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local government centre

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Submission on the Local Government (Auckland Law Reform) Bill

To the Chairman and Members
Auckland Governance Legislation Select Committee
Parliament Buildings
WELLINGTON

1. INTRODUCTION

This submission is from the Local Government Centre within the Institute of Public Policy at AUT University. The Centre is New Zealand's first university-based think tank focusing on research, teaching and research-informed consultancy for the local government sector. It has extensive international linkages, is an associate member of the Commonwealth Local Government Forum and is represented on the forum's Research Advisory Group.

The Local Government Centre wishes to appear before the committee to speak to its submission. We can be contacted as follows:

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2. SUMMARY

The Centre acknowledges the primary intent of the Bill which is set out in the purpose as resolving "further matters relating to the reorganisation of local government in Auckland begun under the Local Government (Tamaki Makaurau Reorganisations) Act 2009 and continued under the Local Government (Auckland Council) Act 2009."

As submitted to the Select Committee in June 2009, the Local Government Centre supports the recognised need to create an effective region wide strategic decision-making capability, and the emphasis on improved local governance (community engagement). We are committed to doing what we can to contribute to achieving 'best in class' governance for Auckland. As the basic elements of Auckland's future governance have been decided, our submission concentrates on specific aspects of governance and accountability where we believe the Select Committee has the opportunity to make changes which will better achieve the objectives for what is a transformational change to local government in Auckland.

In summary the changes we recommend are as follows:

Council-controlled organisations (pages 5-10 of submission)
(4a) Initial directors may be removed by Auckland Council.

(4b) Chairperson of Auckland Transport to be appointed by Auckland Council on approval of the Minister of Transport.

(4c) Directors (other than those who are members of the Auckland Council) may hold office for a term **up to** four years.

(4d) Auckland Council is explicitly provided with the ability to appoint the Chairpersons of CCOs.

(4e) CCOs should be required to establish and maintain processes for Pacific People, Ethnic People and Māori to contribute to its decision-making processes and for Māori specify how input to Board decisions will be provided for.

(4f) Provision for the appointment of one of the initial directors of certain CCOs and Auckland Transport to represent the interests of Māori in the Auckland region.

Auckland Transport (pages 10-14 of submission)
(5a) All meetings of Auckland Transport be subject to Part 7 of the Local Government Official Information and Meetings Act 1987.

(5b) Auckland Transport be required to establish and maintain processes for the public and Local Boards to contribute to its decision-making processes, including provision for public meetings with the Board.

(5c) Auckland Transport's operating principles include consultation with Local Board(s), taking into account their views and/or delegating decision-making on local roading or public transport matters to the greatest extent reasonably possible.

(5d) Auckland Transport bylaw making process be aligned to that for Watercare Services Limited.

(5e) Auckland Transport be required to consult with the Auckland Council and/or Local Board(s), as appropriate, before proceeding with formal bylaw notification processes.

(5f) Auckland Transport be provided with the ability to transfer its bylaw making power to the Auckland Council.

(5g) Auckland Transport bylaw making powers to revert to Auckland Council after five years unless renewed by legislative change.

Watercare Services (pages 14-17 of submission)
(6a) Following accepted practice, Watercare be required to produce a statement of minimum standards of service where failure to deliver will result in a specified payment to the customer affected.

(6b) In setting prices for its water and wastewater, Watercare be required to **give effect to** any policies of, and comply with any directions given by, the Auckland Council.

(6c) Watercare be required to produce Asset Management Plans, Funding Plans, Demand Forecasts and Price Path information for future years.

(6d) All meetings of Watercare Services Limited be subject to Part 7 of the Local Government Official Information and Meetings Act 1987.

Local Boards (pages 17-18 of submission)
(7) The Auckland Council be required to ensure local boards have the power to make decisions on the local characteristics of activities that also have sub-regional or regional characteristics.

Board Promoting Issues of Significance for Mana Whenua and Māori of Tamaki Makaurau (pages 18-19 of submission)
(8) Explicit provision be made for the statutory Māori board appointees to Auckland Council Committees on natural and physical resources to have voting rights.

Spatial Planning (pages 19-21 of submission)
(9a) the spatial planning provisions be removed from the bill pending a further review of how they will work in practice.

(9b) Staged development of the spatial plan be provided for.

We also encourage the government to progress with urgency the work to resolve the relationship of the spatial plan with other plans (as per Cabinet papers) as failure to set in place a framework could undermine the strategic governance of the Auckland Council.

Auditor-General Review (pages 21-22 of submission)
(10a) Define the function of the Auditor-General review to include the effectiveness of the Auckland Council or CCOs performance.

(10b) Explicit provision be made for public requests for a review of service performance.

We now set out our substantive submission which gives our rationale for the above changes and identifies support for key aspects of the Bill we wish to have retained.

3. AUCKLAND COUNCIL ESTABLISHMENT CRITICAL FOR THE SUCCESS OF THE CITY-REGION AND NEW ZEALAND

The Select Committee is playing a pivotal role in the establishment of what will be the most significant public body in New Zealand. The Auckland Council will govern an area which includes one-third of NZ's population (with this proportion expected to rise over coming decades) and be responsible for substantial assets and services.

The task the Committee has before it - refining the Reform Bill - will make a very significant contribution to the ability of the Auckland Council to provide the economic and other leadership which New Zealand requires. It has the responsibility for ensuring that governance and accountability matters are resolved in a transparent and unambiguous manner. This includes providing a base framework which delivers genuine powers for local boards and ensures that Council Controlled Organisations (including Auckland Transport and Watercare) are adequately accountable to the Auckland Council and responsive to customers, stakeholders and the wider community they serve.

It is worthwhile reflecting on the key objectives that have been variously described for reforming local government in Auckland, noting that **effective governance** is at the core of the change.

The Royal Commission on Auckland Governance identified *"two broad, systemic problems evident in current Auckland local government arrangements:*

> *Regional governance is weak and fragmented.*
> *Community engagement is poor."*[1]

The Government is seeking to address these matters and others highlighted in the report of the Commission by reforming the structure and governance of local government across Auckland. In a speech to the Local Government New Zealand Conference (28 July 2009) the Minister of Local Government, Hon. Rodney Hide, highlighted that:

> *"Auckland is a great city and region; our one truly "big" city and a critical gateway to the rest of the world. We can make it even greater. That's what this reform is all about. And getting Auckland right is important not only for Auckland but, it's important too for the rest of the country.*
>
> *…It's about providing the best governance structure to take Auckland forward in the decades ahead.*
>
> *The Government wants Auckland to be able to speak with one voice on the critical regional issues that are so important to get right at that level. We want a mayor and a council able to speak for and represent all of Auckland…But we want more than that. We want the many and varied voices and communities which make up Auckland to have a clear and significant role in its future. The diversity of this great city is what makes it strong and exciting…We want the proposed local boards to have a meaningful role and make local decisions."*

The focus on improving governance was reiterated in the Minister's First Reading Speech on the Local Government (Auckland Law Reform) Bill (17 December 2009):

[1] Royal Commission on Auckland Governance, "Report of the Commission, Volume 1, Executive Summary", para 17, p4, March 2009.

"Good governance enables civic leaders to think regionally, plan strategically and act decisively. Governance arrangements affect the ability to solve the larger and longer-term challenges effectively."

And in his article "Boards to breathe new life into local government" published in the New Zealand Herald (26 January 2010), the Associate Minister of Local Government and Chairperson of this Select Committee further reinforced the Government's objectives for undertaking this reform:

"This Government wants to ensure that Auckland, as New Zealand's largest city, attracts people and investment and offers a first-class infrastructure and lifestyle.

We are committed to making this great city unified with a structure that delivers greater efficiencies through less duplication and waste and is able to progress issues faster.

Aucklanders have told us they want this. Providing better services to Auckland is the object of the exercise."

"From New Zealand's largest city, the Government wants strong regional governance, greater community engagement, local decisions on local activities, improved connections across the region and improved value for money - that is, a better return for rates and government funding."

Our submission now turns to consider specific aspects of governance and accountability where we recommend the Select Committee change the Bill.

4. COUNCIL CONTROLLED ORGANISATIONS

Public comment has emerged expressing concern about the extent of influence or control the Auckland Council will have over its Council Controlled Organisations, including Watercare and Auckland Transport. We do not share the belief the Auckland Council will be powerless in relation to these entities. Rather, we consider that the public reaction reflects widespread misunderstanding of the extent to which council controlled organisations can be properly subject to democratic control by their parent Council without prejudice to the proper governance responsibility of directors or trustees.

In principle we **support** the use of Council Controlled Organisations on the basis that the Local Government Act 2002 (LGA02) coupled with clause 75 of the Reform Bill (which imposes additional accountability requirements on substantive CCOs, see pp 54-55) sets out means whereby the Auckland Council using the Statement of Intent, contracts for service and other mechanisms (e.g. funding flows, reporting) is able to provide the strategic direction to its CCOs and means for monitoring delivery against Council's objectives and priorities. However we note that to effectively use these legislative tools, Auckland Council will need to develop a clear strategic direction and ensure it has sufficient dedicated resources (specialist advisers, funds, systems and processes) in place to optimise this governance mechanism for integrated delivery of the outcomes identified.

Public confidence that the Auckland Council will be able to exercise effective control over its CCOs is going to be one of the critical factors in public acceptance of the legitimacy of the changes which the government is putting in place. **We strongly recommend** that the Select Committee use its report to highlight the degree of influence which the Auckland Council will actually have over its CCOs. As well as the power to appoint and remove directors (which we recommend below should explicitly apply to initial directors as well as to subsequent appointees), the Auckland Council's powers will include:

- The power to review the provisions of the initial constitution - clause 34G (4) (b) (ii) of the reform bill provides that "the initial constitution of the organisation must provide for a review of its provisions by the Auckland Council before 30 June 2012" [see p 27]

- Clause 5 of Schedule 8 of the Local Government Act 2002 allows the shareholders of a CCO by resolution to give notice requiring the board to modify the statement of intent and the board must comply.

Based on this understanding we:

Support clause 76 where the Mayorand Councillors are prohibited from appointment as directors of substantive council-controlled organisations [see p 55] as we consider that a dual Mayor/Councillor and director role in relation to the substantive CCOs could result in a very real conflict. We note that the Bill does not prohibit the appointment of the Mayor/Councillors to non-substantive CCOs and is silent on the appointment of Local Board members as directors of substantive council-controlled organisations. We believe it appropriate for the discretion on these matters to rest with the Auckland Council. We do expect that the Auckland Council will adopt proper protocols for the appointment of CCO directors and note that the Auckland Transition Agency proposed in its high level structure for CCOs (released 3 December 2009) a practice similar to that for State Owned Enterprises.

Recommendation (4a) Initial directors may be removed by Auckland Council
We believe it is important that the new Auckland Council is empowered to make changes to the boards of its CCOs should it believe this necessary rather than wait (in the worst case scenario, three years) for a director's term to expire. In this respect we note that the directors of State Owned Enterprises and Crown entities, although appointed for a fixed term, hold office at the pleasure of the Minister. The purpose is to ensure that directors continue to have the confidence of the government. The same argument applies equally to the importance of the new Auckland Council having confidence in the board of its substantive CCOs.

A mechanism enabling the Auckland Council to remove directors prior to the expiry of their term is already provided for in the new "Schedule 2 Provisions relating to Auckland Transport" S5 Vacation of office (1)(d) "the person is removed from the office by the Council by written notice" [see p 123 Bill]. A parallel provision needs to be made in the proposed new section 35H of the Local Government (Tamaki Makaurau Reorganisation) Act 2009. We **suggest a change is made** as follows:

Add a new subsection to S35H(3) [see p 27 Bill]:

> **"(6) to avoid doubt, a person appointed as a director in accordance with this section may be removed from office by the Council by written notice.**

Recommendation (4b) Chairperson of Auckland Transport to be appointed by Auckland Council on approval of the Minister of Transport

Under the proposed new Section 45 of the Local Government (Auckland Council) Act 2009 sub-section (3) "The board of directors has a chairperson and a deputy chairperson elected by the directors from among themselves." [see p 41 of Bill]

This section introduces a unique and highly unusual mechanism which we believe does not provide Auckland Council, nor the Government – both parties with substantive strategic and financial commitments which Auckland Transport will be asked to deliver upon – with appropriate transparent accountability.

In our view it is highly desirable that the chairperson of such a significant entity, as is the situation for Chairs appointed to Crown Boards, is provided with clear expectations from the organisation it is accountable to (Auckland Council) and its major strategy setting funding partner (NZ Government). Allowing the board to select from among its numbers a chairperson and deputy chairperson provides for confused accountability – should the chair/deputy work in the interests of retaining their fellow directors support, or should they work to deliver on the Auckland Council directives? This mechanism could also provide a non-transparent means for external influence over the appointment process by informally advising directors who is expected to be selected for such roles (e.g. do not appoint the Auckland Council directors – whether they are the Mayor/Councillors or non-elected members).

We believe this mechanism is a compromise which will undermine truly effective governance and therefore recommend the alternative of an explicit mechanism so the chairperson (and possibly the deputy – although this selection could remain with the board) is appointed by the Auckland Council with the approval of the Minister of Transport. Any disagreements could therefore be resolved between the organisational parties to whom the chairperson is clearly accountable and not by politicking and electioneering within the board itself.

Recommendation (4c) Directors (other than those who are members of the Auckland Council) may hold office for a term up to 4 years

Under new Schedule 2 Provisions relating to Auckland Transport, Section 1 Appointments sub-section (2) "Directors (other than those who are members of the Auckland Council) hold office for a term of four years" [see p 121 of Bill]. However Section 35I sets out that when the Minister of Transport and Minister appoint initial directors of Auckland Transport, sub-section (1)(a) provides that "no director may be appointed for a term greater than 3 years" and (1)(b) that "no more than one-third of the total number of directors may be appointed for a term of greater than 2 years, and…" [see p 28 of Bill]

In combination the above suggests that initial directors if they were reappointed (other than those who are members of Auckland Council) would be so for a term of 4 years. We suggest that such specificity is too inflexible. The Auckland Council should be able to vary the term of appointment as it see fits – this may also on occasion assist Directors who may not wish to serve for a further full 4 year term. For this reason **we recommend the following change** to new Schedule 2:

> Sub-section (2) Directors (other than those who are members of the Auckland Council) **may be appointed to** hold office for a term of **up to** four years.

Recommendation (4d) Auckland Council is explicitly provided with the ability to appoint the Chairpersons of CCOs

The Bill is currently silent on the appointment of chairpersons or deputy chairpersons of CCOs (including substantive CCOs) which the Auckland Transition Agency may recommend to the Minister of Local Government. This provides some ambiguity as two possibilities could arise from the application of the new Section 35G sub-section 2 (b) and (c) [see p 26 of Bill]:

1. The Minister of Local Government who will be responsible for recommending an Order in Council could specify that the initial chairperson or deputy of a CCO is appointed by the Minister, and consequently thereafter by the Auckland Council under the standard provisions of the LGA02, or
2. The Minister of Local Government could specify details in the Order in Council which provide for the directors of a CCO (including other substantive CCOs) to elect a chairperson or deputy from amongst themselves.

As discussed under recommendation (4b), we consider the second possibility could result in poor governance practice. To avoid this arising we recommend the Bill be changed to ensure Auckland Council is able to appoint the chairperson or deputy of a CCO including substantive CCOs. This may possibly be achieved by modification of new S35G sub-section 3 (b) as follows:

> Sub-section (3) (b) Does not inappropriately constrain the discretion and accountability of the Auckland Council **or prevent the Auckland Council from appointing the chairperson or deputy chairperson.**

The above modification, coupled with the provision under new S35G sub-section 4 (b) (ii) that "the initial constitution of the organisation must provide for a review of its provisions by the Auckland Council before 30 June 2012" which we **support being retained**, would enable the Council to be satisfied with the governance structuring for the CCOs.

Recommendation (4e) CCOs should be required to establish and maintain processes for Pacific People, Ethnic People and Māori to contribute to its decision-making processes and for Māori specify how input to Board decisions will be provided for.

The Bill does not directly provide for any linkages between the CCOs to be established[2] and the Advisory Panels or the board promoting issues of significance for mana whenua and Māori of Tamaki Makaurau. Furthermore there is no requirement for engagement with the wider communities these panels or board represent. We note that the Auckland Council could, with the agreement of the CCO at a later date, provide for linkages in the Statement of Intent [refer LGA02 Schedule 8 section 9(1)(l) 'any other matters that are agreed by the shareholders and the board]. However government, via the Select Committee, could signal its clear support for such an approach by strengthening the legislation itself. It would be appropriate for the Minister of Local Government to use the new Section 35G sub-section 2 (c) [see p 26] of the Bill to specify details of the requirement for CCOs to establish and maintain processes for Pacific People, Ethnic People and Māori to contribute to its decision-making processes. In particular, the status of Māori could be appropriately recognised by CCOs being required to specify how input

[2] We note the exception where Auckland Transport is required to establish and maintain processes for Māori to contribute to its decision-making processes (Amendments to Local Government (Auckland Council) Act 2009, New Parts 4 to 8 substituted, new Section 44 Operating Principles sub-section (b) [see p40 of Bill]. This provides Auckland Transport with the flexibility to develop processes including the statutory board and/or other means of involving Māori.

to Board decisions (these are the most important for the organisation), will occur. To achieve this we **recommend the following change** to Section 35G:

> Sub-section (2) (c) may specify any other details concerning the structure and operation of the council-controlled organisation **including the requirement for the CCO to establish and maintain processes for Pacific People, Ethnic People and Māori to contribute to its decision-making processes and for Māori specify how input to Board decisions will be provided for.**

Recommendation (4f) Provision for the appointment of one of the initial directors of certain CCOs and Auckland Transport to represent the interests of Māori in the Auckland region.

To further strengthen participation and engagement by Māori within the CCO governance structures this legislation will enable, we encourage the Select Committee to consider including the requirement for one of the initial directors of the CCO boards to be appointed with the relevant skills, knowledge and experience to guide the organisation and contribute to its objectives but in addition, in the opinion of the Minister (Minister of Transport) be able to represent the interests of Māori in the Auckland region.

This provision would compliment the legislative participation already provided for, whereby the board promoting issues of significance for Mana Whenua and Māori of Tamaki Makaurau, appoints a maximum of two persons to sit on Auckland Council committees dealing with natural and physical resources [Part 7, section 70, p 52].

Given the nature of the substantive CCOs, providing decision-making input at the board level by Māori (with the appropriate skill-base) would be a valuable improvement in effective participation. To achieve this for CCOs and Auckland Transport we **recommend the following changes**:[3]

> Renumber new Section 35G sub-sections (4)-(5) as (5)-(6) [see p 28] and insert a new sub-section:
>
> **(4) One of the directors appointed by the Minister must be a person who, in the opinion of the Minister, is appropriate to represent the interests of Māori in the Auckland region.**
>
> Renumber new Section 35I sub-sections (3)-(4) as (4)-(5) [see p 28] and insert a new sub-section:
>
> **(3) One of the directors appointed by the Ministers must be a person who, in the opinion of the Minister, is appropriate to represent the interests of Māori in the Auckland region.**

We note that subsequent to the initial appointments, Auckland Council would determine a policy in relation to the appointment of a director able to represent the interests of Māori.

[3] An equivalent provision to what is recommended was included in the Auckland Regional Amenities Funding Act 2008, clause 7 (4) "One of the members appointed by the Electoral College must be a person who, in the opinion of the Electoral College, is appropriate to represent the interests of Māori in the Auckland region. (5) The members must be persons who have the management skills, experience, and professional judgment necessary to do the Funding Board's functions, in the opinion of those appointing them."

5. AUCKLAND TRANSPORT

The Bill currently provides for a very limited relationship between Auckland Transport and the Local Boards, yet local boards should have a major decision-making role in relation to the local street environment within their communities under the principle espoused by the Minister of Local Government, Hon. Rodney Hide:

> *"We want the proposed local bards to have meaningful role and make local decisions. We don't want the Mayor and council diverted from the regional issues to be tangled up in local issues that could best be handled locally."* (Speech to LGNC Conference, 28 July 2009)

This sentiment was reiterated by the Associate Minister of Local Government and Chair of this Select Committee, Hon. John Carter:

> *"Putting the local back into local government in Auckland is what has been asked for stridently, via submissions and select committee hearings, since the Government embarked on these reforms. We have listened and believe local boards provide the solution."* (NZ Herald article "Boards to breathe new life into local government" 26 January 2010)

The Bill does provide Auckland Transport with the ability to delegate (within certain constraints) any of its responsibilities, duties and powers to the Auckland Council or 1 or more local boards [see new Schedule 2 added to Local Government (Auckland Council) Act 2009, Section 33 (1) and 33 (8), pp135-136 of Bill]. However the extent of delegations may at least initially be quite limited, leaving the Local Boards in the very difficult position of having no more ability to influence Auckland Transport than any member of the public who writes with a complaint or suggestion to Auckland Transport.

This is exacerbated by the new Part 4 Transport management for Auckland to be included in the Local Government (Auckland Council) Act 2009. Section 47 sub-section (2) [see p 41 of Bill] provides that Part 7 of the Local Government Official Information and Meetings Act 1987 only applies at meetings where Auckland Transport intends to make or will make a bylaw. Part 7 of LGOIMA sets out the requirement for local authority meetings to be publicly notified, the provision of agendas and reports to the public, the admission of public to meetings and the right to exclude the public, the right of the public to inspect or receive copies of meeting minutes and other matters. To obtain such information from Auckland Transport a person would need to submit a request for specified official information under Part 2 of LGOIMA. This Reform Bill is therefore providing Auckland Transport with the ability to make all of its meetings and decision-making reports (apart from bylaw making) private and there is no provision for the public, or Local Boards to attend a meeting of the Auckland Transport Board. Proceeding with such a closed-door approach to decision-making over the street environment is a radical departure from the tradition of local communities, businesses and specialist interest groups being in a position to review officer reports and publicly engage with decision-makers over transport concerns.

Select Committee members will be aware that the functions which have been assigned to Auckland Transport are not simply ones that cover the movement of traffic on roads (including tolling schemes) and people in public transport but include the whole street environment from private property boundaries i.e a community corridor that includes the footpaths, berms, kerbs, stormwater drains, street trees and plantings, street-lighting, provision of utility access to these public spaces (gas, electricity, telecommunications,

water, wastewater), seating, bus shelters, fencing, rubbish bins, public toilets, public art, signage, cycle paths and so on in local roads, arterials, town centres, industrial zones, CBD and other major public destinations. Where changes are proposed the community, businesses and specialist interest groups can be passionate about what should or should not occur. While consultation processes are one means of ensuring input on issues, the Board of Auckland Transport (where it has not delegated decision-making responsibility to a Local Board) should be accessible and a mechanism provided where the public and Local Boards can directly lobby the Board through an open forum meeting process. Failure to provide this requirement will substantially reduce community and business input to local decision-making and lead to a situation where staff of Auckland Transport will have substantial influence over reporting, recommendations and decision-making which the public and Local Boards will have no means of influencing via direct public contact with the Board. It also risks undermining public confidence in the new governance arrangements, especially given the sensitivity of many of the issues which arise in relation to local streets. Finally, we note that the normal protections which local authorities currently have in respect of matters of commercial confidentiality should remain.

To address the above issues we recommend the following changes.

Recommendation (5a) All meetings of Auckland Transport be subject to Part 7 of the Local Government Official Information and Meetings Act 1987.

Given the functions Auckland Transport will undertake and the impact its decisions will have on localised communities, communities of interest or even the wider travelling community (e.g. tolling schemes), it is important that members of the public are able to monitor by inspection of agendas and minutes and observe board decision-making in public meetings. We therefore recommend the following change:

> New Part 4 Transport management for Auckland, section 47, delete sub-section (2) and renumber sub-section (3) as (2), and change the wording of 47 (1) to include Part 7 i.e. "Parts 1 to ~~6~~**7** of the Local Government Official Information and Meetings Act 1987 apply to Auckland Transport as if Auckland Transport were a local authority"

Recommendation (5b) Auckland Transport be required to establish and maintain processes for the public and Local Boards to contribute to its decision-making processes, including provision for public meetings with the Board.

While recommendation (5a) set out above, opens up the meetings to scrutiny it does not directly provide for the public or local boards to be able to engage in an open, public forum with the board, in a manner that communities can do throughout New Zealand when their local council deals with transport matters that impact on them. We therefore also recommend a change is made that would open this opportunity up, via the new Part 4 Transport management for Auckland to the Local Government (Auckland Council) Act 2009, section 44 Operating principles:

> Renumber the existing (c)-(f) of S44 [p 40 of Bill] and insert a new sub-section, **(c) establish and maintain processes for the public and Local Boards to contribute to its decision-making processes, including provision for public meetings with the Auckland Transport board; and**

Recommendation (5c) Auckland Transport operating principles include consultation with Local Board(s), taking into account their views and/or delegating decision-making on local roading or public transport matters to the greatest extent reasonably possible.

In addition to the above, we believe it is important that the operating principles of Auckland Transport make it explicit that they must involve Local Boards in decisions about local roading and public transport matters and wherever possible delegate decision-making responsibility. To achieve this, we recommend an additional change to the section 44 Operating principles:

> Renumber the existing (c)-(f) of S44 [p 40 of Bill] and insert two new sub-sections,
> **(d) consult with local boards over local roading and public transport matters and take their views into account; and**
> **(e) to the greatest extent reasonably possible delegate decision-making on the local component of roading and public transport matters to local boards; and**

Recommendation (5d) Auckland Transport bylaw making process be aligned to that for Watercare Services Limited.

Another radical change included in the Bill relates to the allocation of bylaw making power to Auckland Transport, a council-controlled organisation [see new Part 4 Transport management for Auckland to the Local Government (Auckland Council) Act 2009, section 38 (2), p 37 of Bill]. Under the LGA02 bylaw making powers sit with local authority elected members and can not transferred or delegated to any other entity[4] or subordinate body [see LGA02 Schedule 7, Part 1 Provisions relating to local authorities and their members, Section 32(1)(b)]. Even within this Bill, Watercare Services has not been provided with the ability to make a bylaw although it is able to propose and subject to approval from Auckland Council, consult on a proposed bylaw. The change to provide Auckland Transport, an unelected body, with an unfettered right to make a bylaw is a radical departure from the principle of the right to make laws sitting with elected representatives (at various levels of government).

While the New Zealand Transport Agency (previously Transit New Zealand) is provided with the ability to make bylaws and could therefore be used as a basis for arguing precedence, its responsibility for state highways and motorways do not extend to the micro-level of the local roading environments for which Auckland Transport will be responsible. Auckland Transport will be grappling with bylaws that relate to everything from street trading (who can sell what on which footpaths, how many café seats can be placed on footpaths and what charges might apply) to truck parking on local roads, street racing (which streets may be closed off at night or special requirements applied), signage, parking, speed limits, bus lanes and many other matters. Much of this activity would seem to fall within the area of interest for Local Boards. However the Bill prevents Auckland Transport from delegating or transferring the power to make a bylaw to the Auckland Council [see new Schedule 2 added to Local Government (Auckland Council) Act 2009, Section 33 (1) (b), p135 of Bill] so the right that Local Boards have to identify and communicate the interests and preferences of people in its area on bylaws of the Auckland Council [see Section 16((1) (b) of the Local Government (Auckland Council) Act 2009, p11] will not apply. Local Boards and indeed the Auckland Council will only have

[4] With the exception that transfers between territorial authority and regional council are provided for.

the same right as a member of the public to comment on a proposed bylaw once Auckland Transport proceeds with formal bylaw notification processes.

For this reason our first preference is for the bylaw making power to sit with the Auckland Council (as it does for all other local authorities throughout New Zealand) but Auckland Transport, as per Watercare, be able to propose a bylaw and subject to approval from Auckland Council, consult on the proposed bylaw. We therefore **recommend substantial changes** are made so bylaw making powers are not delegated to Auckland Transport i.e. delete new Part 4 Transport management for Auckland, section 42 (1) (i) [p 39 bill] and new clauses are introduced that align with the New Part 5 Water supply and wastewater services for Auckland clauses 50-51. *[Unlike other recommendations we have not attempted to develop specific wording changes for this]*.

If our recommendation to pass transport bylaw making powers back to Auckland Council is not accepted then we recommend the following changes.

Recommendation (5e) Auckland Transport be required to consult with Auckland Council and/or Local Board(s), as appropriate, before proceeding with formal bylaw notification processes.

To obtain early input around a proposal for a bylaw, it would seem more appropriate for Auckland Transport to consult with Auckland Council or 1 or more local boards prior to proceeding with formal bylaw notification processes, thereby providing a mechanism for elected member input. Auckland Transport has the discretion to undertake such consultation, however enshrining this in legislation would strengthen the *"meaningful role"* which the government has indicated it is seeking for local boards. We therefore **recommend the following change** is inserted to the new Schedule 2 added to Local Government (Auckland Council) Act 2009 [p135 of Bill]:

> Section 33 (3) Nothing in this clause restricts the power of Auckland Transport to delegate to a committee or employees of Auckland Transport, or to the Auckland Council, the power to do anything precedent to the exercise by Auckland Transport (after consultation with the committee or employee or the Council) of any power or duty specified in **subclause (1) and**
> **(a) before initiating the special consultative procedure for bylaw making, Auckland Transport undertake pre-notification consultation with Auckland Council, or 1 or more local boards who communities may be affected, about the bylaw being considered.**
>
> *Please note: An alternative approach to the above would be to insert a proviso in Section 42 (1) (i) [p 39 Bill] where the bylaw making power is conferred. The proviso would require Auckland Transport to undertake pre-notification consultation with Auckland Council, or 1 or more local boards whose communities may be affected, before initiating the special consultative procedure for bylaw making.*

Recommendation (5f) Auckland Transport be provided with the ability to transfer its bylaw making power to the Auckland Council.

Over time, it may become evident that the bylaw making powers that sit with Auckland Transport are best transferred to Auckland Council. It would therefore make sense for this flexibility to be provided and we **recommend the following change** to new Schedule 2 added to Local Government (Auckland Council) Act 2009 [p135 of Bill]:

Section 33 (1) (b) the power to make a bylaw under any enactment referred to in **section 42(1)**; **unless a special consultative procedure under section 87 of the Local Government Act 2002 has been undertaken by both Auckland Transport (as if it were a local authority) and Auckland Council where the Council has accepted a transfer of the responsibility,** and

Recommendation (5g) Auckland Transport bylaw making powers to revert to Auckland Council after five years unless renewed by legislative change.
As the removal of transport and street environment bylaws powers from elected members is so significant, another approach that could be considered is a sunset clause, whereby the renewal of the bylaw making powers passed across to Auckland Transport would automatically revert to Auckland Council after a period of years, we suggest five, unless those powers were renewed by Parliament. This would provide a sufficient period for the exercise of the powers and identification of the best allocation of bylaw decision-making. To achieve this we suggest the following change:

Add the following to new Part 4 Transport management for Auckland, section 42 (1) (i) [p 39 bill]
"(i) the functions and powers of a local authority to make and enforce bylaws under subparts 1 and 2 of Part 8 of the Local Government Act 2002 (except those conferred by section 147) in relation to the Auckland transport system **for a period of five years from the date on which the power came into being, and thereafter these functions and powers revert to Auckland Council unless renewed by legislative change.**

6. WATERCARE SERVICES

Watercare Services will be a large, monopoly provider of water and wastewater services to a captured market. While the Bill provides some restrictions on price setting (until 30 June 2015) it is silent on other consumer protection measures that could be applied i.e. there is no requirement to establish a policy or charter for operational performance standards, response to issues and any rebates or compensation that may apply where performance fails. Internationally, it is recognised good practice to require water utilities (and other utilities) to provide a minimum specified amount of compensation to consumers on the happening of any one of a number of performance failures.

While Auckland Council could negotiate with the board of Watercare via the Statement of Intent, for the provision of a charter that includes penalty payments for performance that does not meet targeted levels, we recommend that the government signal via legislation its support for such a protection mechanism which will help build public confidence. We have included in Appendix 1 an example of what Watercare could be required to produce as set out in the Guaranteed Standards Scheme that Ofwat, the Water Services Regulation Authority for England and Wales, requires all water and sewerage companies to comply with.

Recommendation (6a) Watercare be required to produce a statement of minimum standards of service where failure to deliver will result in a specified payment to the customer affected.
To achieve this stronger level of protection for consumers (residents and businesses) we recommend the following changes are made to Part 3 Subpart 3 – Others savings and transitional provisions, Watercare Services Limited:

Section 68 Statement of corporate intent, sub-section (3) [p76 of Bill]
Renumber existing (f)-(k) and insert a new sub-section, **(f) the guaranteed minimum standards of service and the specified level of payment to the customer affected where failure to deliver occurs.**

Section 71 How Watercare Services Limited to set prices [p78 of Bill]
Change the heading to read, **"How Watercare Services Limited to set prices and payments for minimum standard failures"**
Change the wording of Section 71 as follows, "Until the end of 30 June 2015, Watercare Services Limited, in setting the prices for its water and wastewater services, **and its specified levels of payment where a guaranteed minimum standard of service failure occurs**, must ~~take into account~~ **give effect to** any policies of, and comply with any directions given by, the Auckland Council.

Please note our additional **recommendation (6b) included above** changes "take into account" which is a weak provision for providing policy direction, to the much stronger "give effect to". This will truly provide the Auckland Council with the ability to directly influence the price setting and price path which Watercare Services will adopt and, we believe, strengthen public confidence in the arrangements which the government is putting in place. If this wording is not strengthened as recommended then Watercare can simply consider i.e. "take into account" but ignore the Auckland Council. In the absence of an independent regulator to provide direction in terms of pricing (as exists in many overseas countries), and of the Royal Commission's recommended Auckland Services Performance Auditor, the Auckland Council is the only entity in a direct position to influence the policies of Watercare before they implement these (the Office of the Auditor-General and the Commerce Commission are only indirect mechanisms that involve consideration of matters after they occur).

Recommendation (6c) Watercare be required to produce Asset Management Plans, Funding Plans, Demand Forecasts and Price Path information for future years.
In the Cabinet Committee paper AGR (09) 18 14 October 2009, the Hon. Rodney Hide indicates that:

> *"As Watercare's shareholder and owner, the Auckland Council will be able to require Watercare to provide whatever information is needed to provide a robust monitoring regime."* (clause 81, p14).

To move toward this robust approach, it is important that the legislation signals the minimum information requirements that Auckland Council should expect Watercare to deliver to it, with a timeframe sufficient for the Council to provide feedback and guidance.

The current Bill wording replicates for the most part what is in existing legislation (LGA 1974 S707ZZS Water Services) as the information and reporting requirements for the existing wholesale only business of Watercare. Given the substantive change in the organisation from being only a wholesale business to including a large retail business, we believe it is important that these requirements are strengthened to enable the Auckland Council to indeed have access to sufficient minimum information, rather than have to negotiate this via the Statement of Intent process. This would also help build public confidence that effective scrutiny and governance direction will sit with Auckland Council.

For some years Watercare and the retail operators have worked to a timetable that established the provision of essential information requirements to enable forecast planning, asset management, funding and pricing to be established, some of which is set in legislation but other aspects of which were agreed via contract arrangements. The Auckland Council will need access to this information in order to provide robust monitoring and to align with this, **we recommend the following changes** are made Part 3 Subpart 3 – Others savings and transitional provisions, Watercare Services Limited:

Section 66 Obligations on provider of water services in Auckland [pp74-76 of Bill]

Renumber existing sub-sections (e)-(f) and insert three new sub-sections:

(e) **must, at least 10 months before the end of each financial year, prepare and supply to the Auckland Council indicative forecast demands for the next financial year and the subsequent 20 years; and**
(f) at least 7 months before the end of each financial year, prepare and supply to the Auckland Council updated forecast demands for the next financial year and subsequent 9 years; and
(g)at least 7 months before the end of each financial year, prepare and supply to the Auckland Council an indicative price path and an indicative revenue requirement for the next financial year and subsequent 9 years.

Modify the existing clauses as follows:

Sub-section (e) [p74 of Bill]
~~(e)~~ **(h)** must, at least ~~4~~ **7** months before the end of each financial year, prepare and supply to the Auckland Council an indicative asset management plan for the next financial year **and the subsequent 19 years** that must describe the projected condition of its significant assets at the commencement of ~~that~~ **the next financial** year and outline **in particular terms for that year** the rationale for and nature, extent, and estimated costs of its proposed activities, **and outline in general terms for subsequent years the same,** in respect of –

And sub-section (f) [p75 of Bill]
~~(f)~~ **(i)** must, at least 4 months before the end of each financial year, prepare and supply to the Auckland Council, after undertaking a comparative assessment of different funding options, an indicative funding plan for the next financial year **and the subsequent 9 years** that ~~must~~ **identifies in particular terms** for the next financial year **and in general terms for the subsequent 9 years**, the nature and scope of the activities proposed to be undertaken (including, but not limited to, operational requirements, renewals, and significant new projects, and its planned funding requirements and funding sources, showing –

Renumber existing sub-sections (g)-(j) to become (k)-(n) and insert one new sub-section:

(j) must, at least 2 months before the end of each financial year, notify Auckland Council of its final pricing for the next financial year and its indicative price path for the subsequent 9 years.

The changes set out above do not introduce constraints on Watercare beyond what it has been undertaken for some years as part of business as usual, but it will provide the Auckland Council with the minimum information it needs, and sufficient time – especially in relation to indicative pricing – to provide feedback to Watercare, prior to it setting final charges. The information also more appropriately reflects the need to forecast and monitor a substantial infrastructure utility on a long term basis, rather than a minimum of one or five years.

Recommendation (6d) All meetings of Watercare Services Limited be subject to Part 7 of the Local Government Official Information and Meetings Act 1987.
Given the substantive asset responsibilities, expenditure and pricing decisions Watercare Services will be responsible for as both a wholesaler and retailer of water and wastewater services, its decisions can have substantive impacts on the customers its serves and also wider strategic and spatial decisions of the Auckland Council. It is therefore important that board decision-making is transparent and enables public confidence in the organisation to build. We note that normal protections which local authorities currently have in respect of matters of commercial confidentiality would remain if the boards meetings were subject to Part 7 of LGOIMA. In line with our recommendation (5a) for Auckland Transport, we therefore recommend the following:

> Change Part 3 clause 67 Official Information to read "Until 30 June 2012, Parts 1 to ~~6~~**7** of the Local Government Official Information and Meetings Act 1987 apply to Watercare Services Limited as if that organisation were a local authority"

7. LOCAL BOARDS

The Bill makes provision (sections 77-79) for a dispute resolution process via the Local Government Commission in relation to the allocation of decision-making responsibilities, proposed bylaws or local board agreements by the governing body (Auckland Council). While it is important that provision is made for disputes to be addressed, we are concerned that the legislation should be designed to minimise the potential for these to arise. Specifically, our concern is that unless the Auckland Council is proactive in delegating decision-making to local boards, the Local Government Commission could be literally overloaded by requests for dispute resolution. In an ideal world, the provision will be there, but will not be utilised because the Auckland Council and local boards share a common understanding of the fairness of the Council's decisions on delegation. The Select Committee has the opportunity to encourage this by recommending that the legislation on delegation to local boards is further strengthened.

Already there are substantial concerns being expressed over whether Local Boards will have sufficient local decision-making on local activities or will be relatively ineffectual without any significant powers. There is a risk that the Auckland Council could legitimately argue using section 17 (2) (b) of the Local Government (Auckland Council) Act 2009 [p12] that virtually every service has implications beyond a single local board area, requires alignment or integration with other decisions or would benefit from a consistent or coordinated approach, so the Auckland Council should make the decisions.

An example would be libraries, where there are regional characteristics to operations (i.e. technology) and local characteristics (i.e. hours of operation, extent of service for pre-school or primary school aged children). Auckland Council could determine this meant that it should make all the decisions, whereas it would be more appropriate for the local boards to make decisions on the local aspects and fund any enhancements via its funding plan.

We are also mindful of the statements made by Hon. Rodney Hide and Hon. John Carter noted earlier in our submission [see section 3] where the importance of local boards having 'a meaningful role' and encouraging 'local decisions on local activities' which clearly reinforces the principle of subsidiary where political decisions are taken at the lowest practical level.

Recommendation (7) the Auckland Council be required to ensure local boards have the power to make decisions on the local characteristics of activities that also have sub-regional or regional characteristics.

To address the risk outlined above of Auckland Council subsuming substantial local decision-making, we **recommend that a change** be inserted to Part 2 of the Reform Bill that amends Section 17 (2) (a) of the Local Government (Auckland Council) Act 2009, as follows:

> Renumber existing sections 40 to 41 onwards in Part 2 of the Reform Bill, and insert a new section 40:
>
> **40 Principles for allocation of decision-making responsibilities of Auckland Council**
> **Section 17(2) is amended as follows:**
> (a) decision-making responsibility for a non-regulatory activity of the Auckland Council should be exercised by its local boards**; and**
> **(b) where a non-regulatory activity of the Auckland Council has both local characteristics and sub-regional or regional characteristics, the Auckland Council should ensure to the greatest extent reasonably possible that decisions on local characteristics of the activity are exercised by its local boards,** unless paragraph **(c)** applies:
>
> Renumber existing paragraph (b) to (c)

8. BOARD PROMOTING ISSUES OF SIGNIFICANCE FOR MANA WHENUA AND MĀORI OF TAMAKI MAKAURAU

The Bill makes the following provision under Part 7, section 70:

> *"(1) The board must appoint a maximum of 2 persons to sit on each of the Auckland Council's committees that deal with the management and stewardship of natural and physical resources"*

However the Bill is silent as to whether or not these 2 persons who 'sit' on the Council's committees have voting rights or not. This ambiguity needs to be addressed as part of providing clear governance and accountability arrangements for the new Auckland Council. If this ambiguity remains, then the discretion to provide the persons that the board appoints with voting rights will sit with the governing body (Mayor and Councillors)

of the new Auckland Council. A more preferable governance situation would be for the Select Committee and Government to make it explicit that (2) voting rights are ascribed to the appointees or (2) voting rights will be at the discretion of the new Auckland Council.

Recommendation (8) Explicit provision be made for the statutory Māori board appointees to Auckland Council Committees on natural and physical resources to have voting rights.

To give effect to this we recommend a change to Section 70 as follows:

> (1) The board must appoint a maximum of 2 persons to sit **as members with voting rights** on each of the Auckland Council's committees that deal with the management and stewardship of natural and physical resources.

9. SPATIAL PLANNING

We **support** the requirement for the Auckland Council to undertake spatial planning as an important component in ensuring the city-region focuses on a strategic, long-term integrated approach which will contribute to enhancing its international competitiveness (see new Part 6 "Spatial planning for Auckland", Section 66, pp49-51 of Bill). It is particularly important to ensure integration between regional land transport planning, and regional land-use planning. However we also recognise that what is specified in Section 66 (3) as the functions of the spatial plan are substantial and ambitious and will take some time to fully develop, particularly as Section 66 (4) outlines the intention for community and private sector participation in the preparation of the plan. Indeed, we are concerned that the provisions are so extensive and all encompassing that there is a very real risk the spatial planning process could result in decision-making deadlock.

The purpose of the spatial plan is set out in the legislation as providing "an effective and broad long-term strategy for growth and development in Auckland" [Section 66 (2), p 49] and this is reinforced in some of the defined functions of the spatial plan, i.e. "(a) to set out the long-term (20-30 year) strategic direction (including broad objectives) for Auckland and its communities", "(c) to set out Auckland's role in New Zealand", "(e) to provide an evidential base to support decision-making for Auckland, including evidence of trends, opportunities, and constraints in Auckland" [Section 66 (3), p 49]. This therefore suggests that the spatial plan could be considered to be a comprehensive strategic plan covering priorities, spatial allocations and infrastructure development. It could be seen as the 'overarching plan' that guides all other plans and implementation programmes for Council, its CCOs and other external agencies (government, private and third sector). It may be the place where trade-off decisions are made about investments over the next 20-30 years in development and infrastructure e.g.

- does a second international airport get developed in west Auckland with accompanying roading developments, or does investment occur in significantly enhanced public transport that bypasses congestions (rail) to the current international airport?
- what long-term role does the Auckland port have – should it be downscaled or moved out of central Auckland, should Marsden Point or Tauranga be invested in for the long-term?
- what growth and innovation sectors will be actively supported and promoted via provision of infrastructure and in what locations around the region, to improve Auckland's international competitiveness?

If the spatial plan is indeed the 'overarching' strategic document then it is not simply about 'spatial' aspects of growth but includes substantial 'non-spatial' elements. As such the name can be considered a misnomer and the 'Auckland plan', as others have suggested, may be more appropriate. Section 66 (3) (f) should therefore include reference to achieving social and economic policy objectives.

However it we look at other functions set out in the Bill as defining the spatial plan, these could suggest that what could be delivered is an upgraded Regional Growth Strategy that could streamline Auckland's resource management planning, if Phase Two of the RMA reform process provides for this, i.e. "(d) to visually illustrate how Auckland may develop in the future, including how growth may be sequenced and how infrastructure may be provided", "(g) to identify the existing, and guide the future, location of critical infrastructure services and any associated investment in Auckland (for example, open space, transport, and water supply and wastewater services)", "(h) to identify the existing, and guide the future, location and mix of residential, business and industrial activities within specific geographic areas in Auckland". Such a narrow location-based approach would not result in effective high-level strategic decision-making for the region.

It therefore appears, under the current legislative wording, Auckland Council would be left with the potential for a mammoth planning exercise, with a very wide scope for debate and interpretation about what the 'spatial plan' is or is not that could generate a substantial level of discord. The unintended outcome may therefore be planning paralysis, rather than planning which enables Auckland to meet the challenge of delivering strong regional governance and strategic direction-setting.

Recommendation (9a) the spatial planning provisions be removed from the bill pending a further review of how they will work in practice.
Based on the above discussion, our first preference is for the spatial planning provisions to be removed from the bill pending further review of how they will work in practice. This review should be driven from a risk management perspective with a focus on the importance of avoiding the potential for spatial planning to undermine Auckland's development as a dynamic and flexible metropolitan economy.

We note from the Cabinet papers[5] that the Government has determined that the spatial plan has no additional or strengthened legislative linkages to other planning but work to consider replacing existing strategic plans, legislative links, appeal rights and consultative processes should be investigated by the Ministry for the Environment, in consultation with other relevant agencies, as part of the urban work stream of Phase Two of the resource management reform process. This investigation needs to be progressed with some urgency (and would form part of the broad review we suggest) as the implications of leaving the spatial plan in limbo, i.e. without the requirement for other plans to 'give effect' to the spatial plan, could undermine the strategic governance of the Auckland Council.

Continuing without a clear hierarchy for the planning documents for the city-region, could replicate the issue that arose for the Regional Growth Strategy. Until the Local Government (Auckland) Amendment Act 2004 (LGAAA) was passed there was no statutory basis to require all councils in the Auckland Region to integrate their land transport and land use provisions in order to give effect to the Auckland Regional Growth Strategy. There are a substantial number of plans to be coordinated and entities that will

[5] Cabinet Committee on Implementation of Auckland Governance Reforms Minute (AGR Min (09) 10/1, proactively released by the Minister for the Environment

need to actively work toward the development and implementation of the spatial plan. However as it stands, the spatial plan can be considered to be 'just another' plan that the various agencies involved with it discuss and consider. However where disagreements occur the spatial plan direction will not necessarily be implemented by a CCO in its plans, or by another public agency or entity.

Recommendation (9b) Staged development of the spatial plan be provided for.
If the Select Committee does not accept our recommendation to remove the spatial planning provisions pending a review, we believe it important that staged development of the spatial plan is explicitly provided for within the legislation. This would reflect what practically is most likely to occur but it would also manage expectations so CCOs, other external agencies (government, private and third sector) and the community can understand how the spatial plan will be developed, what involvement they will have and what will be delivered within the first term of the new Auckland Council.

Introducing a staged approach to the development of the spatial plan would enable on-going engagement designed to achieve "public confidence in the plans and decisions" [Section 66 (4), p50 of the Bill]. To assist with this we believe the Auckland Council should be required to publish discussion documents and other material from time to time with the intention of ensuring the public of Auckland has the opportunity to understand how the process is evolving, what issues are under consideration and what decisions may be taken and so on. It would be inappropriate, given the implications of such a substantive plan, for behind the scenes work to progress (with some limited community and private sector participation) to the point where a comprehensive draft spatial plan is published and then, following the special consultative procedure (Section 66 (6)) provide a consultation period of just one month.

We recommend the following change to Part 2 of the Reform Bill that introduces a new Part 6 of the Local Government (Auckland Council) Act 2009, Section 66 [pp 49-51 of the Bill]:

> Renumber existing sub-sections (4)-(7) as (5)-(8) and insert a new sub-section:
>
> **(4) The Auckland Council must prepare, and may amend at any time, a public programme for the development of the spatial plan which sets out the stages that will be progressed for each of the component parts, expected public discussion documents, the means of engaging with the community and private sector and the timing associated with this.**

10.AUDITOR-GENERAL REVIEW

We **support** the requirement for the Auditor-General to review the Council's service performance and each of its council-controlled organisations [Section 84, p 59 of Bill]. However we are concerned that the function of such reviews should not only focus on the efficiency of the Auckland Council in delivering services but should also consider such issues as effectiveness, engagement with the community etc. Without such a broader remit applying there is a risk that the 'service performance' will be tightly defined by financial or technical requirements i.e. 'we only report what we can measure', rather than enabling review of the extent of contributions toward on-going improvements or broader strategic objectives set out in such documents as the spatial plan.

Recommendation (10a) Define the function of the Auditor-General review to include the effectiveness of the Auckland Council or CCOs performance.
To ensure a broader remit to the 'service performance' review we recommend the following change to Part 2 of the Reform Bill that introduces a new Part 6 of the Local Government (Auckland Council) Act 2009, Section 84 as follows [p59 of the Bill]:

> Renumber existing sub-sections (2)-(4) as (3)-(5) and insert a new sub-section:
>
> **(2) The function of a review is to examine whether the Council and each of its council-controlled organisations, is carrying out its activities effectively and efficiently, using both internal and external customer or community measures, the use of best practice approaches and means for on-going improvement, and the contribution toward delivery of adopted goals and outcomes.**

Recommendation (10b) Explicit provision be made for public requests for a review of service performance.
We are also aware that there will be strong public interest in some of the matters which are part of the Auditor-General reviews. The Auditor-General can at its own initiative undertake an inquiry concerning a public entities use of its resources (Section 18 (1) Public Audit Act 2001, p8) and this may be prompted by a request from a member of the public, however a formal statutory provision requiring the Auditor-General to give due weight to any such request and respond with reasons for a decision to proceed, or not, to the person making the request, would strengthen this public accountability mechanism. We therefore recommend the addition of a further sub-section to Section 84.

> **(6) (a) A written request for a review of the service performance of the Council or any of its council-controlled organisation may be made by any person, to the Auditor-General.**
> **(b) On receipt of such a request the Auditor-General must give consideration to proceeding but has the discretion to decide not to undertake such a review and shall inform the person who made the request of that decision, and state the reasons for this.**

11.CONCLUSION

The establishment of the Auckland Council is a significant change in the structure of local government within New Zealand and will set the framework for meeting the needs of the city-region as it evolves over coming decades. Furthermore the changes undertaken for Auckland will influence proposals for structural change that are already being debated in other parts of the country e.g. Northland, Waikato and Wellington, to name just a few.

The decisions of the Select Committee will leave a transformative legacy in place and we encourage you to consider fully the submissions being presented to you. The recommendations we have provided in our submission are designed to help ensure that governance and accountability matters are resolved in a transparent and unambiguous manner.

Finally, we would like to thank the Select Committee for taking the time to review our submission and we look forward to meeting with you to clarify any points.

Appendix 1

The guaranteed standards scheme (GSS)

Applicable to England and Wales from 1 April 2008

Customers of water and sewerage companies are entitled to guaranteed minimum standards of service, as laid down by the Government. Where a company fails to meet a standard then it is required to make a specified payment to the customer affected. We monitor the scheme and recommend changes. Each year we publish the number of payments made under the scheme.

This information note summaries these standards and conditions as a guide for consumers. It is not intended to be a substitute for the GSS Regulations. Each water and sewerage company is responsible for ensuring that it understands and correctly interprets its statutory obligations under the GSS Regulations. Under no circumstances will we be bound to interpret the GSS Regulations in accordance with these summaries. When considering regulatory decisions, in particular in determining disputes, we will consider the original text of the GSS Regulations as well as the facts as they arise.

On 1 April 2008 revised GSS Regulations came into force which, among other things, amend the previous GSS Regulations for sewer flooding. The amendments relating to sewer flooding include:

- setting a minimum payment level of £150 for each incident of internal sewer flooding;
- setting a new standard for customers materially affected by external sewer flooding; and
- setting external sewer flooding payments at 50% of the annual sewerage charge for each external sewer flooding incident (minimum payment of £75 and maximum payment of £500).

The 2008 GSS Regulations also ensure that the service standards are now the same regardless of whether the water and sewerage company operates in Wales or England. In the previous GSS Regulations there were variations between standards for the water and sewerage companies operating in Wales and those operating in England.

Customers' rights

The scheme applies to all customers of water and sewerage companies.

The water and sewerage companies must inform billed customers of their rights under the scheme every year.

If a company fails to meet any of the guaranteed standards, customers are entitled to a payment. Details of these are shown under each service standard.

Some companies operate schemes that go further than the GSS. For example, where a reply to a complaint letter is required in ten days under the GSS, the company may raise this standard to five days. In other cases, a higher amount is paid than the minimum amount set out in the GSS Regulations.

The standards which companies must meet are as follows.

1. Making appointments (GSS Regulation 6)

If an appointment is made with a customer, the company must give notice to the customer that its representative will visit during the morning or the afternoon. The company must specify to the customer the times it considers to be the morning or afternoon.

If the company fails to do this, the company must automatically make a GSS payment.

If requested by the customer the company must give notice to the customer that its representative will visit within a specified two-hour time slot.

If the company fails to do this, the company must automatically make a GSS payment.

The company must make the GSS payment within ten working days of the payment becoming due. If the company fails to do this and the customer makes a claim for an additional penalty payment within three months of the GSS payment becoming due, the company must make the additional penalty payment.

2. Keeping appointments (GSS Regulation 6)

If an appointment is not kept because:

- the company representative did not visit on the appointed day;
- the company representative did not visit during the morning or the afternoon (in accordance with the appointed time specified);
- the company representative did not visit within the appointed 2-hour time slot; or

- the company cancelled the appointment but did not give the customer at least 24 hours' notice

a GSS payment must be made automatically.

The company must make the GSS payment within ten working days of the payment becoming due. If the company fails to do this, and the customer makes a claim for an additional penalty payment within three months of the GSS payment becoming due, the company must make the additional penalty payment.

There are exceptions to the requirement to make a GSS payment if an appointment is not met. These are:

- the customer cancels the appointment;
- the company cancels the appointment giving at least 24 hours' notice;
- it is impracticable to keep the appointment due to severe weather;
- it is impracticable to keep the appointment due to industrial action by the company's employees; or
- it is impracticable to keep the appointment due to an act/default of a person other than the company's representative.

3. Low pressure (GSS Regulation 10)

The company must maintain a minimum pressure in the communication pipe of seven metres static head (0.7 bar).

If pressure falls below this on two occasions, each occasion lasting more than one hour, within a 28-day period, the company must automatically make a GSS payment.

There are exceptions to the requirement to make a GSS payment if the pressure standard is not met. These are:

- a payment has already been made to the same customer in respect of the same financial year;
- it is impractical for the company to have identified the particular customer as being affected, and the customer has not made a claim within three months of the date of the latter occasion;
- industrial action by the company's employees makes it impracticable to maintain the pressure standard;
- the act or default of a person other than the company's representative make it impracticable to maintain the pressure standard; or

- the pressure falls below the minimum standard due to necessary works taking place or due to a drought

4. Notice of interruption to supply (GSS Regulation 8)

Where it is planned that the supply will be materially interrupted or cut off for more than four hours to carry out necessary works the company must give written notice to affected customers at least 48 hours before the supply will be interrupted or cut off, including notification of the time by which the supply will be restored.

If the company fails to do this, the company must automatically make a GSS payment.

Where the supply is interrupted or cut off to carry out necessary works in an emergency the company must, as soon as is reasonably practicable, take all reasonable steps to notify affected customers:

- that the supply has been interrupted or cut off;
- where any alternative supply can be obtained;
- the time by which the supply will be restored; and
- of the phone number of an office from which further information may be obtained.

Where a customer was not given the correct notification for a planned interruption lasting more than four hours caused by necessary works, but the company does not make an automatic payment to the customer within 20 working days of this event, the company must automatically make an additional penalty payment to the customer.

There are exceptions to the requirement to make a GSS payment if the correct notice of interruption to supply is not given. These are if:

- industrial action by the company's employees makes it impracticable for the company to give the correct notice at least 48 hours before the supply was cut off;
- the act or default of a person other than the company's representative made it impracticable for the company to give the correct notice at least 48 hours before the supply was cut off; or
- it is impractical for the company to have identified the particular customer as being affected, and the customer has not made a claim within three months of the date on which the supply was cut off.

5. Supply not restored (GSS Regulation 9)

The company must automatically make a GSS payment to affected customers if:

- the supply is interrupted or cut off to carry out necessary works, and the supply is not restored by the time stated in the written notice given to affected customers;
- the supply is interrupted or cut off in an emergency due to a leak or burst in a strategic main and is not restored within 48 hours of the company first becoming aware of the interruption or that the supply was cut off; or
- the supply is interrupted or cut off in an emergency for any other reason and is not restored within 12 hours of the company first becoming aware of the interruption or that the supply was cut off.

A further automatic GSS payment must be made for each full 24-hour period that the supply is interrupted or cut off.

If the company does not make an automatic payment for which it is liable to the customer within 20 working days of the interruption to supply, the company must automatically make an additional penalty payment to that customer.

There are exceptions to the requirement to make a GSS payment if supply is not duly restored. These are if:

- industrial action by the company's employees prevented the supply being restored;
- the act or default of a person other than the company's representative prevented the supply being restored;
- severe weather prevented the supply being restored;
- where the supply was interrupted or cut off due to a leak or burst on a strategic main, or for any other unplanned reason, the circumstances were so exceptional that it would be unreasonable to expect the supply to be restored within the relevant period;
- It is impractical for the company to have identified the particular customer as being affected, and the customer has not made a claim within three months of the date of the supply not being duly restored; or
- the regulation does not apply where supply is interrupted or cut off due to a drought.

6. Account queries and requests about changes to payment arrangements (GSS Regulation 7)

If a customer queries in writing the correctness of an account, the company must despatch a substantive reply to the customer within ten working days from the receipt of the query

If the company fails to do this, the company must automatically make a GSS payment.

If a customer requests, in writing, a change to a payment arrangement and the company is unable to agree to the request, the company must despatch a substantive response within five working days from the receipt of the request.

If the company fails to do this, the company must automatically make a GSS payment.

The company must make the GSS payment within ten working days of the payment becoming due. If the company fails to do this and the customer makes a claim for an additional penalty payment within three months of the GSS payment becoming due, the company must make the additional penalty payment.

There are exceptions to the requirement to make a GSS payment if the company does not respond to account queries or requests in the given timeframes. These are if:

- the customer informs the company that they don't wish to pursue the query or request;
- in the case of a query the company reasonably considered a visit to be necessary, but severe weather made it impracticable to make the visit;
- industrial action by the company's employees made impracticable to despatch a substantive response within the relevant period;
- the act or default of a person other than the company's representative made it impracticable to despatch a substantive response within the relevant period;
- the query or request was not sent to an address notified in writing by the company to its customers as the appropriate address for such queries or requests; or
- in the case of a query, it is frivolous or vexatious.

7. Complaints (GSS Regulation 7)

If a customer complains in writing to a water company about the supply of water, or to a sewerage company about the provision of sewerage services, the

company must despatch a substantive response to the customer within ten working days of receipt of the complaint.

If the company fails to do this, the company must automatically make a GSS payment.

The company must make the GSS payment within ten working days of the payment becoming due. If the company fails to do this and the customer makes a claim for an additional penalty payment within three months of the GSS payment becoming due, the company must make the additional penalty payment.

There are exceptions to the requirement to make a GSS payment if the company does not respond to written complaints in the given timeframes. These are if:

- the customer informs the company that they don't wish to pursue the complaint;
- industrial action by the company's employee's make it impracticable to despatch a reply within the relevant period;
- the act or default of a person other than the company's representative made it impracticable to despatch a reply within the relevant period;
- the complaint was not sent to an address notified in writing by the company to its customers as the appropriate address for complaints of that nature;
- the complaint was frivolous or vexatious; or
- the company reasonably considered a visit to be necessary, but severe weather made it impracticable to make the visit.

8. Flooding from sewers – Internal flooding (GSS Regulation 11)

If effluent from a sewer, which is vested in a sewerage company, enters a customer's building, the company must make an automatic GSS payment of the sum equal to the customer's annual sewerage charge up to a maximum of £1,000.

If the amount the company is required to make is less than £150, the company must pay the customer £150.

If the company does not make an automatic payment for which it is liable to the customer within 20 working days following the date on which the effluent entered his building, the company must automatically make an additional penalty payment to that customer.

This payment must be made for each incident.

There are exceptions to the requirement to make a payment if effluent enters a customer's building. These are if:

- the entry of the effluent was caused by:
  - exceptional weather conditions;
  - industrial action by the company's employees;
  - the actions of the customer;
  - a defect, inadequacy or blockage in the customer's drains or sewers; or
- it is impractical for the company to have identified the particular customer as being affected, and the customer has not made a claim within three months following the date on which the effluent entered his building.

9. Flooding from sewers – External flooding (GSS Regulation 12)

If effluent from a sewer, which is vested in a sewerage company, enters a customer's land or property, the company must make a GSS payment of the sum equal to 50% of the customer's annual sewerage charge up to a maximum £500. The customer must claim the payment from the company within three months of the incident.

If the amount the company is required to make is less than £75, the company must pay the customer £75.

This payment must be made for each incident.

If the company does not make a payment for which it is liable to the customer within 20 working days following the date on which the claim is received by the company, the company must automatically make an additional penalty payment to that customer.

There are exceptions to the requirement to make a payment if effluent enters a customer's building. These are if:

- the entry of the effluent was caused by:
  - exceptional weather conditions;
  - industrial action by the company's employees;
  - the actions of the customer;
  - a defect, inadequacy or blockage in the customer's drains or sewers;

- the company has made a payment to the same customer in respect of the same incident for internal sewer flooding;
- the customer was not materially affected by the incident; or
- the customer has not claimed the payment within three months following the date on which effluent entered the customer's land or property.

In deciding whether a customer has been materially affected by the incident companies must take into account:

- what parts of the customer's land or property the effluent entered;
- the duration of the flooding;
- whether the flooding restricted the access to the land or property;
- whether the flooding restricted the use of the land or property; and
- any other relevant considerations of which the company is aware.

Payment and claims

If a customer is entitled to a GSS payment and the company has not made the payment automatically, the customer can claim the payment within three months of the incident.

If, at the time of the incident, the customer owes money to the company, and has done so for more than six weeks, the company will normally credit the customer's account rather than make payment by cheque.

Legal rights

The scheme does not affect any legal rights to compensation that customers may have.

Exclusions to the scheme

There are certain exemptions to the scheme. Different exceptions apply to different standards, but they include failure to comply because of circumstances beyond the company's control, such as unforeseen events, industrial action or severe or exceptional weather conditions.

Disputed claims

Any disputed claims for payment under this scheme can be referred to us by either the company or the customer. Our decision is final and binding upon both parties.

Payments in the event of drought

All companies are required under Condition Q of their licence conditions to make a payment to customers where essential household water supplies are interrupted as a result of restrictions authorised by emergency drought orders. This includes water supplies for purposes such as:

- cooking;
- washing;
- drinking; and
- flushing the toilet.

It does not include uses such as watering the garden, car washing or filling a pool.

Although this measure is not part of the GSS, it does mean that customers have access to compensation if essential supplies are not maintained.

The licence commits the companies to accept our decision in the event of any disputes about entitlement.

Companies should pay household customers £10 for each day (or part day) that the water supply is interrupted or cut off. The maximum compensation entitlement is equal to the company's average household bill for the previous year.

Companies should pay business customers, in the same circumstances, £50 a day (or part day). The maximum amount payable is the water charge paid by the customer in the previous year. If, however, the customer has not paid a full year's water charge, or a third party is responsible for the water charges, the maximum is set at £500.

There is no entitlement to a payment under Condition Q if the circumstances are so exceptional that, in our view, it would be unreasonable to expect the company to avoid the interruption.

Further information

If you want to know more about the GSS, contact your local water company. A description of GSS (and any company-specific enhancements) will be provided to you on request. Details are also available in the companies' code of practice for domestic customers.

You can read the statutory instrument (SI) containing the GSS regulations (SI2008/594) here.

You can also:

- send an e-mail to enquiries@ofwat.gsi.gov.uk; or
- visit our website at www.ofwat.gov.uk

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Summary of payment amounts that apply in England & Wales: See individual sections for details of when these apply. These are the minimum payment amount. Some companies may voluntarily increase these – ask your company for details.

GSS Regulation	GSS payment		Late payment penalty	
	Domestic customers	Business customers	Domestic customers	Business customers
Appointments not made properly	£20	£20	£10	£10
Appointments not kept	£20	£20	£10	£10
Incidences of low water pressure	£25	£25	-	-
Incorrect notice of planned interruptions to supply	£20	£50	£20	£50
Supply not restored(*) – initial period	£20	£50	£20	£50
Supply not restored(*) – each further 24 hours	£10	£25		
Written account queries and requests to change payment arrangements not actioned on time	£20	£20	£10	£10
Written complaints not actioned on time	£20	£20	£10	£10
Properties sewer flooded internally	Payment equal to annual sewerage charges (Minimum payment of £150. Maximum of £1000)		£20	£50
Properties materially affected sewer flooded externally	Payment equal to 50% of annual sewerage charges (Minimum payment of £75. Maximum of £500)		£20	£50

(*) Supply not restored within time notified (planned work) or when supply is interrupted for an extended time under unplanned/emergency situations