

25th March, 2010

To
The Auckland Transition Agency
Per Email Upload

NZCID Submission on the discussion document on Local Boards of the Auckland Council and the discussion document on the Council-controlled organisations of the Auckland Council

1.1 The New Zealand Council for Infrastructure Development ('NZCID')¹ appreciates the opportunity to make this written submission on the Auckland Transition Agency ('ATA') Discussion Documents – 'Council-controlled organisations of Auckland Council' and 'Auckland Council Local Boards'.²

2 Summary

2.1 While NZCID believes enhancements can be made to ensure strong alignment between the Auckland Council and the Council Controlled Organisations ('CCOs') and to better define the role and authority of Local Boards, NZCID submits that the ATA Discussion Documents have struck the right balance between strategic leadership at the Council level, implementation capacity at the CCO level and local input at the community level. The balance aligns closely with the 'One Auckland' structure promoted by NZCID.³

2.2 With regard to the ATA Discussion Document 'Council-controlled organisations of Auckland Council', NZCID believes that communities across Auckland want to see transparency and accountability in the delivery of local government services. But as monopoly owners, councils face inherent tensions in being at

¹ NZCID is a non profit organisation. Members comprise a diverse range of leading private and public organisations including infrastructure equity owners, financiers, constructors, service providers, public sector agencies, and major infrastructure users. Information on the Council, its members, policy and work can be found at www.nzcid.org.nz. In developing its position on infrastructure issues, NZCID consults extensively with its member organisations, undertakes workshops and seminars on policy and undertakes independent research. This submission represents the views of NZCID as a collective whole, and may not necessarily represent the views of individual member organisations, some of whom will be making their own individual submissions.

² This Submission follows the format recommended by the ATA Discussion Documents by addressing the questions set out at the end of those documents.

³ See NZCID, *One Auckland*, Submission to the Royal Commission on Auckland Governance, April 2008.

the same time, suppliers, the customers' representatives, price setters and regulators of many of these services. Putting these services into arms length standalone CCO structures, with professional governance one step removed from day-to-day political control will help significantly in overcoming this tension.

- 2.3 With regard to the ATA Discussion Document Auckland Council Local Boards', NZCID believes that the role of Local Boards is to provide direct representation for the people of the region. Working within the long term plan for the region, Local Boards will be the point of reference for all regional initiatives that affect a local community. Nonetheless, NZCID submits there is a critical need for the ATA to provide as much certainty and specificity as possible concerning the allocation of non-regulatory responsibilities (to each of the 21 Local Boards) and the 'potential' delegation of regulatory responsibilities to ensure certainty and reduce the risk of dispute following 1 November 2010.

3 Auckland Transition Agency – Discussion Document: Council Controlled Organisations of Auckland Council

3.1 Communities across Auckland want to see transparency and accountability in the delivery of local government services. But as monopoly owners, councils face inherent tensions in being at the same time, suppliers, the customers' representatives, price setters and regulators of many of these services. Putting these services into arms length standalone structures, with professional governance one step removed from day-to-day political control helps overcome this tension.

Given existing legislation and government decisions that have been made to date (summarised in Part 1, pages 6 to 9), what are your views on the structure and responsibilities proposed for the CCOs described in this discussion document?

3.2 NZCID strongly endorses the CCO model and the rationalisation of the current number of CCOs in the new Auckland Council structure.

3.3 The use of CCOs to deliver local government services dates back to the reforms of 1989. As noted by the Royal Commission: "For the Auckland council to plan and deliver the infrastructure and services to meet its requirements, it will need access to the best commercial and engineering expertise and resources. CCO structures and boards of directors can bring these required skills and expertise."

3.4 The benefits of placing activities in CCOs include:

- a Improved commercial focus, that is, operating a company with a professional board of directors with the objectives of achieving a greater operating efficiency;
- b Ring-fencing financial risk using an incorporated structure to insulate a council from financial liability for an activity or venture involving other parties such as a joint venture;
- c Empowering local communities, that is, creating a trust with a set budget funded by a council but managed by a community for a specific purpose such as maintaining a community centre;
- d Tax effectiveness, that is, obtaining dividend imputation credits on the tax that councils pay on dividend income;
- e Achieving economies of scale by aggregating similar activities of various local authorities into one regional CCO;
- f The ability to streamline bureaucracy;
- g An enhanced ability to recruit and retain highly skilled professional staff where the structures and culture of a council are seen as less attractive than those of a CCO.

- 3.5 The proposed CCOs will enable the Auckland Council to make use of commercial disciplines and specialist expertise that will not be available within the council itself. Using these skills, CCO boards will be able to add value to CCOs and help them better achieve their objectives, which will be set by the Council. In the future Auckland Governance framework, CCOs will also play an important role in giving effect to the Auckland Council's strategic direction, including the Spatial Plan and associated strategies relevant to each CCO.
- 3.6 The CCOs exist under the democratic process and the ultimate accountability of the elected council to the ratepayers and electors. It is the Council, in conjunction with the community, which sets the objectives and accounts to the ratepayers and electors for the performance of the CCOs. This model relies on strong, effective accountability mechanisms between the council and the CCO.

What do you consider are the key elements that should be included in the statements of intent (SOI) between the Council and its CCOs?

- 3.7 The Auckland Council will set the agenda for the CCOs. The term "Council-controlled" means exactly what it says – a council controlled organisation.
- 3.8 The Local Government Act 2002 and legislation establishing the new council sets out numerous accountability mechanisms with which the CCOs must comply, including for a CCO to give effect to the Auckland Council's policies and plans. This includes the regional transport strategy and overall strategic direction for transport in Auckland - which will remain with the council. The CCOs will also have their SOI agreed by the council and made public. The SOI will publicly state the activities and intentions of the CCO for the year and the objectives to which these activities will contribute. There are requirements for the CCOs to report regularly to the council and have their performance monitored by the council's governance and monitoring unit.
- 3.9 A number of Cabinet decisions and Government announcements indicate that the organisational culture to bind the Auckland Governance structure together – to form *One Auckland* – should include some common SOI outcomes for all CCOs which reflect principles and values applying to all parts of *One Auckland*. NZCID supports this concept and the following ideas presented to Cabinet:
- a The SOI should explicitly provide for an expectation that the CCO will "give effect" to the Auckland Council strategy, plans and priorities, including the spatial plan;⁴ and
 - b The SOI should include a narrative on how the CCO contributes to and/or aligns with the Council's and where appropriate the Government's wider objectives and priorities for Auckland.⁵

⁴ See CAB Min (09) 41/16, paragraphs 21-24

⁵ See CAB Min (09) 41/16, paragraphs 21.2

- 3.10 The SOI should clearly set out the policy objectives, strategies, operating requirements, major capital expenditures, performance measures and targets (including financial targets), debt and equity structure, human resource management, and environmental/community policies.
- 3.11 NZCID notes that the transition agency is also recommending that the CCOs take account of the views expressed by Local Boards as a requirement of the SOI approved by Auckland Council and has proposed a council committee chaired by the mayor to oversee these organisation activities. Because the timeframe for SOI preparation and consideration (and people resource to support this) may practically make Local Board input limited, the council committee mechanism being considered will need to be developed carefully to provide for this.
- 3.12 NZCID agrees that Local Boards should represent the interest of their communities by providing input into the development of the SOIs. However, because SOIs are intended to be high level outcome based documents, which may not be able to address local board concerns, it may also be appropriate to provide means for variations to be made to other accountability documents enabling more appropriate localised specification.
- 3.13 NZCID also supports a common set of guiding principles and values for the Council bureaucracy and CCOs. We have set out an example in Appendix 1 of this submission. These principles and values will need to be supported by a set of performance indicators (KPIs) to measure each CCO's performance against the achievement of: strengthened regional governance; integrated decision-making; greater community engagement; and improved efficiency and value for money.⁶
- 3.14 In short, the process proposed by the Royal Commission and implied in the Auckland Law Reform Bill anticipates a cascading, interdependent linkage between policy, governance and management culture set down by the Auckland Council and implementation - in that order – by the CCOs.

Do you consider the reporting procedures could be improved to further enhance accountability and governance arrangements? If so, how should this be done?

- 3.15 The accountability requirements on CCOs are designed to ensure that CCOs give full and accurate reporting of their activities and are publicly accountable for their activities. Under the Local Government Act 2002 these requirements include preparation of a six- monthly report and annual report, including a statement of service performance comparing actual performance against the SOI, which are audited by the Auditor General.
- 3.16 NZCID submits that quarterly reporting would provide more regular updates (than the six-monthly requirements) to the governing body and local boards. Again, the idea of the transition agency for a council committee chaired by the mayor to receive these reports on behalf of all local boards may make this

⁶ See Local Government (Auckland Law Reform) Bill, General Policy Statement, page 2

process more efficient. Consideration will also need to be given to quarterly reporting being customised to some extent for local areas so that there is sufficient public scrutiny of on the ground delivery.

- 3.17 Consideration will also need to be given to establish how Auckland Transport will contribute to local board reports and annual agreements.

Do you have any specific comments on the structures, entities, assets and activities identified in respect of individual CCOs described in the discussion document? Please identify to which organisation(s) your comments are directed.

- 3.18 The ATA Discussion Document sets out the proposals for five CCOs: Council Investments; Economic Development, Tourism and Events; Major Regional Facilities; Property Holdings; and the Waterfront Development Agency.

- 3.19 With regard to the Council Investments CCO, questions arise for NZCID about:

- a Ensuring there is a clear separation between the roles of the Council Investments, Waterfront Development and Property Holdings CCOs
- b how existing funding arrangements will remain in place and not be disturbed by the transition?
- c Whether the proceeds of certain investments (eg dividends from the airport shares held currently by Auckland City Council and Manukau city Council) should be expended locally?
- d Whether Prime West Studios should be considered an investment or a major facility?
- e Whether and how local boards should have a say in investment policy? If so, how?
- f The role of this CCO in making strategic decisions regarding the Ports of Auckland Ltd.

- 3.20 With regard to the Major Regional Facilities CCO, questions arise for NZCID about:

- a The governance and working relationship between the existing entities and the new CCO
- b Ensuring the existing contracts/agreements/sponsorship arrangements with third parties are not disrupted through the transition
- c Ensuring local matters are managed appropriately and the relationship of the CCO to local boards
- d Ensuring the benefits of regional governance, such as co-ordinated management, can be realised during the transition

- e Resolving competition issues (e.g. between the stadiums) between the entities within the CCO without undermining local community needs

3.21 With regard to the Property Holdings CCO, questions arise for NZCID about:

- a How the existing entities (particularly existing in-house council strategic property divisions) will be managed within the new CCO
- b How to ensure local matters are managed appropriately and relationships to Local Boards
- c To whom and how any returns managed by Property Holdings will be distributed (again reflecting the local interest)
- d Whether the CCO should have land acquisition powers?
- e Ensuring the functions of the CCO align with and do not overlap with the Waterfront Development Agency

3.22 With regard to the Waterfront Development Agency, questions arise for NZCID about:

- a how national objectives and interests (as evidenced by the infrastructure issues that have arisen over the Rugby World Cup and previously the America's Cup) are to be managed by the CCO and the Auckland Council/Local Board
- b how the existing entities will be managed within the new CCO (will Sea +City be absorbed or remain standalone?)
- c how existing funding arrangements will remain in place and not be disturbed by the transition?
- d The relationship between the with Waterfront Development Agency and the Ports of Auckland Ltd/ Investment CCO
- e How to achieve greater integration with CBD (including the Local Board and possibly the CBD Advisory Board?)
- f Whether the CCO will have regulatory, land acquisition and development powers?

Do you have views on any other issues in this document?

3.23 NZCID believes that councils should not be involved in the provision of private goods. Some councils are in competition with business. For example, in the provision of fitness centres, parking buildings, housing, hotels, land and commercial property. Business assets and property held by the existing councils should therefore be sold to fund infrastructure rather than being transferred to a CCO. Strategic shareholdings in certain key assets may be permissible, (e.g. Auckland Airport, Ports of Auckland), but only when there is a compelling strategic reason why the Council needs to retain control. In such a

case the Council should hold only the minimum that is necessary for control (e.g. 51%).

- 3.24 NZCID also believes that councils should not compete with the private sector for work. The Auckland Council and the CCOs should therefore be encouraged to exit from activities where the private sector can provide services, rather than these being provided by 'in house' staff. NZCID submits that the Auckland Council and CCOs should outsource work to the private sector to ensure the best skills are used, monopolies do not occur and the economy is boosted rather than restricted by the amalgamation of local government in Auckland.
- 3.25 NZCID has proposed that an Executive Management Board ('EMB') be established to have an important role to secure and maintain 'unity' within the overall Auckland Council structure in the performance of its services.
- 3.26 The EMB would be chaired by the Mayor and comprise the Chief Executive of Auckland Council and the CEOs and Chairs of the seven CCOs. The Board will be responsible for ensuring collaboration and alignment of the respective organisations (particularly the implementation of the Auckland Spatial Plan set by the Auckland Council). It will no doubt also be complemented with a CEO Forum, comprising the CEOs of the Auckland Council and CCOs (and perhaps the Mayor's Office).
- 3.27 Critical to the successful performance of the EMB will be its adoption of shared corporate values, culture and code of conduct. Equally critical will be the reporting processes to the various constituent organisations - via the respective governance arms of the Auckland Council (ie the Mayor, Councillors and Local Boards) and the CCOs (ie the respective boards of directors) – who represent the wider regional communities of interest.
- 3.28 The EMB will also be instrumental in ensuring full and transparent information flow between the CCOs and the Council administration (headed by the Council Chief Executive).
- 3.29 As an extremely large organisation by New Zealand standards, there is a risk that the Auckland Council could start its life with each component entity possibly acting at cross purposes to the mayoral vision and/or various council policies. To avoid this, the development of the Council's operating structure needs to proceed on the basis that the incoming mayor and councillors will have a guiding vision and principles which will need to be communicated clearly to constituent organisations - who will be expected to deliver services aligned to this vision and strategic direction. The EMB will have a critical role to play to establish and maintain the Auckland Council's sense of corporate unity and alignment to achieving a shared objective.

4 Auckland Transition Agency – Discussion Document: Auckland Council Local Boards

4.1 The Local Board structure lies at the core of the Auckland Governance structure and formed an important aspect of the NZCID *One Auckland* proposal:⁷

- a The role of Local Boards is to provide direct representation for the people of the region. This must be protected in law. Working within the long term plan for the region, Local Boards will be the point of reference for all regional initiatives that affect a local community. Whether it is a roading upgrade, a water project or a major regional initiative, the relevant regional agency will be required to have consulted with the Local Board(s) affected. While the ultimate authority to approve a regional project will lie with the Auckland Council governing body, any relevant regional agency will be required to demonstrate that they have taken into account the views of the affected community, have acted on their requests in so far as practicable and undertaken any mitigation measures appropriate to the size and scale of the project, prior to a decision being taken by the Auckland Council.
- b This approach enables people to be both consulted and involved in decision making about the services delivered, informed about the quality of the services in their area and enabled to call elected representatives to account if services fail to meet their needs.
- c The role of Local Boards are:
 - i To develop a local board plan that will determine the community's priorities for allocation of funding encompassing such things as: mainstreet programmes, streetscapes, support for community arts, culture and events, neighbourhood and community support, playgrounds, local parks & reserves, recreation centres, development of sport and recreation. The Local Board plan must be consistent with and give effect to the Regional Strategic Plans developed by the Auckland Council.
 - ii To allocate funding (provided by the region) in accordance with the Local Board Plan
 - iii To be consulted and have the right for input on all regional decisions that have a direct effect on the local community
 - iv To represent and act as an advocate for the interests of the community
 - v To maintain an oversight and provide feedback to the governing body of the Auckland Council on services provided to the community (ie to be the eyes, ears and voice of the community), including submissions on regional consents and plans, be consulted by regional agencies where plans affect local communities, and sit in local consent hearings

⁷ See NZCID, *One Auckland*, Submission to the Royal Commission on Auckland Governance, April 2008, pages 33-34.

- vi Be the point of liaison with community organisations, business, and special interest groups in the community
- vii Build rapport and ongoing relationship with the local member of Parliament and the Auckland Council councillor
- viii Provide a development path for regional leaders
- ix Undertake any other responsibilities delegated by the Auckland Council governing body.

4.2 In its submission on the Local Government (Auckland Law Reform) Bill, NZCID recommended that the duties, functions and responsibilities of the Local Boards be as follows:

- Enable democratic decision making by, and on behalf of, communities within the local board area;
- Enable the promotion of the social, economic, environmental and cultural wellbeing of communities within the local board area;
- Responsible for making all local decisions within the regional strategic framework;
- Have input into the development of regional policies, strategies and plans and must give effect to these regional policies, strategies and plans within their local areas;
- Have a key role in place shaping and community development;
- Undertake local long term planning, including the development of a long term community plan and annual plan for their area;
- Undertake the non regulatory functions of the Auckland Council, except where decision making on an Auckland wide basis will better promote the wellbeing of the communities across Auckland (with the non regulatory functions of the Council for which local boards are responsible being identified in the Council's long term and annual plans), including:
 - identifying and communicating the interests and preferences of the communities in the local board area in relation to the content of the strategies, policies, plans, and bylaws of the Council
 - adopting a local board plan to reflect the priorities and preferences of its communities for local services and facilities
 - identifying and developing bylaws specifically for its local board area and proposing them to the governing body
 - the agreement reached with the governing body for local services and facilities
 - monitoring and reporting on the implementation of the local board agreement for its area

- communicating with community organisations and special interest groups in its area
- any responsibilities, duties or powers delegated to it by the governing body
- considering and reporting on any matter of interest or concern to the local board
- managing funding in accordance with legislative requirements and the policies set by the Auckland Council.

Given the principles in the Local Government (Auckland Council) Act 2009 (summarised on page 17), what are your views on the allocation of non regulatory responsibilities in table (a) (pages 21 to 29)?

- 4.3 NZCID agrees with the view taken by the ATA that, in allocating the non regulatory activities, rather than asking ‘why should local boards undertake certain activities?’, that the question to be asked is ‘why not?’
- 4.4 This provides an excellent starting point but does need to be reinforced, recognising that most activities have both regional and local dimensions. The view taken by the ATA also reflects the inherent uncertainty of the Local Government (Auckland Council) Act 2009 under which the ATA operates, coupled with the nature of its mandate – implementation rather than political decision making.
- 4.5 Nonetheless, NZCID suggests the need for greater certainty about the allocation of non regulatory responsibilities to ensure as much clarity as possible for both the Local Boards and the governing body of the Auckland Council.
- 4.6 It should not be an insurmountable task to identify now, from the current Council LTCCPs, a specific and comprehensive list of local board responsibilities and set these out along the lines of the examples given on pages 30 and 31. Now that the number and scope of the Local Boards has been established by the Local Government Commission, this should be done for each Local Board area.
- 4.7 NZCID is of the view that this is critical to the Local Boards and governing body of the Auckland Council getting off to an appropriate start without disputes arising.

Have any non regulatory responsibilities been missed in Table A (pages 21 to 29)?

- 4.8 NZCID does not believe that any non regulatory responsibilities have been missed in Table A. While NZCID believes that the list of responsibilities set out on pages 21 to 29 provides an excellent starting point, as noted above, NZCID suggests that a specific and comprehensive list of local board responsibilities be set out along the lines of the examples on pages 30 and 31.

What local facilities, programmes and projects (such as the examples on pages 30 to 31) do you think local boards should have decision making responsibility for?

- 4.9 NZCID believes that the illustrative examples set out on pages 30 to 31 provides an excellent starting point, but as noted above, NZCID suggests that a specific and comprehensive list of local board responsibilities be set out.

Do you have views on any other issues in this document?

- 4.10 As noted in the ATA Discussion Document, many regulatory responsibilities of councils are of significant interest to local communities. Although regulatory activities under the Local Government (Auckland Council) Act 2009 are generally the responsibility of the governing body, the Act enables the governing body to delegate regulatory responsibilities to Local Boards. The ATA Discussion Document sets out the potential role of Local Boards for regulatory responsibilities on pages 33 to 38 of the Discussion Document.
- 4.11 NZCID submits that, in allocating regulatory responsibilities, the question to be asked is 'why should local boards undertake these responsibilities? As far as possible, decisions on regulatory activities should be similar across the Auckland region to ensure bylaws such as those regarding liquor, dog control and gambling are consistent.
- 4.12 The relationship between CCOs and the local boards is another potential issue. Local boards must provide a three year plan and annual local board agreements that include levels of service, performance targets and budget. An annual report on the actual implementation is then required. NZCID believes that it must be made clear how CCOs will contribute to this by their actions and their reporting practices.
- 4.13 How local service standards will be negotiated between the CCOs and local boards is also something that needs attention. A high degree of collaboration will be required between the various parts of the Auckland Council including the governing body, local boards, the mayor, the CCOs, statutory board for Maori and the panels for ethnic and pacific peoples. The ATA Discussion Document states that: 'Local boards and CCOs are also likely to work directly together. A CCO may inform a local board generally about its operations, or work with a local board on specific projects affecting the local board area.'⁸ The SOI

⁸ Auckland Transition Agency Discussion Document: Local Boards, p 45.

process allows for much clearer obligations to collaborate and listen to the views of local boards, than the expectation set out in the ATA Discussion Document above. NZCID believes that SOIs could have clear performance expectations concerning consultation with local boards, and local board satisfaction with CCO engagement and performance.

APPENDIX 1

1. As mentioned above, the Cabinet paper on Outstanding Policy Issues⁹ states that all CCO SOIs might be strengthened by including a narrative on how each CCO contributes to and/or aligns with Council's, and where appropriate the Government's, wider objectives and priorities for Auckland.
2. Such a narrative might include the following guiding principles¹⁰:
 - a In enabling the establishment and advancement of a single, unified Auckland local government entity, Auckland Council's governance body and service delivery agencies (CCOs) together with the 21 local boards will be guided by the following desired outcomes:
 - i To manage, and give united leadership to, Auckland's growth in all forums local, national and international;
 - ii To provide leadership based on values of fairness for all, equity and sustainability;
 - iii To work to ensure the continued ability of all Aucklanders to improve their standard of living and quality of life;
 - iv To act positively to protect and enhance Auckland's stake in New Zealand's growth and development;
 - v To ensure a fair and equitable return on the Region of Auckland's contribution to New Zealand's economic growth and development;
 - vi To give Aucklanders an effective and united voice in decision making which affects Auckland.
3. A suite of guiding operational principles also seems appropriate to address a range of considerations, such as:
 - A The shared tension that could arise from the separation within Auckland's new unitary structure between policy development and strategic planning – which resides within the Council - from delivery and implementation roles – which reside in arm's-length CCOs.
 - B How CCOs, Mayor and Councillors, elected Local Board members and other constituent entities – and central government agencies -

⁹ CAB Min (09) 41/16, paragraph 21.2

¹⁰ See also 'Guiding principles for reform', NZCID submission to the Royal commission on Auckland Governance, April 2008, page 28.

will be expected to 'work together' in order to achieve Auckland Council's vision, strategies and aims.¹¹

- C What accountabilities, working arrangements and code of conduct will exist between Council's Chief Executive (CEO and management team) and the CEOs (and staff) of the CCOs; and between Mayor, Councillors, Local Board members and directors of CCOs.

4. The following example from Melbourne provides a useful example.

City of Melbourne corporate values

In 2004, City of Melbourne staff helped develop four fundamental and unifying values with the desire to make a positive difference in the activities and services Council provides. These values are: integrity, respect, excellence and courage. In 2008, the value of 'accountability' was introduced to complement the four existing values:

Integrity

We take responsibility for our actions in an honest and transparent way

Courage

We dare to create new and better ways of doing business

Accountability

We take personal responsibility for decisions and actions to achieve agreed outcomes.

Respect

We consider and understand the perspective and contribution of others

Excellence

We continuously improve our performance to achieve outstanding outcomes for Melbourne.

¹¹ For example, as well as Auckland Council having elected Ward councillors and Local Board members, there are some 40 Auckland members of Parliament who are expected to address local issues on behalf of constituents. Some consideration to setting guiding principles on how the relationship will be expected to operate between the various representation groups might be worth consideration at an early point.