

## ***Hon. Sir Roger Douglas MP ACT***

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*"In all that people can do for themselves, the government ought not to interfere."*

- Abraham Lincoln

### **I Executive Summary**

This paper has two purposes. The first purpose is to propose mechanisms that will enable greater community representation in Local Government. These mechanisms include greater residential choice over Council size and representation, as well as stricter democratic checks on Council expenditure.

The second purpose is to emphasise that the functions delegated to Councils determine the scope of Council activity, and therefore the value of the rates paid by ratepayers.

There are two ways to reduce the waste in Local Government. One way is to adjust the structure of Local Government, making it more innovative and competitive.

In the long term, this protects residents from Councils which engage in low-value spending by giving residents more choices. The other way is to limit the functions of Local Government to reduce its expansion into those areas which are inappropriate or particularly wasteful.

Both ways are important if the level of waste in Local Government is to be addressed.

The Royal Commission on Auckland Governance, however, focussed only on structure. That is why the mayors and councillors have spent the whole duration of the Royal Commission process seeking to protect their own territory, while continuing to spend more money and increase rates.

Any determination of the appropriate structure for Local Government must flow from the functions which central Government delegates to it – only if we know what powers Local Government is exercising will it make sense to talk about how we wish to structure the body that exercises those powers.

Given that the Royal Commission was expressly prohibited from considering “the purposes and principles of Local Government as described in the Local Government Act 2002”, it was entirely predictable that it would come up with the confused structure it did.

In terms of structure, there should be two distinct levels of Local Government. The first level is the Greater Regional Council, which will oversee the broad issues like arterial roading and stormwater. The number of staff employed in this role need not be significant.

The second level is the Community Council, which has the role of representing the local community and carrying out those activities that primarily affect the community. It should be noted that, while this paper focuses on Auckland – and more specifically the role of Community Councils in Auckland – the basic model is able to be applied to other regions as well.

On the community level, Councils should be designed to allow greater choice and competition between Community Councils, as well as providing for greater community control over expenditure.

Mechanisms that allow individuals to opt out of certain Council functions, and groups of individuals to switch Community Council, create a new Community Council, or amalgamate with an adjacent Community Council will foster greater competition between Councils. Such competition will allow more diversity and experimentation within Local Government.

Successful Community Council models will be able to be copied, and become the industry standard. For example, some Councils may decide to completely contract out the services that they provide, while others may directly employ staff to carry out the delegated functions. Regardless of the decisions that are

made, the results will be obvious to all as to which model is more effective at delivering services and constraining costs.

The most successful model will then be able to be emulated, with the benefits going to the ratepayers in the form of superior service and lower rates.

In terms of functions, the powers of Local Government – on both the community and regional level – must be constrained by central Government. That means removing the power of general competence.

Any delegation of authority to Local Government should allow it to provide genuine public goods, while constraining activity in areas in which the market performs better. Given that Local Government will have the authority to spend money on the provision of public goods, then it must also have the capacity to set its own rates.

This paper sets out: first, the problems with Local Government, second, a proposed structure for Local Governance that would allow Councils to adapt over time, while subjecting them to competitive pressures; and third, what the role of Local Government under this revised structure should be.

## II The Problems with Local Government

Structurally, Local Government is currently a monopoly. Although people can switch Local Governance supplier by moving suburb, the transaction costs are far too high to make Councils genuinely competitive. The effect of high transaction costs are to limit choice and competition, thereby inhibiting the benefits that competition delivers in terms of reducing costs and improving service quality. With poor competition in Local Government, rates have increased substantially in recent years. They have not delivered value for money.

In addition to the structural flaws, Councils have been delegated an ever larger role in our lives since 2002. This has seen the size of Councils' budgets soar, along with the rates that ratepayers are required to pay. Often, this spending has been advanced because it is in the special interest, rather than the general interest. With low voter turnout, special interests have been particularly effective at hijacking the ratepayers' wallets and purses for their own gain.

There is no other explanation for the kind of expenditure that we have seen on subsidies for sports and cultural events, funded from already-squeezed ratepayers.

If we are to genuinely end Council waste, and ensure that Councils deliver value for money, then both the structural and functional issues need to be addressed.

## III A Structure for Local Government

The principle that should underlie the structure of Local Government is that those most affected by Council decisions must have the capacity to voice their opinion. This principle is commonly known as subsidiarity – the idea that

matters ought to be dealt with by the least centralised but competent authority possible.

For decisions over things like what food to eat or what job to seek, the most appropriate authority is the individual. For decisions over things like the local library or swimming pool in a community, the most appropriate authority is the community. However, as the effect of policies broaden – such as policies relating to regional parks or large roading proposals – it makes sense for such decisions to be made at the regional and, where appropriate, national level.

#### A The Greater Auckland Council and Community Councils

While the focus of this paper is primarily on the role of the second-tier level of Governance (i.e., the level below the Greater Regional Council), it is useful to provide some explanation of the role and size of the Greater Auckland Council itself. The Greater London Authority – which has wider functions than the Auckland Council, covering police and health services as well – has only 600 staff. With those staff, the Authority is able to plan and implement the policies that are part of the proper role of Government.

If Auckland were able to operate similarly, then we would be able to reduce rates heavily, while empowering the community-level government to undertake those decisions which have more direct impacts on their community.

It is important that those making decisions for the spending of money also raise the revenue required to pay for it. If decisions can be made by a community and then funded from the Greater Regional Council's budget, then it is clearly in the interests of the community to spend as much money as they can.

Furthermore, even if the flow of funds is limited in some way from the regional to the community level (i.e., bulk funding, as has been proposed), then Community Councils will still be strong spending advocates. As each Community Council seeks to consume more of regional revenue than they are required to pay, there will be the potential for a general inflation in the level of rates.

Only when Government bodies are held responsible for setting and collecting rates and expenditure will there be adequate checks on their capacity to spend. The rates set by Community Councils could be collected on their behalf by the Greater Regional Council, but it is most important that the resident knows which portion of rates goes to the Community Council and which portion goes to the Greater Regional Council.

While the Government's position on Community Councils – a position which departs from the Royal Commission's absurd proposal to have only six local Councils beneath the regional authority – is generally sound, it is also important that Community Councils are held accountable for what they spend. This will only occur if they raise their own revenue.

#### B Choice and Flexibility

When it comes to determining the size of Community Councils, it is necessary that the structure is flexible. This will avoid the need to reconsider the issues centrally further down the track. This means that the structure must be malleable in response to the changing wishes of the communities. In this sense the Government is moving in the right direction by allowing more local Councils, but further gains could be made in this area.

The need for adaptability suggests two things about the structure of Community Councils.

First, it is important to allow ratepayers to have a say up front over how many Community Councils there are. The suggested boundaries should be drawn up by the Local Government Commission and a submission process implemented that allows ratepayers to adjust the boundaries and seek to have new Councils created.

Small communities could seek to have their own Community Council if that was their wish. Second, ratepayers should have the capacity to change Council boundaries over time.

There should be several ways to alter the boundaries of Councils. The first way is to allow areas of some defined minimum population size (say, for example, 10 000 people) to seek a referendum creating a new Community Council for their district. This number would obviously need to be smaller for rural communities that may wish to create a new Council (perhaps 2 000 people, or a geographically defined area). This would allow small communities of interest to structure their Community Council in a way that reflects their distinct interests.

With the referendum capacity outlined below in part IV, which allows for an expansion of Community Council functions, this would enable a diversity of Local Government models.

In addition to this flexibility, a group of citizens adjacent to another Community Council should be able to opt-out of their current Council, joining the neighbouring Council, if they think their mode of service delivery is more suitable to their wishes. The capacity to change Council will create competition for ratepayers, which is likely to see value for money being delivered by Local Government. Although this choice would only be able to be used by those at the edges, the capacity for others to change providers drives efficiency and therefore benefits all ratepayers.

Moreover, Councils should be able to amalgamate. Where communities of interest change over time, or should one set of ratepayers think that another Council's services are better, then they should be able to join together with them to serve a larger set of ratepayers. Equally, it may sometimes make sense for Councils to split in two, but this process would be driven by and determined by ratepayers.

This ensures that residents have not only the option of voice in local Governance, but also the capacity to exit Governance arrangements that do

not suit them. The capacity for successful Councils to draw in additional ratepayers around their boundaries, or alternatively for successful Councils to expand by amalgamating with Councils from other areas, ensures that there is some level of competition between Community Councils. This competitive element protects all ratepayers, because the capacity for others to make choices at the margin ensures we all receive better services for less cost. In addition, competition will allow for much greater choice amongst ratepayers.

This will allow the diversity of our communities to be reflected through a diversity of Community Councils.

This kind of flexibility is even more important in the longer term. Given the unpredictable way in which Auckland will grow and develop, this mechanism allows the structure to evolve with the changing needs of the people. This will ensure that costly reviews and restructuring are not necessary in the future, and also that change comes from the residents, rather than from central Government.

### C Competing with the Market

Some of the standard roles of Councils, such as rubbish collection, are increasingly being duplicated by private market competitors. Many ratepayers are essentially willing to pay twice for rubbish collection – once through Councils, and once through private companies like Dimac Bins. Given the difficulty of competing against free or heavily subsidised services, this suggests that the private market is delivering far superior service.

This duplication is unnecessary, and could be reduced if we allowed ratepayers to opt out of certain Council functions.

Any rates bill received by a ratepayer should set out where their rates were spent. Once received, ratepayers should be able to opt out of certain functions undertaken by the Council in exchange for lower rates. Examples of activity where this sort of system could be successfully implemented are rubbish collection and recycling.

By allowing greater consumer choice, we provide a further incentive to mitigate waste in the delivery of Local Government services. Although this option would not be available in those areas where there are cross-subsidies occurring (e.g. it would be inappropriate to be able to opt out of paying for parks, pools, libraries, etc.), it would act as a way to reduce costs and increase the level of diversity in certain services.

### IV Key Points on Structure

There are several key points that are required to create more democratic, competitive, and efficient Local Government in Auckland:

- The number of Community Councils should be decided by the people.
- Community Councils should be small enough to represent genuine

communities, not mere bureaucratic structures like those advocated by the Royal Commission.

- Communities should elect their own Community Councils, and these Councils must have real powers (e.g. the capacity to set rates).
- Each Community Council should be made up of a mayor/chairperson and no more than five councillors.
- They should not be allowed to have more than 24 paid meetings a year.
- Ratepayers should be given greater choice in terms of which Council serves them (i.e., they can pick adjacent Councils), and successful Councils should be allowed to merge with others Councils. New Councils should also be able to be created.
- Any budget of a Community Council should be endorsed by the community at a community annual general meeting. That is, the rates should be discussed and voted on. If rejected, Community Councils should have to adapt them and hold a second meeting.
- Any proposal that increases spending by more than 2.5% on any single activity would need to be passed in a referendum (see below).
- For the Greater Regional Council, there should be a mayor and eight councillors also elected at large. Given the local representation that will exist at the Community Council level, what is needed at the Regional level is more like a high-powered Board of Directors with a diversity of skills and experience. This is more likely to occur when the councillors are elected at large, and a board of eight is likely to attract top quality candidates.
- The functions of both Community Councils and the Greater Regional Council would be prescribed by legislation (see Appendix One and Two).

## V The Functions of Local Government

The functions that Councils are delegated – on both the Regional and Community level – should be limited. Should the Council wish to expand their functions outside those specifically enumerated, they should be required to get the agreement of the ratepayers. This is equally true when it comes to large spending increases undertaken by Councils. A limitation on the functions and spending, subject to ratepayer control, enables ratepayers to exercise greater democratic control over their elected representatives.

### A What Governments Should Do

The role of Government should be limited to the production of those goods or services which people want but that, without Government interference, individuals could not produce for themselves through voluntary means. The bulk of goods and services in New Zealand are able to be privately provided

through the market. To the extent that this is true, the market should continue to fulfil this role. However, in certain situations, markets fail.

For example, markets create poor incentives when it comes to the private provision of public goods. It is important to be precise about what is meant by a “public good.” A public good is not just a good that is provided to the public at large. A public good is a good that is both non-rivalrous and non-excludable. In other words, a public good exists when consumption of a good by one person does not reduce the consumption of the good by another person, and when once the good is provided it is necessarily provided to all.

An example of a public good is defence – when the navy defends our waters, it necessarily defends all those living in New Zealand.

Examples of traditional public goods other than defence are the courts and the police. In addition to these traditional functions, there is also a case to be made for the provision of health and education to the public. Even those goods need not be directly provided by Government. Lower taxes would enable many to purchase private health insurance or fund education at a private school. Alternatively, School Voucher schemes and Health Savings Accounts would create a mixed system of private provision and public funding, enabling consumers to choose the services they want while also ensuring that every one can meet their education and health needs.

In addition to the provision of public goods, many Governments also undertake programs on the basis of equity. Transfer programs, for example, are often not justifiable on the grounds that they fulfil a public good, but are instead justified on equity grounds. To the extent that the public wishes to adopt a program on the grounds of equity, it is more appropriate that this occur through central rather than Local Government. There are two main reasons for this.

First, the distribution of wealth within a Council’s area is not known to the Council – rates are set on the basis of the value of the land. Land value is a blunt instrument to determine the actual relative wealth of ratepayers. This suggests that redistribution at the local level is unlikely to reflect genuine wealth, and therefore could be counterproductive.

Second, the fact that central Government also deals with equity issues may lead to policy duplication – or worse, policy inconsistency – which will exacerbate Government waste. Local Government has little role in pursuing policies on equity grounds.

Local Government is only legally allowed to undertake those functions specifically delegated to it by central Government legislation. Any exercise of power beyond that specifically enumerated is considered to be ultra vires. The relationship between central and Local Government was changed considerably when the power of general competence was granted to Councils in 2002.



The granting of this power has led to an expansion of Local Government activity away from their core roles and into areas for which Local Government is ill-suited. Local Government should be confined as far as possible to the delivery of genuine public goods. Councils should be able to undertake activities beyond the provision of public goods, but only after such activities are approved through a referendum process (in the case of a Community Council), or after central Government has approved such activities (in the case of a Greater Regional Council).

#### i Spending Referenda

There would be two situations in which a Community Council decision would be put to a public referendum. First, any decision to increase spending (and therefore rates) on any single activity by more than 2.5% would need to be approved by the ratepayers. Where rates were to increase beyond the rate of inflation, they would need to be certified by the residents at the Annual General Meeting. Second, any expansion of the Community Council's role beyond those functions set out in Appendix One, would need to be approved by the community.

The first step in the referendum process would be for the Community Council to come up with a spending proposal (for example, they may propose to build an entertainment venue in their community). Their proposal would need to set out the estimated costs, as well as the outcomes that they were hoping to achieve. Second, this proposal would be independently audited by a third party – perhaps by the Office of the Auditor General.

This audit would include a cost-benefit analysis. Third, a referendum would be held which would put the Council's proposal, with the independent cost-benefit analysis, before the electorate. The referendum would make clear to all the residents the costs and potential benefits of the policy, ensuring they had sufficient information to adequately decide whether such a proposal was worthwhile.

The other way to achieve greater ratepayer control of Community Council spending is to require Community Councils to present their planned budget to an Annual General Meeting, and require the budget to be passed by the residents. Should the residents not pass the budget, then the Community Council should be required to come back to the residents with an alternative proposal. In this way, Community Council spending will be subject to greater democratic checks, helping to reign in spendthrift Councils.

#### ii Privatisation and Corporatisation

Those functions which are not public goods – such as the operation of ports – should be privatised, or structured by the Council as a business (much like State-Owned-Enterprises). The ports face a particular problem, with port rationalisation being in the economic interests of the nation. Unfortunately, most Councils hold onto these assets hoping they can use them as cash cows. The only option with ports is a divestment to the ratepayers, which will create a more realistic and competitive environment for the traded goods sector of our economy.

The profit motive is particularly effective at reducing waste, because it provides a benefit to shareholders in the form of profit if waste is cut.

However, the effect of competition between alternative suppliers ensures that the benefits of cutting waste are ultimately derived by the consumer, who pays lower prices than they otherwise would if the waste persisted. This is why the privatisation or corporatisation of Government-owned assets has historically led to lower prices, more production, greater levels of efficiency, a greater variety of goods and services, and higher quality standards.

In areas where there will be a lack of competition – such as the provision of water – it is important for Councils to operate a user-pays system, while regulating market power. Even if held in public hands, regulation of market power is necessary to avoid these assets being used as cash cows by Local Government. In many parts of Auckland water is metered. This model should be expanded to other areas as well. Unless water is metered, water is paid for through rates. The marginal cost of water to the individual is essentially zero, providing incentives for overuse. Put simply, those without pools subsidise those with pools.

The lack of marginal pricing ensures that people over-consume water, and the effect of every one over-consuming is that our overall rates are high. If water was metered and charged on the basis of actual use, then people would make more of an effort to conserve water and reduce their use of it. The use of pricing is consistent with environmental aims of reducing water overuse.

The process of privatisation need not see assets transferred into the hands of large corporations should the public not wish that to happen. There are two alternative ways to privatise assets. The first way is through a share distribution to the ratepayers in the region, restoring genuine public ownership over these important assets.

The second way, which is likely to be less effective, is through the creation of companies that distributed profits back to those who used their services.

## VI Conclusion

Unless the functions of Local Government are explicitly set out, then we will continue to see the unnecessary and wasteful growth in Local Government of the last few years, and the increase in rates that such growth necessitates. The proper role of Local Government is the delivery of public goods. Should ratepayers wish to expand the role of their Council beyond that, then they should do so through a referendum process.

In terms of the structure, the golden rule is that decisions must be made by those closest to the action. Capability to make the decisions also necessitates responsibility for raising the revenue to pay for it.

Unless they are required to raise the revenue, Community Councils will join the queue of special interests which advocate increased spending. By devolving power to the community level where appropriate, we will empower

local communities and allow greater diversity and competition in Local Government.

**Appendix One: The Functions of Community Councils**

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

**Appendix Two: The Functions of the Greater Regional Council**

<b>Regional Policy-Making Functions</b>	<b>Regional Service Delivery Functions</b>	<b>Regional Administrative Services</b>
<ul style="list-style-type: none"> <li>• Transport planning</li> <li>• Economic Development <ul style="list-style-type: none"> <li>◦ Infrastructure</li> <li>◦ Branding</li> </ul> </li> <li>• Environmental Planning <ul style="list-style-type: none"> <li>◦ Policy Statement</li> <li>◦ Coastal, air, water controls</li> <li>◦ Hazard management</li> </ul> </li> <li>• Recreational planning</li> <li>• Regional parks</li> <li>• Other regulatory matters</li> </ul>	<ul style="list-style-type: none"> <li>• Civil defense</li> <li>• Promoting sport and recreation</li> <li>• Biosecurity</li> <li>• Harbourmaster</li> <li>• Arterial road construction and maintenance</li> <li>• Water, wastewater, stormwater drainage</li> <li>• Solid waste management</li> <li>• Zoo</li> <li>• Regional parks</li> <li>• Regional facilities for sports and culture</li> <li>• City centre and waterfront</li> <li>• Regional library</li> <li>• Cemeteries and crematoria</li> </ul>	<ul style="list-style-type: none"> <li>• Prepare annual financial plans</li> <li>• Make and administer rates for Regional Authority</li> <li>• Provide shared services as agreed between Regional Authority and Community Councils</li> <li>• Asset and liability management</li> <li>• Public information services</li> <li>• Inform Community Councils on matters affecting regional functions</li> </ul>