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SCALE 1 : 500

NOTE : Cadstral Boundaries are from D.C.D.B. - Councils G.I.S. & are approx. only.

### SCHEDULE

LAND TO BE DECLARED MALL UNDER SECTION 336, LOCAL GOVERNMENT ACT

SHOWN	DESCRIPTION	AREA
(A)	Pt. Legal Road	928m <sup>2</sup> APPROX.

SURVEYED		DATE		REVISION		BY DATE		WAITAKERE CITY COUNCIL	
DESIGNED	M.Hieatt	12/02							ORIGINAL SCALE 1:500
DRAWN	M.Paget	12/02							SHEET DRAWING No. 13962
COMPUTED	M.Paget	12/02							1 OF 1 SHEETS
DWG CHK									CONTRACT No. CY02009
DGN CHK									REVISOR
CAD FILE	...Ver13962	12/02							A4 ORIGINAL



TODD AVENUE  
LAND TO BE DECLARED MALL  
PLAN

## 8. GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

<b>Officer responsible</b> Director of Policy	<b>Author</b> Mary Richardson DDI 941-8882
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The purpose of this report is to provide information on the current General Agreement on Trade in Services (GATS) negotiations at WTO and potential repercussions for local government.

### INTRODUCTION

The current negotiations on the General Agreement on Trade in Services (GATS) being conducted by the New Zealand Government with other governments in the World Trade Organisation (WTO) could have repercussions for local governments.

GATS rules are binding on all levels of government and constrain the ability of central and local government to regulate economic activity in pursuit of social or environmental goals. However, there has been little if any consultation with local government about the negotiations and their implications.

Previously the Christchurch City Council has argued that policy regarding the regulation, funding and provision of essential services should be made democratically by governments at the national and local level, and that such services should not be included in trade agreements.

The Council has called for full transparency and consultation on GATS with local government.

Recently a number of Australian local authorities (including Melbourne City Council, Yarra Council and NSW Local Government Association and the Australian National Local Government Association Conference<sup>1</sup>) and over 70 Canadian municipalities (including West Vancouver) have called for the exclusion of public services from the GATS, particularly local government community services and water services. They have requested that national governments fully consult with local government about the implications of the GATS.

### BACKGROUND

The General Agreement on Trade in Services (GATS) is an agreement signed in 1994 under the World Trade Organisation (WTO) which administers the agreement. GATS rules apply to 160 service sectors, many of which are the responsibility, directly or indirectly, of local government.<sup>2</sup> They include:

- licensing the provision of services (food outlets)
- regulations on services (waste disposal, building control, transport)
- planning permission/permits (including discretionary powers to apply conditions or negotiate provision of social housing)
- discretionary powers in general (e.g. giving preference to local employment, using procurement decisions to promote the local economy, placing environmental/sustainability conditions on contracts).

The purpose of GATS is to encourage freedom of international trade, and to promote competitive markets for all goods and services including those which have previously been outside the market sector. It aims to remove government regulations which are regarded as "unnecessary" barriers to trade and inherently anti-competitive. By signing the GATS in 1994, governments are committed to engaging in the current negotiation process which aims to achieve "a progressively higher level of liberalisation" in the service sectors.<sup>3</sup>

<sup>1</sup> These bodies have not only debated it themselves, but have written to the Federal Trade Minister raising their concerns and requesting consultation

<sup>2</sup> GATS was signed, by all 140 members of the then General Agreement on Tariffs and Trade (GATT) as part of the Uruguay Round of negotiations, in 1994. In 1995 GATT was succeeded by the World Trade Organisation (WTO). The former Director General of the WTO, Renato Ruggiero, has stressed that the scope of governments' obligations under the GATT was extended considerably by the WTO. The new obligations "extend the reach of the Agreement into areas never before recognised as trade policy". The General Agreement on Trade in Services (GATS): Possible Implications for Local Government An LGA/LGiB Briefing Paper

<sup>3</sup> World Trade Organization, Trade in Services Secretariat, (March 2001) GATS: Fact and Fiction, Geneva, available on the WTO web site at <http://www.wto.org>.

OECD, Working Party of the Trade Committee, (September 3, 2001) Open Services Markets Matter, TD/TC/WP(2001) 24/PART1/REV1.

GATS includes two different levels of obligation:

- General Obligations: rules which apply "horizontally" to all service sectors in a WTO member country, including all government measures in the form of a law, regulation, rule, procedure, decision, administrative action of any other form<sup>4</sup>
- Specific Commitments: rules which apply only to those services which a government chooses to include.<sup>5</sup> Each WTO member lists in its national schedule those services for which it wishes to guarantee market access and non-discrimination ("national treatment") to foreign suppliers.

GATS requires that countries make their measures available (transparent) to others, and extend the same trade advantages to all foreign companies that they extend to companies from any one foreign country (the most favoured nation principle).

Schedules may reserve the right to limit the degree to which foreign services providers can operate in the market, for example limiting commitments on market access (Articles 16(2)(a) to (f)) or on national treatment (Article 17).<sup>6</sup> However, all limits and exceptions must be set when a country initially offers a sector. A nation only can set later new limits on the number of investors or how they operate in a GATS-covered sector if the nation can negotiate compensation with all countries who have a right to enter that market (Article 11).

The GATS applies to measures taken by any level of government. While negotiated exclusively by national governments, its restrictions cover measures by "central, regional, or local governments and authorities" (GATS Article 1:3.a.i). The GATS also applies to "non-governmental bodies in the exercise of powers" delegated by any level of government (Article 1:3.a.ii). However, any dispute would be lodged by one or more WTO member governments against the central government whose local authorities' measures were the subject of complaint; that authority itself would have no right of representation in the hearing.

Negotiations are currently taking place on the extension of GATS at WTO Headquarters in Geneva. By June 2002, all WTO members were to have told other countries what sectors they wanted them to add to their existing GATS commitments. By March 2003, WTO members are to identify what they are prepared to give up in return. The public, including elected local government representatives have no right to this information and it can be withheld under New Zealand's Official Information Act. However, some countries have been more forthcoming than New Zealand, which claims it must treat all requests and offers as confidential. For example, the UK has posted on a government website the service sectors for which it has received 'requests' without identifying the countries making the requests, and has called for comment on the effects of opening these sectors – see <http://www.dti.gov.uk/worldtrade/service.htm>.

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<sup>4</sup> No government action, whatever its purpose (e.g. protecting the environment, safeguarding consumers, enforcing labour standards, promoting fair competition, ensuring universal service, or any other end) is, in principle, beyond GATS scrutiny and potential challenge.

<sup>5</sup> Governments commit service sectors to these specific commitments through a series of negotiations. First they submit 'requests' for service sectors they would like other countries to include under GATS; then they make 'offers', stating which of their own services they will allow to be covered by GATS rules. These discussions initially happen on a country-to-country or bilateral basis, but any agreement reached then applies across countries, or multilaterally. Following negotiations a deal is concluded, which is binding. Once a service is committed with GATS any government (and by extension local government) regulation which actually or potentially restricts the market and discriminates (even inadvertently) against foreign companies is open to challenge within the WTO rules. Legally binding guarantees for stable regulatory conditions are constraints on future governments to change or reverse a liberalization process if they identify that economic and social policies need a change - and therefore poses a threat to democracy.

<sup>6</sup> These can include limitations on the number of suppliers, the total value of transactions, the number of services operations, the number of persons to be employed, the types of legal entity permitted and the share of foreign capital. The entry "none" in a schedule is an undertaking that limitations of these kinds will not be imposed (World Trade Organization, Trade in Services Secretariat, (March 2001).

Governments are being asked to increase the range of services included in the GATS agreements. There are proposals to reduce the right of governments to regulate and to provide and fund public services, including proposals to change these rules and reduce the right of governments to regulate by declaring the some regulations of services should be "least trade restrictive" and introducing new necessity transparency agreements<sup>7</sup>.

#### **GATS AND LOCAL GOVERNMENT**

There is considerable uncertainty about the exact implications of GATS for local government services. GATS has some rules which recognise the right of governments to regulate services and to provide and fund public services. However, ability to regulate depends on governments knowing how, and when, to make exceptions and impose limitations when they commit sectors to liberalisation. There is uncertainty regarding the interpretations of "services supplied in the exercise of government authority" (Article 1(3)(c)). This section examines some areas of particular concern to the Christchurch City Council.

#### **Extensions of Services**

Governments are free to choose the services which they will make commitments guaranteeing access to foreign suppliers<sup>8</sup>. However, recent studies by the Canadian Environmental Law Association identified areas of local government services and regulation which could be affected by the GATS negotiations<sup>9</sup>. The services identified included:

- water and sewerage services,
- waste
- management,
- zoning regulations,
- library services,
- community services, such as childcare,
- signage

For example, the European Union has identified extensive additional commitments it wants to add to countries existing GATS commitments in its request to other countries, including New Zealand<sup>10</sup>.

Any additional services will be subject to the National Treatment and Market Access rules.

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<sup>7</sup> (e.g. "Application of the necessity test: issues for consideration", 8 October 1999, Job No.5929, Informal note by the WTO Secretariat; and "Market Access: Unfinished Business", WTO, p.123, available on the WTO Website).

<sup>8</sup> Each Member must have a national schedule of commitments, but there is no rule as to how extensive it should be. There is agreement among all Governments that in the new round of negotiations the freedom to decide whether to liberalise any given service will remain. However, "the principle of progressive liberalization will be maintained." World Trade Organization, Trade in Services Secretariat, (March 2001) GATS: Fact and Fiction, Geneva, available on the WTO web site at <http://www.wto.org>.

<sup>9</sup> Michele Swenarchuk From Global to Local: GATS Impacts on Canadian Municipalities, Canadian Centre for Policy Alternatives, Ottawa, 2002 <http://www.policyalternatives.ca/>  
Sinclair, Scott, GATS How the World Trade Organisations's new "services" negotiations threaten democracy, Canadian Centre for Policy Alternatives, Ottawa, 2000, <http://www.policyalternatives.ca/>

<sup>10</sup> A widely publicised leak of a near-final draft of the European Union request included requests to New Zealand to increase commitments in area of the professional sector (New Zealand has committed professional sector only partially); research and development sectors including natural science and social science; postal and courier services (New Zealand has not undertaken commitments in postal and courier services); telecommunications (New Zealand has only partially committed telecommunications) and goods and services (where New Zealand already has one of the most wide-ranging commitments of any WTO member). New Zealand has not undertaken GATS commitments in environmental services, although it did in the CEP with Singapore, which may indicate a government intention in GATS, and the negotiating agenda agreed at Doha has a specific focus on environmental services. EC requests New Zealand to commit the following subsectors; Water for human use & wastewater management; Solid/hazardous waste management; Protection of ambient air and climate; Remediation and cleanup of soil & water; Noise & vibration abatement; Protection of biodiversity and landscape (From AD HOC 133 COMMITTEE SERVICES MD : 044/02 GATS 2000 Request from the EC and its Member States (hereinafter the EC) To New Zealand) <http://www.guardian.co.uk/globalisation/story/0,7369,685670,00.html>

National Treatment rule requires governments to offer at least the best treatment given to domestic services (or service providers) to like foreign services (or service providers). It is unclear if local government policy which, for example, imposed limits to conserve resources or protect the environment would be GATS-consistent.<sup>11</sup> Some examples of measures identified as potentially modifying the conditions of competition in favour of domestic services or service suppliers include:

- Requirements that retailers recycle packaging could be argued to constitute de facto discrimination if the impact on cross-border, mail-order retailers were deemed more burdensome than the impact on domestic retailers selling through local outlets.<sup>12</sup>
- Requirements that toxic waste be treated on-site or at a local facility could be argued to disadvantage foreign industries or foreign waste treatment companies that have invested in facilities outside the local region<sup>13</sup>.
- Requirements that publicly-funded research and development produce benefits in the local or national economy.<sup>14</sup>

Market Access - GATS Market Access rule prohibits governments from placing restrictions on the number of service suppliers or operations; the value of service transactions; the number of persons that may be employed in a sector; and, significantly, the types of legal entities through which suppliers may supply a service. Article 16 also prohibits limits on foreign capital participation.

For example, if environmental services were committed (as they are under the Singapore CEP), the Canterbury Waste Services (etc) arrangement for the Kate Valley landfill would almost certainly be GATS-illegal because it restricts the number of service providers which can create landfills, and prescribes a certain type of legal entity for those that can (the joint venture companies), among other things.

Limitations on the number of street markets, and limitations as to their type of ownership, may well also be a problem since the retail sector is committed. So might, for example, a limit on the number of suburban malls (particularly since many are overseas owned).

#### **Restrictions on Domestic Regulation**

Regulatory measures, whatever their form or purpose, must conform with the GATS provisions in the main text and a member's specific commitments.<sup>15</sup> While the preamble of the Treaty contains a clause that "recognizes the right of members to regulate," this language has limited legal effect. It may not be construed as providing legal cover for regulations that would otherwise be inconsistent with the substantive provisions of the treaty. Governments retain their freedom to regulate only to the extent that the regulations they adopt are compatible with the GATS.

For example, GATS Article 6.4 specifies that members shall develop any "necessary disciplines" to ensure that "measures relating to qualification requirements and procedures, technical standards and licensing procedures do not constitute unnecessary barriers to trade in services." Sub-paragraph (b) of Article 6.4 further specifies that such disciplines shall aim to ensure that regulatory measures are "not more burdensome than necessary to ensure the quality of the service."

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<sup>11</sup> Measures considered 'necessary' to protect animal or plant life or health and which are not considered 'a means of arbitrary or unjustified discrimination' may come within the General Exceptions Article XIV. But there is no reference to conservation or environmental protection per se.

<sup>12</sup> Scott Sinclair and Jim Grieshaber-Otto (2002) Facing the Facts. A Guide to the GATS Debate and Michelle Swenarchuk From Global to Local: GATS Impacts on Canadian Municipalities Canadian Centre for Policy Alternatives, Ottawa, 2002.

<sup>13</sup> Scott Sinclair and Jim Grieshaber-Otto (2002) Facing the Facts. A Guide to the GATS Debate and Michelle Swenarchuk From Global to Local: GATS Impacts on Canadian Municipalities Canadian Centre for Policy Alternatives, Ottawa, 2002.

<sup>14</sup> Drawn from non-conforming measures listed as limitations to national treatment in the Canadian and US GATS schedules or from illustrations of inconsistent measures in the GATS scheduling guidelines (S/CSC/W/19). (Sinclair and Grieshaber-Otto 2002)

<sup>15</sup> Regulations are clearly listed among the wide range of government measures restricted by the GATS.

"GATS establishes a framework of rules and disciplines to ensure that members regulate their services sector in a manner which avoids that any ensuing trade restrictions and distortions are more burdensome than necessary." and "Governments are free in principle to pursue any national policy objectives provided the relevant measures are compatible with the GATS" (Moore 1999)<sup>16</sup>

There are reportedly WTO members who view local regulations, such as hours of operation and zoning as a problem and seek new grounds to challenge these (Gould 2002). In discussing barriers to trade in the construction industry, the European Community reportedly cited differences in building regulations as a problem.<sup>17</sup>

### Proposals to Expand Restrictions on Domestic Regulation

Changes to GATS rules on regulation of services, now being negotiated in Geneva, could mean that local councils face complaints about their regulations through the WTO complaints system. GATS Working Party on Domestic Regulations (WPDR) has developed proposals to expand restrictions on "domestic regulation" in ongoing negotiations under GATS Article 6.4.<sup>18</sup> Since 1999, the working party has been developing a "necessity test" to be applied to licensing, standards, and qualification requirements set by governments at any level. The test is intended to be a legally binding revision to the GATS. Such a revision to the GATS would be a WTO-imposed requirement that would go far beyond its trade mandate, since regulations judged to be not really "necessary" would become violations of the GATS (Gould 2002).

Unfair treatment of foreign companies is already prohibited under other sections of the agreement.<sup>19</sup> This clause extension would impose an absolute constraint on regulation that would apply even when foreign and local companies are treated exactly the same.

If these new restrictions on domestic regulation were agreed to, they would constitute an extraordinary intrusion into democratic policy-making. Under a necessity test, local councillors would be required to:

- Have an objective that a trade dispute panel would accept as "legitimate".
- Choose the least burdensome or the least trade-restrictive means of achieving their objective that is "reasonably available" to them.
- Ensure the measures taken and the objectives they are supposed to meet are an appropriate fit.

If a regulation was challenged a WTO dispute panel would decide whether the objective was worthy<sup>20</sup> and whether measures were not the least trade restrictive option, whether other less burdensome options were "reasonably available", and whether more effective measures could have been taken to meet the objective.

Decision-making on such matters is passing from democratically-elected governments (including local governments) to appointed tribunals and dispute-settlement panels at the WTO in Geneva. It could be argued that a trade panel determining the appropriateness of "regulations" from safety standards for manufactured goods to the licensing of hospitals to public water quality testing, is undermining governments' sovereignty.

Governments can complain about the laws or regulations of other governments to a panel of trade law experts. There is no right for local authorities to complain or defend themselves in these situations. A local authority being challenged would have no right to present to the panel its reasons for passing a particular regulation nor could it comment on the practicality of "less burdensome" options.

<sup>16</sup> "Liberalization? Don't reject it just yet", Mike Moore, *Guardian*, 26 February 2001.

<sup>17</sup> [http://docsonline.wto.org/gen\\_search.asp](http://docsonline.wto.org/gen_search.asp) for WTO Document Symbol: S/CSS/W/36)

<sup>18</sup> When the GATS was signed in 1994, negotiators had not completed the disciplines on domestic regulation. A specific group of trade officials (the GATS Working Party on Domestic Regulation) is drafting language to enable WTO members to challenge each others services regulations through the WTO dispute system.

<sup>19</sup> Articles stipulate that domestic regulations, licensing requirements, and technical standards must not constitute an "unnecessary barrier to trade in services" (Art. IV, S. 4). They also requires that these regulations must not be "more burdensome than necessary to ensure the quality of the service" (Art. IV, S. 4 (b)).

<sup>20</sup> The only objectives currently recognised as legitimate exceptions to the GATS (12) could be used only in extreme cases for measures to protect life or national security. Objectives of maintaining the character of neighbourhoods or reducing traffic noise may not meet this standard.

## Monopolies and Exclusive Service Suppliers

GATS Article 8, Monopolies and Exclusive Service Suppliers, is one of the GATS general obligations that applies in principle across all sectors. The GATS imposes restrictions on monopolies and exclusive service supplier arrangements. In fact, monopolies (such as in postal services, electricity supply, health insurance, water distribution) and exclusive supplier arrangements (common in post-secondary education, health care and other social services) are inconsistent with GATS provisions and must be listed as country-specific exceptions in covered sectors. Governments wishing to designate new monopolies in listed sectors are required to negotiate compensation with other member governments.

There are concerns that pressure is being put on governments to privatise or liberalise public services. European Union, for example, is demanding full-scale privatisation of public monopolies across the world as its price for dismantling the common agricultural policy in the new round of global trade.<sup>21</sup>

## Subsidies

Negotiation of 'disciplines' on non 'trade-distorting subsidies' are also underway (pursuant to Article XV). The position on subsidies is slightly ambiguous. The New Zealand government tends to the view that subsidies are not covered by the national treatment and market access rules, even where a service has been included in the schedule. However, this is contrary to the guidelines to negotiators drafting the original GATS schedules and the OECD's analysis of the agreement in 1994. It is also inconsistent with the negotiating guidelines agreed at the WTO in March 2001.<sup>22</sup> Specialist on GATS at the OECD Trade Directorate, Pierre Sauve, also identified that subsidies which have not been explicitly reserved in a country's schedules are covered by the agreement.<sup>23</sup>

## Government Procurement

GATS negotiations on government procurement in services have also started. GATS Article 13 excludes government procurement from the MFN, national treatment and market access restrictions. However, the GATS does not clearly and comprehensively define government procurement.

New Zealand is not a signatory to the WTO Agreement on Government Procurement. But there are moves to broaden that agreement, so it is worth anticipating a change of the government's position on signing this agreement – it may even become a compulsory part of the WTO, like GATS itself.

The Council may wish to advocate that their procurement decisions and procedures not be subject to GATS procurement restrictions. Council may wish to also urge trade officials to ensure that New Zealand's commitments under the WTO Agreement on Government Procurement are not extended to cover local-level procurement

Procurement is used by local authorities to support small to medium businesses, provide incomes to residents, or to promote environmentally friendly products and services. Council may wish to seek assurance that any government procurement clauses would preserve the freedom of government and the Council to continue to exercise choice in order for decisions to be made in the best overall interests of its community.

## Consultation with local government

As stated earlier GATS applies to measures taken by any level of government. While negotiated exclusively by national governments, its restrictions cover measures by "central, regional, or local governments and authorities" (GATS Article 1:3.a.i). The GATS also applies to "non-governmental bodies in the exercise of powers" delegated by any level of government (GATS 14 Canadian Centre for Policy Alternatives Article 1:3.a.ii).

<sup>21</sup> John Vidal, Charlotte Denny and Larry Elliott "Secret documents reveal EU's tough stance on global trade" The Guardian, Wednesday April 17, 2002

<sup>22</sup> Council for Trade In Services, Guidelines for the Scheduling of Specific Commitments under the General Agreement on Trade in Services, 23 March 2001 [S/I/92]

<sup>23</sup> Paper to the OECD/US Forum on Trade in Education Services, May 2002

There has been limited dialogue between the national government and local governments which will be directly affected by the commitments being made.

Commitments and limitations have not been open for public consultation and debate.

### **COUNCIL POLICY**

The Christchurch City Council has previously stated that it is inappropriate to constraint local authorities by an agreement to which local government is not a party and has sought exemption from such agreements (April 1998, May 2001).

The Council has sought assurance that that any government procurement clauses would preserve the freedom of the Council to continue to exercise choice in order for decisions to be made in the best overall interests of its community. This has included a request for assurances that there will be no restrictions on local governments rights regarding achieving social ends in procurement and no restrictions regarding conditions on suppliers that would "encourage local development or improve the balance of payments accounts by requiring domestic content, licensing of technology, investment, counter-trade or similar requirements" (September 2000, May 2001).

The Council's policies on preference for local suppliers are as follows: "That the Council adopt a policy of active preference within a small financial cost for local firms for the supply of goods and services, and actively seek out quotes from local firms for all possible supplies" (25/6/90) and "That all future tender documents be worded in such a way as to enable a comparison between New Zealand and overseas produced goods, where relevant" (19/11/90).

In practice most tenders are from local firms so the issue of giving them preference does not arise. The Council has adopted a balanced, pragmatic approach, sometimes awarding a contract to a local supplier, sometimes preferring an offer from an overseas company, and sometimes choosing a combination.

The Council has also noted that the requirement to award a tender on the basis of "value for money" alone does not even make good commercial sense (May 2001). It also noted that increasing attention is being given in the theory and practice of purchase and supply to building relationship, and formation of partnerships, in business and between businesses and public agencies. There is a growing body of experience in the commercial world showing that relationship contracting between buyers and sellers produce significant economic and strategic benefits in the form of lower costs of doing business and greater ability to meet strategic goals, and to do both on a sustainable basis. The shift in business practice is from managing contracts to managing relationships<sup>24</sup>. Comparative growth figures show that countries that followed more benign or pragmatic policy regimes have fared much better economically and socially (reference ?).

### **POLICY OF OTHER LOCAL AUTHORITIES AND MUNICIPALITIES**

NSW Local Government Association Conference last month passed resolutions asking for local government exclusion and for the Australian Federal Government to consult about the implications for local government of the WTO negotiations on Trade in Services (GATS). Melbourne City Council and Yarra, Port Philip, Moreland Council in Victoria and the Marrickville, Waverly and Leichhardt Councils in NSW have passed resolutions critical of the possible impact of GATS on local government services, and calling for full disclosure and information on the negotiations.

All Australian opposition parties, Australian Labour Party, Democrats and Greens now have policies critical of GATS, calling for all the requests and offers in the GATS negotiations to be made public, and supporting a Senate Inquiry into GATS.<sup>25</sup>

<sup>24</sup> References to managing contracts to managing relationships

<sup>25</sup> On November 13 the Australian Senate passed a resolution supported by all the Opposition parties calling for requests and offers in the GATS negotiations to be made public, which was reinforced by a formal request to the government to table these documents on November 15. On November 18 the Australian government refused to table them.

Seventy Canadian municipalities through the Federation of Canadian Municipalities have made similar appeals to their national government.

**COMMENT FROM MINISTRY OF FOREIGN AFFAIRS & TRADE AND PROFESSOR KELSEY FORM  
AUCKLAND UNIVERSITY AND DR BILL ROSENBERG**

Officials from the Ministry of Foreign Affairs and Trade were asked to comment on the issues raised in this report. The Ministry response is tabled together with a letter which the Minister sent to LGNZ in September 2002. The Council was not aware of this letter prior to the Ministry response.

Professor Jane Kelsey from Auckland University and Dr Bill Rosenberg were also asked to comment on the issues raised in this report. Their comments are included in the discussion regarding the MFAT response.

- Recommendation:**
1. That the Council write to the Minister for Trade Negotiations and the Minister of Local Government stating that:
    - (a) The Council believes that it is inappropriate that local authorities be constrained by an agreement to which local government is not a party.
    - (b) The Council believes public policy regarding the regulation, funding and provision of essential services should be made democratically by governments at the national and local level.
    - (c) That Council believes that no restrictions should be placed on local government's rights regarding achieving social and environment ends in procurement.
    - (d) The Council requests that the Government support the clear exclusion of public services at central and local levels from the GATS, including local government community services, environment and water services.
    - (e) The Council requests that the Government oppose any proposals which would reduce the right of local government to regulate services, including the application of a "least trade restrictive" test to regulation.
    - (f) The Council requests that the Government seek to eliminate the ability of WTO trade rules to overturn nation-state laws and practices that protect health, the environment, development and human rights.
    - (g) The Council requests that the Government seek:
      - (i) an amendment to the schedule, for example entering a reservation in the horizontal commitments to exclude local government; or
      - (ii) a carve out for local government by amending the GATS; or
      - (iii) an interpretation or clarifying declaration by WTO members that local governments are exempt from GATS.
    - (h) The Council requests that the Government commission an independent retrospective review on the WTO's impact on development, democracy, environmental sustainability, health, and human rights
  2. That a copy of this report be forwarded to LGNZ and other local authorities for their information and possible action.

3. That LGNZ advocate to central government on behalf of local government regarding the above concerns.
4. That the report be referred to the Canterbury Employers' Chamber of Commerce, the Canterbury Manufacturers' Association and the Canterbury Development Corporation.

## ***North Shore City rejects GATS***

**December 12, 2002**

North Shore City Council is far from impressed with the way the current negotiations on the General Agreement on Trade in Services (GATS) being conducted by the New Zealand Government with others in the World Trade Organisation (WTO) could affect local government in this country.

At its meeting this week, the council's strategy and finance committee was updated on GATS, the response to which was a mixture of surprise, anger and fear.

Committee chairperson Tony Holman says GATS rules are binding on all levels of government and so limit local authorities such as North Shore City to exercise its mandate to pursue social and environmental goals.

"We're far from impressed with the lack of consultation on this critical issue," says Councillor Holman. "We support Christchurch City's call for full transparency and consultation on GATS with local government." This reflects concerns being expressed in Australia, Canada and many other countries.

GATS was signed in 1994 under the WTO which administers the agreement designed to encourage freedom of international trade and removal of regulations deemed obstructive or anti-competitive. GATS applies to 160 service sectors, many of which are the responsibility, directly or indirectly, of local government. They include water services, transport, planning and building controls, community services including libraries and waste disposal.

"GATS is anti-social, anti-environmental and anti-triple bottom line not to mention anti-local enterprise, ownership and sovereignty," Tony Holman says.

"We don't need to look too far to see the folly of many free market experiments in our community, such as the power sector and building control deregulation. We don't need the gnomes of Zurich, Geneva, New York or the EU breaking up essential community and social services for their own profit."

One of the most worrying matters for North Shore City is the ability of foreign nations who are members of WTO complaining to our government on how New Zealand's 87 local authorities choose to deliver their services.

"It's bad enough that our local decisions are open to international scrutiny and challenge but what's even worse is that our local councils would not have the right to defend themselves against such a challenge and that compensation may be payable to nations deemed to have a right to enter our local markets.

"This is clearly a nonsense but deadly serious. We cannot find out what exactly is going on behind the scenes in Geneva and we've been told that we would be stopped from accessing the information under our own Official Information Act," says Tony Holman.

North Shore City is writing to Local Government New Zealand, the body representing the interests of this country's local authorities, and to the Government effectively endorsing the views expressed by Christchurch City Council (see below).

.....  
.....  
**All**

That the Council write to the Minister of Trade Negotiations stating that the Council:

1. Believes that it is inappropriate that local authorities be constrained by an agreement to which local government is not a party;
2. Believes public policy regarding the regulation, funding and provision of essential services should be made democratically by governments at the national and local level;
3. Believes that no restrictions should be placed on local government's rights regarding achieving social and environmental ends in procurement;
4. Requests that the Government support the clear exclusion of public services at central and local levels from the GATS, including local government community services, environment and water services;
5. Requests that the Government oppose any proposals which would reduce the right of local government to regulate services, including the application of a "least trade restrictive" test to regulation;
6. Requests that the Government seek to eliminate the ability of WTO trade rules to overturn nation-state laws and practices that protect health, the environment, development and human rights;
7. Requests that the Government seek: (a) an amendment to the schedule, for example, entering a reservation in the horizontal commitments to exclude local government, or (b) a carve out for local government by amending the GATS, or (c) an interpretation or clarifying declaration by WTO members that local governments are exempt from GATS;
8. Requests that the Government commission an independent retrospective review on the WTO's impact on development, democracy, environmental sustainability, health, and human rights.
9. Requests that Local Government NZ advocate to central government on behalf of local government regarding the above concerns.



Waitakere City

MEDIATION AGREEMENT BETWEEN  
SWANSON RESIDENTS AND  
WAITAKERE CITY COUNCIL

AUGUST 1993

PREAMBLE

MEDIATION AGREEMENT  
BETWEEN SWANSON RESIDENTS AND  
WAITAKERE CITY COUNCIL

PREAMBLE

Swanson residents and Waitakere entered into a mediation process as a means of resolving conflict over the future of the Kay Road balefill site and to address the understanding that the site would close on November 30 1993 and thereafter be used as a recreation reserve.

Swanson residents offered an outline agreement which allows Waitakere to honour the assurances made by an earlier Council to Swanson residents to close the site in November 1993. The agreement ensures that the site is finished in a planned and environmentally responsible way, it allows Waitakere to make appropriate alternative arrangements for waste disposal, and it minimises the financial burden on ratepayers across the City.

In recognition of the willingness of the Swanson Community to allow the closure date of the site to be extended by 3 years, Waitakere agrees to meet specified conditions and to provide a fund to enable residents to minimise the effects of the site on their community.

BACKGROUND TO AGREEMENT

1. The Council is the owner and operator of a balefill site situated at Kay Road, Swanson.
2. The operation of the site as a balefill is required to cease in terms of Waitakere's transitional district plan as at 30th November 1993.
3. Waitakere and the Residents commenced a process of mediation to address the understanding that the site would cease to be used thereafter and to reach agreement about issues associated with the requirement for closure of the balefill.
4. The Residents recognise the need for Waitakere to finish the site in a timely manner and to make alternative arrangements for the disposal of refuse in the City and have agreed on a means of facilitating the closure of the site and its ultimate development as a reserve.
5. Waitakere has agreed that it will close the site after the extension agreed on and will not thereafter use the site for depositing refuse and will covenant to use it as a reserve.
6. As the result of the mediation Council and the Residents have voluntarily reached agreement as follows.

**THE MEDIATION AGREEMENT**

## MEDIATION AGREEMENT

### PARTIES:

WAITAKERE CITY COUNCIL ("Waitakere") of the first part

AND

THE PERSONS NAMED IN THE SCHEDULE, being the owners and/or occupiers of the land described in the Schedule ("the Residents")

### TERMS OF AGREEMENT

#### The Kay Road Site

1. In this agreement the term "the Site" means the property owned by Waitakere at Kay Road, Swanson which is currently used by Waitakere as a balefill. In the event that Waitakere acquires other property adjoining the Site for the purposes of the balefill then so much of the land so acquired as is used for balefill purposes shall be included within the definition of the Site in this agreement.

#### Waitakere to proceed with consents and approvals

2. Waitakere shall proceed diligently to obtain all the consents and approvals necessary to carry on the operation of the balefill on the Site. It is contemplated that such consents and approvals shall include:
  - (a) A change to the District Plan to provide for the use of the Site:
    - i) As a balefill development for the depositing of baled refuse for the period specified in paragraph 3 hereof;
    - ii) Facilities for the collection of gas and its flaring or conversion into electricity or other energy use or to pipe gas from the site;
    - iii) Uses ancillary to the above including excavation and depositing of soil, treatment and disposal facilities, operation and maintenance of machinery and vehicles;
    - iv) Recreational use following the closure as a balefill consistent with the predominant and intermediate uses in the Recreation 1 zone of Waitakere's transitional District Plan.

- v) The continuation of a power generation plant after closure.
  - vi) Rehabilitation and aftercare.
- (b) A temporary land use consent to permit the continuation of the balefill until the change to the District Plan becomes operative;
  - (c) Resource consents to permit the discharge of leachate, gas and combustion products;
  - (d) Resource consents for the diversion, storage and discharge of stormwater and silt;
  - (e) Such further or other approvals and consents as may be necessary to give effect to this agreement.

**Operation of balefill for three years with maximum 6 months downtime**

- 3. The approvals and consents will be for Waitakere to continue the operation of the Site as a balefill until 30th November 1996. Should Waitakere be unable to use the site as a balefill at any time during the period 30th November 1993 to 30th November 1996 due to the absence of necessary consents or approvals then the closure date will be extended for such time as Waitakere is unable to use the Site up to a maximum of six months. In no case shall the use of the balefill extend beyond 31st May 1997. The approvals and consents shall also provide for rehabilitation of the site, attending to any necessary or incidental aftercare and for the continuation of a power generation plant from landfill gas beyond the closure date.

**Consent by Residents and agreement not to object or appeal**

- 4. The Residents acknowledge and agree that by signing this agreement:
  - i) They are consenting to the applications to be made by Waitakere for the necessary consents and approvals to give effect to this agreement.
  - ii) They will not revoke their consent and will not oppose the applications.
  - iii) They will not appeal against the grant of any such consents or approvals.
  - iv) They will use their best endeavours to support and facilitate the granting of consents and approvals and the avoidance of appeals.

**Outline Management Plan**

- 5. The parties acknowledge that Waitakere has developed in consultation with the

Residents an Outline Management Plan for the depositing of baled refuse and for the development and rehabilitation of the Site. The Outline Management Plan shall be amended to incorporate any conditions or requirements imposed in any approval or consent as set out in paragraph 2 and may be amended as provided in paragraphs 6, 8 and 11 hereof.

Upon the coming into effect of the approvals and consents the Outline Management Plan shall become the Management Plan for the Site. References in this agreement to the Management Plan shall include (where the context requires) reference to the Outline Management Plan.

6. Waitakere will forthwith publish and keep publicly accessible the Management Plan which will include a Reserve Landscaping Plan showing how the Site will appear in its finished state at the conclusion of the balefill and rehabilitation. Waitakere will in consultation with the Site Management Committee modify such plans from time to time to take account of any fluctuation in the volume of refuse deposited and likely to be deposited during the operation of the balefill.
7. Waitakere agrees that it will conduct the balefill operation in accordance with the Management Plan at all times.

#### Site Management Committee

8. There shall at all times be a Site Management Committee comprising representatives of the Residents and of Waitakere. The Site Management Committee shall overview operations in accordance with the Management Plan and shall approve any amendment of or departure from the plan provided that there shall be no such amendment or departure which contravenes any resource consent or other approval.
9. The Site Management Committee will comprise up to six members of whom 3 shall be appointed by the Residents in such manner as they may from time to time decide and 3 shall be appointed by Waitakere.
10. Waitakere shall consult with the Site Management Committee concerning administration and sequencing of the work.
11. The Site Management Committee shall be constituted as a subcommittee of Waitakere and shall be delegated to it the functions, duties and powers of Waitakere as to minor amendments to or departures from the Management Plan.

#### Registration of Covenant against future uses

12. Forthwith upon the coming into effect of the necessary consents and approvals as provided for in paragraph 2 Waitakere will register against the titles to the Site a land use covenant in which Waitakere will covenant in favour of the Residents and their successors in title that it will not use the Site for the depositing of refuse nor for any

other purpose except:

- (a) During the term referred to in Clause 3 hereof;
- (b) Attending to any necessary or incidental aftercare;
- (c) Works to rehabilitate the Site following its use as a balefill;
- (d) Works to develop the Site as a recreation reserve;
- (e) Facilities for the collection of landfill gas and its flaring or conversion into electricity or other energy use or to pipe the gas from the site;
- (f) Recreational uses as follows:
  - i) For the first thirty years as a passive recreation reserve;
  - ii) Thereafter as a "recreation reserve" within the classification in the Reserves Act 1977 or such other enactment as may then be in force.

#### Sunnyvale Sections

13. Forthwith upon the coming into effect of the necessary consents and approvals as provided for in paragraph 2 Waitakere will register against the titles to the properties owned by it and situated at numbers 86,94 Crows Road a land use covenant in which Waitakere will covenant in favour of the Residents and their successors in title that it will not use the said properties for any other purpose except:
- (a) Works to develop the properties as a recreation reserve;
  - (b) As a "recreation reserve" within the classification in the Reserves Act 1977.

#### Roadworks

14. (a) By 1 August 1994 or upon the coming into effect of the necessary consents and approvals as provided for in paragraph 2 (whichever is the later) Waitakere shall commence a programme of roadworks in the Swanson area in accordance with a plan to be agreed with the Site Management Committee which plan shall be as close as may be practicable to the Traffic Management Concept plan produced by Waitakere in consultation with the Resident number 10984 and dated June 1993.
- (b) If despite Waitakere's best endeavours, Transit New Zealand does not agree to a subsidy for the 1994/95 roading year then Waitakere may defer or reduce the scope of the roadworks with the consent of the Site Management

Committee. Should such consent not be forthcoming then Waitakere shall proceed with work identified by the Site Management Committee as priority safety - related work up to a maximum contribution by Council of \$60,000.

Buy-out option

15. In the event that the owner of any of the properties listed in Part II of the Schedule hereto is forced by reason of the continuation of the balefill to sell his or her property Waitakere will agree to purchase the property in accordance with the following provisions:
- (a) The owner of the property shall within six months of the recommencement of the balefill give a notice in writing to Waitakere stating that he or she requires Waitakere to purchase the property and the price which he or she considers to be the market value of the property.
  - (b) Within one month of the receipt of the notice Waitakere shall notify the owner that it accepts the price or that it requires the market value to be determined by arbitration in the manner provided below.
  - (c) The market value shall be determined by a single arbitrator if the parties can agree on one or failing agreement by two arbitrators (one to be chosen by each party) and an umpire and otherwise to be in accordance with the provisions of the Arbitration Act 1908.
  - (d) Settlement of the purchase and the giving and taking of possession shall be one month from the date on which the price is fixed unless the owner specifies a later date. The terms of the agreement shall otherwise be in accordance with the standard form of agreement for sale and purchase used by real estate agents in Auckland.
  - (e) In this paragraph the term "market value" means the value of the property at the time of valuation as if the balefill development at the Site had been completed on 30 November 1993.

No other claims

16. Except as provided herein or in case of mishap no Resident shall have any claim against Waitakere or any other person for any adverse effect on the Resident or on any property owned or occupied by the Resident arising out of or in any way connected with the continuation of the balefill in accordance with the provisions of this agreement.

Trust for mitigation of Adverse Effects and Community Facilities

17. The Residents will establish a Trust to receive and administer the payments to be made as provided in paragraph 18 hereof. The purposes of the Trust and of the payments shall be:
- (a) To make provisions for the health, safety, welfare and benefit of the residents of the Swanson area in such manner as the trustees in their discretion may determine;
  - (b) To provide for planting and landscaping in the Swanson area;
  - (c) To provide for the mitigation of adverse effects of the continuation of the balefill beyond 30 November 1993 for properties directly affected (other than those whose owners exercise the buy-out option in paragraph 15 hereof).
18. Waitakere shall pay to or at the direction of the Trustees of the Trust established under paragraph 17 hereof an amount to be calculated as follows:
- i) For such period as Waitakere is able to use the site for the depositing of baled refuse for a period not exceeding nine months at the rate of \$11,333.33 per month or part thereof;
  - ii) For such period as Waitakere is able to use the site for the depositing of baled refuse for a period exceeding nine months at the rate of \$102,000 plus \$14,000 per month for every month in excess of nine months.
- (a) Such payments shall be made in accordance with the following programme:
- One half of the sum will be paid upon the coming into effect of the consents and approvals as provided for in paragraph 2 hereof
  - One half of the balance shall be paid after one third of the period for which Waitakere is able to use the site for the depositing of baled refuse.
- The balance then remaining shall be paid after two thirds of the period for which Waitakere is able to use the site.
- (b) Pending any direction by the Trustees as to payment, Waitakere shall hold the amount payable in a separately identified interest bearing account on behalf of the Trust and interest therein (after tax) shall be added to the amount so held.
  - (c) In the event that Council obtains a temporary consent for the operation of the site for the depositing of baled refuse and does not obtain the consents or approvals to continue, then the amount due shall be payable at the time the

temporary consent terminates.

- 18A. Waitakere shall continue to investigate and shall provide to the Site Management Committee and to the Trustees of the Trust established under paragraph 17 all information received by it in relation to Health and Safety issues arising out of refuse disposal generally in the Site.

#### Aftercare and Rehabilitation

19. Waitakere will be responsible for all necessary aftercare during and after the conclusion of the balefill in accordance with the best practicable standards of care and will ensure that any adverse effects are minimised and the integrity of the development and the rehabilitation is maintained.

#### Agreement Requires Acceptance by Residents

20. This agreement shall not be binding on Waitakere until it has been executed by the owners and occupiers of not less than 4/5ths of the properties, other than those owned by Waitakere, situated within the area outlined in red on the locality plan which is annexure B to this agreement.

#### Right to Renegotiate and Withdraw

21. In the event that Waitakere has proceeded diligently as required by paragraph 2 but does not by 31 May 1994 have operative all the consents and approvals necessary to continue the balefill for the period provided in paragraph 3 then it shall consult with the Residents for the purpose of negotiating such amendments to this agreement as the parties may agree. If despite such consultation the parties are unable to reach agreement by 31 August 1994 Waitakere shall have the right to withdraw any outstanding proceedings or applications and not to proceed with the balefill extension.
22. In the event that Waitakere elects not to proceed with the balefill extension and provided that election has not been caused by the breach by the Residents of their obligations under paragraph 4 hereof Waitakere will proceed to register the covenant provided in paragraph 12 hereof and will proceed diligently to complete the site in accordance with Management Plan and in consultation with the Site Management Committee.


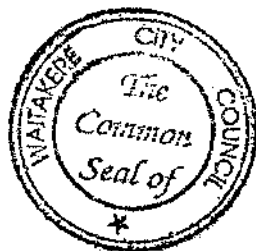
#### Naming of Reserve

23. Prior to the termination of the use of the Site as a balefill in accordance with paragraph 3 Waitakere will in consultation with the Residents decide on a name for the reserve on the Site.

EXECUTED by Waitakere CITY  
COUNCIL by the affixing of  
its seal pursuant to  
resolution number 2646/93  
dated 17 August 1993

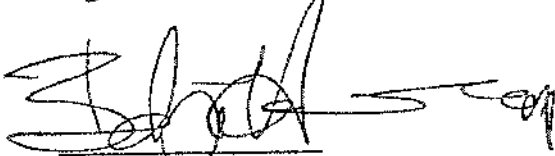


M.O. Dacombe, Chief Executive Officer



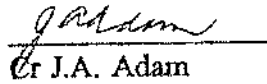
H.V. O'Rourke, General Manager:  
Finance & Administration

Signed on behalf of Council



Robert A. Harvey, Mayor

Signed on behalf of the Swanson Community



Cr J.A. Adam

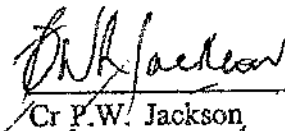
Ms J.K. Henley



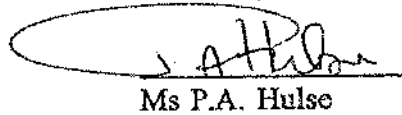
Cr H.M. Haslam



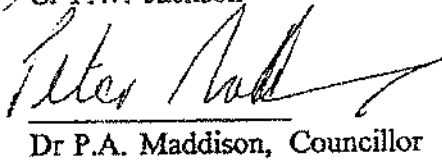
Mr G. Hogg



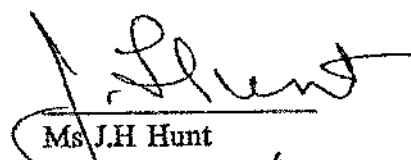
Cr P.W. Jackson



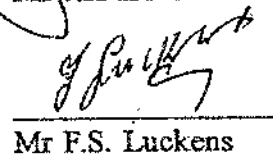
Ms P.A. Hulse



Dr P.A. Maddison, Councillor

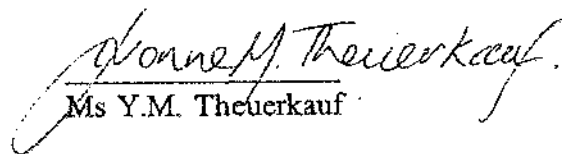


Ms J.H. Hunt



Mr F.S. Luckens

Mr S.L. Lake



Ms Y.M. Theuerkauf

Dated: 27 October 1993 at  
Waitakere City Council Chambers

Dated 27 October 1993, at  
Waitakere City Council Chambers

27 February 2003

Hon Paul Swain  
Minister of Transport  
**WELLINGTON**

Dear Mr Swain,

**LAND TRANSPORT MANAGEMENT BILL SUBMISSION**

Thank you for the opportunity to make a submission on the Land Transport Management Bill. Waitakere City is the fifth largest city in the country with a rapidly growing and young population. The City Council has for ten years pursued a programme to integrate transport investments with our urban development strategies as part of the development of a sustainable city.

The Council recognises that there are many valuable and significant changes to the direction of land transport contained in this Bill. We are especially pleased to see the broadening of focus for transport investment and support the purpose of the Bill "to contribute to the aim of achieving an integrated, safe, responsive, and sustainable land transport system." Waitakere City Council recognises that our particular city form and location provide us with a significant opportunity to benefit from investments in rail as well as roads and the proposed legislation provides a much more equitable framework for funding different modes of transport. The improved framework for long-term planning and investment is also significant. These elements of the Bill will significantly enhance our Council's and the Auckland Region's ability to deliver on the growth vision contained in our strategic plans and the Regional Growth Strategy.

However, Council is concerned that in places the consultation requirements are poorly worded and unclear. Also in some parts there needs to be checks against the Minister's decision making authority.

Council's submission on particular elements of the Bill is as follows:

**Part 1 – Preliminary Provisions**

- Council supports the inclusion of a 'Purpose' section in the Bill and supports the content of that section. We believe it is important to locate transport investments within a wide strategic framework so that the merit of any particular project can be judged in terms of its impact on wider sustainable development goals.

**Part 2 – Funding of Land Transport System**

- Council supports the requirement to prepare long-term financial forecasts and review these annually. Council also supports the requirements to consult in the preparation of these forecasts. It is our view that regional planning will be greatly improved by the preparation of these forecasts as is already being demonstrated by the work of the Regional Land Transport Committee in preparing a prioritised investment plan for the Auckland region. However, we ask that the consultation requirements under section 12 be tightened to ensure that agencies are not inadvertently tripped up by the lack of clarity of parts of this section. We refer to sections 12(1)(e) and 12(1)(g) which refer to 'representatives of land transport users' and 'affected Maori'. While we support consultation with these groups the wording of the Bill does not make it clear how an agency would determine who they are. Therefore, in fairness to public transport authorities and in order to facilitate progress we ask that the Government reconsider the wording of these subsections and / or provide definitions as to who is being referred to.
- Section 14 of the Bill provides for the Minister to give instructions to Transfund or Transit as regards funding decisions. While the Minister must consult the relevant entity about the practicality of the proposed

instruction, the Minister does not have to make the instruction subject to any long-term strategy or policy. This means that the Minister could impose a political imperative on these agencies that undermines the ability of Transit or another transport agency to implement a long-term strategy. This type of problem arises in other parts of the Bill. Council recognises that the Government should be able to direct its agencies and be effective in setting national direction. However, given the significance and cost of transport investments and the need to work to a long-term, integrated investment strategy, we ask that this section of the Bill be modified. It is suggested that the Bill be altered to the effect that the Minister should not be able to issue instructions that significantly alter a long-term financial forecast, or national or regional transport strategy without consulting affected transport agencies on that instruction.

Sections 15 to 22 of the Bill relate to the preparation of a land transport programme. Council supports this part of the Bill but again seeks clarification with regard to consultation. At section 15 it is not clear from the Bill who constitutes 'representatives of land transport users' or 'representatives of affected communities'. As with section 12 we ask that the legislation clarify who these groups are in order to facilitate progress and avoid unnecessary delays and possible re-litigation of projects.

Section 18 obliges all organisations preparing a bid to Transfund to 'consider the needs of persons who are transport disadvantaged'. Council supports this obligation. However, this group is not defined, nor is there any clarity as to what considering their needs means. We ask for further clarity in this section in order to increase the likelihood of it being given effect. Further, it is suggested that this obligation be added to section 15 to assist these matters being addressed as a matter of course rather than an add on to planning.

- Section 23 of the Bill is significant in that it identifies the basis on which Transfund decides which projects to fund. Council generally supports the funding framework in that it promotes what amounts to a triple bottom line approach. However, Council does not support the promotion of mobility as an objective. Mobility is about enabling people to move around as they wish. Access is about ensuring people can get the goods and services they need. While it is reasonable to expect transport agencies to provide access to goods and services, setting mobility as a goal may promote over investment in transport infrastructure to ensure people can be as mobile as they wish. In a context where government and this Council are promoting energy efficiency and sustainable development setting mobility as a goal is inconsistent with the wider strategic direction. Therefore, we ask that the reference to mobility in section 23(3)(c) be removed.

Further, the assessment criteria specified at Section 23(3)(e) that Transfund take into account how a project 'ensures environmental sustainability' appears to be impractical. It is not clear how a transport project could be shown to ensure sustainability. The other criteria listed in this subsection are not phrased as imperatives but are focused on improving and promoting community goals. It is suggested that subsection 23(3)(e) be reworded to "improve and promote environmental sustainability."

The issues of mobility and environmental sustainability also arise at sections 20(2) and 53(3).

Council also notes its support for the criteria of safety and personal security at section 23(3)(b).

- Sections 31 to 33 of the Bill provide the rules under which a Council can hold an interest in public transport services or infrastructure.

Section 33 is a significant change to the status quo in that it provides for Regional Councils to hold an interest in public transport services or infrastructure, generally subject to the Minister of Transport's approval. Council supports in principle the option for a regional council to own public transport assets via a public company as this may be implemented in a way that binds public agencies more tightly together in the coherent deliver of public transport services and provides options to the region.

However, the process by which the Minister makes a decision (S33(6)) is flawed and Council asks that changes be made to this process. This subsection of the Bill simply allows the Minister to make a decision without reference to any party other than the relevant regional council. Quite clearly local authorities may be significantly affected by the decision and should be able to make a submission to the Minister as a matter of right. Also, as with section 14, the Minister should not be able to make decisions that significantly alter a long-term financial forecast, national or regional transport strategy without consulting affected transport agencies. We ask that local authorities be given the right to make a submission and be heard before any change is made to the status quo.

Further, using the Order in Council process the Minister may be able to confer the right on a regional council to own very significant transport assets without consultation or going through a process of proposing and justifying a change to the status quo. It is suggested that this subsection of the Bill (s33(5)(a)) be removed so that all significant changes to the status quo are subject to a process of assessment and consultation.

- Sections 36 to 42 of the Bill relate to the work of the Land Transport Safety Authority. The Authority must prepare a Safety Administration Programme each year for approval by the Minister and subsequent funding by Transfund. These sections are straight forward except that while the Authority does not have to consult local authorities in the preparation of its annual programme we are obliged to 'give effect to, observe, and enforce' the programme as it is relevant to us. Council asks that as a matter of principle Council should be able to participate in the preparation of a programme of work that we have some obligation to implement. Further, notwithstanding that Section 38(3) of the Bill only requires Councils to comply 'so far as its financial resources reasonably permit'; it is possible that difficult and/or expensive actions may be required of us from time to time. It is our view that any agency that may be required to implement any part of the Authority's programme must be able to participate in setting that programme.
- Section 43 relates to Transfund's ability to reduce or recover payments that were made on the basis of incorrect information. It is suggested that the wording of this section is too strong. Transport agencies may, at least in theory, be exposed to significant costs if Transfund can recover payments where information is found to be 'erroneous or inaccurate'. Most projections of patronage or vehicle demand will be inaccurate to some degree. We ask that this section needs to be amended to include a requirement that there be a degree of significance involved and that a dispute procedure be invoked to make a decision on a problem. Further, Transfund should be required to make all of its reports and internal advice on a contested project available to the affected transport agency. This also arises in section 45.
- Section 44 appears to create problems for Councils operating in a commercial context. This section allows Councils to require information from each other and for Transfund to require information from Councils. It appears that this is not restricted by commercial considerations. Given that the Bill requires Councils to operate public transport through a company structure it appears necessary to allow those companies to keep some information confidential. It is suggested that this section be amended so that commercially sensitive information can be kept confidential where relevant.
- Section 46 of the Bill provides for Infrastructure Auckland to make grants to Transit for projects within the Auckland Region. This is beneficial in that it may enable projects to be implemented in a way which produces higher levels of benefit than might be achieved if Transfund is the only funder. For example, Infrastructure Auckland may help fund the extra cost providing a high level of mitigation to a project. However, while the Bill specifies that Infrastructure Auckland money must be spent in the region, in reality any money that Infrastructure Auckland gives to a project within the Auckland Region reduces the call on the national fund held by Transfund. Thus Transfund may be able to allocate more money elsewhere in the country if Infrastructure Auckland becomes a funder of Transit. Council asks that a method be put into the Bill ensuring that any money Infrastructure Auckland makes available to Transit is over and above funding that could reasonably be expected from Transfund for that project so that the Auckland Region does not in effect use Infrastructure Auckland money to subsidise projects elsewhere.

## **Subpart 2 – Tolling Schemes and Concession Agreements**

Council has reviewed this part of the Bill and supports the current wording. In particular the Council asks that:

- a) the Minister's discretion in tolls and concessions be retained;
- b) the consultation requirements be retained;
- c) the public sector protection from patronage risk be retained.

## **Part 3 - Administrative Provisions**

- Sections 70 and 79 identify the objective of Transfund and Transit – to allocate resources to achieve an integrated, safe, responsive and sustainable land transport system. In doing this Transfund 'must exhibit a sense of social and environmental responsibility'. Council notes its support for these requirements.

- Sections 75 and 84 of the Bill and clause 48 of Schedule 1 enable Transfund and Transit to borrow with Ministerial approval. Council supports this ability as it enables the costs of infrastructure projects to be spread more fairly amongst those who benefit from the project. Further, Council asks that consideration be given to Transfund and Transit being enabled to raise debt to fund a "network" rather than just individual projects. This would provide a higher level of certainty that projects would get built. However, we would expect that each project would still need to be justified and go through a resource consent process.

Finally, Council also notes that there is something of a health 'theme' in the Bill. In preparing its annual programmes Transit must consult the Ministry of Health and there is a requirement to assess the extent to which a project 'protects and promotes public health'. This is different to safety and no doubt reflects the growing realisation of the extent to which transport emissions affect health. Council supports this and hopes to see an expansion of the Government's work in this area to better identify the health effects of transport and effective means to reduce them.

Once again, thank you for the opportunity to make a submission on this important piece of legislation. We ask that momentum be maintained in establishing this broad framework for planning and funding transport infrastructure and that the passage of this legislation receive priority in the Government's programme.

Yours sincerely,

Harry O'Rourke.  
Chief Executive