

Submission

by

Business|NZ

to the

Local Government & Environment Select Committee

on the

Local Government Bill 2001

22 February 2002

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LOCAL GOVERNMENT BILL 2001

SUBMISSION BY BUSINESS NEW ZEALAND

22 February 2002

1. INTRODUCTION

- 1.1 This submission is made on behalf of Business New Zealand, incorporating regional employers' and manufacturers' organisations. The regional organisations consist of the Employers and Manufacturers Association (Northern), Employers and Manufacturers' Association (Central), Canterbury Manufacturers' Association, Canterbury Employers' Chambers of Commerce, and the Otago-Southland Employers' Association. Business New Zealand represents business and employer interests in all matters affecting those sectors.
- 1.2 One of Business New Zealand's key goals is to see the implementation of policies that would see New Zealand retain a first world national income and to regain a place in the top ten of the OECD in per capita GDP terms. This is a goal that is shared by the Government. It is widely acknowledged that consistent, sustainable growth in real GDP per capita of well in excess of 4% per annum (and probably closer to 7-8%) would be required to achieve this goal in the medium term. Continued growth of around 2% (our long-run average) would only continue New Zealand's relative decline.
- 1.3 The health of the economy also influences the ability of a nation to deliver on the desirable social and environmental outcomes that we all want. First class social services and a clean and healthy environment are possible only in prosperous, first world economies. When it was elected, the Labour-Alliance Government undertook a number of policy actions to correct what it perceived to be failings of the 1980s and 1990s emphasis on market-driven economic reform. However, while Business New Zealand understands the Government's wish to change the previous balance between social and economic objectives, we submit that it is now time for the Government to concentrate on building the foundations for a strong and growing economy, without which desirable social and environmental outcomes would be unsustainable.
- 1.4 The performance of local government has significant implications for economic growth and our ability to move back into the top ten of the OECD. For example, local government spending amounts to almost 4% of GDP and the assets of the sector (net of debt) amount to around \$42 billion, which is considerably more than the net asset value of all companies listed on the New Zealand Stock Exchange (around \$27 billion). It also has a major role in regulating the conduct of business, most notably through the Resource Management Act 1991.
- 1.5 Business New Zealand therefore appreciates the opportunity to comment on the Local Government Bill 2001. We note that the Bill seeks to implement the

Government's decisions following the Review of Local Government Act. With regard to the Review, Business New Zealand would have welcomed a thorough and principled review of the activities, funding, and powers of local authorities that adequately addressed the views of all interested parties at an early stage, not just those of the local government sector. However, we were very disappointed with the Review process and the lack of meaningful consultation with the business community. As a result, when we saw the Bill, we were disappointed, but not surprised, to have significant concerns about its general direction as well as many of its specific provisions, particularly those relating to the purpose and powers of local government.

1.6 Business New Zealand submits that this Bill in its current form would not assist in delivering a strong and growing economy and ultimately it would be more likely to result in unsustainable economic, social, and environmental outcomes. Our key concerns are listed below:

- The Local Government Bill and the Local Government (Rating) Bill were developed and are being considered in isolation from each other.
- Lack of robust analysis of the costs and benefits of a more empowering Local Government Act, particularly in the areas of economic impacts and business compliance costs.
- Wide purpose statement encouraging local authorities to actively promote social, economic, environmental, and cultural well-being, which in practice is likely to work against sustainable economic growth by diminishing economic efficiency and fiscal discipline.
- Broad power of general competence, which would give local authorities a powerful tool to engage in activities better carried out by the private and voluntary sectors, and central government agencies.
- Reduced importance of Council-Controlled Organisations operating efficiently as successful businesses and increased impediments for local authorities wishing to divest or transfer control of assets and services that would be more effectively and efficiently operated by the private sector.
- Reduced emphasis on financial disciplines in planning processes and accountability documents and a move away from objective output-based measures towards subjective 'desired outcomes'.
- Arbitrary and extraordinary specific restrictions on local authorities selling parks, exiting delivery of water supply and wastewater services, and from charging membership fees for libraries.
- Special consultative and electoral arrangements for Maori, and specific funding and financial policies for Maori land that lack any sound public policy justification.
- Abolition of the non-resident ratepayer franchise, an attack on the fundamental democratic right of 'no taxation without representation'.

2. RECOMMENDATIONS

2.1 Business New Zealand recommends that:

Concerns About the Local Government Act Review

- (a) Further consideration by the House of the Local Government (Rating) Bill should be delayed until after the consideration of this Bill has been completed.

General Concerns with the Local Government Bill

- (b) The Bill should refocus the local government sector on its critical role of funding and/or providing those public goods and services that cannot be supplied efficiently by the private sector or central government agencies.
- (c) The core functions of local government should be specified in the Local Government Act, with local authorities provided with flexibility to carry out their designated functions in the most effective and efficient way for them.

Regulatory Impact and Compliance Cost Statement

- (d) The Committee should seek independent and robust analysis of the economic impacts of a more empowering local government statute.
- (e) The Committee should seek independent and robust advice on the business compliance cost impacts of a more empowering local government statute.
- (f) The Department of Internal Affairs should develop guidelines for regulatory best practice based on those already developed by the Cabinet Office.

Part 1 – Preliminary Provisions

- (g) Clause 3(c) should be amended to read:

“Enable local decision-making, consistent with the specified functions of local government, by and on behalf of citizens in their local communities, to promote the overall well-being of people who reside or work in the authority’s territory or region in the present and in the future.”

- (h) Clause 4 should be deleted.

Part 2 – Role and Structure of Local Government

- (i) Clause 8 should be amended to read:

“The purpose of local authorities is to enable local decision-making, consistent with the specified functions of local government, by and on behalf of citizens in their local communities, to promote the overall well-being of people who reside or work in the authority’s territory or region in the present and in the future.”

- (j) Clause 9 should be amended to state that the functions and responsibilities of local government would be specified in a Schedule to the Act.
- (k) A Schedule should be added to the Act that would clearly set out the respective functions and responsibilities of territorial authorities and regional councils, with an emphasis on the provision of public goods as opposed to private goods, and with any additions to be subject to the approval of residents and ratepayers through a poll or special consultative procedure.
- (l) A new clause should be inserted that would list principles that would seek to minimise duplication of services and inappropriate activities.
- (m) Clause 11 should be amended to:
 - Include principles on promoting accountability and transparency, minimising the duplication of services, and reducing costs faced by taxpayers and ratepayers.
 - Provide that any agreements between the Crown and local authorities should be subject to resident and ratepayer approval through a poll or the special consultative agreement.
 - Set out, for the purpose of clarity, those responsibilities, duties, powers, and services that should remain the sole preserve of the Crown.
- (n) Clause 12(e) should be deleted.

Part 3 – Governance and Management of Local Authorities and Community Boards

- (o) Section 119H of the existing Act should be retained in Schedule 5 of the Bill.
- (p) Clause 26(1)(b) should be amended to delete references to Maori wards and constituencies and clause 26(1)(g) should be deleted.

Part 4 – Council-Controlled Organisations

- (q) Provisions should be added to Part 4 requiring local authorities to regularly assess their ownership of and involvement in any and all of its commercial undertakings (be they through Council-Controlled Organisations or services directly provided by the local authority) and prove that public ownership and involvement is clearly in the public good and the most efficient and effective way to achieve the desired outcome.
- (r) Provisions should be added to Part 4 requiring local authorities to transfer their commercial activities into standalone CCOs.
- (s) Clause 42(4) should be amended to exclude airport companies, energy companies, and energy supply companies from the definition of a Council-Controlled Organisation.
- (t) A new sub-clause 42(5) should be inserted that would read as follows:

“The principal objective of every Council-Controlled Organisation shall be to operate as a successful business.”

- (u) A new clause 43(3) should be inserted restoring the provisions in the existing Act regarding establishment units.
- (v) Clause 44(2) should be amended to restore the requirement that at least two directors of every Council-Controlled Organisation would be neither members of any local authority or persons employed by any local authority.
- (w) The Committee consider whether the Auditor-General’s statutory monopoly for auditing financial statements of Council-Controlled Organisations should be abolished.

Part 5 – Planning, Decision-Making, and Accountability

- (x) Clauses 62(c) and 62(d) should be deleted.
- (y) Clause 63(d) should be deleted.
- (z) Clause 66(1)(c) should be deleted.
- (aa) Clause 69 should be deleted and clause 68 amended to remove reference to statements of proposal.
- (bb) Clause 70 should be amended to mirror section 594F of the existing Act.
- (cc) Notwithstanding recommendation (bb), if clause 70(c) is retained, it should be redrafted so that its emphasis is on the impact on the level of service rather than the method by which the service is delivered.
- (dd) Clause 71(a) should be amended to define ‘significant’ as the material threat to the supply of goods and services required by the community and whether there is an effective alternative supply.
- (ee) References to the undefined and emotive term ‘strategic assets’ should be removed (by deleting clauses 71(1)(v) and 71(3) and (4)).
- (ff) A new clause should be inserted that would require local authorities to assess their ownership and involvement in commercial activities with the onus on having to prove that public ownership and involvement is clearly in the public good and the most efficient and effective way to achieve the desired outcome.
- (gg) Clauses 73 and 74 should be deleted.
- (hh) The Long-Term Council Community Plan should be renamed the ‘Long Term Financial Strategy’ and clause 75 should be amended to restore the provisions contained in sections 122K-M of the existing Act.
- (ii) Clause 76 should be amended to restore the provisions contained in clause 223D of the existing Act.

- (jj) Clauses 75, 76, and 78 should be amended to require local authorities to adopt a common reporting format and 'headings' for the LTCP/LTFS, the annual plan and the annual report. Business New Zealand also recommends that a clause should be inserted into Part 10 to empower the Local Government Commission to collect and publish information from local authorities.
- (kk) The financial management provisions in Part VIIA of the existing Act should be retained.

Part 6 - Bylaws

- (ll) The Department of Internal Affairs should develop guidelines for regulatory best practice based on those already developed by the Cabinet Office.

Part 7 – Specific Obligations, Powers, and Restrictions of Local Authorities and Other Persons

- (mm) Clauses 121-123 should be deleted unless there are sound public health and safety reasons for these mandatory assessments to be legislated for.
- (nn) Clauses 126 and 127 should be deleted.
- (oo) Clause 129 should be deleted.
- (pp) Clause 130 should be deleted.
- (qq) Subpart 3 should be deleted or amended if it would hinder the private delivery of water services.
- (rr) Subpart 9 should be deleted, or at least amended to exclude provision of reserves from the scope of development contributions.

Part 9 – Offences, Infringement Notices, Removal Orders, and Legal Proceedings

- (ss) The Committee should assess the proposed levels of fines to ensure that the increase is not above the cumulative level of inflation since they were last adjusted, unless there are sound public policy reasons for a significant increase over and above inflation.

Part 10 – Local Government Commission

- (tt) A clause should be inserted into Part 10 to empower the Local Government Commission to collect and publish information from local authorities to assist in the benchmarking of their performance.

Part 13 – Amendments to the Local Electoral Act 2001

- (uu) New section 19A should be amended to reduce the maximum membership of territorial authorities from 30 to 12.

- (vv) New section 19F should be amended to reduce the maximum membership of community boards from 12 to 5.
- (ww) New sections 19H, 19I, and 19J should be amended to provide for independent reviewers to advise local authorities in carrying out a review of representation arrangements following each five-yearly census.
- (xx) New section 19V should be amended to include land area and rateable value as factors able to be taken into account when reviewing representation arrangements.
- (yy) New sections 19Z-19ZH and New Schedule 1A should be deleted.
- (zz) Clause 270 should be deleted.
- (aaa) Clause 273 should be deleted.
- (bbb) Clause 283 should be deleted.

3. PRINCIPAL CONCERNS ABOUT THE LOCAL GOVERNMENT ACT REVIEW

3.1 Business New Zealand acknowledges that a number of ad hoc legislative amendments over many years have made the Local Government Act 1974 huge, detailed, and cumbersome. We agree that the Act is in need of modernisation and that a review of the legislation was timely, but we have concerns about the process of the Review in the following areas:

- Inadequate consultation;
- Lack of first-principles discussion on the proper role of local government; and
- Relationship with the Local Government (Rating) Bill.

Inadequate Consultation

3.2 Although we agree that the existing Local Government Act 1974 is in need of reform, the consultation document that was released for public comment in June 2001 was the first that the business community saw of the Government's proposals to reform the Act. We are aware that the Government developed its proposals in very close collaboration with the local government sector, and so they should have been. However, we were very disappointed that the much-vaunted spirit of 'partnership' between local and central government was not extended to the customers of local government services and ratepayers, without whom local government could not exist.

3.3 Therefore, one of Business New Zealand's key recommendations to the Review was that the Government should establish an experts group (comprising of ratepayers and users, and central and local government representatives) to consider submissions and make recommendations prior to any final decisions being made on the proposals contained in the consultation document. Despite repeating this suggestion in a letter to the Minister of Local Government, we received no response.

Lack of First-Principles Discussion on the Proper Role of Local Government

3.4 More fundamentally, Business New Zealand was very disappointed that there was a lack of robust discussion in the consultation document on the proper role of local government. A 'first-principles' discussion should have been absolutely fundamental to reaching a view on the roles and responsibilities of a modern and responsive local government sector.

3.5 On page 4 of the Review consultation document there was a list of fundamental questions about local government. The first four are particularly relevant:

- Why do we have councils?
- What should councils be able to do?
- How can you have a say in what your council does?
- How should councils operate?

- 3.6 Although these questions were posed briefly at the start of the consultation document, nowhere in the remainder of the document were these critical issues adequately discussed or addressed. Instead the Government proceeded with a document that clearly signalled its preferences, having already made its decisions in close collaboration with the local government sector. This is despite the importance of ensuring that such an important piece of legislation is relevant for today and for the future.

Relationship with the Local Government (Rating) Bill

- 3.7 Business New Zealand notes that the Government has recently undertaken a series of major reviews into the major statutes concerning local government, most notably the Local Government Act 1974, the Rating Powers Act 1988, the Local Elections and Polls Act 1976. There is also the ongoing consideration of reform of land transport management and waste management, both of which could have major implications for local authorities. While Business New Zealand supports the need for a comprehensive review of the activities, funding, and powers of local government, we were disappointed that these important and inter-related reviews have been carried out separately and on different timeframes.
- 3.8 We submit that it was particularly inappropriate that the Local Government (Rating) Bill 2001 was introduced into the House before submissions closed on the Review of the Local Government Act. In August 2001, when the Rating Bill was introduced, the Minister of Local Government announced that the Government intended for it to be passed before the end of 2001 and before legislation to implement the outcome of the Review was even to have been introduced. It is our strong view that such separate, but inextricably related, reviews on the powers of local government and the funding of local government's activities should not have been considered by Parliament in isolation. We have yet to be informed of any credible rationale for this approach.
- 3.9 Business New Zealand's submission to this Committee on the Rating Bill therefore recommended that consideration of that Bill should be held over and merged with the Review of the Local Government Act. However, the Committee chose to report the Rating Bill back to the House on 6 December 2001 – well before any sight of the proposals contained in this Local Government Bill, which was not introduced until 20 December 2001.
- 3.10 As it eventuated, other legislative priorities meant that the Rating Bill was unable to be considered by the House before it rose prior to Christmas. In effect the Rating Bill has been temporarily 'parked' and Parliament now has the opportunity to consider the two pieces of legislation together. Business New Zealand therefore submits that the Rating Bill should not be considered further until after this Bill has received this Committee's, and the House's, full consideration.

3.11 *Business New Zealand recommends that further consideration by the House of the Local Government (Rating) Bill should be delayed until after the consideration of this Bill has been completed.*

4. GENERAL CONCERNS WITH THE LOCAL GOVERNMENT BILL

- 4.1 Business New Zealand submits that the Government's proposed solution to the shortcomings of the existing Local Government Act, that local authorities should be granted a broad '*power of general competency*', is not the appropriate way forward.
- 4.2 This is especially so when it would be combined with the proposed purpose of local authorities to ensure that their activities are managed in order to '*promote their social, economic, cultural, and environmental well-being in the present and for the future*'. We believe that well-meaning local authorities could undertake activities or impose interventions that either duplicate or are at cross-purposes to national economic, social, and environmental policies. A line must be drawn on what is sensible to handle on a national basis and what is appropriate at a local level.

Problems with Local Government

- 4.3 We would not be so concerned about the purpose statement and increased powers if the past track record of local government were not so poor. To illustrate our point, we have several major concerns with the existing system of local government:
- Rates differentials;
 - Growing rates burden;
 - Inappropriate activities;
 - Service duplication;
 - Lack of transparency and accountability; and
 - Compliance costs.

Rates Differentials

- 4.4 Business ratepayers already generally face a disproportionately high rates burden through rates differentials – where local authorities charge businesses considerably more for the equivalent property value than residences. For example, Manukau City Council charges businesses four times more in rates than residences for a property of equivalent value and Wellington City Council six times more. Rates differentials are grossly inequitable considering the beneficiaries of most council services (such as libraries, swimming pools etc) tend to be residents rather than businesses.
- 4.5 Although it is often argued by councils that businesses are rated more due to a greater 'ability to pay', we strongly dispute this assertion. The vast majority of businesses are very small and have very low taxable incomes – in fact, statistics from Inland Revenue indicate that 77% of companies have no assessable income at all, while another 15% earn less than the average wage. Ratings differentials are therefore an onerous burden on the business sector. Unfortunately, however, it seems that businesses are an easy target from which to raise revenue, simply because there are far more residential ratepayers (i.e., voters) for councils to be concerned about.

Growing Rates Burden

- 4.6 Over the past decade, local authority rates have increased at a consistently faster rate than the consumer price index. Statistics New Zealand figures show that between June 1989 and June 2001, rates and local authority user charges increased by twice the rate of inflation (i.e., 61% compared to an increase of the CPI over the same period of 30%). The most recent CPI statistics confirm this long-term trend – local authority rates increased by 3.7% for the year ended December 2001, compared to an increase in the CPI of 1.8% over the same period. These statistics indicate to us that councils are not as disciplined as they should be with ratepayers' money and too often than not take the easier option of increasing rates rather than rationalising services and activities.
- 4.7 There are also inflationary implications for the wider economy, with evidence that rates have been acting as a driver of inflation. The 30% increase in the CPI over 1989-2001 would have been significantly less if growth in central and local government charges had been excluded. In December 1992, Statistics New Zealand introduced a measure of central and local government charges. Over the period from December 1992 to June 2001, such charges are estimated to have added on average 0.3 percentage points to the annual increase in the CPI.
- 4.8 Business New Zealand considers that this Bill could have the effect of significantly increasing the cost of local government and consequently the rates burden, as it would also give local authorities greater freedom to use ratepayers' money to subsidise council involvement in commercial activities and non-core business that ought to be left to the private sector.

Inappropriate Activities

- 4.9 Business New Zealand is concerned at the extent of quasi-commercial activities undertaken by some local authorities. These activities often impact on private sector organisations (commercial as well as non-profit). Examples include a council setting up a local medical centre or running subsidised swimming classes not only in competition with existing private sector providers, but which are also, in effect, paid for by them through their rates.

Service Duplication

- 4.10 Duplication of those services that are already carried out by central government agencies is inefficient and costly. For example, a number of local authorities duplicate the role of Housing New Zealand in providing rental accommodation for low-income and/or elderly people, and last year Wellington City Council agreed to the appointment of 15 'community safety officers' to 'police' the inner city at a cost to ratepayers of \$600,000. We submit that central government should be carrying out these services rather than abdicating its responsibilities onto local authorities.

Lack of Transparency and Accountability

- 4.11 Business New Zealand is concerned at the Bill's naïve faith in democratic and consultative processes to hold local authorities to account. There is already a distinct lack of democratic checks and balances against council activities and their capture by small special interest groups. In particular, democratic processes at the local government level are weak compared to those of central government.
- 4.12 There is, for example, a distinct lack of rigorous analysis and contestable advice within the local government sector. Whereas policy developed by central government is examined and scrutinised by a range of departments before decisions can be made, there is no equivalent in local government. On the contrary, many policies implemented by local authorities have been developed without objective analysis or debate due to a lack of adequate checks and balances. Poor quality decision-making has been a major factor in the growth of local government expenditure and proliferation of activities.
- 4.13 Public participation in the consultative process is limited and there is a widely held perception in the business community that the consultative process is more often than not a waste of time and effort, with submissions often ignored and sometimes not even acknowledged. Put simply, the costs borne by individuals and groups in monitoring local government are large relative to the benefit of doing so (i.e., the likelihood of successfully influencing an outcome).
- 4.14 Ultimately, these weak structures have impacted on the democratic process. There is a lack of information for voters to consider candidates' policies and a lack of ability for individuals and groups to easily monitor and hold councils accountable, which is exacerbated by the more limited media coverage of local government gets compared to central government. Unfortunately, this has resulted in consistently low (and reducing) voter turnouts in local authority elections¹, which has further reinforced the ability of councils to increase expenditure, carry out undesirable activities, and impose onerous interventions, often at the behest of motivated vocal minorities.
- 4.15 Business New Zealand considers that this Bill would not assist in remedying the existing lack of transparency and accountability. If anything, we consider that a broad power of general competence and wide purpose statement would further weaken the institutional framework in which local government operates and would most probably exacerbate the problem.

Compliance Costs

- 4.16 Business New Zealand notes that the report of the Compliance Cost Panel confirmed many of the business community's concerns about local government, particularly over the way in which the sector administers the Resource Management Act. The fact that so many respondents made submissions criticising the performance of local government indicates that action must be taken to urgently improve the situation.

¹ 48% turnout in 2001 compared to 53% in 1998, according to a November 2001 LGNZ opinion piece. The turnouts appeared to be particularly low in cities and tended to reduce from south to north.

4.17 In its response to the Compliance Cost Panel's report, the Government acknowledged that small and medium sized enterprises face disproportionately higher compliance costs and penalties from non-compliance. This is of particular concern considering that 86% of New Zealand businesses employ fewer than five people². Business New Zealand submits that more must be done to address the burden of compliance, particularly for small and medium sized enterprises, and we are therefore disappointed with the Government's dismissal of the compliance cost implications of this Bill (discussed further in paragraphs 5.16 to 5.19).

Conclusion

4.18 Business New Zealand submits that this Bill does not provide the business community with any cause for optimism that the problems described above will be satisfactorily addressed. On the contrary, the Bill would seem not just to give local government a licence to take greater account of social, environmental and cultural imperatives, but it would make it a requirement under statute to actively *promote* them. Combined with a power of general competence, there would seem to be little to stop a council from undertaking expensive services and projects, nor from imposing further costly regulatory interventions.

4.19 Furthermore, it is our view that the Bill would not assist in achieving the Government's stated ambition to 'transform the economy' and improve New Zealand's position in the OECD rankings. On the contrary, as the proposals do not adequately address the weaknesses of local government, and in fact most probably add to them, we believe that the proposals would in practice seriously hinder economic growth. We are most concerned that there has been no benefit-cost analysis undertaken on the economic impact of the proposals – particularly with the local government sector being such a significant factor in the economy.

4.20 Instead, Business New Zealand submits that local government should be refocused on its critical role of funding and/or providing those public goods and services that cannot be supplied efficiently by the private sector or central government agencies. As a member of the Local Government Forum, Business New Zealand fully endorses the Forum's 1999 publication, *Refocusing the Role of Local Government*, as an alternative way forward. We also endorse the Forum's separate submission on this Bill.

4.21 Business New Zealand submits that the core functions of local government must continue to be specified in the Local Government Act, although we agree that the existing Act is too prescriptive in terms of 'the how'. Councils should instead be provided with flexibility to carry out their designated functions in the most effective and efficient way for them.

4.22 *Business New Zealand recommends that the Local Government Bill should not proceed unless the following key changes are made:*

² Statistics New Zealand Business Demographic Survey 2001.

- *The refocusing of the local government sector on its critical role of funding and/or providing those public goods and services that cannot be supplied efficiently by the private sector or central government agencies.*
- *The core functions of local government to be specified in the Local Government Act, with local authorities provided with flexibility to carry out their designated functions in the most effective and efficient way for them.*

5. REGULATORY IMPACT AND COMPLIANCE COST STATEMENT

5.1 As well as commenting on the specific provisions of the Bill, submitters have been invited to comment on the Regulatory Impact and Compliance Cost Statement, which forms part of the Bill's Explanatory Note. We are pleased to have the opportunity to do so, but are disappointed with its quality and lack of robust analysis. Our concerns are described in detail below.

Statement of the Nature and Magnitude of the Problem and the Need for Government Action

5.2 While agreeing that the Local Government Act needs modernisation, Business New Zealand does not agree with the Government's proposed approach of a broad power of general competence, combined with a wide purpose statement that encourages local authorities to promote social, economic, environmental, and cultural well-being.

Statement of Public Policy Objectives

5.3 Comment on each of the Government's key objectives:

- *To reflect a coherent strategy for local government* – we submit that developing a coherent strategy could be a more difficult task if local authorities are provided with a power of general competence and a wide purpose statement.
- *To provide a more empowering legislative framework* – we submit that the best way to achieve this would be for local government functions to be specified in the Act, but with local authorities having flexibility to exercise those functions in the best way for them and their communities.
- *To enable local communities to better meet the needs of their communities* – we submit that local authorities can best achieve this by focussing on their critical role of funding and/or providing those public goods and services that cannot be supplied efficiently by the private sector or central government agencies.
- *To develop a partnership between central and local government* – we submit that local government was created by central government because it was recognised that local authorities are useful for making certain decisions at a local level – 'partnership' is therefore an inaccurate portrayal of the proper relationship between central and local government.
- *To clarify local government's relationship with the Treaty of Waitangi* – we submit that the Treaty of Waitangi is a 'relationship' between Maori and the Crown, and should not be extended into the realm of local government.

Statement of Feasible Options

5.4 The Government believes that there are two options for modernising the Local Government Act 1974:

- An Act written in modern language, but which continues to adopt a prescriptive approach, with the statute attempting to directly regulate the activities local authorities can undertake, how they should undertake them, and the related powers at their disposal; or
- An Act that describes the powers of local government in more general terms and balances this by regulating the processes of local decision-making so as to give communities greater capacity to influence the way these powers are used.

5.5 Business New Zealand submits that to state that there are only two options is incorrect. There is actually a further approach that should have been considered by the Government from the outset:

- A thorough first-principled review of the activities, funding, and powers of local government, resulting in a refocusing of local government on its critical role of funding and/or providing those public goods and services that cannot be supplied efficiently by the private sector or central government agencies. Local government's functions should be clearly specified in the Act, but local authorities should be provided with the flexibility to exercise those functions in the best way for them and their communities.

Statement of Net Benefits

5.6 The Government admits that it is difficult to accurately assess the overall economic impacts of the provisions contained in the Bill, but it does make an attempt to do so – only it is not a very robust one. It is disappointing and surprising that the economic analysis is so weak, especially when local government plays such an important role in the economy.

5.7 The Government makes an ambitious and optimistic prediction that broader empowerment may provide a 'modest stimulus to economic activity and improved resource allocation', arising from higher levels of activity and greater transparency in local government operations. The Government believes that some sectors may benefit from greater local government involvement in economic development, but admits that funding requirements may see a 'modest increase'.

5.8 We agree that greater transparency may indeed lead to a more efficient local government sector (i.e., improved resource allocation), although it is not clear to us whether the Bill will actually achieve this. More significantly, we consider that an increase in local government activity and its resultant need for more funding, presumably through higher rates, is not likely to be beneficial to the economy, especially as businesses (the country's wealth and job creators) are already faced with a disproportionately high rates burden in many areas through rating differentials.

5.9 High levels of government spending (whether local or central) do not lend themselves to a more vibrant and prosperous economy, as the example of many OECD economies prove. For example, Ireland has substantially reduced government spending as a percent of GDP from over 50% in the

1980s to less than 30% today, which has helped to encourage and sustain high levels of economic growth and a high standard of living. The Irish are now significantly better off than New Zealanders (both in terms of economic and social indicators), something that would have been unthinkable only 20 years ago.

- 5.10 The requirement for local authorities to actively promote social, environmental and cultural well-being will very probably act against economic growth (especially if unreasonable environmental controls were to stymie development), not to mention put pressure on fiscal discipline.
- 5.11 While Business New Zealand supports further initiatives to promote regional development, we would be concerned if they were to result primarily in the transfer of economic activity from one region to another, to the detriment of other regions and the national economy.
- 5.12 The Government admits that local authorities might face additional compliance costs in decision-making through additional consultation requirements (including specific consultation arrangements for Maori). This seems a likely outcome, and would ultimately be a further burden for ratepayers to bear.
- 5.13 While a 'balanced budget requirement' might sound positive, the additional requirement that local authorities must not cease an activity purely on cost considerations would effectively mean that a balanced budget would be achieved by increasing rates rather than constraining expenditure. The financial management provisions of this Bill are significantly weaker than those contained in the existing Act.
- 5.14 Meanwhile, discouraging, and in some cases (e.g., water) prohibiting, the divestment of assets and the use of user-pays would be likely to reduce economic efficiency and discourage the use of sound business practice – not to mention conservation of a scarce resource.
- 5.15 Overall, we submit that the Government's benign economic assessment of the provisions contained in this Bill is overly optimistic and lacking in robust 'analysis'. Better quality economic analysis is needed before this Bill should be allowed to proceed.

Business Compliance Cost Statement

- 5.16 We are surprised that the Government believes that the provisions contained in this Bill would not impact on business compliance costs. This view does not take into account the concerns of the business community and the recommendations of the Government's own Compliance Cost Panel, which rated local government as one of the major areas that needed to be addressed. Contrary to what the Government believes, the regulation of the conduct of local authorities does impact on businesses.
- 5.17 The business compliance cost statement does not consider the likely behavioural affects of a broad power of general competence and the new purpose statement, where local authorities would be encouraged to promote

social, economic, environmental, and cultural well-being. For example, local authorities may choose to meet one or more of these objectives through more regulation, which would almost inevitably impose higher compliance costs on businesses.

- 5.18 As the proposals are also likely to result in local authorities increasing the scope of their activities and demanding more funding as a result, businesses are likely to be the ones paying the price through higher rates. Rates differentials in particular are an onerous and inequitable burden for many businesses in many areas, as discussed in paragraphs 4.4 and 4.5 above.
- 5.19 Overall, we are disappointed with the Government's dismissal of the business compliance cost impacts of this Bill, particularly given the prominence that local government costs were accorded by the Compliance Cost Panel.

Sources and Groups Affected by Compliance Costs

- 5.20 Business New Zealand notes that the Department of Internal Affairs intends to work with stakeholders on developing guidelines on 'good regulatory practice'. While welcoming the gesture, we note that the Cabinet Office has already published material on Regulatory Impact Statements (refer to paragraphs 3.23 to 3.38 of the Cabinet Office's *Step by Step Guide Cabinet and Cabinet Committee Processes*). Rather than starting from scratch and devising new and unique guidelines for the local government sector, we submit that the Department should base the guidelines on the Cabinet Office's material.

Conclusion

- 5.21 Overall, Business New Zealand's strong view is that the discussion contained in the Regulatory Impact and Compliance Cost Statement does not adequately justify the need for such a radical change to the legislative regime that sets out the powers and functions of local government.
- 5.22 *Business New Zealand recommends that:*
- *The Committee should seek independent and robust analysis of the economic impacts of a more empowering local government statute.*
 - *The Committee should seek independent and robust advice on the business compliance cost impacts of a more empowering local government statute.*
 - *The Department of Internal Affairs should develop guidelines for regulatory best practice based on those already developed by the Cabinet Office.*

6. PART 1 – PRELIMINARY PROVISIONS (CLAUSES 1-6)

Clause 3 - Purpose

- 6.1 Business New Zealand submits that a thorough first-principled review of the activities, funding, and powers of local government, should have resulted in a Bill that seeks to refocus local government on its critical role of funding and/or providing those public goods and services that cannot be supplied efficiently by the private sector or central government agencies. Local government's functions should be clearly specified in the legislation, but local authorities should be provided with the flexibility to exercise those functions in the best way for them and their communities.
- 6.2 Specifically, and for the reasons discussed more fully in paragraphs 7.1-7.5 of this submission, we are most concerned about the clause 3(c), 'enable local authorities to play a broad role in promoting the sustainable social, economic, environmental, and cultural well-being of their communities.
- 6.3 *Business New Zealand recommends that clause 3(c) should be amended to read:*

“Enable local decision-making, consistent with the specified functions of local government, by and on behalf of citizens in their local communities, to promote the overall well-being of people who reside or work in the authority's territory or region in the present and in the future”.

Clause 4 – Treaty of Waitangi

- 6.4 The Bill recognises the principles of the Treaty of Waitangi as it relates to facilitating Maori contributions to local authority decision-making.
- 6.5 Business New Zealand considers that the relationship between local authorities and Maori should be no different from that of any other significant interest group that local authorities should consider in undertaking their activities. We are aware that this Bill intends to 'clarify' the status of the Treaty of Waitangi as it relates to local government and in doing so makes provision for special treatment for one of the Treaty partners. Business New Zealand submits that the Treaty should not be extended into local government – the parties to the Treaty were individual Iwi and the Crown, not local government, and any issues Maori have with regard to the Treaty should be taken up with central government.
- 6.6 *Business New Zealand recommends that clause 4 should be deleted.*

7. PART 2 – ROLE AND STRUCTURE OF LOCAL GOVERNMENT (CLAUSES 7-22)

Subpart 1 – Purpose and Powers of Local Government (clauses 8-12)

Clause 8 – Purpose of Local Authorities

- 7.1 Clause 8 provides that the purpose of local authorities would be to enable local decision making by, and on behalf of, individuals in their communities, to democratically promote and action their social, economic, environmental, and cultural well-being in the present and for the future.
- 7.2 This statement is consistent with the language of ‘sustainable development’. In 1987, the World Commission on Environment and Development (the Brundtland Commission) released a report *Our Common Future*. In that report, the concept of sustainable development was introduced and defined as ‘*development that meets the needs of the present without compromising the ability of future generations to meet their own needs*’. The rationale is that decisions should take a ‘balanced’ account of economic, environmental, and social considerations.
- 7.3 Business New Zealand recognises that the concept of sustainable development is being widely promoted around the world and that considerable weight has been placed on it in both the private and public sectors. However, it is our view that the concept has not been well defined or spelt out and, as a result, a vast range of specific activities and programmes are attributed to ‘sustainable development’. As Hon Simon Upton has noted,
- “For about 15 years, now, we have been living with the idea of sustainability. It has found its way into almost every corner of public policy. It has spawned a vast literature. And it has become a catch-all which a bewildering array of businesses, public interest groups, and political organisations have felt obliged to graft onto their agendas. Its success as a unifying principle of policy and conduct is also its Achilles heel. For as the case for sustainability has expanded to embrace almost everything, the possibility of a clear and focussed agenda has been placed at risk.”³
- 7.4 Business New Zealand is therefore concerned about the proposal to enshrine such a broad concept into such an important piece of legislation. We are particularly concerned that listing the four imperatives (social, economic, environmental, and cultural) so explicitly would provide ‘flags’ enabling vocal minorities to stifle development and growth and impose oppressive costs on doing business and wealth generation. Instead, we submit that explicit reference to the four imperatives should be deleted and that consistency with the specified functions of local government should be added (please refer to paragraphs 7.6-7.12 for discussion on why we consider it important to specify the functions of local government).

³ Special Sustainable Development Edition, Upton-on-Line, Diaspora Edition, 16 May 2001.

7.5 *Business New Zealand recommends that clause 8 be amended to read:*

“The purpose of local authorities is to enable local decision making, consistent with the specified functions of local government, by and on behalf of citizens in their local communities, to promote the overall wellbeing of people who reside or work in the authority’s territory or region in the present and in the future”.

Clause 9 – Status and Powers

- 7.6 A local authority would have full capacity to carry on any activity or business, do any act, or enter into any transaction (clause 9(2)(a)). A local authority would be able to exercise its powers as long as it considers the action to be consistent with promoting well-being, it follows the required decision-making processes, and the action is lawful (clauses 9(3) and 9(4)).
- 7.7 This is known as the ‘power of general competence’. A broad power of general competence is of grave concern to the business community, particularly considering the implications of the purpose statement where local authorities should promote social, cultural, and environmental well-being.
- 7.8 Instead, Business New Zealand submits that there should be a refocusing of local government’s functions. It is our view that local government’s functions should be specified in a Schedule to the Local Government Act, but that councils should have the flexibility to exercise those functions in the best way for them, rather than have to be subject to the prescriptive requirements of the existing Act. We submit that this would provide local authorities with sufficient powers to carry out their appropriate functions with some flexibility, while providing much needed checks and balances.
- 7.9 The Schedule would list the designated responsibilities and functions of territorial authorities and regional councils. It would clearly be necessary for such a list to be carefully and tightly formulated, with an emphasis on the provision of public, as opposed to private, goods. An example using local government’s current responsibilities might look as follows:

Territorial Authorities

- Policy decisions on community well-being at a local level (where local government action is justified) and community leadership;
- Public health and safety (i.e., building control; environmental health; waste and hazardous substance management; food and liquor; dog control etc);
- Infrastructure at a local level (i.e., roading and transport; sewerage, water, and stormwater), although it is our view that there is scope for greater private provision of such infrastructure;
- Resource management at a local level (i.e., land use planning; development control); and
- Recreation and culture services.

Regional Councils

- Biosecurity;
- Catchment control;
- Harbour administration;
- Regional emergency management and civil defence;
- Regional land transport; and
- Resource management.

7.10 We also submit that core principles should be adopted and specified in the Act. For example:

- Territorial authorities and regional councils should not duplicate services or interventions carried out by the other;
- Local authorities should not duplicate services or interventions carried out by central government agencies;
- Local authorities should not duplicate services or interventions carried out by private and/or voluntary sector service providers; and
- Services provided by local authorities should be subject to competitive tender.

7.11 Any additions to a local authority's responsibilities or functions not provided for in the Schedule should be subject to the approval of residents and ratepayers through a poll or, at the very least, the special consultative procedure.

7.12 *Business New Zealand recommends that:*

- *Clause 9 should be amended to state that the functions and responsibilities of local government would be specified in a Schedule to the Act;*
- *A Schedule should be added to the Act that would clearly set out the respective functions and responsibilities of territorial authorities and regional councils, with an emphasis on the provision of public as opposed to private goods, and with any additions to be subject to the approval of residents and ratepayers through a poll or special consultative procedure.*
- *A new clause should be inserted that would list principles that would seek to minimise duplication of services and inappropriate activities.*

Clause 11 – Local Authority May Enter into Agreement with the Crown to Exercise Responsibility, Duty, or Power, or Provide Service for the Crown

7.13 This provision would presumably enable local authorities to take over central government responsibilities such as the delivery of health, education, welfare and even policing and defence as the clause is written.

7.14 Business New Zealand is sceptical of the notion of 'partnership' between central and local government and we are unconvinced as to how effectively it would work in practice. However, were local and central government to agree that a local authority(s) would be the best provider of a particular social service (such as housing) funded by central government, then such an arrangement

should be permissible, subject to some caveats. For example, any such arrangement must be fully transparent and, in our view, central government funding must be offset by rates reductions. Central government should then cease to be a service provider in that local authority area (to ensure that there is no duplication). We submit that such an arrangement would have to be subject to the approval of residents and ratepayers through a poll or at the very least, the special consultative procedure.

7.15 For the purpose of clarity, we also submit those services or responsibilities (e.g., welfare benefits, police, defence etc) that should remain the sole preserve of the Crown should be set out in the legislation.

7.16 *Business New Zealand recommends that clause 11 should be amended to:*

- *Include principles on promoting accountability and transparency, minimising the duplication of services, and reducing costs faced by taxpayers and ratepayers.*
- *Provide that any agreements between the Crown and local authorities should be subject to resident and ratepayer approval either through a poll or the special consultative procedure.*
- *Set out, for the purpose of clarity, those responsibilities, duties, powers, and services that should remain the sole preserve of the Crown.*

Clause 12 – Principles Relating to Local Authorities

7.17 The principles listed would generally appear to be reasonable, although we submit that there should not be specific mention of Maori (or any other group) as requiring special opportunities (clause 12(e)).

7.18 *Business New Zealand recommends that clause 12(e) should be deleted.*

Subpart 2 – Co-ordination of Responsibilities of Local Authorities (clauses 13-15)

7.19 Clause 13 ('Triennial Agreements') would require regional councils and territorial authorities within each region to meet to agree protocols for communications/co-ordination every three years. Special consultation provisions for any significant new activity to be undertaken by a regional council are set out in clause 14 and provisions for a regional council transferring responsibilities to a territorial authority(s) are set out in clause 15.

7.20 Business New Zealand submits that if the functions of local authorities were clearly set out in the Act (as we suggest they should there be in our comment on clause 9 above) then there would be no need for such arrangements to have to be made.

Subparts 3 – Structure of Local Government (clauses 16-17); Subpart 4 – Reorganisation of Local Authorities (clauses 18-22); and Subpart 5 – Minister and Secretary (clauses 21-22)

7.21 Business New Zealand has no comment on subparts 3, 4, and 5.

8. PART 3 – GOVERNANCE AND MANAGEMENT OF LOCAL AUTHORITIES AND COMMUNITY BOARDS (CLAUSES 23-40)

Subpart 1 – Local Authorities (clauses 23-33)

Clause 24 – Governance Principles

- 8.1 Business New Zealand has no comment on the six principles listed for the governance of local authorities. However, we submit that if the performance of local government is to be improved and maintained at a high level, it is critical that people of high calibre are attracted to stand as councillors. The existing focus on day-to-day ‘hands on’ management by councillors is a disincentive for such people (whose time is often precious and limited). Therefore, the governance structures need to encourage this objective – operational matters should be left to professional staff.

Clause 25 – Management Principles

- 8.2 Business New Zealand has no comment on the two principles listed for the management of local authorities. We would like to reiterate though the importance of councillors being focused on higher-level policy and oversight, whereas operational issues should be left to council staff, led by a competent Chief Executive who is accountable to the Council.
- 8.3 An issue that has been brought to our attention, however, is the deletion of section 119H of the existing Act that requires local authorities to make staff appointments on the basis of merit. We note that the existing provisions for the employment of staff will be contained in Schedule 5, but it would appear that appointment on merit would no longer be required under the new Act. From a ratepayer’s perspective it is important that this provision be retained in Schedule 5 to ensure that local authorities employ the most competent staff available.
- 8.4 *Business New Zealand recommends that section 119H of the existing Act should be retained in Schedule 5 of the Bill.*

Clause 26 – Local Governance Statements

- 8.5 While we can see the merit of requiring local authorities to prepare and make publicly available a triennial local governance statement, we are opposed to the option of establishing separate Maori wards and constituencies (clause 26(1)(b)) and the development of policies for liaising with, and memoranda or agreements with Maori (clause 26(1)(g)).
- 8.6 We consider that the relationship between local authorities and Maori should be no different from that of any other significant interest group that local authorities should consider in undertaking their activities. We are aware that this Bill intends to ‘clarify’ the status of the Treaty of Waitangi as it relates to local government and in doing so makes provision for special treatment for one of the Treaty partners. Business New Zealand submits that the Treaty

should not be extended into local government – the parties to the Treaty were individual Iwi and the Crown, not local government and any issues Maori have with regard to the Treaty should be taken up with central government.

- 8.7 *Business New Zealand recommends that clause 26(1)(b) should be amended to delete references to Maori wards and constituencies and that clause 26(1)(g) should be deleted.*

Subpart 2 – Community Boards (clauses 34-40)

- 8.8 We have no comment on this subpart.

9. PART 4 - COUNCIL-CONTROLLED ORGANISATIONS (CLAUSES 41-58)

Clause 41 – Purpose of this Part

- 9.1 Council-Controlled Organisations (CCOs) are currently known as 'Local Authority Trading Enterprises' (LATEs) under the existing Local Government Act (refer Part XXXIVA). Business New Zealand notes with some concern that while the existing Act mainly discusses LATEs in the context of 'divestment of undertakings', this Bill's emphasis would appear to be on preserving local authority ownership (seemingly on ideological grounds rather than on any rational basis).
- 9.2 Business New Zealand submits that local government (as well as central government) should assess its ownership of and involvement in commercial activities and that the onus should be on local authorities to prove that public ownership or involvement is clearly in the public good and the most efficient and effective way to achieve the desired outcome. If local authorities cannot adequately do so, they should consider divestment of these assets or ceasing the activity. We consider that this principle should hold both for existing CCOs and council activities, as well as any new initiatives, and would simply be sound business practice and prudent asset management.
- 9.3 *Business New Zealand recommends that provisions should be added to Part 4 requiring local authorities to regularly assess their ownership of and involvement in any and all of their commercial undertakings (be they through CCOs or services directly provided by the local authority) and prove that public ownership and involvement is clearly in the public good and the most efficient and effective way to achieve the desired outcome.*
- 9.4 Furthermore, we consider that there must be a process for ensuring that more local authority commercial activities become CCOs. Establishing standalone CCOs for all commercial activities (particularly those that charge on a user-pays basis) would ensure greater transparency and accountability as well as minimise cross-subsidisation of non-commercial activities. The proposed new consultative processes set out in Part 5 of the Bill would make such a requirement even more important as the consultation processes would be very likely to make it more difficult for local authorities to establish such CCOs.
- 9.5 *Business New Zealand recommends that provisions should be added to Part 4 requiring local authorities to transfer their commercial activities into standalone CCOs.*

Clause 42 – Meaning of Council-Controlled Organisation

- 9.6 Clause 42(4) of the Bill provides that port companies would continue not to be regarded as CCOs, but airport companies, energy companies, and energy supply operators would, by implication, become CCOs (this compares with section 594B of the existing Act where neither port, airport, energy companies nor energy supply operators are permitted to be LATEs). Business New Zealand wonders whether this change is intended and, if so, asks why has the

change been made to the status of airport companies, energy companies, and energy supply operators, but not port companies? In the absence of any explanation to date we would submit that the status quo should be maintained.

- 9.7 *Business New Zealand recommends that clause 42(4) should be amended to exclude airport companies, energy companies, and energy supply operators from the definition of a CCO.*
- 9.8 Also, while section 594Q of the existing Act states that the principle objective of every LATE is to operate as a successful business, no such objective is specified for CCOs. We submit that this objective should be restored.
- 9.9 *Business New Zealand recommends that a new sub-clause 42(5) should be inserted that would read as follows:*

“The principal objective of every Council-Controlled Organisation shall be to operate as a successful business”.

Clause 43 – Consultation Required Before Council-Controlled Organisation Established

- 9.10 Clause 43 provides that the ‘special consultative procedure’ must be followed before a CCO may be established. Business New Zealand notes that consultation when setting up a CCO would be a new requirement. We would welcome this requirement, as it would provide an opportunity for ratepayers to place a check on commercially ambitious local authorities.
- 9.11 Meanwhile, sections 594I-P of the existing Act provide for an Establishment Unit to be set up, but there are no such provisions in this Bill. We are not aware of any explanation as to why it has been decided that establishment units are no longer required. In the absence of any credible explanation we would submit that the status quo should be maintained.
- 9.12 *Business New Zealand recommends that a new clause 43(3) should be inserted restoring the provisions in the existing Act regarding establishment units.*

Clause 44 – Appointment of Directors

- 9.13 Clause 44 abolishes the requirement (section 594R of the existing Act) that at least two directors shall not be members or employees of a local authority. We submit that there is value in ensuring that there are such directors of CCOs – not only are they independent of the political process, but they are also more likely to have the commercial and other skills that are important for high-quality decision-making.
- 9.14 *Business New Zealand recommends that clause 44(2) should be amended to restore the requirement that at least two directors of every CCO would be neither members of any local authority or persons employed by any local authority.*

Clause 54 – Auditor-General is Auditor of Council-Controlled Organisations

- 9.15 Although section 594ZC of the existing Act also provides that the Auditor-General is the auditor of LATEs, we are not convinced as to why the Auditor-General should have a statutory monopoly in this regard. It is difficult to justify this monopoly on the grounds of quality when one considers that private sector auditors (particularly the big firms) have considerable expertise and experience in auditing the financial statements of what are often very large and complex organisations in the private sector. If there is no credible explanation as to why the Auditor-General should have such a monopoly then it should be abolished.
- 9.16 *Business New Zealand recommends that the Committee should consider whether the Auditor-General's statutory monopoly for auditing the financial statements of CCOs should be abolished.*

Clause 58 – Official Information

- 9.17 Clause 58 provides that the Local Government Official Information and Meetings Act 1987 and the Ombudsmen Act 1975 will apply to CCOs. This is a new provision and brings CCOs into line with State Owned Enterprises, that are subject to the Official Information Act 1982 and the Ombudsmen Act. We are comfortable with this provision, as it should aid accountability and transparency. Presumably, commercially sensitive information would be adequately protected by sections 7(b) and 7(i) of the Local Government Official Information and Meetings Act.

10. PART 5 – PLANNING, DECISION-MAKING, AND ACCOUNTABILITY (CLAUSES 59-97)

Subpart 1 – Planning and Decision-Making (clauses 61-77)

Clause 62 – Principles of Decision-Making

- 10.1 Clause 62 lists eight new principles of decision-making for local authorities to follow. Generally, they would seem to be reasonable, but the need to take into account Maori interests on any significant decisions on land or bodies of water (clause 62(c)) runs contrary to our view (expressed in paragraph 8.6 above) that the Treaty of Waitangi should not be extended into local government and that specific groups (such as Maori) should not receive any special treatment. We also submit that the sustainable development principle (clause 62(d)) could work against those proposals that are, for example, economically efficient or financially prudent through an over emphasis on social, environmental and/or cultural objectives.
- 10.2 We submit that the intent of principles 62(c) and 62(d) would be more than adequately covered by the other principles listed (particularly clauses 62(b) and 62(h)(i) respectively), without there being any need to explicitly draw attention to them.
- 10.3 *Business New Zealand recommends that clauses 62(c) and 62(d) should be deleted.*

Clause 63 – Contributions to Decision-Making by Maori

- 10.4 Clause 63 would require local authorities to establish and maintain processes to provide opportunities for Maori to contribute to decision-making and must consider ways to foster the development of Maori capacity to contribute.
- 10.5 This is a new provision. Although clause 63(2) states that local authorities are free to adopt similar processes for other groups of people, making such specific processes mandatory for Maori (or any other specific group) is, in our view, undesirable. Many local authorities already choose to do so and they should continue to be free to do so, but it should not be mandatory for all local authorities – the compliance costs are likely to be high, especially for those local authorities with very small Maori populations⁴. There is also the problem of identifying those individuals and groups who claim to represent Maori.
- 10.6 Again, we reiterate our view that the Treaty of Waitangi should not be extended into local government, and that the relationship between local government and Maori should be no different from that of any other significant interest group (or the community as a whole) that local authorities should consider during the decision-making process.
- 10.7 *Business New Zealand recommends that clause 63 should be deleted.*

⁴ According to the 1996 Census, several South Island local authorities (e.g., Ashburton, Waimate, and Waitaki) had less than 5% Maori population.

Clause 66 – Principles of Consultation

10.8 The six principles of consultation are new. In general, they would appear to be reasonable, with the exception of the requirement for specific Maori consultation processes (clause 66(1)(c)), for the reasons described above.

10.9 *Business New Zealand recommends that clause 66(1)(c) should be deleted.*

Clause 67 – Special Consultative Procedure

10.10 Clause 67 sets out the requirements for the ‘special consultative procedure.’ These provisions appear to be reasonable and similar to what is already provided for in section 716A of the existing Act.

Clause 68 – Statement of Proposal

10.11 Clause 69 relates to the Statement of Proposal, which will be a new requirement additional to any other information the local authority may choose to supply when consulting the community. We are particularly concerned about the emphasis on how the proposal would impact on the social, economic, environmental, and cultural objectives as it could result in undue emphasis being placed on aspects that would weaken the case for proposals that would be economically efficient and financially prudent. As ‘significant proposals’ are largely those that relate to changes in ownership and control of assets (see clause 70), the way the statement of proposal is structured would appear to be a deliberate move to hinder asset divestments by providing more explicit ‘targets’ for those opposed to privatisation purely on ideological grounds to argue against.

10.12 There is currently no requirement for such statements of proposal, and they would presumably become an additional compliance cost for local authorities to bear, a cost which will ultimately fall on ratepayers. In the absence of any credible explanation as to why the statements are deemed to be so necessary, we submit that they should not be required. If local authorities were to wish to provide such information on their own account, they would be free to do so.

10.13 *Business New Zealand recommends that clause 69 should be deleted and clause 68 amended to remove reference to statements of proposal.*

Clause 70 – Significant Proposals

10.14 Clause 70 lists those proposals that are deemed to be ‘significant’, so requiring the use of the special consultative procedure. The list appears to be a significant expansion of the list in section 594F of the existing Act (which is currently confined essentially to proposals that would reduce local authority shareholding to below 50%). The following additional proposals would be added:

- Transfer or divestment of significant assets (including ‘strategic assets’ – e.g., port and airport companies).
- Transfer of control of an asset.
- Significant change by a local authority in its delivery of a service.
- Seeking of listing on any stock exchange, equity securities in any CCO.
- Any other decision in relation to an asset or issue that the local authority determines.

10.15 We are particularly concerned about the inclusion of significant changes by a local authority in its delivery of a service (clause 70(c)). The clause seems to assume that all contracting out arrangements are detrimental, an assumption that we consider to be false. For example, a contractor can often provide a better service for the same or lower price than a local authority and contracting ancillary services can lead to an improvement in core services undertaken by a local authority. Unfortunately, however, this clause would be an onerous hindrance to those local authorities wishing to make a decision that would result in the more efficient delivery of a service.

10.16 We also consider that the wording of clause 70(c) is particularly poor. For example, it describes a ‘significant change’ as including ‘a change in the person by whom an activity is to be delivered’ – does this mean that the special consultative procedure would apply if there was to be a change in the crew of a council’s rubbish truck? We consider that this clause’s emphasis should be on the impact on the level of service rather than the method by which the service is delivered.

10.17 Business New Zealand submits that ‘significant proposals’ should be confined to those listed in existing section 594F. If the concern is about loss of public ‘control’ of an asset, then the existing provisions regarding the 50% threshold should be sufficient.

10.18 *Business New Zealand recommends that clause 70 should be amended to mirror section 594F of the existing Act.*

10.19 *Notwithstanding our recommendation above, if clause 70(c) is to be retained, we recommend that it be redrafted so that its emphasis is on the impact on the level of service rather than the method by which the service is delivered.*

Clause 71 – Assessment of Whether Decision is Significant

10.20 Clause 71 is new. It requires local authorities to adopt a policy on assets, matters of issues of significance, including any thresholds or procedures for assessing significance. We consider that the principle of ‘significance’ should be characterised as the material threat to the supply of goods and services required by the community and whether there is an effective alternative supply. Defining ‘significance’ in such a manner would reduce uncertainty for people and also reduce compliance costs for local government in consultation.

10.21 The clause also requires local authorities to list assets it considers to be ‘strategic assets’ and that this list must include any equity held in airport or port companies. The term ‘strategic asset’ is often used emotively by those

opposed to privatisation on ideological grounds and is undefined in the Bill (there is the danger that what might be a 'strategic asset' to one person may be insignificant to another). Overall, we submit that the requirement to list 'strategic assets' would be undesirable as it is a deliberate move to invite strident opposition to any proposals to privatise assets, particularly airport and port companies.

10.22 Instead Business New Zealand submits that local government (as well as central government) should assess its ownership of and involvement in commercial activities and that the onus should be on local authorities to prove that public ownership or involvement is clearly in the public good and the most efficient and effective way to achieve the desired outcome. If local authorities cannot adequately do so, they should consider divestment of these assets or ceasing the activity. This is simply sound business practice and prudent asset management.

10.23 *Business New Zealand recommends that:*

- *Clause 71(1)(a) should be amended to define 'significant' as the material threat to the supply of goods and services required by the community and whether there is an effective alternative supply.*
- *References to the undefined and emotive term 'strategic assets' should be removed (by deleting clauses 71(1)(v) and 71(3) and (4)).*
- *A new clause be inserted that would require local authorities to assess their ownership and involvement in commercial activities with the onus on having to prove that public ownership and involvement is clearly in the public good and the most efficient and effective way to achieve the desired outcome.*

Clause 72 – Requirement to Use Special Consultative Procedure

10.24 Clause 72 would require local authorities to use the special consultative procedure before adopting a long-term council community plan (LTCCP), adopting an annual plan, or making a decision on a 'significant proposal'. The requirement to use the special consultative procedure for LTCCPs (currently Long Term Financial Strategy) and annual plans would be new. Significant proposals are already subject to such a procedure under the existing Act.

10.25 We would be comfortable with the special consultative procedure being extended to important accountability documents such as the LTCCP and annual plan, providing that the costs would not be prohibitive.

Clauses 73 and 74 – Process for Identifying Community Outcomes and Priorities and Obligation to Report Against Community Outcomes and Priorities

10.26 Clause 73 would require local authorities to carry out a process to identify community outcomes and priorities, while clause 74 would require them to report at least every three years against these outcomes and priorities. This is a new provision and one that we are very concerned about from the following perspectives:

- Firstly, we see the requirements to identify outcomes and priorities and report against them as going even further than simply 'encouraging' local authorities to promote social, economic, environmental, and cultural well-being. Business New Zealand predicts that such a provision would, for example, make it very difficult for any local authority that is not of a mind to carry out social services, such as health and education services, the provision of housing, and even job creation schemes and income redistribution.
- Secondly, desired 'outcomes' are often subjective and can be unrealistic. We predict that a list of community outcomes and priorities developed through public consultation is likely to be a wish list. While there is nothing wrong with setting ambitious objectives, there is the danger that they would be unrealistic. At worst, aggressively pursuing unrealistic objectives could be unsustainable and indeed damaging to other imperatives (such as a sound local economy or a clean environment). 'Outputs' in contrast are quantifiable and far more objective and would be preferable from an accountability perspective.
- Thirdly, we can see the requirements to identify outcomes and priorities and report against them as imposing significant compliance costs on local authorities, costs that would ultimately be borne by ratepayers.

10.27 *Business New Zealand recommends that clauses 73 and 74 should be deleted.*

Clause 75 – Long-Term Council Community Plan

10.28 Clause 75 requires local authorities to prepare and adopt a long-term council community plan (LTCCP) every three years. The purpose of the LTCCP would be to:

- Describe local authority activities and the community outcomes they will contribute to;
- Provide integrated decision-making and co-ordination of resources;
- Provide a medium to long-term focus (covering a period of 10 consecutive financial years);
- Provide a basis for accountability; and
- Provide an opportunity for public participation in decision-making.

10.29 This is a significant change. The LTCCP is new and would replace the Long Term Financial Strategy (LTFS), which is provided for in sections 122K-M of the existing Act. It broadens the focus from purely financial matters to social, economic, environmental, and cultural objectives.

10.30 Although financial issues would continue to be an aspect of the LTCCP, Business New Zealand is concerned that moving to a 'triple bottom line' approach would almost inevitably dilute the importance of financial discipline. Furthermore, the LTCCP would give local authorities the licence to positively consider potentially costly social, economic cultural, and environmental

activities and interventions. When combined with a broad power of general competence, councils would gain a powerful implementation tool. There is also a risk that focus and accountability would be lost if multiple, often contradictory, objectives are imposed onto councils. We believe that any tradeoffs against economic efficiency must be clearly and regularly reported to aid accountability and transparency. The clause also refers to 'community outcomes', which for the reasons described under paragraph 10.26 above, are unsuitable for what would be a significant accountability document. On balance we consider that the status quo should be maintained.

10.31 *Business New Zealand recommends that the LTCCP should be renamed the 'Long Term Financial Strategy' and that clause 75 should be amended to restore the provisions contained in sections 122K-M of the existing Act.*

Clause 76 – Annual Plan

10.32 Clause 76 requires local authorities to prepare and adopt an annual plan for each financial year (with the exception of the first year covered by a LTCCP). The purpose of the annual plan would be to:

- Describe any proposed changes to the LTCCP;
- Contain the proposed annual budget for the year;
- Provide integrated decision-making and co-ordination of resources;
- Provide a basis for accountability; and
- Provide an opportunity for public participation in decision-making.

10.33 Although the provisions for the annual plan are largely based on the provisions contained in the existing Act (section 223D), the close link between the annual plan and the existing LTFS and proposed LTCCP mean the comments made in paragraph 10.30 equally apply.

10.34 *Business New Zealand recommends that clause 76 be amended to restore the provisions contained in section 223D of the existing Act.*

Subpart 2 – Reporting (clauses 78-79)

Clause 78 – Annual Report

10.35 Clause 78 requires local authorities to prepare and adopt, within four months of the end of each financial year, an annual report. The purpose of the annual report is to provide a record of the activities and performance of the local authority (information required is contained in Schedule 8) and promote the local authority's accountability to the community. Local authorities will have to make public the annual report and summary of information contained in the annual report within one month of adoption. The provisions would appear to be based largely on the provisions contained in section 223E of the existing Act.

10.36 Benchmarking is an important accountability and transparency tool. However, it is often difficult to make meaningful comparisons of the performance of local authorities. We strongly believe that local authorities should be required to

adopt a common reporting format (including accounting practices, principles, and procedures) for the LTCCP/LTFS, the annual plan, and the annual report. The Government should set 'headings' for local authorities to report against and the analysis of public and private benefits should be standardised.

- 10.37 Another measure that would assist in benchmarking performances of local authorities would be for the Local Government Commission to regularly collect and publish information from all councils on important issues such as rates and charges, debt, and amounts spent on infrastructure and services, etc. This should be done in consultation with Statistics New Zealand, which also collects and publishes information on the local government sector, to minimise duplication and ensure consistency.
- 10.38 *Business New Zealand recommends clauses 75, 76, and 78 should be amended to require local authorities to adopt a common reporting format and 'headings' for the LTCP/LTFS, the annual plan and the annual report. Business New Zealand also recommends that a clause should be inserted into Part 10 to empower the Local Government Commission, in consultation with Statistics New Zealand, to collect and publish information from local authorities.*

Subpart 3 – Financial Management (clauses 80-90)

- 10.39 Part VIIA of the existing Act contains the financial management provisions inserted by the Local Government Act (No.3) 1996. The intention of the No.3 Act's provisions was to apply the Fiscal Responsibility Act 1994 to the local government sector, an intent that was strongly supported by the business community.
- 10.40 The provisions of the No.3 Act have proven to be imperfect due to compromises during the consultation and debate on the initial proposals, but were still a significant improvement on the previous regime. Unfortunately, however, local authorities have been slow to focus on core activities, corporatise business operations, or contract out services, and there has been little in the way of first principles examination of activities and funding.
- 10.41 Nevertheless, we consider the provisions of the existing Act to be far superior to those proposed in this Bill and we discuss our specific concerns below.

Clause 81 – Balanced Budget Requirement

- 10.42 Clause 81 requires local authorities to ensure that each year's projected operating revenues are set at a level sufficient to meet projected operating expenses ('balanced budget requirement'). However, local authorities would be able resolve to set revenues at a different level providing they consider it would be financially prudent to do so (clause 81(2)), and local authorities would not be able to cease an activity on the sole basis that insufficient cash is available (clause 81(3)).

10.43 This is a new provision. While the 'balanced budget requirement' may sound positive, the caveat that local authorities must not cease an activity just because of a lack of funds would work against the intent of fiscal discipline – the budget would instead have to be balanced through increasing revenue (i.e., rates) or borrowing, which we would argue could be far worse than ceasing an activity, particularly an activity that has only marginal benefit to the community.

Clause 82 – Principles of Financial Management

10.44 We consider the proposed principles in clause 82 to be substantially weaker than those contained in the section 122C(1) of the existing Act. Just one example is the watering down of principle (a) regarding prudential financial management from a requirement to something councils would only have to *endeavour* to ensure. We are also concerned at the lack of provision for cost-benefit analyses, the discarding of the existing three-step process for funding decisions, and the discarding of the principle of economic efficiency.

Clause 83 – Funding and Financial Policies

10.45 Clause 83 would require local authorities to, in order to provide predictability and certainty about sources and levels of funding, adopt a number of funding and financial policies, such as revenue, financing, asset management, liability management, investment, remission and postponement of rates on Maori land etc.

10.46 We note that while clause 83, which lists all the various policies that must be adopted, is new, the requirement to adopt many of these specific policies are contained in the existing Act. The provisions for the adoption of policies on remission and postponement on rates are difficult for us to understand. We find it hard to accept such policies should be mandatory for Maori land but only discretionary for all other land. We submit that this is anomalous.

10.47 With regard to asset management, we would be most concerned were any local authorities to plan for ongoing deficits by not raising revenue to cover depreciation and maintenance. Any move away from accrual accounting back to cash accounting would be a retrograde step.

10.48 *Business New Zealand recommends the retention of the financial management provisions in Part VIIA of the existing Act.*

Subpart 4 – Borrowing and Security (clauses 91-97)

10.49 We have no comment on these provisions, but note that the financial provisions in this Bill would be likely to increase local authority borrowing and debt levels. The experience with district health boards is not encouraging in this regard – debt can build up quickly to unsustainable levels if expenditure does not have to be funded from revenue.

11. PART 6 – BYLAWS (CLAUSES 98-120)

- 11.1 We do not wish to comment in great detail on Part 6. However, we note that clause 112 relates to the determination of whether a by-law is appropriate. We agree that a local authority should have to determine whether a by-law is the most appropriate way of addressing a perceived problem, but note that the clause as it is written still leaves it to the local authority's discretion. Business New Zealand submits that a robust process of assessing costs and benefits, with a particular emphasis on compliance costs, should be included in the assessment process.
- 11.2 Business New Zealand notes that the Department of Internal Affairs intends to work with stakeholders on developing guidelines on 'good regulatory practice'. While welcoming the gesture, we note that the Cabinet Office has already published material on Regulatory Impact Statements (refer to paragraphs 3.23 to 3.38 of the Cabinet Office's *Step by Step Guide Cabinet and Cabinet Committee Processes*). Rather than starting from scratch and devising new and unique guidelines for the local government sector, we submit that the Department should base the guidelines on the Cabinet Office's material.
- 11.3 *Business New Zealand recommends that the Department of Internal Affairs develop guidelines for regulatory best-practice based on those already developed by the Cabinet Office.*

12. PART 7 – SPECIFIC OBLIGATIONS, POWERS, AND RESTRICTIONS OF LOCAL AUTHORITIES AND OTHER PERSONS (CLAUSES 121-173)

Subpart 1 – Specific Obligations (clauses 121-125)

Clauses 121-123 – Assessment of Water, Waste Water, and Sanitary Services

- 12.1 Clauses 121-123 would require territorial authorities to make assessments of the provision of water and wastewater services (clause 121) and other sanitary services (clause 122). The type of information to be contained in these assessments is set out in some detail. This appears to be a new provision and could impose additional compliance costs on the local government sector, which would most probably be passed on to the ratepayer.
- 12.2 We can only assume that this proposed provision has been inspired by public health and safety concerns. However, in the absence of any credible explanation as to why water, wastewater and sanitary services have been singled out for such mandatory assessments we would submit that the status quo should be maintained, which would presumably empower local authorities and health authorities to undertake such assessments if deemed necessary.
- 12.3 *Business New Zealand recommends that clauses 121-123 should be deleted unless there are sound public health and safety reasons for these mandatory assessments to be legislated for.*

Clauses 124 and 125 – Fire Hydrants and Pipes

- 12.4 Clauses 124 and 125 would appear to be consistent with the relevant sections of the existing Act (sections 647 and 648 respectively). We have no comment on these clauses.

Subpart 2 – Specific Restrictions (clauses 126-130)

- 12.5 Overall, subpart 2 would appear to be in opposition to the Government's stated intention to 'enable' and 'empower' local authorities. Business New Zealand submits that the specific restrictions are totally ad hoc and seem to be motivated from a purely political and ideological perspective.

Clauses 126 and 127 – Restrictions on the Disposal of Parks and Further Restrictions on Disposal of Parks by Auckland Regional Council

- 12.6 Clause 126 requires local authorities proposing to sell a park to use the special consultative procedure and clause 27 prohibits outright the Auckland Regional Council from selling a number of specified parks and reserves. These provisions regarding parks would appear to be new.
- 12.7 Apart from politics it is hard to understand why the Government would wish to make it particularly difficult to sell parks over other types of land and why the Auckland Regional Council is expressly forbidden to sell of a list of specified

Regional Parks, particularly when other regional councils presumably face no prohibitions from selling any regional parks they may own.

- 12.8 *Business New Zealand recommends that clauses 126 and 127 should be deleted.*

Clause 128 – Restrictions on Disposal of Endowment Property

- 12.9 Clause 128 would appear to be similar to section 230 of the existing Act. We acknowledge that this can be a sensitive issue, but there are occasions when the original purpose of the endowment is no longer relevant and that local authorities should therefore be able to dispose of the property.

Clause 129 - Restrictions on Exit from Delivery of Water Supply and Wastewater Services

- 12.10 Clause 129 would require a territorial authority that provides water and wastewater services to continue to do so and maintain its capacity to do so. It would not be able to divest or transfer ownership or control to a person that is not a CCO involved in providing water supply or wastewater services.

- 12.11 Again, apart from politics it is hard to understand why the Government has singled out water and wastewater services as those that must not be privatised. Not only would it run contrary to the Government's own empowerment principle, but it is our view that efficiency and conservation are less likely to be achieved if consumers do not bear the cost of their use, something which is less likely if water remains under the control of local authorities. Such a prohibition would also be likely to diminish the flexibility of local communities to look at a range of water delivery options to improve water supply and water quality, particularly in large rural areas.

- 12.12 *Business New Zealand recommends that clause 129 should be deleted.*

Clause 130 – Territorial Authority May Not Charge Residents to Join a Library

- 12.13 Clause 130 requires that for territorial authorities providing a library for public use, its residents would be entitled to join the library free of charge. It is difficult to understand why the Government would wish to interfere at such a micro level as library memberships, particularly when the intention of this legislation is to empower local authorities in their decision-making and move away from a prescriptive Act.

- 12.14 *Business New Zealand recommends that clause 130 should be deleted.*

Subpart 3 – Powers in Relation to Water (clauses 131-133)

- 12.15 Subpart 3 appears to be based largely on provisions contained in the existing Act (sections 378, 382 and 397). Would continuing to restrict control of reticulated water sources to local authorities hinder the private delivery of water? If that would be the case, we would be concerned for the reasons discussed in paragraph 12.11 above.

12.16 *Business New Zealand recommends that if subpart 3 would hinder the private delivery of water services, then it should either be deleted, or amended to facilitate the private delivery of water supply.*

Subpart 4 – Powers to Discharge Sewerage and Trade Waste (clauses 134-135);

Subpart 5 – Enforcement Powers (clauses 136-144);

Subpart 6 – Powers in Relation to Private Land (clauses 145-152);

Subpart 7 – Powers in Relation to Owners and Occupiers of Land (clauses 153-156);

Subpart 8 – Defaults by Owner or Occupier (clauses 157-160)

12.17 We have no comment on subparts 4,5,6,7 and 8.

Subpart 9 – Development Contributions (clauses 161-167)

12.18 Subpart 9 would authorise local authorities, when granting resource consents, building consents, or authorisations for a service connection, to require a development contribution to be made to the local authority for costs associated with the incremental provision of reserves and network infrastructure. The Government considers this to be fair in two senses. Firstly, the cost ultimately falls on the users of the services, and secondly the risks associated with developing any new subdivisions should lie with the developer.

12.19 Business New Zealand is wary about proposals that would give local authorities additional avenues for funding their activities, particularly those that would fall heavily on the business community, such as a new funding power to charge developers. We are also concerned about the potential for property owners in a new development to pay twice, firstly through the costs being passed on by the developer through higher purchase prices, and secondly through the rates revenue the local authority will receive over time from the property owners.

12.20 More specifically, while there might be some justification for charging developers for the provision of network infrastructure, we are less convinced about the proposal to enable local authorities to charge developers for the provision of reserves. While reserves have amenity value they are not an essential service. Besides, many developers make their own voluntary provision of reserves and presumably this practice would be discouraged if they were to be charged on top of this for local authority reserves.

12.21 For all of these reasons, Business New Zealand would prefer the status quo (or a modification thereof), where local authorities wishing to charge developers must first make a case to the Environment Court at the time the resource consent is issued.

12.22 *Business New Zealand recommends that subpart 9 should be deleted, or at the very least provision of reserves should not be included in the scope of development contributions.*

Subpart 10 – Recovery of Damages (clauses 168-173)

12.23 We have no comment on subpart 10.

Additional Issue: Roothing and Land Transport

12.24 Business New Zealand notes that there appear to be no provisions in this Bill on roading and land transport. Roothing is one of the most significant responsibilities and activities for local authorities and is a significant part of the existing Act (Part XXI is entirely devoted to roads, service lanes, and access ways). We presume that the Government's long-awaited decisions on land transport management will address rooothing, including local roads, as well as wider land transport issues and we look forward to seeing the Government's proposals in due course.

13. PART 8 – POWERS OF MINISTER TO ACT IN RELATION TO LOCAL AUTHORITIES (CLAUSES 174-179)

- 13.1 Part 8 gives the Minister of Local Government certain powers to address non-performing local authorities. We consider these provisions to be appropriate and welcome their inclusion in the Bill.

14. PART 9 – OFFENCES, INFRINGEMENT NOTICES, REMOVAL ORDERS, AND LEGAL PROCEEDINGS (CLAUSES 180-224)

- 14.1 Business New Zealand notes that the level of fines have increased considerably from those under the existing Act (e.g., from \$500 to up to \$20,000 for some offences, and in one case, relating to trade wastes, from \$10,000 to \$200,000). While recognising that over a period of time inflation can significantly erode the 'real' level of a fine, we are uncertain as to why the fines have increased by such a significant amount. We submit that unless there are sound public policy reasons for particularly significant increases, any adjustments should generally be limited to the cumulative level of inflation since the level of fines were last adjusted.

- 14.2 *Business New Zealand recommends that the Committee assess the proposed levels of fines to ensure that the increase is not above the cumulative level of inflation since they were last adjusted, unless there are sound public policy reasons for a significant increase over and above inflation.*

15. PART 10 – LOCAL GOVERNMENT COMMISSION (CLAUSES 225-233)

- 15.1 Part 10 establishes the Local Government Commission and provides that it consist of three members appointed by the Minister. It is to have the status of a Commission of Inquiry. We agree with these provisions, but suggest an additional benchmarking role for the Commission.

- 15.2 As discussed in paragraphs 10.36 and 10.37, benchmarking is an important accountability and transparency tool. However, it is often difficult to make meaningful comparisons of the performance of local authorities. A way to assist in benchmarking performances of local authorities would be for the Local Government Commission to regularly collect and publish information from all councils on important issues such as rates and charges, debt, and amounts spent on infrastructure and services, etc.

- 15.3 *Business New Zealand recommends that a clause should be inserted into Part 10 to empower the Local Government Commission to collect and publish information from local authorities to assist in the benchmarking of their performance.*

16. PART 11 – MISCELLANEOUS PROVISIONS (CLAUSES 234-236)

- 16.1 We have no comment on Part 11.

17. PART 12 – CONSEQUENTIAL AMENDMENTS, REPEALS, RECOVATIONS, TRANSITIONAL PROVISIONS, AND SAVINGS (CLAUSES 237-265)

17.1 We have no comment on Part 12.

18. PART 13 – AMENDMENTS TO THE LOCAL ELECTORAL ACT 2001 (CLAUSES 266-293)

Clause 269 – New Part 1A Inserted

New Section 19A – Membership of Territorial Authorities

- 18.1 We note that the membership of territorial authorities and regional councils will be transferred from the Local Government Act 1974 to the Local Electoral Act 2001 without any changes to the minimum and maximum number of members.
- 18.2 Business New Zealand considers that the existing maximum membership of territorial authorities (30) is far too large, particularly for what are supposed to be decision-making bodies. We therefore submit that membership of territorial authorities should be limited to a maximum of 12.
- 18.3 *Business New Zealand recommends that new section 19A should be amended to reduce the maximum membership of territorial authorities from 30 to 12.*

New Section 19D – Membership of Regional Councils

- 18.4 Considering the larger populations and geographical areas of regional councils, we support their maximum size remaining unchanged at 14.

New Section 19F – Membership of Community Boards

- 18.5 We note that the membership of community boards will be transferred from the Local Government Act 1974 to the Local Electoral Act 2001 without any changes to the minimum and maximum number of members.
- 18.6 Business New Zealand considers that the existing maximum membership of community boards (12) is far too large, particularly when they more often than not have very small populations. We therefore submit that membership of community boards should be limited to a maximum of 5.
- 18.7 *Business New Zealand recommends that new section 19F should be amended to reduce the maximum membership of community boards from 12 to 5.*

New Sections 19H, 19I, and 19J – Review of Representation Arrangements for Territorial Authorities, Regional Councils, and Community Boards

- 18.8 Currently, local authorities are required to review their representation arrangements every three years. Business New Zealand supports the removal of the link between the electoral cycle and these reviews. However, we are less comfortable with the local authority carrying out the review itself and making the final decision, as this would always make the process open to possible political manipulation. For example, it is particularly undesirable for

decisions on the numbers of councillors (and how they are to be elected) to be made by the councillors themselves. We note that the Review consultation document floated the option of there being an 'independent' team to advise on options, but this is not provided for in the Bill.

18.9 Business New Zealand submits that, to ensure that the reviews are carried out objectively, it would be preferable for the legislation to specify that such reviews must follow each five-yearly census, which would provide the reviewer with useful and credible information on population and demographics that would enable informed decisions to be made. It would also be consistent with the long-standing practice for the adjustment of electoral boundaries for general elections. We submit that the review should be undertaken by independent reviewers, as suggested in the consultation document, with the Local Government Commission empowered to make the final decision in the case of any disputes (we are pleased that the latter is provided for in new sections 19P-19W).

18.10 *Business New Zealand recommends that new sections 19H, 19I, and 19J should be amended to provide for independent reviewers to advise the local authority in carrying out a review following each five-yearly census.*

New Section 19V – Factors in Determination of Membership for Wards, Constituencies, and Subdivisions

18.11 Business New Zealand notes that the population of each ward, constituency, and subdivision divided by the number of members to be elected would be required to produce a figure no more than 10% greater or smaller than the population of the local authority divided by the total number of elected members. Area and rateable value would no longer be able to be taken into account. While this would enshrine 'one-man one-vote', in our view it is dubious how fair this actually is to the ratepayers themselves, particularly on those with the heaviest rates' burden. Like the proposed removal of the non-resident ratepayer franchise, this would reduce ratepayers' ability to provide a small but important check on the activities of councils.

18.12 *Business New Zealand recommends that new section 19V should be amended to include land area and rateable value as factors able to be taken into account when reviewing representation arrangements.*

New Sections 19Z-19ZH, and New Schedule 1A – Maori Wards and Maori Constituencies

18.13 New sections 19Z-19ZH would enable local authorities to establish Maori wards and constituencies.

18.14 Business New Zealand considers that there should not be any special measures to increase Maori (or any other specific group's) participation and representation in local government. The perceived barriers to Maori representation are most probably no greater than for any other ethnic group. For example, there is likely to be even less Pacific Island and Asian involvement in local government but the Government does not seem to be

suggesting that local authorities should be able to establish special Pacific Island or Asian constituencies, despite Pacific Island and Asian populations being higher than the Maori population of some local authorities⁵. The statistics quoted on page 35 of the Review consultation document indicate that Maori participation was already increasing (from 2.5% of elected members in 1992 to 5.5% in 1998) without any special measures, so we ask if there really is a problem that needs addressing in such a separatist manner?

18.15 Meanwhile, women have shown that there is no need for 'positive discrimination' to increase their participation – there have been large increases in the numbers of women councillors and mayors elected over recent years. We submit that the matter comes down to a question of personal choice and unless individuals feel competent to stand and want to stand, artificial encouragement to do so can only operate to the detriment of those it is intended to assist.

18.16 *Business New Zealand recommends that new sections 19Z-19ZH and Schedule 1A should be deleted.*

Clause 270 – New Section 20 Substituted

18.17 New section 20 abolishes the existing provision for ratepayer electors. Business New Zealand is strongly opposed to the abolition of the franchise for non-resident ratepayer electors and we submit that this choice of franchise should be retained. If a person happens to be a ratepayer in a local authority that he or she is not a resident of, that person should still be able to exercise their democratic right. This is particularly relevant for many business owners, particularly small business owners (86% of businesses employ fewer than five people), who might otherwise find that they are being taxed without the opportunity of representation – which is contrary to a fundamental democratic principle.

18.18 The rationale the Government used in the Review consultation document, that the existing franchise is not being widely used is not, in our view, a valid reason to abolish it. If anything, this very argument could be used to advocate the widening of the franchise to allow people to vote in all local authorities in which they are resident and own property (rather than being given a choice of just one local authority in which to exercise their vote). We would support the consideration of such a widening.

18.19 This could work as follows: voting papers would be sent to those on the residents' roll (the parliamentary roll) and the rating roll. No individual would be permitted to vote more than once in any single local authority either in their own right or on behalf of an incorporated body (but would be able to vote in as many local authorities in which they are a resident or ratepayer). If voting on behalf of a corporate, the voter would be required to provide their name and residential address, so that dual voting could be policed.

⁵ According to the 1996 Census, local authorities with higher Pacific Island populations than Maori populations included Auckland, Manukau, and Porirua. Local authorities with higher Asian populations than Maori populations included Auckland, North Shore and Wellington.

18.20 *Business New Zealand recommends that the ratepayer franchise should be restored, by deleting clause 270.*

Clause 273 – New Sections 24A to 24F Inserted

18.21 New sections 24A-24F relate to the electors of Maori wards and constituencies and their voting rights. For the reasons expressed in paragraphs 17.14-17.16 above we are opposed to the establishment of Maori wards and constituencies.

18.22 *Business New Zealand recommends that clause 273 should be deleted.*

Clause 283 – New Section 79 Inserted

18.23 New section 79 would enable the early processing of votes to be permitted (i.e., during the voting period). We would be concerned if the processing and counting of votes before polls close resulted leaks of information on how candidates are polling, so possibly influencing the conduct of the election. Presumably, this provision is in response to concerns about the length of time to process votes following the polls closing. Business New Zealand submits if this is the case, then it would be better to ensure that the processing of votes was resourced adequately.

18.24 *Business New Zealand recommends that clause 283 should be deleted.*