

LOCAL GOVERNMENT FORUM

1. EXECUTIVE SUMMARY

- 1.1. This submission on the Local Government (Auckland Law Reform) Bill ('the Bill') is made on behalf of the Local Government Forum ('the Forum'). The Forum comprises business organisations that have a vital interest in the activities of local government.
- 1.2. New Zealand's economic performance has been falling well short of the level required to achieve the government's goal of raising New Zealand's per capita income to the same level as that of Australia by 2025. There is considerable scope for local government to enhance its contribution to the economic and social performance of the country.
- 1.3. While improved governance arrangements for Auckland are a commendable first step, the Forum believes that much work remains if local government is to contribute fully to lifting overall economic performance. Broader reform of local government, which the government is progressing separately, can assist.
- 1.4. The Forum has focused on those areas of the Bill which it believes can be improved. It supports the Bill's intent and recommends that it should proceed – subject to specific recommendations contained in this submission.
- 1.5. The Forum's key recommendations are listed below:
 - **Transport**
 - The overriding goal of Auckland Transport should be to provide an efficient transport system (clause 45 and new section 39 refer). To avoid doubt, efficiency should be defined to reflect an economic perspective.
 - Auckland Transport should not be granted a power of general competence (clause 45 and new section 40 refer).

- The board of Auckland Transport should comprise voting members who are not members of the Auckland Council only and all board members should be appointed by the Auckland Council (clause 45 and new section 45 refer).
- **Water**
 - Watercare Services (and any other Auckland water organisation, other than the Auckland Council) should be established as a council-controlled trading organisation (CCTO) on the same basis as the government's state-owned enterprises (clauses 30, 47(2) and 65 refer). Any non-commercial services that the Auckland Council may wish Watercare to provide should be contracted and paid for separately.
 - The statutory obligation to charge minimum prices should be removed (clause 45 and new section 49(1)(a) refer). Watercare should charge for water and wastewater services on efficient pricing principles (like the government's SOEs). Under-pricing of services leads to over-consumption and waste.
 - The prohibition on the payment of a dividend by Watercare should be removed (clause 45 and new section 49(1)(b) refer). Dividend policy should be a matter for the board of Watercare and the Auckland Council.
 - The Auckland Council should not be allowed to guarantee the borrowings of Watercare or provide loans on non-commercial terms (that is, section 62 of the Local Government Act 2002 should apply from 1 November 2010 to any new borrowing by Watercare).
- **Spatial planning**
 - Part 6 of the Bill, which would require the Auckland Council to prepare a spatial plan, should not proceed at this stage (clause 45 and new section 66 refer). The proposal to require a spatial plan and its implications for other planning processes and the Resource Management Act 1991 (RMA) should be examined carefully and fully in the Phase II Review of the RMA which is to be completed by 30 June 2010. It would be premature to enact the proposed Part 6 before the review is completed and the full implications of the proposed legislation are assessed.

- **Other issues**

- The functions of the Auckland Council and the Local Boards should be specified in legislation and the Local Boards should have meaningful functions to undertake and a significant decision-making role (Part 2 of the Bill, notably clause 33, refers). A possible division of functions is outlined in the appendix to this submission.
- The proposal to establish a Waterfront Development Agency should be deleted from the Bill (clause 11(3), and clause 18 and new section 19B refer). The Auckland Council's legitimate responsibilities for the development of the waterfront should rest with the Council.
- The provision in the Bill empowering Auckland Transport to impose development contributions should be deleted (clause 45 and new section 80 refer). Development contributions should not be extended to fund spending undertaken by council-controlled organisations (CCOs).
- A three-year transitional period for moving to a single rating system based on capital value rating is proposed in the Bill (clauses 77-80 refer). The Forum thinks that this adjustment period is relatively short and notes that the Auckland Council may need to seek an extension once detailed work on rating options for the new Council are examined.
- Watercare and other Auckland water organisations should pay rates on the same basis as other ratepayers (clause 45 and new section 61 refer).
- The establishment of the Auckland Council presents an opportunity to review the differential rating of businesses. We believe that businesses should face user charges that reflect the costs of services provided, and that under the capital value rating system proposed for the Auckland Council they will pay their full share of general rates. The Shand report (*Rating Local Government*) recommended that the power to set a business rate differential be removed. In our view this recommendation should be adopted in general local government legislation but in the interests of earlier removal of this anti-business provision and contributing to the government's growth agenda we submit that it be adopted for the Auckland Council forthwith.

2. INTRODUCTION

- 2.1. This submission is made by the Local Government Forum (the Forum). The Forum welcomes the opportunity to make a submission on the Local Government (Auckland Law Reform) Bill ('the Bill'). Overall, the Forum supports the Bill's intent and recommends that it should proceed – subject to specific comments and recommendations contained in this submission.
- 2.2. The Local Government Forum comprises organisations that have a vital interest in the activities of local government. Its members include Business New Zealand, the Electricity Networks Association, Federated Farmers of New Zealand, New Zealand Business Roundtable, New Zealand Chambers of Commerce, and New Zealand Retailers' Association. The Forum was established in 1994 to promote greater efficiency in local government and to contribute to debate on policy issues affecting it.
- 2.3. Forum members are significant representatives of ratepayers in their own right. The Forum's perspective is to advance community welfare through the advocacy of sound public policy. We believe that local government can best serve the interests of the community and ratepayers by focusing on the efficient provision of public goods at a local level.
- 2.4. The Bill is the third and final bill to establish new governance arrangements for Auckland. The Local Government (Tamaki Makaurau Reorganisation) Act 2009 and the Local Government (Auckland Council) Act 2009 created the Auckland Transition Agency, and the Auckland Council and its local boards. The Bill would amend both acts.
- 2.5. The Bill provides for the following:
 - further establishment-related provisions relating to the new governance arrangements for Auckland, the transition of staff and assets to the new structures, local elections, and planning and reporting arrangements for the period up to 1 November 2010;
 - substantive statutory provisions to enable the Auckland Council to operate from 1 November 2010, relating to the following matters:
 - the relationship between the Council's governing body and its local boards;

- the management of transport, and water supply and wastewater services;
 - the development of a spatial plan for Auckland;
 - the establishment of a board to promote issues of significance for mana whenua and Māori for Tamaki Makaurau; and
 - the governance of council-controlled organisations, development contributions, and representation reviews;
- transitional planning, funding and rating arrangements for the Auckland Council until at least July 2012; and
 - consequential amendments to other legislation.

2.6. Local government is a vitally important institution. It provides essential services such as roading and water, and undertakes important regulatory activities, for instance in relation to resource use and buildings. The Forum believes that there is considerable scope for local government to contribute to an improvement in the economic and social performance of the country.

2.7. New Zealand's economic performance has been falling well short of the level required to achieve the government's goal of raising New Zealand's per capita income to the same level as that of Australia by 2025. The Forum supports reforms, such as those relating to the governance of Auckland, that would improve the efficiency and effectiveness of local government and increase per capita incomes.

2.8. While better governance arrangements for Auckland are a commendable first step, the Forum believes that much work remains if local government is to contribute fully to lifting overall economic performance. Broader reform of local government, which the government is progressing separately, can assist. The Forum also believes that the changes to the bill outlined in this submission would also help the Auckland Council to make a greater contribution to overall economic and social performance.

2.9. The balance of this submission focuses on those areas of the Bill which the Forum believes can be improved. Transport is addressed in section 2, water in section 3, spatial planning in section 4 and other issues in section 5. The last section comments on local boards, the proposed Waterfront Development Agency, development contributions and rating.

2.10 The Forum notes that its members may make separate submissions.

3. TRANSPORT

- 3.1. Clause 45 of the Bill would insert a new part (Part 4) into the Local Government (Auckland Council) Act 2009. Part 4 would establish Auckland Transport as an independent entity of the Auckland Council (new section 38 refers). It would be responsible for the planning and delivery of transport services, and would exercise statutory powers relating to the Auckland transport system that are normally held by a local authority. Conversely, the relevant powers would not be conferred on the Auckland Council, although Auckland Transport would be permitted to delegate certain of its powers to the Auckland Council.
- 3.2. Auckland Transport would be responsible for public roads (other than state highways), public passenger transport services and public transport infrastructure that is under the control of the Auckland Council or Auckland Transport. It would not be responsible for railways, airfields or off-street carparking facilities (although it may manage such parking for the Auckland Council). The Auckland Council would be responsible for the preparation and approval of a regional land transport strategy for Auckland and the funding of Auckland Transport.
- 3.3. The efficiency of the roading network is of vital interest to members of the Forum. The Forum believes that the entire public road network should be managed on a more commercial basis by a small number of dedicated roading entities along the lines outlined in the previous National government's discussion document of 1999, *Better Transport – Better Roads*. The Forum generally endorses the establishment of Auckland Transport as a step in that direction. It is disappointed, however, that neither the Royal Commission on the Governance of Auckland (the Royal Commission) nor the government appears to have examined the merits of establishing a separate statutory entity, owned by central and local government, to own and manage all publically-owned roads over a wider area than the territory of the Auckland Council. Such a body would not be responsible for public transport or public transport infrastructure not directly related to roading. The Forum believes that further work aimed at improving institutional arrangements for transport activities for the whole country is required.

3.4. Auckland Transport would be a CCO. However, unlike other CCOs, Auckland Transport would not be required to comply with certain provisions of the Local Government Act 2002 (the LGA). Instead it would be required to comply with an entity-specific regime which is, for the most part, similar.

3.5. A CCO is required to achieve the commercial and non-commercial objectives of its shareholders as specified in its statement of intent. A CCO that is a council-controlled trading organisation (CCTO) is also required to conduct its affairs in accordance with sound business practice. These provisions would not apply to Auckland Transport. Its objective would be specified by statute as follows:

The objective of Auckland Transport is to undertake its functions in a way that contributes to an affordable, integrated, safe, responsive, and sustainable land transport system for Auckland (new section 39).

3.6. This objective suffers from the following weaknesses:

- A more commercial approach to the provision of transport services, as proposed in *Better Transport – Better Roads*, would require Auckland Transport's objectives to be specified in commercial terms similar to other CCOs and SOEs. An exception may be warranted because Auckland Transport would, at least in the next few years, earn little of its income from charges for its services. However, over the longer term more efficient pricing of transport services is desirable and is becoming feasible with advances in technology.
- If a policy-oriented objective were to be specified, then emphasis should be placed on efficiency, which is omitted. Economic efficiency focuses on maximising output with a given level of resources or minimising the level of resources required to achieve a given level of output. Moreover, efficiency should be evaluated from the overall perspective of society (not that of a particular entity such as that of Auckland Transport) and should not be limited to the manner in which it undertakes its functions. The latter is a particularly narrow perspective. Safety is embraced in an efficiency goal.
- There is no basis on which conflicts among the goals proposal for Transport Auckland (affordability, integration, safety, responsiveness and sustainability) can be resolved. An emphasis on efficiency would address that issue.

- 3.7. Over recent years some transport policy documents have understated or omitted the importance of efficiency as a social goal. This practice should stop as it is inconsistent with the government's prime goal of boosting economic growth. *The Forum submits that the overriding goal of Auckland Transport should be to provide an efficient transport system. To avoid doubt, efficiency should be defined to reflect an economic perspective.*
- 3.8. The Bill would confer a power of general competence on Auckland Transport for the purposes of performing its functions (new section 40 refers). This power would be subject to the Local Government (Auckland Council) Act 2009. Local authorities (but not CCOs) were given a similar power by the Local Government Act 2002 (LGA). The Forum does not support the granting of a power of general competence to local authorities or Auckland Transport. Such a power is inconsistent with the protection of individual autonomy and property. This requires the role of government at all levels to be limited. The activities of councils and their agencies should be enumerated in legislation and their powers (except for reasonably incidental powers) should be explicit and conferred by statute. *The Forum recommends that the proposed new section 40, conferring the power of general competence on Auckland Transport, be deleted from the Bill.*
- 3.9. The proposed governance arrangement for Auckland Transport blurs accountability (new section 45 refers). The Auckland Council would appoint most voting directors (between 6 and 8), which is appropriate as Auckland Transport is to be a CCO of the Council. However, two of these directors may be elected members of the governing body of the Auckland Council. Such members would be members of Auckland Transport and of the body that is responsible for monitoring its performance. A clear separation of the governance of the two organisations is desirable to help contain inappropriate political influence over transport activities. This view is reflected in the new Part 8 (new sections 75 and 76) which would prohibit the appointment of councillors to boards of substantive council-controlled organisations. Transport Auckland appears to come within the relevant definition and the provisions seem to be inconsistent.
- 3.10. If the concern is that an unelected board may have excessive power to regulate the lives and activities of citizens, a better approach could be to confer the power to make regulations on the Auckland Council. Their administration would be the

responsibility of Auckland Transport. This approach is similar to that proposed in the Bill in respect of water CCOs.

- 3.11. A non-voting director may be nominated by the New Zealand Transport Agency. Although Auckland Transport would be funded to a considerable level through the New Zealand Transport Agency and while state highways and arterial and local roads jointly constitute the national roading network, we do not think that there are sufficient grounds to warrant the appointment of a non-voting director. In any event the precise role of such a director is unclear.
- 3.12. For these reasons, *the Forum submits that the board of Auckland Transport should comprise voting members who are not members of the Auckland Council only and the Auckland Council should appoint all board members.*

4. WATER

- 4.1. The Bill would insert a new Part 5 into the Local Government (Auckland Council) Act 2009 which relates to water supply and wastewater services for Auckland (clause 45).
- 4.2. The Cabinet paper that gave rise to the Bill noted that Auckland local authorities and their subsidiaries have water and wastewater assets exceeding \$5 billion in value. In the Forum's view, economies arising from better management of these assets and more efficient investment and pricing policies (together with similar improvements in transport) represent the main potential gains from Auckland reorganisation. The gains could far exceed those estimated by Taylor Duignan Barry for the Royal Commission.
- 4.3. In addition, the proposals for Watercare Services are seen as a model for water infrastructure reforms in the rest of the country. Analysis commissioned by the Department of Internal Affairs forecasts total expenditure in the sector for the period 2009-18 to be \$28.5 billion, made up of \$11.5 billion of capital expenditure and \$17 billion of operating expenditure. Given the economic importance of these expenditures, it is obviously vital to get the Watercare model right. The issue should also be seen in the context of the government's goal of matching Australia's per capita income levels by 2025. Achieving that goal will require top quality, not sub-optimal, policies across the board.

- 4.4. Our main submission is that because water and wastewater services are private good activities that can be undertaken commercially, a straightforward commercial model should be adopted. These are utility services similar to electricity, for which it has long been accepted at a central government level that the state-owned enterprise model is appropriate. It provides the strongest incentives, short of private ownership, for efficiency and financial performance. Commercial water utilities, whether publicly or privately owned, are commonplace around the world. This logic points to the adoption of a CCTO rather than a CCO model for Watercare and any other Auckland water organisation, other than the Auckland Council. Key distinctions are that a CCTO would be profit-oriented, able to pay a dividend, and not be subsidised by the Auckland Council (for example, through guarantees on borrowing or loans on terms that reflect the Council's power to levy rates). These are all features of the SOE model. The government is seeking to ensure that its SOEs improve their financial performance and are as profitable as comparable private businesses. The same principles should apply to a water utility.
- 4.5. It appears that the government has favoured a CCO over a CCTO on the basis of a perception that the requirement to make a profit would mean higher prices. This is mistaken. Profit-oriented private businesses are accepted as the best means of delivering value to consumers. The SOE model reflects the same principle, even in industries where competition is weak, such as electricity transmission.
- 4.6. The requirement to make a profit has no implications for prices. Normal profits are part of the cost of capital. Watercare must meet its cost of capital, otherwise resources will be misallocated, and it must set its prices accordingly. As the Regulatory Impact Statement (RIS) notes, the level of any dividend would not affect the level of prices set on efficiency grounds. The issue regarding a dividend merely concerns what proportion of profits should be retained within the business or paid out to owners. The government rightly insists on a dividend policy for SOEs in order to strengthen incentives for performance. Allowing Watercare to retain all profits in the business risks the creation of a fat and lazy balance sheet.
- 4.7. The Forum is naturally concerned that Watercare does not exploit a monopoly position. However, it agrees with the analysis in the RIS that prohibiting the payment of a dividend is not the best way to achieve this goal. Other mechanisms, in particular Part 4 of the Commerce Act which provides for the regulation of the price and quality of goods and services in markets where there is little or no competition,

are preferable. The RIS notes that there is no evidence that water and wastewater providers in Auckland have abused their monopoly position in the past and we agree with the desire of the government (and the Royal Commission) to avoid specific heavy-handed regulation.

4.8. The Forum has often been critical of RISs accompanying bills but we agree with the Department of Internal Affairs that the RIS relating to water and wastewater is adequate. The purpose of a RIS is to examine the underlying analysis for a policy decision. Some of the government's decisions in the bill are not consistent with the RIS.

4.9. The Forum agrees with the conclusions of the RIS that:

- water and wastewater services are predominantly private good activities (that is, they can be supplied commercially);
- all water and wastewater services should be corporatised; and
- all water and wastewater assets should be retained in public ownership.

4.10. At the same time, we believe that private sector participation in some form in water and wastewater services should not be precluded in the future, and agree that the Auckland Council should be able to consider changes after 2015. To widen its range of choices, sections 136 and 137 of the LGA, which put restrictions on water that are not applied to other council activities, should be repealed in the review of that Act. Among other things, Watercare should be free to use its assets to enter into other lines of business (in the same way that electricity lines businesses, for example, can provide telecommunications services). We also note that future water industry reform may need to focus on wider catchment areas (such as the Waikato), with larger urban centres contained within them.

4.11. In the Forum's view, it follows from this analysis that Watercare should not be subject to a statutory obligation to charge minimum prices and be prohibited from paying a dividend, for the reasons given in paragraphs 46 and 47 of the RIS. These features are not consistent with SOE policy. We disagree with the government's decisions on these issues.

4.12. Accordingly, *the Forum recommends that the bill be modified in the following ways:*

- *Watercare Services (and any other Auckland water organisation, other than the Auckland Council) should be established as a CCTO on the same basis as the government's SOEs (clauses 30, 47(2) and 65 refer). Any non-commercial services that the Auckland Council may wish Watercare to provide should be contracted and paid for separately.*
- *The statutory obligation to charge minimum prices should be removed (clause 45 and new section 49(1)(a) refers). Watercare should charge for water and wastewater services on efficient pricing principles (like the government's SOEs). Under-pricing of services leads to over-consumption and waste.*
- *The prohibition on the payment of a dividend should be removed (clause 45 and new section 49(1)(b) refers). Dividend policy should be a matter for the board of Watercare and the Auckland Council.*
- *The Auckland Council should not be allowed to guarantee the borrowings of Watercare or provide loans on non-commercial terms (that is, section 62 of the LGA should apply to any new borrowing by Watercare from 1 November 2010).*

5. SPATIAL PLANNING

- 5.1. The Bill inserts a new Part 6 in the Local Government (Auckland Council) Act 2009 which relates to spatial planning (clause 45 refers). This would require the Auckland Council to prepare a spatial plan. The present requirement for the Auckland Regional Council to prepare a regional growth strategy would be repealed and that strategy would have no effect once a spatial plan is adopted (clause 106 refers).
- 5.2. The Royal Commission concluded that Auckland's regional governance was weak and fragmented. It elaborate on this finding in the following terms (at page 4):

Auckland's regional council and seven territorial authorities lack the collective sense of purpose, constitutional ability, and momentum to address issues effectively for the overall good of Auckland. Disputes are regular among councils over urban growth and the development and sharing of key infrastructure, including roads, water and waste facilities, and cultural and sporting amenities. Councils cannot agree on, or apply, consistent standards and plans.

The Commission also reported (at pages 4-5):

The Commission observes ..., as others have previously, that *Auckland does not lack plans: it lacks the will and ability to implement them* (emphasis added).

5.3. The Commission's main response to its findings comprised its recommendation that a unitary council, the Auckland Council, be established. It also recommended that the Auckland Council prepare a regional spatial plan and infrastructure investment plan to provide "a vision for the Auckland region and to guide growth management, regional and district planning, and public works investment in the region" (page 34). The Commission envisaged that the spatial plan would have a 30-50 year timeframe (page 531) and would be an overarching plan that would "coordinate" plans for growth, economic and social development (page 9).

5.4. The approach to, and breadth of, the spatial plan proposed by the Royal Commission is indicated by the following:

Ultimately, this plan [the spatial plan] should analyse population, households, employment, major social infrastructure, open space networks, city-shaping infrastructure of roads, rapid transit, transport services, active transport networks including pedestrians and cyclists, water, wastewater, and stormwater networks, and major energy lines. It should identify the green and ecological network of the region, and areas that should be protected from all development and their natural values enhanced. It should identify growth areas for the region to accommodate urban population, and household and economic development, specifying timing, priority, methods, and agencies involved. The plan would address sustainability, outstanding urban design, a more efficient energy future, climate-resilient development, and the creation of cohesive communities (pages 531-532).

5.5. A similar approach is reflected in the Bill (new section 66 refers) which specifies the following functions of the proposed spatial plan:

- to set out the long-term (20-30 year) strategic direction for Auckland and its communities;
- to state policies, priorities and programmes, and land allocations that will implement the strategic direction and to specify the resources that will be provided to implement the strategic direction;
- to set out Auckland's role in New Zealand;

- to visually illustrate how Auckland may develop in the future, including how growth may be sequenced and how infrastructure may be provided;
- to provide an evidence base to support decision making for Auckland, including evidence of trends, opportunities and constraints in Auckland;
- to set out a development strategy on how to achieve broad policy objectives for land use, transport, other infrastructure, and environmental management in Auckland;
- to identify the existing, and guide the future, location of critical infrastructure services and any associated investment in Auckland such as water supply and open space;
- to identify the existing, and guide future, location and mix of residential, business and industrial activities within specific geographical areas in Auckland;
- to identify significant ecological areas in Auckland that should be protected from development;
- to give direction to, and align, implementation plans, regulatory plans, and funding plans of the Auckland Council;
- to integrate otherwise competing policy goals and provide opportunities for coherent and combined decision-making about investment and regulation in Auckland; and
- to act as an information and co-ordinating mechanism enabling the Auckland Council (as the spatial planning agency) and parties that provide services, infrastructure, and other investment to discuss, and agree on, the timing and outcome of providing those things and the location of things.

5.6. The minister for the environment's paper to the Cabinet Implementation of Auckland Governance Reforms Committee proposed "a staged approach to establishing the spatial plan for Auckland that involves providing, in the first instance, for a spatial plan, without legislative links to other plans of the Council. The Auckland Council can be expected, however, to reflect its spatial plan in other planning processes and in its decision making, except where this would be prevented by statute. Moreover,

under the Resource Management Act 1991 (RMA), when deciding an application for a resource consent, the consent authority must have regard to any other matters the consent authority considers relevant (section 104(1)(c) refers). A consent authority could be expected to regard the spatial plan as relevant. Thus despite the proposed staged approach, the provision in the Bill, if adopted, could be expected to impact on resource applications once a spatial plan is adopted. There has been no adequate examination of the impact of the proposed spatial plan on resource use.

- 5.7. The preferred long-term option according to the minister for the environment's paper is for a statutory spatial plan to replace existing strategic plans prepared under the RMA and Land Transport Management Act 2003. The relationship among the proposed spatial plan and other planning processes is to be examined in Phase 2 of the resource management review.
- 5.8. The paper referred to above views the RMA as a planning act (see paragraph 29). This is an inappropriate and inaccurate description as the RMA's primary purpose is to promote the sustainable management of natural and physical assets. It is an environmental protection act.
- 5.9. The Forum is strongly opposed to the proposed requirement for the Auckland Council to prepare a spatial plan on the basis proposed by the Royal Commission and as outlined in the Bill for the following main reasons:
 - The proposed spatial plan is over-ambitious and unfocused, and risks going well beyond the proper role of the government. It assumes that the government should regulate a vast range of activities and implies that the community's preferences are homogenous and can be reflected adequately in a plan. No group of officials and no amount of consultation with interested parties can hope to obtain the information necessary to 'plan' the array of activities envisaged. The consultative process risks being a sham.
 - The Royal Commission's proposal and the provision contained in the Bill are predicated on a highly planned economy and are certain to fail. The minister for the environment's paper states that successful cities "use spatial planning to drive productivity by agreeing a high level direction, investment, and other activities" (paragraph 41). That view is not supported by a contemporary approach to economic policy and is not consistent with the policy of the present government. Although the Ministry for the Environment asserts in its RIS (at

page 10) that the absence of a plan that addresses “achieving economic growth and productivity” is a weakness of current arrangements, these are examples of matters that cannot be planned along the lines envisaged by the Bill. Central and local government can adopt policies that are conducive to economic growth and productivity (for instance, by upholding private property rights and reducing unwarranted regulatory burdens) but growth and productivity predominantly arise from the decentralised decisions of firms and individuals who respond to the incentives set spontaneously.

- The proposal is inconsistent with the effects-based approach of the RMA. It harks back to the former Town and Country Planning Act, in particular the reference to “allocations of land” for particular purposes. There are no criteria to be applied in developing the plan and parties adversely affected would have no appeal rights. Indeed there is criticism of appeal rights and court processes under the RMA (see paragraph 56 and the RIS at page 12). There is no indication that private property rights would be properly respected.
- The proposal is inconsistent with the government’s key goal of promoting economic growth and its policy to reduce regulatory burdens. This requires a reduction in regulation and greater innovation. The extensive planning processes that are envisaged and which would ultimately be mandatory are the antithesis of what is required.
- The Auckland Regional Council and certain other councils have adopted so called ‘smart growth’ policies which promote urban intensification, largely to foster public transport. Such policies constrain the supply of land for housing and commercial purposes and inflate land prices. The spatial plan can be expected to further constrain land supply and raise the cost of housing, shops, factories and warehouses. Development proposals which do not comply with the Council’s plan will be discouraged or simply prohibited. There is no indication that the need to address affordable housing reflects a desire to free up land for development and reduce regulatory burdens. The Forum suspects that the opposite is envisaged, namely, rules requiring developers to provide low cost housing without compensation as a condition of resource consents.
- The key problems with the provision of infrastructure have arisen where government agencies are responsible. They are rare where there is

competition and private provision of the relevant services. The solution is not more detailed and extensive planning but greater private participation in the provision of services. Moreover, efficient pricing of infrastructure, where appropriate and feasible, offers a much better solution to the problem of coordinating the supply of, and demand for, infrastructure.

- The provision of infrastructure such as roads and other transport infrastructure, water, wastewater and stormwater facilities needs to be scheduled well in advance. This is primarily the responsibility of the service providers. Many other activities examined by the Royal Commission do not require planning on such a long-term basis.
- The discussion in the relevant papers, including the RIS, focus excessively on short-term implementation options and do not examine adequately the broader economic effects of the proposed plan and planning process. Nor do they consider in sufficient detail how the proposal would impact on existing legislation.

5.10. The Forum is not persuaded that the Auckland Council should be required to prepare a spatial plan at this stage. Moreover, the proposal has been inadequately examined and its implications have not been spelt out. The merits or otherwise of a spatial plan and its relationship to other statutory planning processes and the RMA need to be examined fully and carefully. We believe that the appropriate forum is the stage II review of the RMA. Accordingly, *the Forum recommends that Part 6 be deleted from the Bill and the proposal to prepare a spatial plan be examined carefully and fully in the review of the RMA.*

6. OTHER ISSUES

Local Boards

6.1. A key weakness of the proposed governance arrangements is the absence of a meaningful role for local boards. The Bill would require the Auckland Transition Agency to make an initial allocation of decision-making responsibilities for the non-regulatory activities of the Auckland Council between the Council's governing body and its local boards (clause 17 refers). There is no ongoing statutory specification of the functions of local boards and there is a clear conflict of interest between those of the Auckland Council and its boards. The Forum believes that this will be a

source of ongoing difficulties if it is not resolved through statute. The provision of a process to resolve disputes (clause 45 and new sections 77 and 78) is an insufficient response.

- 6.2. As noted in the Forum's submission on the Local Government (Auckland Council) Bill in 2009, the Auckland Council functions should be those that have Auckland-wide application while other functions should be the responsibility of local boards. The proposals to date allocate few functions to local boards and little by way of revenue raising power. The average local board is likely to be larger than many existing territorial local authorities. However, despite their size they will be dependent on the Auckland Council for service delivery, staffing, and funding. Because of this dependency, the Forum is concerned that the local boards could become little more than parochial lobby groups paid for by ratepayers generally.
- 6.3. The Forum continues to believe that Local Boards should have meaningful functions. The functions that we think should be the responsibility of Local Boards and those that should be the function of the Auckland Council are listed in an appendix. We accept that some of the Local Board functions listed in the appendix are 'grey areas' that could equally be undertaken by the Auckland Council (for example, environmental health control) but whatever the final allocation, the Forum believes that the respective functions should be set out in legislation rather than being left for the Auckland Transitional Agency to propose in the first instance and for the Auckland Council and Local Boards to decide beyond 1 November 2010.
- 6.4. We also note that the functions listed in the appendix reflect existing council activities, including some that the Forum considers to be beyond the core roles and responsibilities of local government (for example, economic development, and promoting sport and recreation).
- 6.5. If there is a wish for either the Auckland Council or a Local Board to go beyond these functions then the decision should be a matter for relevant ratepayers to determine through referenda.
- 6.6. Accordingly, *the Forum recommends that the functions of the Auckland Council and the Local Boards should be set out in legislation and the Local Boards should be allocated meaningful functions.*

Waterfront Development Agency

- 6.7. Part 1 of the Bill would amend the Local Government (Tamaki Makaurau Reorganisation) Act 2009 to require the Auckland Transition Agency to establish a Waterfront Development Agency (WDA) as a CCO of the Auckland Council. The WDA would be responsible for the development of the Auckland waterfront (clause 11(3), and clause 18 and new section 19B refer).
- 6.8. The Royal Commission recommended the establishment of a WDA that would exercise regulatory powers and engage in urban development (pages 389-390). The Commission observed (at page 389) that many harbour cities have “recognised that their city centre and waterfront areas are strategic assets which are at the core of shaping and demonstrating quality urban design.” According to the Commission, some cities have formed dedicated organisations to provide urban design and development leadership for waterfront revitalisation. Melbourne’s regional urban development authority, VicUrban, was cited as an example. Its functions included the purchase of land for urban purposes, development of land alone or in partnership, the provision of “a competitive market in land” and the promotion of best practice in urban and community design and development. The functions which the Commission envisaged for a WDA extend well beyond the core role of councils.
- 6.9. Disputes over the development of the Auckland waterfront and delays centre on disagreements among the array of government agencies involved. The Auckland Council will be responsible for all of the local government agencies. The Forum is sceptical that a valid case for the establishment of the WDA can be made. *The Forum submits that the clauses relating to the establishment of WDA be deleted from the Bill.*

Development Contributions

- 6.10. The Bill would empower the Auckland Council to impose development contributions in respect of expenditure undertaken by Auckland Transport (clause 45 and new Part 8 refer). A development contribution may only be levied in respect of certain expenditure that is provided for in a council’s long-term council community plan (LTCCP). As LTCCPs reflect expenditure by the parent council and exclude that of its separate legal entities, such as CCOs and CCTOs, expenditure by Auckland Transport would not be able to be funded by development contributions under existing legislation. The formation of CCOs (by Auckland Council or any other

council) may therefore reduce the level of spending that can potentially be funded by development contributions.

- 6.11. The Forum will shortly release a study on development and financial contributions. It highlights serious problems with such contributions. They are an inappropriate method of funding certain classes of expenditure, for example where efficient prices are feasible and appropriate. They may be applied to impose excessive costs on a minority of ratepayers as demonstrated by *Neil Construction Limited and others v North Shore City Council* and they unduly inflate the cost of new homes and commercial developments. Although appeal rights apply to financial contributions levied under the RMA, no such rights apply to development contributions which are levied under the LGA. Councils generally favour development contributions relative to financial contributions for this and other reasons. Similar incentives would lead councils to address environmental issues in their spatial plans rather than the RMA if a spatial plan is required under the Local Government (Auckland Council) Act 2009.
- 6.12. The Forum believes that the government's policy on development contributions should be reviewed on a first principles basis. In the meantime, it is opposed to any extension of the classes of entities that would be able to fund their expenditure through development contributions.
- 6.13. The *Neil* case established that councils are required to apply the financial management provisions of the LGA, for instance in relation to funding options, in deciding whether to fund spending through development contributions. Those provisions could not be readily applied by Auckland Transport and thus there would seem to be no effective criteria for deciding whether spending should be funded by development contributions or in some other way. Nor would there be adequate identification of the level and timing of the spending to be funded.
- 6.14. *The Forum recommends that the provision empowering Auckland Transport to impose development contributions be deleted from the Bill.*
- 6.15. Arrangements relating to development contributions held by, or owing to, terminating councils and unspent on 1 November 2010 do not appear to be adequately specified (clause 24 and new section 35K refer). *The Forum recommends that such contributions be accounted for separately from any development contributions collected subsequently and only be spent on the projects for which they were raised and in the former district where they were levied.*

Rating

- 6.16. A single integrated rating system is to be implemented from 1 July 2012. Clause 15 of the Bill would amend the Local Government (Tamaki Makaurau Reorganisation) Act 2009 to require the interim chief executive of the Auckland Council to ensure that a single rating information database is established, with rates to be levied on the capital value of land.
- 6.17. There are separate provisions in Part 2 of the Bill which would amend the Local Government (Auckland Council) Act 2009 so that any rates on land owned by an Auckland water business could not exceed the level that would be payable on a land value basis (new section 61 refers). All other landowners would be rated on a capital value basis.
- 6.18. Part 3, clauses 76-80 of the Bill provide a transitional mechanism to limit the percentage change in the level of rates during the three years to 2014/15 arising from the Auckland Council's move to a single rating system. The Auckland Council may set the maximum percentage change in the level of rates. The extent to which the measure protects ratepayers from an excessive change in the level of rates is unknown.
- 6.19. The Forum has reservations about the proposed rating arrangements for the following reasons:
- There is no economic merit in adopting a uniform rating system for its own sake. The proposed rating base may be more efficient or less efficient depending on the existing rating base in each district and on the change in the overall level of rates.
 - The transition to a single rating system over three years could require significant adjustment. The two largest existing councils (Auckland and Manukau cities) rate on an annual value basis. Some councils rate on a land value basis. Most councils have an array of general rates that apply to specific classes of activity (for example, commercial) or locations (CBD, rural island). A significant redistribution of the aggregate rating burden among ratepayers is certain if a single rating system were adopted as proposed. This would be accentuated if steps were also taken to even up the level of rates charged in different districts. In addition to general rates, the levels of uniform annual

general charges and targeted rates may be changed. It is impossible to predict how large these adjustments would be. There is little indication so far that a lower total rate burden is envisaged, which would help the adjustment. A similar problem will arise if the Auckland Council moves to a more uniform system of fees and charges. The implication is that very significant changes in council rates and charges could arise over the transitional period and in the immediately following years. This would impact on households and firms that have endured a recession.

- The change in rating system will impose wealth adjustments in addition to changes in the annual level of rates charged. Property prices reflect expected future rating imposts. Changes in all future rates will therefore affect property prices imposing windfall gains and losses on households and firms. We doubt if there is any information about the likely levels and distributions of such windfalls.
- The cap on the change in the level of rates is likely to have implications for the Auckland Council's borrowing programme.

6.20. *The Forum thinks that the adjustment period proposed in the Bill is relatively short and notes that the Auckland Council may need to seek an extension once detailed work on rating options for the new Council are examined.*

6.21. The Forum also considers that the establishment of the Auckland Council presents an opportunity to review the differential rating of businesses. The Forum's position, set out in a 2009 report, is that:

Differential rates should be abolished, but councils should be permitted to apply a different level of rates to particular taxpayers in certain circumstances, such as where a subset of ratepayers agree in advance to fund a particular project or where specific services are not available to certain ratepayers.¹

We believe that businesses should face user charges that reflect the costs of services provided, and that under the capital value rating system proposed for the Auckland Council they will pay their full share of general rates. In this situation the case for a general business differential disappears. The Shand report (*Rating Local Government*) recommended that the power to set a business rate differential be

¹

Income and Wealth Redistribution: Should it be a Role of Local Government, Local Government Forum, p 25.

removed. In our view this recommendation should be adopted in general local government legislation but in the interests of earlier removal of this anti-business provision and contributing to the government's growth agenda we submit that it be adopted for the Auckland Council forthwith.

Appendix One: The Functions of Local Boards

Local Policy-making Functions	Local Service Delivery Functions	Local Engagement Functions
<ul style="list-style-type: none"> • Input into regional policy making • Dog control policy • Gambling policy • Liquor licensing • Brothels – control of location and signage • District promotion 	<ul style="list-style-type: none"> • Planning applications • Graffiti removal • Resource consents • Building consents • Environmental health control (food premises licensing) • Animal control • Local parks • Recreation centres • Community centres • Cultural venues • Litter control • Public toilets • Camping grounds • Crime prevention • Artworks • Citizens Advice Bureaux • Local art galleries and museums 	<ul style="list-style-type: none"> • Identifying the needs of the community • Supporting local groups through grants • Considering what form of service delivery is appropriate (e.g., complete contracting out to private sector, or direct employment to fulfil responsibilities).

Appendix Two: The Functions of the Auckland Council

Auckland-Wide Policy-Making Functions	Auckland-Wide Service Delivery Functions	Auckland-Wide Administrative Services
<ul style="list-style-type: none"> • Transport planning • Economic Development • Environmental Planning <ul style="list-style-type: none"> ○ Policy Statement ○ Coastal, air, water controls ○ Hazard management • Recreational planning • Regional parks • Other regulatory matters 	<ul style="list-style-type: none"> • Civil defence • Promoting sport and recreation • Biosecurity • Harbourmaster • Transport services • Water, wastewater, stormwater drainage • Solid waste management • Zoo • Regional parks • Regional facilities for sports and culture • City centre and waterfront • Regional library • Cemeteries and crematoria 	<ul style="list-style-type: none"> • Prepare annual financial plans • Make and administer rates for Auckland Council • Provide shared services as agreed between Auckland Council and Local Boards • Asset and liability management • Public information services • Inform Local Boards on matters affecting Auckland Council functions