To the Select Committee for

Local Government (Auckland Law Reform) Bill 112-1 (2009)

A Submission by:
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I wish to make an oral submission before the Select Committee.

I would like to request a Select Committee hearing in Papakura as with the previous Bill.

This Submission is ***against*** some parts of the Local Government (Auckland Law Reform) Bill 112-1 (2009), ***supportive*** of some parts and ***suggests alternatives*** to other parts.

Contents

General Issues

Understandability;

Whilst I understand that legislation is not intended for the easy consumption of the everyday person but for accurate definition, the Local Government (Auckland Law Reform) Bill is difficult to follow. This inhibits the ability of the ordinary citizens, who will be most affected by the outcome, to understand and respond to the key issues of what will soon be law that shapes their living environment.

My belief is that one of the main reasons for the cumbersome nature of this Bill is because the original legislation, Local Government (Tamaki Makaurau Reorganisation) Act 2009 and Local Government (Auckland Council) Act 2009, was produced in a hurried and ill conceived manner and is deeply flawed, and in order to meet 2011 schedule timeframes the Government believes corrections must be attempted immediately.

Having to read and understand each part in the context of the original Acts, reading partial amendments to clauses, amendments and repeals to other Acts like the Local Government Act 2002 makes understanding and submission difficult. It instead increases community suspicion that it is being used as a vehicle to introduce many non-beneficial changes by stealth.

I submit that on this basis the Government (Auckland Law Reform) Bill should be deferred until the actual physical requirements of the Auckland Region and the requirements of the citizens of Auckland Region have been determined properly and democratically.

Purpose of Council

The purpose of a Council is to gather as a group of responsible leaders or delegates to make decisions and provide necessary shared community services that would be uneconomic or inefficient for each member of the community to provide for themselves. Key provisions include (but should not be limited to) “3 Waters”, waste removal, roading and transport, local land planning, provision of parks, facilities and events for the good of the community

These provisions are made for the ratepayers, they are the stakeholders, customers and community shared owners of the facilities. They trust the council (on the whole) to protect and use their resources and The Council is the servant of the population

The proposed model of the Auckland Council will not deliver this to citizens and ratepayers. It is not intended to be a servant of the Citizens.

Old Model – New Model

The publicised reasoning for the reorganisation, as outlined in the General Policy Statement of the Bill, is given as combating the fractured or inconsistent delivery of regional services and disagreement between the councils on regional issues because the region was divided into cities, each with their own council. It is not unexpected that each council has done a variable job of rendering the required services to their ratepayers and that councils will adopt different strategies to regional initiatives based on individual city requirements. Disagreement and debate adds to the quality of democracy that we experience.

The proposed replacement is to unify the cities and aggregate their assets while fracturing the service delivery into individual functions run at arm's length from the Auckland Council and with no legislated controls.

This can be summarised thus; A complete system of services provision by "City Silo's" across a regional unit replaced with a complete City that provides "Silo Services".

Instead of a less intrusive reorganisation based on the existing known and trusted working elements of Auckland Region, the Government has chosen to throw the baby out with the bathwater and completely reinvent the regional "local" government without the consent, support or assistance of the people of the region.

From a Government perspective the Super City has the benefits of eliminating dissent, facilitating easy administrative control of a significant geographic area with a large population and consolidating the community wealth into a single organisation. This does not make sense even as a business model (Westpac Bank recently admitted that centralised administration was a "flawed strategy") and is certainly not what the citizens of Auckland Region want.

I submit that the Auckland reorganisation should be suspended and instead the legislation controlling the activities and powers of the Auckland Regional Council be amended to tighten the controls on an existing, stable and proven Local Government system.

Council Controlled Organisations

I do not support the proposals of any of the Council Controlled Organisations, for example;

- Section 18 of the Local Government (Auckland Law Reform) Bill 2009 112-1 inserting Section 19B to the Local Government (Tamaki Makaurau Reorganisation) Act 2009 where the Waterfront Development Agency is established as a *council-controlled organisation.*

The proposed council-controlled organisations include but are not limited to:

- Regional Transport Authority*
- Watercare Services Limited*
- Waterfront Development Agency*
- Economic Development, Tourism and Events Agency
- Property Holdings and Development
- Major Regional Facilities
- Council Investments

Possible council controlled organisations are not limited to the above list because according to new appended Section 35G of the Local Government (Tamaki Makaurau Reorganisation) Act 2009 (added by Section 24 of the Local Government (Auckland Law Reform) Bill) being "*The Governor General may, by Order in Council, made on the recommendation of the Minister, authorise the Auckland Transition Agency to establish with effect on and from 1 November 2010, 1 or more entities as council controlled organisations of the Auckland Council.*"

Potentially the Minister for Local Government could initiate several more council-controlled organisations by this non-legislative process that is beyond the reach of submission and opposition.

The proposed Council Controlled Organisations are to be led by appointed executives and have a specific prohibition contained in Section 76 of the new Part 8 of the Local Government (Auckland Council) Act 2009 (added by Section 45 of the Local Government (Auckland Law Reform) Bill) being "*Councillors prohibited from appointment as directors of substantive council-controlled organisations*".

This closes the administration of the Council Controlled Organisation from public view. If the Council Controlled Organisations were in fact private companies in a territory or environment where actual competition existed and there were no shareholders that should be consulted or advised about operational matters then you could quite rightfully claim that it was for reasons of commercial sensitivity or to maintain strategic advantage. The closed curtain and exclusion of Councillors with no explicit control mechanisms in the legislation

makes “council-controlled” a misnomer when the intention is, in fact, to separate the operation from the control of public opinion or will as much as possible.

The Local Government (Auckland Law Reform) Bill 112-1 (2009) has an apparent conflict of information that I would be interested to clarify. In new Section 76 as above, Councillors are prohibited as Directors of substantive council-controlled organisations yet in the new Section 45(2)(a) of the Local Government (Auckland Council) Act 2009 as appended by the Local Government (Auckland Law Reform) Bill 112-1 (2009): “...of whom 2 may be elected members of the governing body of the Auckland Council...” that I interpret as Councillors.

Watercare Services Limited or subsequent “Auckland water organisations” have other provisions so explicitly stated that they contrast extremely starkly with the void that is the scant published details of the powers and responsibilities of Local Boards.

I submit that the council-controlled organisations established by the Local Government (Tamaki Makaurau Reorganisation) Act 2009, Local Government (Auckland Council) Act 2009 and Local Government (Auckland Law Reform) Bill 112-1 (2009) are undemocratic, have insufficient explicit legislative control mechanisms or boundaries to be trusted to <u>serve</u> the needs and desires of the population of Auckland Region and should be repealed from the above existing and proposed legislation.

Local Government (Auckland Law Reform) Bill Part 1 (S4 to S26)

Amendments to the Local Government (Tamaki Makaurau Reorganisation) Act 2009.

General;

The Local Government (Tamaki Makaurau Reorganisation) Act 2009 was enacted with no consultation with the citizens of the region and is inherently undemocratic if not anti-democratic.

The normal process of Local Authority Reorganisation involves the Local Government Commission examining the reorganisation proposal to quantify and balance the benefits against the costs and detrimental effects. The Local Government Commission then makes a recommendation for (or against) reorganisation and the citizens of the affected authorities are polled. None of this occurred and furthermore there are insufficient positive business or community reasons for the reorganisation other than immediate benefits coincident to the Rugby World Cup 2011.

No bank would lend money to a legitimate business enterprise on the basis of the scant, opinionated and anecdotal evidence of benefits, cost savings and administrative efficiency that have been publicly presented to date. There is no evidence of public benefit arising from the Auckland Region reorganisation.

If the Act were only to reorganise the region of Tamaki Makaurau (the southern boundary being Manukau City) as referred to in the title, the citizens of Papakura would have no complaint or argument. The people of Papakura do not want to be part of Auckland City or Tamaki Makaurau.

On the basis of the undemocratic process of the Local Government (Tamaki Makaurau Reorganisation) Act 2009 and the strong rejection by the people of Papakura, I submit that the Local Government (Tamaki Makaurau Reorganisation) Act 2009 should be repealed entirely as part of the Local Government (Auckland Law Reform) Bill.

"Auckland water organisations"

It is concerning, and confusing, that the most significant asset of the Auckland Region is not protected clearly and absolutely in legislation.

Entire civilisations and empires throughout history have risen and fallen, been born and once again returned to the dust of the land, all on the availability of water.

The new, appended Part 5 of the Local Government (Auckland Council) Act 2009, added by Section 45 of the Local Government (Auckland Law Reform) Bill, continuously refers to "an Auckland water organisation" after Section 30 of the Local Government (Auckland Law Reform) Bill amending Section 4(1) of the Local Government (Auckland Council) Act 2009 to include Auckland Council or Watercare Services Limited **OR** "a council controlled organisation..."

It is a particularly topical and sore issue to people from Papakura, that control of such an important natural asset and natural monopoly can be taken out of direct council control and then provided back to the community owners with a profit margin added that no longer benefits the community.

The ambiguity of the wording, the apparent segregation of council-controlled organisations from other council operations shows an intent to be able to encapsulate and sell "an Auckland water organisation". People from Papakura do not trust the motives of those who are pro-privatisation and would prefer that all assets and the control of those assets remained in the hands of those who have financed their development.

I don't believe that it is incorrect to have a water supply authority to coordinate and operate water supply services for the entire region **however**, handing over assets or rights to operate to private companies is wrong on such a key resource.

I find the provisions of Sections 65 to 74 of the Local Government (Auckland Law Reform) Bill 112-1 (2009) which, as I understand it, will be the similarly titled Local Government (Auckland Law Reform) Act 2010, particularly ominous. They go to great prescriptive lengths in the face of the vagueness of the larger part of the remainder of the Bill and contain provisions that indicate to me the full intention to privatise this council-controlled organisation. The provisions appear to be sufficiently independent of references to other Acts or sections to allow a simple Amendment Act to complete the legal separation of this organisation from the Auckland Council.

Section 66(c) "must in its financial statements, identify clearly and separately... etc...

- (i) the financial position of its reticulated water-supply, waterworks, and bulk water-supply activities; and
- (ii) the financial position of its activities in relation to sewerage and the collection, treatment, and disposal of sewage and trade wastes:"

Section 66(d) must ensure that the activities described in paragraph (c)(i) and (ii) are costed and priced separately:

This appears to indicate the split of these 2 parts of the "3 Waters" that can be clearly financially defined from each other. I have not yet found the specific references to Stormwater being the 3rd part unless this is incorporated under sewage / trade wastes.

Section 71 only limits Watercare Services Limited to comply with Auckland Council directions on charges until 30 June 2015 and Section 73 only places limits on the ownership of Watercare Services limited until 30 June 2015 when the Auckland Council can decide how to continue to provide these services. 1 July 2015 seems to be a magic date for water supply in Auckland.

I submit that regional water supply should be coordinated by a department or committee of a Regional Council and legislation should protect the public ownership of that water supply <u>in perpetuity</u>. There should not be arms-length council-controlled organisations or private ownership/management. Any decisions over future provision of "3 Waters" services must be made with the full consultation of the people of the Auckland Region.

Waterfront Development Agency

I disagree with Section 18 of the Local Government (Auckland Law Reform) Bill 2009 which is to add Section 19B to the Local Government (Tamaki Makaurau Reorganisation) Act 2009, empowering the Auckland Transition Agency to establish a Council Controlled Organisation, that is, the Waterfront Development Agency.

The Waterfront Development Agency is not an entity that will benefit the entire region. A whole independent organisation to develop and administer several hundred metres of waterfront in the Central Business District of the existing Auckland City, on behalf of the proposed city of 1.4 million people is a disproportionate and unacceptable allocation of resources.

I do not support Council Controlled Organisations because they are staffed by appointed executives not democratically elected councillors or board members. The organisation is too separate from explicit council control and there are no control mechanisms set in legislation. This situation is sometimes referred to as "the fox being put in charge of the chickens".

One of the single greatest benefits of direct council control, rather than being run independently at arm's length, is the collaboration and input of a variety of ideas that ensures balance and community focus. Where the organisation is guided completely by independent business executives, it is subject to the possibility of narrow, directed thinking, resistance to fresh business paradigms, disregard of stakeholders or allegiances that are not beneficial to stakeholders (ratepayers) because of the lack of transparency and public accountability. A standard defence used to prevent transparency is to claim commercial sensitivity although the competition who would benefit from knowledge of the commercially sensitive information is sometimes hard to isolate where natural monopolies exist. There is only one waterfront, unless the waterfronts in Papakura, Otahuhu, Mangere etc... are all included in the scope of the Waterfront Development Agency, just as there is only one water supply – natural monopolies that are better in public ownership and control.

I submit that the Local Government (Tamaki Makaurau Reorganisation) Act 2009, if not repealed in its entirety, should be amended to make a Waterfront Development Agency a department or committee of the Auckland Council, publicly accountable and under direct council control.

Auckland Transport

While I agree in principle with a region wide transport organisation, here known as Auckland Transport, I disagree with it being a separate council-controlled organisation because of the lack of accountability, transparency and control by Auckland Council on behalf of the ratepayers. All matters which have been dealt with under previous council-controlled organisation headings.

Section 19 of the Local Government (Auckland Law Reform) Bill 2009 adds sections 21A to 21C to the Local Government (Tamaki Makaurau Reorganisation) Act 2009, which empowers the Auckland Transition Agency to appoint (not cause to have elected) a Chief Executive of Auckland Transport who is then empowered to act for Auckland Transport. There is no provision for the democratic election or opposition to the appointment/election of the governing executives for this or any other council controlled organisation.

Once again there are also no explicit controls on the type of service, restrictions, limitations or acceptance of council control (read; ratepayers democratic control) written into legislation. The organisation itself decides how it will service Auckland.

I submit that there should be no council-controlled organisations established by the Local Government (Tamaki Makaurau Reorganisation) Act 2009, Local Government (Auckland Council) Act 2009 and Local Government (Auckland Law Reform) Bill 112-1 (2009), specifically here Auckland Transport, because they are undemocratic, have insufficient explicit legislative control mechanisms or boundaries to be trusted to serve the needs and desires of the population of Auckland Region and should be repealed from the above existing and proposed legislation. I submit that Auckland Transport should be an internal and dependent committee or department of an Auckland Regional Council, which is maintained in public ownership and control.

Dissolution of Local Authorities;

Section 35(1) of the Local Government (Tamaki Makaurau Reorganisation) Act 2009 is amended by Section 23 in association with Section 24 of the Local Government (Auckland Law Reform) Bill 112-1 (2009) for the dissolution of Local Authorities and the dissolution of certain existing council-controlled organisations.

In Papakura this specifically affects an organisation that removes graffiti and provides “town ambassadors”. These are of particular benefit to Papakura and provided within the scope of (currently) the lowest rates in the Auckland Region.

Papakura District Council meets all of its obligations within said lowest rates and provides well for the community in its care.

I submit that it is not right to dissolve the Local Authority of the Papakura District Council and that Papakura District Council should be specifically exempted from dissolution. I further submit that the any existing council-controlled organisations should not be dissolved without consultation with the communities they serve and that have paid for them.

Local Government (Auckland Law Reform) Bill Part 2 (S27 to S46)

Amendments to Local Government (Auckland Council) Act 2009

Decision-making responsibilities of local boards;

Section 39 of the Local Government (Auckland Law Reform) Bill 112-1 (2009) amends Section 16 of the Local Government (Auckland Council) Act 2009 with a statement on collaboration with other boards

Regrettably the Bill does not say much more about the powers, responsibilities and decision making of the Local Boards which may or may not have been completely abdicated to the Auckland Transition Agency who are also not that forthcoming with specific information.

As it currently stands, the population can be quite justified to think that Local Boards will be a "Tea and Scone" club with little business of importance and a burdensome requirement to report to the Auckland Council frequently and in detail. The public of Papakura, with whom I have spoken frequently on the matter, have little faith in the Local Boards to have an effect on Councillors let alone on the Auckland Council, much less the ineptly named "council-controlled organisations".

I submit that the proposed powers and decision making responsibilities of Local Boards must be define, significant and enshrined in Legislation to even approach the concept of "Local Democracy".

Conclusion;

This submission is, regrettably, not as concise or all encompassing as I would prefer, however I have devoted quite some thought to what I see as the most significant of a great swarm of problems introduced by this hurried process.

I wish that the timetable was not governed by the imminent Rugby World Cup in 2011 and that there was more time to actually study the issues and formulate corrective plans in consultation with the citizens of the Auckland Region.

I am reminded of a saying which I am sure most have heard:

Act in Haste, Repent at Leisure.

I submit that the Local Government (Tamaki Makaurau Reorganisation) Act 2009, Local Government (Auckland Council) Act 2009 and Local Government (Auckland Law Reform) Bill 112-1 (2009) are ill conceived and are not to the benefit or wellbeing of the communities of the Auckland Region and should be abandoned and repealed.

Thank You. END