

BRIEFING TO THE INCOMING MINISTER OF LOCAL GOVERNMENT

1. Property Council New Zealand (“Property Council”) is a not-for-profit organisation that represents New Zealand’s commercial, industrial, retail, property funds and multi-unit residential property owners. Property Council New Zealand represents all the forms of commercial property and property investment in New Zealand.
2. Property Council Members own or manage property portfolios the value of which exceeds \$25 billion. Our organisation actively involves itself with central, local and other government associated bodies, promoting the views, goals and ideas of our members. Property Council’s underlying policy is that economically sustainable communities are good for New Zealand’s future well-being, and that such communities will only be viable if we do three things:
 - re-establish New Zealand as an attractive investment destination;
 - improve local and national governance through law reform; and
 - further invest in infrastructure and utilities that secure New Zealand’s economic prosperity.

A Road for Reform

3. In September 2008 Property Council released its manifesto document, *A Roadmap for Reform*, which codifies a series of public policy changes that are necessary to transform and reenergise New Zealand’s economy. *A Roadmap for Reform* calls for the following:
 - economic growth (starting with an overhaul of the Resource Management Act 1991);
 - fairer taxes;
 - greater overseas investment;
 - cutting red tape;

- delivering the dividends of wealth creation back to the creators of wealth;
 - smarter governance at all levels of government; and
 - the opportunity for all New Zealanders to own property, gain financial security and enjoy a quality standard of living
4. Property Council is committed to working with the New Zealand Government to advocate for public policy reforms that deliver the aforementioned policy outcomes. We see the deliverance of these outcomes as one that first requires collaboration and a common purpose between the New Zealand Government and the business community (including the commercial property sector).

Public policy in the context of New Zealand's current economic profile

5. Property Council starts out from the perspective that New Zealand's economic fortune since 2001 has been built on high commodity prices, which has shielded the economy from the problems created by structural deficiencies in terms of the labour market, low productivity, inadequate infrastructure, low savings rates, and a high rate of taxation. Inflationary pressure has forced the Governor of the Reserve Bank to maintain a tight monetary policy, which has led to New Zealanders paying some of the highest interest rates in the OECD.
6. Current monetary policy has provided the Reserve Bank with significant means to reverse New Zealand's economic decline. With the Official Cash Rate currently set at 6.5 per cent, New Zealand has significant capacity to reduce the cost of credit and maintain domestic liquidity. The Crown also has a low level of Net Debt, which enables it to borrow in order to fund infrastructure (a stimulus) and (less likely) personal tax cuts.
7. However, New Zealand continues to be buttressed by structural problems in the labour market, barriers to foreign investment, a low skills base, inadequate infrastructure, a tax system that stymies investment, and a poor savings base. While economic transformation is necessary, it starts with the requirement to address the fundamental structural problems that constrain New Zealand's performance within an already unfavourable global economy.

Local Government: power of general competence

8. Property Council maintains that the power of general competence has played a role in many units of local government failing to ensure prudent stewardship, as well as failing to efficiently and effectively use resources in the interest of its respective communities. The latter outcome is one of the reasons why stakeholder organisations, such as Property Council (which represents commercial property owners who pay the largest proportion of land rates in New Zealand), campaigned for reforms to the way the local government sector is funded (which in turn led to the Independent Inquiry into Local Government Rates).
9. The LGA 2002 vests wide powers in local authorities, which are body corporates of perpetual succession. The investiture starts with the power of general competence, which is codified pursuant to section 12(2) of the LGA 2002, where a local authority has:

“(a) full capacity to carry on or undertake any activity or business, do any action, or enter into any transaction; and

“(b) for the purpose of paragraph (a), full rights, powers and privileges.”
10. The move to vest in the local government sector the power of general competence was consistent with the previous government’s philosophical approach to local government, which can be summarised in terms of moving from prescriptive to enabling. The power of general competence is analogous to section 16 of the Companies Act 1993.
11. Property Council acknowledges that the move to the power of general competence has been tempered with the imposition of some limitations, as well as the requirement for units of local government to engage in community consultation. The power of general competence does not give units of local government the discretion to exercise discretionary powers over other statutes.

Recommendation to Minister of Local Government:

Property Council recommends amending the LGA 2002 to clarify the precise role and function of local authorities, based on the delivery of core services to the community, as an alternative to the enabling provisions currently codified in section 12(2).

Local Government funding

12. Rates are a property tax, which do not necessarily bear any relation to important equity and affordability issues. They do not accurately reflect the property owner's demand for and use of services provided by local authorities or the property owner's ability to afford increasing rate bills. Perverse outcomes that need to be addressed range from business users receiving no additional benefits or services for paying higher rates based solely on flawed criteria, through to elderly people on fixed incomes receiving massive rate increases on the back of renewed property valuations.
13. The Local Government (Rating) Act 2002 ("LGA (Rating) 2002"), which provides local authorities with the power to set, assess and collect rates to fund its activities, fails to prohibit unfair distortions often levied at the expense commercial rate-paying property owners. Property Council supports most of the implementation of recommendations from the Independent Inquiry into Local Government Rates, which was released in August 2007. The immediate implementation of the following recommendations are of particular importance:
 - that local authorities move away from fully funding depreciation, with the development of longer-term funding policies that take better account of intergenerational equity, and the availability of longer-term debt financing;
 - that councils review and reduce forecast rate increases where that is consistent with their longer-term funding policies;
 - that the power to set uniform annual general charges be removed from the LGA (Rating) 2002;
 - that the 30 per cent cap on uniform charges be removed from the LGA (Rating) 2002;
 - that rating differentials be removed from the LGA (Rating) 2002 from an operative date of 1 July 2012; and
 - that a common rating system be promoted across the country for general rates.

14. Implementing these changes would force the local government sector to properly allocate the cost of funding the development of public infrastructure across the generations of users who will benefit from that infrastructure. The changes would also ensure that different groups of ratepayers are no longer overcharged an unfair proportion of property rates.

Recommendation to Minister of Local Government:

Property Council recommends amending the LGA 2002 and the LGA (Rating) 2002 to enact key recommendations from the Independent Inquiry into Local Government Rates, in order to address perverse outcomes, provide fairness between different categories of ratepayers, and to increase transparency across the local government sector.

Development Contributions

15. Territorial authorities are able to formulate and apply a development contributions policy pursuant to the LGA 2002. However, the non-prescriptive nature of the statutory provisions has resulted in the local government sector exploiting the scope and application of this funding mechanism.
16. The majority of territorial authorities have adopted a development contributions policy, which enables those authorities to recoup the costs of growth-related expenditures from property developments (the developers of which then pass on the cost to future residential and commercial property owners). Many territorial authorities have elevated development contributions to become the main source of funding for future asset development and an increase in the capacity of existing assets. This preference fails to give adequate recognition to the benefits of capital expenditure, which will accrue to existing ratepayers as improved levels of service and through extending infrastructure life. It consequently loads a disproportionately high share of costs onto residential and business growth.
17. Property Council supports a transferring the entire development contributions provisions currently codified in the LGA 2002 to the Resource Management Act 1991 (“the RMA 1991”). It is critically important that Parliament enacts a regulatory environment that forces territorial authorities to demonstrate that their development contributions policy –

- correctly allocate the costs of the territorial authority's asset development program, between growth (new) and deferred capital expenditure (catch-up); and
 - spread the costs of growth-related capital expenditures so as to ensure that those who benefit from improved levels of service and infrastructure pay for that service and infrastructure.
18. Development contributions will always be a compliance cost, which will be passed on to the property owner. However Property Council considers that development contributions have a wider economic and social impact, which is manifest in terms of –
- housing affordability, particularly for younger people (who are sensitive to changes in the cost of housing);
 - demand for transport infrastructure as people seek affordable housing in remote locations, often far removed from paid employment; and
 - the inflationary impact of more expensive housing and increased transport costs (resulting from development contributions).
19. A new statute should require that territorial authorities, when drafting a development contributions policy, should evaluate and take into account –
- the economic and social benefits and costs of the policy, as well as the rules and methodology that shall apply;
 - the benefits and costs of requiring development contributions to fund capital expenditures vis-à-vis other funding mechanisms (e.g. debt funding and rates); and
 - the benefits of a development, which offset the costs of a development.
20. Any person charged a development contribution should have the statutory right of appeal. Property Council recommends that the right of appeal a development contribution should be analogous to the provisions of the RMA 1991, which enables any person charged a financial contribution to appeal that decision to the Environment Court. This recommendation is feasible given existing

jurisprudence as well as that Court's experience in deliberating on contribution-type appeals.

Recommendation to Minister of Local Government:

Property Council recommends amending the LGA 2002 to transfer the development contributions provisions currently codified in the LGA 2002 to the RMA 1991. Concurrent to any statutory amendments that specify the content and application of development contributions policies, Parliament needs to give any person the right to appeal a development contribution levied against him or her by a territorial authority in the Environment Court.

Local Government Commission

21. The functions and powers of the Local Government Commission ("the LGC"), is codified pursuant to section 30 of the LGA 2002. Property Council recommends a review of the LGC, including its statutory function in order to assess how it can improve the performance outputs of local authorities. As set out in *A Roadmap for Reform*, the LGC needs to add value to the local government sector in specific ways, including:

- evaluating and reporting publicly on the effectiveness of each local authority's outputs (including each authority's financial and non-financial performance);
- reviewing and overseeing the electoral representation of the local authorities and assessing whether local authorities meet the needs of their respective communities;
- making recommendations to the Minister of Local Government on whether to retain, amalgamate or divide local authorities as part of its review of electoral representation;
- promoting and initiating the sharing of intellectual property amongst local authorities; and
- providing guidance to local authorities on writing policies that comply with the Local Government Act 2002.

22. A stronger, more independent LGC would have the ability to direct territorial authorities on how to perform and bring about streamlined and standardised processes. For example, it could give direction to all authorities on performance delivery in key areas such as the issuing of building (within a contested consent and compliance environment) and resource consents. It could have the powers to work with failing authorities on improving their service delivery or recommend amalgamations and other process changes to ensure better, more consistent performances from our local authorities.

Recommendation to Minister of Local Government:

Property Council recommends that the Minister of Local Government enable an independent review of the Local Government Commission, including its statutory function in order to assess how it can improve the performance outputs of local authorities.

Auckland

23. Property Council seeks the transformation of Auckland's governance in order unshackle the region's economic performance, eliminate regulatory duplication and divergent planning outcomes. Property Council made the following recommendations to the Royal Commission on Auckland Governance:

- *move to a single regional governance body, "One Auckland", which operates within a defined set of statutes. One Auckland would contribute to the governance of Auckland through six portfolio areas: one transport; one water; one economy; regional parks and facilities; one regulatory plan; local democracy and Maori empowerment;*
- *establish a number of local Community Councils. These Community Councils would be based on: communities of interest; an equitable representation of the population; and logical geographical catchments. Each community council would comprise of 12 members elected at large within their community area. (including members who are directly elected to serve as representatives on One Auckland). This recommendation guarantees*

Maori representation on One Auckland, as well as through the establishment of two Maori Advisory Councils.

- *provide opportunities for account transparency, disclosure and economies of scale through the establishment of One Auckland. Property Council maintains that in order to transform Auckland into a world-class city, the region's funding and revenue strategies need to be directly linked to the region's overall regional initiatives and services.*

- *implement the recommendations of the Inquiry into Local Government rates, specifically require:*
 - i. the removal of the ability to set uniform annual general charges;*

 - ii. the removal of the ability to have general rates differentials; and*

 - iii. the setting of charges for services supplied by council controlled organisations solely on a cost-recovery basis.*

- *unify planning and decision making through the adoption of one Regional Spatial Plan, one Auckland Regional (District) Plan, one Long Term Council Community Plan, one Auckland Sustainability Plan, and one set of bylaws. These documents and bylaws would in turn be complemented (but not overruled) by local Community Plans.*

- *establish a single Regional Consent Authority responsible for all matters relating to implementation, governance, enforcement and overview of all building works in the Auckland region.*

- *establish a unified regional approach to waste management funding and operational decisions. This should start with a strategic regional vision for waste minimisation and resource recovery (which would be included in the Regional Spatial Plan), which in turn drives waste management solutions.*

- *through One Auckland, adopt the Auckland Region Civil Defence Emergency Management Plan, including all of the roles of functions that currently sit with Auckland's existing units of local government.*
- *through One Auckland, adopt a regional animal stock management policy, as well as a regional strategy for the eradication of pests.*
- *develop an infrastructure plan, which in turn drives its treasury and funding policies. This plan will also assess each infrastructure option against a Public Policy Peer Review (PPPR) process (see Economic Development chapter) to determine the selectivity of beneficiaries, and other equity principles.*
- *vertically integrate water and wastewater services in the Auckland region to eliminate duplication, confused roles and unnecessary cost. Vertical integration would result in a centralised billing arrangement, one asset management plan and one agency controlling one network. Property Council endorses Watercare Services Ltd., a council controlled organisation, as the agency that should be utilised to deliver the less-cost approach to reform within the Auckland water industry.*
- *develop an appropriate regulatory model for water, which will guard against sub optimal single agency behaviour. This model would include: an Independent Regulator; and a Water Services Ombudsman.*
- *establish a One Auckland Transport division for the Auckland region, One Transport, as a council controlled organisation (CCO). One Transport would be responsible for governance, funding and development of transport infrastructure, and would be wholly owned by One Auckland, which in turn would appoint a Board of Directors.*
- *establish a One Auckland Economy (OAE) division to monitor and report on the financial and non-financial performance of One Auckland's investments, and the roll-out of infrastructure and services that complement regional economic development strategies.*

- *establish One Auckland Investments as a council controlled trading organisation (CCTO). One Auckland Investments would be a passive portfolio holder/investor. This public company should be responsible for managing One Auckland's shareholding in: Auckland International Airport Limited; Ports of Auckland; and other property assets.*

- *establish a Tourism Auckland as a CCO to actively engage at a strategic level with significant public and private sector stakeholders, and manage all major tourism projects where One Auckland has a strategic interest. Tourism Auckland would comprise of three integrated arms: Visit Auckland, Major Events Auckland and Major Venues Auckland.*

- *establish One Auckland Major Projects as a CCO. One Auckland Major Projects will actively engage at a strategic level with significant public and private sector stakeholders, and manage major projects where One Auckland has a strategic interest. Such major projects may include (but not be limited to): Rugby World Cup 2011, Americas Cup and Other international sporting events (e.g. Commonwealth Games).*

- *establish an Arts, Community and Recreation Division (ACRD), which would be responsible for the planning, funding and provision of services where appropriate. The division would be divided into the following categories: arts, community, and recreation. ACRD would be established as a CCO or a similar governing body. Each of the key areas (arts, community, and recreation) would be individually managed in an integrated manner so that the region maximises the utilisation of facilities and services for the benefit of individual communities, while also encouraging the economic well-being of Auckland.*

Recommendation to the Minister of Local Government:

Property Council recommends using the Royal Commission on Auckland Governance as a blueprint for local government reform elsewhere in New Zealand. However, failing a Royal Commission, a similar process could be led by an empowered Local Government Commission.