Local Government (Auckland Law Reform) Bill

Report of the Department of Internal Affairs to the Auckland Governance Legislation Committee

Department of Internal Affairs
16 April 2010
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INTRODUCTION

Department of Internal Affairs report (the report)

This report is based on consideration of the submissions on the Local Government (Auckland Law Reform) Bill (the Bill) received by the Auckland Governance Legislation Committee (the Committee). The report presents a clause by clause summary of submitters’ comments, and the recommendations of the Department of Internal Affairs (and other advisors where appropriate) on amendments to the Bill.

The recommendations on amendments to the Bill are subject to Parliamentary Counsel discretion concerning how best to give effect to the policy in each recommendation. In addition, Parliamentary Counsel may recommend additional amendments to the Bill that are a consequence of:

- implementing a recommendation of the Department; or
- the restructuring of the Bill.

Parliamentary Counsel has also identified a number of editorial changes (for example punctuation, spelling, and typographical changes) required to clauses in the Bill as introduced.
**Summary of Recommended Changes**

The Department recommends the following changes to the Bill: (subject to Parliamentary Counsel refinement)

<table>
<thead>
<tr>
<th>Clause 2 – Commencement</th>
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<tr>
<td>AGREE that clause 2 be amended consequentially if required.</td>
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<tr>
<th>Clause 3 – Purpose</th>
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<tr>
<td>AGREE that clause 3 be amended consequentially if required.</td>
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<table>
<thead>
<tr>
<th>Clause 5 – Commencement</th>
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<td>AGREE that clause 5 be amended consequentially if required.</td>
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<table>
<thead>
<tr>
<th>Clause 6 – Background and purpose of Act</th>
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<tbody>
<tr>
<td>AGREE to amend clause 6:</td>
</tr>
<tr>
<td>(a) by adding “at the close of” to the words omitted from section 3(7)(b) of the principal Act by subclause (2);</td>
</tr>
<tr>
<td>(b) by adding “on” to the words inserted by that subclause; and</td>
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<tr>
<td>(c) to reflect other changes to the Act as required.</td>
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<tr>
<th>Clause 7 – Outline of Act</th>
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<tr>
<td>AGREE that clause 7 be amended consequentially if required.</td>
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<tr>
<th>Clause 8 – Interpretation</th>
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<tr>
<td>AGREE to amend clause 8 by omitting the proposed definition of “selection body”.</td>
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<table>
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<tr>
<th>Clause 11 – Functions and Duties of Auckland Transition Agency</th>
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<tbody>
<tr>
<td>AGREE to amend clause 11(2) to clarify, in new paragraph (cb), the respective roles of the existing local authorities and the Auckland Transition Agency under the Waste Management Act 2008 in contributing towards the Auckland Council’s ability to meet its obligations under that Act.</td>
</tr>
</tbody>
</table>
Clause 15 – New section 18A inserted

**AGREE** to amend clause 15:
(a) to correct the heading so that it refers to arrangements for valuation services for Auckland Council; and
(b) to omit reference to the capital value rating system.

Clause 17 – Preparation of planning document

**AGREE** to amend clause 17 to:
(a) correct a reference to the wrong year in section 19A(1) of the principal Act;
(b) correct the omission of a reference to an investment policy in new subsection (1A); and
(c) move provisions that have effect after 1 November 2010 into Part 3 of the Bill.

Clause 18 – New Section 19B inserted

**AGREE** to amend clause 18 new section 19B to clarify the process for establishing the Waterfront Development Agency.

Clause 20 – New section 26A inserted

**AGREE** to amend clause 20 new section 26A(2) to clarify that the financial statements referred to must be audited.

Proposed New Clause – Dissolution of Auckland Transition Agency

**AGREE** to the insertion of new provisions in Part 1 of the Bill 3 to amend section 27 of the Local Government (Tamaki Makaurau Reorganisation) Act 2009, to reflect the intent that any commitments, obligations, contracts and engagements of the Auckland Transition Agency are also transferred.

Clause 21 – Obligations of existing local authorities in relation to 2010/2011 annual report

**AGREE** to amend clause 21 to clarify the respective roles of the existing local authorities and Auckland Council in the preparation and adoption of the final reports.

Clause 22 – New sections 29D to 29F inserted

**AGREE** to amend clause 22 new section 29D to refer to the October 2010 triennial general elections in Auckland (rather than “for the Auckland Council”).
Proposed New Clause – Members of existing local authorities

AGREE to amend the Bill by adding a new provision to amend section 32 of the Local Government (Tamaki Makaurau Reorganisation) Act 2009 to provide that members of existing local authorities and community boards within Auckland remain in office until 31 October 2010.

Clause 23 – Dissolution of existing local authorities

AGREE to amend clause 23 to clarify that the provisions for vesting of specified assets in substantive council-controlled organisations through an Order in Council overrides the general provisions in the clause as currently drafted.

New Section 35B Dissolution of certain council-controlled organisations

AGREE to amend the Bill to provide sufficient flexibility to accommodate any decisions of Ministers regarding the initial council-controlled organisation structure of the Auckland Council.

Recommendation

AGREE that, subject to advice from Parliamentary Counsel, the employment provisions in the Bill be redrafted and restructured to consolidate the employment related clauses (including those relating to Auckland Regional Transport Authority and Auckland Regional Transport Network Limited) and clarify the policy intent. This will include that the intent of these provisions is that:

(a) the chief executive will review the positions of staff and identify an option for each staff member;
(b) there are three options:
   (i) the same or a substantially similar position with the same terms and conditions of employment; or
   (ii) a position which is not the same or substantially similar which may have different terms and conditions of employment; or
   (iii) termination;
(c) location will be set aside and not taken into account as part of an assessment of whether a position is the same or substantially similar;
(d) location will be addressed independently and either the relocation provisions in an employee’s employment agreement or the minimum relocation compensation provisions will apply to all employees who accept a new position at a different location; and
(e) staff offered a position with a new employer have the right to accept or decline that offer.
New Section 35D Whether employees entitled to redundancy or other compensation

AGREE that, subject to advice from Parliamentary Counsel, the employment provisions in the Bill be redrafted and restructured to consolidate the employment related clauses (including those relating to Auckland Regional Transport Authority and Auckland Regional Transport Network Limited and clarify the policy intent, including clarifying the circumstances in which employees are entitled to redundancy or other compensation.


AGREE to amend the Bill to:
(a) recognise that assets, liabilities, obligations etc of a terminating organisation may be transferred to more than one entity;
(b) clarify in these circumstances which entity is responsible for adopting the final report of the terminating organisation; and
(c) establish a way of providing certainty concerning which entity is responsible for the final report (and other residual matters).

New Section 35G Order in Council authorising Transition Agency to constitute council-controlled organisation

AGREE to amend clause 24 new section 35G to clarify that the Auckland Transition Agency will be directed to establish one or more council-controlled organisations by any Order in Council.

New Section 35H Minister may appoint initial directors of certain council-controlled organisations

AGREE to amend clause 24 new section 35H to:
(a) clarify that the Minister may appoint initial directors to council-controlled organisations that are “required to be established” either:
    (i) by Order in Council under new section 35G; or
    (ii) under section 19B with respect to the Waterfront Development Agency; and;
(b) make it explicit that the Auckland Council can remove members of initial boards of council-controlled organisations should it choose to do so.

We recommend that the Select Committee:

AGREE to an explicit transitional provision in Part 3 of the Bill making it clear that the Council can remove members of the initial boards of its council-controlled organisations should it resolve to do so.
New Section 35J Vesting of Assets, etc in Watercare Services Limited

AGREE to amend clause 24 new section 35J by inserting protections for breach of contract/tort similar to that provided for other receiving entities as contained in clause 24, proposed subsection 35B(3) of the Bill.

New Section 35K Development contributions already made or owed

AGREE to omit clause 24 new section 35K.

Clause 25– Schedule

AGREE to omit clause 25.

Clause 26 – New Schedules 2 to 6 added

AGREE to PCO making drafting changes to clause 26.

Proposed new provision in Part 1

AGREE to amend the Bill to extend the expiration date of the Local Government (Watercare Services Limited) Order 2007 from 30 June 2010 to 31 October 2010.

Proposed New Clause –Interim Remuneration Authority Determination

AGREE to amend the Bill:
(a) to insert a new provision in Part 1 requiring the Remuneration Authority to issue an interim determination for the remuneration of Auckland Council and local board positions by 15 July 2010; and
(b) to insert a new provision in Part 3 providing that the interim determination remains in force until a fresh determination of the remuneration of Auckland Council and local board positions under the Local Government Act 2002.

Clause 29 – New section 3 substituted

AGREE that clause 29 be amended consequently if required.

Clause 30 – Interpretation

AGREE that the definition of ‘water supply and wastewater services’ in clause 30 of the Bill be amended to specifically exclude privately owned assets and stormwater.
Clause 35 – Membership of local boards

AGREE that the Bill be amended to set five as the ongoing minimum number of members of a local board and 12 as the statutory maximum.

Clause 38 – Decision-making responsibilities of governing body

AGREE to amend clause 38 to clarify that transport funding decisions will be made by the governing body informed by the views of local boards.

Clause 40 – Local board plans

AGREE to amend:
(a) clause 40 to require local boards to develop their draft local plan by August following an election, with final plans completed no later than 31 October; and
(b) the Bill to make it clear that local board agreements:
   (i) are limited in scope to:
      - local activities as defined in the Local Government (Auckland Council) Act 2009;
      - matters delegated by the governing body under section 31 of that Act;
      - matters related to local bylaws; and
   (ii) must not be inconsistent with strategies, plans, policies and objectives of the governing body.

Clause 45 New Parts 4 to 8 substituted

New section 37 – Interpretation

AGREE to amend clause 45 new section 37 along the following lines:
“37 Interpretation
“(1) In this Part and Schedule 2, unless the context requires another meaning,
“Auckland transport system
“(a) means—
““(i) the roads (as defined in section 315 of the Local Government Act 1974) within Auckland; and
““(ii) the public transport services (as defined in section 4 of the Public Transport Management Act 2008) within Auckland; and
““(iii) the public transport infrastructure owned by and under the control of Auckland Transport or the Auckland Council; but
““(b) does not include
““(i) State highways:
““(ii) railways under the control of the New Zealand Railways Corporation:
““(iii) off-street parking facilities under the control of the Council:
““(iv) airfields
“board of directors or board means the board of directors of Auckland Transport
“director includes the chairperson and the deputy chairperson of the board of directors
“interested or interest has the meaning in clause 14 of Schedule 2.

“(2) In this Part and Schedule 2, unless the context requires another meaning, land transport, regional land transport programme, and State highway have the same meanings as in section 5(1) of the Land Transport Management Act 2003.”

New section 38 – Establishment of Auckland Transport

AGREE to amend clause 45 new section 38 by omitting subsection (3).

New section 39 – Objective of Auckland Transport

AGREE to amend clause 45 by omitting the current new section 39 and replace with a new section entitled “Purpose of Auckland Transport”, to provide that the purpose of Auckland Transport is to "contribute to an efficient and effective land transport system to support Auckland’s economic, social, cultural and environmental wellbeing”.

New section 41 – Functions of Auckland Transport

AGREE to amend clause 45 new section 41 by:
(a) expressing paragraph (c) as being “for the purpose of 41(b)” or similar;
(b) adding a new paragraph to enable Auckland Transport to:
"undertake any functions or powers in relation to the management of the State highway system that the New Zealand Transport Authority may lawfully delegate to it".

AGREE to amend the Bill by adding a savings provisions, under Part 3 of the Bill for existing New Zealand Transport Authority delegations along the following lines:
“Delegations by the New Zealand Transport Authority to an existing local government organisation, which are in relation to the Auckland transport system and in effect immediately before 1 November 2010, continue to have effect and are deemed to be delegations to Auckland Transport.”

New section 42 – Functions and powers of Auckland Transport acting as local authority or other statutory body

AGREE to amend clause 45 new section 42 by:
(a) adding a sub clause along the following lines:
“for the avoidance of doubt, despite sub section 42(1)(c), all roads and the soil thereof, and all materials of which they are composed,
vest in fee simple in the Auckland Council in the Auckland region, with the exception of State highways; 

(b) amend new section 42(1)(a) to provide that Auckland Transport may exercise the specified functions and powers in relation to a road, as defined in the Transport Act, but only to the extent that the road is part of the Auckland transport system (i.e. that it falls within the definition in the Local Government Act 1974);

(c) amending subsection (1)(d) to apply sections 591 and 591A of the Local Government Act 1974 as well as section 684;

(d) replacing subsection (1)(f) with a provision to the effect that the Auckland Council can exercise its functions and powers as a local authority under the Public Works Act 1981 in relation to Auckland transport system related public works, with the agreement of Auckland Transport;

(e) clarifying in paragraph (1)(g) that the designation power can be exercised by Auckland Transport in respect of any transport-related activity within Auckland for which it is, or will be, responsible (whether or not the land subject to the designation currently forms part of the Auckland transport system);

(f) Amend new section 42(1)(h) to include the functions and powers of a road controlling authority and a territorial authority under the Land Transport Act 1998 (and any regulations and rules made under that Act), in relation to a road as defined in that Act but only to the extent that the road is part of the Auckland transport system (i.e. that it falls within the definition in the Local Government Act 1974);

(g) making the technical changes to subsection (1) along the following lines:
   - in the chapeau: insert “in relation to the Auckland transport system” after “powers”;
   - in paragraph (b): omit “in relation to the Auckland transport system”;
   - in paragraph (d): omit “in relation to the Auckland transport system”;
   - in paragraph (e): omit “within Auckland”.
   - in paragraph (g): omit “in relation to transport activities within Auckland”;
   - in paragraph (i): omit “in relation to the Auckland transport system”;
   - in paragraph (j): omit “relation to” and substitute “respect of”.
   - in paragraph (k): omit “relation to” and substitute “respect of”; and omit “within Auckland”.

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14:01:55 21/04/2010
New section 43 – Council prohibited from exercising powers and functions conferred on Auckland Transport under section 42

AGREE to amend clause 45 new section 43 by adding words to the effect that section 43(1) does not prevent the Auckland Council from exercising the functions and powers referred to in section 42(1)(g) and (h) in relation to an area that forms part of the Auckland Transport system, for purposes that are not transport-related, but only with the agreement of Auckland Transport.

New section 44 – Operating principles

AGREE to amend clause 45 new section 44 by:
(a) replacing the chapeau with words to the effect of “In exercising its powers and functions and meeting its principal objective under s59 of the Local Government Act 2002, Auckland Transport must - ”; and
(b) omitting paragraphs (a) and (b).

New section 45 – Governing body of Auckland Transport

AGREE to amend clause 45 new section 45 by:
(a) omitting subsections (3) and (4); and
(b) replacing subsection (5) with a subsection providing that the Council may appoint the Chair and deputy, provided that the appointees are not elected members of the Council.

New section 47 – Applications of certain Acts to Auckland Transport

AGREE to amend clause 45 new section 47 by:
(a) omitting subsections (1) & (3); and
(b) amending subsection (2) to complement the effect of section 74 of the Local Government Act 2002.
New section 48 – Schedule 2 applies to Auckland Transport

<table>
<thead>
<tr>
<th><strong>AGREE</strong> to amend clause 45 new section 48 by inserting a new subsection requiring the Auckland Council to determine rules governing the activities of Auckland Transport which will form part of its constitution for the purpose of section 6(3)(d) and 60 of the Local Government Act 2002. Those rules should, without limitation, address the following matters:</th>
</tr>
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<tbody>
<tr>
<td>(a) rules relating to the qualifications of directors, and the procedures for their appointment in accordance with section 45(2);</td>
</tr>
<tr>
<td>(b) rules relating to the cessation, removal, and remuneration of directors;</td>
</tr>
<tr>
<td>(c) the duties of directors and the powers of the board (although see below in relation to whether the existing provisions need to be retained in the Bill);</td>
</tr>
<tr>
<td>(d) procedures for the calling, holding, and conduct of meetings of the board;</td>
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<tr>
<td>(e) processes for the disclosure of conflicts of interest by directors;</td>
</tr>
<tr>
<td>(f) requirements in relation to the employment of staff, including a chief executive; and</td>
</tr>
<tr>
<td>(g) rules concerning the acquisition and disposal of significant assets.</td>
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</table>

New section 51 – Auckland water organisation must consult on proposed bylaw

| **AGREE** that clause 45 new section 51 be retained without amendment, subject to confirmation by Parliamentary Counsel. |

New section 53 – Construction of works on private land and roads by Auckland water organisation

<table>
<thead>
<tr>
<th><strong>AGREE</strong> to amend clause 45 new section 53 by:</th>
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<tbody>
<tr>
<td>(a) clarifying that the water organisation will have the right to undertake works on public lands (other than roads);</td>
</tr>
<tr>
<td>(b) clarifying that the water organisation will be the organisation permitted to break open a road and move, alter, repair or move, only water and wastewater pipes (and not gas pipes as currently drafted); and</td>
</tr>
<tr>
<td>(c) including the word ‘supply’ in paragraph 53(2)(a) after the word ‘water’.</td>
</tr>
</tbody>
</table>

New section 61 – Rating of certain land owned by Auckland water organisation

| **AGREE** that clause 45 new section 61 be amended, subject to consideration by Parliamentary Counsel Office, to ensure that the provision ensures that any water supply or wastewater services assets on land owned by the Auckland water organisation, or anyone else, should be exempt from being rated on the improved value of the land. |
New section 62 – Powers of Auckland water organisation under Local Government Act 1974

AGREE that clause 45 new section 62 be amended to provide that section 468 of the Local Government Act 1974 (relating to tree roots) also applies to the water organisation.

New section 63 – Power of Auckland water organisation under Local Government Act 2002

AGREE to amend clause 45 new section 63 to include reference to sections 175, 186, 187 and 232 of the Local Government Act 2002.

New section 64 – Offences relation to waterworks and network assets of Auckland water organisations

AGREE to amend clause 45 new section 64 so that:
(a) the heading better reflects the content of the provision; and
(b) the new section 64 be linked to an equivalent provision as contained in section 226 of the Local Government Act 2002, with the necessary modifications.

Proposed New Clause(s)

AGREE to amend the Bill to specify that:
(a) the Auckland water organisation will have the functions, duties and powers of a local authority under the Public Works Act 1981 as if it were a local authority; and
(b) the governing body of the Auckland Council be required, after receiving advice from the Auckland water organisation, to appoint sufficient enforcement officers to enable the water organisation to perform its functions.

New Section 66 – Spatial plan for Auckland

AGREE to amend clause 45 new section 66 to:
(a) add to the functions in subsection (3), the identification, for information purposes, of regionally significant natural environmental constraints, and regionally and nationally significant landscapes, areas of historic heritage value, and natural features;
(b) reword subsection (3)(g) to make it clear that critical infrastructure services include social infrastructure, network utilities and stormwater;
(c) include in subsection (3)(h), references to “rural production” and “regionally significant recreational and open space areas”;
(d) include in subsection (4) reference to central government and infrastructure providers (including network utility providers) as key parties for the Auckland Council to engage with in the development and implementation of the spatial plan; and
(e) reword clause 66(5) to provide simply “the Auckland Council may amend the spatial plan at any time”.

New Part 7 – Board promoting issues of significance for mana whenua and Māori of Tamaki Makaurau

AGREE to insert an explanatory section at the beginning of Part 7, to clarify that:
(a) the board is independent, of both the Auckland Council and of any mana whenua or taura here groups, and cannot be directed;
(b) the board is a statutory entity, whose role is to help ensure that the Auckland Council acts in accordance with the Treaty of Waitangi provisions in existing legislation;
(c) although the Auckland Council will have duties to the board, but these duties do not relieve the Auckland Council from existing legislative obligations to consult with Māori, whether under the Local Government Act 2002, the Resource Management Act 1991, or any other legislation; and
(d) board members must act in the interests of achieving the board’s purpose, and may not act in the interests of any other group, to which they may belong.

New section 67 – Establishment and purpose of board

AGREE to amend clause 45 new section 67(3) to remove the requirement for decisions to be reached via consensus.

New section 70 – Board’s specific functions

AGREE to amend clause 45 new section 70(1) to clarify that the board can appoint members to the Auckland Council committees that deal with the management and stewardship of natural and physical resources.

New section 72 – Auckland Council information provided to board

AGREE to amend clause 45 to clarify that the board may not disclose information that falls within section 72(1)(a) to (c); and to clarify that this section relates to decisions by the board on whether or not section 72(1)(b) and (c) apply.

New section 73 – Auckland Council’s duties to board

AGREE to amend clause 45 new sections 73 and 69 respectively to require the Auckland Council and the board to meet not less than four times a year to progress the work required to carry out the Auckland Council’s and the board’s respective duties and functions.
New section 75 – Council may impose additional accountability requirements on substantive council-controlled organisations

AGREE to amend the Bill:
(a) to require Auckland Council to have a policy on the accountability of its substantive council-controlled organisations;
(b) to require substantive council-controlled organisations of Auckland Council to give effect to the relevant aspects of the long-term council community plan and act consistently with relevant aspects of other strategies and plans of the Auckland Council, including its local boards as specified by the governing body; and
(c) to allow the Auckland Council to appoint the Chair and deputy Chair of the board of each of its substantive council-controlled organisations.

New section 76 – Councillors prohibited from appointment as directors of substantive council-controlled organisations

AGREE to amend clause 45 new section 76 to:
(a) clarify that Auckland Transport is the exception to the provision that councillors cannot be appointed as directors of substantive CCOs; and
(b) prohibit local board members from being appointed as directors of substantive council-controlled organisations.

AGREE that provision be made in relevant legislation stating that directors of substantive council-controlled organisations who are elected to either the governing body or a local board must resign from the board of the council-controlled organisation.

New section 77 – Disputes about allocation of decision-making responsibilities, proposed bylaws, or local board agreements

AGREE to amend clause 45 new section 77 by omitting paragraph (1)(c).

New section 78 – Local Government Commission to determine disputes

AGREE to amend clause 45 new section 78 to:
(a) require information requested of the mayor and chief executive under (1) to be provided within 7 days;
(b) require the LGC to determine disputes with urgency; and
(c) provide that, if the matter relates to the content of an long-term council community plan that has been adopted, that plan is modified to the extent necessary to give effect to the determination.
New section 80 – Development contributions for transport infrastructure

AGREE to amend clause 45 new section 80 to:
(a) replace “undertaken” with “incurred” in subsection (2); and
(b) broaden the scope of the exemption in subsection (5) to include the whole of the Local Government Act 2002.

New section 81 – Development contributions for assets managed by other parties

AGREE to amend clause 45 new section 81 to:
(a) express the provision as being “for the avoidance of doubt”; and
(b) omit “council-owned” in subsection (1).

New section 83 – Review of representation arrangements under Local Electoral Act 2001

AGREE to amend clause 45 new section 83 to clarify that local board names can be reviewed and changed through the representation review process.

Clause 49 – Repeal of Local Government (Auckland) Amendment Act 2004

AGREE that:
(a) provision should be made in the Bill to allow Auckland Regional Holdings to be disestablished by Order in Council or retained as a non-statutory council-controlled organisation;
(b) the Bill be amended to retain the intent of Clause 6 of Schedule 1 of the Local Government (Auckland Amendment) Act 2004 with respect to representation on the board of a port company; and
(c) that the Bill be amended so that the repeal of the Local Government (Auckland Amendment) Act 2004 is dealt with in Schedule 3 of the Bill, and the disestablishment of the Auckland Regional Transport Authority and Auckland Regional Transport Network Limited, and the transfer of their assets to Auckland Transport via the generic provisions in the Local Government (Tamaki Makaurau) Act 2009.

Clause 50 – Disestablishment of Auckland Regional Transport Authority

AGREE to omit clause 50 and re-enact any specific provisions still required.
Clause 51 – Existing regional land transport programme and regional land transport strategy for Auckland continues in effect until 30 June 2012

AGREE to amend clause 51 by:
(a) adding a new subclause (1A) providing that, despite subclause (1), the whole or relevant part of any activities or combinations of activities included in the Auckland regional land transport programme to be constructed in the Franklin district (as defined) must be treated as part of the regional land transport programme approved by the Waikato Regional Council for the 3 financial years commencing 1 July 2009.
(b) omit subclause (3)(b) and insert additional provisions to the effect that, if there is no strategy to which subclause (2) applies:

"(a) the Auckland Council must, by 31 October 2011 or such later date as the Minister of Transport allows, complete the strategy that was under preparation before 31 October 2010, under Part 3 of the Land Transport Management Act 2003; provided that the Auckland Council is not required to carry out any consultation under section 78 of that Act if:

"i the Auckland regional transport committee had carried out consultation in respect of a draft of the strategy in accordance with clause 6 of Schedule 7 of the Land Transport Management Act 2003 (then in force); and

"ii the Auckland Council decides to approve the strategy without any substantial change to the draft strategy that was the subject of that consultation; and

"(b) the existing strategy prepared under the Land Transport Act 1998 must be treated as having effect until the new strategy is prepared and approved."

Clause 52 – Disestablishment of Auckland Regional Transport Network Limited

AGREE to omit clause 52 and re-enact any specific provisions still required.
Clause 53 – Review of employment provisions

AGREE that, subject to advice from Parliamentary Counsel, the employment provisions in the Bill be redrafted and restructured to consolidate the employment related clauses (including those relating to Auckland Regional Transport Authority and Auckland Regional Transport Network Limited) and clarify the policy intent.

AGREE that this clause commence from the day after the Royal Assent.

Clause 54 - Whether employees entitled to redundancy or other compensation

AGREE that, subject to advice from Parliamentary Counsel, the employment provisions in the Bill be redrafted and restructured to consolidate the employment related clauses (including those relating to Auckland Regional Transport Authority and Auckland Regional Transport Network Limited) and clarify the policy intent.

AGREE that these provisions commence from the day after the Royal Assent.

Clause 55 – Obligations in relation to 2010/2011 annual report

AGREE to amend the heading to clause 55 to refer to the 2009/10 annual report.

Clause 56 – Collective bargaining before 1 November 2010 for variation or new collective agreement to come into force on that date

AGREE that the employment provisions in the Bill should be redrafted and restructured to consolidate the employment related clauses (including those relating to Auckland Regional Transport Authority and Auckland Regional Transport Network Limited) and clarify the policy intent, including clarifying that the relevant unions may initiate bargaining at any time before 1 November 2010 for a new collective agreement, notwithstanding section 41 of the Employment Relations Act 2000 which provides that bargaining may not be initiated earlier than 60 days before the expiry of an existing collective agreement.

AGREE that these provisions commence from the day after the Royal Assent.

Clause 57 – Application of existing collective agreements on and from 1 November 2010

AGREE that, subject to advice from Parliamentary Counsel, the employment provisions in the Bill should be redrafted and restructured to consolidate the employment related clauses (including those relating to ARTA and ARTNL) and clarify the policy intent.
Clause 58 – Interpretation

We recommend that the Select Committee:

AGREE to amend clause 58, as required, to support other amendments to subpart 3 of Part 3 of the Bill.

Clause 61 – First steps for board established by Part 7 of Local Government (Auckland Council) Act 2009

We recommend that the Select Committee:

AGREE to:

1) omit subclauses (2) and (3) from clause 61 (which will continue to come into force on 1 November 2010);
2) amend Part 1 of the Bill to insert a provision along the following lines in the Local Government (Tamaki Makaurau) Act 2009 (which will come into force immediately but be repealed on 1 November 2010);

“(1) The Minister of Māori Affairs and the mana whenua groups described in clause 4(2) of Schedule 3 of the Local Government (Tamaki Makaurau) Act 2009 must commence the selection process for members of the board promoting issues of significance for mana whenua and Māori of Tamaki Makaurau to be established under section 67 of that Act by—

“(a) the Minister giving notice to the mana whenua groups in accordance with clause 4 of Schedule 3 of the Local Government (Auckland Council) Act 2009; and

“(b) the mana whenua groups establishing a selection body in accordance with clauses (2) and 4(4) of that Schedule.

“(2) For the purposes of this section, the Minister and the mana whenua groups must carry out the functions described in this section as if Part 7 and Schedule 3 of the Local Government (Tamaki Makaurau) Act 2009 were in force and the Auckland Council established;

“(3) The Auckland Transition Agency is responsible for any costs the Minister may incur acting under this section”;

3) the addition of a new requirement for all members of the first board to be appointed by no later than 1 November 2010; and

4) amend the Bill to require that:

a. the board must hold its first meeting within two weeks of appointments to the board being made; and
b. the board must appoint a member to act as Chairperson and a member to act as deputy Chairperson at the first meeting.

Clause 62 – Moratorium on sale of certain Council property

**AGREE** to amend clause 62 to clarify:
(a) that the exemption from the moratorium applies to situations where disposal of the asset is a consequence of a public work; and
(b) that the moratorium does not prevent the transfer of assets between the Auckland Council and its council-controlled organisations.

Clause 71 – How Watercare Services Limited to set prices

**AGREE** to omit clause 71 and insert a new provision in Part 5 under clause 45 of the Bill that reflects the existing provision subject to the following changes:
(a) remove reference to 30 June 2015;
(b) replace the reference to Watercare Services Limited with a reference to an Auckland water organisation; and
(c) clarify that taking account of an Auckland Council policy or complying with an Auckland Council direction, does not mean that the water organisation is breaching the proposed new section 49 of the Local Government (Auckland Council) Act 2009.

Clause 72 – Employees and members of Auckland Council must not be directors of Watercare Services Limited

**AGREE** to amend the provision to reflect a generic approach to the appointment of directors to substantive council-controlled organisations of the Auckland Council and taking into account that Watercare will not be a council-controlled organisations until July 2012.

Clause 74 – Watercare Services Limited to administer and enforce Auckland Regional Council Trades Waste Bylaw 1991

**AGREE** to amend clause 74 to ensure that:
(a) Watercare has the mandate to administer and enforce the trades waste bylaw in the Franklin and Rodney districts, and in North Shore city until 1 July 2015 or earlier if the Council makes a new trades waste bylaw; and
(b) a breach of the Auckland Regional Council trades wastes bylaw is treated as an offence against the Local Government Act 2002 and any such breach will attract a penalty under section 242 of that Act.
Proposed New Clause– Interim Requiring Authority Status for Watercare

AGREE to the insertion of a new provision in Part 3 of the Bill to deem that the general approvals of requiring authority status that Watercare has under 1992 and 1994 Gazette notices, cover the operation, maintenance, and improvement of all the infrastructure Watercare will own and operate from 1 November 2010.

Clause 75 – Exemption from Takeovers Code in relation to Auckland International Airport Limited shares

AGREE to amend clause 75 to:
(a) recognise that the Auckland Council may acquire up to a 22.8 percent shareholding in Auckland International Airport Ltd;
(b) provide for a Takeovers Code exemption for the Auckland Council’s acquisition of up to 21.2 percent shareholding in the New Zealand Local Government Insurance Corporation; and
(c) clarify that the Takeovers Code exemptions applies to the acquisition of shareholdings by Auckland Council or any of its council-controlled organisations or their subsidiaries.

Clause 77 – Interpretation

AGREE to retain clause 77 with only technical drafting and consequential amendments.

Clause 78 – Council may have rates transition management policy for 3-year period commencing 1 July 2012

AGREE to amend clause 78 (and clauses 77 and 79 if required):
(a) to allow the change limit to be expressed as a dollar amount instead, or as well as a percentage of the previous year's rates; and
(b) to allow different limits on increases and decreases but only to achieve a neutral outcome in overall rates revenue.

Clause 80 – Local Government (Rating) Act 2002 otherwise applies

AGREE to amend clause 80 to provide that the Auckland Council’s general rate in 2012/13 must be assessed using capital value, so that the normal discretion under the Local Government (Rating) Act 2002 will not apply for that year.
Clause 83 – Rates for 2011/2012 financial year

**AGREE** to amend clause 83, and/or add a new clause:
(a) to provide for Auckland Council to assess and collect a separate wastewater transitional rate in 2011/12 that is proportional to 2010/11 wastewater rates and at a level to meet the wastewater revenue requirements of Watercare; and
(b) to provide for the revenue from wastewater rates in 2011/12 to be paid to Watercare.

Clause 84 – Targeted rates proposals in 2011/2012 financial year

**AGREE** to amend clause 84 to provide that local boards may not propose targeted rates in the 2011/12 year.

Proposed New Clause – rates remission and postponement policies

**AGREE** to amend the Bill to insert new provisions requiring the Auckland Council to adopt new rates remission and postponement policies with effect from 1 July 2011, including clarification that these policies can contain different provisions in respect of the areas of the former local authorities.

Clause 85 – Charges on rates

**AGREE** to amend clause 85(3) by omitting the expression “For the purposes of subsection (2)”.

Clause 87 – Certain matters in planning document prepared by Transition Agency must be replaced by 30 June 2012

**AGREE** to amend clause 87 to clarify that while the policies of existing councils continue they apply only in the former districts of the councils that adopted them.

Proposed New Clause(s) – status and effect of planning document prepared by Transition Agency

**AGREE** to the insertion of new provisions in subpart 3 of Part 3 in order to provide:
(a) that the planning document serves in place of an LTCCP until 30 June 2012;
(b) that the new policies prepared by the ATA as required, and the aggregated policies of the existing councils in other cases, are the policies of the Auckland Council;
(c) that the allocation of local board responsibilities and funding in the planning document applies as if allocated in an LTCCP;
(d) that the planning document serves as an annual plan until 30 June 2011;
(e) that the planning document can be amended by the Auckland Council, using the LTCCP amendment process during this period; and
(f) to preclude the Auckland Council reducing the allocated local board responsibilities during this period.

Proposed New Clause(s) – completion of final reports of existing councils

AGREE to amend the Bill to:
(a) insert new provisions in subpart 3 of Part 3 to require the Auckland Council to complete and adopt the final reports of the existing local authorities, covering the period from 1 July 2009 to 31 October 2010, by 31 March 2011; and
(b) to provide that the audited financial statements included in the reports satisfy the requirement under section 53E of the Securities Act 1978 for existing local authorities to have audited financial statements for the 2009/2010 financial year.

Clause 88 – Development contributions already made or owed

AGREE to amend clause 88 to deal with the obligations of Auckland Council in respect of development contributions policies, assets and obligations transferred from existing local authorities.

Clause 90 – Development contributions for water infrastructure

AGREE to amend clause 90 to:
(a) refer to section 209(1)(a)(b) or (c) in subclause (3);
(b) require Auckland Council to transfer relevant development contributions to the water organisation immediately on receipt of them;
(c) clarify that the Auckland Council remains responsible for refunds of development contributions under section 209 of the Local Government Act 2002, but that the water organisation must reimburse the Council for such refunds; and
(d) make changes consequent to other changes to development contributions provisions.

Clause 91 – Development contributions for transport infrastructure

AGREE to amend clause 91 to make changes consequent to other changes to development contributions provisions.

Clause 92 – Bylaws about Auckland transport system

AGREE to amend clause 92 by:
(a) omitting subclause (3); and
(b) inserting paragraphs after subclause (4)(b) to save any provision within an individual bylaw and resolution made under a bylaw.
Clause 93 – Bylaws about waste

AGREE to amend clause 93(1)(a)(ii) to replace “predominantly about waste” with wording to clarify the provision’s application to solid waste bylaws and solid waste sections of consolidated bylaws.

Clause 94 – Bylaws about matters other than Auckland transport system and waste

AGREE to amend clause 94 to clarify the use of the public consultative process to review bylaws.

Clause 95 – Policies

AGREE to amend clause 95 to provide that it does not apply to transport-related policies.

AGREE to insert new provisions in the Bill to provide for the transfer of policies relating to the Auckland transport system to Auckland Transport.

Clause 96 – Statutory warrants relating to transport law

AGREE to amend section 96 to
(a) provide that warrants issued by the Commissioner of Police are not treated as if they were issued by Auckland Transport;
(b) omit reference to section 68BA of the Transport Act 1962 (section 68BA merely contains the powers of a parking warden, whereas section 7 of that Act contains the power to appoint a parking warden); and
(c) include warrants issued to an employee of or contractor to Auckland Regional Transport Authority (subclause (1)(c)).

Clause 98 – Fees and charges: regulatory services

AGREE to amend the Bill by moving current clause 98 to Part 1 and clarifying the scope of the fees and charges to which this clause applies.

Clause 100 – Standing orders

AGREE to amend the Bill by moving current clause 100 to Part 1.
Clause 101 – Delegations

AGREE to amend clause 101 to:
(a) fix the drafting error in clause 101(4)(b);
(b) allow the chief executive to delegate Resource Management Act 1991 functions;
(c) to provide that the chief executive continues to hold functions, duties and powers conferred by this provision, and any sub-delegations remain in place, until the Auckland Council resolves otherwise or 30 June 2011, whichever is earlier; and
(d) enable delegations by the New Zealand Transport Authority to an existing local authority, which are in relation to the Auckland transport system and in effect immediately before 1 November 2010, continue to have effect and are deemed to be delegations to Auckland Transport.

Clause 102 – Building

AGREE to amend clause 102 by moving subclauses (1) to (3) into Part 1 as an amendment to the Local Government (Tamaki Makaurau) Act 2009.

Clause 104 – Fire authority appointments

AGREE to amend clause 104 to provide that if there is no person performing the function of a Principal Rural Fire Officer for the area of an existing local authority (because of resignation etc), the existing Principal Rural Fire Officer of another area within Auckland can be directed to undertake that role, pending the appointment of a Principal Rural Fire Officer for Auckland.

Clause 105 – Resource management

AGREE to amend the Bill:
(a) so that clause 105 applies only to Resource Management Act 1991 matters within Auckland, and a separate provision applies to those parts of Franklin transferred into Waikato Region and Waikato or Hauraki District;
(b) by clarifying that section 81 of the Resource Management Act 1991 applies to the regional and district plans of the Waikato Regional Council and the Waikato and Hauraki District Council in respect of those parts of Franklin transferred into their region or district;
(c) by clarifying that the Auckland Regional Policy Statement will apply to those areas, formerly in the Waikato Region, that transfer to the Auckland Council;
(d) by clarifying that the provisions currently in clause 105(10) apply to both regional councils and local authorities, and include both notification and commencement under the Resource Management Act 1991;
(e) by clarifying the intent of the provisions currently in clause 105(11);
(f) by clarifying that the parts of existing district and regional councils plans and policy statements continued after 1 November 2010 (currently by clause 105(3)) can be changed via processes under the Resource Management Act 1991;
(g) by clarifying that that existing designations that specify a timeframe longer than 1 November 2015 continue for the term for which they were granted and are not affected by the deadlines currently in clause 105(7); 

(g) by clarifying that any designation included in existing district plans that would otherwise lapse under sections 184 or 184A of the Resource Management Act 1991 before 1 November 2015 will not lapse prior to 1 November 2015, unless: 

(i) the existing designation in the proposed plan already specifies a longer lapse period; or 

(ii) the designation is given effect to in accordance with sections 184 or 184A of the RMA; or 

(iii) the Auckland Council resolves to fix a longer lapse period under sections 184 or 184A; 

(h) by amending clause 101 to enable the chief executive officer of Auckland Council to delegate, from 1 November 2010, the responsibilities, duties and powers under the RMA held as a result of that provision, despite the restrictions in section 34A of the Resource Management Act 1991 until the Auckland Council itself delegates those matters or on 1 July 2011, whichever is later.

Clause 106 – Auckland regional growth strategy

**AGREE** to amend clause 106 to preserve the current effect of section 18 of the Waitakere Ranges Heritage Area Act 2008 while the Regional Growth Strategy remains in force.

Clause 108 – Tax

**AGREE** to amend clause 108:

(a) transitional tax relief covers all possible transfers from the existing councils and their CCOs and to the Auckland Council and its council-controlled organisations; 

(b) where assets and liabilities are transferred from a tax exempt entity to a taxable entity, or vice versa, income and expenditure attributable to the transferor does not become income or expenditure of the transferee; 

(c) depreciable assets transferred from a tax-exempt entity to a taxable entity are valued at accounting carrying value as at the date of transfer; 

(d) financial arrangements, trading stock and revenue account property transferred from a tax-exempt entity to a taxable entity (and vice versa) are transferred at market value; 

(e) depreciable assets transferred from a taxable entity to a tax-exempt entity are valued at tax book value so that there are no tax consequences on transfer; 

(f) existing tax losses (including the losses of non-corporate entities) are able to be transferred and utilised by the new combined Auckland Council structure in all circumstances; 

(g) it does not apply for determining association under section YB of the Income Tax Act 2007 for the purposes of the land tax provisions in subpart CB of that Act but only in relation to land where there is no association before the land was transferred;
(h) when assets (other than shares) are transferred from an entity to a council-controlled organisation, the difference between the market value of the assets and any attributed liability is available subscribed capital in the council-controlled organisation; and

(i) when shares are transferred from a local authority to a council-controlled organisation and either:
   (i) the shares are subsequently sold by the council-controlled organisation generating a tax-free capital gain; or
   (ii) the shares are transferred to the Auckland Council or a council-controlled intermediary; and
   a distribution of the shares or sale proceeds directly or indirectly to the Council or intermediary is not taxable.

Clause 109 – Waste

**AGREE** to amend clause 109 to:
(a) clarify that: the Council, in determining how it will comply with the requirements of the Waste Minimisation Act 2008 in relation to adopting a Waste Minimisation Plan, may take into account any consultation work carried out by or under the oversight of the Auckland Transition Agency in preparing options for waste management;
(b) clarify that any work carried out by Auckland Transition Agency and councils in preparation of a draft waste assessment can be regarded as contributing towards the obligations of the Auckland Council under sections 50(2) and 51 of the Waste Management Act 2008; and
(c) change the heading of clause 109 from “Waste” to “Solid Waste”.

Clause 111 – Establishment of Pacific and Ethnic Advisory Panels for Auckland

**AGREE** to amend clause 111 (4) to make it clear that, from 1 November 2013, the continuation of the Ethnic and Pacific Peoples Advisory Panels become discretionary.

Proposed New Clause – Long-term council community plans of Waikato District and Hauraki District

**AGREE** to amend the Bill to insert a new provision to clarify that:
(a) until 30 June 2012, the long-term council community plans of Waikato and Hauraki Councils consist of the long-term council community plans adopted by those councils in 2009 plus the Franklin District long-term council community plans as it applies to the part of Franklin included in their District;
(b) the councils will not be required to amend their long-term council community plans simply by virtue of the reorganisation; and
(c) the councils will be required to produce an integrated annual plan for 2011/12 under the umbrella of the combined long-term council community plans.
Proposed New Clauses – Financial Contributions

AGREE to the insertion of new provisions in subpart 3 of Part 3 in order to provide for:
(a) the general obligations of the Auckland Council after 1 November 2010 in respect of financial contributions made to, owed to or required by existing local authorities;
(b) to preclude the Auckland Council from imposing financial contribution requirements for water and wastewater infrastructure after 1 July 2011;
(c) requirements in respect of financial contributions received for for water supply and wastewater infrastructure; and
(d) requirements in respect of financial contributions for transport infrastructure.

Schedule 1 – New Schedules 2 to 6 added to Local Government (Tamaki Makaurau Reorganisation) Act 2009

AGREE to amend clause 4 of new Schedule 2 in Schedule 1:
(a) to make provision for a revenue and financing policy that represents a compilation of the policies of the 8 councils with amendments; and
(b) to include a requirement to develop an integrated investment policy for inclusion in the planning document.

New Schedule 3 – Matters in relation to election signs that must be included in bylaw to be made for the purposes of section 29D(1)(a)(i)

AGREE to amend clause 7 of new Schedule 3 in Schedule 1:
(a) to limit the situations in which the local authority officers can remove signs to unauthorised or unsafe; and
(b) subject to Parliamentary Counsel Office advice, to limit the recovery of costs of sign removal to removals authorised as described above.

New Schedule 4 – Dissolution of council-controlled organisations

AGREE to amend new schedule 4 in schedule 1 to identify the Auckland Regional Transport Authority and Auckland Regional Transport Network Limited as terminating organisations, with Auckland Transport as the receiving entity in each case.

New Schedule 5 – Provisions that apply to certain employees of existing local authorities and terminating organisations

AGREE that subject to advice from Parliamentary Counsel, the employment provisions in the Bill:
(a) be redrafted and restructured to consolidate the employment related clause (including those relating to Auckland Regional Transport Authority and Auckland Regional Transport Network Limited and clarify the policy intent, including that no redundancy compensation is available if an employee accepts a new position in the Auckland governance arrangements, whether or not the position is lower paid; and
(b) relating to an exemption to part 6A of the Employment Relations Act 2000, be
redrafted to provide Part 6A protections for the defined groups of workers if their
work is to be contracted out or sold to a third party which is not the Auckland
Council or any of its council-controlled organisations or their subsidiaries.

New Schedule 6 – Redundancy and compensation provisions that apply to
certain employees of existing local authorities and terminating organisations

AGREE that, subject to advice from Parliamentary Counsel, the employment
provisions in the Bill be redrafted and restructured to consolidate the employment
related clauses (including those relating to Auckland Regional Transport Authority and
Auckland Regional Transport Network Limited), and clarify the policy intent including
that:
(a) where there is an entitlement to salary protection that it is available for 6 months
   from 1 November 2010 or the date of commencement in the substantive new
   position in the new structure;
(b) either the relocation provisions of an employee’s employment agreement or the
   minimum relocation compensation provisions will apply to all employees who
   accept a new position at a different location; and
(c) a permanent employee who is offered a fixed term agreement with a new
   employer, is not disadvantaged in terms of redundancy if they decide not to
   accept that position.

AGREE that a formula for determining the minimum compensation provisions to apply
if there are no relocation compensation provisions in an employee’s terms and
conditions of employment be included in the Bill rather than being later specified in an
Order in Council.

Schedule 2 – New Schedules 2 and 3 added to Local Government
(Auckland Council) Act 2009

AGREE to omit all provisions in new Schedule 2 in Schedule 2 except clause 33.
AGREE to amend new Schedule 3 in Schedule 2 to:

**Definitions**

1) provide for the definition of the terms: “mana whenua” (effectively, those groups that fall within the meaning of clause 4(2) of Schedule 3); and “taura here” (Māori residing within the Auckland Council boundaries who do not fall within the meaning of clause 4(2) of Schedule 3); and

2) replace the word “Māori” with words “taura here” where the context requires it in Part 7 and Schedule 3;

3) insert a requirement to make the board subject to the Local Government Official Information and Meetings Act 1987;

**Identifying mana whenua**

4) amend clause 4(2) to clarify that recognised mana whenua groups should “have historic and continuing mana whenua in an area wholly or partly located within the Auckland Council boundaries”;

5) for the purposes clause 4(2), “mana whenua” should be defined as being the customary authority exercised by an iwi or hapū in an identified area;

6) include a requirement for all persons prior to their appointment to the board to:
   a) consent in writing to being a board member;
   b) certify that they are not disqualified from being a board member;

**Qualifications and disqualification of members**

7) amend clause 5 (g) to clarify that only current Members of Parliament are disqualified;

8) amend clause 5 (h) to clarify that only current Auckland Councillors or current local board members are disqualified;

9) amend clause 9(2) to clarify that any member of the board who at any time becomes disqualified from membership of the board under clause 5, will immediately cease to be a member of the board;

**Appointment process**

10) amend clause 8(3) to require the selection body to complete the process in this section at least 2 months before the ending of the terms of office of the members of the board;

11) make provision in relevant clauses for the Minister of Māori Affairs to have last resort power to step in and take any necessary steps, if the selection body is unable to complete the appointment process;

12) clarify that upon completion of the selection process, the selection body disbands. The selection body will be re-formed as required for subsequent appointments to the board;

13) include a provision in clause 8 for prospective appointees to:
   a) consent in writing to being a board member, and;
   b) to certify that they are not disqualified from being a board member;

**Removal of members**

14) amend clause 10(1) to allow a majority of the board, at any time for just cause, to also remove any person appointed by the board to Auckland Council Committee(s) under section 70;

**Consensus decision making**
15) amend clause 14(2) to remove the requirement for decisions to be valid only if reached by consensus;
16) amend clause 14(9) to provide that the board may, at its discretion, implement rules and procedures to ensure that decisions of the board are reached following the highest levels of good faith engagement and the principles of consensus decision-making;

**Remuneration**
17) amend clause 17(3)(d) to:
   a) specify that recommendations on remuneration levels should be made for board members, the Chairperson, and Deputy Chairperson;
   b) require recommendations on remuneration levels to be made to both the board, and the Auckland Council;
18) amend clause 17(4) to require the Auckland Council to give effect to the recommendation of the independent expert in setting the fee to pay to the members of the board;
19) amend clause 20(4) to clarify that the funding agreement must include the remuneration payable, along with reasonable provision for expenses, to the board’s members in accordance with clauses 17 and 18;

**Delegations**
20) amend clause 28(1)(d) to remove the requirement for delegations to be approved by the Auckland Council;

**Annual reporting**
21) Include provision in clause 47 of Part 3 for the board to be listed on Schedule 2 of the Public Audit Act 2001;

**Secretariat to the board**
22) amend clause 33(4) to specify that the executive officer and the staff of the secretariat will be instructed by, and carry out their roles under the direction of the board;

**Disputes**
23) amend clause 34(1) to clarify that this section applies to disputes within either the board, or the selection body, and also applies to disputes between the board and the selection body; and
24) amend clause 34(3) to clarify that the board and the selection body may consider, but are not limited to the listed remedies.
Schedule 3 – Enactments amended

Part 1 Amendments to Public Acts

Government Roading Powers Act 1989

**AGREE** to amend section 62 of the Government Roading Powers Act 1989 to provide that, for the purposes of that section, “territorial authority” includes Auckland Transport to allow the (NZTA) to delegate State highway matters to Auckland Transport.

Land Transport Act 1998

**AGREE** to omit the amendment to the Land Transport Act 1998.

Land Transport Management Act 2003

**AGREE** to amend proposed section 17 of the Land Transport Management Act by adding a sub section providing that any decision by the Council to propose an activity or combination of activities for inclusion in an Regional Land Transport Programme must be made by the governing body.

**AGREE** to amend proposed section 18(2) of the Land Transport Management Act by providing that only affected local boards must be consulted.

**AGREE** to amendments to make Auckland Transport an “approved public organisation”, not an “approved organisation”.

Litter Act 1979

**AGREE** to amend section 2(1) of the Litter Act 1979 to remove the reference to the Auckland Harbour Bridge Authority.

Local Government Act 1974

**AGREE** to amend the proposed amendments to the Local Government Act 1974 by omitting the item relating to section 313.
Schedule 3 – Enactments amended

Part 2 Amendments to Local, Private and Provincial Acts

Auckland Aotea Centre Empowering Act 1985

**AGREE** the proposed new section 8 of the Auckland Aotea Centre Empowering Act 1985 to require the Auckland Council to bear the operating costs of the Centre net of receipts.

Auckland Regional Amenities Funding Act 2008

**AGREE** that officials work with Parliamentary Counsel, and liaise with the Office of the Clerk, in order to identify amendments that are both acceptable and will best preserve the intent of the Act in the changed local government context in Auckland.

Auckland War Memorial Museum Act 1996

**AGREE** that officials work with Parliamentary Counsel, and liaise with the Office of the Clerk, in order to identify amendments that are both acceptable and will best preserve the intent of the Act in the changed local government context in Auckland.

Museum of Transport and Technology Act 2000

**Agree** that officials work with Parliamentary Counsel, and liaise with the Office of the Clerk, in order to identify amendments that are both acceptable and will best preserve the intent of the Act in the changed local government context in Auckland.

Waitakere Ranges Heritage Area Act 2008

**AGREE** to amend Schedule 3:
(a) to omit the repeal of section 18 of the Waitakere Ranges Heritage Area Act 2008; and
(b) amend section 18 of the Waitakere Ranges Heritage Area Act to refer to the spatial plan instead of the Auckland Regional Growth Strategy.

Additional local and private Acts

**AGREE** to officials working with Parliamentary Counsel to identify additional spent and redundant local and private Acts, relating to Auckland, for repeal in Schedule 3, and any additional consequential amendments required.
Part 3 Amendments to Regulations

AGREE to officials working with Parliamentary Counsel to identify additional consequential amendments to regulations required by this legislation.

Schedule 4 – Provisions that apply to certain employees of Auckland Regional Transport Authority and Auckland Regional Transport Network Limited

AGREE that subject to advice from Parliamentary Counsel, the employment provisions in the Bill be redrafted and restructured to consolidate the employment related clauses (including those relating to Auckland Regional Transport Authority and Auckland Regional Transport Network Limited) and clarify the policy intent.

Schedule 5 – Redundancy and compensation provisions that apply to certain employees of Auckland Regional Transport Authority and Auckland Regional Transport Network Limited

AGREE that, subject to advice from Parliamentary Counsel, the employment provisions in the Bill be redrafted and restructured to consolidate the employment related clauses (including those relating to Auckland Regional Transport Authority and Auckland Regional Transport Network Limited) and clarify the policy intent.
Submissions on Bill as a whole

Six hundred and eighty two submissions were received by the Select Committee on the Bill, including primary and supplementary submissions from affected councils and community boards.

Major Issues/Themes

Submissions canvassed a number of major issues and themes. In order to provide an overview of those issues, they are discussed briefly in the narratives below, which provide a background and context to the discussion in relation to individual clauses.

COUNCIL-CONTROLLED ORGANISATIONS

Part 1 of the Bill includes provisions that set out processes for the dissolution and establishment of council-controlled organisations (CCOs) and the allocation of their respective assets. It provides specific direction to the Auckland Transition Agency (ATA) to establish a Waterfront Development Agency (WDA) so provides for Ministers to appoint initial directors of certain council - controlled organisations (CCOs).

Part 2 of the Bill creates additional accountability requirements for a new class of “substantive CCOs” of the Auckland Council. It also prohibits members of both the governing body and local boards from being appointed as directors of substantive CCOs.

Submissions

Clause 24, new sections 35G and 35H - 279 submitters opposed the ATA establishing further CCOs, primarily on the grounds that decisions on the Council’s council – controlled organisation (CCO) structure should be made by the elected council. The same submitters opposed any board appointments being made by Ministers, on the grounds that appointments should be made by the elected Council. Many submitters argued that elected councillors should fill board positions.

The submissions made in relation to new sections 35G and 35H apply also to new section 35I as most submitters on these matters considered decisions on the creation of a new CCO for Transport, and the appointment of directors, should be the responsibility of elected representatives of the Council.

Other recommendations were that the Auckland Council should have the power to appoint and remove all directors of all CCOs at any time and the power to require all of its CCOs to implement the strategies and policies of the Council, including the spatial plan.
Approach in Departmental Report

Amendments are required for the legislation to provide sufficient flexibility to accommodate any decisions of Ministers regarding the eventual CCO structure of the Auckland Council, which will be implemented through Orders in Council under the provisions of this Bill, once enacted.

All CCOs are accountable to their parent councils, which are effectively shareholders in the business run by the CCO. The standard CCO framework, which applies throughout the local government sector, imposes a duty on directors to achieve the objectives of the shareholder.

However, a number of issues have been raised in submissions which relate to the accountability of CCOs, particularly substantive CCOs. These issues include the degree of direction that the governing body can give to CCOs, the ability to limit CCO decisions relating to strategic assets and further liabilities, and whether CCO meetings should be open to the public.

Officials have considered how best the Auckland Council can clearly articulate its day-to-day accountability expectations of its substantive CCOs. While each substantive CCO will have a constitution and Statement of Intent (SoI) setting out its objectives and performance expectations, it is proposed that the Auckland Council be required to have a policy on the accountability of its substantive CCOs setting out its accountability requirements in respect of issues such as:

- substantive CCOs’ contribution to, and alignment with, Council and Government objectives and priorities;
- frequency and nature of reporting;
- planning requirements (type, frequency and content);
- requirements for specific CCOs to operate as if they were subject to Part 7 of the Local Government Official Information and Meetings Act;
- the definition of a strategic asset and processes for approval of major transactions relating to these; and
- management of strategic assets.

The policy would inform the development of the annual SoI between the CCOs and the Auckland Council and would be included in the Auckland Council’s long term council community plan (LTCCP). CCOs would be required to give effect to the policy through the course of their day-to-day activities.

Other additional accountability requirements proposed for substantive CCOs include:

- a requirement for substantive CCOs of Auckland Council to give effect to the relevant aspects of the LTCCP and act consistently with relevant aspects of other strategies and plans as specified by the governing body; and
- allowing the Auckland Council to appoint the Chair and Deputy Chair of the board of each of its substantive CCOs.
In view of the high level of public interest in this matter, officials recommend that an explicit transitional provision is incorporated in the Bill to make it clear that the Council can remove members of the initial boards of its CCOs, should it resolve to do so.

LOCAL BOARDS

The substantive provisions relating to local boards are included in the LGACA09 (LGACA09). This Bill includes significant amendments to refine and clarify those provisions in Part 2 of the Bill (clauses 35-40 and clause 45, new s77-79).

The Bill also clarifies, in clause 17, the role of the ATA in making the initial allocation of non-regulatory responsibilities to local boards prior to their establishment on 1 November 2010. This will occur in the preparation of the planning document that will serve as the Auckland Council’s LTCCP until July 2012.

Further provisions concerning the content of that plan are included in new Schedule 2 in Schedule 1 of the Bill.

Submissions

Clause 17 of the Bill requires that the initial planning document prepared by the ATA for the new Council must include an initial allocation of decision-making responsibility for the non-regulatory activities of the Council between the Council’s governing body and its local boards.

Two hundred and fifty one submitters opposed this clause on the grounds that the powers and responsibilities of local boards should be set out in the Bill. The same submissions apply to Schedule 1, new Schedule 2 clause 1 General requirements of planning document.

Similarly, there were 114 submissions on clause 39 Decision-making responsibilities of local boards. The predominant theme from the submissions was that the Bill does not give sufficient detail about the powers, roles and responsibilities of local boards, their relationship with the governing body of the Auckland Council and CCOs, the allocations and delegations they will hold from the Council, and whether they will be required to operate within the parameters of a regional strategy and policy framework.
It was submitted that local boards must be given clear powers to control local issues. It was consistently submitted that all of these matters should be contained in the Bill.

There were several submissions from existing Auckland Councils expressing concern about the timing of local board plans. These submissions proposed extending the time available for local boards to complete their triennial plan.

Approach in Departmental Report

When considering the legislative provisions for local board functions previously, the Select Committee agreed that a principles-based approach to the allocation of non-regulatory functions between the governing body and local boards, rather than listing
the functions in legislation, was both desirable and appropriate. This approach was based, in part, on the understanding that the range of activities that are to be undertaken by individual local boards could vary, depending on the circumstances of each board, and be likely to change over time.

Officials consider that this principles-based approach is the only practicable way for the Auckland Council to be able to manage the allocation of functions to its local boards. A more prescriptive approach would limit the council’s ability to respond to changing local preferences and the differing nature of Auckland’s diverse communities. The existing provisions in the LGACA09 set out a clear requirement for the governing body to allocate decision-making to the local boards unless specific conditions apply.

However, this issue has generated considerable public interest and it is acknowledged that some amendments to the Bill may be desirable if local board members, and the communities they are to represent, are to have certainty about the role and functions of local boards. This is particularly important in the immediate post-election period. Providing additional certainty would also have the effect of affirming the application of the principle of subsidiarity when functions are allocated to local boards in future. It is therefore proposed to amend the Bill to provide that the initial allocation of local board functions by the ATA can be augmented but not eroded until the Auckland Council adopts its first LTCCP in 2012.

Officials also propose extending the deadline for the adoption of local board plans after each triennial election. This is currently set at 30 April to allow input into the next annual plan, but there is a wide consensus that this is unworkable and will detract from both the quality of the plan and the extent to which new councillors can participate in the process. It is proposed to allow public consultation on the local board plan to occur after that on the annual plan, with a deadline for adoption in November. This will then inform the development of the draft LTCCP by the Council.

In addition it is proposed that:

- the scope of local board agreements be clarified and that agreements must be consistent with the strategies, plans, policies and objectives of the governing body;
- future reviews of the membership of local boards can result in a broader membership base of between 5 and 12 members; and
- in line with provisions for members of the governing body, members of local boards cannot be appointed to the boards of substantive CCOs.
TRANSPORT

The Bill establishes Auckland Transport and sets out its status, powers, functions and responsibilities.

Submissions

Two hundred and forty three submitters were opposed to the establishment of a CCO for transport and that Auckland Transport should be managed as an in-house business unit of Auckland Council, fully accountable to the Council. Submissions from individuals typically wanted local boards to have greater influence over local transport activities and opposed board appointments by Ministers. A small number of organisational submitters supported the creation of Auckland Transport, but suggested refinements to the Bill, particularly on links to the Auckland Council’s strategic planning. Most organisational submitters, including existing councils opposed Auckland Transport but suggested a range of improvements to governance mechanisms and strategic planning linkages between the Auckland Council and Auckland Transport.

Approach in Departmental Report

Fragmentation of transport responsibilities between eight councils and the Auckland Regional Transport Authority was one of the drivers behind the change to Auckland’s governance. The Bill integrates the regional transport network and provides for a single focus on transport through Auckland Transport.

There has been concern about transport being managed through a CCO, particularly over the extent influence elected representatives will have over transport decision making. The governing body of the Auckland Council will have three key areas of responsibility and influence over transport, these are:

- governance of Auckland Transport;
- funding of transport activities through the LTCCP; and
- preparation of the Regional Land Transport Strategy.

We are proposing a number of changes to the Bill to simplify the governance model for Auckland Transport; make it more consistent with the provisions applying to other substantive CCOs; and provide greater opportunity for the Council’s governing body to set Auckland Transport’s objectives.

The main changes are:

- Auckland Transport will be required to give effect to the relevant aspects of Auckland Council’s LTCCP and act consistently with relevant aspects of other strategies and plans, including local board plans, specified by the governing body;
- Auckland Transport’s objective should be more broadly framed as a “purpose” statement, “contributing to an efficient and effective land transport system to support Auckland’s economic, social, cultural and environmental wellbeing”;

- The standard CCO provisions in the LGA02 should apply to Auckland Transport, instead of the customised provisions currently included in the Bill. This includes the ability to set operating objectives for Auckland Transport through the Statement of Intent process; and
- Auckland Council should be able to set Auckland Transport’s “constitution” and select the Chair and deputy Chair of the board; however, the Councillors on the board will not be able to hold these roles.

Other accountability mechanisms that will be retained are:
- Auckland Transport will remain accountable to the governing body through the appointment and dismissal of directors and the processes surrounding the Statement of Intent. Consequentially schedule 2, with the exception of delegation powers, will be omitted;
- Auckland Transport will have six to eight directors, two of whom may be Councillors, plus one non-voting director from the New Zealand Transport Agency (NZTA); and
- to ensure a smooth transition, Ministers may appoint initial directors of terms up to 3 years before the establishment of Auckland Transport. However, from 1 November 2010 the governing body will have full powers to dismiss existing directors and appoint new directors as it sees fit.

In addition, Auckland Council will be the major funder of Auckland Transport through the LTCCP process, Auckland Transport will be required to give effect to the LTCCP. Auckland Council will be the sole funder for some activities and will provide local share funding for other activities receiving subsidy from the New Zealand Transport Agency. This funding role gives the governing body and local boards of the Auckland Council a high degree of control over Auckland Transport’s funding and the ability to influence its implementation of the Regional Land Transport Programme.

The Auckland Council will also be responsible for setting the strategic direction for transport through the preparation of the regional land transport strategy. This strategy sets the high level direction for Auckland’s transport system, including the State highway and railway system for a period up to 30 years.

It is also recommended that there be amendments to section 15 of the (LGACA09) to ensure that the governing body of the Council is responsible and democratically accountable for the Council’s decision-making in respect of transport objectives and transport funding. This includes the duty to consider the views and preferences of local boards.

Auckland Transport will be required to consult with local boards on the draft programme under the Land Transport Management Act 2003. Auckland Transport will work closely at an operational level with local boards on local issues.

Local boards will be able to propose local transport activities in their local board plans. Inclusion of proposed activities in local board agreements will give the boards a strong influence over the local projects selected by Auckland Transport and the way these projects are carried out in local areas. Nevertheless, it will be up to the governing body of the Auckland Council to propose the activities for inclusion in the Regional
Land Transport Programme, and for Auckland Transport to decide how those activities will be reflected in the programme.

Bylaw making powers are necessary to ensure that Auckland Transport has sufficient regulatory powers to fulfil its statutory duty as a road controlling authority. The Bill provides for Auckland Transport to exercise bylaw powers that are similar to those of the NZTA - the NZTA model. One amendment is proposed to confer additional powers under Part 34 of the Local Government Act 1974 (LGA74) in relation to parking places and transport stations that was overlooked in the initial framing of the Bill.

In terms of bylaws, transport bylaw making powers are an essential part of managing the transport system and, to ensure focus, need to be exercised by a single body in conjunction with other transport powers. Many transport bylaws relate to purely operational matters like placement of stop signs, or no stopping zones. For example, the design of a new intersection presupposes a particular form of regulatory controls. Alignment between design and regulation is essential to effective and efficient management of traffic flows.

The operational efficiency of the Auckland Transport System is critical to Auckland’s performance as a whole. Auckland Transport’s ability to make integrated capital project and regulatory decisions is a key component in the proposed framework. Any structural misalignment between development and regulatory decision making risks significant systemic loss of efficiency and effectiveness associated with over $1 billion in public expenditure each year. There should also be administrative efficiencies in Auckland Transport having transport bylaw powers alone.

The NZTA has local authority bylaw making powers in relation to the State highway network under the Government Roading Powers Act 1989. The NZTA exercises these powers in urban environments, such as the main streets of small towns, as well as on the motorway network. Auckland Transport’s bylaw powers will be very similar to those of NZTA. Auckland Transport will need to consult on bylaws and, unlike the NZTA, will be required to exercise its bylaw making powers in a public meeting of its board.

Submitters expressed concern over the ownership of transport assets. Auckland Council rather than Auckland Transport will own the roads. Auckland Transport will, however, have effective control over the roads and be able to buy new road land, but any land it chooses to dispose of will revert to the Council. This is based on the model for State highways which are owned by the Crown, but managed and controlled by the NZTA.
SPATIAL PLAN

The requirement for a spatial plan in the Bill replaces the current requirement for Auckland to have a Regional Growth Strategy in the LGA74. The spatial plan’s purpose is to provide an effective and broad long-term strategy for growth and development in Auckland.

Submissions

The Select Committee received numerous submissions on the spatial plan, attributed to a range of clauses throughout the Bill. The section provides a summary of the key issues raised by submitters on the spatial plan. The discussion of the spatial plan in clause 66 deals with specific, technical issues raised by submitters.

Overall, there was general support for the provisions in the Bill for a spatial plan in achieving the core aims of the legislation.

A number of submitters highlighted the importance of getting the governance or basic relationships between the parts that make up the Auckland Council (i.e. the governing body, CCOs and local boards) and their plans right. In particular, there was concern that the implementation of the spatial plan could be undermined by a lack of clarity regarding the relationship and integration between the spatial plan and other Auckland Council plans and strategies; the inability of the Auckland Council to influence its CCOs (especially Auckland Transport); and the role of local boards in relation to the development of the spatial plan.

There were also a number of submissions on the relationship between the spatial plan and local boards and local board plans. Submitters recommended that the principles of place shaping be a key component in the development of the spatial plan and that local boards should, therefore, play a strong role.

The relationship between the spatial plan and other plans and existing frameworks such as the Resource Management Act, Local Government Act and Land Transport Management Act was raised by a number of submitters. A desire for more alignment and integration was a common theme.

A range of other matters relating to the functions of the spatial plan were also raised by individual submitters. These are addressed under clause 66 of this report.

Approach in Departmental Report

In practice, the Auckland Council will have two main levers, which will determine how effectively it can implement its policy.

The first is through the governance and accountability relationships between the governing body and its CCOs and local boards.
The second is through the overall planning framework and the legal relationships between different plans.

The spatial plan is central to both as it sets out the overarching strategic direction for the growth and development of Auckland and its communities, which needs to be implemented through governance decisions and plans. Ideally, the planning and governance relationships will work to complement and reinforce each other.

(a) The spatial plan’s place in the overall governance framework

The change to one council will of itself remove much of the current fragmented governance so that a single Auckland Council will be able to have its decisions implemented through all its subsidiaries.

Amendments are proposed to clarify and strengthen the accountability provisions for substantive CCOs and provide stronger links between the plans and strategies of the Auckland Council and the local boards. This should ensure CCOs act consistently with relevant aspects of the Auckland Council’s plans and strategies, including the spatial plan.

Officials also consider that the Bill provides for local boards to have a significant role in developing as well as implementing the spatial plan. No substantive amendments are proposed in this area.

(b) Legal linkages between plans

Officials acknowledge that further policy work is needed to consider the relationships between the spatial plan and other plans, particularly RMA plans. Cabinet has agreed that this work will be progressed as part of the urban planning reform work, which is one of 10 work streams in phase two of the resource management reforms (RMII-U). Cabinet decisions for RMII-U are expected in August 2010, with any necessary legislative amendment following subsequently. RMII-U will also consider the applicability of spatial planning for other regions in New Zealand and how central government can give more national direction to regions via a spatial plan.
BOARD PROMOTING ISSUES OF SIGNIFICANCE FOR MANA WHENUA AND MĀORI OF TAMAKI MAKAURAU

In making the decision not to provide for dedicated Māori representation on the new Auckland Council, the Government opted instead to establish an independent statutory board, which would play a key role in ensuring that the Auckland Council fulfils its existing legislative Treaty of Waitangi obligations.

To ensure that the board was able to achieve these objectives, the Government decided to place a number of obligations on both the Auckland Council, and on the board itself. These requirements are intended to ensure that both parties deal with each other reasonably, and in good faith to fulfil statutory obligations to the people of Auckland.

The decision to establish a board that is independent of the Auckland Council means that the board cannot be dissolved if any future Council objects to its existence. By also making the board independent of the interests of any particular mana whenua or taura here grouping, it is better able to avoid inter and intra group politics and can focus entirely on achieving its statutory objectives.

Submissions

Out of the more than 600 submissions on the Bill, 236 made submissions on the provisions in Part 7. Of these, some 176 submitters sought Māori representation via seats on the Auckland Council, and 117 opposed Part 7 which would establish the board. A number of those who sought seats on the Council indicated that in the absence of seats, the board should have greater powers than were present in the Bill.

Of the mana whenua groups who made submissions on the Bill, the overwhelming preference was for Māori to have specific representation on the Auckland Council. Of those that submitted specifically on Part 7, many mana whenua submissions focused on the membership of the board, and on related issues such as the requirement for consensus decision making.

Many of the councils in the Auckland region also submitted on the board provisions, with submissions covering a broad range of subjects, for example: the Auckland City Council felt that consensus decision-making was an issue, and that the Auckland Council should administer the selection body process; the Manukau City Council commended the board concept, but wanted the Auckland Council to decide how the board was set up and how it should function; and the Waitakere City Council supported the board concept, but felt that it should have broader powers.

A number of other groups and individuals provided substantive submissions on the board provisions. An example of this was the submission by the New Zealand Law Society, which made a number of technical suggestions on how to improve aspects of the board provisions. A number of other submitters expressed a desire for the board
to have a broader scope, and greater powers, and for the Auckland Council to be required to give effect to the advice of the board.

Approach in Departmental Report

The majority of changes that are proposed via the Departmental report are technical in nature, and are aimed at ensuring clarity of interpretation for the Bill when it becomes law. Key amongst these changes are:

- the addition of an explanatory section that clarifies the intent of the board. It became obvious through the submissions process that many submitters did not understand the:
  - wider legislative context within which the Auckland Council and the board would operate;
  - board’s requirement for independence; or
  - intent that the board would play a key role in ensuring that the Auckland Council fulfilled its Treaty of Waitangi obligations, which are already set out in existing legislation;
- clarifying that to be recognised as a mana whenua group within the Auckland Council boundaries, groups must have historic and continuing mana whenua in the Auckland region. A concern was identified that iwi with significant populations in the Auckland region may consider themselves to fall within the scope of the Bill. Officials consider that this interpretation is incorrect, but to ensure clarity, it is proposed that to be recognised as being mana whenua for the purposes of selection body membership, groups must have a historic and continuing mana whenua in the Auckland region; and
- softening the requirement for board decisions to be made by consensus, to allow the board to seek consensus decisions, but not to require that it do so. Many submitters appear to interpret consensus as a requirement for unanimity. This was not the intention of these provisions. The original intent was to ensure that all decisions were informed by the collective wisdom of the board, and that each decision would be underpinned by a clear record of the reasoned discussion for each. To address the apparent confusion, it is proposed that the requirement for consensus be relaxed to be a method that the board can utilise to make decisions.
EMPLOYMENT RELATED PROVISIONS: PROPOSED NEW PART

The Bill includes a number of employment related provisions. These provisions are included to facilitate the smooth transition or termination of staff from existing local government organisations which will be disestablished from 1 November 2010. Generally such provisions are negotiated between employees' bargaining agents and employers. Given the number of staff, employment agreements and bargaining agents and the timeframes associated with the Auckland governance reforms, it was decided that these provisions should be included in legislation. These provisions are consistent with, and support, the ATAs processes and protocols for the transition of staff which have been subject to consultation with staff impacted by the Auckland governance reforms and discussed with the main bargaining agents.

The majority of submissions received relate to a concern that the current Bill gave the chief executive of the Auckland Council the unilateral right to transfer staff into alternative positions with new employers, possibly with different terms and conditions of employment. The Public Service Association (PSA) and Combined Trade Unions (CTU) also raised a number of issues seeking clarification of certain provisions, for the avoidance of doubt. Ensuring fairness and transparency was also a common theme amongst submitters.

Currently the employment related provisions in the Bill are spread across two Parts and four Schedules. In addition, there are some aspects of the current provisions which could be clarified in order for the policy intent to be more clearly expressed. This was recognised in December 2009 as work that would need to be done following the introduction of the Bill, due to the compressed timeframe within which the Bill was originally drafted.

The current structure of the Bill and the relationship between the various clauses has at times led to confusion and concern amongst submitters about the staff transition process.

Therefore, as a result of submissions and further consideration, it is proposed that, subject to advice from Parliamentary Counsel, all the employment related provisions in the Bill be consolidated into one part. This Part would contain the employment provisions relating to the transition of all staff employed by existing local government organisations which are being disestablished on 1 November 2010, to the new arrangements. Preliminary discussions on this approach have been held with the PCO.

Discussions are also underway with PCO to determine the best approach for clarifying the staff transition process, the nature of the positions offered and their associated terms and conditions of employment and the consequences of an employee’s decision in relation to the different types of offers of employment.

No policy changes are proposed.
The purpose of the new Part will be to:

- Outline the process for the transfer, appointment or termination of employees of disestablished existing local government organisations;
- Specify the circumstances in which employees are entitled to redundancy or other financial compensation;
- Provide for advance collective bargaining for new replacement collective employment agreements before 1 November 2010, to have effect from 1 November 2010;
- Provide for the transfer of collective employment agreements to which existing local government organisations are party.

One Part containing all employment related provisions would ensure that all staff in existing local government organisations (in the order of 8,000 staff) and other interested parties (e.g. bargaining representatives) would be able to easily locate all relevant employment provisions.

It is envisaged that this new Part will cover the existing scope as that intended to be covered by the existing clauses in the Bill. Some redrafting and restructuring of the existing clauses to improve clarity will also be undertaken.

Two additions to the scope of the Bill are proposed.

Schedule 1 new Schedule 6 clause 5(b) of the Bill currently provides for an Order in Council to be made to specify relocation compensation, if there are no relocation compensation provisions in an employee’s terms and conditions of employment. This clause was included because at the time of drafting work on the appropriate compensation had not been completed. It is now proposed to include the minimum relocation compensation formula in the Bill, removing the need for a separate Order in Council process.

In addition, it is proposed that a provision be included in the Bill on the advance exercise of powers. This will ensure that any staff transition activity within the scope of the new Part of employment related matters, that is undertaken prior to the Bill being enacted, will be deemed to have been done under, and in accordance with, that Part. This will ensure that the ATA is able to progress the staff transition process prior to the enactment of this Bill without their validity being legally challenged if that process would have complied with the new Part, had it been in force.
Preliminary Provisions - Clauses 1 to 3

Clause 1 – Title

This clause states the title of the Bill.

Submissions
No submissions received on this clause.

Officials' Comment
No change is proposed.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 1 without amendment.
Clause 2 – Commencement

This clause provides that:
- Parts 2 and 3 of the Bill will come into force on 1 November 2010;
- section 47(2) will come into force on 1 July 2012; and
- the remainder of the Bill will come into force the day after Royal assent.

Submissions

Fifteen submitters asked that the commencement of the Bill be delayed to allow more consultation and consideration.

One submitter noted that Parts 2 and 3 of the Bill come into force on 1 November 2010, but clauses 53, 54 and 56 require action to be taken on job offers by the CE of Auckland Transport or ATA by 30 September. The submitter asked whether there was a timing problem for those clauses.

Officials’ Comment

The overall timeframe for the Bill is required to allow meaningful, informed elections for the new Council and local boards.

There are a number of timing issues with the Bill as introduced. These have been addressed in a number of ways including the movement or splitting of provisions between Parts. Consequential amendments to this clause may be required.

Recommendation

We recommend that the Select Committee:

AGREE that clause 2 be amended consequentially if required.
Clause 3 – Purpose

This clause outlines the purpose of the legislation.

Submissions

Four submitters expressed support for the purposes of the Bill.

Two submitters recommended that the Bill's purpose be amended to include an overall statement to highlight that the efficient functioning of Auckland Council as a unitary organisation "will be underpinned by a single, integrated structure in which all component parts are aligned and accountable to the elected Council."

Officials’ Comment

The proposed amendments are more concerned with the outcome of the Auckland Governance reforms as a whole than with the technical purpose of this particular Bill.

A significant number of amendments are proposed to the Bill, some of which may merit reflection in the purpose provision.

Recommendation

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<th>We recommend that the Select Committee:</th>
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<td><strong>AGREE</strong> that clause 3 be amended consequentially if required.</td>
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Part 1 - Clauses 4 to 26 - amend the Local Government (Tamaki Makaurau Reorganisation) Act 2009

This Part contains amendments to the Local Government (Tamaki Makaurau Reorganisation) Act 2009 (LGMRA09), which authorities and organisations are to operate during the reorganisation period. Clauses 4 to 26 amend or impose new requirements on the ATA, set out new obligations on existing Auckland local authorities during the reorganisation period, and set out further matters in relation to the dissolution of the existing councils and their subsidiaries.
Clause 4 – Principal Act amended

This clause states that this part of the Act amends the LGTMRA09.

Submissions
No submissions received on this clause.

Officials’ Comment
No change is proposed.

Recommendation

We recommend that the Select Committee:

\textbf{AGREE} to retain clause 4 without amendment.
Clause 5 – Commencement

This clause amends the commencement provision in the LGTMRA09 and repeals the subsection that provides for Part 2 of the LGTMRA09 to come into force on 1 November 2010.

Submissions
No submissions received on this clause.

Officials’ Comment
Changes to the structure of the principal Act and the insertion of additional provisions may require consequential changes to this clause.

Recommendation

| We recommend that the Select Committee: |
| AGREE that clause 5 be amended consequentially if required. |
Clause 6 – Background and purpose of Act

This clause makes consequential changes to the background and purpose statement in section 3 of the LGTMRA09.

Submissions
No submissions received on this clause.

Officials’ Comment
Some drafting changes are needed to the wording of the change to section 3(7) (b) of the principal Act, and to reflect other changes to the Act.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 6:
(d) by adding “at the close of” to the words omitted from section 3(7)(b) of the principal Act by subclause (2);
(e) by adding “on” to the words inserted by that subclause; and
(f) to reflect other changes to the Act as required.
Clause 7 – Outline of Act

This clause makes a consequential amendment to the Outline statement in section 7 of the principal Act.

Submissions
No submissions received on this clause.

Officials’ Comment
Changes to the structure of the principal Act and the insertion of additional provisions may require consequential changes to the provision amended by this clause.

Recommendation

| We recommend that the Select Committee: |
| AGREE that clause 7 be amended consequentially if required. |
Clause 8 – Interpretation

This clause amends the interpretation section of the principal Act. It inserts definitions for:

- “Auckland Transport”
- “receiving entity”
- “selection body” and
- “terminating organisation”.

The clause also amends the definitions for “Auckland”; “Auckland Council”; and “existing local government organization”.

Submissions

The New Zealand Law Society notes that the definition of “selection body” refers to a “body established by clause 2 of Schedule 3”. The intended reference would seem to be to clause 2 of Schedule 3 of the LGACA09, not clause 2 of Schedule 3 of the LGTMRA09. The Society recommends that the Committee satisfies itself that the definition is correct.

The Kaipara District Council asks that the definition of Auckland be amended so the LGC is given the option to consider an adjustment to the northern boundary of the Auckland Council so that governance of the Kaipara Harbour falls within Kaipara District Council.

One submitter suggested a definition of ‘regulatory’ is needed.

Officials’ Comment

The inclusion of the definition of “selection body” here is an error and it should be removed.

Amending the definition of “Auckland” in this clause would not be an appropriate way of addressing boundary changes which are now out of time in any case.

A definition of “regulatory” would not be appropriate.

Recommendation

We recommend that the Select Committee:

**AGREE** to amend clause 8 by omitting the proposed definition of “selection body”.
Clause 9 – Part 2 repealed

This clause repeals Part 2 of the LGTMRA09 that established Auckland Council as a unitary authority. However, this is now achieved by the LGACA09.

Submissions

No submissions received on this clause (other than one submitter mistakenly reading this clause as repealing Part 2 of the current Bill).

Officials’ Comment

No change is proposed.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 9 without amendment.
Clause 10 – Governing Body of Transition Agency

This clause makes a minor change to the reference in section 10 of the principal Act to recognize the addition of new Schedules to that Act.

Submissions

Two submitters objected to the powers of the ATA, but did not propose any amendments to this clause.

Officials’ Comment

No change is proposed.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 10 without amendment.
Clause 11 – Functions and Duties of Auckland Transition Agency

This clause amends section 13 of the principal Act to prescribe additional functions and duties for ATA.

- preparation of waste management and minimisation options;
- developing proposals for the establishment of the Ethnic Peoples Advisory Panel;
- establishing a WDA;
- making arrangements for the initial operation of Auckland Transport.

Submissions

Waste Management and Minimisation

Ten submissions were received on sub-clause (2) (cb), three of which were from key organisations within Auckland’s waste management industry, wanting the ATA to consult with current providers in the preparation of options for integrated planning and services. The balance of the submissions are more relevant to what might be contained in the options to be developed (e.g. whether services should be undertaken by the Council, by local boards or by private providers).

Ethnic Peoples Advisory Panel

There were 32 submissions received on sub-clause (2) (cc), the majority of which were that there should be wider involvement in the development of proposals for establishing the Panel, and that the proposals should be considered by the wider Council, not the Mayor alone. Other submissions were that the Panel should be permanent, and its relationship with CCOs and local boards should be defined in legislation. One submitter wanted a definition of “ethnic peoples” and one wanted a name change for the Panel to Tangata Nui o Aotearoa (the new people of NZ).

Waterfront Development Agency

Four submitters wanted the Auckland Council to make decisions about whether the WDA should be a CCO.

Auckland Transport

Five submitters opposed Auckland Transport being a CCO, preferring that it be a business unit of the Council.
Officials’ Comment

_Waste Management and Minimisation_

The waste management issues raised under clause 11 will be primarily dealt with in clause 109.

_Ethnic Peoples Advisory Panel_

Apart from those relating to the process for developing proposals, submissions on this issue relate to the content of clause 111 and are discussed in relation to that clause. While it is expected that the ATA will consult more widely in developing the proposal and draw on the experiences of existing local authorities, it is not possible to prescribe this in detail.

_Waterfront Development Agency_

Government policy is that the ATA will establish the WDA.

_Auckland Transport_

The establishment of Auckland Transport as a CCO is addressed in relation to clause 45 – Part 4.

Recommendation

<table>
<thead>
<tr>
<th>We recommend that the Select Committee:</th>
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<tbody>
<tr>
<td><strong>AGREE</strong> to amend clause 11(2) to clarify, in new paragraph (cb), the respective roles of the existing local authorities and the Auckland Transition Agency under the Waste Management Act 2008 in contributing towards the Auckland Council’s ability to meet its obligations under that Act.</td>
</tr>
</tbody>
</table>
Clause 12 – Appointment of electoral officer for October 2010 triennial general elections

This clause provides for Waitakere and Portage Licensing Trust elections in 2010 to be held by First Past the Post rather than Single Transferable Vote. These trusts had previously resolved to use Single Transferable Vote to align with Waitakere City’s intention to use that system.

Submissions
Two submitters want the clause to apply in Hauraki and Waikato District Councils for those areas transferred from Franklin District.

Two submitters want the clause to apply to the Mount Wellington and Otara Licensing Trusts.

Officials’ Comment
The content of this clause is not relevant to the transfer of parts of Franklin District to Hauraki and Waikato Districts.

The clause is not relevant to other licensing trusts that had not resolved to hold the 2010 elections using Single Transferable Vote.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 12 without amendment.
Clause 13 – Appointment of interim chief executive for Auckland Council

This clause clarifies the intent of provision for the appointment of an interim chief executive.

Submissions

No submissions relevant to this clause were received.

Officials’ Comment

No changes are proposed.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 13 without amendment.
Clause 14 – Interim chief executive may appoint staff and enter into contracts

This clause ensures that the interim chief executive may, before the Auckland Council comes into existence on 1 November 2010, call the first meeting of the Council (although the meeting cannot be held before that date).

Submissions
One submitter asked that there be a provision requiring the chief executive to consider the role of community volunteers in the Council staffing structure.

Officials’ Comment
This clause amends section 18 of the LGTMRA09 which also provides for the interim chief executive to appoint staff and enter into contracts. This is a general provision and it would not be appropriate to specify particular categories of staff.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 14 without amendment.
Clause 15 – New section 18A inserted

This clause inserts a new section.

New section 18A – Interim Chief executive must ensure valuation services in place for existing local authorities

This new provision will require the interim chief executive to make the necessary arrangements to enable an integrated new rating information database and valuation roll for the Auckland Council to be created in time for use from July 2012. The clause stipulates that the valuation roll should provide for the use of capital value for the initial general rates of the Council.

Submissions

Nine submitters opposed the inclusion of capital value in the clause, primarily on the grounds that it should be left to the Council (in consultation with ratepayers) to decide what valuation system to use, whether capital, annual or land value.

Officials’ Comment

While it will be up to the Auckland Council to determine what valuation system(s) it will use in future, it is necessary to determine now what system will be used from 1 July 2012 in order that contracts and arrangements for the major revaluation of all of Auckland can be finalised as soon as possible. However provisions relating to the basis for general rating in 2012/13 belong in Part 3 and should be removed from this provision and included in a new clause in that Part.

In addition, the current heading is inaccurate and should refer to arrangements for valuation services for Auckland Council rather than for existing local authorities.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 15:
(a) to correct the heading so that it refers to arrangements for valuation services for Auckland Council; and
(b) to omit reference to the capital value rating system.
Clause 16 - Transition Agency may exercise powers under section 18 in certain circumstances

This extends section 19 of the principal Act to provide that the ATA may enter contracts etc for valuation services in the absence of or at the request of the interim chief executive.

Submissions
No submissions were received on this clause.

Officials’ Comment
No changes are proposed.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 16 without amendment.
Clause 17 – Preparation of planning document

This clause requires that in preparing the initial planning document for the Council the ATA:
- must make an initial allocation of non-regulatory decision-making between the governing body and local boards;
- must develop a liability management policy for the Council; and
- may develop integrated funding and financial policies.

This planning document will serve as the Council’s LTCCP until a new LTCCP comes into force on 1 July 2012.

Submissions

Two hundred and fifty one submitters opposed this clause on the grounds that the powers and responsibilities of local boards should be set out in the Bill. The same submission applies to Schedule 1, new Schedule 2, clause 1 General requirements of planning document. Some submitters suggested that at the very least the Bill should require the ATA to consult with the existing local authorities on the initial allocation of responsibilities.

The main points in the submissions are:
- the functions and responsibilities should be in the Bill;
- oppose the ATA deciding the functions of local boards;
- if the ATA does retain this role then it should be required to consult with existing councils and/or it should follow principles set out in the Act;
- concern that the Auckland Council will not give enough local functions to local boards through the allocation or delegation processes;
- relationships with CCOs and the Auckland Council should be specified;
- local boards should be adequately resourced; and
- local boards should be able to deal with local issues.

Officials’ Comment

A number of the submissions under this clause relate to the way the powers of local boards are determined, the discretion of the governing body in relation to local board functions, and the relationships between local boards, the governing body and council organisations. These matters relate to the LGACA09 and are dealt with in relation to Part 2 of the Bill.

The alternatives to the ATA determining the initial allocation of local board responsibilities are for Parliament to make that allocation through this legislation, or for the governing body and local boards to commence that process after 1 November 2010. For the first option, Parliament would rely on advice from and consultation with the ATA, existing councils and the Auckland public which is exactly what is occurring under the ATA process. The timeframes and process for the Bill would allow less public input and less time than the ATA process.
Leaving the initial determination of responsibilities to the governing body and local boards to determine would inevitably require an extended period of consultation and negotiation during which there would be a vacuum in local governance and decision-making in Auckland.

The clause does require some technical amendments to:

(a) correct a reference to the wrong year in section 19A(1) of the principal Act;
(b) correct the omission of a reference to an investment policy in new subsection (1A); and
(c) move provisions that have effect after 1 November 2010 into Part 3 of the Bill.

**Recommendation**

We recommend that the Select Committee:

**AGREE** to amend clause 17 to:

(d) correct a reference to the wrong year in section 19A(1) of the principal Act;
(e) correct the omission of a reference to an investment policy in new subsection (1A); and
(f) move provisions that have effect after 1 November 2010 into Part 3 of the Bill.
Clause 18 – New Section 19B inserted

This clause inserts a new section

New Section 19B - Establishment of Auckland waterfront development agency

This clause requires the ATA to establish a WDA as a CCO of Auckland Council.

Submissions

There were 20 submissions received most of which suggested that more detail be added to the Bill as follows:

- add detail on the role, functions and responsibilities of the WDA and how it will work with the Council and other constituent organisations;
- cover the transfer of Auckland Regional Holdings assets in the Wynyard Precinct to the WDA;
- clarify whether it is ATA who will set the objectives of the WDA and who is responsible for appointing the initial directors;
- provide that the WDA is subject to council planning documents, such as the spatial plan;
- provide that the WDA is not permitted to participate in consent applications outside its own landholdings;
- the membership of the board should include representatives from other CCOs, central government and Ports of Auckland; and
- clarify the jurisdiction of the WDA in respect of the Waitemata waterfront, Westhaven, Devonport and Hobsonville.

Five submitters thought the WDA should be a council committee rather than a CCO. Four submitters supported the establishment of the WDA as a CCO but submitted it should be done through the normal Local Government Act 2002 (LGA02) process by the new Council.

Officials’ Comment

Most of the issues raised in submissions will be addressed either in:

- new provisions to strengthen accountability of substantive CCOs (see comment on clause 45, new section 75); and
- the application of clause 24, new sections 35G and 35H to the WDA which is required under the Bill.

New CCO accountability provisions proposed for the Bill will provide for the WDA to give effect to council plans and strategies.

The Order in Council establishing the WDA as a new CCO will specify the objectives and governance structure of the WDA. CCO establishment proposals will also set out any asset transfers between affected CCOs, for example ARH, to be effected through Order in Council. Provisions to allow these transfers to take place between CCOs are recommended in this report.
Once the Order in Council has been made initial directors will be appointed by the Minister, as with other substantive CCOs.

It may, however, be useful to clarify how the WDA is established by carrying over the provisions relating to the establishment of CCOs and appointment of directors into Clause 18.

With respect to consent applications, there are no grounds for excluding the WDA from applications outside of its landholding area. The Auckland Council, not the WDA, will be the consenting authority. The WDA should have the same rights to make submissions on notified applications as all other parties.

**Recommendation**

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<tr>
<th>We recommend that the Select Committee:</th>
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<tr>
<td><strong>AGREE</strong> to amend clause 18 new section 19B to clarify the process for establishing the Waterfront Development Agency.</td>
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Clause 19 – New sections 21A to 21C inserted

This clause inserts three new sections in the principal Act.

New section 21A - Appointment of interim chief executive of Auckland Transport

This clause empowers the ATA to appoint an interim chief executive for Auckland Transport to prepare for the establishment of that entity.

Submissions

Rodney District Council wants "interim" inserted before chief executive in new section 21A(1) into clause to avoid confusion.

One submitter believes the Auckland Council should appoint the chief executive of Auckland Transport.

Officials’ Comment

The chief executive is “interim” by the specified term of their employment. The wording of this section is consistent with the sections in the LGTMRA09 relating to the appointment and powers of the interim chief executive of the Auckland Council.

The governing board of Auckland Transport will be responsible for appointing the chief executive at the conclusion the interim term. However it is desirable that an interim appointment be made before 1 November 2010 so that the organisation can function effectively on and from that date.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 19 new section 21A without amendment.
Clause 19 cont’d

New section 21B - Interim chief executive for Auckland Transport may appoint staff and enter into contracts

This clause empowers the interim chief executive for Auckland Transport to appoint staff and enter into contracts as appropriate in preparation for its establishment.

Submissions

Rodney District Council wants "interim" inserted before chief executive in new section 21B(1) into clause to avoid confusion.

Auckland Regional Council recommends that section 21B(3)(b) is amended to provide for any contract, lease or other agreement to be consistent with the procurement requirements for the NZTA which are set out in the Land Transport Management Act 2003.

Officials’ Comment

The chief executive is “interim” by the specified term of their employment. This section is consistent with the sections in the LGTMRA09 relating to the appointment and powers of the interim chief executive of the Auckland Council.

Consistency with the procurement requirements of the NZTA is only necessary where the NZTA is providing funding. Not all the contracts, leases or other agreements entered into will receive such funding. Those that do will be required to use the procurement procedures as a condition of receiving funding. Therefore it is not necessary to amend the Bill.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 19 new section 21B without amendment.
Clause 19 cont’d

New section 21C – Transition Agency may exercise powers under section 21B under certain circumstances

This clause empowers the ATA to exercise the powers of the interim chief executive of Auckland Transport with the agreement of the interim chief executive or if no appointment has been made.

Submissions
One submitter believes new section 21C should be deleted.

Officials’ Comment
This section is consistent with section 19 in the LGTMRA09 which enables the ATA to exercise the powers of the interim chief executive of the Auckland Council either with the agreement of the chief executive or if there is no chief executive. These provisions are important to ensure that implementation is not delayed if there is no chief executive or enables the chief executive to delegate this responsibility to the ATA if there are other priorities.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 19 new section 21C without amendment.
Clause 20 – New section 26A inserted

This clause inserts a new section 26A in the principal Act.

New section 26A – Transition Agency not required to prepare annual financial statements for year ending 30 June 2010

This clarifies that the ATA is not required to prepare both annual financial statements for the year ending 30 June 2010 and terminal financial statements for the remaining period until its disestablishment on 1 November 2010.

Submissions

Three submissions were received on this clause, primarily to the effect that having to insert new sections into the principal Act indicates the earlier legislation was rushed.

Officials’ Comment

The original legislation was necessarily drafted and enacted in a compressed timeframe and it has always been recognised that there would be a need for further provisions on a number of aspects during the transition process.

It is desirable to clarify that the financial statements required under subsection (2) must be audited.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 20 new section 26A(2) to clarify that the financial statements referred to must be audited.
Proposed New Clause – Dissolution of Auckland Transition Agency

Officials’ Comment
Section 27 of the LGTMRA09 provides that the ATA is dissolved at the close of 31 October 2010, and any remaining assets and liabilities of the Agency become assets and liabilities of the Auckland Council.

Officials have identified a risk from both legal and accounting perspectives that the current wording may not capture the full extent of the commitments, obligations, contracts etc that ATA may enter into and which were intended to be transferred to the Auckland Council. This could mean that such commitments and obligations cease on 31 October 2010.

We therefore recommend the insertion of a new clause in Part 1 of the Bill to amend section 27, to give better effect to the intent that any commitments, obligations, contracts and engagements of the ATA are also transferred.

Recommendation

We recommend that the Select Committee:

AGREE to the insertion of new provisions in Part 1 of the Bill 3 to amend section 27 of the Local Government (Tamaki Makaurau Reorganisation) Act 2009, to reflect the intent that any commitments, obligations, contracts and engagements of the Auckland Transition Agency are also transferred.
Clause 21 – Obligations of existing local authorities in relation to 2010/2011 annual report

This corrects a drafting error in the principal Act.

Submissions

The Hauraki District Council has asked that provision be made in the Bill for transitional LTCCP and annual plans for the Hauraki and Waikato District Councils, similar to the provisions made for the existing Auckland councils.

Officials’ Comment

The content of this clause relates to annual reports and is not relevant to the application of LGA02 plans to parts of Franklin District transferring to Hauraki and Waikato Districts. Those matters are dealt with in the LGC determination and associated LGA02 provisions and in a new clause proposed for Part 3 of the Bill.

This clause does however need to be amended to clarify the respective roles of the existing local authorities and Auckland Council in the preparation and adoption of the final reports.

Provision for the Auckland Council to complete and adopt the reports is needed in Part 3 of the Bill as this must occur after 1 November 2010.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 21 to clarify the respective roles of the existing local authorities and Auckland Council in the preparation and adoption of the final reports.
Clause 22 – New sections 29D to 29F inserted

This clause inserts three new sections in the principal Act.

New section 29D - Obligations of existing local authorities in relation to October 2010 triennial general elections

This section requires existing territorial authorities to adopt consistent bylaws on election signs and hoardings in accordance with rules and restrictions contained in a Schedule to the Bill.

Submissions

Franklin District Council seeks amendments to include provision for Waikato District Council and Hauraki District Council bylaws to become operative in areas that will become Waikato and Hauraki District Council after 31 October 2010.

Waitakere City Council in general supports the development of consistent guidelines for election signage, however the Council is concerned that provision should: allow for the placing of signs on road berms where this meets all other safety requirements; be applied to District Health Boards, Licensing Trust and any other elections held concurrently; require signs to be located in a way that ensures public safety; and prohibit obscuring other candidates signs.

Manukau City Council wants the Bill to be amended to enable the Council to make a bylaw or resolution on the erection of election signs; and to clarify the application of Part 6 and Sections 155 and 156 of the LGA02.

Submissions also sought clarification that providing for regulation of election signs within the two months prior to the election is not intended to restrict the right to display signs prior to that two month period; and the replacement of “polling day” by “election day”.

Officials’ Comment

The election hoarding bylaws of Waikato and Hauraki Districts already apply in the relevant parts of Franklin, as a consequence of the LGC determination.

The set of bylaws set out in the Schedule reflects common practice across the existing local authorities in Auckland. For consistency, these rules should all be set as bylaws.

New section 29D is clear about the application of sections 155 and 156 of the Local Government Act 2002, and it is these provisions that govern the application of Part 6.

This new section (and new Schedule 3) does need to be amended to apply the new bylaws to all local elections that will be held in Auckland. The current wording would apply them only to Auckland Council and local board elections.
Recommendation

We recommend that the Select Committee:

AGREE to amend clause 22 new section 29D to refer to the October 2010 triennial general elections in Auckland (rather than "for the Auckland Council").
Clause 22 cont'd

New section 29E – Rodney District Council and Waitakere City Council 2010 revaluations not required

This section provides that revaluations of Rodney District and Waitakere City scheduled for 2010 are not required because they are unnecessary to the interim rating regime.

Submissions
No submissions were received on this proposed new section.

Officials’ Comment
No changes are proposed.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 22 new section 29E without amendment.
Clause 22 cont’d

New section 29F – Auckland Regional Council must ensure sufficient Watercare Services Limited employees appointed as enforcement officers before Council dissolved

This section requires the Auckland Regional Council to appoint sufficient Watercare employees as enforcement officers so enforcement can continue after November 2010.

Submissions
Six submissions were received on this new section. Two submitters recommended that regulatory enforcement be independent of Watercare, one submitter saw no value in limiting enforcement to present employees of Watercare, and one submitter recommended that all warrants issued by Watercare be deemed to have been issued by the Auckland Council as of 1 November 2010.

Officials’ Comment
It is intended that Watercare be the enforcement agency in respect of the delivery of water and wastewater services and in the management of its assets to affect service delivery. It is appropriate for Watercare to have the enforcement responsibility because it has the relevant expertise and it is accountable for managing its assets. In order for Watercare to perform its enforcement function, Watercare needs to have sufficient enforcement officers on 1 November 2010. Under clause 97, statutory warrants in place on 31 October 2010 continue in force.

While it is proposed that Watercare officers can be warranted as enforcement officers, it is appropriate that the democratically elected body be responsible for issuing the warrants. It is for this reason that it is proposed that the Auckland Regional Council be able to issue warrants to Watercare officers prior to 1 November 2010. The Auckland Council will issue such warrants to Watercare officers thereafter, under section 177 of the LGA02. It will be up to the Auckland Council, in liaison with Watercare, to determine what the appropriate number of enforcement officers is from 1 November 2010.

Two minor drafting errors have been identified.
- the proposed new subsection 29F(1) refers to section 97 of the Local Government (Auckland Law Reform) Bill whereas it should refer to the Local Government (Auckland Law Reform) Act; and
- the proposed new subsection 29F(2) refers to “the Council”. This expression is defined as the Auckland Council whereas this provision should refer to the Auckland Regional Council.
Recommendation

We recommend that the Select Committee:

AGREE to amend clause 22 new section 29F to fix drafting errors.
Proposed New Clause –Members of existing local authorities

Officials’ Comment

Under the normal provisions of the Local Electoral Act 2001, incumbent elected members remain in office until persons elected at the next election assume that office (on the day after declaration of the official result). It is not clear how this will apply in the case of Auckland.

It is proposed to clarify this by adding a new provision to amend section 32 of the LGTMRA09 to provide that members of existing local authorities and community boards within Auckland remain in office until 31 October 2010.

Recommendation

We recommend that the Select Committee:

AGREE to amend the Bill by adding a new provision to amend section 32 of the Local Government (Tamaki Makaurau Reorganisation) Act 2009 to provide that members of existing local authorities and community boards within Auckland remain in office until 31 October 2010.
Clause 23 – Dissolution of existing local authorities

This clause clarifies section 35 of the principal Act to ensure that, on 1 November, the interests of existing local authorities in CCOs and council organisations transfer to the Auckland Council.

Submissions

There were seven submissions on this clause, 5 of which were made to oppose the sale of public assets. Two submitters asked that Papakura and Franklin District Councils not be dissolved.

The Auckland Regional Council recommended that the clause be extended to allow an existing local authority’s interest in a CCO to be transferred to either the Auckland Council or to a CCO that is wholly owned or controlled by the Auckland Council.

Officials’ Comment

Proposals for the Auckland Council’s substantive CCO structure will be considered by Government mid-year. Provisions are proposed for clause 24 of this Bill (new sections) to enable vesting of specified assets from existing councils, CCOs and other entities to a variety of receiving entities through the Order in Council process.

This clause needs to be amended to clarify that the provisions for vesting of specified assets in substantive CCOs through an Order in Council override the general provisions in the clause as currently drafted.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 23 to clarify that the provisions for vesting of specified assets in substantive council-controlled organisations through an Order in Council overrides the general provisions in the clause as currently drafted.
Clause 24 – New Sections 35A to 35L inserted

This clause inserts a number of new sections in the LGTMRA09.

New Section 35A Schedule 2 of LGA02 consequentially amended

This new section will consequentially amend the lists of local authorities in the LGA02 by omitting the names of the local authorities to be disestablished.

Submissions

No submissions were received on this proposed new section.

Officials’ Comment

The new section consequentially amends Schedule 2 of the LGA02. It is non-controversial.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 24 new section 35A without amendment.
Clause 24 cont.

New Section 35B Dissolution of certain council-controlled organisations

This new section provides for the dissolution of specified CCOs (identified as “terminating organisations”) on 1 November 2010.

Submissions

There were five submissions received in relation to new section 35B, recommending amendments:

- to ensure that the section can deal effectively with the transfer of assets and liabilities, as well as interests in CCOs, from existing local authorities and CCOs to the Auckland Council and to new and existing CCOs;
- to provide that stormwater assets in Metro Water and Manukau Water transfers to the Auckland Council, not to Watercare Services. Stormwater assets in the other territorial authorities go to the Auckland Council;
- to allow for assets of terminating organisations to go to more than one entity;
- to amend 35B(1)(a), to read “all property belonging to, or held in trust by, each terminating organisation…”;
- to amend 35B(1)(d), to clarify that it includes taxation assets and liabilities, including tax losses and imputation credits; and
- to ensure provision is made for appropriate dispersal of assets in the event a licensing trust is wound up. The assets should go to the community covered by the licensing trust’s boundary, which is the local board not the Auckland Council.

One submitter recommended that the dissolution of existing CCOs be decided by the new Auckland Council in consultation with local boards.

Officials’ Comment

Amendments are required for the legislation to provide sufficient flexibility to accommodate any decisions of Ministers regarding the initial CCO structure of the Auckland Council, which will be implemented through Orders in Council under the provisions of this Bill, once enacted.

The current legislative framework provides or will provide statutory mechanisms for:

- vesting the assets, liabilities, rights and obligations of the existing local authorities in the Auckland Council, Auckland Transport, and Watercare on 1 November 2010; and
- disestablishing existing CCOs on 1 November 2010 and vesting their assets, liabilities, rights and obligations in Auckland Council, new CCOs or existing CCOs.

The following issues have been identified with the framework currently provided by the existing legislation and the Bill:

- the proposed CCO framework for the Auckland Council may require the transfer of some assets, liabilities or other matters from existing local authorities
or CCOs (on their disestablishment) to new or existing CCOs, rather than to the Auckland Council; and

- while the Bill as drafted provides for the possibility of more than one entity receiving assets, liabilities, rights or obligations when a CCO is disestablished, there is no mechanism for the allocation of those matters between the receiving entities.

**Recommendation**

We recommend that the Select Committee:

**AGREE** to amend the Bill to provide sufficient flexibility to accommodate any decisions of Ministers regarding the initial CCO structure of the Auckland Council.
Clause 24 cont.

New Section 35C Review of employment provisions

This new section provides for the interim chief executive of Auckland Council to review the positions of persons employed by local authorities and CCOs that are to be disestablished.

Submissions

Forty-five submitters opposed new section 35C on the grounds it did not protect the employment rights of staff transferring to another position, and gave the chief executive of Auckland Council the right to determine if conditions carried over.

Two submitters recommended that the Bill provide that if no offer of employment is made by 30 September 2010, the employee automatically transfers to the new Council.

One submitter recommended that the transitional arrangements should also apply to staff moving to the Hauraki and Waikato District Councils.

Two submitters recommended that the Bill should include provision for the retention of all injury prevention positions and programmes.

Officials’ Comment

It is proposed that, subject to advice from PCO, the employment provisions in the Bill be redrafted and restructured to consolidate the employment related clauses (including those relating to Auckland Regional Transport Authority (ARTA) and Auckland Regional Transport Network Limited (ARTNL) and clarify the policy intent. Preliminary discussions on this approach have been held with the PCO.

This consolidation will include clarifying the process for the transition of staff. It is also proposed that this consolidation include a provision on the advance exercise of powers. This will ensure that any staff transition activity (within the scope of the new Part on employment related matters), that is undertaken prior to the Bill being enacted, will be deemed to have been done so under, and in accordance with, that Part. This will ensure that the ATA is able to progress the staff transition process prior to the enactment of this Bill without their validity being legally challenged if that process would have complied with the new Part, had it been in force.

The policy intent of this section is for the interim chief executive to review the positions of staff and identify an option for each person. There are three options:

a. the same or a substantially similar position with the same terms and conditions of employment; or

b. a position which is not the same or substantially similar which may have different terms and conditions of employment; or

c. termination.
For the purpose of determining whether a position is the same or substantially similar, it is intended that location be set aside and not taken into account as part of such an assessment. Location will be addressed independently and either the relocation provisions in an employee’s employment agreement or the minimum relocation compensation provisions will apply to all employees who accept a new position at a different location.

Where continued employment (a. or b. above) is the option, the chief executive will offer the position to the staff member. Each staff member who receives an offer has the right to accept or decline that offer. The consequences of that decision will depend on the particular circumstances. There is no intention for the chief executive to make unilateral binding decisions in relation to the terms and conditions of employment of staff that are transferred or appointed to the new organisations.

Discussions are underway with PCO to determine the best approach for clarifying the staff transition process, the nature of the positions offered and their associated terms and conditions of employment, and the consequences of an employee’s decision in relation to the different types of offers of employment.

The Bill already provides for staff that have not been notified of termination, or offered a transfer or an appointment by 30 September 2010 to the Auckland Council in their existing position on their existing terms and conditions of employment.

This clause does not and should not address the outcome of the review of positions by the chief executive.

Recommendation

We recommend that the Select Committee:

AGREE that, subject to advice from Parliamentary Counsel, the employment provisions in the Bill be redrafted and restructured to consolidate the employment related clauses (including those relating to Auckland Regional Transport Authority and Auckland Regional Transport Network Limited) and clarify the policy intent. This will include that the intent of these provisions is that:

(a) the chief executive will review the positions of staff and identify an option for each staff member;
(b) there are three options:
   (i) the same or a substantially similar position with the same terms and conditions of employment; or
   (ii) a position which is not the same or substantially similar which may have different terms and conditions of employment; or
   (iii) termination;
(c) location will be set aside and not taken into account as part of an assessment of whether a position is the same or substantially similar;
(d) location will be addressed independently and either the relocation provisions in an
employee’s employment agreement or the minimum relocation compensation provisions will apply to all employees who accept a new position at a different location; and

(e) staff offered a position with a new employer have the right to accept or decline that offer.
Clause 24 cont.

New Section 35D Whether employees entitled to redundancy or other compensation

This new section outlines the criteria for when new Schedule 6 – Redundancy and compensation provisions, applies.

Submissions
Nine submitters reiterated the concerns they had raised under new section 35C.

Officials’ Comment
It is proposed that, subject to advice from PCO, the employment provisions in the Bill are redrafted and restructured to consolidate the employment related clauses (including those relating to ARTA and ARTNL and clarify the policy intent. Preliminary discussions on this approach have been held with the PCO. This will include clarifying the circumstances in which employees are entitled to redundancy or other compensation.

Recommendation

We recommend that the Select Committee:

AGREE that, subject to advice from Parliamentary Counsel, the employment provisions in the Bill be redrafted and restructured to consolidate the employment related clauses (including those relating to Auckland Regional Transport Authority and Auckland Regional Transport Network Limited) and clarify the policy intent, including clarifying the circumstances in which employees are entitled to redundancy or other compensation.
Clause 24 cont.

New Section 35E Obligations of terminating organisations in relation to 2010/2011 annual report

This new section sets out reporting requirements for CCOs that will be dissolved on 1 November 2010. They are not required to produce an annual report for the year ending 30 June 2010 but instead a report for the 16 month period ending with their dissolution is required.

Submissions

One submitter recommended that the heading of new section 35E be amended to read “…2009/2010 annual report...” to reflect the text of the section.

Officials' Comment

Provisions in the Bill should recognise that the assets, liabilities, obligations etc of a terminating organisation may be transferred to more than one entity and clarify, in these circumstances, which entity is responsible for adopting the final report of the terminating organisation.

The Bill will also need to establish a way of providing certainty concerning which entity is responsible for the final report (and other residual matters). These provisions should be inserted in Part 3 of the Bill as they will occur after 1 November 2010 (Part 2 applies to matters up to 1 November 2011).

Recommendation

We recommend that the Select Committee:

AGREE to amend the Bill to:
(d) recognise that assets, liabilities, obligations etc of a terminating organisation may be transferred to more than one entity;
(e) clarify in these circumstances which entity is responsible for adopting the final report of the terminating organisation; and
(f) establish a way of providing certainty concerning which entity is responsible for the final report (and other residual matters).
Clause 24 cont.

New Section 35F Power to amend Schedule 4

This new section provides for a new Order in Council process to identify CCOs as terminating organisations together with the new or continuing entity or entities to which their assets, liabilities etc will transfer on 1 November 2010.

Submissions

One submitter asks that all assets (other than water and wastewater assets) are initially vested in the Auckland Council by amending 35F(2) to provide that a receiving entity will always be the Auckland Council (or Watercare for Metro Water and Manukau Water) and amending clauses 50(1)(a) and 52(1)(a) to replace the references to Auckland Transport with references to the Auckland Council.

Four submitters expressed concern that the proposed new section gives powers to identify further CCOs as terminating organisations, and to appoint further organisations as receiving organisations. One submitter wanted greater clarity in 35F(4) around what constitutes local government “ownership” of a CCO and which type of CCO this section would apply to. Submitters recommended that the power to identify further CCOs as terminating organisations should be vested in the Auckland Council, not done by Order in Council.

Officials’ Comment

This clause provides flexibility to accommodate any decisions of Ministers regarding the eventual CCO structure of the Auckland Council, which will be implemented through Orders in Council under the provisions of this Bill, once enacted.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 24 new section 35F without amendment.
Clause 24 cont.

New Section 35G Order in Council authorising Transition Agency to constitute council-controlled organisation

This new section provides for a new Order in Council process to authorise the ATA to constitute new CCOs with effect from 1 November 2010.

New Section 35H Minister may appoint initial directors of certain council-controlled organisations

This new section empowers the Minister of Local Government to appoint the initial directors of the new CCOs (with staggered terms of one, two or three years) prior to 1 November 2010.

Submissions

Note: these submissions are considered together as most submitters addressed both new sections in the one submission.

Two hundred and seventy-nine submitters opposed the ATA establishing further CCOs, primarily on the grounds that decisions on the Council’s CCO structure should be made by the elected Council. The same submitters opposed any board appointments being made by Ministers, on the grounds that appointments should be made by the elected Council. Many submitters argued that elected councillors should fill board positions.

Some submitters recommended that the Bill limit the type and number of CCOs that can be enacted prior to the establishment of the Auckland Council to those absolutely necessary to enable governance transition. Also that the Bill include a definition of the process for how organisations are selected to be part of a CCO and the consultative process that must be employed by the Auckland Council when the creation of a CCO is being considered.

Other recommendations were that the Auckland Council should have the power to appoint and remove all directors of all CCOs at any time and the power to require all of its CCOs to implement the strategies and policies of the Council including the spatial plan.

Community board submitters were concerned about how the proposed CCOs will interact with each other and the local community. There was concern expressed that local boards will not have the ability to input into any strategies or plans made by the CCOs, nor will the CCOs be accountable to the local boards for work done in a local area. They recommended a requirement in the Bill for the CCOs to have in place, by 31 May of the year following an election, a local board agreement stipulating how the local boards and the CCOs will interact and the decision-making process that will apply.
Officials’ Comment

*New Section 35G*

The provisions provide the flexibility for CCOs to be established prior to the Auckland Council becoming operational. Any proposals to establish an organisation will need to be agreed to by Ministers for an Order in Council to be made. Any CCO established under this provision will be able to be disestablished by the Auckland Council.

Once an Order in Council has been made the ATA will be required to establish one or more entities as CCOs of the Auckland Council according to the specification of the Order. The wording of the clause needs to be amended to make it clear that the ATA will be directed by the Order in Council, rather than authorised. This will give legal certainty to the establishment of any CCO identified under the Order.

*New Section 35H*

The Bill needs to be amended to clarify that the Minister of Local Government may appoint initial directors to CCOs that are “required to be established” either by Order in Council under new section 35G or under section 19B with respect to the Waterfront Development Agency.

The Bill contains provisions allowing for the appointment of initial directors by the Minister in order to ensure Boards are in place at establishment of any CCOs. The Auckland Council will be able to remove any member of a Board at any time.

In view of the high level of public interest in this matter, officials recommend that an explicit transitional provision is incorporated in the Bill to make it clear that the Council can remove members of the initial boards of its CCOs, should it resolve to do so.

Recommendation

We recommend that the Select Committee:

**AGREE to amend clause 24 new section 35G to clarify that the Auckland Transition Agency will be directed to establish one or more council-controlled organisations by any Order in Council.**

We recommend that the Select Committee:

**AGREE to amend clause 24 new section 35H to:**

(a) clarify that the Minister may appoint initial directors to council-controlled organisations that are “required to be established” either:

(i) by Order in Council under new section 35G; or

(ii) under section 19B with respect to the Waterfront Development Agency; and;

(b) make it explicit that the Auckland Council can remove members of initial boards of council-controlled organisations should it choose to do so.
We recommend that the Select Committee:

**AGREE** to an explicit transitional provision in Part 3 of the Bill making it clear that the Council can remove members of the initial boards of its council-controlled organisations, should it resolve to do so.
Clause 24 cont.

New Section 35I Minister of Transport and Minister may appoint initial directors of Auckland Transport

This new section empowers the Ministers of Transport and Local Government to appoint the initial directors of Auckland Transport (with staggered terms of one, two or three years) prior to 1 November 2010.

Submissions

The 279 submissions made in relation to new sections 35G and 35H apply also to new section 35I as most submitters on these matters considered decisions on both the creation of a new CCO for Transport and the appointment of directors are the responsibility of elected representatives of the Council. Variations on that position were:

- the current Auckland councils, rather than the Minister of Transport, should appoint the initial directors;
- an Electoral College from existing councils and community boards should make the appointments;
- the current Mayoral Forum should be consulted on the initial appointment of directors;
- the Auckland Council must be able to appoint a completely new board should it wish to do so; and
- local boards must have a say in appointments, as well as councillors.

One submitter recommended an obligation be placed on directors of Auckland Transport to take into account how decisions will contribute to the achievement of the Council’s objectives and wider strategic intent.

One submitter recommended that the Minister be required to ensure, in appointing directors, that at least some of the appointees have an understanding of land use planning, urban design and economic development, and how transport interacts with these functions, and have experience working with communities on the impact of transport decisions.

Officials’ Comment

The Bill contains provisions allowing for the appointment of initial directors by Ministers in order to ensure a Board is in place when Auckland Transport commences operation. The staged length of terms is intended enable maintain some continuity of membership rather than have all members up for re-appointment at the same time. Auckland Council can, nevertheless, remove any member of the Board at any time.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 24 new section 35I without amendment.
Clause 24 cont.

New Section 35J Vesting of Assets, etc in Watercare Services Limited

This new section provides for the vesting of the water and wastewater assets and liabilities of the existing local authorities in Watercare Services Limited on 1 November 2010. The assets and liabilities concerned will be identified by Order in Council.

Submissions

Thirteen submissions were received in relation to this clause. Five submitters noted that new section 35J (5) specifically excludes stand-alone water supply or wastewater schemes:

- one recommended a definition of "stand alone" be included;
- two expressed concern that the Bill does not identify any other entity as having management responsibility for such assets; and
- two recommended that these schemes should be owned and managed by Watercare.

One submitter considered it was necessary to ensure that Pukekohe Wastewater Treatment Plant services are fairly managed through negotiation between Watercare and Waikato, and four submitters opposed the clause on the grounds that it allowed the privatisation of water services.

Officials’ Comment

There is nothing in the Bill to provide for the privatisation of water in Auckland,

It is not intended that Watercare own and manage all (or any) standalone water supply or wastewater schemes. There are hundreds of such supplies and schemes in Auckland that are owned and managed by many organisations such as private home owners, groups of farmers, industry, marae and schools. These supplies and schemes will continue to be managed as at present. The issue of the definition of 'stand alone' water supply and wastewater schemes is discussed in reference to clause 30.

Amendment is required to the proposed new section to give protections from breach of contract in relation to the transfer of assets to Watercare. Currently the proposed section 35B(3) contains such protections for receiving entities, and it appropriate that such protections also apply to Watercare.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 24 new section 35J by inserting protections for breach of contract/tort similar to that provided for other receiving entities as contained in clause 24, proposed subsection 35B(3) of the Bill.
Clause 24 cont.

New Section 35K Development contributions already made or owed

This new section provides for transfer to the Auckland Council of obligations relating to development contributions already made or owed to existing local authorities.

Submissions
Eleven submissions were received on this new section. All submitters emphasised the importance of clear provisions for development contributions transferring to the Auckland Council and the need to ensure the funds are used for appropriate purposes.

Two submitters questioned the terminology used, and recommended the use of the terms "paid", "made", "incurred", and "required". For example, it was suggested that section 35K(4) should read "required by" rather than "owed to" as the contribution may not have fallen due for payment as at 31 October 2010.

Two submitters noted that the new section does not cover financial contributions and recommended the new section be reworded to include these.

Officials’ Comment
The bulk of the content of this clause, and the bulk of concerns of submitters, relate to the period after 1 November 2010. Those provisions should therefore be moved to clause 88 in Part 3 of this Bill (or possibly a new clause associated with that provision). The transfer of development contribution assets, obligations and requirements from existing local authorities to Auckland Council is adequately covered by the generic transfer provisions in section 35 of the principal Act. Section 35K can therefore be omitted.

Recommendation

We recommend that the Select Committee:

AGREE to omit clause 24 new section 35K.
Clause 24 cont.

New Section 35L Chief Executive of Ministry of Pacific Island Affairs must develop proposals in relation to the establishment of Pacific Peoples Advisory Board

This new section requires the Chief Executive of the Ministry of Pacific Island Affairs to develop proposals in relation to the establishment of Pacific Peoples Advisory Board for consideration by the incoming Mayor of Auckland. The chief executive must consult the ATA and each existing Auckland council in developing the proposals.

Submissions

There were 29 submissions on this new section and these were generally supportive of the establishment of a Pacific Peoples Advisory Panel. The main issues raised were:
- the importance of consulting the existing councils’ Pacific advisory boards when developing proposals; and
- elected councillors should be involved in considering the proposals once developed, not just the mayor.

One submitter proposed that the Panel should be reconstituted as a statutory board or committee.

Officials’ Comment

The chief executive of the Ministry of Pacific Island Affairs can consult any person they think fit when developing proposals. This can include existing Pacific advisory boards in Auckland. There is no intention to make this a statutory requirement.

The role of the Mayor of Auckland includes ensuring there is effective engagement between the Auckland Council and the people of Auckland. Establishment of the Pacific Peoples Advisory Panel is consistent with this responsibility, and in considering proposals for the Mayor to involve the members of the Auckland Council.

There is no intention to seek a Cabinet decision to replace the Pacific Peoples Advisory Panel with a statutory board (i.e. Māori statutory board) or a committee.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 24 new section 35L without amendment.
Clause 25– Schedule

This clause amends the heading to the existing Schedule in the LGTMRA09.

Submissions
No submissions were received on this clause.

Officials’ Comment
PCO has proposed the omission of this clause as unnecessary.

Recommendation

We recommend that the Select Committee:

AGREE to omit clause 25.
Clause 26 – New Schedules 2 to 6 added

This clause adds new Schedules to the LGTMRA09.

These cover:
- the planning document to be prepared by the ATA (Schedule 2);
- election signs (Schedule 3);
- dissolution of CCOs (Schedule 4);
- employment provisions for employees transferring e.g. continuous service (Schedule 5); and
- redundancy and compensation provisions (Schedule 6).

Submissions
No submissions were received on this clause.

Officials’ Comment
No substantive changes are proposed to this clause but PCO has proposed drafting changes.

Recommendation
We recommend that the Select Committee:

AGREE to PCO making drafting changes to clause 26.
Proposed new provision in Part 1

Extending an Order in Council to provide trade waste services to 1 November 2010.

Officials Comment

Currently Watercare has a range of powers, including enforcement, in relation to trade waste under the Auckland Metropolitan Drainage Act 1960 and the Auckland Regional Council Trades Waste Bylaw 1991. These powers are vested in Watercare by the Local Government (Watercare Services Limited) Order 2007. The Order expires on 30 June 2010. There is, therefore, a hiatus between 1 July 2010 and 1 November 2010 where Watercare will have no mandate to execute the relevant trade waste bylaws.

To ensure that Watercare can continue to undertake its trade waste functions, it will be necessary to extend the expiration of the Local Government (Watercare Services Limited) Order 2007 from 30 June 2010 to 31 October 2010.

Recommendation

We recommend that the Select Committee:

AGREE to amend the Bill to extend the expiration date of the Local Government (Watercare Services Limited) Order 2007 from 30 June 2010 to 31 October 2010.
Proposed New Clause –Interim Remuneration Authority Determination

Officials’ Comment

It is desirable that prospective candidates for Auckland Council and local board positions are aware of the levels of remuneration for those positions. The LGACA09 included local board positions in the list of positions (in Schedule 7 to the LGA02) within the jurisdiction of the Remuneration Authority. However there is no deadline for determining the remuneration for those positions.

There is also no statutory authority for determining the remuneration of the Mayor and councillors of Auckland Council before that Council comes into being on 1 November 2010.

It is therefore proposed to insert a new clause in Part 1 of the Bill, to require the Remuneration Authority to issue an interim determination for Auckland Council and local board positions by 15 July 2010. It is also proposed to insert a clause in Part 3 of the Bill providing that the determination remains in force, for the purpose of payments to elected members, until a new determination is made under the LGA02 provisions.

Recommendation

We recommend that the Select Committee:

AGREE to amend the Bill:
(c) to insert a new provision in Part 1 requiring the Remuneration Authority to issue an interim determination for the remuneration of Auckland Council and local board positions by 15 July 2010; and
(d) to insert a new provision in Part 3 providing that the interim determination remains in force until a fresh determination of the remuneration of Auckland Council and local board positions under the Local Government Act 2002.
Part 2 – Sections 27 to 45 amend the Local Government (Auckland Council) Act 2009

This Part covers amendments to the LGACA09 which established the Auckland Council and set out the matters in relation to its structure and functions, duties and powers that differ from the general provisions applying to local authorities under the LGA02 and other local government legislation. In addition to amending existing provisions of the Act, clauses 27 to 46 insert new provisions for transport management for Auckland, water supply and wastewater services, spatial planning, and the establishment of a board promoting issues of significance for mana whenua and Māori of Tamaki Makaurau.
Clause 27 – Principal Act amended

This clause states that this part of the Act amends the principal Act.

Submissions
No submissions were received on this clause.

Officials’ Comment
No changes are proposed.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 27 without amendment.
Clause 28 – Commencement

This clause amends the commencement provision in the principal Act.

Submissions
No submissions were received on this clause.

Officials’ Comment
No changes are proposed.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 28 without amendment.
Clause 29 – New section 3 substituted

This clause inserts a new section into the principal Act.

New Section 3 Purpose
This clause substitutes a new purpose statement in the LGACA09 to recognise the additional provisions inserted by this Bill.

Submissions
Two submitters recommended that the wording should be changed from “to promote issues of significance for mana whenua and Māori of Tamaki Makaurau” to “advise and decide on issues…”

Officials’ Comment
The proposed changes are not consistent with the role of the statutory board.

Recommendation

We recommend that the Select Committee:

AGREE that clause 29 be amended consequently if required.
Clause 30 – Interpretation

This clause amends section 4 the principal Act by inserting definitions of key terms used in the additional provisions inserted by this Bill.

Submissions

Three submitters recommended renaming local boards as “community boards” to better reflect their role.

One submitter recommended a definition of “stand-alone” be inserted as a consequence of the “water supply” and “wastewater services” definitions.

Officials’ Comment

Submitters have commented in relation to both this provision and in respect of the proposed section 35J of the LGTMRA09 that there needs to be a clearer definition of ‘stand-alone’ water supply and wastewater schemes. The intention of this provision is that those schemes operated outside of Auckland’s reticulated water and wastewater network should not be transferred to Watercare. As noted above, there are hundreds of such supplies and schemes in Auckland which are owned and managed by many organisations such as, private home owners, groups of farmers, industry, marae and schools. It may be helpful, for the sake of clarity, to specify that the definition of water supply and wastewater scheme in clause 30 be amended to specifically not include privately owned schemes.

Some submitters have also indicated (in relation to clause 24, section 35J) that stormwater should be specifically excluded from the definition of water supply and wastewater services. The intention is to exclude ‘stormwater’ from the water supply and wastewater services. To avoid doubt, the definition should be amended appropriately.

Recommendation

We recommend that the Select Committee:

**AGREE** that the definition of ‘water supply and wastewater services’ in clause 30 of the Bill be amended to specifically exclude privately owned assets and stormwater.
Clause 31 – Relationship between this Act and Local Government Act 2002 and Local Electoral Act 2001

This clause amends section 5 of the principal Act which defines the relationship between that Act and other Acts which may contain sections with similar jurisdiction.

Submissions
One submitter recommended this clause be deleted, and section 5 of the principal Act be repealed, on the grounds of opposition to the principal Act prevailing over the other Acts cited.

Officials’ Comment
This clause refers to section 5 of the LGACA09 which defines the relationship between that Act and other Acts which may contain sections with similar jurisdiction. Given that these Acts exist in parallel and could be read as containing conflicting provisions it is important to ensure that the relationship between these Acts is clear.

The LGACA09 was enacted to recognise and provide for the particular situation in Auckland as a result of Government decisions on the Royal Commission’s report on Auckland Governance. The LGACA09, the LGTMRA09 and this Bill make up a suite of legislation which is Auckland specific and which reflects the new form and of local government structures in Auckland arising from this reform.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 31 without amendment.
Clause 32 – Auckland Council established

This clause makes a minor technical amendment to section 6 of the principal Act.

Submissions

One submitter recommended a further amendment to section 6 to introduce a statement of the purpose of the Auckland Council.

Officials’ Comment

The purpose of local government and the role of a local authority are defined in the LGA02. The Auckland Council is a local authority and therefore its purpose is to fulfil the responsibilities of a local authority for Auckland. No additional statement of purpose would be appropriate.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 32 without amendment.
Clause 33 – Decision-making of Council shared between governing body and local boards

This clause requires the Auckland Council’s governance statement to outline how decision-making is shared between the governing body and local boards.

Submissions

Three submitters recommended additional amendments to section 7 of the principal Act, as follows:

- the Bill should include a governance arrangement requiring Auckland Council and local boards to work collaboratively with CCOs on local activities. The arrangement should allow for local boards to contribute to the development of programmes for transport, economic development, tourism, major events etc; and
- the clause should provide stronger signals to the governing body and local boards that social development needs have equal priority to other aspects of wellbeing.

Officials’ Comment

The issues raised in submissions on this clause are addressed in the comments and changes proposed in relation to clause 38.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 33 without amendment.
Clause 34 – Mayor of Auckland

This corrects a typographical error in the principal Act.

Submissions

There were seven submissions on mayoral powers and responsibilities, the main points being:

- the Mayor of Auckland had too much power, and should have the same powers and responsibilities as the mayors of other local authorities;
- the Mayor should be elected on a second vote system similar to London; and
- there needs to be a supportive structure for the Mayor’s involvement in social issues. The legislation should provide strong signals about the importance of improved social policy capability within the council.

Officials’ Comment

The majority of these submissions raise issues regarding the substantive provisions of section 9 of the LGACA09 on the role and powers of the Mayor of Auckland. These issues were considered by the Select Committee and Parliament during the consideration of that Act.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 34 without amendment.
Clause 35 – Membership of local boards

This clause clarifies that members of local boards must be elected in accordance with the Local Electoral Act 2001, and must elect a chairperson from amongst themselves. This clause also clarifies that non-resident ratepayers may enrol as a ratepayer elector for a local board area if they meet certain requirements.

Submissions

Twenty submissions were received on this clause. Thirteen submitters opposed sub-clause (5) which relates to eligibility as a ratepayer elector in a local board area (the ratepayer franchise). The main points made in relation to sub-clause (5) were:

- submitters opposed the idea that landlords will have increased influence in local body elections as a result of owning multiple properties;
- the clause is unclear on the extent to which residents as distinct from property owners are enfranchised in one or several wards);
- the clause needs to provide that ratepayer electors must at least specifically apply every three years to go on the special roll for this purpose;
- in line with the principle of one person, one vote, people should only be entitled to enrol and vote at the place they regard as their home; and
- every eligible voter should only have one vote for the Auckland Council and one vote for the local board area in which they reside.

Other matters raised in relation to membership of local boards were:

- the minimum size of a local board should be five;
- membership of local boards should include Tangata Whenua, Pasifika, and Ethnic community representatives; and
- if councillors are prohibited from sitting on local boards they will lack understanding of local issues.

Officials’ Comment

The LEA, through its non-resident franchise provisions, allows ratepayers who are not residential electors in an area, but who pay rates in that area, to enrol or nominate someone to vote in that area’s election. The provision is long standing. This clause applies the same provision to the election of local boards to maintain consistency between Auckland and the rest of New Zealand.

Further work on the membership of local boards has been undertaken. The initial membership of the local boards was determined by the LGC under the provisions in Part 3 of the LGACA09. Those provisions set a minimum of four and maximum of nine members for each board. No provision was made however for the number of ongoing local board members.

The determination of the LGC on the membership of local boards has resulted in no board with fewer than five members (only the two smallest board areas – Waiheke
Island and Great Barrier – have five members). A minimum number of four members would result in a quorum of only two members being required to make decisions, which officials consider too small a number to promote robust decision making. Officials recommend that the minimum number of members be revised from four to five.

In addition, provision could be made for a modest increase to the maximum number of members of a local board in case experience over the first six years of their existence, and population changes, indicate more than nine is desirable. The current maximum number of members for a community board is set at 12, and it would be hard to justify a lower maximum given the greater responsibilities of local boards and the populations that they serve.

Officials therefore propose that the Bill be amended to set five as the ongoing minimum number of members of a local board and 12 as the statutory maximum.

**Recommendation**

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<tr>
<th>We recommend that the Select Committee:</th>
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<td><strong>AGREE</strong> that the Bill be amended to set five as the ongoing minimum number of members of a local board and 12 as the statutory maximum.</td>
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Clause 36 – New section 11A inserted

This clause inserts a new section into the principal Act.

**New section 11A Indemnification and liability of local board members**

This clause inserts a new section in the principal Act to provide that local board members have statutory indemnity as if they were a member of a local authority, but members are only liable in respect of matters that are the responsibility of a member’s local board.

**Submissions**

Three submitters proposed that the clause be amended to make local boards local authorities, and their members local authority members, for most purposes and not just for the purposes of sections 43-47 of the LGA02.

**Officials’ Comment**

In the main local board members do have responsibilities and liabilities of local authority members.

**Recommendation**

We recommend that the Select Committee:

**AGREE to retain clause 36 without amendment.**
Clause 37 – New section 13A inserted

This clause inserts a new section into the principal Act.

New section 13A Local boards may be subject of reorganisation proposal

This clause clarifies that the establishment or abolition of a local board area, the alteration of local board boundaries and the union of two or more local board areas must be dealt with as reorganisation proposals under the LGA02.

Submissions

Four community boards and two other submitters made recommendations on the clause, as follows:

- the clause should provide that a reorganisation proposal can only be made following consultation with all affected parties, including the local board, affected communities and the LGC;
- the clause should be amended to include in possible reorganisation proposals the subdivision of a local board and boundaries, the division of a local board into two or more boards, or for new boards to be created out of two or more boards;
- the Auckland Council should be able to comment on any proposals put forward by boards or by local residents, but it should not be able to act as a filtering, determining or vetoing body; and
- clarify that changes are defined by the LGC.

Officials’ Comment

All the recommendations made by submitters are already provided for in, or as a consequence of, this clause, with the exception of the desire for reorganisation proposals to deal with the subdivision of a local board and the boundaries of subdivisions. Electoral subdivisions of local boards are matters that can be dealt with in a representation review as proposed in new section 83C in clause 45.

Recommendation

We recommend that the Select Committee:

| AGREE to retain clause 37 without amendment |
Clause 38 – Decision-making responsibilities of governing body

This clause clarifies that the governing body of the Auckland Council is responsible for decisions relating to the governance of its CCOs (with input from local boards before making those decisions). The insertion of this responsibility in subsection (1) of section 15 of the principal Act makes decisions subject to subsection (2) of that section, including the requirement that the governing body must “consider any views and preferences expressed by a local board, if the decision affects or may affect the responsibilities or operation of the local board or the well-being of communities within its local board area.”

Submissions

Eight submissions were made recommending matters relevant to the decision-making responsibilities of the governing body.

One submitter recommended that there should be no legislative restriction on the Auckland Council restructuring its group structure at any time, and that general local government legislation is relied on instead. The submitter recommended that no legislative provision should be made that would constrain the Council’s ability to determine the governance structure it uses in relation to its CCOs.

Other submitters took the opportunity to propose:

- the Auckland Council and its local bodies should be required to hold annual general meetings of ratepayers;
- the Council should form a “local board committee” comprising representatives from councillors and local boards;
- the Council needs to consider the maintenance of “protected areas” in major planning documents;
- the Council should not be able to set up CCOs for core services;
- the Council needs to have a fully-integrated waste minimisation plan;
- a general provision should be included that requires all CCOs to consult with local boards on the scope and priority of works in a local body area; and
- the Council must consult local boards on the development of the Regional Land Transport Strategy and the Land Transport Plan.

Officials’ Comment

Additional provisions proposed in this report in relation to the accountability of CCOs to the Auckland Council (CCO accountability policy, requirement to give effect to certain Council plans) will strengthen the levers available to the Council to ensure that CCOs are responsive to local boards.

The Auckland Council will have a powerful accountability mechanism through its ability to determine the specific purpose of funding made available to substantive CCOs in its LTCCP. This will include projects or levels of service decided through the local board agreement process.
Inclusion of local board agreements in the LTCCP will set a strong expectation of delivery by CCOs, unless there are good reasons otherwise.

The provisions in the Bill also need to be amended to confirm the regional nature of transport funding decision-making, and clarify that transport funding decisions will be made by the governing body informed by the views of local boards.

The governing body of the Council will be responsible and democratically accountable for the Council’s decision-making in respect of transport objectives and funding. This would, however, be subject to an existing requirement within the LGACA09 to consider the views and preferences of local boards.

**Recommendation**

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<tr>
<th>We recommend that the Select Committee:</th>
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<tr>
<td><strong>AGREE</strong> to amend clause 38 to clarify that transport funding decisions will be made by the governing body informed by the views of local boards.</td>
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Clause 39 – Decision-making responsibilities of local boards

This clause inserts a principle recognising the desirability of local boards collaborating and cooperating with each other where interests align.

Submissions

There were 111 submissions on this clause. The predominant theme from the submissions was that the Bill does not give sufficient detail about the powers, roles and responsibilities of local boards, their relationship with the governing body of the Auckland Council and CCOs, the allocations and delegations they will hold from the Council, and whether they will be required to operate within the parameters of a regional strategy and policy framework. It was submitted that local boards must be given clear powers to control local issues. It was consistently submitted that all of these matters should be contained in the Bill.

In addition to this predominant theme, submissions were made as follows:

- the Bill’s delegation of the allocation of local board functions to the ATA undermines the democratic process as the ATA is not required to consult the public;
- Waiheke Island residents want their local board to have the power to administer their own resource consents and to have a legislated role in all capital expenditure decisions and planning decisions affecting Waiheke;
- a regional arts and culture strategy is necessary to ensure integrated decision making across the Auckland Council and its boards;
- the Bill needs to ensure there is consistency between local board decisions and Council policy;
- the clause adding a duty to collaborate be deleted, leaving local boards with the freedom, but not the requirement, to cooperate and collaborate;
- there should be a provision for local boards to deal direct with CCOs where there is local impact;
- local boards should be required to hold annual meetings of ratepayers;
- a clear procedure is needed for the recommendation of bylaws by local boards to avoid inconsistencies across the city;
- local boards should be allowed to own property;
- the core powers and duties of local boards should be in the legislation, but not a fixed and prescriptive list; and
- amend section 17(2)(b)(iii) of the LGACA09 to read “will significantly outweigh…,” to give more priority to local decisions being made locally.
Officials’ Comment

Powers and functions are given to local boards in three ways under the provisions of the Auckland Council Act. They are either:

- statutory functions set out in the legislation (e.g. their bylaw proposing powers; powers under section 13 and 16 relating to representation of their local communities; and monitoring powers under section 23); or
- non-regulatory decision making responsibilities allocated by the governing body in accordance with section 17; or
- functions delegated by the governing body under section 31.

The ATA has responsibility for performing the initial allocation of decision-making responsibilities under section 17. It is, however, the Auckland Council, rather than the ATA, that has the responsibility for any delegations.

Submitters on the Bill, including some councils and numerous community boards, believe that the responsibilities of local boards, including those allocated under section 17 or delegated under section 31 of the LGACA09, should be listed in the Bill. Some were concerned that the future Auckland Council would reverse the allocations made by the ATA and that enshrining them in legislation would prevent this from happening.

The LGACA09 articulates a principles-based approach to the allocation of non-regulatory functions between the governing body and local boards, rather than listing the functions in legislation. This approach was based, in part, on the understanding that the range of activities that are to be undertaken by individual local boards could vary, depending on the circumstances of each board, and be likely to change over time.

Officials consider that this principles-based approach is the only practicable way for the Auckland Council to be able to manage the allocation of functions to its local boards. A more prescriptive approach would limit the Council’s ability to respond to changing local preferences and the differing nature of Auckland’s diverse communities. Officials consider that the existing provisions in the Auckland Council Act set out a clear requirement for the governing body to allocate decision-making to the local boards, unless specific conditions apply.

As this issue has generated considerable public interest, and to provide some certainty for local board members and the communities they are to represent, it is proposed that the Bill be amended to provide that the initial allocation of local board decision-making responsibilities for non-regulatory activities by the ATA remain fixed, as a minimum baseline, until the completion of the Auckland Council’s LTCCP in 2012. This provision will need to be in Part 3 of the Bill, and is recommended in the context of the proposed new clause after the item on clause 87 in this report.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 39 without amendment.
Clause 40 – Local board plans

This clause amends section 40 of the principal Act to recognise that a local board plan may propose a broader range of local revenue sources to augment the local boards budget, including a targeted rate, fee or charge, or any other revenue connected with a local activity.

Submissions

There were 45 submissions on this clause, 16 of which related to local revenue sources and 29 of which commented more generally on local board plans and their associated budgets.

The main points made in respect of local revenue sources were:
- the criteria that triggers the need for local boards to recommend the raising of local revenue needs to be specified;
- the Bill should be amended to require the Auckland Council to adopt a local revenue source policy outlining the types of activities for which local revenue sources may be used;
- clarify if the intention is to determine a standard level of service and require a targeted rate for any funding required above the standard;
- targeted rates can leave vulnerable communities isolated and under funded;
- the provision could result in local boards setting varying fees for their area while the Bill is trying to standardise things in Auckland;
- the Bill should specify the range of local revenue sources;
- the Bill should include controls on the use and necessity of targeted rates, fees and charges; and
- wharf charges should be collected by local boards to fund facilities for visitors and the community.

The main points raised on local board plans and budgets were:
- thirteen councils and Community Boards recommended changes to the timing of the completion date for local board plans. They suggested changes to align the plans with the LTCCP process, or extend from 30 April to either 30 June or 30 September in the year following an election;
- the plan should be supported by bulk funding; and
- section 21(2) of the LGACA09 should be amended to allow the further exception of “the governing body and the local board both agree to the change”.

Officials’ Comment

This clause broadens the definition of local revenue source. Providing for local revenue sources provides flexibility for local boards. Any proposals for using local revenue sources would be included in local board plans and agreements which are subject to the special consultative procedure.
Currently the LGACA09 requires each local board to have developed a local board plan by 30 April of the year following the triennial local body elections, having followed the special consultative procedure in the LGA02.

This would require local boards to develop a draft local board plan by February following the election, undertake the special consultative procedure, and then adopt the final plan by 30 April that year in order to feed into the annual plan by June.

There is a risk that this timeline would not allow for an adequate consultation process or for new local board members to familiarise themselves with the issues and their role.

Officials recommend that the Bill be amended to require local boards to develop their draft local board plans by August following the election, with final plans completed by 31 October. This timing would still allow freshly developed local board plans to be reflected in each LTCCP of the Auckland Council.

Local board agreements provide the mechanism for the Auckland Council to include the preferences of each local community in the Council’s LTCCP. The current wording of the LGACA09 does not, however, limit the scope of the agreements to issues under the purview of local boards. It also does not explicitly require the content of the agreements to be consistent with strategies, plans and policies adopted by the governing body.

It is also proposed that the Bill be amended make it more explicit that:
- local board agreements are limited in scope to those things defined as local activities under section 17 of the LGACA09; and
- agreements must be consistent with the strategies, plans, policies and objectives of the governing body of the Auckland Council.

We recommend that the Select Committee:

**AGREE** to amend:

(c) clause 40 to require local boards to develop their draft local plan by August following an election, with final plans completed no later than 31 October; and

(d) the Bill to make it clear that local board agreements:

(i) are limited in scope to:
- local activities as defined in the Local Government (Auckland Council) Act 2009;
- matters delegated by the governing body under section 31 of that Act;
- matters related to local bylaws; and

(ii) must not be inconsistent with strategies, plans, policies and objectives of the governing body.
Clause 41 – Application of Schedule 7 of Local Government Act 2002 to local boards

This clause clarifies that local boards and their members are subject to Schedule 7 of the LGA02 and associated penalties. This Schedule outlines provisions relating to local authorities and their members and covers issues such as vacation of office, remuneration, conduct, election of chair, meetings, and delegations.

Submissions
One submitter opposed the clause in the context of a general concern about the roles and functions of local boards not being specified in the Bill.

Officials’ Comment
This concern does relate directly to this clause.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 41 without amendment.
Clause 42 – Powers of Minister in relation to local board

This clause inserts new sections in the principal Act:

New section 32A Powers of Minister in relation to local board

Section 32A clarifies that the (limited) statutory powers of the Minister of Local Government to review a local authority and appoint a review authority and/or Commissioner, or call a new election, apply to local boards as if they were local authorities.

New section 32B Application of certain Acts to local boards

Section 32B provides that the Ombudsmen Act 1975, Local Government Official Information and Meetings Act 1987, and the Local Authorities (Members’ Interests) Act 1968 apply to local boards.

Submissions

Local Government New Zealand (LGNZ) opposed the clause on the grounds that issues of board performance should, in the first instance, be left to the Auckland Council or Auckland citizens to resolve. LGNZ recommended that the clause be replaced by a provision requiring a special election for local boards if requested by a community petition, representing 10% of registered voters or a review undertaken on behalf of the Auckland Council.

Officials’ Comment

Local boards are part of the Auckland Council. It is therefore appropriate that the Minister’s ability to review a local authority include the ability to review a local board. The proposal in the submission would suggest that local boards are accountable to the governing body when in fact their relationship is complementary.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 42 without amendment.
Clause 43 – Local Government Commission to determine boundaries of Auckland

This clause makes reference changes in the principal Act to recognise the renumbering of Schedules required by the Bill.

Submissions
Several submitters took the opportunity to seek changes to Auckland boundary decisions, and to query ward boundary matters within the jurisdiction of the LGC.

Officials’ Comment
The majority of these submissions raise issues regarding the substantive provisions of section 33 of the LGACA09 providing for the LGC to determine the boundaries for Auckland. The issues concerning the boundaries of Auckland were considered by the Select Committee and Parliament during the consideration of that Act.

The LGC has subsequently issued its determinations in accordance with section 33 of the LGACA09. During the process of making its determinations, the LGC considered a number of representations on boundary issues.

Recommendation

| We recommend that the Select Committee: |
| AGREE to retain clause 43 without amendment. |
Clause 44 – Order in Council to give effect to determinations

This clause amends section 35 of the principal Act to:
- provide that the alteration of boundaries occurs at the close of 31 October 2010; and
- clarify that section 81 of the Resource Management Act 1991, which deals with the operation of that Act in the event of boundary adjustments, applies to the alteration of boundaries under the principal Act.

Submissions
No submissions were received on this clause.

Officials’ Comment

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 44 without amendment.
Clause 45 – New Parts 4 - 8 substituted

This clause inserts new Parts 4 to 8 (new sections 37 to 85) into the LGACA09.

New Part 4 – Transport management for Auckland

New Part 5 – Water supply and wastewater services for Auckland

New Part 6 – Spatial Planning for Auckland

New Part 7 – Board promoting issues of significance for mana whenua and Māori of Tamaki Makaurau

New Part 8 – Miscellaneous
Clause 45 cont.

New Part 4 – Transport management for Auckland

New section 37 – Interpretation

This section defines terms used in the new Part 4.

Submissions

The points raised in submissions on this clause were:

- the Bill should use the definition of Auckland Regional Transport System from the Local Government (Auckland) Amendment Act 2004;
- the definition of “Auckland transport system” lacks the necessary precision to enable a clear allocation of functions and responsibilities between Auckland Transport, Auckland Council and local boards, and the inter-relationships are not clear;
- the Bill should clarify responsibilities for pathways, walkways and public access areas;
- local transport issues such as footpaths, local roads, local public transport and local traffic improvements should be dealt with by local boards;
- parking facilities and park and ride facilities should be the responsibility of Auckland Transport rather than individual local boards; and
- this definition will give Auckland Transport control over commercial public transport services.

Officials’ Comment

The broad intention of the definition is to maintain the status quo. Those parts of the transport system currently managed as transport assets by local government should be controlled by Auckland Transport as transport assets.

Auckland Regional Transport System definition

The definition of Auckland Regional Transport System used in the Local Government (Auckland) Amendment Act 2004 relates to the nine agencies charged with managing the system rather than describing what is being managed. That definition will not work in the context of Auckland Transport.

‘Roads’ is defined too broadly

The Bill uses the existing LGA02 definition of a road. That definition is appropriately ‘fence to fence’. There will be some anomalies, particularly where local authorities continue to hold land as a ‘road’ when it is actually used for other purposes (e.g., recreation reserve), but these anomalies can be resolved over time by Auckland Council and Auckland Transport.
Public Transport Services

The only powers Auckland Transport is given in relation to public transport services are the powers of a regional council to manage and control public transport services under the Public Transport Management Act 2008.

Public transport infrastructure

Rather than defining public transport infrastructure, we propose amending paragraph (1)(a)(iii) of the definition to refer to public transport infrastructure that is owned by Auckland Transport or the Auckland Council. There may still be some marginal cases where Auckland Council and Auckland Transport will need to agree on how to apply the provisions, particularly where the distinction between ‘off-street parking’ and ‘park and ride’ is not clear. As with ‘roading’, these ‘public transport’ interpretation issues at the margins are best resolved by Auckland Council and Auckland Transport as they arise.

The assets used within the rail corridor are also under mixed control. The ‘railway’ exclusion also needs to be extended to make it clear that ‘railways’ relates to the assets that are under the control of the New Zealand Railways Corporation.

Off street car parking

Car parking straddles the boundaries of the transport system. It is very difficult to distinguish legislatively between car parks associated with specific community facilities and public car parks for a cluster of uses on another site. However, the Council may delegate off-street car park management to Auckland Transport.

Other terms

We propose deletion of a number of terms that are not used in this Part or the associated primary legislation and clarifying that State highways have the same meaning as in the LTMA03

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 45 new section 37 along the following lines:

“37 Interpretation
“(1) In this Part and Schedule 2, unless the context requires another meaning,
“Auckland transport system
“(a) means—
“(i) the roads (as defined in section 315 of the Local Government Act 1974) within Auckland; and
“(ii) the public transport services (as defined in section 4 of the Public Transport Management Act 2008) within Auckland; and
“(iii) the public transport infrastructure owned by and under the control of Auckland Transport or the Auckland Council; but
“(b) does not include
“(i) State highways:
“(ii) railways under the control of the New Zealand Railways Corporation:
“(iii) off-street parking facilities under the control of the Council:
“(iv) airfields

“board of directors or board means the board of directors of Auckland Transport
“director includes the chairperson and the deputy chairperson of the board of directors
“interested or interest has the meaning in clause 14 of Schedule 2.

“(2) In this Part and Schedule 2, unless the context requires another meaning, land transport, regional land transport programme, and State highway have the same meanings as in section 5(1) of the Land Transport Management Act 2003.”
Clause 45 cont.

New Part 4 – Transport management for Auckland

New section 38 – Establishment of Auckland Transport

This section establishes Auckland Transport as a CCO of Auckland Council with Auckland Council as a sole shareholder.

Submissions

The majority of the 243 submitters who commented on this new Part were opposed to the establishment of a CCO for transport.

Many submitters considered that Auckland Transport should be an in-house business unit of Auckland Council, fully accountable to the Council, with some arguing that land use and transport planning and delivery needed to be managed by the same organisation as the two issues are strongly related.

Others felt that Auckland Transport functions must be controlled by elected councillors.

Some submitters recommended an early review of the CCO.

Officials’ Comment

An appointed Auckland Transport board will bring a greater focus on transport delivery than the Auckland Council with its multiple functions and responsibilities could provide. An Auckland Transport board would also provide greater continuity in investment and operational decisions than is likely to occur with an elected council. An arms-length entity will also draw on a wider pool of professional governance experience than a council alone.

We recommend that subsection (3) be deleted. The effect of this recommended change will be that the standard CCO provisions in the LGA02 will apply in full (including the principal objective of a CCO in section 59 of that Act), instead of the customised provisions currently included in the Bill.

We further recommend amendments to section 15 of the LGACA09 to clarify that the governing body of the Council is responsible and democratically accountable for the Council’s decision-making in respect of transport objectives and transport funding under section 15(2). This includes the duty to consider the views and preferences of local boards. These are dealt with in relation to clause 38.
Recommendation

We recommend that the Select Committee:

AGREE to amend clause 45 new section 38 by omitting subsection (3).
Clause 45 cont.

New Part 4 – Transport management for Auckland

New section 39 – Objective of Auckland Transport

This section states the objective of Auckland Transport as being to contribute to an affordable, integrated, safe responsive and sustainable land transport system for Auckland.

Submissions

Submissions recommended variously that the objectives should include:

- contributing to the economic, environmental, cultural, and social well-being of Auckland;
- giving effect to the strategic objectives of the Auckland Council as set out in the spatial plan and regional land transport strategy; and
- contributing to the effective and sustainable integration of land use and transport.

Officials’ Comment

Auckland Transport, as a statutory entity, needs a clear purpose to give it direction and focus. We propose replacing the existing objective with a purpose that requires Auckland Transport to contribute to an efficient and effective land transport system to support Auckland’s economic, social, cultural and environmental wellbeing.

The change in terminology is driven partly by the need to provide a clear sense of direction for the organisation, and partly by the changes to the governance provisions (see new section 38, above) meaning that the “principal objective” of Auckland Transport will now be as stated in section 59 of the LGA02.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 45 by omitting the current new section 39 and replace with a new section entitled “Purpose of Auckland Transport”, to provide that the purpose of Auckland Transport is to “contribute to an efficient and effective land transport system to support Auckland’s economic, social, cultural and environmental wellbeing”.
Clause 45 cont.

New Part 4 – Transport management for Auckland

New section 40 – Status and powers of Auckland Transport

This section states that Auckland Transport has full power to act, subject to the LGACA09.

Submissions

Points included:
- Auckland Transport should not be granted a power of general competence;
- Auckland Transport should seek Auckland Council approval before entering into transactions related to the establishment or disposal of assets;
- accountability arrangements must be consistent with those for Crown agents.

Officials’ Comment

Auckland Transport has a prescribed set of functions and powers. In order to undertake those functions it needs the powers of a body corporate and the ability to control the assets that make up the Auckland Transport System.

Auckland Transport will have a higher level of accountability than a Crown agent (such as the NZTA) under the Crown Entities Act 2004, as the governing body will be unconstrained in how it funds Auckland Transport.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 45 new section 40 without amendment.
Clause 45 cont.

New Part 4 – Transport management for Auckland

New section 41 – Functions of Auckland Transport

This section outlines the functions of Auckland Transport, which are to:

- prepare the regional land transport programme for Auckland;
- manage and control the Auckland transport system;
- carry out research, training and education;
- exercise or perform the statutory functions and powers set out in new section 42 in relation to the Auckland transport system as if it were a regional council, territorial authority, or other statutory body;
- undertake any other transport functions that the Council may lawfully direct it to exercise or delegate to it; and
- undertake any other functions conferred by an enactment.

Submissions

Submissions stated that:

- local transport issues should be dealt with by local boards as part of their legislated duties. Delegations must come from Auckland Transport to local boards; and
- clause 41(e) should be amended so that it refers to “transport-related” functions.

Officials’ Comment

Transport operates as a regional network although it also has local impacts. Decisions therefore need to be funded and controlled in a regional context that is informed from a local perspective.

We recommend amendments to new section 41(c) to improve clarity and the addition of a new paragraph to enable the NZTA to delegate to Auckland Transport (as it currently does to existing councils) matters in respect of State highways under section 62 of the Government Roading Powers Act; and under section 73 of the Crown Entities Act 2004. This requires a consequential amendment that is dealt with in relation to Schedule 3.

We also propose saving any existing delegations under both the Government Roading Powers Act 1989 and the Crown Entities Act 2004.
Recommendation

We recommend that the Select Committee:

**AGREE** to amend clause 45 new section 41 by:

(c) expressing paragraph (c) as being “for the purpose of 41(b)” or similar;

(d) adding a new paragraph to enable Auckland Transport to:

"undertake any functions or powers in relation to the management of the State highway system that the New Zealand Transport Authority may lawfully delegate to it”.

We recommend that the Select Committee:

**AGREE** to amend the Bill by adding a savings provisions, under Part 3 of the Bill for existing New Zealand Transport Authority delegations along the following lines:

“Delegations by the New Zealand Transport Authority to an existing local government organisation, which are in relation to the Auckland transport system and in effect immediately before 1 November 2010, continue to have effect and are deemed to be delegations to Auckland Transport.”
Clause 45 cont.

New Part 4 – Transport management for Auckland

New section 42 – Functions and powers of Auckland Transport acting as local authority or other statutory body

This section confers on Auckland Transport the functions and powers of a local authority or an enforcement authority under specified certain enactments.

Submissions

Submitters on this clause submitted that:

- some of the proposed bylaw making powers may not be appropriate for Auckland Transport. There should be a provision similar to that for Watercare, i.e. Auckland Council has the bylaw making power but Auckland Transport can propose a bylaw and consult on it with the approval of the Council;
- Auckland Transport should be required to use the special consultative procedure when making bylaws;
- there is no provision to allow local boards to propose bylaws to Auckland Transport and ensure they are formally considered;
- the reference to tolling schemes should be deleted as road tolling is an unfair and inefficient road funding mechanism;
- there is a concern that transport-specific bylaws will transfer to Auckland Transport;
- add a further paragraph to 42(1) to enable Auckland Transport to perform the functions and powers of a road controlling authority under any rules made pursuant to section 157(a), (e) or (f) of the Land Transport Act 1998; and
- Auckland Transport should not be able to stop roads and declare pedestrian malls.

Officials’ Comment

Bylaw making powers

Bylaw making powers are an integral part of road controlling authority powers. Transport activities are almost always a blend of infrastructure and regulatory interventions and Auckland Transport’s powers need to reflect this. The NZTA has exercised bylaw making power for years without significant issues arising.

Tolling powers

Tolling policy is established under the Land Transport Management Act 2003 and is outside the scope of this legislation.
Stopping of roads and pedestrian malls

Stopping roads or preventing normal traffic flow on roads has impacts across the network, as traffic will shift to other parts of the roading network. Decisions to limit traffic access or stop roads cannot be made in isolation of the impacts on the rest of the Auckland transport system. These powers should therefore rest with Auckland Transport.

Road controlling authority powers

Land Transport Rules made under the Land Transport Act 1998 empower road controlling authorities to carry out certain functions. New section 42(1)(c) gives control of roads to Auckland Transport under the Bill; consequently it is a “road controlling authority” for the purpose of Rules. However, to avoid doubt, we propose adding a provision explicitly providing that Auckland Transport has road controlling authority powers over the Auckland transport system.

Public Works Act powers

The intention of the Bill is to place Auckland Transport in broadly the same position as the NZTA in respect of its ability to acquire land for public works, in relation to the Auckland transport system. As drafted, new section 42(1)(f) gives Auckland Transport the power to acquire land. However, this is arguably not appropriate as in the central government system Land Information New Zealand acts on behalf of NZTA to acquire land and the title to land acquired vests in the Crown.

Auckland Council as the funder of Auckland Transport will in any event need to agree to most acquisitions by Auckland Transport as part of funding agreements. We recommend that the Auckland Council should exercise the acquisition power, with the agreement of Auckland Transport. This would be more comparable to the central government system.

Resource Management Act designations

There is a need for greater clarity that Auckland Transport is able to designate land for intended transport projects, outside the existing Auckland transport system.

Bylaws in respect of parking places and transport stations

In addition to the powers conferred under new section 42(1)(c), Auckland Transport also needs to be given the powers of a local authority under section 591 and 591A of the LGA to enable it to authorise use of any part of a road for use as a parking place or transport station. Transport stations include areas such as bus lay-bys, where buses park between runs. The bylaw making powers in section 591A include reserving disabled parks, creating residents parking zones, and prohibiting or restricting parking on specified residential roads.
Drafting clarification

As currently drafted there is some duplication of wording between section 41 and this section which could cause confusion when interpreting the provisions concerned. To address this, officials are proposing a number of technical changes to new section 42(1), as set out in the recommendations below.

To clarify that the ownership of the roads will rest with the Council officials are proposing a new paragraph for the avoidance of doubt.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 45 new section 42 by:

(h) adding a sub clause along the following lines:
   “for the avoidance of doubt, despite sub section 42(1)(c), all roads and the soil thereof, and all materials of which they are composed, vest in fee simple in the Auckland Council in the Auckland region, with the exception of State highways”;

(i) amend new section 42(1)(a) to provide that Auckland Transport may exercise the specified functions and powers in relation to a road, as defined in the Transport Act, but only to the extent that the road is part of the Auckland transport system (i.e. that it falls within the definition in the Local Government Act 1974);

(j) amending subsection (1)(d) to apply sections 591 and 591A of the Local Government Act 1974 as well as section 684;

(k) replacing subsection (1)(f) with a provision to the effect that the Auckland Council can exercise its functions and powers as a local authority under the Public Works Act 1981 in relation to Auckland transport system related public works, with the agreement of Auckland Transport;

(l) clarifying in paragraph (1)(g) that the designation power can be exercised by Auckland Transport in respect of any transport-related activity within Auckland for which it is, or will be, responsible (whether or not the land subject to the designation currently forms part of the Auckland transport system);

(m) Amend new section 42(1)(h) to include the functions and powers of a road controlling authority and a territorial authority under the Land Transport Act 1998 (and any regulations and rules made under that Act), in relation to a road as defined in that Act but only to the extent that the road is part of the Auckland transport system (i.e. that it falls within the definition in the Local Government Act 1974);

(n) making the technical changes to subsection (1) along the following lines:
   - in the chapeau: insert “in relation to the Auckland transport system” after “powers”;
   - in paragraph (b): omit “in relation to the Auckland transport system”;

In the context of the transport system.
- in paragraph (d): omit "in relation to the Auckland transport system";
- in paragraph (e): omit "within Auckland".
- in paragraph (g): omit "in relation to transport activities within Auckland";
- in paragraph (i): omit "in relation to the Auckland transport system";
- in paragraph (j): omit "relation to" and substitute "respect of".
- in paragraph (k): omit "relation to" and substitute "respect of"; and omit "within Auckland".
Clause 45 cont.

New Part 4 – Transport management for Auckland

New section 43 – Council prohibited from exercising powers and functions conferred on Auckland Transport under section 42

This section states that the Auckland Council must not exercise any transport related power or function that has been conferred on Auckland Transport.

Submissions

Comments on this clause included:
- Auckland Council should be making the decisions and have the ultimate authority to resume powers initially conferred on Auckland Transport;
- this clause will allow unelected persons to control transportation and utilities;
- section 43(2) envisages a subsidiary delegating to its principal; and
- Auckland Transport should be allowed to delegate local transport issues to local boards.

Officials’ Comment

It is important to avoid a situation where two different entities have the same regulatory powers over the same roads or public transport services.

The purpose of the delegation provisions enabling Auckland Transport to delegate functions to the Auckland Council is to provide flexibility where decision making by the Council makes sense in a particular context. This includes delegating to local boards.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 45 new section 43 by adding words to the effect that section 43(1) does not prevent the Auckland Council from exercising the functions and powers referred to in section 42(1)(g) and (h) in relation to an area that forms part of the Auckland Transport system, for purposes that are not transport-related, but only with the agreement of Auckland Transport.
Clause 45 cont.

New Part 4 – Transport management for Auckland

New section 44 – Operating principles

This section outlines operating principles for Auckland Transport. Auckland Transport must:

- exhibit a sense of social, environmental and economic responsibility;
- establish processes for Māori to contribute to its decision-making;
- operate in a financially responsible manner;
- use its revenue efficiently and effectively, and in a manner that seeks value for money;
- ensure that its revenue and expenditure are accounted for in a transparent manner; and
- ensure that it acts in a transparent manner in making decisions under the LGACA09 and the Land Transport Management Act 2003.

Submissions

There was general support in the submissions for these operating principles. However, a number of submitters also urged that section 59 of the LGA02 should also apply to Auckland Transport in its own right.

Officials' Comment

As recommended under new section 38 above, we are proposing applying the standard CCO provisions in the LGA02, including setting the principal objective under section 59 which would create an overlap with new section 44. Overlapping provisions in section 44 should be omitted. We propose retaining the current operating principles around decision-making, value for money and transparency as transport-related objectives that will be supplementary to the principal objective.

We also recommend a technical amendment to the section, applying the principles to the exercise of powers as well as functions.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 45 new section 44 by:

(a) replacing the chapeau with words to the effect of “In exercising its powers and functions and meeting its principal objective under s59 of the Local Government Act 2002, Auckland Transport must - ”; and
(b) omitting paragraphs (a) and (b).
Clause 45 cont.

New Part 4 – Transport management for Auckland

New section 45 – Governing body of Auckland Transport

This section contains provisions establishing a board of directors as the governing body.

Submissions

Submissions made the following points:

- new section 45(2)(a) (which allows the appointment of two councillors to the board of directors) appears to contradict new section 76, which prohibits the Council from appointing councillors as directors of substantive CCOs;
- the major concern is that the majority of the board is appointed and cannot be councillors. Suggestions include increasing the number of elected councillor members, the Auckland Council appointing the chair and deputy, and appointing a non-voting member from the New Zealand Railways Corporation;
- current Auckland councils, not Ministers should appoint the directors;
- amend section 45 (2)(b) to provide that the person nominated by the NZTA must be a director of that agency. Another submitter recommended deleting the requirement for a nominee from the NZTA; and
- to provide clear accountability the chair, and possibly the deputy, should be appointed by the Auckland Council with the approval of the Minister of Transport.

Officials’ Comment

A balance is needed between ‘expert’ directors so that Auckland Transport adds value and elected members given the high level of funding the Auckland Council will spend on transport.

A maximum of two councillors provides a strong voice without councillors becoming a controlling block. As discussed in the overview to the transport provisions, the Auckland Council additionally has strong powers over Auckland Transport through its control of regional transport funding.

A non-voting director from the NZTA was included on the board because the NZTA is the other major funder of Auckland Transport. The Agency is directly represented on regional land transport committees, which in other regions carry out the functions that will be conferred on Auckland Transport in relation to regional land transport programmes. It is unnecessary to restrict who the NZTA could appoint to this role. The New Zealand Railways Corporation will not fund Auckland Transport.

As a consequence of the recommendations to apply the standard LGA02 provisions for CCOs (including sections 59 and 60), subsections (4) and (5) are superfluous and should be omitted. Subsection (3), enabling the chairperson and deputy chairperson to be elected by the board, should also be omitted and replaced with provisions...
enabling the Auckland Council to appoint the Chair and deputy Chair of the board provided that the appointees are not elected members of the Council.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 45 new section 45 by:

(c) omitting subsections (3) and (4); and

(d) replacing subsection (5) with a subsection providing that the Council may appoint the Chair and deputy, provided that the appointees are not elected members of the Council.
Clause 45 cont.

New Part 4 – Transport management for Auckland

New section 46 - Restriction on borrowing

This sections states Auckland Transport must not borrow any funds without the written agreement of the Auckland Council.

Submissions

Submitters wanted the Bill to be amended to require the transport agency to seek approval from the Auckland Council before it enters into any transaction which relates to the establishment or disposal of subsidiaries, securities, borrowing, guarantees, indemnities etc and related transactions that have the potential to create unbudgeted liabilities or commitments for the Auckland Council.

Another submitter recommended new section 46 be removed.

Officials’ Comment

Requiring Auckland Transport to seek approval before entering into any transactions with financial implications would unnecessarily restrict the ability for Auckland Transport to carry out its functions.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 45 new section 46 without amendment.
Clause 45 cont.

New Part 4 – Transport management for Auckland

New section 47 – Applications of certain Acts to Auckland Transport

This section clarifies that the Ombudsmen Act 1982 and the Local Government Official Information and Meetings Act 1987 apply to Auckland Transport, and that Part 7 of the latter Act applies to meetings of Auckland Transport when exercising its power to make bylaws.

Submissions

Submitters argued that Part 7 of the Local Government Official Information and Meetings Act should apply to all meetings of Auckland Transport.

Officials’ Comment

The section as drafted makes Auckland Transport subject to disclosure under the same disclosure rules that apply to any council controlled organisation or Crown Entity, including entities such as the NZTA. Those provisions allow Auckland Transport to meet in private if the Board chooses except for matters relating to bylaws. In addition to this requirement, Auckland Transport is required to act transparently under its operating principles. Under the proposed change to new sections 38 and 75, the Auckland Council could develop rules requiring Auckland Transport to act in a way that further limits the board’s discretion in this area. That will be a matter for resolution between Auckland Council and Auckland Transport.

Taken together these provisions impose a sufficient transparency requirement on Auckland Transport.

As a consequence of the decision to apply all the standard CCO provisions in the LGA02 to Auckland Transport, subsections (1) and (3) will become superfluous and can be omitted. However, subsection (2) should be retained as an addition to section 74 of the LGA02.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 45 new section 47 by:
(c) omitting subsections (1) & (3); and
(d) amending subsection (2) to complement the effect of section 74 of the Local Government Act 2002.
Clause 45 cont.

New Part 4 – Transport management for Auckland

New section 48 – Schedule 2 applies to Auckland Transport

Schedule 2 sets out provisions regarding the appointment, remuneration, role and duties, conflicts of interests and disqualification of Auckland Transport directors. It also sets out the procedures for board meetings, employment of staff and delegations, and accountability requirements.

Submissions

There were no submissions on this clause – Schedule 2 is dealt with separately in his report.

Officials’ Comment

The proposal to require the Auckland Council to determine rules relating to the operation of Auckland Transport, which will form part of its constitution for the purpose of section 6 of the LGA02, should be enacted as an amendment to this new section 48. As a consequence of that change, many of the provisions in Schedule 2 will become superfluous.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 45 new section 48 by inserting a new subsection requiring the Auckland Council to determine rules governing the activities of Auckland Transport which will form part of its constitution for the purpose of section 6(3)(d) and 60 of the Local Government Act 2002. Those rules should, without limitation, address the following matters:

(h) rules relating to the qualifications of directors, and the procedures for their appointment in accordance with section 45(2);
(i) rules relating to the cessation, removal, and remuneration of directors;
(j) the duties of directors and the powers of the board (although see below in relation to whether the existing provisions need to be retained in the Bill);
(k) procedures for the calling, holding, and conduct of meetings of the board;
(l) processes for the disclosure of conflicts of interest by directors;
(m) requirements in relation to the employment of staff, including a chief executive; and
(n) rules concerning the acquisition and disposal of significant assets.
Clause 45 cont.

New Part 5 – Water supply and wastewater in Auckland

This new Part sets out the functions, duties and powers of Auckland water organisations. It attracted 42 comments and recommendations in total.

New section 49 – Obligations on Auckland water organisations

This section sets out the key obligations for an Auckland water organisation, including managing operations efficiently and maintaining prices at minimum levels. This section also prohibits a water organisation from paying a dividend to the Auckland Council.

Submissions

One submitter strongly supported Watercare having a robust business plan and Statement of Intent that provides for a pricing structure that is competitive but, at the same time enables retention of sufficient funding for long-term maintenance, upgrade and capital improvements, and argued that new section 49 may need clarification in that regard. Other points were:

- the statutory obligation to charge minimum prices should be removed because underpricing of services leads to over-consumption and waste;
- the prohibition on the payment of a dividend by Watercare should be removed because 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;
- Auckland water organisations should have to comply with policies and directions of the Council;
- new section 49 should be amended to provide for Watercare to set aside a small proportion of their revenue for the restoration of damage done to cultural wellbeing, to assist mana whenua to re-establish cultural services near affected places;
- there should be an additional sub-section in 49(1) to provide that water services are to be provided and maintained with regard to public safety and the prevention of drowning; and
- Watercare should have responsibility for stormwater management.

Officials’ Comment

The removal of the existing minimum price requirement and the prohibition on dividends was considered but rejected to assist Watercare to maintain lower prices for its services. It is noted, however, that clause 71 of the Bill provides that Watercare must, in setting prices for its water and wastewater services, take into account any policies of, and comply with any direction given by, the Auckland Council. It is proposed that section 71 will be augmented by a range of provisions (discussed elsewhere) that will require substantive CCOs to give effect to the Auckland Council’s
long-term council community plan, and to act in a manner consistent with other council policies. This might include, for example, a requirement to assist mana whenua to re-establish cultural services near affected places, or means of ensuring that the most vulnerable can afford the cost of Watercare services.

On the issue of the Council guaranteeing Watercare’s borrowings, the Department recommends no change to this provision. The LGA02 currently provides that CCOs (other than council-controlled trading organisations (CCTOs)) can receive a council guarantee, indemnity or security in respect of the performance of any statutory function. Watercare will clearly not be a CCTO because CCTOs are defined as CCOs which trade to make a profit.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 45 new section 49 without amendment.
Clause 45 cont.

New Part 5 – Water supply and wastewater in Auckland

New section 50 – Auckland water organisation may propose bylaw

This section provides for the Auckland water organisation to propose bylaws relating to the management of supply water and wastewater. The Auckland Council must consider any proposed bylaw and decide whether it complies with relevant statutory requirements, is consistent with the Auckland Council’s strategies, policies, plans and bylaws, and whether the bylaw can be implemented and enforced efficiently.

Submissions

A number of submissions (in relation to the proposed section 51 below) considered that bylaws should be developed entirely by the Auckland Council for democratic accountability and transparency. One submitter wanted section 50(1) to provide that water organisations can also propose bylaws about water for fire-fighting purposes and trade waste.

Officials’ Comment

Under current legislation, Watercare can make bylaws in relation to wastewater services. However, Watercare’s statutory power to make bylaws will be removed with the repeal of the Auckland Metropolitan Drainage Act 1960 (as set out in Schedule 3). The provisions on bylaws balance the need for Watercare to have an appropriate regulatory environment to enable it to meet its statutory duties, its own operational objectives and the objectives of the governing body, while preserving responsibility for decision-making on bylaws with the governing body. This is consistent with provisions in the LGACA09 in terms of decision making responsibilities (section 15) and provisions enabling local boards to also propose bylaws (section 26).

The submission which proposed that water organisations be able to propose bylaws on water supply for fire-fighting and trade waste has identified two important aspects of the provision of water supply and wastewater services. In the Department’s view, bylaws could already be made under the provision, as drafted, in respect of water supply for fire-fighting and the carriage of trade waste through the wastewater network.

Recommendation

We recommend that the Select Committee:

AGREE that clause 45 new section 50 be retained without amendment.
Clause 45 cont.

New Part 5 – Water supply and wastewater in Auckland

New section 51 – Auckland water organisation must consult on proposed bylaw

This section says that if the Auckland Council is satisfied that the bylaw proposed by the water organisation meets the necessary tests, the water organisation can consult on the proposed bylaw using the special consultative procedure.

Submissions

Submissions argued that the proposed new section 51 needs to be expanded to clarify the procedure to be followed by the governing body.

Officials’ Comment

Officials consider that the provision contains sufficient clarity on the process to be followed by the governing body on making bylaws proposed by the water organisation.

There are two minor drafting issues on which further Parliamentary Counsel advice may be sought.

Recommendation

We recommend that the Select Committee:

AGREE that clause 45 new section 51 be retained without amendment, subject to confirmation by Parliamentary Counsel.
Clause 45 cont.

New Part 5 – Water supply and wastewater in Auckland

New section 52 – Auckland water organisation may occupy certain Crown land without charge

This section allows the Auckland water organisation to occupy free of rent certain lands in the Auckland harbours where there are wastewater assets (section 12 of the Resource Management Act 1991 restricts the use of the coastal marine area). It applies to all wastewater assets held by Watercare Services Limited on 1 November 2010, including those transferred from the existing local government wastewater providers.

Submissions
No submissions addressed this section.

Officials’ Comment
The proposed section should be retained without amendment.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 45 new section 52 without amendment.
Clause 45 cont.

New Part 5 – Water supply and wastewater in Auckland

New section 53 – Construction of works on private land and roads by Auckland water organisation

This section states that the water organisation has the power under section 181 of the LGA02 to construct works on private land, including a road, provided reasonable notice is given to the owners or occupiers.

Submissions

Points in submissions included:

- the Bill should be amended to provide that it and the LGACA09 and the LGTMRA09 are all subject to the provisions of the Electricity Act, the Gas Act, the Telecommunications Act, the Infrastructure Bill (as eventually enacted) and subsequent amendments to these Acts;
- omit sections 53 to 59. Watercare should not be given special powers that are not also given to other utility operators. If these provisions are retained they should be consistent with the time periods in the Infrastructure Bill and relevant code of practice;
- recommends the term "gas" is replaced with "wastewater services";
- the water organisation should not be able to open the road and alter the position of other gas or water pipes as provided in this section; and
- suggests that new section 53(3) be amended to require that the water organisation operates within the provisions of the national code of practice for utilities working in the roads as specified in the Utilities Access Bill.

Officials’ Comment

The thrust of the submissions were that the Auckland water organisation should be required to meet the same statutory requirements as other utility operators. In particular, it is proposed that the water organisations should be subject to the same requirements as other utility operators as amended through the Utilities Access Bill, and the national utilities code of conduct. The provision, as drafted, seeks to modernise Watercare’s power and obligations in respect of any works undertaken in the road corridor and or on other public land in line with the changes to utilities related legislation. The provision also reflects decisions that the water organisation, which in future could be the governing body of the Auckland Council, should have the powers of a local authority for the purpose of providing both wholesale and retail water supply and wastewater services.

Three amendments are required to this provision, as drafted.

1. It is not clear that the water organisation will have the right to undertake works on public lands (other than roads). This matter is essential to Watercare’s (or any future water organisation) ability to perform its statutory functions.
2. In paragraph (2)(b) and (c), it erroneously permits the water organisation to break open a road and move, alter, repair or move, a gas pipe. This provision should be constrained to permit the water organisation to do such things in relation to water or wastewater pipes.

3. Drafting matter in paragraph 53(2)(a), the expression ‘water and wastewater infrastructure’ should be water supply and wastewater infrastructure.

It is also noted that the proposed new section 53 duplicates the proposed new section 63(d). This matter will be discussed in relation to that provision.

**Recommendation**

We recommend that the Select Committee:

**AGREE** to amend clause 45 new section 53 by:
(a) clarifying that the water organisation will have the right to undertake works on public lands (other than roads);
(b) clarifying that the water organisation will be the organisation permitted to break open a road and move, alter, repair or move, only water and wastewater pipes (and not gas pipes as currently drafted); and
(c) including the word ‘supply’ in paragraph 53(2)(a) after the word ‘water’.
Clause 45 cont.

New Part 5 – Water supply and wastewater in Auckland

New section 54 – Notice requirement

This section requires the water organisation to give notice of its intention to open or break up a road for the purpose of maintaining or constructing a water supply or wastewater asset.

Submissions

Submissions argued that the clause 54 notice provisions are inconsistent with those of the Code and the schema of the Infrastructure Bill where all parties using the road are to be kept informed of upcoming works. Clauses 53 and 54 should be rewritten to conform to the intent and content of the Infrastructure Bill and the Code which it provides for. In particular, the Bill should not provide the water organisation with any greater or lesser powers than that provided for through the Infrastructure Bill and its supporting Code.

Officials’ Comment

As noted above, in developing the water organisation’s regulatory powers, a balance was required between the powers and duties of utility operators generally, with those of a local authority.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 45 new section 54 without amendment.
Clause 45 cont.

New Part 5 – Water supply and wastewater in Auckland

New sections 55 to 56 – Auckland water organisation to be notified of conditions

These sections state the Auckland Council, Auckland Transport or anyone else with control over a road, has 20 working days to impose conditions for any work proposed to be undertaken by the water organisation in any road. If no conditions are imposed within this period, the organisation may commence work.

Submissions

It was submitted that the notification provisions in the Bill should be consistent with those in the Infrastructure Bill.

Officials’ Comment

The provisions sought to balance the powers and obligations of the water organisation between those applying to other utility providers, and those applying to local authorities.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 45 new sections 55 and 56 without amendment.
Clause 45 cont.

New Part 5 – Water supply and wastewater in Auckland

New section 57 – Urgency

This section allows the water organisation to commence work without giving notice if work is urgent and necessary because of any defective equipment or other emergency. However the water organisation must give notice of the location of the work, the nature of the work and the reasons for it as soon as practicable after commencing the work.

Submissions

No submissions addressed this section.

Officials’ Comment

No comment on this section

Recommendation

<table>
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<th>We recommend that the Select Committee:</th>
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<td><strong>AGREE</strong> to clause 45 new section 57 without amendment.</td>
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Clause 45 cont.

New Part 5 – Water supply and wastewater in Auckland

New section 58 – Offence to not comply with any of sections 53, 54 and 57

This section states that it is an offence for failure by the water organisation to comply with any conditions or notification requirements – liable on summary conviction to a fine not exceeding $10,000. A court may also make a compensation order.

Submissions
No submissions addressed this section.

Officials’ Comment
No comment on this provision.

Recommendation

We recommend that the Select Committee:

AGREE to clause 45 new section 58 without amendment.
Clause 45 cont.

New Part 5 – Water supply and wastewater in Auckland

New section 59 – Appeals by Auckland water organisation to District Court

This section allows the water organisation to appeal to a District Court against all or any conditions issues in respect of proposed work. The District Court may confirm, modify or cancel any or all of the conditions opposed.

Submissions

One submitter observed that the possibility of a CCO taking its owner to Court will do nothing to inspire public confidence in the good governance of the city.

Officials’ Comment

The submitter is correct that it would be preferable for matters between a CCO and its shareholders to be resolved without redress in the Courts. The provision is included as a last resort.

Recommendation

We recommend that the Select Committee:

AGREE to clause 45 new section 59 without amendment.
Clause 45 cont.

New Part 5 – Water supply and wastewater in Auckland

New section 60 – Abatement of nuisances created by Auckland water organisations

This section states the Director - General of Health may require the water organisation to abate any nuisance or undertake works to abate a nuisance. The water organisation can apply to the District Court to set aside the requirement if it considers it to be unreasonable or impracticable or unnecessary. The District Court’s decisions is final.

Submissions

One submitter identified a need to clarify the relationship with the similar nuisance provisions in the Health Act 1956, and which one prevails.

Officials’ Comment

For the purposes of this section, a nuisance is defined in section 29 of the Health Act 1956. That Act also provides for penalties and means of remedying any nuisance. The proposed section 60 augments those provisions in the Health Act.

Recommendation

We recommend that the Select Committee:

AGREE to clause 45 new section 60 without amendment.
Clause 45 cont.

New Part 5 – Water supply and wastewater in Auckland

New section 61 – Rating of certain land owned by Auckland water organisation

This section says land owned by an Auckland water organisation and used for providing water supply or wastewater services shall be liable for rates based on the land value.

Submissions

Five submitters opposed this section on the basis that Watercare should pay rates on the same basis as anyone else. One submitter supported the section.

Officials’ Comment

The intent of this provision is to ensure that the water organisation is subject to the same duties in relation to the payment of rates as apply to Watercare at present, although extended to:

- its operations in the Waikato Region (where there will be water storage dams); and
- cover all of its assets in relation to wholesale and retail water supplies and its wastewater services.

The provision as drafted gives effect to the intent in relation to assets held on Watercare-owned land, as at present. However, the provision, as currently drafted, does not exempt Watercare’s assets on land owned by third parties being rated at capital or annual value. Nor does it prevent third-party land owners, where there are Watercare assets on the land, from being rated on the improved value of the land.

Recommendation

We recommend that the Select Committee:

AGREE that clause 45 new section 61 be amended, subject to consideration by Parliamentary Counsel Office, to ensure that the provision ensures that any water supply or wastewater services assets on land owned by the Auckland water organisation, or anyone else, should be exempt from being rated on the improved value of the land.
Clause 45 cont.

New Part 5 – Water supply and wastewater in Auckland

New section 62 – Powers of Auckland water organisation under Local Government Act 1974

This section says provisions in the LGA74 relating to drainage apply to the Auckland water organisation.

Submissions

Submitters wanted to:
- include a provision that the powers in section 468 of the LGA74 and the obligations in section 647 and 648 of that Act apply to an Auckland water organisation.
- omit (d) and (e) so that the powers relating to private drains in sections 461 and 462 of the LGA74 sit with the Auckland Council.

Officials’ Comment

This provision needs to be amended to provide that section 468 of the LGA74 also applies to the water organisation. Section 468 allows a council to require an occupier or owner of land to cut down or remove a tree whose roots enter or are likely to enter a public drain. We do not support removing the reference to sections 461 and 462 of the LGA74 on the basis that they are necessary for the water organisation to manage its assets.

Recommendation

We recommend that the Select Committee:

AGREE that clause 45 new section 62 be amended to provide that section 468 of the Local Government Act 1974 (relating to tree roots) also applies to the water organisation.
Clause 45 cont.

New Part 5 – Water supply and wastewater in Auckland

New section 63 – Power of Auckland water organisation under Local Government Act 2002

This section applies a range of water supply and wastewater service powers and responsibilities in the LGA02 to the water organisation. The provisions give general and specific powers for the water organisation to enter private land.

Submissions

There were no submissions on this section.

Officials’ Comment

This clause needs amendment to include reference to sections 175, 186, 187 and 232 of the LGA02.

Sections 186 and 187 confer powers to a local authority in the event that an owner or occupier defaults on work they were required to do. Such work is commonly required under section 459 of the LGA74 (power to require owners of land to provide private drains). This power is given to water organisations under section 62(b).

Section 175 provides that a local authority has the ability to recover for damage by wilful or negligent behaviour. Section 232 provides that it is an offence to wilfully or maliciously destroys or damages waterworks, etc.

We recommend that the Select Committee:

AGREE to amend clause 45 new section 63 to include reference to sections 175, 186, 187 and 232 of the Local Government Act 2002.
Clause 45 cont.

New Part 5 – Water supply and wastewater in Auckland

New section 64 – Offences relation to waterworks and network assets of Auckland water organisations

This section makes it an offence to undertake work on, or in relation to, a water supply or wastewater asset of the water organisation without first notifying the organisation and obtaining written consent for the work (except where the person doing the work has a resource or building consent, or where the work was necessary to avoid, mitigate or remedy the effects of an emergency and was carried out by a registered person).

Submissions
There were no submissions on this section.

Officials’ Comment
This provision replicates a similar provision in section 225 of the LGA02. The heading, however, does not reflect the range of assets described in the body of the provision. Instead, the heading should refer to offences in relation to water supply and wastewater assets.

Section 225 the LGA02 is linked to section 226 of that Act. That provision specifies that a person who commits an offence in relation to section 225 may, in addition to or instead of a penalty for the offence, be ordered to pay the cost incurred by the council in repairing the damage done to the waterworks by the offence. An equivalent provision to section 226 needs to be included in the Bill.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 45 new section 64 so that:
(a) the heading better reflects the content of the provision; and
(b) the new section 64 be linked to an equivalent provision as contained in section 226 of the Local Government Act 2002, with the necessary modifications.
Clause 45 cont.

New Part 5 – Water supply and wastewater in Auckland

New section 65 – Council must consult Auckland water organisations when assessing water and other sanitary services

This section says when the Auckland Council assesses water and other sanitary services it must consult the Auckland water organisations.

Submissions
There were no submissions on this section.

Officials’ Comment
No comment on this provision.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 45 new section 65 without amendment.
New Part 5 – Water supply and wastewater in Auckland

Proposed New Clause(s)

A number of new provisions are proposed in relation to the Auckland water organisation:

1. The Bill should make it clear that the Auckland water organisation is deemed to be a local authority for the purposes of the Public Works Act 1981.

2. There should be a duty on the Auckland Council, after receiving advice from the Auckland water organisation, to appoint sufficient enforcement officers to ensure that the water organisation can undertake its enforcement functions.

Officials’ Comment

Public Works Act 1981

It is intended that an Auckland water organisation have the functions, duties and powers of a local authority under the Public Works Act, as if it were a local authority. The ability for Watercare to acquire land through the Public Works Act 1981 is integral to Watercare's operations and should be provided in relation to both water supply and wastewater services. It is currently unclear whether Watercare, or another future Auckland water organisation, is covered by the current definitions of local authority under that Act. The definition of ‘local authority’ under the Public Works Act does not cover a CCO or Council Organisation. It does include, regional water board, however, that does not cover Watercare either given that such boards were regulators, which Watercare is not. It should also be noted that Auckland Transport is deemed to have the functions and powers of a local authority under the Public Works Act (proposed section 42 of the LGACA09, as inserted by clause 45 of the Bill).

Enforcement Officers

Watercare, and any future Auckland water organisation, will be responsible for the delivery of both wholesale and retail water supplies, and wastewater services. Along with these responsibilities, Watercare will have a greater enforcement role. Section 177 of the LGA02 provides the power for the relevant local authority to appoint enforcement officers. Given the coercive nature of enforcement functions, it is appropriate that the responsibility for appointment remain with the governing body of the Auckland Council. However, Watercare, or a future Auckland water organisation will have more information to help determine how many enforcement officers are required to enable it to perform its functions. It is therefore appropriate that the council receive advice on the requisite number of enforcement officers.
Recommendation

We recommend that the Select Committee:

AGREE to amend the Bill to specify that:
(a) the Auckland water organisation will have the functions, duties and powers of a local authority under the Public Works Act 1981 as if it were a local authority; and
(b) the governing body of the Auckland Council be required, after receiving advice from the Auckland water organisation, to appoint sufficient enforcement officers to enable the water organisation to perform its functions.
Clause 45 cont.

New Part 6 – Spatial planning for Auckland

New Section 66 – Spatial plan for Auckland

This section says the Auckland Council must prepare and adopt a spatial plan to provide a broad, long-term strategy for growth and development in Auckland. The functions of the plan are specified and consultation requirements are set out.

Submissions

Purpose of the spatial plan (Clause 66(2))

The majority of submissions (29) referred to the proposed purpose of the spatial plan, which is “to provide an effective and broad long-term strategy for growth and development in Auckland”. The majority of submitters supported a mandated plan that provides a long-term framework for Auckland, but argued that the purpose should explicitly refer to wider environmental, economic, social and cultural objectives. Submitters questioned the emphasis on economic growth and development and considered that this detracts from the other roles that local government needs to play in achieving positive social and environmental outcomes.

Four submissions, including the Children’s Commissioner, considered that the spatial plan take into account the health and wellbeing of children and young people.

Role of central government and its agencies

Submitters noted that central government has substantial involvement in wider ‘place-shaping’ through investment and the placement of facilities, and that decisions of central government and its entities can either reinforce the effectiveness of the spatial plan or undermine its objectives. Some submitters considered that formal legal links between central government policy and the spatial plan should be provided.

Functions of the spatial plan (Clause 66(3))

A number of submitters (15) suggested additional functions for the spatial plan. Submitters and the ATA note that the environmental function of the spatial plan is narrowly focused and is limited to identifying significant ecological areas that should be protected from development.

Other minor changes to the functions were proposed by submitters including:

- recreational activities and open space should be protected from development;
- significant historic heritage places and areas should be protected from inappropriate development; ‘heritage’ should be included as a broad policy
objective in 3(f); 3(h) should include reference to “historic heritage, recreational activities and open space”;

- include reference to areas of land in rural production;
- a wide range of arts-based organisations (17) argued a regional arts and cultural strategy should be a function of the spatial plan, and ‘critical infrastructure’ should include arts infrastructure;
- include reference to a regional recreation and sports strategy;
- critical infrastructure should include utilities, such as broadband, electricity, gas and telecommunications;
- the need to clarify the role of public infrastructure, for example schools and hospitals; and
- Water New Zealand recommended that ‘stormwater management’ be included in critical infrastructure services.

Timely preparation of the spatial plan and requirements for review

A number of submitters (12) recommended the inclusion of a time limit for the preparation and adoption of the spatial plan. Submitters (10) also proposed a specific legislative timetable for reviewing and updating the spatial plan.

Relationship of spatial plan to local Acts (Waitakere Ranges Heritage Area Act 2008 and Hauraki Gulf Marine Park Act 2000)

Clause 106(3) of the Bill states that the Auckland Regional Growth Strategy has no effect once the Auckland Council adopts the spatial plan. Thirty-eight submissions noted that the spatial plan should be consistent with the Waitakere Ranges Heritage Area Act 2008.

A number of submissions stated that the spatial plan should also be consistent with the Hauraki Gulf Marine Park Act 2000. Others (10) argued for a separate statutory spatial plan for the Gulf to ensure sufficient resources are allocated for the wellbeing and Kaitiakitanga of the Hauraki Gulf – Tikapa Moana, and its communities.

Officials’ Comment

A number of issues raised by submitters will be addressed in the RMII-U policy as described on pages 16 and 17 of this report. There are, however, some minor technical drafting issues that can be addressed through this.

Purpose of the spatial plan (Clause 66(2))

The purpose of the spatial plan is enabling, and provides flexibility to enable the Auckland Council to address environmental, economic, social and cultural wellbeing should it wish to do so. The terms “broad long-term strategy” and “broad objectives” cover a range of outcomes, and provide for the spatial plan to give direction for the range of council’s roles, and also for the health and wellbeing of children and young people, should the Auckland Council wish to emphasise this matter. No change is proposed to clauses 66(2) and 66(3)(a).
Role of central government and its agencies

The Bill states that the spatial plan will act as an information and coordination mechanism between the Auckland Council and other parties. This includes central government, the private sector and infrastructure providers. The Bill should explicitly refer to central government and infrastructure providers (including network utility providers) as key parties for the Auckland Council to engage with in the development and implementation of the spatial plan.

The creation of formal legal relationships between the spatial plan and central government policy instruments would enhance the ability of central government to give direction to regional development. Cabinet has agreed to investigate the relationship of the spatial plan to national planning instruments as part of the RMII-U process rather than through the Auckland Governance reform. Therefore, no amendment should be made to further strengthen the legal links between central government policy and the spatial plan at this time.

Functions of the spatial plan (Clause 66(3))

It is agreed that the environmental function is narrowly defined and should be expanded to identify regionally significant natural environmental constraints (e.g. flooding, unstable land), and regionally and nationally significant landscapes and natural features.

It is considered that recreational activities and open space are more effectively addressed through Resource Management Act 1991 (RMA) plans. However, nationally and regionally significant recreation areas and/or open space (e.g., regional parks) may be identified in the spatial plan.

The protection of historic heritage from inappropriate subdivision, use, and development is a matter of national importance in section 6 of the RMA. RMA plans, therefore, provide greater opportunity to protect historic heritage from inappropriate development. Nationally and regionally significant historic heritage areas can be identified in the spatial plan as supporting other objectives e.g. economic development although this is a matter for the Auckland Council to decide.

It is agreed that clause 66(3)(h) should include reference to ‘rural production’.

It is agreed that the development of a regional arts [and cultural] strategy and a regional recreation and sports strategy has a vital role in contributing to Auckland’s future economic, social and cultural development. The purpose of the spatial plan currently enables the Auckland Council to develop, and be informed by, such strategies.

It is agreed that clause 66(3)(g) should be amended to make it clear that critical infrastructure services include those managed by network utility operators, social infrastructure and stormwater.
Timely preparation of the spatial plan and requirements for review

The timely preparation of the spatial plan will be required to align with the funding plans that support its implementation, including the long-term council community plan, and this will provide sufficient incentive for early preparation of the spatial plan. There is therefore no need for statutory provision.

The spatial plan is intended to set out the long-term (20-30 year) strategic direction for Auckland and give direction to, and align, implementation plans, regulatory plans and funding plans of the Auckland Council. A requirement for the spatial plan to be reviewed on a frequent basis risks undermining this long-term direction. In addition, the review of spatial plans and their linkage to statutory plans is being considered as part of the RMII-U policy process. At this stage, the current provisions enable flexibility but this would be enhanced by removing the qualification relating to significant change in circumstances.

Relationship of spatial plan to local Acts (Waitakere Ranges Heritage Area Act 2008 and Hauraki Gulf Marine Park Act 2000)

The Auckland Council should ensure that the spatial plan’s provisions are not inconsistent with the purpose of Waitakere Ranges Heritage Area Act 2008 or its objectives. The Act should be amended accordingly through Schedule 3.

Part 1, Section 7 of the Hauraki Gulf Marine Park Act 2000 recognises the national significance of the Hauraki Gulf. It states that sections 7 and 8 apply as if they were a national policy statement under the RMA and additional provision in the third Bill in unnecessary. The preparation of a separate spatial plan for the Gulf (and other sub-regional areas) is a matter for the Auckland Council.

 Recommendation

We recommend that the Select Committee:

AGREE to amend clause 45 new section 66 to:

(f) add to the functions in subsection (3), the identification, for information purposes, of regionally significant natural environmental constraints, and regionally and nationally significant landscapes, areas of historic heritage value, and natural features;

(g) reword subsection (3)(g) to make it clear that critical infrastructure services include social infrastructure, network utilities and stormwater;

(h) include in subsection (3)(h), references to “rural production” and “regionally significant recreational and open space areas”;

(i) include in subsection (4) reference to central government and infrastructure providers (including network utility providers) as key parties for the Auckland Council to engage with in the development and implementation of the spatial plan; and

(j) reword clause 66(5) to provide simply “the Auckland Council may amend the spatial plan at any time".
Clause 45 cont.

New Part 7 – Board promoting issues of significance for mana whenua and Māori of Tamaki Makaurau

This new Part relates to the establishment and operation of a board promoting issues of significance for mana whenua and Māori of Tamaki Makaurau.

There were 158 submissions on this new Part.

Submissions

A number of submitters made the following general comments on the new Part 7:

- there was opposition to Part 7 on the grounds that there should instead be reserved Māori seats on the Auckland Council;
- however, if the board was to be established, many submitters commented that it needed to have meaningful input into decision making;
- Part 7 should contain specific references to how the Auckland Council will give effect to the principles of the Treaty of Waitangi;
- Part 7 needs to prescribe how Auckland Council will maintain existing relationships and arrangements between local authorities and mana whenua or Māori; and
- the make-up of the board should be able to be influenced by the Auckland Council.

Officials’ Comment

In considering the broad range of submissions on Part 7, there is a need for greater clarity around the legislative context within which the board will operate and the place of the board within that context.

An explanatory section at the beginning of Part 7, which clarifies the role of the board in relation to the existing legislative framework, and to both the Auckland Council and mana whenua and taura here groups, would provide additional clarity.

Recommendation

We recommend that the Select Committee:

AGREE to insert an explanatory section at the beginning of Part 7, to clarify that:

(e) the board is independent, of both the Auckland Council and of any mana whenua or taura here groups, and cannot be directed;
(f) the board is a statutory entity, whose role is to help ensure that the Auckland Council acts in accordance with the Treaty of Waitangi provisions in existing legislation;
(g) although the Auckland Council will have duties to the board, but these duties do not relieve the Auckland Council from existing legislative obligations to consult with Māori, whether under the Local Government Act 2002, the...
Resource Management Act 1991, or any other legislation; and
(h) board members must act in the interests of achieving the board’s purpose,
and may not act in the interests of any other group, to which they may belong.
Clause 45 cont.

New Part 7 – Board promoting issues of significance for mana whenua and Māori of Tamaki Makaurau

New section 67 – Establishment and purpose of board

This section establishes a statutory board to promote issues of significance for mana whenua and Māori to assist the Auckland Council in making decisions, performing functions and exercising powers.

Submissions

Submitters wanted to:
- amend new section 67(1) so that the purpose of the board is consistent with the purpose of local government as defined in the LGA02, “to promote the well-being of communities”;
- change the word “issues” in 67(1) to “matters”;
- provide that the board has committee status;
- change wording to ensure the board has meaningful input into decision making;
- include a statement that Auckland Council is not absolved from continuing to consult and engage with Māori; and
- omit, or define the principles of, the term ‘consensus decision making’ in 67(3).

Officials’ Comment

The purpose of the board is not intended to be limited solely to the purposes of the LGA02. Government intended that the board have a role in working alongside the Auckland Council to help ensure that existing legislative Treaty of Waitangi obligations placed on the Auckland Council are met.

The proposal for an independent statutory board reflects Government policy decisions. Establishing a statutorily independent entity as a council committee would create significant issues for both the board and the Auckland Council and is not recommended.

Contrary to the perceptions of many who submitted on this clause, and on Part 7 in general, the Bill does not set aside the purpose or principles of the RMA, or any other relevant legislation. These Acts will continue to apply, and will continue to require the Auckland Council to consult and engage with Māori, and to act in accordance with particular Treaty of Waitangi provisions. The inclusion of an explanatory section at the beginning of Part 7 is proposed to address these misconceptions.

Contrary to perceptions that consensus decision making requires unanimity, the requirement to seek consensus in decision making is to ensure that all views are canvassed, and that the majority of decision makers agree with a course of action. Because unanimity is not the intention of this provision, clause 67(3) requires amendment to remove the requirement for decisions to be reached via consensus.
However, it is recommended that Schedule 3 clause 14(9)(b) provides that members much reach decisions pursuing the principles of consensus decision-making.

Recommendation

We recommend that the Select Committee:

**AGREE** to amend clause 45 new section 67(3) to remove the requirement for decisions to be reached via consensus.
Clause 45 cont.

New Part 7 – Board promoting issues of significance for mana whenua and Māori of Tamaki Makaurau

New section 68 – Board’s name

This allows the board to determine its own name.

Submissions

It was submitted that there should be a provision that the board must publicly notify any change of name as soon as practicable, rather than tell the Minister of Māori Affairs.

Officials’ Comment

While the Bill requires that the Minister of Māori Affairs be informed of any change of name, there is nothing in the Bill that would prevent the board from publicly notifying any change of name, should the board wish to do so.

Recommendation

We recommend that the Select Committee:

AGREE not to amend clause 45 new section 68 in respect of this submission.
Clause 45 cont.

New Part 7 – Board promoting issues of significance for mana whenua and Māori of Tamaki Makaurau

New section 69 – Board’s general functions

This section establishes the board’s general functions.

Submissions

Submitters wanted to:
- change the word “issues” in section 69(b) to “matters” or “areas of interest”;
- add that the board also has a role in advising CCOs and local boards; and
- clarify the process to amend priorities or renegotiate the schedule of issues.

Officials’ Comment

Consistent with Government policy decisions, the intent of the Bill is for the board to interact principally with the governing body of the Auckland Council, and not with CCOs or local boards. Nothing in the Bill as currently drafted prevents the establishment of a working relationship between the board and local boards or CCOs. Nor is there anything to prevent the Auckland Council from encouraging local boards and CCOs to engage with, or seek advice from, the board.

Section 69(b) of the Bill currently requires the board to develop a schedule of issues of significance, and section 69(c) requires the board to keep this schedule up to date. In effect these requirements already provide for a mechanism by which the board can amend priorities. Additionally, there is no requirement for the board to seek approval of any party in finalising this schedule, and following on from that, there is no requirement for the board to renegotiate should it wish to alter the schedule as part of its role under section 69(c).

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 45 new section 69 without amendment.
Clause 45 cont.

New Part 7 – Board promoting issues of significance for mana whenua and Māori of Tamaki Makaurau

New section 70 – Board's specific functions

This section prescribes the specific functions of the board.

Submissions

It was submitted that:

- at least two members of the board should be entitled to sit on any Auckland Council committee where they believe Māori interests may need to be safeguarded, which includes committees that deal with social, community, economic, and cultural matters;
- board members should have voting rights on the Auckland Council committees they are appointed to; and
- the provisions of new section 70(1) should also apply to local board committees that deal with the management and stewardship of natural and physical resources; add reference to local boards in subsections 70(1), (2) and (3).

Officials' Comment

One of the key issues raised by submitters in relation to this clause was the need to clarify the role of board members on Auckland Council's committees. Many of these submitters recommended that board representatives have full speaking and voting rights. This is also consistent with Government policy decisions to provide for effective engagement and participation by the board in the work of the Auckland Council, and it is recommended that section 70(1) clarify that board representatives on committees would be committee members.

Submitters have sought board membership of a wider range of Auckland Council committees on the grounds that Māori interests are broader than natural and physical resources. Section 70(2) is clear that the Auckland Council is empowered to ask the board to appoint members to other Auckland Council committees.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 45 new section 70(1) to clarify that the board can appoint members to the Auckland Council committees that deal with the management and stewardship of natural and physical resources.
Clause 45 cont.

New Part 7 – Board promoting issues of significance for mana whenua and Māori of Tamaki Makaurau

New section 71 – Board’s powers

This section sets out the operational powers of the board.

Submissions
Submitters recommended that the board has appropriate powers delegated to it, including RMA powers.

Officials’ Comment
Existing legislative provisions, such as section 33 of the RMA, already provide for the transfer of powers to entities.

As such a provision already exists, and there is limited benefit from adding a further ability to delegate powers such as RMA powers, particularly to an entity such as the board, which is entirely independent of the various mana whenua interests that may be more appropriate recipients of such powers.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 45 new section 71 without amendment.
Clause 45 cont.

New Part 7 – Board promoting issues of significance for mana whenua and Māori of Tamaki Makaurau

New section 72 – Auckland Council information provided to board
This section places restrictions on how the board can deal with information provided by the Auckland Council.

Submissions
The New Zealand Law Society noted that new section 72(1)(b) refers to information that the Auckland Council holds, “as that term is used in the Local Government Official Information and Meetings Act 1987 and the Privacy Act 1993”. The two statutes contain slightly different provisions setting out when information is held by an agency, and the Society asks whether the “and” linking the titles of the two statutes is intended to be disjunctive. The Society recommends the intended meaning is clarified.

The Society also notes that new section 72(2) refers to decisions on whether or not subsection (1)(b) and (c) apply, without stating who will be making such decisions. It is clear from 72(3) that it is contemplated that the Auckland Council will be making such decisions, but not whether the board will also be – for example, if the Auckland Council does not turn its mind to the issue. The Society recommends the matter is clarified.

Officials’ Comment
The submission on proposed new section 72 from the New Zealand Law Society seeks greater clarity on the intended meaning of this section. Section 72 should be amended to ensure the intended meaning is sufficiently clear. In particular, that the board may not disclose information that falls within section 72(1)(a) to (c), and that section 72(2) relates to decisions made by the board.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 45 to clarify that the board may not disclose information that falls within section 72(1)(a) to (c); and to clarify that this section relates to decisions by the board on whether or not section 72(1)(b) and (c) apply.
Clause 45 cont.

New Part 7 – Board promoting issues of significance for mana whenua and Māori of Tamaki Makaurau

New section 73 – Auckland Council’s duties to board

This section prescribes Auckland Council’s obligations to the board in terms of providing information and considering advice.

Submissions

It was submitted that:

- the Auckland Council should be required to take into effect the board’s advice;
- the board needs to be allocated adequate funding for hiring staff, for board meetings, and travel costs; the board’s budget should be set on a three year cycle;
- the Bill needs to clarify the process the board can use to seek an explanation or appeal a decision when they believe the Auckland Council hasn’t taken their advice into account; and
- there needs to be provision for sub-committees of the board to be established at the local board level.

Officials’ Comment

The requirement for the Auckland Council to ‘take into account’ the advice of the board reflects Government policy decisions. The requirement to take into account advice means that the Auckland Council must genuinely consider the advice of the board, and should have a robust and defensible reason for not acting on that advice. This requirement is deliberately weighted so that although the Auckland Council cannot simply ignore advice from the board, the Auckland Council is not bound to accept and act on all the recommendations it receives, should there be genuine reasons not to do so.

In the event that the board is concerned that the Auckland Council has not ‘taken into account’ the advice of the board, there are a range of options, ranging from making public statements on the matter, through to seeking a judicial review of the decision in question. The key to avoiding a situation where these options are exercised will be through maintaining a commitment to dialogue between the board and the Auckland Council. To ensure that this occurs the governing body of the Auckland Council and the board should be required to meet at least four times per year to progress the work required to carry out their respective duties and functions.
Recommendation

We recommend that the Select Committee:

AGREE to amend clause 45 new sections 73 and 69 respectively to require the Auckland Council and the board to meet not less than four times a year to progress the work required to carry out the Auckland Council’s and the board’s respective duties and functions.
Clause 45 cont.

New Part 7 – Board promoting issues of significance for mana whenua and Māori of Tamaki Makaurau

New section 74 – Schedule 3 applies to board

New Schedule 3 sets out how the board will be selected and how it will operate.

Submissions
Refer to submissions on Schedule 3.

Officials’ Comment
Schedule 3 sets out the various administrative requirements for the establishment, membership, operation, support and funding for the board.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 45 new section 74 without amendment.
Clause 45 cont.

New Part 8 – Miscellaneous

This new Part inserts new provisions relating to miscellaneous functions, powers and duties of the Auckland Council.

New section 75 – Council may impose additional accountability requirements on substantive council-controlled organisations

This section empowers the Auckland Council to impose additional accountability requirements on substantive CCOs.

Submissions

This section attracted a range of submission that made the following points:

- the Bill should clearly require all CCOs to have a consistent and robust SoI framework setting out accountability arrangements with Auckland Council covering: the nature and scope of the CCOs activities; the outcomes, objectives and outputs of the organisation; and the performance targets and other measures by which each CCO may be judged (by Auckland Council and the wider community) in relation to its outcomes, objectives and outputs;
- the SoI should comply with Schedule 8 of the LGA02 and include a shared narrative setting out Council's overall objective and some guiding principles;
- there must be a provision for public attendance and input into CCO meetings;
- the SoIs of CCOs must take into account priorities agreed with local boards;
- amend 75(1)(b)(ii) so that a substantive CCO need only have $2 million in assets to be defined as a substantive CCO;
- make all the requirements of 75(2) mandatory;
- delete 75(3), as Auckland Transport should be required to adopt a plan under subsection (2)(c);
- change from quarterly reporting against the SoI to six monthly;
- CCOs should develop 30 year infrastructure strategies supported by 10 year asset management and investment plans, which align with the spatial plan; and
- provide for the preservation of records and archives, held by existing Auckland councils and CCOs, under the new Auckland governance structure; require CCOs to "report annually with regards to compliance with sections 27 and 40 of the Public Records Act 2005".

Officials’ Comment

All CCOs are accountable to their parent councils, which are effectively shareholders in the business run by the CCO. The standard CCO framework, which applies throughout the local government sector, imposes a duty on directors to achieve the objectives of the shareholder.

The Bill’s current provisions already enhance the standard accountability regime in Auckland by enabling the governing body to require substantive CCOs to report...
quarterly, make additions to their statements of intent and have a long-term plan setting out how the CCOs will give effect to the Auckland Council's strategies, plans and priorities.

Measures to further enhance the CCO accountability regime have been identified. It is proposed that the Auckland Council be required to have a policy on the accountability of its substantive CCOs. This policy would set out the expectations and accountability requirements that the Auckland Council would have of its substantive CCOs. Such a policy would, amongst other things, include:

- expectations of CCOs’ contribution to, and alignment with, Council and Government objectives and priorities;
- frequency and nature of reporting;
- planning requirements (type, frequency and content);
- requirements for specific CCOs to operate as if they were subject to Part 7 of the Local Government Official Information and Meetings Act;
- the definition of a strategic asset and processes for approval of major transactions relating to these; and
- management of strategic assets.

The policy would incorporate the levers currently outlined in this clause of the Bill and the issues outlined above. It is recommended that the CCO Accountability Policy be included in the Auckland Council’s LTCCP and would only be able to be amended as an amendment to the LTCCP.

Officials also recommend that to improve the accountability of CCOs to Auckland Council’s governing body, all substantive CCOs be required to give effect to the relevant aspects of the LTCCP and act consistently with relevant aspects of other strategies and plans of the Auckland Council, including its local boards, as specified by the governing body.

Appointing Chairs and Deputy Chairs of the boards of substantive CCOs is another way that the governing body can influence a CCO’s strategic direction. Officials recommend that the Auckland Council be allowed to appoint the Chair and deputy Chair of the board of each of its substantive CCOs. Provisions in the Bill for the establishment of Auckland Transport will clarify that the Auckland Council cannot appoint board members who are councillors into the roles of Chair or deputy Chair.
Recommendation

We recommend that the Select Committee:

AGREE to amend the Bill:

(d) to require Auckland Council to have a policy on the accountability of its substantive council-controlled organisations;

(e) to require substantive council-controlled organisations of Auckland Council to give effect to the relevant aspects of the long-term council community plan and act consistently with relevant aspects of other strategies and plans of the Auckland Council, including its local boards as specified by the governing body; and

(f) to allow the Auckland Council to appoint the Chair and deputy Chair of the board of each of its substantive council-controlled organisations.
Clause 45 cont.

New Part 8 – Miscellaneous

New section 76 – Councillors prohibited from appointment as directors of substantive council-controlled organisations

This section prohibits the appointment of members of the Auckland Council from being appointed as directors of substantive CCOs.

Submissions

- ninety submitters expressed opposition to councillors not being directors of CCOs, most wanting a majority of councillors on CCO boards;
- six submitters thought it should be left to Auckland Council to decide its own policy on the appointment of councillors to the boards of CCOs;
- five submitters supported the new section as they considered appointment of councillors as directors could raise conflict of interest issues; and
- two submitters considered members of local boards should also be prohibited from being appointed as directors of CCOs.

Officials’ Comment

With the exception of Auckland Transport, which can have up to two Auckland Councillors appointed as directors, the Bill provides that an elected member of the governing body cannot be appointed as a director of a substantive CCO of the Auckland Council.

In light of the enhanced accountability requirements for substantive CCOs incorporated within clause 45, new section 75, of the Bill, officials are of the view that appointment of elected members to the boards of substantive CCOs would create unnecessary duplication and confuse accountability at both the board and council level.

In the interests of consistency of accountability regimes between the governing body and local boards, it is recommended that the Bill provide that elected members of the Auckland Council’s local boards also be excluded from appointment as directors to substantive CCO boards.

Officials also recommend that provision be made in relevant legislation stating that should a member of a substantive CCO board be elected to the governing body or a local board, they are deemed to have resigned from the CCO board.
Recommendation

We recommend that the Select Committee:

AGREE to amend clause 45 new section 76 to:
(c) clarify that Auckland Transport is the exception to the provision that councillors cannot be appointed as directors of substantive CCOs; and
(d) prohibit local board members from being appointed as directors of substantive council-controlled organisations.

We recommend that the Select Committee:

AGREE that provision be made in relevant legislation stating that directors of substantive council-controlled organisations who are elected to either the governing body or a local board must resign from the board of the council-controlled organisation.
Clause 45 cont.

New Part 8 – Miscellaneous

New section 77 – Disputes about allocation of decision-making responsibilities, proposed bylaws, or local board agreements

This section provides for local boards to refer disputes with the governing body about certain matters to the LGC.

Submissions

Most submitters on this new section supported its intent, but want the LGC to be resourced to carry out the job. There is some concern that the budget cycle will not allow enough time for the Commission to make a decision, and that use of local board budgets will dissuade boards from using the process. Submitters made the following points:

- the onus should be on local boards and the governing body resolving issues themselves, rather than relying on external parties to referee disputes;
- consider including a duty to cooperate. Further consideration should be given to whether all disputes are referred to the LGC as an independent arbiter;
- omit (1)(b) and (c) so that dispute resolution does not apply to disputes about local board agreements or about decisions to refuse proposed bylaws. Also, insert a new provision that enables the governing body to make the final decision about what matters to include in a local board agreement or a bylaw;
- the provision of a process to resolve disputes is an insufficient response to the lack of allocation of powers and responsibilities to local boards in this Bill;
- many disputes will be budgetary and the tight timeframes of these processes will not give time for the disputes process to work. Also this could result in budgets being set by a small group of officials appointed by the Government. This would undermine the relationship between councillors and voters;
- amend the Bill to stipulate a time-frame for resolving disputes and to ensure that dispute resolution costs are not apportioned to local boards;
- where a dispute has to go to arbitration the costs for such an action should be borne by the Auckland Council out of the City General Pool rather than from the limited board resources; and
- there should be a similar clause for a disputes process between CCOs and local boards.

Officials’ Comment

The clause does include a duty on both boards and the governing body to resolve any dispute between themselves. The nature of the dispute resolution process also constitutes an incentive to resolve matters between the parties, as does provision for the LGC to award costs having regard to the merits of the initial positions of the parties.
The issues raised concerning the difficulty of allowing timeframes for the resolution of disputes in relation to local board agreements and local board budgets are valid. Statutory deadlines apply to the adoption of LTCCPs and annual plans, that will include local board agreements and budgets, and to subsequent rating decisions. The process for developing those documents includes the preparation of draft documents (including draft local board agreements) and public consultation on those.

This process together with the statutory timeframes for the adoption of plan and subsequent rating decisions, cannot allow sufficient time for robust concurrent resolution of multiple disputes by the LGC. In addition, recourse to an independent dispute resolution process may be seen as detracting from the prior public consultation processes.

It is therefore proposed that the dispute resolution procedure in new sections 77 and 78 should not apply to local board agreements. We recommend that paragraph (c) in section 77(1) is omitted.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 45 new section 77 by omitting paragraph (1)(c).
Clause 45 cont.

New Part 8 – Miscellaneous

New section 78 – Local Government Commission to determine disputes

This prescribes the process for the resolution of disputes by the LGC (or a Commissioner/s).

Submissions

The following points were made in submissions:

- the LGC should be obliged to meet with the parties before reaching its determination on any dispute about allocation of decision-making responsibilities, proposed bylaws, or local board agreements;
- include in (78)(4) provision for contingency funding for local boards for costs incurred in taking dispute proceedings; and
- the Bill should detail dispute procedures and mechanisms to ensure priority is given to local opinion in resource allocation and spatial planning.

 Officials’ Comment

The LGC is empowered to meet with and consult the parties, to the extent it thinks fit, having regard to the matter and circumstances.

Contingency funding for the costs of dispute resolution would remove the incentive for local boards to resort to this process only where there position has genuine merit.

As noted in relation to section 77, a number of submissions stressed the need for quick resolution of disputes and sought the prescription of a timetable for this process. Although the removal of jurisdiction over local board agreements relieves some of the greatest pressure for this, expediency is still desirable. Rather than specifying a firm deadline, it is considered desirable to create an obligation on the Commission to resolve disputes with urgency and in a timely way.

Statutory deadlines apply to the adoption of LTCCPs, and the content of these may be affected by decisions on disputes about the allocation of responsibilities under section 17 of the principal Act. It is therefore desirable to clarify that LTCCPs are automatically amended to the extent necessary to give effect to a determination of the LGC in relation to a dispute.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 45 new section 78 to:
(d) require information requested of the mayor and chief executive under (1) to be provided within 7 days;
(e) require the LGC to determine disputes with urgency; and
(f) provide that, if the matter relates to the content of an long-term council community plan that has been adopted, that plan is modified to the extent necessary to give effect to the determination.
Clause 45 cont.

New Part 8 – Miscellaneous

New section 79 – Local Government Commission may delegate duty to determine dispute

This allows a member or committee of the LGC to determine a dispute.

Submissions
One submitter proposed that any disputes should be heard by all Commissioners.

Officials’ Comment
The submitter’s proposal would be unworkable and expensive.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 45 new section 79 without amendment.
Clause 45 cont.

New Part 8 – Miscellaneous

New section 80 – Development contributions for transport infrastructure

This section states development contributions collected by the Auckland Council for transport can be used to fund capital expenditure by Auckland Transport.

Submissions

Submissions said:

- the new section should be amended to require Auckland Council to transfer development contributions to Auckland Transport to part fund transport infrastructure expenditure;
- the cost of infrastructure associated with managing the growth of Auckland should be spread over the entire city, with the local natural growth being covered as is at present;
- the provision in the Bill empowering Auckland Transport to impose development contributions should be deleted. Development contributions should not be extended to fund spending undertaken by CCOs; and
- Auckland Council should be responsible for the setting and collection of development contributions which it may use to recover the growth related costs otherwise borne by ratepayers.

Officials’ Comment

The proposed section is consistent with the first and forth points above. The second point relates to the way in which development contributions and other funding tools are used and is a matter for the Auckland Council to determine. Contrary to the third point, the Bill does not empower Auckland Transport to set development contributions but does provide for Auckland Council to use these, amongst other tools, to fund its contribution to Auckland Transport capital projects.

Minor changes to this section are required, to replace “undertaken” with “incurred” in subsection (2) and broaden the scope of the exemption in subsection (5) to include the whole of the LGA02.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 45 new section 80 to:

(c) replace “undertaken” with “incurred” in subsection (2); and
(d) broaden the scope of the exemption in subsection (5) to include the whole of the Local Government Act 2002.
Clause 45 cont.

New Part 8 – Miscellaneous

New section 81 – Development contributions for assets managed by other parties

This section states the Auckland Council can collect development contributions under the LGA02 despite management of council-owned reserves or infrastructure by another party.

Submissions

Points in submissions were:

- the words "For the avoidance of doubt" could be inserted at the beginning of the section;
- some assets will transfer to Watercare and will no longer be "owned" by Auckland Council, while other assets will only be managed by Auckland Transport. Asset ownership is not aligned;
- recommend that the section refers to "council-controlled" reserves, network and community infrastructure, rather than "council-owned";
- amend to provide that the Auckland Council can require development contributions for capital expenditure incurred by CCOs, and, where relevant, that the council must pass those development contributions on to the relevant CCO, which must use the development contributions for the purposes for which they were collected;
- provide that no tax obligations will arise from any transfer of development contributions from the Auckland Council to any of its CCOs; and
- amend clause to include roading financial contributions.

Officials’ Comment

Agree that, as this section is seeking to clarify the intention of current provisions in the LGA02, it should be expressed as being “for the avoidance of doubt”.

Also agree that ownership of assets is not a requirement under the LGA02 and should not constrain the intent of this section.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 45 new section 81 to:
(c) express the provision as being “for the avoidance of doubt”; and
(d) omit “council-owned” in subsection (1).
Clause 45 cont.

New Part 8 – Miscellaneous

New section 82 – Prohibition on establishment of community boards

This section states community boards cannot be established in Auckland.

Submissions

Two submitters considered there should be provision for democratic structures at an even more local level than local boards.

Officials’ Comment

No changes are proposed.

Recommendation

<table>
<thead>
<tr>
<th>We recommend that the Select Committee:</th>
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<tr>
<td>AGREE to retain clause 45 new section 82 without amendment.</td>
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</table>
Clause 45 cont.

New Part 8 – Miscellaneous

New section 83 – Review of representation arrangements under Local Electoral Act 2001

This section states the first Auckland Council representation review is to be no earlier than after the local elections in 2013, unless Auckland is required to be divided into Māori wards for the 2013 local election, in which case the Auckland Council must make its first determination no later than 8 September 2012.

Submissions

New section 83 attracted 101 submissions, predominantly opposed. The main points raised were:

- the Government has been unable to prove that the boundaries and composition of wards and local boards are what people want. A freeze on changes is undemocratic;
- Auckland Council should be able to determine when a review of representation arrangements is appropriate, within the constraints of the LEA;
- the ward boundaries for the Auckland Council need to be reviewed by the LGC as the different size of population from ward to ward is undemocratic; and
- amend 83(3) to provide that the LGC may change the number of local board members or alter the subdivision within a local board area, and in doing so must take into account the matters set out in section 34(2) of the LGACA09 2009.

Officials’ Comment

As is normal when reorganisations take place, this clause provides for a settling down period before representation arrangements can be reviewed. Under the Local Electoral Act 2001, representation reviews are only required every six years.

The clause also makes it clear what aspects of local boards can be reviewed and changed through the representation review process (unlike community boards, the existence and external boundaries of local boards cannot be changed through this process). The clause needs to be amended to correct the omission of local board names as a matter that can be reviewed and changed through this process.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 45 new section 83 to clarify that local board names can be reviewed and changed through the representation review process.
Clause 45 cont.

New Part 8 – Miscellaneous

New section 84 – Auditor-General to review Council's service performance

This section states the Auditor-General is empowered to review service performance of the Council and its CCOs.

Submissions

Submitters argued that:
- the section should specify the frequency, duration and focus of audit reviews as well as public consultation processes;
- the Auditor-General must ensure that the new Auckland Council structure delivers savings of 15 per cent on existing arrangements;
- the Auditor-General's report must be made public as soon as presented to the Auckland Council;
- reviews of the Auckland Council should be against desired performance, outcomes achieved as well as financial performance;
- the service performance of the CCOs should not be reviewed "from time to time"; the reviews should be conducted at a minimum of every 2 years;
- to avoid "we only report what we can measure", define the function of the Auditor-General’s review to include the effectiveness of the Auckland Council or CCOs performance;
- a provision requiring the Auditor-General to give weight to any request from the public for a review would strengthen this public accountability mechanism.
- the Auditor-General should develop and annually review specific levels of service and performance targets for the water organisation, having regard to international best practice; and
- the review brief of the Auditor-General should be wider. It is important that the implementation of the governance reforms is measured and assessed in order to establish that improvements have been made and continue to be made. Section 84(1) should be amended to read: "84(1) The Auditor-General must, before 1 January 2014 and from time to time, review the improvements in service performance, cost effectiveness, value for money, and the policy performance of the Council and each of its council-controlled organisations."

Officials’ Comment

The current wording of the section provides a flexible duty for the Auditor-General to review the performance of the Auckland Council and its subsidiaries and is consistent with the Auditor-General’s powers and roles in the local government system. It should be noted that these reviews are intended to complement, rather than replace, the democratic accountability of the Auckland Council to its citizens and ratepayers.
No changes are proposed.

**Recommendation**

We recommend that the Select Committee:

**AGREE** to retain clause 45 new section 84 without amendment.
Clause 45 cont.

New Part 8 – Miscellaneous

New section 85 – Council employee elected to local board must resign before taking up position

This section states Auckland Council employees cannot be local board members unless they resign from the Council.

Submissions
No submissions were received on this new section.

Officials’ Comment
No changes are proposed.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 45 new section 85 without amendment.
Clause 46 New Schedules 2 and 3 added

This inserts new Schedules 2 and 3 (in Schedule 2 of the Bill) into the LGACA09.

Submissions
Refer to submissions under Schedule 2.

Officials’ Comment
Some drafting changes may be required.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 46 without amendment.
Part 3 – Amendments, repeals, savings, transitional provisions, and related matters

This Part covers clauses 47 to 111 and deals with amendments, repeals, savings, transitional provisions and related matters.
Subpart 1 – Amendments and repeals and related matters

Clause 47 – Consequential amendments

This clause consequentially amends a variety of Acts as described in Schedule 3. It also removes Watercare’s exemption from the definition of CCO in the LGA02 with effect from 1 July 2012.

Submissions
Refer to submissions on Schedule 3.

Officials’ Comment
Some drafting changes may be required.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 47 without amendment.
Clause 48 – Repeal of Auckland Metropolitan Drainage Act 1960

This clause repeals the Auckland Metropolitan Drainage Act 1960. Certain sections continue in force until 2015 as if every reference to the board were a reference to Watercare Services Limited.

Submissions
No submissions were received on this clause.

Officials’ Comment
No changes are proposed.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 48 without amendment.
Clause 49 – Repeal of Local Government (Auckland) Amendment Act 2004

This clause repeals the Local Government (Auckland Amendment) Act 2004. ARTA, the Auckland Regional Land Transport Committee and ARNTL are disestablished. Auckland Regional Holdings (ARH) continues in existence as a CCO of Auckland Council without statutory recognition.

Submissions

There were 215 submissions made on this clause, the majority from members of the public opposing repeal of section 28 of the Act on the grounds that it opens the way for the privatisation of Ports of Auckland by removing the requirement for an Auckland-wide referendum before the Ports can be sold.

Submissions from Auckland councils and ARH were:

- amend clause 49(2) (b) that disestablishes the Auckland Regional Land Transport Committee and section 105 of the Land Transport Management Act 2003. Changes to representation on regional transport committees should be undertaken through a review of the Land Transport Management Act, not through the Auckland governance reform process;
- clause 49(2)(d) provides that ARH will continue as a CCO of the Auckland Council but it does not contain any mechanism to enable this clear intention to be implemented;
- clause 49(2)(d) should be deleted, allowing the status of ARH to be resolved through the ATA process, which will provide a mechanism for the transfer of assets and liabilities as required;
- Schedule 5 of the Local Government (Auckland) Amendment Act 2004 provides a useful guide to achieving integration of transport and land use planning in the Auckland region. In the early stages of developing a spatial plan for Auckland, it would continue to provide guidance. Suggest amendment to clause 49 to have Schedule 5 continue in force and that it must be taken into account in preparing a spatial plan for Auckland;
- sections 38-43 of the Local Government (Auckland Amendment) Act 2004 and its Schedule 5 relate to Plan and Policy Statement changes which are still live, and should be retained in order to give certainty to process and scope. Clause 49 should be amended appropriately;
- ARH has submitted that the provision in clause 6 of Schedule 1 should be retained. They say that without it there would be no restriction on the number of ARH directors or employees being appointed as directors of Ports of Auckland; and
- Auckland Regional Council recommends that the Bill is amended to ensure that strategic assets can only be sold following public consultation.
Officials' Comment

A regional transport committee is not needed where there is a unitary authority, such as the Auckland Council. Changes along these lines are under active consideration for inclusion in the next review of the Land Transport Management Act.

The other planning provisions in the Local Government (Auckland) Amendment Act have been overtaken by changes in the framework of strategies and plans established under the Bill and are now redundant.

Under the provisions of the LGA02 and the provisions in this Bill relating to substantive CCOs of the Auckland Council, Ports of Auckland Ltd assets will not be able to be sold without public consultation (subject to the provisions of the Auckland Council's CCO accountability policy).

The Bill currently provides for ARH to become a non-statutory CCO of the Auckland Council. Given the provisions in clause 24, new section 35G enabling the ATA to establish CCOs under an Order in Council, officials recommend that a binding decision on the future of ARH should not be made. It is recommended that the Bill be amended to provide flexibility in decision making about the future of ARH.

Clause 6 of Schedule 1 of the Local Government (Auckland Amendment) Act 2004 deems ARH to be a regional council for the purposes of the Port Companies Act 1988. It is important that the limit on port company directors who are directly associated with local government continues to apply to the new Auckland Council and to any subsidiaries, or CCOs, or any other sub-organisations of the Auckland Council whether ARH continues or not.

For the avoidance of doubt, officials recommend that the Bill be amended to retain the intent of this provision.

It is now proposed that the repeal of the Local Government (Auckland Amendment) Act 2004 will be dealt with in Schedule 3 of the Bill, and the disestablishment of the ARTA and ARNTL, and the transfer of their assets to Auckland Transport, will occur via the generic provisions in the LGTMA09. This will obviate the need for much of what is included in clauses 49 to 52 although some provisions, including those discussed above, will still be required.
### Recommendation

We recommend that the Select Committee:

**AGREE** that:

1. provision should be made in the Bill to allow Auckland Regional Holdings to be disestablished by Order in Council or retained as a non-statutory council-controlled organisation;
2. the Bill be amended to retain the intent of Clause 6 of Schedule 1 of the Local Government (Auckland Amendment) Act 2004 with respect to representation on the board of a port company; and
3. the Bill be amended so that the repeal of the Local Government (Auckland Amendment) Act 2004 is dealt with in Schedule 3 of the Bill, and the disestablishment of the Auckland Regional Transport Authority and Auckland Regional Transport Network Limited, and the transfer of their assets to Auckland Transport via the generic provisions in the Local Government (Tamaki Makaurau) Act 2009.
Clause 50 – Disestablishment of Auckland Regional Transport Authority

This clause disestablishes the ARTA and provides for the transfer of its property, information, rights, liabilities, contracts, entitlements and engagements to Auckland Transport. All actions, commencements, continuations or enforcement of proceedings and completions of ARTA become the responsibility of Auckland Transport.

Submissions

Four submissions were received on this clause, the main points of which were:
- the transfer of wharves will be inconsistent as North Shore City Council owns its wharves and so those assets will transfer to the new Auckland Council. However, wharves owned by the Auckland Regional Transport Authority will transfer to Auckland Transport;
- the disestablishment occurs too early - it should occur after Auckland Transport is operational; and
- amend this clause to set out ownership and control arrangements to provide for the consistent ownership transfer of all transport assets (apart from land) to Auckland Transport and to ensure Auckland Transport has effective control of all transport assets.

Officials’ Comment

Control of all public transport assets will all transfer to Auckland Transport, regardless of whether they are owned by the Auckland Transport or the Council.

ARTA and Auckland Regional Transport Network Limited need to be disestablished when Auckland Transport starts up to avoid any duplication of functions.

As noted in relation to clause 49, it is now proposed that disestablishment of the ARTA and the transfer of its assets to Auckland Transport will occur via the generic provisions in the LGTMA09. This will obviate the need for much of what is included in clause 50.

Recommendation

We recommend that the Select Committee:

AGREE to omit clause 50 and re-enact any specific provisions still required.
Clause 51 – Existing regional land transport programme and regional land transport strategy for Auckland continues in effect until 30 June 2012

This clause provides for the existing land transport programme prepared by ARTA is to continue until 30 June 2012 and any regional land transport strategy approved before 1 November 2010 will have effect for six years from the date of approval.

Submissions

Two submitters proposed as follows:
- having the current strategy and programme remain in effect until 2016 and 2013 respectively will hamstring the efforts of the new Auckland Council to effect change in delivering transport services and investments. The current strategy should be extended until 2012 to allow the new Council to prepare and consult on its own strategy;
- amend clause 51(1) (b) by adding "or until a successor programme is approved by the Auckland Council" and amend clause 51(2) by adding "or until a new strategy is adopted"; and
- it is inappropriate that a body about to be superseded Auckland Regional Council should be able to constrain and direct its successor over such a critical area of operation as land transport for such a long period. Recommended that the current Regional Land Transport Strategy 2005 should be extended to 31 December 2012 to allow the new Auckland Council to prepare and consult on its own Regional Transport Strategy. The current draft Regional Land Transport Strategy should be suspended.

Officials’ Comment

Regional Land Transport Strategy

The intent is to ensure that any existing Regional Land Transport Strategy on 1 November 2010 continues in effect and is subject to review at the same time as it would have been due for review. The Auckland Regional Transport Committee is currently reviewing the Auckland Regional Land Transport Strategy. While it is anticipated that this review will be completed well before 1 November 2010 the legislation needs to ensure that, regardless of the review, the operative Regional Land Transport Strategy continues in force and falls due for review at the normal time.

The suspension of the draft Regional Land Transport Strategy would be problematic as there is a requirement under the Land Transport Management Act 2003 for a new strategy to be adopted.

The current Auckland regional land transport programme contains some projects that are in the Franklin District. Transitional provisions are needed to ensure that these projects (and any associated funding from the National Land Transport fund) transfer to the Waikato region and that they are consistent with the Waikato Regional Land Transport Strategy.
Recommendation

We recommend that the Select Committee:

**AGREE** to amend clause 51 by:

(c) adding a new subclause (1A) providing that, despite subclause (1), the whole or relevant part of any activities or combinations of activities included in the Auckland regional land transport programme to be constructed in the Franklin district (as defined) must be treated as part of the regional land transport programme approved by the Waikato Regional Council for the 3 financial years commencing 1 July 2009.

(d) omit subclause (3)(b) and insert additional provisions to the effect that, if there is no strategy to which subclause (2) applies:

"(a) the Auckland Council must, by 31 October 2011 or such later date as the Minister of Transport allows, complete the strategy that was under preparation before 31 October 2010, under Part 3 of the Land Transport Management Act 2003; provided that the Auckland Council is not required to carry out any consultation under section 78 of that Act if:

"i the Auckland regional transport committee had carried out consultation in respect of a draft of the strategy in accordance with clause 6 of Schedule 7 of the Land Transport Management Act 2003 (then in force); and

"ii the Auckland Council decides to approve the strategy without any substantial change to the draft strategy that was the subject of that consultation; and

"(b) the existing strategy prepared under the Land Transport Act 1998 must be treated as having effect until the new strategy is prepared and approved."
Clause 52 – Disestablishment of Auckland Regional Transport Network Limited

This clause vests all property, information, rights, liabilities, contacts, entitlement and engagements of ARTNL in Auckland Transport. All actions, commencements, continuations or enforcement of proceedings and completions of ARTNL become the responsibility of Auckland Transport.

Submissions

Two submissions made the following point:

- amend this clause to set out ownership and control arrangements to provide for the consistent transfer of all transport assets (apart from land) to Auckland Transport and to ensure Auckland Transport has effective control of all transport assets.

Officials’ Comment

All assets belonging to ARTNL will transfer to Auckland Transport. As discussed earlier Auckland Transport will have control of all transport assets, even if they are owned by the Council.

As noted in relation to clause 49, it is now proposed that disestablishment of the ARTA and the transfer of its assets to Auckland Transport, will occur via the generic provisions in the LGTMA09. This will obviate the need for much of what is included in clauses 50.

Recommendation

We recommend that the Select Committee:

AGREE to omit clause 52 and re-enact any specific provisions still required.
Clause 53 – Review of employment provisions

This clause contains employment provisions relating to ARTA and ARTNL staff. The provisions are further defined in Schedule 4. These provisions and Schedule mirror the general provisions.

Submissions

There were ten submissions on this clause, the main points of which were:

- amend the section to provide that ARTA and ARTNL employees become subject to exactly the same procedures as employees of existing local government organisations in Auckland;
- in 53(4)(c)(iii) add with respect to current council employees "any less favourable terms and conditions may not come into force until at least 6 months after an employee is transferred to the Auckland Council or one of its CCOs"; and
- should be amended to reflect that there is no intention for a chief executive to make unilateral binding decisions in relation to the terms and conditions of staff that are transferred to the new organisations.

Officials’ Comment

This clause mirrors clause 24 new section 35C relating to the review of employment positions of employees of existing local authorities and terminating organisations.

It is proposed that the employment provisions in the Bill are redrafted and restructured to consolidate the employment related clauses (including those relating to ARTA and ARTNL) and clarify the policy intent.

The other proposed changes to general review of employment provisions outlined in the “Officials Comment” on clause 24 new section 35C also apply to ARTA and ARTNL staff.

The Bill provides for compensation for staff that are offered and accept positions in the new structure in two circumstances:

i. if the position offered has a lower salary; and
ii. if the position is at a different location.

This ensures that the ongoing terms and conditions of employment for the position that they are offered are clear, with recognition that they will be entitled to compensation, for a period, if they are offered a lower salary or are required to move to a different location.

As this clause relates to the process prior to 1 November 2010 for transitioning staff to the new organisations, it needs to commence from the day after the Royal Assent rather than 1 November 2010 as currently provided for in clause 2 – Commencement.
Recommendation

We recommend that the Select Committee:

AGREE that, subject to advice from Parliamentary Counsel, the employment provisions in the Bill be redrafted and restructured to consolidate the employment related clauses (including those relating to Auckland Regional Transport Authority and Auckland Regional Transport Network Limited) and clarify the policy intent.

AGREE that this clause commence from the day after the Royal Assent.
Clause 54 - Whether employees entitled to redundancy or other compensation

This clause specifies when employees are entitled to redundancy or other compensation. Schedule 5 outlines situations where redundancy/compensation is/is not payable. This provision and Schedule mirror the general provisions.

Submissions

The ARTA submitted that the Bill should be amended to provide for existing ARTA and ARTNL staff to be transferred directly to Auckland Transport.

Officials' Comment

The Bill provides the staff of ARTA and ARTNL to transition to new employers using the same processes as those applying to the transition of staff of existing local authorities and terminating organisations. Positions in Auckland Transport should be available for staff from all existing local authorities, terminating organisations, ARTA and ARTNL.

It would not be appropriate to provide an advantage to those staff who are currently employed in ARTA and ARTNL over staff in other organisations that are to be disestablished at the close of 31 October 2010.

As this clause relates to the process prior to 1 November 2010 for transitioning staff to the new organisations, it needs to commence from the day after the Royal Assent rather than 1 November 2010 as currently provided for in clause 2 – Commencement.

Recommendation

We recommend that the Select Committee:

AGREE that, subject to advice from Parliamentary Counsel, the employment provisions in the Bill be redrafted and restructured to consolidate the employment related clauses (including those relating to Auckland Regional Transport Authority and Auckland Regional Transport Network Limited) and clarify the policy intent.

AGREE that these provisions commence from the day after the Royal Assent.
Clause 55 – Obligations in relation to 2010/2011 annual report

This clause sets reporting requirements for ARTA and ARTNL. Neither is required to prepare and adopt an annual report for the 2009/2010 financial year. Instead a report for 1 July 2009 to 31 October 2010 must be prepared for each organisation and adopted by Auckland Transport.

Submissions

Submissions sought the amendment of the heading of this clause to "Obligations in relation to the 2009/2010 annual report", as the clause refers to this year rather than 2010/2011.

Officials’ Comment

The heading is incorrect and should be amended as suggested.

Recommendation

We recommend that the Select Committee:

AGREE to amend the heading to clause 55 to refer to the 2009/10 annual report.
Subpart 2 – Transitional provisions relating to collective agreements

Clause 56 – Collective bargaining before 1 November 2010 for variation or new collective agreement to come into force on that date

This clause enables parties to enter into collective bargaining before 1 November 2010 to achieve a new collective employment contract to be effective from 1 November 2010.

Submissions

The PSA and NZCTU submitted that:

- additional wording is required in clause 56(2) to enable effective collective bargaining before 31 October 2010;
- the relevant unions may initiate bargaining at any time notwithstanding that section 41 of the Employment Relations Act 2000 provides that they may not initiate bargaining earlier than 60 days before the expiry of an existing collective agreement; and
- stipulate that the provisions of the Employment Relations Act continue to apply and that new employees will have the protections under section 62 of the Employment Relations Act.

Officials’ Comment

This clause is intended to enable the initiation of bargaining for a new collective agreement any time before 31 October 2010. For clarification it is proposed that this clause be amended to make it explicit that the relevant unions may initiate bargaining at any time before 1 November 2010 for a new collective agreement, not withstanding section 41 of the Employment Relations Act which provides that bargaining may not be initiated earlier than 60 days before the expiry of an existing collective agreement.

As this clause relates to the initiation of bargaining before 1 November 2010, it needs to commence from the day after the Royal Assent rather than 1 November 2010 as currently provided for in clause 2 – Commencement.

It is proposed that, subject to advice from Parliamentary Counsel, the employment provisions in the Bill are redrafted and restructured to consolidate the employment related clauses (including those relating to ARTA and ARTNL) and clarify the policy intent.

Nothing in this clause suggests that the provisions of the Employment Relations Act would not apply to new collective employment agreements, which are enabled by this clause to be negotiated during the period to 31 October 2010.
Recommendation

We recommend that the Select Committee:

AGREE that the employment provisions in the Bill should be redrafted and restructured to consolidate the employment related clauses (including those relating to Auckland Regional Transport Authority and Auckland Regional Transport Network Limited) and clarify the policy intent, including clarifying that the relevant unions may initiate bargaining at any time before 1 November 2010 for a new collective agreement, notwithstanding section 41 of the Employment Relations Act 2000 which provides that bargaining may not be initiated earlier than 60 days before the expiry of an existing collective agreement.

AGREE that these provisions commence from the day after the Royal Assent.
Clause 57 – Application of existing collective agreements on and from 1 November 2010

This clause ring fences existing collective agreements that continue beyond 1 November 2010 and provides for each of those collective agreements to be treated as a separate agreement in relation to each new employer, with the new employer becoming party to the agreement. The clause also enables the union to give early notice of expiry of such an agreement.

Submissions

There were four submissions on this clause, as follows:

- amend 57(2)(b) to clarify that new employers will be bound by the collective agreement;
- the clause should apply to staff in Hauraki and Waikato District Councils;
- the ATA and new employers should be required to provide existing staff with current conditions; and
- clause 57(4) is intended to limit the application of clause 57 to those collective agreements that have not been agreed under clause 56 processes. The wording is not clear.

Officials’ Comment

This clause provides for each new employer, who receives staff on 1 November 2010 covered by a valid collective agreement, to become party to that collective agreement. This in effect binds that new employer to comply with that collective agreement.

This clause also only applies to collective employment agreements in force on 31 October 2010 and which are not negotiated as a result of clause 56. The wording of this provision could be clarified.

Provisions for the transition of staff to the new organisations and their terms and conditions of employment are covered in clause 24 new section 35C.

It is proposed that, subject to advice from Parliamentary Counsel, the employment provisions in the Bill be redrafted and restructured to consolidate the employment related clauses (including those relating to ARTA and ARTNL) and clarify the policy intent.

Recommendation

We recommend that the Select Committee:

AGREE that, subject to advice from Parliamentary Counsel, the employment provisions in the Bill should be redrafted and restructured to consolidate the employment related clauses (including those relating to ARTA and ARTNL) and clarify the policy intent.
Subpart 3 – Other savings and transitional provisions

Clause 58 – Interpretation

This defines certain terms as used in subpart 3 of Part 3 of the Bill.

Submissions
No submissions were received on this clause.

Officials’ Comment
Some changes are likely to be required consequentially by other amendments to this subpart.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 58, as required, to support other amendments to subpart 3 of Part 3 of the Bill.
Clause 59 – Prohibition on reorganisation of Auckland until after October 2013 triennial general elections

This clause prohibits reorganisation proposals by any person (including the Minister of Local Government or the Auckland Council) relating to Auckland until after the 2010 local elections.

Submissions
Clause 59 attracted 117 submissions, predominantly raising similar points to those raised in respect of clause 45, new Part 8, new section 83:

- the Government has been unable to prove that the proposed boundaries, wards and local board areas are supported by residents and the freeze is anti-democratic;
- the new Auckland Council should have the right to redraw the city boundaries to reflect the various communities of interest;
- want to retain the right to address the possible anomaly of part of Waikato district bisecting what will probably be the boundaries of Hauraki district;
- Rodney District Council requests that the moratorium on reorganisation proposals be reduced to 18 months;
- the option for Waiheke to leave the Auckland Council and join with Thames / Coromandel should remain open; and
- the clause withholds rights under the LGA02 from one third of New Zealanders for three years because they live in Auckland.

Officials’ Comment
This clause provides a “settling down” period after the major changes made by the Government to Auckland Governance, before reorganisation proposals can be initiated. This will allow a fair assessment of these changes, and prevent the expense and further disruption and uncertainty of knee-jerk reactions by those opposed to the changes.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 59 without amendment.
Clause 60 – October 2013 triennial general elections to be conducted using First Past the Post

This clause states that the October 2013 local elections must be held using the First Past the Post electoral system.

Submissions

168 submitters opposed this clause on the grounds that it denies Aucklanders the right to opt for a more proportional system for a further three years.

Officials’ Comment

Under the Local Electoral Act 2001, polls on electoral systems are binding for two elections (six years). This clause makes similar provision in respect of Parliament’s decision that the first election in Auckland will use First Past the Post.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 60 without amendment.
Clause 61 – First steps for board established by Part 7 of Local Government (Auckland Council) Act 2009

This clause contains the first steps to establish a statutory board to represent the interest of mana whenua and Māori.

Submissions

Submissions relevant to the clause recommended:

- clause 61(5) should be amended to have the remuneration of board members determined by the Remuneration Authority, as it does now for community Boards, and not by the Auckland Council; and
- the Higher Salaries Commission should determine salaries, not the Auckland Council.

Officials’ Comment

While the remuneration of board members will ultimately be set by an independent expert, it will take some time to assess the role of the board, and arrive at the appropriate level of remuneration. Regardless of who is assigned the role of setting remuneration levels, the amount of time taken is likely to be some months.

Not providing for remuneration of some form from the outset would have the effect of board members going without any remuneration for some months until recommendations could be made. The provision for board members to be remunerated as if they were specialist advisors to the Auckland Council will ensure that board members do not spend several months without any recompense for their work.

To support the Auckland Council when it first comes into existence on 1 November 2010, it is recommended that the board also be established on or before 1 November 2010. The new Auckland Council will be required to undertake a substantial range of activities, and it could reasonably be expected to need assistance or advice as it undertakes particular functions affecting on Māori. To give effect to this, it will be required to amend the existing clause 61 to provide for the establishment of a board on or before 1 November 2010.
Recommendation

We recommend that the Select Committee:

AGREE to:

2) omit subclauses (2) and (3) from clause 61 (which will continue to come into force on 1 November 2010);

2) amend Part 1 of the Bill to insert a provision along the following lines in the Local Government (Tamaki Makaurau) Act 2009 (which will come into force immediately but be repealed on 1 November 2010);

“35IA Minister of Māori Affairs and mana whenua groups to commence selection process for members of board promoting issues of significance for mana whenua and Māori of Tamaki Makaurau

“(1) The Minister of Māori Affairs and the mana whenua groups described in clause 4(2) of Schedule 3 of the Local Government (Tamaki Makaurau) Act 2009 must commence the selection process for members of the board promoting issues of significance for mana whenua and taura here of Tamaki Makaurau to be established under section 67 of that Act by—

“(a) the Minister giving notice to the mana whenua groups in accordance with clause 4 of Schedule 3 of the Local Government (Auckland Council) Act 2009; and

“(b) the mana whenua groups establishing a selection body in accordance with clauses (2) and 4(4) of that Schedule.

“(2) For the purposes of this section, the Minister and the mana whenua groups must carry out the functions described in this section as if Part 7 and Schedule 3 of the Local Government (Tamaki Makaurau) Act 2009 were in force and the Auckland Council established;

“(3) The Auckland Transition Agency is responsible for any costs the Minister may incur acting under this section”;

3) the addition of a new requirement for all members of the first board to be appointed by no later than 1 November 2010; and

4) amend the Bill to require that:

   c. the board must hold its first meeting within two weeks of appointments to the board being made; and

   d. the board must appoint a member to act as Chairperson and a member to act as deputy Chairperson at the first meeting.
Clause 62 – Moratorium on sale of certain Council property

This clause prohibits the Auckland Council from selling shareholdings, land or buildings used for service delivery, and any other land or buildings with value over $250,000, until 1 July 2012, unless:

- the sale of the asset is already noted in the LTCCP of an existing council;
- the sale of the asset is part of a property development and is completed by the statement of intent of an existing CCO;
- the sale of the asset is required for public works; and
- the asset is operational plant or equipment surplus to the Council’s requirements.

The Council may lease, rent or otherwise authorise land or buildings surplus to requirements.

The Moratorium affects the Council, any of its CCOs and their subsidiaries.

Submissions

There were 197 submissions on this clause, the majority of which expressed the following:

- opposition in principle to any asset sales without a public referendum supporting the sale;
- concern that the proposed moratorium would end on 1 July 2012, prior to the 2013 elections;
- Aucklanders should be able to have their say on asset sale proposals at the 2013 elections; and
- the moratorium should continue until Aucklanders decide otherwise.

In addition to these main themes, submissions were made as follows:

- clarify that the moratorium does not prevent the transfer of assets between the Auckland Council and its CCOs;
- amend 62(1)(c) to $2 million, as $250,000 would not trigger the significance policies of any of the existing Auckland councils; and
- amend to ensure that those properties subject to s40 of the Public Works Act 1981 be excluded from the moratorium.

Officials’ Comment

The moratorium is intended to prevent the sale of assets in the period between the establishment of the Auckland Council and the adoption of its first LTCCP in 2012. Any proposals for asset sales by the Auckland Council after 1 July 2012 will need to be consulted on as part of the process of developing the LTCCP. This is the same consultation requirement as applies to all other territorial authorities under the Local Government Act 2002.
Officials recommend that the Bill clarifies that the moratorium does not prevent the transfer of assets between the Auckland Council and its CCOs. The proposed for accountability policy for council-controlled organisations will enable the Auckland Council to adopt a policy for the definition of a strategic asset held by a substantive council-controlled organisation and determine the processes for approval of major transactions relating to these.

One of the exceptions to the moratorium on selling property is where “disposal of the asset is required to effect or complete a public work”. The terms “effecting or completing” do not capture all of the circumstances that might apply to disposal of property relating to a public work land. It is recommended that the clause be amended to clarify that the exemption applies to situations where disposal of the asset is a consequence of a public work.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 62 to clarify:
(a) that the exemption from the moratorium applies to situations where disposal of the asset is a consequence of a public work; and
(b) that the moratorium does not prevent the transfer of assets between the Auckland Council and its council-controlled organisations.
Clause 63 – Existing directors and board members of council-controlled organisations and council organisations

This clause says existing directors or board members of CCOs and Council Organisations including those whose terms expire before 31 December 2010 will remain in office until new directors or board members are appointed. This includes those appointed by existing local government organisations.

Submissions
No submissions were received on this clause.

Officials’ Comment
No changes are proposed.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 63 without amendment.
Clause 64 – Half-yearly report replaced with 4-month report

This clause requires CCOs transferring to the Auckland Council unchanged to prepare a four-monthly report of its operations for the period from 1 July to 31 October 2010.

Submissions
No submissions were received on this clause.

Officials’ Comment
No changes are proposed.

Recommendation

| We recommend that the Select Committee: |
| AGREE to retain clause 64 without amendment. |
Clause 65 – Watercare Services Limited treated as local government organisation

This clause states that Watercare is to be treated as a local government organisation until 30 June 2012.

Submissions

There were 52 submissions on this clause, primarily by submitters taking the opportunity to oppose any future privatisation of water services. Submissions relevant to the clause were:

- Auckland Regional Council recommended that Watercare becomes a CCO from 1 November 2010, and that clauses 65 to 70 be deleted; and
- the Local Government Forum submitted that Watercare should be established as a council-controlled trading organisation (CCTO), on the same basis as the Government’s SOEs.

Officials’ Comment

The intention of making Watercare a CCO from 2012 was to give some time for it to upscale its operations between 2010 to 2012. Watercare cannot be considered a CCTO because it will not be operating to make a profit, which is what differentiates a CCO from a CCTO (see definitions in section 6 of the LGA02).

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 65 without amendment.
Clause 66 – Obligations on provider of water services in Auckland

This clause outlines provisions relating to the operation of Watercare until 30 June 2012 – scope of functions, funding plans and arrangements; financial statements and costing and pricing practices; the treatment of surpluses; asset management; and consultation on the SoI.

Submissions

There were 39 submissions on this clause, primarily by submitters taking the opportunity to express concerns about the accountability of Watercare to the Council and to ratepayers, and the possibility of future privatisation. Submissions relevant to the clause were:

- Watercare must be subject to Auckland Council policies and directions in setting price for water after 30 June 2015;
- decision making processes must remain transparent after June 2012;
- the clause is inconsistent with the reporting requirements that will apply to (the other) CCOs; and
- to help build public confidence that effective scrutiny and governance direction will sit with Auckland Council, strengthen the information and reporting requirements.

Officials’ Comment

As noted elsewhere, the Department has recommended significant changes to the Bill to increase the accountability of CCOs (including Watercare) to the governing body of the Auckland Council and through the council, to the public. This includes having to give effect to the council’s LTCCP and acting consistently with other relevant council plans and strategies.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 66 without amendment.
Clause 67 – Official information

This clause clarifies that the Local Government Official Information and Meetings Act 1987 applies to Watercare until 30 June 2012.

Submissions

There were 163 submissions on this clause, with most submitters misinterpreting the clause to mean that Watercare would not be subject to Parts 1 to 6 of the Local Government Official Information and Meetings Act 1987 after 30 June 2012.

The one submission relevant to the intent of the clause was:
- Watercare should also be made subject to Part 7 of the Local Government Official Information and Meetings Act.

Officials' Comment

This clause is consistent with the duties on CCOs in respect of Local Government Official Information and Meetings Act under section 74 of the LGA02. No change is recommended.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 67 without amendment.
Clause 68 – Statement of corporate intent

This clause requires Watercare to have a statement of corporate intent for each financial year until 30 June 2012.

Submissions

Submissions relevant to the clause were:

- the provisions for Watercare’s SoI should be assessed to ensure consistency with the SOI principles and alignment with the SoI provisions in the LGA02;
- the clause is inconsistent with the reporting obligations that will apply to (the other) CCOs;
- amend 68(2) to provide that a draft statement of corporate intent must be provided on or before 1 March each year;
- the statement of corporate intent needs to reflect social and environmental responsibilities; and
- add after 68(3)(e) “the guaranteed minimum standards of service and the specified level of payment to the customer affected where failure to deliver occurs”.

Officials’ Comment

This is a transitional provision. The intention of the 2012 date was to provide time for Watercare to change its operation to take on its additional responsibilities. From 2012, when Watercare becomes a CCO, it will be subject to the same accountability and reporting requirements as other CCOs, subject to the proposed Auckland Council’s accountability policy discussed elsewhere.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 68 without amendment.
Clause 69 – Completion of statement of corporate intent

This clause specifies the process for considering stakeholder comments on Watercare’s statement of corporate intent until 30 June 2012.

Submissions

Submissions relevant to the clause were concerned that the clause is inconsistent with the reporting obligations that will apply to (the other) CCOs.

Officials’ Comment

This is a transitional provision. The intention of the 2012 date was to provide time for Watercare to change its operation to take on its additional responsibilities. From 2012, when Watercare becomes a CCO, it will be subject to the same accountability and reporting requirements as other CCOs, subject to the proposed Auckland Council’s accountability policy discussed elsewhere.

Recommendation

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<td><strong>AGREE</strong> to retain clause 69 without amendment.</td>
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Clause 70 – Reports and accounts

This section set out the reporting requirements of Watercare until 30 June 2012.

Submissions

Submissions relevant to the clause were concerned that the clause is also inconsistent with the reporting obligations that will apply to (the other) CCOs.

Officials’ Comment

This is a transitional provision. The intention of the 2012 date was to provide time for Watercare to change its operation to take on its additional responsibilities. From 2012, when Watercare becomes a CCO, it will be subject to the same accountability and reporting requirements as other CCOs, subject to the proposed Auckland Council’s accountability policy discussed elsewhere.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 70 without amendment.
Clause 71 – How Watercare Services Limited to set prices

Until 30 June 2015, Watercare must take into account policies and comply with directions from the Auckland Council, when setting prices for its water and wastewater services.

Submissions

The clause attracted 201 submissions, primarily from submitters concerned that Watercare will not be subject to Auckland Council policies or directions in setting prices for water after 30 June 2015.

In addition to that main theme, submitters raised the following matters and suggestions:

- the legislation does not give any indication as to what applies after June 2015, and there are major concerns around the potential for the sale into private hands of Auckland’s water services;
- Watercare should remain subject to Auckland Council’s policies and directions on pricing after June 2015;
- suggest the clause be amended by changing “take into account” to read “give effect to” as this is much stronger; and
- currently, some existing council policies provide for the remission or postponement of rates for water and wastewater. Does this clause bind Watercare to the remission and postponement policies of the Auckland Regional Council. Can the Auckland Council ameliorate water rates as part of the rates bill, for rebate recognition? Recommend that there be clarification of whether Watercare is to be bound by existing policies, and if so, until when. Suggest the clause extend to cover rates rebates as councils policies for remissions on rates will no longer apply.

Officials’ Comment

There was no intention that the policies of, and the directions given by, the Auckland Council would cease to have effect after 30 June 2015. The Department recommends amending the proposed new section by removing reference to 30 June 2015, and making the provision more flexible by referring to the Auckland water organisation rather than Watercare. As noted elsewhere, all CCOs will be required to give effect to the Auckland Council’s long-term council community plan and to act in a manner consistent with other relevant council strategies and plans.

The new provisions should be moved to clause 45 which inserts new Part 5 in the LGACA09.

There is a question as to the relationship between the proposed new section and the obligations on Auckland water organisations (in the proposed new section 49 of the LGACA09, which requires services to be provided at minimum levels. In the Department’s view, the duty in the new section 49 is for the water organisation to
manage its operations efficiently with a view to keeping its charges at minimum levels. The price charged needs to reflect the water organisation’s statutory duties which in this case would mean complying with any direction on pricing. It would be useful, to avoid doubt, to clarify that by following the Auckland Council’s policies and directions, the water organisation is not breaching the new section 49.

Recommendation

We recommend that the Select Committee:

AGREE to omit clause 71 and insert a new provision in Part 5 under clause 45 of the Bill that reflects the existing provision subject to the following changes:

(a) remove reference to 30 June 2015;
(b) replace the reference to Watercare Services Limited with a reference to an Auckland water organisation; and
(c) clarify that taking account of an Auckland Council policy or complying with an Auckland Council direction, does not mean that the water organisation is breaching the proposed new section 49 of the Local Government (Auckland Council) Act 2009.
Clause 72 – Employees and members of Auckland Council must not be directors of Watercare Services Limited

This clause says employees and members of Auckland Council must not be directors of Watercare.

Submissions

Submissions on this clause were all opposed to the clause on the one of two grounds. They maintained that either:
- a majority (or at least half) of the directors of Watercare should be Auckland councillors; or
- the Auckland Council should determine a policy for who can be a director.

Officials’ Comment

The Government’s policy is that no members of the Auckland Council’s governing body or local boards can be a director of a substantive CCO (other than Auckland Transport, where a maximum of two Auckland Councillors may be appointed members). A corollary is that directors who are elected to either the governing body or a local board must resign from the directorship. This is being dealt with in respect of CCOs generally in clause 45 new section 76. This clause should be amended accordingly.

Any amendment also needs to take account of the fact that Watercare will not be a CCO until 2012.

Recommendation

We recommend that the Select Committee:

AGREE to amend the provision to reflect a generic approach to the appointment of directors to substantive council-controlled organisations of the Auckland Council and taking into account that Watercare will not be a council-controlled organisations until July 2012.
Clause 73 – Restrictions on form and asset ownership of Watercare Services Limited

Until 30 June 2015, Auckland Council must remain the sole owner of Watercare. Auckland Council must ensure that Watercare does not dispose of any part of its business or assets that are necessary for conduct of business. Auckland Council must provide water services through Watercare only. From 1 July 2015 Auckland Council can decide how it will provide water and wastewater services in Auckland.

Submissions

Submissions on this clause all opposed it on the grounds that:
- the Bill must prevent any sale of Watercare post-2015;
- the clause sends mixed messages about whether the Government has allowed for Watercare to be privatised after 2015; and
- water services should be run by a department or committee of the Council.

Officials’ Comment

The Government’s policy decisions are that Watercare should be the Auckland water organisation until 2015, after which time the governing body of the Auckland Council can decide how water supplies and wastewater services are provided. However, any decision by the Auckland Council must also conform to other relevant legislation including provisions in the LGA02. The LGA02 currently provides that an organisation providing water services cannot divest ownership or other interest in a water service other than to another local government organisation. This means that, after 2015, should the Auckland Council decide that it does not want Watercare to be the water and wastewater services provider, or decides to split some of Watercare’s functions to another provider, any assets can only be sold back to the Council or to another council organisation. Such assets cannot therefore be privatised. Subsection (2) of this clause would enable the Auckland Council, after 2015, to provide water and wastewater services by a council department.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 73 without amendment.
Clause 74 – Watercare Services Limited to administer and enforce Auckland Regional Council Trades Waste Bylaw 1991

This clause says Watercare must administer and enforce the Auckland Regional Council (ARC) Trades Waste bylaw until the earlier of 1 July 2015 or when the Council makes a new trade waste bylaw.

Submissions

While a number of submitters mentioned this clause in expressing opposition to any future privatisation plans, there were no submissions specific to this clause.

Officials’ Comment

This clause needs to be amended to reflect that Watercare needs the mandate to administer and enforce the trade waste bylaws currently in force in the Franklin and Rodney districts, and North Shore city until the earlier of 1 July 2015 or when the Council makes a new trade waste bylaw.

The Bill also needs to be amended to ensure that an offence against the ARC bylaw is an offence under the LGA02. Currently, a breach of the Auckland Regional Council Trades Waste Bylaw is an offence by virtue of section 28(2) of the Auckland Regional Authority Act 1963. This Act will be repealed by the Bill. Section 239 of the LGA02 provides that a breach of a bylaw made under that Act is liable, on summary conviction, to a penalty set out in section 242 of the LGA02. However, because the Auckland Regional Council bylaw is made under the Auckland Regional Authority Act 1963, the LGA02 penalty provisions do not apply. Accordingly, amendment to the Third Bill is necessary to ensure that the offences provisions of the LGA02 apply to breaches of the ARC Trade Wastes Bylaw otherwise breaches of the Trades Waste Bylaw will not be able to be prosecuted.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 74 to ensure that:
(a) Watercare has the mandate to administer and enforce the trades waste bylaw in the Franklin and Rodney districts, and in North Shore city until 1 July 2015 or earlier if the Council makes a new trades waste bylaw; and
(b) a breach of the Auckland Regional Council trades wastes bylaw is treated as an offence against the Local Government Act 2002 and any such breach will attract a penalty under section 242 of that Act.
Proposed New Clause– Interim Requiring Authority Status for Watercare

Officials’ Comment
Watercare holds requiring authority status under the RMA under Gazette Notices issued by the Minister for the Environment in 1992 and 1994. Those notices grant requiring authority status for the operation, maintenance, and improvement of a wide range of broadly described infrastructural assets. It is not clear, however, that they cover all of the infrastructure Watercare will own and operate from 1 November 2010.

The RMA prescribes a process whereby network utility operators can apply to the Minister for the Environment for approval as a requiring authority. This is the appropriate procedure for Watercare to follow to obtain certainty concerning its status across its new sphere of operations.

However it may be difficult for Watercare to obtain such approval under this process before 1 November 2010, and unreasonable to expect this given the other major changes it is undertaking over this period. It is therefore proposed to insert a provision in the Bill deeming the general approvals it has under the current 1992 and 1994 Gazette notices to cover all the infrastructure Watercare will own and operate from 1 November 2010.

Recommendation

We recommend that the Select Committee:

AGREE to the insertion of a new provision in Part 3 of the Bill to deem that the general approvals of requiring authority status that Watercare has under 1992 and 1994 Gazette notices, cover the operation, maintenance, and improvement of all the infrastructure Watercare will own and operate from 1 November 2010.
Clause 75 – Exemption from Takeovers Code in relation to Auckland International Airport Limited shares

This clause exempts the Auckland Council from the Takeovers Code in respect of its acquisition of 22.8 percent of Auckland International Airport Ltd (AIAL) shares, resulting from the reorganisation.

Submissions

There were four submissions on this clause, all concerned that if the 22.8% shareholding changes, the exemption will no longer apply. They submit it should be amended to apply to any council shareholding up to 22.8 percent.

Officials’ Comment

Since the Bill was introduced, shareholders of AIAL have been offered a dividend reinvestment option. If shareholders other than Auckland and Manukau City Councils take up the offer, then the percentage shareholdings of Auckland City Council and Manukau City Investments Ltd (the holding company for Manukau City Council’s shares in AIAL) will reduce making their combined shareholding less than the 22.8 percent specified. Officials recommend that clause 75 of the Bill is amended to recognise that the new Auckland Council may acquire “up to” a 22.8 percent shareholding in AIAL.

Officials have also identified that the Auckland governance reorganisation will result in the Auckland Council acquiring up to 21.2 percent of shareholding in the New Zealand Local Government Insurance Corporation (NZLGIC).

It is recommended that the Bill provide for a statutory exemption to the Takeovers Code for this acquisition.

It is also recommended that the Bill is clarified to ensure that the Takeovers Code exemptions apply to the acquisition of shareholdings in AIAL and NZLGIC by Auckland Council “or any of its CCOs or their subsidiaries”.

**Recommendation**

We recommend that the Select Committee:

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<th><strong>AGREE</strong> to amend clause 75 to:</th>
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<td>(d) recognise that the Auckland Council may acquire up to a 22.8 percent shareholding in Auckland International Airport Ltd;</td>
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<td>(e) provide for a Takeovers Code exemption for the Auckland Council’s acquisition of up to 21.2 percent shareholding in the New Zealand Local Government Insurance Corporation; and</td>
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<tr>
<td>(f) clarify that the Takeovers Code exemptions applies to the acquisition of shareholdings by Auckland Council or any of its council-controlled organisations or their subsidiaries.</td>
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Clause 76 – Purpose of sections 77 to 80

This clause states that the purpose of sections 77 to 80 are to provide mechanisms to enable Auckland Council to manage any significant changes in rating liability from 2012 to 2015 arising from creating a single rating system.

Submissions
There were no submissions on this clause.

Officials’ Comment
No changes are proposed.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 76 without amendment.
Clause 77 – Interpretation

This clause defines key terms used in clauses 78 to 80.

Submissions
There were no submissions on this clause.

Officials’ Comment
Technical drafting changes are required to correct an incorrect section reference and two incorrect date references. Consequential amendments may be required to recommended changes to clauses 78 to 80.

Recommendation

| We recommend that the Select Committee: |
| **AGREE** to retain clause 77 with only technical drafting and consequential amendments. |
Clause 78 – Council may have rates transition management policy for 3-year period commencing 1 July 2012

This clause provides for the Auckland Council to have a rates transition management policy and sets out the required content of that policy.

Submissions

There were 10 submissions on this clause, generally in favour of a transition management policy for the new rating system to be developed by the Council. The main suggestions made in submissions were:

- that there be provision for a dollar limit on the maximum rate increase and decrease limit as well as a percentage, a maximum change of whichever is greater;
- that there be an option to have a different maximum rate decrease limit from the maximum rates increase limit;
- that the transition rate be calculated on the total rating liability for each ratepayer excluding any rate charged for a local infrastructure loan;
- that the current level of rates paid by elderly residents be “grandparented” in the initial transition phase;
- the adjustment period is relatively short and may need to be extended by the Council; and
- the Bill should address passive utilities separately and adopt a unique change limit specifically for passive utilities.

Officials’ Comment

The rates transition management policy will be one of a number of tools available to allow the Auckland Council to manage the impact of introducing a consistent rating regime across Auckland. While these mechanisms are proposed to be available for only the first three years of the Auckland Council’s new rating regime, the Council can use rates remission and rates postponement mechanisms to address any individual impacts beyond that time. Those mechanisms (and the Government’s Rates Rebate Scheme) are also available to address cases of individual ratepayer hardship arising from any cause throughout this period.

Officials concur that it may be desirable for change limits to be able to be set in dollar, as well as percentage, terms. We also agree that it is desirable to provide for different limits on rates increases and decreases, but only to the achieve a neutral outcome in terms of rates revenue. Unconstrained ability to set different limits would blur accountability, and could lead to significant additional costs (at one extreme) or non-transparent increases in overall rates revenue on the other. Consequential changes may be required to clauses 77 and 79.
Recommendation

We recommend that the Select Committee:

**AGREE** to amend clause 78 (and clauses 77 and 79 if required):
(c) to allow the change limit to be expressed as a dollar amount instead, or as well as a percentage of the previous year’s rates; and
(d) to allow different limits on increases and decreases but only to achieve a neutral outcome in overall rates revenue.
Clause 79 – How Council must apply rates transition management policy

This clause sets out how the Council must apply a policy under clause 78.

Submissions

Submissions made on this clause made the following points:
- rates should not change by more than CPI each financial year;
- the Bill should not have embedded percentage increases in it. The Bill should streamline rates and ensure that regardless of where one lives, a fair system that is not annually increased/decreased by a percentage is brought in with this Bill; and
- Waikato District Council seeks to have the same rating transition provisions as provided to the Auckland Council.

Officials’ Comment

The clause is concerned only with the impact on individual ratepayers of the introduction of a common rating system across Auckland. This will inevitably lead to changes to valuation systems, differential systems, and the use of targeted rates and may involve significant winners and losers amongst ratepayers.

It is understood transitional rating provisions for that part of Franklin District included in Waikato District are included in the LGC determination.

Recommendation

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<td>AGREE to retain clause 79 without amendment.</td>
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**Clause 80 – Local Government (Rating) Act 2002 otherwise applies**

This clause provides that, except as provided in clauses 78 and 79, the Local Government (Rating) Act 2002 applies.

**Submissions**

No submissions were received on this clause.

**Officials’ Comment**

This clause needs to be amended to recognise that (as discussed in relation to clause 15) it is necessary to specify in this Part that the Auckland Council’s general rate in 2012/13 must be assessed using capital value, so that the normal discretion under the Local Government (Rating) Act 2002 will not apply for that year.

**Recommendation**

We recommend that the Select Committee:

**AGREE to amend clause 80 to provide that the Auckland Council’s general rate in 2012/13 must be assessed using capital value, so that the normal discretion under the Local Government (Rating) Act 2002 will not apply for that year.**
Clause 81 – District valuation roll, rating information database, and rates records

This clause contains transition provisions for transferring district valuation rolls, rating information databases and rates records to the Auckland Council.

Submissions

There were two submissions on this clause, as follows:

- rates increases will lead to affordability issues for significant numbers of ratepayers; and
- there should be consultation on the most equitable rating methodology.

Officials’ Comment

Neither of these submissions are relevant to the subject matter of this clause. No changes are proposed.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 81 without amendment.
Clause 82 – Council authorised to collect and deal with balance of rating matters for 2010/2011 financial year

This clause authorises the Council to collect rates and rates arrears for the 2010/2011 financial year.

Submissions
No submissions were received on this clause.

Officials’ Comment
No changes are proposed.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 82 without amendment.
Clause 83 – Rates for 2011/2012 financial year

This clause states a single transaction rate must be set for the 2011/2012 financial year and a uniform percentage change will be applied. For example, a 2 percent increase on last year’s rates bill, less rates for water and wastewater (because Watercare will charge directly for these services).

Submissions

There were nine submissions on this clause, recommending as follows:

- amend the clause to ensure the transition rate is calculated as a uniform percentage variation from the total rates liability for each rating unit, less any local infrastructure loans and any rates for water supply or wastewater services;
- to empower each local community to improve their own area according to their own priorities and to free Auckland councillors and mayor to focus upon regional matters, the submitter requests that the Bill be altered to require Auckland Council to issue a single bill for all rates and council utilities (separately itemised), including a separate local rate (to be set annually by the relevant local board) and regional rate (to be set annually by the Auckland Council). This permits the current diversity of views as to appropriate levels of council service provision to be reflected and funded in a local rate for each local community, while allowing the full Auckland Council to set and fund rates for provision of those amenities that are truly regional in nature;
- amend the clause to replace "uniform percentage variation" with "Consumer Price Index";
- a uniform approach is not appropriate as it fails to recognise that passive utilities do not cause costs to councils and derive little benefit from council services. It is more appropriate that any percentage variation should be tailored to specific activity classes;
- provide that the existing councils' current rates policies and projected rates increases set out in their LTCCPs should continue, with a uniform percentage increase applied only if there is a shortfall;
- amend to provide that any uniform percentage increase that is applied does not apply to targeted rates; and
- Grey Power noted that there will be three other local authority rating entities (Auckland War Memorial, Museum of Transport and Technology, and the Auckland Regional Amenities Fund). If their charges increase this would have a major impact on the elderly and low income earners.

Officials’ Comment

The majority of submissions are seeking variations or limits on the transitional rate as if it were the long-term rating regime of the Auckland Council. The clause is intended to ensure that in 2011/12, all ratepayers face the same (proportionally) increases or decreases in rates compared to the rates set by the existing local authorities for 2010/11. This allows time for the Auckland Council to design an Auckland wide rating regime for managed introduction (as discussed in relation to previous clauses) from 2012.
Changes are proposed to this clause (or possibly in a new companion clause) to postpone the introduction of direct charging for wastewater services by Watercare until 2012 (apart from consumers who already pay direct charges for wastewater services). It is proposed that a separate wastewater transitional rate, proportional to 2010/11 wastewater rates, be set and collected by the Auckland Council at a level to meet the wastewater revenue requirements of Watercare. The revenue will be paid to Watercare.

**Recommendation**

We recommend that the Select Committee:

**AGREE** to amend clause 83, and/or add a new clause:

- (c) to provide for Auckland Council to assess and collect a separate wastewater transitional rate in 2011/12 that is proportional to 2010/11 wastewater rates and at a level to meet the wastewater revenue requirements of Watercare; and
- (d) to provide for the revenue from wastewater rates in 2011/12 to be paid to Watercare.
Clause 84 – Targeted rates proposals in 2011/2012 financial year

If a local board wants to have a targeted rate for the 2011/2012 financial year, the Council can either set it or decline it if it is impractical or unreasonably expensive to implement it that year.

Submissions

There were thirteen submissions on this clause, the main points of which were:

- Auckland Regional Council recommended that the grounds on which the governing body may decline a proposal for a targeted rate in 2011/12 are broadened;
- while supportive of the idea of some different funding between local board areas, one submitter was concerned that there is the potential for the Auckland Council to "off-load" its responsibilities for local areas by requiring targeted rates to be set for core services. Should this happen, the scenario might arise where there is considerable disparity between the services provided to high income areas compared to low income areas. The Select Committee should look into mechanisms to avoid such a situation such as a percentage cap on the amount of rates that can be local board area targeted rates as a proportion of the total rates set;
- targeted rates should be discontinued;
- rates should be based on capital value;
- the distribution of rates and the development of budgets based on rate collections need to be tailored to coincide with the areas identified for local body representation;
- local boards need to be adequately funded and not rely on raising additional targeted rates for their work; and
- Business Improvement Districts should be separated from other community initiatives within the targeted rating policy.

Officials’ Comment

The majority of submissions on this clause are addressing the concept of separate rates within local board areas. This clause, is merely addressing the likely administrative difficulties that may arise with local board targeted rate proposals in 2011/12.

This report recommends, in relation to clause 40, that the timeframe for local board plans be postponed so that public consultation and finalisation of these would not occur until after the 2011/12 rates have been finalised. It is therefore proposed that these rates be precluded altogether in 2011/12.
Recommendation

We recommend that the Select Committee:

**AGREE** to amend clause 84 to provide that local boards may not propose targeted rates in the 2011/12 year.
Proposed New Clause – rates remission and postponement policies

Officials’ Comment

The Bill as introduced proposes that the rates remissions and postponement policies adopted by existing local authorities continue to apply, within the same areas, until replaced by the Auckland Council or 30 June 2012. The existing policies will work for the remainder of 2010/11 while the Auckland Council is collecting rates set by the existing councils.

This arrangement will not, however, work in 2011/12 because:
- there will be inconsistencies between the policy inherited from the Auckland Regional Council and those adopted by territorial authorities, in respect of the same ratepayers; and
- existing policies may reflect rates for water supply, which will no longer be set.

It is therefore proposed to insert a new clause, requiring the Auckland Council to adopt new rates remission and postponement policies with effect from 1 July 2011. It is proposed to make it clear that these policies can contain different provisions in respect of the areas of the former local authorities.

Recommendation

We recommend that the Select Committee:

AGREE to amend the Bill to insert new provisions requiring the Auckland Council to adopt new rates remission and postponement policies with effect from 1 July 2011, including clarification that these policies can contain different provisions in respect of the areas of the former local authorities.
Clause 85 – Charges on rates

This clause states that every existing local authority charge on rates applies as if the Auckland Council had charged it, and all charges have equal ranking.

Submissions

No submissions were received on this clause.

Officials’ Comment

Concern has been expressed that the narrow wording of subclause (3) may cause uncertainty and concern amongst lenders. It is therefore proposed to omit the words “For the purposes of subsection (2)”.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 85(3) by omitting the expression “For the purposes of subsection (2)”.

Clause 86 - Rates as security

This clause clarifies that the transition provisions do not preclude the Auckland Council using rates as a security for a loan.

Submissions
No submissions were received on this clause.

Officials' Comment
No changes are proposed.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 86 without amendment.
Clause 87 – Certain matters in planning document prepared by Transition Agency must be replaced by 30 June 2012

This clause states funding and financial policies in the planning document prepared by the ATA must be replaced with a single integrated policy 30 June 2012.

Submissions

Three submitters commented on this clause, as follows:
- all citizens within the Auckland region should be levied to fund local amenities;
- the full cost of the transition to one council has not been fully assessed, this will place a financial burden on ratepayers that will take years to recoup; and
- Auckland Regional Council recommended that the clause requires the ATA to include a new rates remission policy for 2011/12 in the planning document they are preparing for the new Council.

Officials’ Comment

The first two submissions are not relevant to this clause. The Auckland Regional Council recommends that the ATA prepare a single rates remission policy for Auckland to have effect for the 2011/12 year. This issue has been addressed in the proposed new clause on rates remission and postponement policies.

The clause does need amendment, however, to clarify that while the policies of existing councils continue they apply only in the former districts of the councils that adopted them.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 87 to clarify that while the policies of existing councils continue they apply only in the former districts of the councils that adopted them.
Proposed New Clause(s) – status and effect of planning document prepared by Transition Agency

Officials’ Comment

As discussed in relation to clause 17, it is necessary to provide in Part 3 of the Bill for the status and effect of the interim planning document prepared under that clause, over the period until 30 June 2012.

New provisions are therefore proposed to provide that:
- the planning document serves in place of an LTCCP until 30 June 2012;
- that the new policies prepared by the ATA as required, and the aggregated policies of the existing councils in other cases, are the policies of the Auckland Council;
- the allocation of local board responsibilities and funding in the planning document applies as if allocated in an LTCCP;
- the planning document serves as an annual plan until 30 June 2011; and
- the planning document can be amended by the Auckland Council, using the LTCCP amendment process during this period.

In light of concerns expressed in submissions, and to allow a reasonable settling down process, it is proposed to preclude the Auckland Council reducing the allocated local board responsibilities during this period. The Council would have the option of adding additional responsibilities to the base allocation by the ATA, and would need to follow the special consultative process to amend its LTCCP to do so. In practical terms such changes could only take effect from the beginning of a new planning/funding year.

Recommendation

We recommend that the Select Committee:

AGREE to the insertion of new provisions in subpart 3 of Part 3 in order to provide:

(g) that the planning document serves in place of an LTCCP until 30 June 2012;
(h) that the new policies prepared by the ATA as required, and the aggregated policies of the existing councils in other cases, are the policies of the Auckland Council;
(i) that the allocation of local board responsibilities and funding in the planning document applies as if allocated in an LTCCP;
(j) that the planning document serves as an annual plan until 30 June 2011;
(k) that the planning document can be amended by the Auckland Council, using the LTCCP amendment process during this period; and
(l) to preclude the Auckland Council reducing the allocated local board responsibilities during this period.
Proposed New Clause(s) – completion of final reports of existing councils

Officials' Comment

As discussed in relation to clause 21, it is necessary to provide in Part 3 of the Bill for the Auckland Council to complete and adopt the final reports of the existing local authorities, covering the period from 1 July 2009 to 31 October 2010. Those reports should be adopted by 31 March 2011.

It is also proposed to provide that the audited financial statements included in the reports satisfy the requirement under section 53E of the Securities Act 1978 for existing local authorities to have audited financial statements for the 2009/2010 financial year.

Recommendation

We recommend that the Select Committee:

AGREE to amend the Bill to:

(c) insert new provisions in subpart 3 of Part 3 to require the Auckland Council to complete and adopt the final reports of the existing local authorities, covering the period from 1 July 2009 to 31 October 2010, by 31 March 2011; and

(d) to provide that the audited financial statements included in the reports satisfy the requirement under section 53E of the Securities Act 1978 for existing local authorities to have audited financial statements for the 2009/2010 financial year.
Clause 88 – Development contributions already made or owed

Under this clause development contributions made or owed to existing local authorities transfer to the Auckland Council.

Submissions

No submissions were received on this clause.

Officials’ Comment

As noted in relation to clause 24 (section 35K), it is necessary to augment this clause to provide for the consequences of the transfer of development contribution assets, obligations and requirements to the Auckland Council.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 88 to deal with the obligations of Auckland Council in respect of development contributions policies, assets and obligations transferred from existing local authorities.
Clause 89 – Initial development contributions policy

Under this clause the development contributions policies of existing local authorities transfer to the Auckland Council and will continue to apply in the former districts. The Auckland Council must replace them with a new development contributions policy by 30 June 2012.

Submissions

There were five submissions on this clause, the main points of which were:

- the Bill should make a clear distinction between financial contributions under the RMA and development contributions under the LGA02.
- clause 89 (4) should be amended to remove the Auckland Council's power to require a development contribution for water and waste-water purposes from 1 July 2011;
- the clause should state that development contributions put in place after 30 June 2012 apply even if inconsistent with policies in place prior to 30 June 2012; and
- Watercare intends to use network upgrade charges for water and wastewater infrastructure costs driven by growth. This carries complications and legal risk and has never been legally challenged in NZ before. Waitakere City Council submits that water and wastewater capital expenditure required for population growth should be funded by development contributions until these legal matters are resolved and the new development contributions policy of the Auckland Council is adopted.

Officials' Comment

Clause 89 already provides, in subclause (4), to preclude development contributions for water and wastewater infrastructure, with effect from 1 July 2011. Watercare has indicated it will use network upgrade charges, in place of development contributions, from that date. The proposal to allow Auckland Council to continue to fund that infrastructure through development contributions, is not supported given the proposed financial and asset independence of Watercare from Auckland Council.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 89 without amendment.
Clause 90 – Development contributions for water infrastructure

This clause says that development contributions can be collected by the Auckland Council for water and wastewater only until mid 2011. These contributions must be, transferred to Watercare if it does the work, or refunded. Watercare must not double dip when provided funding under these provisions.

Submissions

There were five submissions on this clause, as follows:

- clause 90 should be amended so that subsection (3) relates to the LGA02 section 209 (1)(a)(b)(c), and subsection (6) relates to the LGA02 section 209 (1)(d);
- until it can be confirmed that the area to be transferred to Hauraki has no water or wastewater infrastructure assets, this provision should not apply to the area being transferred;
- this clause should also apply to financial contributions;
- the clause should also provide that Waikato District Council review and replace all existing development contributions policies inherited from transfer of parts of the Franklin district by 30 June 2012; and
- Waitakere City Council notes that Watercare intends to use Network Upgrade Charges for water and wastewater infrastructure costs driven by growth. This carries complications and legal risk and has never been legally challenged in New Zealand before. Council submits that water and wastewater capital expenditure required for population growth should be funded by development contributions until these legal matters are resolved and the new development contributions policy of the Auckland Council is adopted. The Council recommends that clause 90 be deleted.

Officials’ Comment

Officials agree that clause 90(3) should be amended to refer to section 209(1)(a)(b) or (c) – these are circumstances where the triggers for development contributions cease to exist. Subclause (6) already refers to section 209(1)(d) – where the relevant expenditure is not undertaken by the local authority.

It is not appropriate to deal with financial contributions under this clause. They are dealt with in separate new provisions recommended by this report.

Development contribution issues in relation to those parts of Franklin District transferring to Hauraki and Waikato Districts are dealt with under the LGC determination and associated processes.

The provision, as drafted, does not specify when the Auckland Council is required to transfer development contributions to an Auckland water organisation undertaking capital expenditure for which a development contribution was raised. The provision could be interpreted to mean that the Auckland Council is not required to transfer such
funding to the Auckland water organisation until the completion of the project. Given the complexity and long time-frames of some water infrastructure projects, this has the potential to cause financial planning and cash-flow difficulties for the water organisation.

It is therefore proposed that the Auckland Council should transfer such development contributions to the water organisation immediately on receipt. Auckland Council would retain the statutory liability to refund development contributions if either the relevant expenditure does not occur or the development in respect of which the contribution was paid does not proceed. The water organisation would have an obligation to reimburse the Council where any such refund is made.

Other changes to development contributions provisions in the Bill may require consequential amendments to this clause.

**Recommendation**

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<th>We recommend that the Select Committee:</th>
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<tr>
<td>AGREE to amend clause 90 to:</td>
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<td>(e) refer to section 209(1)(a)(b) or (c) in subclause (3);</td>
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<td>(f) require Auckland Council to transfer relevant development contributions to the water organisation immediately on receipt of them;</td>
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<td>(g) clarify that the Auckland Council remains responsible for refunds of development contributions under section 209 of the Local Government Act 2002, but that the water organisation must reimburse the Council for such refunds; and</td>
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<td>(h) make changes consequent to other changes to development contributions provisions.</td>
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Clause 91 – Development contributions for transport infrastructure

This clause allows the Auckland Council to continue to collect development contributions for transport infrastructure and use them to fund capital expenditure by Auckland Transport.

Submissions

One submitter recommended adding to clause 91(1)(b) “any assessment by the Auckland Council under clause 89(2) of the Bill”, and adding after subclause 91(2) a new subclause requiring the Auckland Council to refund or return the development contribution if section 209 or 210 of the LGA02 applies.

Officials’ Comment

The proposed change is unnecessary – the provisions in the LGA02 will apply. Changes to development contributions provisions elsewhere in the Bill will require consequential amendments to this clause.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 91 to make changes consequent to other changes to development contributions provisions.
Clause 92 – Bylaws about Auckland transport system

This clause deems that any existing transport bylaws transfer to Auckland Transport and remain in force until they are confirmed, amended, or revoked by Auckland Transport or by section 160A of the LGA02 or 30 June 2012 – whichever is earlier.

Submissions
There were six submissions on this clause, recommending the following:

- ensure that resolutions made pursuant to the bylaws are also deemed to have been made by the Auckland Council;
- include a requirement that Auckland Transport must consult on transport planning requirements and not just bylaws;
- amend to clarify that all existing bylaws, resolutions and delegations of the existing regional, city and district councils in the Auckland area are effectively adopted by the new Auckland Council on 1 November 2010 and must be reviewed no later than 1 November 2015;
- have corresponding provisions that validate Franklin District Council’s bylaws in areas to come under the jurisdiction of Waikato District Council and Hauraki District Council; and
- amend so transport bylaws are made by the Auckland Council, not Auckland Transport.

Officials’ Comment
As discussed under new section 42, bylaw making powers are an essential part of Auckland Transport’s road management function.

The Bill requires Auckland Council to review all non-transport bylaws. There are a high number of transport bylaws, many governing minor matters such as give way signs and no stopping zones and most of which are highly unlikely to warrant review. Auckland Transport is likely to be faced with far more pressing issues upon establishment than standardisation of transport bylaws across the region. Existing transport bylaws need to be saved but thereafter Auckland Transport should be free to review, modify or repeal them in the normal course of business.

Officials’ recommend amending the Bill by adding saving provisions for resolutions made under bylaws, and saving provisions within an individual bylaw.
Recommendation

We recommend that the Select Committee:

AGREE to amend clause 92 by:

(c) omitting subclause (3); and

(d) inserting paragraphs after subclause (4)(b) to save any provision within an individual bylaw and resolution made under a bylaw.
Clause 93 – Bylaws about waste

Any waste bylaws that exist or were made under the Waste Minimisation Act 2008 transfer to the Auckland Council and remain in force until they are confirmed, amended, revoked by the Auckland Council or by section 160A of the LGA02 which applies to bylaws that have not been reviewed. Each bylaw must be reviewed either by the date required for review by the LGA02 or 30 June 2012 – whichever is earlier.

Submissions

There were eight submissions made on this clause, the main points of which were:

- ensure that resolutions made pursuant to the bylaws are also deemed to have been made by the Auckland Council;
- amend 93(4)(b) to provide that the Auckland Council must review each waste bylaw before the close of 30 June 2013;
- amend to clarify that all existing bylaws, resolutions and delegations of the existing regional, city and district councils in the Auckland area are effectively adopted by the new Auckland Council on 1 November 2010 and must be reviewed no later then 1 November 2015;
- have corresponding provisions that validate Franklin District Council’s bylaws in areas to come under the jurisdiction of Waikato District Council and Hauraki District Council;
- bylaws need to be reviewed, and ratepayers should be given the opportunity to discuss the effects; and
- there needs to be transitional provisions in the Bill to enable an appropriate lead in time for the waste management industry to respond and adjust their practices.

Officials’ Comment

Dates for review of the waste bylaw should not be changed; any changes to a later date will be inconsistent with part 4 section 56(2) of the Waste Minimisation Act 2008.

A technical amendment is required to clause 93. Clarification has been sought by ATA regarding the term “predominantly about waste”. This term was intended to capture only bylaws or sections of consolidated bylaws with a large solid waste content and to avoid capturing any bylaw which mentioned waste as a secondary issue (e.g. as part of another bylaw or section of consolidated bylaw). Consequently we recommend clarifying this to read “solid waste” rather than “waste” and specify its application to solid waste bylaws or solid waste parts of a consolidated bylaw.
Recommendation

We recommend that the Select Committee:

**AGREE** to amend clause 93(1)(a)(ii) to replace “predominantly about waste” with wording to clarify the provision’s application to solid waste bylaws and solid waste sections of consolidated bylaws.
Clause 94 – Bylaws about matters other than Auckland transport system and waste

Bylaws that are not about the Auckland Transport system or waste, and were in force at the close of 31 October 2010, transfer to the Auckland Council and remain in force until they are confirmed, amended, or revoked by the Auckland Council, or by section 160A of the LGA02 which applies to bylaws that have not been reviewed. Each bylaw must be reviewed either by the date required for review by the LGA02 or 31 October 2015 – whichever is earlier.

Submissions

There were 10 submissions on this clause, the main points of which were:

- ensure that resolutions made pursuant to the bylaws are also deemed to have been made by the Auckland Council;
- provide that until 31 October 2015 the Council can roll over an existing bylaw where it considers the bylaw to be acceptable in its current state without having to undertake the full review process under the Local Government Act 2002;
- support a consistent approach to bylaws but it may lead to bylaws not reflecting local circumstances. The Auckland Council should create a priority list of bylaws where a regional approach would be immediately beneficial;
- suitable legislative provisions need to be included for existing bylaws made by the Franklin District Council to remain in force in the area to be transferred to the Hauraki and Waikato District Councils. This will ensure that there is no disruption to the bylaw regulatory framework;
- amend to clarify that all existing bylaws, resolutions and delegations of the existing regional, city and district councils in the Auckland area are effectively adopted by the new Auckland Council on 1 November 2010 and must be reviewed no later then 1 November 2015;
- the Waikato District Council seeks the power to confirm, amend, or revoke any bylaws inherited from the Franklin District Council in areas transferred from the Franklin district;
- oppose being able to change bylaws without public consultation; and
- a revision of all bylaws is probably an unrealistic target and may lead to quick rather than thorough and consultative decisions.

Officials’ Comment

The LGC determination contains provisions for the application of Waikato and Hauraki District Council bylaws in relevant parts of Franklin District and no provision is required in the Bill.

The timeframe for reviewing bylaws in the Bill is considered appropriate. It is intended that reviews must be undertaken through a public consultation process and this could be clarified in the clause.
Recommendation

We recommend that the Select Committee:

AGREE to amend clause 94 to clarify the use of the public consultative process to review bylaws.
Clause 95 – Policies

This clause states policies of existing local authorities that were in force at the close of 31 October 2010 transfer to the Auckland Council and remain in force until they are confirmed, amended, or revoked by the Auckland Council. The Auckland Council must review each policy and confirm, amend or revoke it by 31 October 2015.

Submissions

There were ten submissions made on this clause, recommending as follows:

- amend clause 95(1)(a) so that it also applies to policies that are made pursuant to bylaws to which sections 92 to 94 apply;
- delete clause 95 as it would dissolve Council policies that are not expressly required by law, such as alcohol and liquor licensing policies, which could have a detrimental effect on community well-being and safety;
- amend clause 95 to ensure that all existing alcohol/liquor licensing policies in the Auckland region be retained until such time that these can be reviewed and a city wide policy developed to achieve consistency and effective harm reduction;
- Zero Waste Policies should be retained from 1 November 2010;
- amend to clarify that non-statutory policies are also to be transferred;
- have corresponding provisions that validate Franklin District Council’s policies in areas to come under the jurisdiction of Waikato District Council and Hauraki District Council and that a similar timeframe as set for the Auckland Council apply);
- the Waikato District Council seeks the power to confirm, amend, or revoke any policies inherited from the Franklin District Council in areas transferred from the Franklin district; and
- a revision of all policies is probably an unrealistic target and may lead to quick rather than thorough and consultative decisions. The clause should include criteria to determine the priorities for the review of policies.

Officials’ Comment

This clause refers to policies that have some legal status and effect. It does not deal with policies on alcohol and liquor licensing as such.

Officials recommend that transitional arrangements should make provision for policies relating to the Auckland transport system to transfer to Auckland Transport rather than the Council. Also, policies made by ARTA, including the ‘significance policy’ made under section 106 of the Land Transport Management Act 2003, need to be saved and transferred to Auckland Transport. Subject to PCO’s advice, a new clause (possibly associated with clause 51) is required to provide for Transport policies to transfer to Auckland Transport.

Provision is not required in this clause for that part of Franklin District transferring to Hauraki and Waikato Districts.
Recommendation

We recommend that the Select Committee:

**AGREE** to amend clause 95 to provide that it does not apply to transport-related policies.

We recommend that the Select Committee:

**AGREE** to insert new provisions in the Bill to provide for the transfer of policies relating to the Auckland transport system to Auckland Transport.
Clause 96 – Statutory warrants relating to transport law

Any statutory transport warrants that were in force at the close of 31 October 2010 are deemed to have been issued by Auckland Transport and remain in force until they are revoked, confirmed, amended by Auckland Transport, or the employee/contractor ceases to work for the Auckland Transport and the warrant is revoked.

Submissions
No submissions were received on this clause.

Officials' Comment
At present some traffic enforcement officers are appointed by warrant issued by the Commissioner of Police pursuant to s208 of the Land Transport Act 1998 to enforce moving vehicle offences. The current wording in clause 96(2) deems these warrants to have been issued by Auckland Transport, and does not recognise in (3) that it would be the Commissioner that confirms, amends or revokes the warrant. We propose amending this section so that while all current warrants remain in force, warrants issued by the Commissioner of Police are not treated as if they were issued by Auckland Transport.

Recommendation

We recommend that the Select Committee:

AGREE to amend section 96 to

(d) provide that warrants issued by the Commissioner of Police are not treated as if they were issued by Auckland Transport;

(e) omit reference to section 68BA of the Transport Act 1962 (section 68BA merely contains the powers of a parking warden, whereas section 7 of that Act contains the power to appoint a parking warden);

and

(f) include warrants issued to an employee of or contractor to Auckland Regional Transport Authority (subclause (1)(c))
Clause 97 – Statutory warrants relating to law other than transport law

Any statutory warrants not relating to transport that were in force at the close of 31 October 2010 are deemed to have been issued by the Auckland Council and remain in force until they are confirmed, amended, revoked by Council, or the employee/contractor ceases to work for the Council.

Submissions

In respect of employees transferred to the Waikato District Council, the Council submitted that provision should be made for each warrant to remain in force until confirmed, amended, or revoked by the Waikato District Council.

Officials' Comment

One of the sub-clauses of the Bill specifies that warrants remain in force until the employee or contractor to whom it was issued ceases to work for the Auckland Council. The Waikato District Council can issue any new warrants for new employees, under the LGA02 as usual.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 97 without amendment.
Clause 98 – Fees and charges: regulatory services

This clause states an Order in Council made before 1 October 2010 may standardise fees for regulatory services. The Order in Council must come into force before the close of 31 October 2010. Fees that were in force at the close of 31 October 2010 remain in force until amended or replaced by the Auckland Council.

Submissions

Three submissions were made on this clause:
- the New Zealand Law Society submitted that subclauses 98(2) and 98(3) seem to be contradictory in that subclause 98(2) suggests an Order in Council may be made, and subclause 98(3) that it must;
- one submitter recommended that the words "or a Council Controlled Organisation of the Auckland Council", be added after the word "Council"; and
- one submitter recommended that 98(3)(b) read “come into force on 1 November 2010”.

Officials’ Comment

The Department does not consider subclauses 98(2) and 98(3) to be contradictory.

The Department does not consider it appropriate for the Bill to allow CCOs to amend or replace fees or charges that have already been made by existing councils. The Auckland Council can, however, delegate this responsibility to a CCO once it is established.

The Department does not consider it appropriate to change the date for Orders in Council to come into force to 1 November 2010.

However, subclause (1)(b) requires amendment to clarify the scope of the fees and charges to which this clause applies.

In addition, because the Order in Council is required to be made before Part 3 comes into force, this provision should be moved to Part 1.

Recommendation

We recommend that the Select Committee:

AGREE to amend the Bill by moving current clause 98 to Part 1 and clarifying the scope of the fees and charges to which this clause applies.
Clause 99 – Fees and charges: non-regulatory services

A fee to which clause 98 does not apply, that was in force at the close of 31 October 2010, remains in force until the Auckland Council replaces it or it is revoked.

Submissions

Two submissions were received on this clause, recommending:
- that the words "that applies in Auckland" be deleted; and
- that the words "or a Council Controlled Organisation of the Auckland Council" be added after the word “Council”.

Officials’ Comment

No changes are proposed.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 99 without amendment.
Clause 100 – Standing orders

This clause states an Order in Council must be made before 1 November 2010 prescribing standing orders for the Auckland Council, and these remain in force until standing orders adopted by the Auckland Council come into force.

Submissions

Five submitters opposed the Minister’s role in making the new Standing Orders and proposed that a joint committee of existing local authorities make them, or the ATA draft them for the new Auckland Council to consider.

Officials’ Comment

These standing orders are only interim standing orders. Once the Auckland Council comes into force, it can adopt standing orders to replace the ones made under this clause.

The Order in Council is required to be made before Part 3 comes into force, and therefore should be moved to Part 1.

Recommendation

We recommend that the Select Committee:

AGREE to amend the Bill by moving current clause 100 to Part 1.
Clause 101 – Delegations

This clause provides that, on and from 1 November 2010, the chief executive of the Council holds all responsibilities, duties and powers of the Council that any Act allows a local authority to delegate to an officer of the local authority. The chief executive may delegate some or all of these to any other employee or officer of the council. The chief executive holds the responsibilities, duties and powers until a new delegation comes into force, or 30 June 2011 – whichever is earlier.

Submissions

There were nine submissions on this clause, the main points of which were:

- the Bill does not give CCOs the ability to delegate to local boards, with the exception of Auckland Transport, which is able to delegate to local boards but is not compelled to; and
- 101(4) (b) should refer to a local board, not a community board.

Officials’ Comment

Clause 101(4)(b) does contain a drafting error. The reference to a community board should be to a local board.

There is no intention to give CCOs other than Auckland Transport the power to delegate to the Auckland Council, including to local boards.

Section 34A of the RMA does not allow an employee of a council to delegate RMA functions, powers and duties. This would result in the chief executive of the Auckland Council not being able to delegate RMA functions. This is not the intent of the provision. However it should be clear that the chief executive cannot delegate the power to sub-delegate RMA functions, duties and powers.

The current wording would provide that the effect of the provision as a whole would cease when any delegation by the Auckland Council comes into force. Officials consider that this “all or nothing” approach is undesirably inflexible, and would prevent a staged approach by the Auckland Council to the establishment of an ongoing delegation regime. It is therefore recommended that the clause provide that the chief executive (and holders of sub-delegations) hold powers, duties and functions under the section until the Auckland Council resolves otherwise (which would include any Council resolution delegating the same powers, functions or duties). The current deadline of 30 June 2011 should also remain.
Recommendation

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<td>We recommend that the Select Committee:</td>
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<td><strong>AGREE</strong> to amend clause 101 to:</td>
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<td>(e) fix the drafting error in clause 101(4)(b);</td>
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<td>(f) allow the chief executive to delegate Resource Management Act 1991 functions;</td>
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<tr>
<td>(g) to provide that the chief executive continues to hold functions, duties and powers conferred by this provision, and any sub-delegations remain in place, until the Auckland Council resolves otherwise or 30 June 2011, whichever is earlier; and</td>
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<tr>
<td>(h) enable delegations by the New Zealand Transport Authority to an existing local authority, which are in relation to the Auckland transport system and in effect immediately before 1 November 2010, continue to have effect and are deemed to be delegations to Auckland Transport.</td>
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</table>
Clause 102 – Building

This clause provides for the Auckland Council to be a building consent authority until 31 October 2011 at the latest. This date may be extended by Order in Council.

Submissions

There were no submissions relevant to the clause, but two submitters commented on the need to prevent the expense created by leaking buildings being spread across entire rating base, and the need for stricter regulations on buildings and infrastructure to protect them from earthquake damage.

Officials’ Comment

The first part of this clause (subclauses (1) to (3)) relates to actions that need to occur before this Part of the Bill comes into force on 1 November 2010. It therefore needs to be moved into Part 1 as an amendment to the LGTMA09. Some consequential changes may be required to the remainder of the clause.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 102 by moving subclauses (1) to (3) into Part 1 as an amendment to the Local Government (Tamaki Makaurau) Act 2009.
Clause 103 – Civil defence and emergency management

This clause ensures civil defence arrangements continue uninterrupted over the transition period.

Submissions
No submissions were received on this clause.

Officials’ Comment
No changes are proposed.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 103 without amendment.
Clause 104 – Fire authority appointments

This clause ensures the continuity of Rural Fire Officers.

Submissions

The Franklin District Council submitted that Fire Authority appointments should continue to have effect in Waikato District Council and Hauraki District Council.

Officials’ Comment

The LGC determinations cover fire authority appointments in relation to the areas transferring to Hauraki and Waikato Districts.

The clause needs to be amended to provide that if there is no person performing the function of a Principal Rural Fire Officer (PRFO) for the area of an existing local authority (because of resignation etc), any other person who continues to be a PRFO may also, at the Auckland Council's direction perform the functions and duties and exercise the powers of a PRFO for that area, similar to the current provisions in clause 104(2) (b).

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 104 to provide that if there is no person performing the function of a Principal Rural Fire Officer for the area of an existing local authority (because of resignation etc), the existing Principal Rural Fire Officer of another area within Auckland can be directed to undertake that role, pending the appointment of a Principal Rural Fire Officer for Auckland.
Clause 105 – Resource management

This clause provides for continuity of regional plans, district plans and regional policy statements from 1 November 2010, and for the first monitoring report to be required by the Auckland Council in five years from 1 November 2010. The clause also includes transition provisions for resource management provisions relating to designations and responsibility for resource management matters transferred to a local authority other than the Auckland Council.

Submissions

There were eleven submissions on this clause, as follows:

- clause 105 be redrafted to more clearly make arrangements for the administration of RMA plans, regional policy statements, plan changes and appeals following the southern boundary change;
- if no such provision already exists, the Bill should be amended to provide that arrangements similar to causes 105(2) and 105(7) will apply in respect of those parts of Franklin District to be transferred to Hauraki District or Waikato District;
- the provisions about resource management and relating to district plans should also apply to the Waikato District Council;
- in sub-clause 12, the south-eastern corner of the current Auckland region containing water supplies and regional parks should be restored to Auckland. If this is not agreed to, a reference to the Hauraki District should be added;
- amend sub-clause (7) to provide that existing designations continue in effect until the proposed district plan of the Auckland Council becomes operative and delete all references to designations ceasing to have effect once included in the proposed Auckland Council plans or on 1 November 2015;
- delete all references to Auckland Council being able to "decide" to include requirements for designation in its proposed plan under clause 4 of Schedule 1 of the RMA;
- amend sub-clause (1) to require the transfer of responsibility for all outstanding RMA actions, and have a new provision which provides for the continued processing of all RMA applications and progress of other outstanding actions required by existing authorities;
- concern that clause 105(7) may have the effect of overriding the tenure and security of utilities’ designations. These should continue for the term for which they were granted and not be affected by this legislation;
- that clause 105 be amended to overcome the barrier to sub-delegation contained within the RMA;
- the private plan change requests process must remain in place while the Auckland Council District Plan is being prepared concurrently. It is submitted that the imposition of a moratorium during all or part of the district plan preparation process is unnecessary;
- that sections 38-43 of the Local Government (Auckland) Amendment Act 2004 and Schedule 5 be retained; and
- further matters should be included after subsection 12 to cover National Environmental Standards, and National Policy Statements issued before 1 November 2010, and existing tree protection controls.
Officials’ Comment

(a) Transitional provisions for Waikato Region, Waikato District and Hauraki District

Submitters noted that no transitional provisions were provided in the Bill for those parts of the Franklin District operative and proposed district plans that relate to any part of the district that will be transferred to Waikato District and Hauraki District. Section 81 of the Resource Management Act 1991 requires a territorial authority to make changes to its district plan to cover any area that comes within its jurisdiction as a result of a boundary change within two years. These provisions should apply in respect of that part of Franklin District not included within Auckland.

It is not intended that the special transitional provisions for designations in sub-clause 105(7) to apply to designations transferred out of the Auckland Region due to boundary changes.

Subclause 105(10) applies specifically to those areas of Franklin included in other districts, and subclauses (11) and (12) are intended to apply both to those areas and within Auckland. The current construction of those sections is confusing, and in clarifying the existing intent, it would be desirable to have separate clauses applying to the Auckland Council and to those councils (including Hauraki District Council) to which parts of Franklin will transfer.

(b) Designations

There was some concern that clause 105(3) could be interpreted to mean that there is no ability to update district plans should there be any outstanding administrative matter required by the local authorities prior to 1 November 2010. This may include including designations in district plans pursuant to section 175 of the RMA. Officials agree that clause 105(3) should be amended to allow the deemed operative Auckland Council District Plan to be changed via processes under the RMA 1991.

Officials do not consider clause 105(7) to be inconsistent with subclause (2). It provides for a specific situation that could not otherwise be addressed by section 81 of the RMA.

Officials agree that subclause 105(7), as currently drafted, may appear to have the effect of overriding the tenure and security of utilities’ designations. Existing designations that specify a longer timeframe before lapsing should continue for the term for which they were granted and not be affected by sub-clause 105(7). Officials recommend that the provision be amended to clarify that any designation included in existing district plans that will lapse under sections 184 or 184A of the RMA 1991 before 1 November 2015, will not lapse prior to 1 November 2015 unless specified circumstances are met.
(c) Financial contributions

Submitters noted that no sections specifically related to financial contributions were included in the Bill.

Existing councils will hold or be due financial contributions from legacy consents after 31 October 2010. Provisions in the RMA allow for the continued collection of financial contributions, given the existing authorities’ district plans will remain in force and that financial contributions as enacted under the provisions of the RMA and legacy provisions of LGA74 may still apply. Section 35(1)(d) of the LGTMA09 would ensure a financial contribution payable represents money owing to the Auckland Council. Officers agree that the basis for the refund of financial contribution charges should apply consistently with provisions in the relevant Acts underpinning the financial contributions regime.

Special provisions to clarify transitional issues relating to financial contributions are recommended elsewhere in this report.

(d) Delegations

Officials agree that transitional arrangements are required to overcome the barrier to sub-delegation within the RMA to enable ‘business as usual’. Officials recommend that clause 101(1) of the Bill should be amended to enable the chief executive of Auckland Council, to delegate, from 1 November 2010, the responsibilities, duties and powers under the RMA held as a result of that provision, despite the restrictions in section 34A of the RMA. The effect of that provision, together with any delegations made, will terminate when the Auckland Council itself delegates those matters or on 1 July 2011, whichever is later.

Section 34(2) of the RMA enables a local authority to delegate to any community board any of its functions, powers or duties under the Act in respect to any matter of significance to that community (other than the approval of a plan or any change to a plan). Officials agree that an amendment to section 34(2) is required to enable the Auckland Council to delegate to any local board any of its functions, powers or duties under the RMA in respect to any matter of local significance to that community. A recommendation in relation to this is made in relation to Schedule 3 of the Bill.
Recommendation

We recommend that the Select Committee:

AGREE to amend the Bill:

(i) so that clause 105 applies only to Resource Management Act 1991 matters within Auckland, and a separate provision applies to those parts of Franklin transferred into Waikato Region and Waikato or Hauraki District;

(j) by clarifying that section 81 of the Resource Management Act 1991 applies to the regional and district plans of the Waikato Regional Council and the Waikato and Hauraki District Council in respect of those parts of Franklin transferred into their region or district;

(k) by clarifying that the Auckland Regional Policy Statement will apply to those areas, formerly in the Waikato Region, that transfer to the Auckland Council;

(l) by clarifying that the provisions currently in clause 105(10) apply to both regional councils and local authorities, and include both notification and commencement under the Resource Management Act 1991;

(m) by clarifying the intent of the provisions currently in clause 105(11);

(n) by clarifying that the parts of existing district and regional councils plans and policy statements continued after 1 November 2010 (currently by clause 105(3)) can be changed via processes under the Resource Management Act 1991;

(g) by clarifying that that existing designations that specify a timeframe longer than 1 November 2015 continue for the term for which they were granted and are not affected by the deadlines currently in clause 105(7);

(o) by clarifying that any designation included in existing district plans that would otherwise lapse under sections 184 or 184A of the Resource Management Act 1991 before 1 November 2015 will not lapse prior to 1 November 2015, unless:

(i) the existing designation in the proposed plan already specifies a longer lapse period; or

(ii) the designation is given effect to in accordance with sections 184 or 184A of the RMA; or

(iii) the Auckland Council resolves to fix a longer lapse period under sections 184 or 184A;

(p) by amending clause 101 to enable the chief executive officer of Auckland Council to delegate, from 1 November 2010, the responsibilities, duties and powers under the RMA held as a result of that provision, despite the restrictions in section 34A of the Resource Management Act 1991 until the Auckland Council itself delegates those matters or on 1 July 2011, whichever is later.
Clause 106 – Auckland regional growth strategy

This clause deems the Auckland Council to have adopted the Regional Growth Strategy adopted by the existing Auckland Regional Council, which will remain in effect until the Auckland Council adopts the spatial plan.

Submissions

One submitter noted that clause 106(3) provides that the Auckland Regional Growth Strategy has no effect once the Auckland Council adopts the spatial plan. The submitter considers that an amendment should be made either to the Bill or the Waitakere Ranges Heritage Area Act 2008 to ensure that the spatial plan must be consistent with the Waitakere Ranges Heritage Area Act.

Officials' Comment

The clause should be modified so that, notwithstanding the proposed amendment of section 18 of the Waitakere Ranges Heritage Area Act 2008 to refer to the spatial plan, that section continues to apply to the regional growth strategy so long as it remains in force.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 106 to preserve the current effect of section 18 of the Waitakere Ranges Heritage Area Act 2008 while the Regional Growth Strategy remains in force.
Clause 107 – Appeals against change or variation under Local Government (Auckland) Amendment Act 2004

This clause states that the RMA appeals on a change or variation to a planning document under the Local Government (Auckland Amendment) Act 2004 (LGAAA) must be determined as if the LGAAA had not been repealed and the Auckland Council had not adopted the spatial plan.

Submissions
No submissions were received on this clause.

Officials’ Comment
No changes are proposed.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 107 without amendment.
Clause 108 – Tax

Clause 108 of the bill contains transitional tax relief provisions to ensure that:
- when an entity transfers its assets and liabilities to another entity no income tax, GST or gift duty consequences arise solely from those transfers; and
- when an entity changes its ownership structure or ceases to exist, any tax losses or imputation credits are preserved in relation to the owners of that entity or the new entity.

These provisions are based on a set of guiding principles that were established to facilitate the restructuring on a tax-neutral, seamless basis. These principles are summarised as follows:
- Certainty of tax treatment for all aspects of the transition and the new structure;
- Minimising initial and on-going tax compliance costs, where practical;
- General tax rules would apply going forward; and
- No worse overall tax position than before the restructure.

The recommended changes to clause 108 outlined below expand the transitional tax relief to ensure policy intentions are met.

Submissions

Four submissions were received on clause 108 from Auckland City Council, Auckland Regional Council, Manukau City Council, and Rodney District Council. The submission points were:
- clause 108 4(e) and (f) should be expanded to accommodate direct transfers to CCOs of the Auckland Council so that imputation credits and tax losses are not extinguished;
- depreciable assets transferring from a tax-exempt to a taxable entity should be valued at the tax-exempt entity’s accounting book value at the time of transfer. Depreciable assets transferred between taxable entities should be transferred at current tax book value so as to preserve tax neutrality;
- Watercare should be exempt from income tax;
- existing councils should be permitted to file a tax return for the transitional period 1 July 2009 to 31 October 2010, consistent with their financial reporting requirements;
- for the purposes of the Inland Revenue Acts and the Injury Prevention Rehabilitation and Compensation Act 2001, the recipient entity should be deemed to be the same employer as the original employer until 31 March 2011. This submission is concerned that the transfer of staff from existing entities to new entities may result in the over-payment of fringe benefit tax and ACC levies;
- “assets” and “liabilities” should be defined to include taxation assets and liabilities including but not limited to tax losses;
- clause 108 should apply for the purposes of NZIFRS3; and
the GST Act should be amended to allow the Auckland Council to elect to account for GST on rates in equal 1/12 amounts.

**Officials’ comment**

We support the first submission point as it is consistent with the policy objective of clause 108. The change is needed in light of the fact that transfers of assets and interests will now be made between existing CCOs to the Auckland Council or to a new CCO.

The second point relates to the valuation at which depreciable assets are transferred from an existing tax-exempt entity to a new or existing taxable entity. Clause 108(8) requires the taxable entity to value the assets at historical cost. However, this provision is unworkable and is inconsistent with the LGA02, which allows the transfer of depreciable assets from a council to a CCO at market value for tax purposes. Therefore, we support an amendment to clause 108 so that depreciable assets are transferred at the tax-exempt entity’s accounting book value at the time of transfer. In relation to transfers between taxable entities depreciable assets would be transferred at current tax book value as provided for by clause 108 (5) and (6).

We do not support exempting Watercare Services Limited from income tax because conferring a specific income tax exemption on Watercare, or any other entity involved in the restructuring, would go well beyond the policy for transitional tax relief for restructurings. As the bill currently stands, the tax treatment of Watercare will be determined under the general tax rules in the Income Tax Act 2007.

Allowing councils to file a 16 month tax return would mean that there would be no tax return furnished for the 2010 income year. Such a result would be inconsistent with the current return filing rules and therefore we do not support the submission point.

In relation to the submission on ACC levies and Fringe Benefit Tax, clause 108 deems the new employer to be the same person as the existing employer for the purposes of the Inland Revenue Acts, thereby achieving the desired policy outcome for tax purposes.

The submission on the definition of assets and liabilities is not supported. “Assets” and “liabilities” already includes taxation assets and liabilities.

Clause 108 applies solely for the purposes of the Inland Revenue Acts and to provide transitional tax relief. The clause is not intended to and should not apply for financial reporting standards purposes. The submission on this issue is not supported.

The submission relating to GST is not supported for several reasons. First, a supply of goods and services takes place on the earlier of the date of payment and the date of the rates instalment notice, for GST purposes. This is in line with the standard rule. Unless there is a very good reason for departing from this approach, it is simpler for the standard rule to apply to all taxpayers. Second, the submission point would require further consideration to determine its workability (including transitional issues in moving from the current treatment). Third, it should also be subject to the full
generic tax policy consultation process, rather than being introduced at select committee.

Officials also suggest a number of other changes to clause 108 to help improve the clarity of the provisions in that clause and ensure policy intentions are met. These changes include:

- financial arrangements, trading stock and revenue account property transferred from a tax-exempt entity to a taxable entity (and vice versa) should be transferred at market value;
- where assets and liabilities are transferred from a tax exempt entity to a taxable entity, or vice versa, income and expenditure attributable to the transferor should not become income or expenditure of the transferee;
- depreciable assets transferred from a taxable entity to a tax-exempt entity should be valued at tax book value so that there is no tax consequence on transfer;
- the existing tax losses of Metrowater should be transferred to Watercare Services Limited on the transfer date;
- for the purposes of the land provisions in subpart CB of the Income Tax Act 2007, no association will be triggered solely by the restructuring in relation to land transferred to a new CCO if there is no association between the existing landowner and a developer before the transfer of that land;
- when assets (other than shares) are transferred from an entity to a CCO, the difference between the assets’ market value and any attributed liability should give rise to available subscribed capital in the CCO; and
- when shares are transferred from a local authority to a CCO and either:
  - the shares are subsequently sold by the CCO generating a tax-free capital gain; or
  - the shares are transferred to the Auckland Council or a council-controlled intermediary, a distribution of the shares or sale proceeds directly or indirectly to the Council or intermediary is not taxable.
Recommendation

We recommend that the Select Committee:

AGREE to amend clause 108:

(a) transitional tax relief covers all possible transfers from the existing councils and their CCOs and to the Auckland Council and its council-controlled organisations;
(b) where assets and liabilities are transferred from a tax exempt entity to a taxable entity, or vice versa, income and expenditure attributable to the transferor does not become income or expenditure of the transferee;
(c) depreciable assets transferred from a tax-exempt entity to a taxable entity are valued at accounting carrying value as at the date of transfer;
(d) financial arrangements, trading stock and revenue account property transferred from a tax-exempt entity to a taxable entity (and vice versa) are transferred at market value;
(e) depreciable assets transferred from a taxable entity to a tax-exempt entity are valued at tax book value so that there are no tax consequences on transfer;
(f) existing tax losses (including the losses of non-corporate entities) are able to be transferred and utilised by the new combined Auckland Council structure in all circumstances;
(g) it does not apply for determining association under section YB of the Income Tax Act 2007 for the purposes of the land tax provisions in subpart CB of that Act but only in relation to land where there is no association before the land was transferred;
(h) when assets (other than shares) are transferred from an entity to a council-controlled organisation, the difference between the market value of the assets and any attributed liability is available subscribed capital in the council-controlled organisation; and
(i) when shares are transferred from a local authority to a council-controlled organisation and either:
   (i) the shares are subsequently sold by the council-controlled organisation generating a tax-free capital gain; or
   (ii) the shares are transferred to the Auckland Council or a council-controlled intermediary; and
       a distribution of the shares or sale proceeds directly or indirectly to the Council or intermediary is not taxable.
Clause 109 – Waste

This clause deems existing waste minimisations plans to be those of the Auckland Council on 1 November 2010. The waste management plan is to be reviewed by 30 June 2012 in accordance with the Waste Minimisation Act 2008. The clause also sets out arrangements for the expenditure of levies received under the Waste Minimisation Act.

Submissions

There were ten submissions on this clause, the main points of which were:

- insert a new subclause to clarify the right of the Council and its CCOs to charge for the transport of trade waste through their systems;
- one submitter was concerned that the transition to the Auckland Council will adversely affect the waste management market and may cause changes to current waste management arrangements with existing local authorities. The submitter recommends that any proposals to change the existing system of waste management should be subject to public consultation;
- one submitter proposed that the Bill is amended to allow for a separate CCO to be established to plan and manage regional solid waste matters;
- the Auckland Council should be prevented from contracting out waste management services for longer than three years;
- waste disposal charges should be determined by the Auckland Council Waste Department;
- an independent Auckland Services Performance Auditor should be established to monitor the waste industry; and
- the Waikato District Council seeks an equitable proportion of levy money received by the Franklin District Council under the Waste Minimisation Act 2008 before 31 October 2010 to be transferred to the Waikato District Council.

Officials’ Comment

Charging for trade waste is not a solid waste issue so is best dealt with under Part 5 Water supply and wastewater services for Auckland.

Officials recommend changing clause 109 from “Waste” to read “Solid Waste” to provide clarity that it deals only with Solid Waste.

Investigations into waste management and minimisation aspects of Auckland governance by Ministry for the Environment has identified potential risks regarding the ability of the Auckland Council to meet statutory requirements (including timeframes) and intent of the Waste Minimisation Act 2008 and the New Zealand Waste Strategy. The ATA and councils of the Auckland region have also noted that the Special Consultative Procedure (SCP) required to adopt a waste minimisation plan (or a revised plan) has particularly challenging timeframes.
Officials recommend that the Bill be amended to allow the Auckland Council to recognise previous work undertaken by existing councils under the oversight of the ATA (under section 13 of the LGTMRA09) by explicitly authorising:

- the Council, in determining how it will comply with the requirements of the Waste Minimisation Act 2008 in relation to adopting a Waste Minimisation Plan; to take into account any consultation work carried out by or under the oversight of the ATA, in preparing options for waste management for consideration by the Auckland Council; and
- any work carried out by the ATA and councils in preparation of a draft waste assessment be regarded as contributing towards the requirements of the Auckland Council under sections 50(2) and 51 of the Waste Management Act 2008.

**Recommendation**

We recommend that the Select Committee:

AGREE to amend clause 109 to:

(a) clarify that: the Council, in determining how it will comply with the requirements of the Waste Minimisation Act 2008 in relation to adopting a Waste Minimisation Plan, may take into account any consultation work carried out by or under the oversight of the Auckland Transition Agency in preparing options for waste management;

(b) clarify that any work carried out by Auckland Transition Agency and councils in preparation of a draft waste assessment can be regarded as contributing towards the obligations of the Auckland Council under sections 50(2) and 51 of the Waste Management Act 2008; and

(c) change the heading of clause 109 from “Waste” to “Solid Waste”.
Clause 110 – Titles to land

This clause contains provisions for the registration of the Auckland Council or its CCOs in relation to any registered land transferred as part of this restructuring.

Submissions

The Waikato District Council submitted that this clause relating to titles to land should apply to the Waikato District Council in relation to land transferred from the Franklin District to the Waikato District Council.

Officials' Comment

Provision for the registration of titles is made under the LGA02 in relation to land transferred by a LGC determination.

Recommendation

We recommend that the Select Committee:

AGREE to retain clause 110 without amendment.
Clause 111 – Establishment of Pacific and Ethnic Advisory Panels for Auckland

This clause requires the Mayor to establish, no later than 31 March 2011, a Pacific Advisory Panel and an Ethnic Advisory Panel. The clause contains the purposes of these panels. The panels are disestablished on 1 November 2013.

Submissions

There were 51 submissions made on this clause, predominantly supporting the establishment of the Panels and seeking their continuation beyond 1 November 2013. Additional points made in submissions were:

- the Pacific and Ethnic Advisory Panels should be established on a permanent basis;
- replace the Pacific and Ethnic Advisory Panels for Auckland with the Auckland Pacific Economic Forum Inc which is already established and recognised;
- establish Pacific advisory boards to the 20 - 30 local boards similar to the existing arrangements with the Auckland councils;
- they should be able to develop their own work programmes of interest to their communities, and be able to report and present to the Auckland Council, local boards and CCOs on these;
- suggest Ministry of Pacific Island Affairs, Office of Ethnic Affairs and current councils provide advice to Mayor on appointments;
- one submitter suggests that the Bill includes a definition of an ethnic group in relation to eligibility for inclusion on the Ethnic Advisory Panel;
- advisory panels should also be created for youth, the elderly, transgender, gay and lesbian people; and business sectors;
- the existing Pacifica boards should be co-opted to the Pacific Peoples Advisory Panel. These people are long-serving and have considerable community support and knowledge;
- amend the Bill to introduce the requirement to review panels, their role, influence and effectiveness with a view to either maintaining them or putting in place alternative mechanisms and/or processes for engaging with Pacific and ethnic peoples;
- require the Auckland Council to review the work of the Panels by 1 November 2013;
- include a statutory Pacific panel on the governance board and a transparent selection process;
- advisory groups/panels should have committee status;
- "Panel" should be called "a Board";
- rename as Pacific Peoples Advisory Committee or Pacific Peoples Advisory Forum;
- the Auckland Council should appoint, not the Mayor;
- in 2 (b) and 3(b) add "and CCOs" as their powers will be great in their impacts on Pasifika and Ethnic populations;
- the process for appointing both panels is unnecessarily political and should be the responsibility of the Auckland Council, not a role for the Mayor; and
• there are inconsistencies in the provision for establishing the two panels in relation to consultation. The submitter submits that the consultation requirements for the Ethnic Peoples Advisory Panel imposed on the ATA include the broader consultation requirement placed on the chief executive of the Ministry of Pacific Island Affairs in relation to the Pacific Peoples Advisory Panel. Both sets of advice should be available to the new Auckland Council by 1 November 2010.

Officials’ Comment

After the first term, the Auckland Council may determine its own arrangements to facilitate Pacific and Ethnic peoples’ participation in local authority decision-making processes. It becomes a decision for the Auckland Council - this could involve the continuation of advisory panels or not. It is desirable that sub-clause (4) be amended to clarify this intent.

The Mayor’s power to establish and appoint the panels fits within the Mayor’s responsibilities under the Local Government (Auckland Council) Act 2009. Under section 9(2) of that Act, the Mayor’s role includes ensuring there is effective engagement between the Auckland Council and the people of Auckland.

The Bill includes consultation requirements for developing proposals on the panels which are to be considered by the Mayor of Auckland. These requirements differ for the Pacific advisory panel and the Ethnic advisory panel. These were inserted into the Bill in consultation with the Ministry of Pacific Island Affairs and the Office of Ethnic Affairs.

The Auckland Council can establish advisory panels for youth, the elderly, transgender, gay and lesbian people, and business sectors.

Other suggestions raised by submitters are either not feasible to be implemented through the Bill, or are more appropriately a decision for the Auckland Council.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 111 (4) to make it clear that, from 1 November 2013, the continuation of the Ethnic and Pacific Peoples Advisory Panels become discretionary.
Proposed New Clause –Long-term council community plans of Waikato District and Hauraki District

Officials’ Comment

The LGC determination of the southern boundary of Auckland provides that the LTCCP prepared by Franklin District Council continues in force in those parts of Franklin included in Waikato and Hauraki Districts. This situation continues until those councils amend their LTCCPs to reflect the inclusion of parts of Franklin.

There is concern that the inclusion of parts of Franklin within those districts may itself require those Councils to go through the formal LTCCP amendment process, irrespective of whether any substantive changes are proposed. This would be an unnecessary process and financial imposition on those councils.

It is therefore proposed to insert a new provision to clarify that until 30 June 2012, the LTCCPs of Waikato and Hauraki Councils consist of the LTCCPs adopted by those councils in 2009 plus the Franklin District LTCCP as it applies to the part of Franklin included in their District. The councils will not be required to amend the LTCCP simply by virtue of the reorganisation. They will be required to produce an integrated annual plan for 2011/12 under the umbrella of the combined LTCCPs.

Recommendation

We recommend that the Select Committee:

AGREE to amend the Bill to insert a new provision to clarify that:
(a) until 30 June 2012, the long-term council community plans of Waikato and Hauraki Councils consist of the long-term council community plans adopted by those councils in 2009 plus the Franklin District long-term council community plans as it applies to the part of Franklin included in their District;
(b) the councils will not be required to amend their long-term council community plans simply by virtue of the reorganisation; and
(c) the councils will be required to produce an integrated annual plan for 2011/12 under the umbrella of the combined long-term council community plans.
Proposed New Clauses – Financial Contributions

Officials’ Comment

The RMA authorises the inclusion, in district plans, of requirements that developers make financial contributions to the local authority as conditions of resource consents. Financial contributions can be required to fund infrastructure expenditure and were widely used for this before development contributions became available with the passage of the LGA02.

Although most councils within Auckland have now removed provision for financial contributions for infrastructure from their district plans this is not universal. In addition, financial contribution requirements are attached to resource consents allocated historically and will be activated if/when those consents are actioned.

New provisions are therefore required to make similar provision in respect of financial contributions as are proposed in clauses 88 to 90 for development contributions. These provisions will need to clarify:

- the general obligations of the Auckland Council after 1 November 2010 in respect of financial contributions made to, owed to or required by existing local authorities;
- to preclude the Auckland Council from imposing financial contribution requirements for water and wastewater infrastructure after 1 July 2011;
- requirements in respect of financial contributions received for water supply and wastewater infrastructure; and
- requirements in respect of financial contributions for transport infrastructure.

Recommendation

We recommend that the Select Committee:

AGREE to the insertion of new provisions in subpart 3 of Part 3 in order to provide for:

(e) the general obligations of the Auckland Council after 1 November 2010 in respect of financial contributions made to, owed to or required by existing local authorities;
(f) to preclude the Auckland Council from imposing financial contribution requirements for water and wastewater infrastructure after 1 July 2011;
(g) requirements in respect of financial contributions received for water supply and wastewater infrastructure; and
(h) requirements in respect of financial contributions for transport infrastructure.
Schedule 1 – New Schedules 2 to 6 added to Local Government (Tamaki Makaurau Reorganisation) Act 2009

New Schedule 2 – Provisions relating to planning document required under section 19A

This Schedule sets out the content which must be included in the planning document prepared by the ATA for the Auckland Council for the period 1 November 2010 to 30 June 2011. Contents include budgets, activities, forecast financial statements, funding and financial policies, funding impact statements, and information about council-controlled organisations.

The planning document must be a consolidation of the information contained in the 2009 – 2019 LTCCPs and the 2010/2011 annual plans of the existing local authorities. It must be audited by the Auditor-General or a person appointed by the Auditor-General.

Submissions

Ten submitters commented on Schedule 2 planning provisions.

The following amendments were suggested:
- clause 2(2) is amended so that the ATA is required to set local board budgets for 2010/11 and 2011/12;
- in clause 2(2)(a) add "and projects" after "activities" because local boards will have a few local projects and events;
- clause 4 to include an initial policy on significance and hybrid revenue and financing policy;
- amend the requirement to prepare an audited annual planning document based on existing LTCCPs to a requirement to prepare a more realistic planning document for a shorter period;
- provision be made to allow for adjustments to budgets/allocation of resources to local boards in the first planning period; and
- strengthening the CCOs plan provisions to also identify the assumptions on which the financial statements are based (e.g. useful life of significant assets and sources of funding for future replacement).

Officials’ Comment

In terms of the points made in submissions:
- it is not appropriate to specify local board budgets for 2010/11 – existing service levels set by existing local authorities will continue for the remainder of this year and there will be no opportunity to negotiate local board agreements for this year;
- service levels apply to activities, not projects as such;
- clause 4 should make provision for a revenue and financing policy that represents a compilation of the policies of the 8 councils with amendments to
recognise changes to revenue streams arising from the reorganisation. A significance policy is not necessary from day one of the Auckland Council, and must be developed by the Council itself;

- a document based on existing council LTCCPs is considered an appropriate transitional document pending the Auckland Council’s first LTCCP;
- the framework allows for adjustments to local board resources and budgets for the 2011/12 year; and
- clause 3(3), relating to identification of significant assumptions, applies to the whole document.

In addition to the need to amend provision for the revenue and financing policy in clause 4, as identified above, there is a need to amend the clause to require the development of an integrated investment policy for the Auckland Council for inclusion in the planning document.

Recommendation

We recommend that the Select Committee:

AGREE to amend clause 4 of new Schedule 2 in Schedule 1:
(c) to make provision for a revenue and financing policy that represents a compilation of the policies of the 8 councils with amendments; and
(d) to include a requirement to develop an integrated investment policy for inclusion in the planning document.
New Schedule 3 – Matters in relation to election signs that must be included in bylaw to be made for the purposes of section 29D(1)(a)(i)

This Schedule contains provisions about election signs that must be set out in a bylaw from each existing local authority. The bylaw must identify all the land owned by the existing local authority on which signs may be erected in accordance with the bylaw. Contents of the bylaw must include time period for which signs may be displayed, prohibited sites, designated sites, and removal of signs by existing local authorities.

Submissions

There were thirteen submissions on the new Schedule 3.

The following amendments were suggested:

- clause 3(2) so that "polling day" is replaced by "election day" as per the Local Electoral Act;
- clause 4 should include heritage and sensitive ecological sites;
- clause 6 to clarify that the limitation of one election sign extends to affiliations;
- clause 6(1)(d) change to approximately "45 degree for the angle of the bracing" if this requirement is needed at all;
- clause 6(1)(e) add "only if on public land", surely private owners can decide whether to fix it to their house or a fence;
- clause 6(1)(g) delete reminder to vote signs or ribbons are surely okay provided they are safe;
- clause 6(3) change from a one-sign limit to one of no more than two signs to allow those at approximately right angles facing each way for stability and for visibility;
- clause 7(1)(b) delete "damaged, is vandalised or" as unnecessary, they only need to be taken down if actually unsafe;
- clause 7(2) after sign add "for the purposes of subsection 1" i.e., candidates should be required to pay only if they have breached the requirements or the sign has to come down because it is unsafe; and
- clause 8(1) after candidate add "or group of candidates", which will be the more common situation for signs.

Officials’ Comment

The provisions in this schedule are based on the rules that govern election hoardings across Auckland. All are based on experience in regulating this aspect of elections. The only suggestions in submissions are considered to have merit are:

- to only limit the situations in which the local authority officers can remove signs (clause 7(1)) to unauthorised or unsafe signs; and
- to limit the circumstances in which the local authority can recover the costs of sign removal (clause 7(2)) to those authorised by clause 7(1). PCO will advise whether specific provision is necessary.
**Recommendation**

<table>
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<tr>
<th>Recommendation</th>
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<td>We recommend that the Select Committee:</td>
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<td><strong>AGREE</strong> to amend clause 7 of new Schedule 3 in Schedule 1:</td>
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<td>(c) to limit the situations in which the local authority officers can remove signs to unauthorised or unsafe; and</td>
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<tr>
<td>(d) subject to Parliamentary Counsel Office advice, to limit the recovery of costs of sign removal to removals authorised as described above.</td>
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New Schedule 4 – Dissolution of council-controlled organisations

This Schedule terminates Manukau Water Limited and Metro Water Limited, and makes Watercare Services Limited the receiving entity for both.

Submissions

No submissions were made on this new Schedule.

Officials’ Comment

It is proposed that the abolition of the ARTA and ARTNL, and the transfer of their assets to Auckland Transport, will now occur via the generic provisions in the LGTMA09. It is therefore necessary to insert those two organisations in Schedule 4 as terminating organisations, with Auckland Transport as the receiving entity in each case.

Additional terminating organisations and receiving entities can be added to this schedule through Order in Council under section 35F clause 24 once decisions have been made.

Recommendation

We recommend that the Select Committee:

AGREE to amend new schedule 4 in schedule 1 to identify the Auckland Regional Transport Authority and Auckland Regional Transport Network Limited as terminating organisations, with Auckland Transport as the receiving entity in each case.
New Schedule 5 – Provisions that apply to certain employees of existing local authorities and terminating organisations

This Schedule contains provisions which apply to employees of existing local authorities and terminating organisations who:

- have been notified that their employment is to be transferred on the same terms and conditions on and from 1 November 2010;
- have been notified that their employment is to be transferred on and from 1 November 2010, but on different terms and conditions; and
- whose employment position is subject to review but who have received no notification.

These provisions relate to these employees’ status with their new employer after the transition.

Submissions

Three submitters commented on Schedule 5 employment provisions.

The following amendments were suggested:

- clause (1)(b) amended in line with the amendments to 35C(4)(c) so that the clause clearly states that staff who are transferred to the Auckland Council will be transferred on the same employment agreement;
- clause 2 amended so that there is discretion for staff to be offered transfers before 1 November 2010, and ensure this does not affect employees' entitlement to compensation through to 30 April 2011 under proposed clause 4(b) in Schedule 6; and
- that Part 6A of the Employment Relations Act 2000 relating to the protection of vulnerable workers should apply to those who fall under Schedule 1A of the ERA.

Officials' Comment

It is proposed that, subject to advice from PCO, the employment provisions in the Bill be redrafted and restructured to consolidate the employment related clauses (including those relating to ARTA and ARTNL) and clarify the policy intent. This includes the clauses in this schedule.

All transfers and appointments of existing local government organisations’ staff will take effect on 1 November 2010. It is not appropriate to transfer or appoint these staff earlier as existing local government organisations need to retain staff to ensure that they are able to deliver on their statutory and customer service responsibilities until their dissolution.

Officials have further considered the proposed exemption from Part 6A of the Employment Relations Act. Part 6A provides for the protection of vulnerable workers such as cleaners and food catering service workers if as a result of restructuring their work is to be undertaken by another employer. In general it enables the defined
workers to elect to transfer to that employer on the same terms and conditions of employment.

Officials consider that this protection should be available (and therefore Part 6A apply) only if the work performed by the defined groups of workers is to be contracted out or sold to a third party which is not the Auckland Council or any of its CCOs or their subsidiaries. This legislation, the staff transfer protocols and change management plan developed by the ATA will apply to the transfer of any such workers from existing local government organisations to the Auckland Council, its CCOs and their subsidiaries.

It is proposed that the provisions in the Bill relating to an exemption to part 6A of the Employment Relations Act 2000 be redrafted to reflect this.

Some further redrafting of the provisions in this schedule are required to be clear that no redundancy compensation is available if an employee accepts a new position in the Auckland governance arrangements, whether or not the position is lower paid.

Discussions are also underway with PCO to determine the best approach for clarifying the staff transition process, the nature of the positions offered and their associated terms and conditions of employment, and the consequences of an employee’s decision in relation to the different types of offers of employment.

**Recommendation**

We recommend that the Select Committee:

**AGREE** that subject to advice from Parliamentary Counsel, the employment provisions in the Bill:

(a) be redrafted and restructured to consolidate the employment related clause (including those relating to Auckland Regional Transport Authority and Auckland Regional Transport Network Limited and clarify the policy intent, including that no redundancy compensation is available if an employee accepts a new position in the Auckland governance arrangements, whether or not the position is lower paid; and

(b) relating to an exemption to part 6A of the Employment Relations Act 2000, be redrafted to provide Part 6A protections for the defined groups of workers if their work is to be contracted out or sold to a third party which is not the Auckland Council or any of its council-controlled organisations or their subsidiaries.
New Schedule 6 – Redundancy and compensation provisions that apply to certain employees of existing local authorities and terminating organisations

This Schedule sets out when an employee of an existing local authority or terminating organisation is and is not entitled to compensation.

Submissions
Seven submitters commented on Schedule 6 redundancy and compensation provisions.

The following amendments were suggested:
- clause 1 be amended to provide for affected fixed term contract employees if they are terminated before the end of their agreement;
- clause (4)(b) be amended to remove the start and end dates, and allow for a 12 month period of wage protection compensation, and include a clause in the schedule to allow or other disadvantage to be raised and compensated;
- clause 4(b) be amended so that the 6 months should be from the time of commencement in the position;
- clause 5 be amended to refer to all employees who transfer to a position in a different location;
- clause 5(b) should provide for certainty, with no redundancy below certain levels and comprehensive provision based on principles of fair employment protection and entitlements; and
- clause 6(c)(iii) is redrafted so that Auckland Regional Council, Auckland Regional Transport Authority and Auckland Regional Holding employees are not disadvantaged relative to employees of other local government organisations, when considering whether a relocation constitutes a change in the terms and conditions of employment.

Officials’ Comment

It is proposed that, subject to advice from Parliamentary Counsel, the employment provisions in the Bill be redrafted and restructured to consolidate the employment related clauses (including those relating to ARTA and ARTNL) and clarify the policy intent. This includes the clauses in this schedule.

Compensation for being offered and accepting a new position with a lower salary is 6 months salary protection. This is based on the Manukau City Council collective agreement. We are advised that salary protection is only likely to be required in relation to a small number of staff.

It has been recognised that some staff may be needed to undertake transition related work in their current role for a period beyond 1 November 2010 and will not therefore commence in their substantive new position until a date after 1 November 2010. The current provision in the Bill does not provide this flexibility as it specifies precise calendar dates. It is proposed that this provision be redrafted to clarify the policy
intent so that if there is an entitlement to salary protection it is for 6 months from 1 November 2010 or the date of commencement in the substantive new position.

In terms of the location of a new position, it is intended that location be set aside, and not taken into account as part of an assessment about whether a position is the same or substantially similar. Location will be addressed independently and the intent is that either the relocation provisions in employee’s employment agreement or the minimum relocation compensation provisions will apply to all employees who accept a new position at a different location. The current provisions need to be amended to clarify this intent and to ensure that staff who are employed by region-wide organisations such as the ARC are not disadvantaged in terms of the application of any relevant relocation compensation provisions.

Clause 5(b) of the Bill currently provides for an Order in Council to be made to specify relocation compensation, if there are no relocation compensation provisions in an employee’s terms and condition of employment. This clause was included because at the time of drafting, work on the appropriate compensation had not been completed. The ATA has subsequently undertaken further work on the transfer provisions for staff. It is now proposed to include the minimum relocation compensation formula in the Bill. This compensation will take the form of a one off payment. The proposed minimum relocation compensation formula has been determined, taking into account provisions in existing employment agreements and common law. This will remove the need for an Order in Council.

Further work has also identified that a provision needs to be included in the Bill to ensure that a permanent employee who is offered a fixed term agreement with a new employer is not disadvantaged and is entitled to any redundancy compensation specified their employment agreement, if they decide not to accept that position. This reflects the policy intent.

The review of employment positions and the staff transition process will determine whether or not there is a position for an existing employee in the new arrangements or whether that employee should be terminated. If an employee is to be terminated, any redundancy compensation will be calculated in accordance with the provisions in an employees’ employment agreement.
Recommendation

We recommend that the Select Committee:

AGREE that, subject to advice from Parliamentary Counsel, the employment provisions in the Bill be redrafted and restructured to consolidate the employment related clauses (including those relating to Auckland Regional Transport Authority and Auckland Regional Transport Network Limited), and clarify the policy intent including that:

(a) where there is an entitlement to salary protection that it is available for 6 months from 1 November 2010 or the date of commencement in the substantive new position in the new structure;

(b) either the relocation provisions of an employee’s employment agreement or the minimum relocation compensation provisions will apply to all employees who accept a new position at a different location; and

(c) a permanent employee who is offered a fixed term agreement with a new employer, is not disadvantaged in terms of redundancy if they decide not to accept that position.

AGREE that a formula for determining the minimum compensation provisions to apply if there are no relocation compensation provisions in an employee’s terms and conditions of employment be included in the Bill rather than being later specified in an Order in Council.
Schedule 2 – New Schedules 2 and 3 added to Local Government (Auckland Council) Act 2009

New Schedule 2 – Provisions relating to Auckland Transport

This Schedule relates to Auckland Transport. It covers:
- appointments, vacancies, remuneration, role etc of directors;
- conflict of interest disclosure rules;
- procedure of the board;
- employment of staff;
- delegations; and
- accountability.

Submissions

Nine submitters commented on Schedule 2 provisions relating to Auckland Transport.

The following amendments were suggested:
- clause 1 to introduce a fixed interim period for the CCOs Board;
- clause 1(2). Directors’ terms should be a maximum of 3 or 4 years with a right of reappointment in (3) to correspond with the Council term;
- clause 3 should include a 'person who is a board member of another council-controlled organisation';
- clause 14(2)(d) the reference to a trustee should be amended to a beneficial trustee;
- clause 16 should require disclosures of interests to be publicly available;
- clause 23(b) should only occur when that method of electronic, rather than face-to-face communication, is agreed to by all directors as satisfactory for that particular meeting;
- clause 29 does not include any requirement that the appointed director does not have any conflict of interest in accepting the role. This should be an explicit requirement when appointing the director; and
- clause 30 (4) is undemocratic as it gives undue influence to Minister of Local Government, and should be repealed.

Officials’ Comment

Officials propose that Auckland Transport should as far as possible be subject to a similar governance regime as other CCOs. The purpose, functions, operating principles, membership of the board would still be set in legislation. Within these limits Auckland Council would then govern Auckland Transport using the standard CCO mechanism. This would include setting Auckland Transport’s constitution, replacement of Board members, approval of Auckland Transport’s SoI and consideration of Auckland Transport’s quarterly reports.
Officials therefore recommend that schedule 2 be omitted, with the exception of clause 33 the power to delegate responsibilities, duties and powers to Auckland Council (including local boards), which needs to be retained.

Recommendation

We recommend that the Select Committee:

**AGREE** to omit all provisions in new Schedule 2 in Schedule 2 except clause 33.
Schedule 2 – New Schedules 2 and 3 added to Local Government (Auckland Council) Act 2009

New Schedule 3 – Provisions relating to board promoting issues of significance for mana whenua and Māori of Tamaki Makaurau

This Schedule relates to the board, and provisions cover matters including:
- appointment to membership and cessation of membership;
- meetings;
- validity and invalidity of members, meetings and actions of the boards;
- remuneration, expenses, liabilities and funding;
- conflict of interest and disclosure rules;
- the board’s ability to delegate functions and powers, the powers of the delegate, the effect of delegation on the board and revocation of delegations;
- accountability of the board;
- servicing of the board; and
- dispute resolution.

Submissions

Ten submitters commented on Schedule 3 provisions relating to the board promoting issues of significance for mana whenua and Māori of Tamaki Makaurau. Submitters raised issues on: selection process; terms of office; powers; remuneration and the definition of “taura here”.

The following amendments were suggested:
- in clause 1(a), clarify who "taura here" are;
- clause 1 reference to "taura here" be deleted and the words "pan-tribal Māori" be inserted or the term "taura here" be given statutory definition”;
- in clause 1, increase number of taura here representatives, so that urban Māori and external iwi have a reasonable voice;
- in clause 1, increase number of mana whenua representative to ensure all major groups have membership;
- in clause 2, tangata whenua or elected representatives should be responsible for the selection body, not central government and the Minister of Māori Affairs;
- in clause 2, the Minister of Local Government and the Minister of Māori Affairs should have dual responsibility for the selection panel and the board;
- in clause 4, amend obligation to give notice should be with the Auckland Council rather than the Minister of Māori Affairs;
- in clause 4, amend the way in which mana whenua groups will be identified and representatives selected to ensure all major groups have membership;
- in clause 5(2), amend to ensure that there is clarity about members of the board vacating office if they become disqualified from holding office;
- there should be a requirement in clause 8 for board members to consent in writing to be appointed, and certify that they are not disqualified from being a board member;
- in clause 9(1), the three year term should align with the Auckland Councils triennial electoral cycle;
- change clause 9(1) to a minimum term of four years and a maximum of two terms with a rolling membership process;
- in clauses (9) and (10), these decisions should be made by the selection body or by the Minister of Māori Affairs not by the board;
- clause 12(1) should provide for the initial appointment of a chairperson and deputy following the establishment of the board;
- clause 13(2) should expressly provide for notices of meeting to be given either in writing or electronically;
- in clause 14(9)(b), delete or define consensus making requirement;
- in clause 17, the board's remuneration, because of its independence, responsibilities and mana, should be determined by the Remuneration Authority, not the Auckland Council;
- in clause 17(3)(d), clarify whether the expert makes his or her recommendations to the board rather than to the Auckland Council or to the Auckland Council and the board;
- in clause 17(1) and (4), the Bill should expressly recognise that different fee levels may be set for the chairperson and deputy of the board;
- in clause 20(4), the meaning of “the remuneration payable to the board’s members” should be clarified;
- in clause 20, clarify how fees, expenses and "remuneration payable to the board's members" will be set and agreed to;
- in clause 28, that any differences between who can be members of the board and who can be members of a committee is clarified;
- with regards to clause 32, ensure that section 45M(2) of the Public Finance Act does not apply to the board and add the board to Schedule 4 of the Public Finance Act;
- amend clause 33 so that the secretariat should be equipped with staff, including Māori and non Māori with a sound knowledge of local government as well as an understanding of kaupapa Māori (Māori way), te reo Māori (Māori language) and te iwi Māori processes and relationships;
- in clause 33, clarify who the secretariat is ultimately accountable to; and
- current wording of clause 34(3) limits the board and the selection body to the three dispute processes.

**Officials’ Comment**

**Definitions**

It is evident from submissions that there is some confusion over the terminology used in the Bill to refer to mana whenua, taura here, and Māori. To ensure clarity it is proposed that Schedule 3 provide for a definition of ‘mana whenua’ (those groups that fall within the meaning of clause 4(2) of Schedule 3) and ‘taura here’ (Māori who do not fall within the meaning of mana whenua). These terms should also be used where appropriate throughout the Bill to refer to iwi and Māori.

A number of submitters recommended that numbers of mana whenua or taura here on the board be increased. Given the importance of this issue to Māori in Auckland, and the potential for Auckland Council decisions to affect Māori, there may be some merit in calls to increase the membership of the board. This, however, needs to be balanced against the increased complexity and costs associated with a larger board.
By ensuring that information on the activities and decisions of the board is freely available, it is possible that concerns around the makeup of the board may be alleviated. Making the board subject to the Local Government Official Information and Meetings Act 1987 would contribute substantially to addressing these concerns.

**Role of the Minister of Māori Affairs**

There appears to be a misconception amongst some submitters that the selection body and the board would be controlled by the Minister of Māori Affairs and/or Government. However, the board is a statutory body with specific purpose, functions and powers. The role of the Minister of Māori Affairs is to ensure that mandated representatives are appointed to the selection body and the board, and the naming of the Minister of Māori Affairs in clause 4 (rather than the Auckland Council as suggested by one submitter) provides for the required level of independence from Auckland Council.

**Identifying mana whenua**

One submitter indicated that they would consider themselves to fall within the meaning of mana whenua under the provisions currently in the Bill, even though they would not be considered to be mana whenua of the Auckland region in the generally accepted sense. Additional clarification is proposed in clause 4(2) to make explicit a requirement for mana whenua groups identified under these provisions to have historic and continuing mana whenua in an area wholly or partly located within the Auckland Council boundaries. For the purposes of this clause, “mana whenua” should also be defined as being the customary authority exercised by an iwi or hapū in an identified area.

**Qualification and disqualification of members**

Greater clarity is required in clause 5(2) about the process for members to vacate office if they become disqualified. To provide this clarity around who is disqualified from membership of the board, specific provision should be made in clause 9(2) to clarify that any member of the board who at any time becomes disqualified from membership of the board under clause 5, will immediately cease to be a member of the board.

Furthermore, it is recommended that clauses 5(2)(h) and (g) are amended to only refer to current Members of Parliament, Auckland Councillors or local board members.

**Appointment process**

There was a recommendation that the Bill should provide more direction on how mana whenua representatives should be selected and the groups that should be eligible for selection. The Bill currently provides that the sole function of the selection body is to appoint members to the board and therefore the selection body will be responsible for developing the most appropriate selection process. It is, therefore, not appropriate to prescribe this level of detail in the Bill.
One submitter also queried whether there should be a requirement for board members to consent in writing to be appointed, and certify that they are not disqualified from being a board member, in a similar manner as for the Auckland Transport board. This recommendation has merit and it is recommended that a provision be included for prospective appointees to: 1) consent in writing to being a board member, and 2) to certify that they are not disqualified from being a board member.

The three year term as outlined in clause 9(1) does broadly align with the Auckland Council’s triennial electoral cycle and it is therefore recommended that this clause is retained without amendment. To remove any uncertainty, it is recommended that clause 8(3) be amended to require the selection body to complete the process of selection at least two months before the terms of incumbent board members end. With the requirement for a board to be in place by polling day, even greater alignment with Auckland Council electoral cycles will be ensured. With this closer alignment, and to ensure that the business of the Auckland Council can continue without delay, it is recommended that a further clause be added which empowers the Minister of Māori Affairs to, as a matter of last resort, step in if the selection body is unable to complete the process in clause 8, and take the steps necessary to appoint board members.

The selection body is only established to appoint members to the board and therefore will not have an ongoing role in board decisions. It is recommended that the Bill clarify that upon completion of the selection process, the selection body disbands. The selection body will then be re-formed as required for subsequent appointments to the board.

Removal of board members

There was a suggestion that clauses 9 and 10 be reworded so that decisions on the cessation of membership or removal of members are made by the selection body or the Minister of Māori Affairs rather than the board. It is important that this function stays with the board in accordance with its role as an independent statutory body. The Bill does, however, provide for the Minister of Māori Affairs to have a role in the resolution of disputes (clause 34).

In a related area, clause 9(2) should be amended to clarify that if any member of the board at any time becomes disqualified from membership of the board under clause 5, they will immediately cease to be a member of the board.

In line with this recognition of the board as an independent statutory body, we also recommend Clause 10(1) is amended to allow a majority of the board, at any time for just cause, to also remove any person appointed by the board to Auckland Council Committee(s) under section 70.

The first board

A recommendation that clause 12 should provide for the initial appointment of a chairperson and deputy following the establishment of the board has been addressed in new section 61 which outlines the first steps for establishing the board.
Consensus decision-making

Concerns over the term ‘consensus decision making’ have been addressed in relation to clause 67 of new part 7, clauses 14(2) and (9) should also be amended to make the requirement for decisions to be reached via consensus a desirable principle that the board could elect to follow, rather than an absolute requirement.

Remuneration

There were a number of concerns with the remuneration provisions for members of the board as outlined in clause 17. In order to address these submissions, it is recommended that: there is a requirement for the Auckland Council to give effect to the recommendations of an independent expert; that recommendations should be made for board members, the chairperson and deputy chairperson; and that recommendations be made to both the board and the Auckland Council. This change will provide for an independent and fair remuneration process for the board.

In order to address requests to clarify funding provisions in clause 20(4), the current provision should be amended to clarify that the funding agreement must include the remuneration payable, along with reasonable provision for expenses, to the board’s members in accordance with clauses 17 and 18.

Delegations

Clarification was sought on the difference in meaning between members of the board and a committee in clause 28(1). Under clause 71 of new Part 7, the board may consult any person who the board considers is likely to help the board in carrying out its purpose. In order to achieve this, the board may establish any committees it considers necessary (71(2)). Clause 28(1)(c) gives the board the ability to delegate any of its functions or powers to a committee established under clause 71(2).

To ensure the board is able to consult any person who the board considers is likely to help the board in carrying out its purpose as outlined in 71(1), clause 28(1)(d) should be amended to remove the requirement for delegations to be approved by the Auckland Council.

Annual reporting

One submitter queried the relationship of the board to the Public Finance Act 1989. Because the board is not a Crown Entity in terms of Schedule 4 of the Crown Entities Act 2004, section 45M of the Public Finance Act 1989 does not apply.

The board is, however, identified in clause 32(5) as a public entity for the purposes of the Public Audit Act 2001, and should also be listed in Schedule 2 of that Act as a specific entity not falling within any class.

Secretariat to the board

A number of submitters provided detailed recommendations on the preferred make up of Secretariat. It is envisaged that the necessary skills and composition of the
Secretariat will discussed by the board and the Auckland Council in relation to the development of an initial work plan and funding agreement as outlined in clause 20 of Schedule 3.

In order to provide greater clarity on who the secretariat is accountable to, clause 33(4) should be amended to specify that the executive officer and the staff of the secretariat will be instructed by, and carry out their roles under, the direction of the board.

Disputes

Clause 34 currently limits the board and the selection body to three disputes processes. This clause should be reworded so that board and the selection body may consider, but are not limited to the listed remedies. In order to provide greater clarity, this section should also apply to disputes within either the board, or the selection body, and also applies to disputes between the board and the selection body.
Recommendation

We recommend that the Select Committee:

**AGREE** to amend new Schedule 3 in Schedule 2 to:

**Definitions**

25) provide for the definition of the terms: “mana whenua” (effectively, those groups that fall within the meaning of clause 4(2) of Schedule 3); and “taura here” (Māori residing within the Auckland Council boundaries who do not fall within the meaning of clause 4(2) of Schedule 3); and

26) replace the word “Māori” with words “taura here” where the context requires it in Part 7 and Schedule 3;

27) insert a requirement to make the board subject to the Local Government Official Information and Meetings Act 1987;

**Identifying mana whenua**

28) amend clause 4(2) to clarify that recognised mana whenua groups should “have historic and continuing mana whenua in an area wholly or partly located within the Auckland Council boundaries”;

29) for the purposes clause 4(2), “mana whenua” should be defined as being the customary authority exercised by an iwi or hapū in an identified area;

30) include a requirement for all persons prior to their appointment to the board to:
   c) consent in writing to being a board member;
   d) certify that they are not disqualified from being a board member;

**Qualifications and disqualification of members**

31) amend clause 5 (g) to clarify that only current Members of Parliament are disqualified;

32) amend clause 5 (h) to clarify that only current Auckland Councillors or current local board members are disqualified;

33) amend clause 9(2) to clarify that any member of the board who at any time becomes disqualified from membership of the board under clause 5, will immediately cease to be a member of the board;

**Appointment process**

34) amend clause 8(3) to require the selection body to complete the process in this section at least 2 months before the ending of the terms of office of the members of the board;

35) make provision in relevant clauses for the Minister of Māori Affairs to have last resort power to step in and take any necessary steps, if the selection body is unable to complete the appointment process;

36) clarify that upon completion of the selection process, the selection body disbands. The selection body will be re-formed as required for subsequent appointments to the board;

37) include a provision in clause 8 for prospective appointees to:
   c) consent in writing to being a board member, and;
   d) to certify that they are not disqualified from being a board member;

**Removal of members**

38) amend clause 10(1) to allow a majority of the board, at any time for just cause,
to also remove any person appointed by the board to Auckland Council Committee(s) under section 70;

**Consensus decision making**

39) amend clause 14(2) to remove the requirement for decisions to be valid only if reached by consensus;

40) amend clause 14(9) to provide that the board may, at its discretion, implement rules and procedures to ensure that decisions of the board are reached following the highest levels of good faith engagement and the principles of consensus decision-making;

**Remuneration**

41) amend clause 17(3)(d) to:
   a) specify that recommendations on remuneration levels should be made for board members, the Chairperson, and Deputy Chairperson;
   b) require recommendations on remuneration levels to be made to both the board, and the Auckland Council;

42) amend clause 17(4) to require the Auckland Council to give effect to the recommendation of the independent expert in setting the fee to pay to the members of the board;

43) amend clause 20(4) to clarify that the funding agreement must include the remuneration payable, along with reasonable provision for expenses, to the board’s members in accordance with clauses 17 and 18;

**Delegations**

44) amend clause 28(1)(d) to remove the requirement for delegations to be approved by the Auckland Council;

**Annual reporting**

45) include provision in clause 47 of Part 3 for the board to be listed on Schedule 2 of the Public Audit Act 2001;

**Secretariat to the board**

46) amend clause 33(4) to specify that the executive officer and the staff of the secretariat will be instructed by, and carry out their roles under the direction of the board;

**Disputes**

47) amend clause 34(1) to clarify that this section applies to disputes within either the board, or the selection body, and also applies to disputes between the board and the selection body; and

48) amend clause 34(3) to clarify that the board and the selection body may consider, but are not limited to the listed remedies.
Schedule 3 – Enactments amended

Part 1 Amendments to Public Acts

Government Roading Powers Act 1989

Officials’ Comment

Amendment of this Act was not part of Schedule 3, of the Bill as introduced. However, officials recommend changes as a consequence of other amendments to the Bill.

Recommendation

We recommend that the Select Committee:

AGREE to amend section 62 of the Government Roading Powers Act 1989 to provide that, for the purposes of that section, “territorial authority” includes Auckland Transport to allow the (NZTA) to delegate State highway matters to Auckland Transport.

Hauraki Gulf Marine Park Act 2000

Submissions

Three submitters supported amending Hauraki Gulf Marine Park Act 2000 to provide for representation from the Great Barrier and Waiheke local boards.

Officials’ Comment

No changes are proposed.

Recommendation

We recommend that the Select Committee:

AGREE to the proposed amendments to the Act.

Income Tax Act 2007

Submissions

One submitter suggested further amendments to the Income Tax Act 2007. To provide that Watercare is not required to pay tax given that is prohibited from paying a dividend and to provide that all new CCOs established under proposed section 35G will be tax exempt until 1 November 2010.
Officials’ Comment
No changes are proposed.

Recommendation

We recommend that the Select Committee:

AGREE to the proposed amendments to the Act.

Land Transport Act 1998

Officials comment

This section incorrectly refers to Auckland Transport as the road controlling authority rather than Auckland Council. However, as Auckland Transport is a road controlling authority by virtue of the powers conferred on it under new section 42 (c) the relevant sub section is unnecessary and can be omitted.

Recommendation

We recommend that the Select Committee:

AGREE to omit the amendment to the Land Transport Act 1998.

Land Transport Management Act 2003

Submissions

Most submitters want to retain section 15(b) of the Land Transport Management Act 2003 as its repeal would mean Auckland Transport is not required to 'give effect' to the Regional Land Transport Strategy (RLTS) in its Regional Land Transport Programme.

Five submitters recommended additional amendments to Land Transport Management Act 2003, as follows:

- section 15 (b) should be amended to require Auckland Transport to give effect to spatial plan in the Regional Land Transport Programme;
- section 74(3) should be amended to read: "the Auckland Council must appoint representatives of New Zealand Transport Agency, ONTRACK and the New Zealand Railways Corporation to be special advisors to the Auckland Council;
- section 74(4) should be consistent with Section 74(3);
- omit the phrase "if Affected" from 18(ab) so that the Auckland Council is always consulted;
- amend so that separate consultation must be undertaken on the Regional Land Transport Programme;
- Auckland Transport should jointly manage all State highways and railways in Auckland; and
- amend clause 41(a) to require Auckland Transport to prepare an Regional Land Transport Programme which gives effect to the objectives of the Council as set out in the spatial plan and the Regional Land Transport Strategy.

**Officials’ Comment**

The Regional Land Transport Programme prepared by Auckland Transport will include all Auckland State highway work fully funded by the Crown as well as activities relating to the Auckland transport system that will be partly or fully funded by Auckland Council. Auckland Transport will need to balance the transport policies of the Auckland Council with the transport policies of the Government if it is to optimise the programme.

The current base line statutory duty to be ‘consistent’ with the Regional Land Transport Strategy and the Government Policy Statement on Land Transport funding leaves scope for Auckland Transport to undertake this optimisation process. If Auckland Council sets a higher duty through its governance powers (e.g., requiring Auckland Transport to give effect to the Regional Land Transport Strategy through the statement of intent) and the current regional transport policies do not align with national funding priorities Auckland Transport’s programming task will become significantly more challenging.

The NZTA has the role of special advisor to the council because the Crown provides funding for the majority of activities included in Auckland Transport’s Programme. The New Zealand Railways Corporation activities are not included in the Regional Land Transport Programme and the Corporation does not fund transport activities undertaken by Auckland Transport.

Auckland Transport is not sufficiently accountable to the Government to have legislative control over assets such as State highways and railways that are wholly funded by the Crown rather than Auckland Council.

Elsewhere in this report officials have recommended that section 15 of the LGAC09 be amended to provide that the governing body of the Council is responsible and democratically accountable for the Council’s decision-making in respect of transport objectives and transport funding, including the duty to consider the views and preferences of local boards. A consequential amendment needs to be made to the new section 17 of the Land Transport Management Act, to make it clear that the governing body of the Council is responsible for proposing transport activities for inclusion in the regional land transport programme under section 17(1)(a) or (b).

The proposed new section 18(2) of the Land Transport Management Act would require Auckland Transport or a neighbouring regional land transport committee to consult the governing body and all local boards of the Auckland Council. In some circumstances, for example a new road crossing the boundary between Waikato and Auckland, it is unnecessary for all local boards to be consulted as many would not be affected. Consequently we propose an amendment to provide that only affected local boards must be consulted.
Recommendation

We recommend that the Select Committee:

**AGREE** to amend proposed section 17 of the Land Transport Management Act by adding a sub section providing that any decision by the Council to propose an activity or combination of activities for inclusion in an Regional Land Transport Programme must be made by the governing body.

We recommend that the Select Committee:

**AGREE** to amend proposed section18(2) of the Land Transport Management Act by providing that only affected local boards must be consulted.

We recommend that the Select Committee:

**AGREE** to amendments to make Auckland Transport an “approved public organisation”, not an “approved organisation”.

Litter Act 1979

**Submissions**

One submitter opposes the suggested amendment to the Litter Act 1979.

**Officials’ Comment**

The reference to the “Auckland Harbour Bridge Authority” is an error in the Litter Act 1979 as the entity no longer exists and should be removed from the Act.

**Recommendation**

We recommend that the Select Committee:

**AGREE** to amend section 2(1) of the Litter Act 1979 to remove the reference to the Auckland Harbour Bridge Authority.

Local Electoral Act 2001

**Submissions**

108 submitters opposed the amendments to the Local Electoral Act 2001 that would increase election campaign spending limits. Submitters suggested a formula based on either an amalgamation of the spending limits of current councils, or one based on the parliamentary limits.
The majority of the submissions express concern at the increase in electoral spending and that it will restrict candidacy to those able to fund larger campaigns and would benefit big business and restrict the ability of those without significant financial backing to stand.

Officials’ Comment
No changes are proposed.

Recommendation

We recommend that the Select Committee:

AGREE to the proposed amendments to the Act.

Local Government Act 1974

Submissions
No submissions were received.

Officials’ Comment
The amendments in the Bill include the repeal of section 313 which has already been repealed.

Recommendation

We recommend that the Select Committee:

AGREE to amend the proposed amendments to the Local Government Act 1974 by omitting the item relating to section 313.

Local Government Amendment Act 1992

Submissions
108 submitters opposed the repeal of section 77 of the Local Government Amendment Act 1992 on the grounds that the section vests ownership of Centennial Park in the Auckland Regional Council. It was submitted that the only amendment required is to change the reference to “Auckland Council”. There was concern as to the potential risk for further development, the lack of local control and change in ownership without consultation.

Officials' Comment
No changes are proposed.
Recommendation

We recommend that the Select Committee:

AGREE to the proposed amendments to the Act.

Local Government Official Information and Meetings Act 1987

Submissions
One submitter suggested further insertions to Part 2 of Schedule 1 Local Government Official Information and Meetings Act 1987 to include Auckland Transport, the WDA, Watercare and any other Auckland Council CCOs that may be established in the future.

Officials' Comment
No changes are proposed.

Recommendation

We recommend that the Select Committee:

AGREE to the proposed amendments to the Act.

Resource Management Act 1991

Submissions
One submitter supports changing to RMA, section 33(2) that allows for the governing body to delegate to a Local Board the roles, functions and powers under the RMA. This Board is particularly concerned that local boards retain control over local planning and consenting issues so that it can conserve the heritage nature of the local area.

Officials' Comment
No changes are proposed.

Recommendation

We recommend that the Select Committee:

AGREE to the proposed amendments to the Act.
Schedule 3 – Enactments amended

Part 2 Amendments to Local, Private and Provincial Acts

Auckland Aotea Centre Empowering Act 1985

Submissions

Five submitters commented on amendments to the Auckland Aotea Centre Empowering Act 1985.

Submitters opposed the repeal and substitution of sections 8 and 8A and suggested amending the Act to allow for the Auckland Council to negotiate an annual service agreement with the Aotea Board of Management to efficiently operate the facilitates and deliver agreed community outcomes.

The Auckland City Council identified that the Bill amends the Act to require the Auckland Council to “bear the operating costs of the Centre.” Currently the Act is clear that the existing councils bear the operating costs net of receipts. The Auckland City Council considers the amendment does not account for the Centre’s ability to earn revenue. The Auckland City Council considers the new Council should only be obliged to make a ‘reasonable contribution’ to the operating costs.

The Auckland City Council suggests that the Auckland Council review the Aotea Centre Empowering Act and report to the Department of Internal Affairs by 1 November 2013.

Officials’ Comment

Officials agree that the amendments should preserve the current situation whereby local authority ratepayers are required to bear the operating costs of the Centre “net of receipts”.

Recommendation

We recommend that the Select Committee:

AGREE the proposed new section 8 of the Auckland Aotea Centre Empowering Act 1985 to require the Auckland Council to bear the operating costs of the Centre net of receipts.
Auckland Regional Amenities Funding Act 2008

Submissions
Twenty four submitters commented on amendments to the Auckland Regional Amenities Funding Act 2008.

Most submitters are not in favour of the removal of section 34(5) relating to the maximum levy of contributing authorities. Retaining the funding cap provides for planning under the annual panning process for the maximum amount to be budgeting for and there is total certainty as to the maximum levy that could be paid in any one year. There is also support for the substitution of the Electoral College with the Auckland Council.

Some submitters suggested additional amendments to Auckland Regional Amenities Funding Act as follows:
- provide that the definition of “Auckland” take effect from 1 July 2010 for the levies for Museum of Transport and Technology and Auckland Museum;
- repeal the entire Auckland Regional Amenities Funding Act as its purpose disappears with the amalgamation of the exiting Auckland local authorities into the Auckland Council; and
- suggest that the Act is amended to ensure amenities payments during the transition period are continued but seeks a more thorough review of the funding arrangements for the longer term, to apply consistent, fair and democratic principles of accountability.

Officials’ Comment
Officials have been advised by the Office of the Clerk, through Parliamentary Counsel, that substantive amendments to local and private Acts cannot be made in a Government Bill. This poses significant challenges in relation to the Auckland Regional Amenities Funding Act 2008, in terms of preserving the objectives of the Act in a sensible and practicable way.

Officials will continue to work with Parliamentary Counsel, and liaise with the Office of the Clerk, in order to identify amendments that are both acceptable and will best preserve the intent of the Act in the changed local government context in Auckland.

Recommendation
We recommend that the Select Committee:
AGREE that officials work with Parliamentary Counsel, and liaise with the Office of the Clerk, in order to identify amendments that are both acceptable and will best preserve the intent of the Act in the changed local government context in Auckland.
Auckland War Memorial Museum Act 1996

Submissions
Two submitters commented on amendments to the Auckland War Memorial Museum Act 1996.

Recommended additional amendments to the Auckland War Memorial Museum Act 1996 are:

- delete "contributing authority' in section 2, and replace with a/the/any contributing authority" with the equivalent reference to "Auckland Council" in:
  - section 4(3);
  - section 5(4) and subsection 5(4)(a);
  - section 12(2)(f);
  - section 22(5);
  - section 28(5)(b); and
  - section 29: heading and text;
- the reference to section 13 (to be repealed) should be removed from section 7(8);
- amend the definition of "Electoral College" to replace the words "Auckland Council" with the words "not less than 7 members of the Auckland Council, who shall elect a chairperson for each meeting";
- the new clause 23(3) should read: "The Auckland Council must pay the levy on the next 1 July after the Board makes the levy referred to in subsection (2)";
- section 6(4) of the LGA02 should be amended with a new sub-sub-section "(ga) The Auckland War Memorial Museum", or Include after section 10 in the Auckland War Memorial Museum Act "10A Museum is not a council controlled organisation. The Museum is deemed not be a council controlled organisation under the Local Government Act 2002";
- section 22(3) requires a meeting with the chairperson of the Electoral College. Should this be a reference to the Mayor or a member of the Auckland Council?
- repeal 22(7) as it will require the Auckland Council to send itself a copy of its submission on the draft annual plan to itself;
- section 23(5) requires payment of the levy on 1 July each financial year; maybe retain this to avoid monthly or quarterly payments;
- add the Auckland Museum Trust Board to section 6(4) of the LGA02 as 50% Council appointed members of the Trust Board could bring the Museum under the definition of a CCO; and
- provide that the definition of 'Auckland' take effect from 1 July 2010 for the levies for Museum of Transport and Technology and Auckland War Memorial Museum.
Officials’ Comment

Officials have been advised by the Office of the Clerk, through Parliamentary Counsel, that substantive amendments to local and private Acts cannot be made in a Government Bill. This poses significant challenges in relation to the Auckland War Memorial Museum Act 1996, in terms of preserving the objectives of the Act in a sensible and practicable way.

Officials will continue to work with Parliamentary Counsel, and liaise with the Office of the Clerk, in order to identify amendments that are both acceptable and will best preserve the intent of the Act in the changed local government context in Auckland.

Recommendation

We recommend that the Select Committee:

AGREE that officials work with Parliamentary Counsel, and liaise with the Office of the Clerk, in order to identify amendments that are both acceptable and will best preserve the intent of the Act in the changed local government context in Auckland.

Museum of Transport and Technology Act 2000

Submissions

Three submitters commented on amendments to the Museum of Transport and Technology Act 2000.

Two submitters recommended additional amendments to the Museum of Transport and Technology Act 2000, as follows:

- references to Franklin district that the Bill proposes to include in the Amenities Funding Act, the Museum Act and MOTAT Act are removed;
- not repeal section 5(4)(b) of the MOTAT Act;
- the provision removing caps on the funding levies in the Museum Act and the MOTAT Act be deleted from the Bill; and
- provide that the definition of 'Auckland' take effect from 1 July 2010 for the levies for Museum of Transport and Technology and Auckland War Memorial Museum.
Officials’ Comment

Officials have been advised by the Office of the Clerk, through Parliamentary Counsel, that substantive amendments to local and private Acts cannot be made in a Government Bill. This poses significant challenges in relation to the Museum of Transport and Technology Act 2000, in terms of preserving the objectives of the Act in a sensible and practicable way.

Officials will continue to work with Parliamentary Counsel, and liaise with the Office of the Clerk, in order to identify amendments that are both acceptable and will best preserve the intent of the Act in the changed local government context in Auckland.

Recommendation

We recommend that the Select Committee:

Agree that officials work with Parliamentary Counsel, and liaise with the Office of the Clerk, in order to identify amendments that are both acceptable and will best preserve the intent of the Act in the changed local government context in Auckland.

Waitakere Ranges Heritage Area Act 2008

Submissions

50 submitters commented on amendments to the Waitakere Ranges Heritage Area Act 2008. Most submitters opposed the repeal of section 18 of the Waitakere Ranges Heritage Area Act 2008. Officials agree that section 18 of the Waitakere Ranges Heritage Area Act 2008 should be amended so "Regional Growth Strategy" is replaced with "Spatial Plan".

Officials’ Comment

Officials consider that section 18 of the Act should not be repealed. The Department considers that section 18 should instead be amended to refer to the spatial plan for Auckland from the time the Auckland Council adopts one.

Recommendation

We recommend that the Select Committee:

AGREE to amend Schedule 3:
(a) to omit the repeal of section 18 of the Waitakere Ranges Heritage Area Act 2008; and
(b) amend section 18 of the Waitakere Ranges Heritage Area Act to refer to the spatial plan instead of the Auckland Regional Growth Strategy.
Additional local and private Acts

Officials’ Comment
Officials are working with Parliamentary Counsel to identify additional local and private Acts that fall in to one of four categories that the Office of the Clerk has agreed may be included in this Schedule. The categories are:

- repeal of spent local/private Acts with agreement of "promoters" (or their successors)
- repeal of redundant (but not spent) local/private Acts at the request of "promoters" (or their successors)
- repeal of spent local/private Acts to which consequential amendments would otherwise be required
- purely consequential amendments to local/private Acts (replacement of references to existing councils or cities/districts)

Recommendation

We recommend that the Select Committee:

AGREE to officials working with Parliamentary Counsel to identify additional spent and redundant local and private Acts, relating to Auckland, for repeal in Schedule 3, and any additional consequential amendments required.
Part 3 Amendments to Regulations

Officials’ Comment
Officials are working with Parliamentary Counsel to identify additional consequential amendments to regulations required by this legislation.

Recommendation

We recommend that the Select Committee:

AGREE to officials working with Parliamentary Counsel to identify additional consequential amendments to regulations required by this legislation.
Schedule 4 – Provisions that apply to certain employees of Auckland Regional Transport Authority and Auckland Regional Transport Network Limited

This Schedule contains transition provisions for employees of ARTA and ARTNL:
- who have been notified that their employment is to be transferred on the same terms and conditions on and from 1 November 2010;
- who have been notified that there employment is to be transferred on and from 1 November 2010, but on different terms and conditions; and
- whose employment position is subject to review, but who have received no notification.

These provisions related to these employees’ status with their new employer after the transition.

Submissions
One submitter recommended that the provisions are amended to refer to all employees who transfer to a position in a different location.

Officials’ Comment
As noted previously, it is proposed that, subject to advice from Parliamentary Counsel, the employment provisions in the Bill be redrafted and restructured to consolidate the employment related clauses (including those relating to ARTA and ARTNL) and clarify the policy intent. This includes the clauses in this schedule.

Recommendation

We recommend that the Select Committee:

AGREE that subject to advice from Parliamentary Counsel, the employment provisions in the Bill be redrafted and restructured to consolidate the employment related clauses (including those relating to Auckland Regional Transport Authority and Auckland Regional Transport Network Limited) and clarify the policy intent.
Schedule 5 – Redundancy and compensation provisions that apply to certain employees of Auckland Regional Transport Authority and Auckland Regional Transport Network Limited

This Schedule sets out when certain employees of ARTA and ARTNL are or are not entitled to compensation.

Submissions
No submissions received on this schedule.

Officials’ Comment
This schedule mirrors schedule 1 new schedule 6 for staff employed by ARTA and ARTNL. As previously noted, it is proposed that, subject to advice from Parliamentary Counsel, the employment provisions in the Bill be redrafted and restructured to consolidate the employment related clauses (including those relating to ARTA and ARTNL) and clarify the policy intent. This includes the clauses in this schedule.

Recommendation

We recommend that the Select Committee:

AGREE that, subject to advice from Parliamentary Counsel, the employment provisions in the Bill be redrafted and restructured to consolidate the employment related clauses (including those relating to Auckland Regional Transport Authority and Auckland Regional Transport Network Limited) and clarify the policy intent.