifika Boards of the local authorities and the community boards as well and for the appointments to be made by the Auckland Council not the Mayor alone.

2.11 Clause 29 Section 3(d). The purpose should be to decide and advise on issues for Maori not merely to promote them.

2.12 Clause 35 section 11(5) needs to be amended to provide, as in the current Act, that these electors must at least specifically apply every 3 years to go on the special and publicly accessible roll for this purpose. Better still, in line with the principle of one person one vote, people should only be entitled to enrol and vote at the place they regard as their home. The fact that someone owns property in a particular board area does not generally give them a greater interest in an area than others who regularly rent property there for their holidays nor those who work, worship or play sport in that board area but who quite rightly do not thereby earn a vote there.

2.13 Clause 36 should be amended to make Local Boards to be local authorities and their members local authority members for most purposes and not just for the purposes of sections 43 to 47 of the Local Government Act.

2.14 Clause 37 Section 13A. This should be amended to include in possible reorganisation proposals also the subdivisions of a local board and their boundaries, the division of a local board into 2 or more boards or for new boards to be created out of 2 or more boards. The Auckland Council should be able to comment to a local board and to the Local Government Commission on proposals for boundary and other changes to boards put forward by boards or

by local residents but not act as a filtering, determining or vetoing body.

2.15 Clause 45 Section 37. This is an important opportunity in the proposed (1)(b) to amend the definition of the Auckland Transport System to take out of the definition things that should be done instead of Auckland Transport by the Council or, preferably, local boards e.g. footpaths, berms, those parts of road reserves not used as road, street vegetation, street furniture and utilities buried in or otherwise utilizing road reserve space.

2.16 Clause 45, Section 39. "Energy efficient, people friendly, efficient and appropriate land use and minimally polluting" should be added to the objectives of Auckland Transport. It should also be obliged to contribute to the economic, environmental, cultural and social wellbeing of Auckland

2.17 Clause 45, Section 42(1)(i), delete the power for Auckland Transport to make bylaws. If not, require the same special consultative procedure for making bylaws and other significant policies as is required for local authorities.

2.18 Clause 45 Section 42(1)(j). The reference to tolling schemes should be deleted.

2.19 Clause 45 Section 43(1) should be deleted. The Auckland Council should retail the ultimate authority to resume powers initially conferred on Auckland Transport

2.20 Clause 45 Section 44(a). The requirement to exhibit responsibility should have "cultural" added. To the other three wellbeings.

2.21 Clause 45, Section 45 should be amended provide that the majority of members are Auckland Councillors and also not limit the number of 12 voting members.

2.22 Clause 45, Section 47(2). This must be amended so that all of the Local Government Official Information and Meetings Act must apply to all aspects of Auckland Transport and to all the other CCOs. LGOIMA already exempts commercial secrecy and personal privacy and that is the only exemption required.

2.23 Clause 45. In proposed Part 5, sections 49-65 re water and wastewater services, the proposed section 51 re bylaws should be undertaken entirely by the Auckland Council for democratic accountability and transparency.

In Section 61 water organisations should pay the same capital value-based rates as every other ratepayer.

2.24 Clause 45, in the proposed Part 6 re spatial planning the same specific requirement that it be sustainable as is in the Local Government Act and RMA should be added.
Powers to delegate appropriate functions under the RMA and the spatial plan to the Maori board and to the Local boards should be added.
Powers with respect to the co-ordination of utilities like broadband, electric power, gas and telcos need to be added.
Subsection (3)(h) should add a reference to recreational activities and open space and these should be protected as are ecological areas in 3i.
Subsection (6) - the special consultative procedure requirement- is supported.

In subsection (7)(b) the Act should require the plan and amendments to be made available on Waiheke and Great Barrier.

2.25 Clause 45 Part 7 sections 67-74 the proposed Maori Board. Section 69(d) and (e) need to add that the Maori Board also advise all the CCOs and the local boards.
In Section 70(1) need to add “built and cultural” resources to the natural and physical resources referred to. The one or two Maori Board appointees to a limited number of appropriate Council Committees should specifically in the legislation have speaking and voting rights. In Section 71 the Maori Board should have some appropriate powers delegated to it, particularly some RMA powers.

2.26 Clause 45 Part 8 Miscellaneous. In section 75(1)(b)(ii) this should be amended so that a substantive CCO need only have $2 Million in assets.
In section 75(2)(c)(iii) add “technological, and public opinion” factors. Delete 75(3) so Auckland transport is not exempt from the substantive CCO requirement to prepare a plan.

2.27 Clause 45, delete section 76 as it should be up to the Council to decide whether particular Councillors would be the best directors of a substantive CCO not the Parliament or Government.

2.28 Sections 77-79 do give an appropriate Board - Council dispute resolution role to the Local Government Commission so that they are treated equally and independently and is supported.

2.29 Clause 45. Section 83. The first review of representation arrangements should be permitted during the Council's first term and be required no later than 2015. For completeness an (h)(iii) should be added to include whether additional local boards should be created merged or reshaped, boundaries changed or the number of board members overall or from a subdivision changed.

2.30 Clause 49. An amendment is required to save section 28 of the Local Government (Auckland) Amendment Act which prevents the sale of Auckland Regional Holding’s shareholding in Ports of Auckland.

2.30 Clause 51(1)(b) add “or until a successor programme is approved by the Auckland Council” and to 51(2) add “or until a new strategy is adopted”.

2.31 Clause 53(4)(c)(iii) add with respect to current Council employees “any less favourable terms and conditions may not come into force until at least 6 month after an employee is transferred to the Auckland Council or one of its CCOs”.

2.32 Clause 59 postponing consideration of better reorganisation proposals and Clause 60 requiring first past the post for at least 2 elections, should be deleted. Aucklanders should decide those matters under normal legal and public consultation procedures.

2.33 Clause 61(5) should be amended to have the remuneration of board members determined by the Remuneration Authority as it does now for Community Boards and not by the Auckland Council.

2.34 Clause 62. This provides a moratorium on the sale of strategic assets. This should be retained unchanged but its sunset clause extended from July 2012 to July 2015.

2.35 Clauses re Watercare Services. The requirements in these clauses should remain as statutory requirements permanently and not expire in June 2012 in Sections 65, 66, 67 re the local government Official Information and Meetings Act, 69 or in 2015 in sections 71- keeping prices to a minimum, or 73 – preventing privatisation. In clause 69 the views of local boards must also be taken into account in the SOI. In Clause 72 the ban on Councillors being on the Watercare Board should be deleted- that should be a decision of the Council.

2.36 Clause 75. This clause re the Airport Shares should refer to a greater than 20% shareholding rather than 22.8%

2.37 Bylaws. Clause 92 Amend so Transport Bylaws are made by the Auckland Council, not Auckland Transport.

2.38 Clause 100 Standing Orders. These Standing Orders of the new Auckland Council should not be imposed by the Minister but preferably by a joint committee of the Auckland Councils or failing that by the ARC.

2.39 Clause 101. There is a typo in that in subsection (4)(b) should refer to a local board, not community board.

2.40 Clause 105, subsection 12. Unless we succeed in restoring the southeastern corner of the Auckland Region, which is worth advocating for again, a reference to the Hauraki District should be added.

2.41 Clause 111 re Pacific and Ethnic Councils. In subsection (1) delete “mayor of” so the Council appoints.
In (2)(a)(i) and (3)(a)(i) add and “any proposed budgets, fees and rates” as this financial influence is a key one to exercise. In (2)(b) and (3)(b) add “and CCOs.” as their powers will be great in their impacts on Pasifika and Ethnic populations.
In (4) add “© these must be replaced with a democratic, authentic, appropriate and effective successor.”

2.41 Schedule 2 Clause 2 (2)(a) add “and projects” after activities.

2.41 Schedule 3 Clauses 6-8 re election signs. It is important these are consistent but these proposals are far too prescriptive and impose unfair and unnecessary costs on candidates and their supporters. In sub-section (1)(d) change to approximately 45 degrees. (!)(e) Add “only if on public land. (1)(g) Delete. 1Clause 6(3) change to no more than 2 signs to allow those at right angles facing each way. Clause 7(1)(b) delete “damaged, is vandalised or” as unnecessary. Clause 7(2) after sign add “for the purposes of subsection 1”. Clause 8 after candidate add “or group of candidates.”

2.42 Schedule 6. (4)(b) is supported which ensures continuing employees cannot have their wages or salary cut for 6 months. Their terms and conditions should also be protected for 6 months and this provision added to the Bill.

2.43 Page 121 Schedule 2 Clause 1(2). The term should be a maximum of 3 years with a right of reappointment in (3).

2.44 Page 126 Schedule 2 Clause 14(2)(d) the reference to a trustee should be amended to a beneficial trustee, as being a professional or voluntary trustee is irrelevant if there is no financial

interest.

2.45 Page 130 Clause 23. Subsection (b) should only occur when that method of communication is agreed to by all directors as satisfactory for that particular meeting.

2.46 Page 137 Maori Board Schedule 3 Clauses 1 and 6. The Board should have 4 taura here representatives. In clauses 9 and 10 these decisions should be made by the selection body not the Board. In Clause 17 the Maori Board's remuneration, because of its independence, responsibilities and mana should be determined by the Remuneration Authority, not the Auckland Council
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2.47 Page 163 Schedule 3 Part 1 Local Electoral Act. The mayoral campaign spending limit must be reduced to $100,000 plus 5 cents per elector, not 50 cents. Mayoral candidates need to compete in terms of their personal qualities, ability to generate genuinely newsworthy statements and policies and motivate voluntary workers not in terms of the personal wealth of themselves and their supporters

2.48 Page 170 and 171 referring to the Auckland Regional Amenities Funding Act. The amended provisions ensuring that these regional amenities are sustained financially and in terms of good governance in the long-term should specifically be supported.

Richard Northey 1 February 2010.