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To: **THE CLERK**  
**AUCKLAND GOVERNANCE LEGISLATION COMMITTEE**  
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Wellington

Submission of: **Environmental Defence Society Incorporated (EDS)**

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## SUMMARY

1. This is a submission by the Environmental Defence Society (**EDS**) on the Auckland (Law Reform) Bill (the **Bill**) which if enacted will amend the Local Government (Auckland Council) Act 2009.
2. The submission largely concerns the provisions of the Bill relating to the spatial plan. EDS supports the creation of a spatial plan to provide an effective long-term strategy for growth and development in Auckland. However it opposes the current wording of Clause 66 of the Bill and proposes several amendments.
3. Clause 66(3)(j) of the Bill should be deleted from the Bill until a thorough analysis is undertaken of the appropriate legal status of the spatial plan and the implications for other planning instruments. This is consistent with the recommendation in the ‘Spatial Planning Options for the Auckland Council’ paper prepared by the Office of the Minister for the Environment for the Cabinet Implementation of Auckland Governance Reform Committee (the **Spatial Plan Cabinet paper**).
4. Clause 66(3)(i) of the Bill should be amended to provide that a function of the spatial plan is to identify outstanding natural landscapes that should be protected from development. This would be consistent with local authorities’ obligations under the Resource Management Act 1991 (the **RMA**).
5. Clause 66 of the Bill should be amended to include reference to the metropolitan urban limit (the **MUL**). This is necessary to avoid urban sprawl and to protect peri-urban areas.
6. Provision should be made for a spatial plan to potentially deliver specific targets derived from international environmental obligations.
7. EDS supports the inclusion of Clause 66(6) of the Bill as public participation is necessary if the spatial plan is to reflect community objectives as well as private sector aspirations.
8. EDS wishes to appear before the Auckland Governance Legislation Committee to speak to its submission.

## THE ENVIRONMENTAL DEFENCE SOCIETY

9. EDS is a New Zealand based environmental advocacy organisation that was formed in 1971 to act as an advocate for conservation and the environment. It consists largely of resource management professionals and collectively it has a great deal of experience and expertise in environmental policy.
10. EDS's objectives are:
  - To preserve, conserve, protect and enhance natural and cultural resources and the environment and to defend them against harm, misuse, depletion, unsustainable use and destruction;
  - To conduct research into all aspects of resource management and any related subject;
  - To provide advice and representation in resource management matters in the public interest;
  - To publish newsletters, journals, articles, pamphlets, internet web pages and any other materials which will further the aims of the Society; and
  - To arrange seminars, conferences, meetings and other gatherings which will further the aims of the Society.
11. EDS operates in two principle ways: as a litigator and as a think tank.
12. As a think tank, it publishes books, holds conferences and seminars and generally works to stimulate understanding about best practice in resource management. It works constructively with businesses whenever opportunities arise.
13. EDS's current focus is on three key issues:
  - Landscape Protection
  - Freshwater Management; and
  - Coast and Oceans Management.

## PROPOSED AMENDMENTS

### Ambiguity as to meaning of “give direction to, and align...regulatory plans”

14. Clause 66(3)(j) of the Bill states that one of the functions of the spatial plan is “to give direction to, and align, implementation plans, regulatory plans, and funding plans of the Auckland Council”.
15. ‘Regulatory plans’ are not defined in the Bill so it is unclear whether regional and district planning instruments are included. District and regional plans have been considered by the Courts to have the force and effect of regulations so they would probably be classified as ‘regulatory plans’.
16. EDS appreciates that implementation plans, regulatory plans and funding plans need to have some relationship to the spatial plan otherwise it defeats its purpose. However, in the Spatial Plan Cabinet paper it was recommended that at this stage the spatial plan should not have legislative links to other plans of the Council. The reason for this was because the implications had not been considered and there is a risk that the creation of legislative links could result in unintended consequences.
17. It is unclear whether the statement ‘give direction to, and align’ is meant to create some form of legislative link between the spatial plan and implementation plans, regulatory plans, and funding plans of the Council.
18. The phrase ‘give direction to’ suggests that the other plans should generally reflect the long-term strategy for growth and development as set out in the spatial plan. The term ‘align’ is more problematic as it implies a stronger relationship between the spatial plan and the other Council plans.
19. In the Spatial Plan Cabinet paper at page 4, footnote 2 the term ‘legislative linkages’ and the spectrum of legal strength of relationships are discussed. There is a range of legal threshold tests:

from high (e.g. recognise and provide; give effect), medium (e.g. not be inconsistent) to low (e.g. have regard; take into account; be informed by). This affects the contestability of decisions in the Courts.

20. The above terminology has not been used in the Bill. The use of new terms creates uncertainty as to the legal threshold. It is likely to result in disagreements as to the meaning and application of “give direction to, and align”.
21. A related issue is that if district and regional planning instruments are to be aligned with the spatial plan then this may result in the district and regional plans being inconsistent with national planning instruments. Section 55 of the RMA provides that a local authority must amend a document if a national policy statement directs so but the spatial plan may include objectives which are contrary to a National Policy Statement. This would create an untenable conflict and must be resolved by making the spatial plan subject to national planning instruments.
22. EDS contends that the implications of creating legislative links between the spatial plan and national, regional, district planning instruments have not been carefully considered. Clause 66(3)(j) of the Bill should be removed until a thorough analysis is undertaken of the appropriate legal status of the spatial plan and the implications for other planning instruments.

**Spatial plan should be consistent with the Waitakere Ranges Heritage Area Act 2007**

23. Section 18 of the Waitakere Ranges Heritage Area Act 2008 (**Waitakere Ranges Act**) provides that the Act prevails over the Auckland Regional Growth Strategy and that the Auckland Regional Council must ensure that the provisions contained in the Strategy are not inconsistent with the purpose of the Waitakere Ranges Act.

24. Clause 106(3) of the Bill states that the Auckland Regional Growth Strategy has no effect once the Auckland Council adopts the spatial plan. EDS considers that an amendment should be made to either the Bill or the Waitakere Ranges Act to ensure that the spatial plan must be consistent with the Waitakere Ranges Act.

#### **Failure to provide for protection of outstanding natural landscapes**

25. The proposed functions of the spatial plan do not include provision for the protection of outstanding natural landscapes. EDS considers that this should be a key function of the spatial plan.
26. The proposed functions of the spatial plan as set out in Clause 66(3) of the Bill replicates the list compiled from a review of international spatial plan functions as contained in the Spatial Plan Cabinet paper at page 6 paragraph 42. As noted this list is based on a review of international planning practices, it was not tailored to the New Zealand context.
27. Auckland has many outstanding natural landscapes which merit protection. It may be that the cities included in the review of international planning practices did not contain such landscapes or that it was not considered to be function of a city council to provide for their protection. Yet New Zealand is different as local authorities' have an obligation under section 6(b) of the Resource Management Act 1991 to protect outstanding natural landscapes from inappropriate subdivision, use and development.
28. In the Report of the Royal Commission on Auckland Governance, March 2009 at page 532 it was noted that the spatial plan should identify areas that should be protected from all development and their natural values enhanced. It is likely that the Royal Commission envisaged that this would include outstanding natural landscapes but these have not been included in the framework for the spatial plan.

29. Clause 66(3)(i) should be amended to add reference to outstanding natural landscapes. EDS proposes the following amendment:

To identify significant ecological areas *and outstanding natural landscapes* in Auckland that should be protected from development;

**Include reference to metropolitan urban limit**

30. Clause 66(3)(h) of the Bill notes that one of the functions of the spatial plan is to identify the existing, and guide the future, location and mix of residential, business, and industrial activities within specific geographic areas in Auckland.
31. Yet there is no specific reference to the MUL in Clause 66 of the Bill. The function of the spatial plan is merely to “guide” the future location of activities within specific geographic areas and this does not create an enforceable limit.
32. The Royal Commission on Auckland Governance emphasised that an MUL was essential to the development of a successful city in the 21<sup>st</sup> century. In its report at page 532 it noted that:

One of the key tools to secure a sustainable future for Auckland is to identify appropriate boundaries for urban expansion...Increasing sprawl would have an undermining effect on the provision of public transport and could make improvement unaffordable. Dense cities use less energy per person than the more dispersed model. For these reasons, the MUL is a key policy and the consequent control of land use will require significant enforcement efforts.

33. EDS submits that it is imperative that Clause 66 of the Bill be amended to include reference to the MUL. This is necessary to avoid urban sprawl and to protect peri-urban areas.

## **Provide option to include international environmental obligations**

34. In the Spatial Plan Cabinet paper at page 7 it is noted that:
- commitment to international environmental obligations has led to growing interest from national governments in exploring spatial plans’ potential as an instrument to deliver specific targets, including reduced greenhouse gas emissions and the proportion of electricity generated from renewables.
35. EDS submits that provision should be made within Clause 66 for a spatial plan to potentially deliver specific targets derived from international environmental obligations.

## **Retain Auckland Centennial Memorial Park**

36. Schedule 3 of the Bill (at page 163) proposes to repeal section 77 of the Local Government Amendment Act 1992 (the **LGAA**). Section 77(1) states that:
- The Auckland Regional Council shall continue to hold, for the purposes of a scenic park...the land known as “the Auckland Centennial Memorial Park” and any other land acquired by the Council or its predecessors for the purposes of that park.
37. The Auckland Centennial Memorial Park, otherwise known as the Waitakere Ranges Regional Park, should continue to be held by the Auckland Council for the benefit of the people of Auckland. Stakeholders and the community have not been consulted as to whether the park should be nationalised. The park is currently well maintained and managed and EDS opposes any change which would have a detrimental effect on the Park.
38. EDS submits that section 77(1) of the LGAA should not be repealed. The only amendment necessary is to change the reference to the ‘Auckland Regional Council’ to the ‘Auckland Council’.



## **SUPPORT FOR FUNCTIONS OF SPATIAL PLAN**

### **Long-term strategy for growth preferred to ad hoc development**

39. EDS supports the creation of a spatial plan to provide an effective long-term strategy for growth and development in Auckland.
40. The spatial plan should enable significant ecological areas, peri-urban areas and outstanding natural landscapes to be protected from inappropriate and ad hoc development.

### **Retain ability for community participation in developing the spatial plan**

41. Clause 66(6) of the Bill provides that the Auckland Council must prepare and adopt the spatial plan, or any amendment to the plan, in accordance with the special consultative procedure.
42. Presumably the ‘special consultative procedure’ is the procedure established under section 83 of the Local Government Act 2002. EDS suggests that Clause 66(6) could include an express reference to this section so it is clear what the special consultative procedure requires.
43. EDS supports the inclusion of Clause 66(6) as public participation is necessary if the spatial plan is to reflect community objectives as well as private sector aspirations. If there are going to be legislative links with other planning instruments then it becomes even more important that communities are able to provide input into the development of the spatial plan.
44. It also adds weight to the vague commitment in Clause 66(4) of the Bill which states that: “The preparation and amendment of the spatial plan is intended to involve community and private sector participation so that there is public confidence in the plans and decisions made for Auckland.”