

**Submission to the ICT Regulatory Team
Ministry of Economic Development**

In the matter of

**Broadband Investment Fund
Draft Criteria & Process**

**From Waitakere City Council
Strategic Projects Group**

30 June 2008

Waitakere City Council welcomes the recent announcement of the Broadband Investment Fund (BIF) aimed at accelerating the development of broadband in New Zealand. The increase in funds to \$325 million, compared to the 2005 Broadband Challenge Fund of \$24 million, is recognition of the importance of broadband and the role it can play in economic and social development.

General Comment

Waitakere City Council has previously submitted that the Digital Strategy goal of FTTN does not provide a transformational change that will lift New Zealand's international broadband competitiveness. The funding pool and criteria, which align with this strategy, similarly constrain the vision to "a key stepping stone to fibre... to the home".

Waitakere City is working with other Auckland councils to develop a regional broadband network of some significance. There are various estimates of the cost to develop FTTH in Auckland, but most agree it is in excess of \$1 billion. If we assume Auckland receives one third of the fund (roughly equating to the population ratio, but acknowledging that the Auckland GDP per capita is greater), and if we assume 1:1 public/private funding, there remains a shortfall that may be sufficiently large to discourage any transformational change. Furthermore, the requirement that only 30% of the fund be assigned in any one year, may preclude any substantial regional Auckland application. This constraint may encourage some Auckland Councils to elect to apply for individual, rather than regional funding.

There is a strong emphasis on ensuring broadband connectivity to the Health and Education sectors and a statement that the government plans to spend at least \$160 million on connectivity to these sectors. It is unclear to us how the outputs of this funding will interface with the outputs of the Broadband Investment Fund, and what the process is to ensure both local and central government plans align. Until the nature of the Education/Health fund is determined, there may be potential overlap on local fibre network design and budgets. It is also unclear how proposed government demand-side policy mechanisms may affect design and the resultant level of funding from the BIF.

There are separate funds for Urban and Rural initiatives, but for regions such as Waitakere, where there are significant urban and rural areas, an overall strategy may be applicable. It may also be the case that a rural strategy is dependent upon a successful urban strategy (the supply of backhaul for rural wireless infrastructure for instance). A process that acknowledges a holistic approach across the entire community is recommended.

The eligibility and assessment criteria appear to favour a passive network solution that can be extended to an FTTH network at some later date. There are scenarios (a PON network for instance) where an active network bearer service may be more appropriate (where a single fibre is shared by a group of users). Solutions therefore should not be limited to passive infrastructure.

Timetable

The timetable proposed establishes an annual gating process for all applicants. This may have the effect of delaying projects that are already well advanced, or forcing projects to deliver sub-optimal applications in order to meet deadlines (or face a 12 month delay). We recommend that the timetable and gating process be reconsidered to recognise the differing stages that proposals may be at.

Competition

The fund has a stated objective of “promoting competition at the deepest level of the network”. But there is also an implied objective of leveraging off existing networks. Because of the high cost of access network delivery, we do not believe the end-users will have a choice of infrastructure, nor bearer services. Waitakere City believes the most likely scenario would be local area monopolies at the infrastructure level with open-access competition at the services level. The risks inherent in this monopoly infrastructure supply could be offset by contractual obligations associated with any seed funding.

There is a suggestion that Infrastructure Services should be separated from Application Services. This is intended to prevent ‘bundling’, where vertically integrated companies may offset the cost of one service against the other. We agree in principle with this objective but wonder whether it can practically be achieved. If our key partner were to be a multi-service incumbent, there would be a requirement for them to operationally separate their company and a requirement for transparent operation that may be contractually difficult to guarantee.

Eligibility

Clause 3.1 (Infrastructure Services): There are a number of scenarios where it may be disadvantageous to offer Infrastructure Services (passive duct/fibre) to any Third Party Service Providers. For instance, if a PON architecture was to be implemented, there is a likelihood that the service offered would be a bearer service, rather than a duct or dark-fibre service. Open access to a bearer service only should therefore be permitted under the eligibility criteria and Infrastructure Services should not be mandatory.

Clause 3.3(b) (unbundling): Because of the high cost of access network delivery and termination, we do not believe the end-users will have a choice of infrastructure, nor bearer services, and that these are likely to be monopoly services. If choice was achievable, it would most likely be on an area basis, rather than an individual basis, e.g. Telecom, for instance, may dominate one suburb whereas another party may dominate an adjacent suburb.

Assessment Criteria

Clause 6.2(d) requires the applicant to demonstrate that the network does not unnecessarily duplicate existing networks. Firstly, there is a high probability that the existence of existing infrastructure may not be discoverable (from non-partner organisations). Secondly, if discoverable, it is unlikely that quality, capacity and the ease

of service provision would be disclosed. Thirdly, any such sharing may add significant contractual and operational complexity. Fourthly, excessive use of existing infrastructure does not promote the objective of “promoting competition at the deepest level of the network”. As part of the economic evaluation process, the use of existing infrastructure would have been examined by the applicant, but any decision not to use it, should not count against it.

Clause 6.2(f) measures the alignment and integration with other initiatives. Whilst Waitakere City is working closely with other Auckland Councils it is conceivable that individuals, companies and other groups are formulating plans of their own that we may be unaware of. This may only be ‘discovered’ following the EOI and subsequent advice by the MED. This may then necessitate a coordination and amalgamation process to ensure an optimal full application. We note that the extent of local authority support is part of the assessment criteria (clause 7.2 c) but would recommend that this be part of the Eligibility Criteria and that an early, and public, “Registration of Interest” may help to reduce duplication of effort and alert parties to potential partners (and competitors).

Clause 7.2(f) requires an indication of aggregated demand and commitment from potential users. These “commitments” are unlikely to hold great weight and will be influenced by market conditions at the time of the required financial commitment. Whilst they may be indicative, they should not greatly influence the assessment.

We note that there is a 15% weighting for Sustainability and Potential Expansion (Clause 9). We believe these are two differing criteria and should be considered separately. Sustainability is a measure of how the proposal can continue to deliver benefits, within the defined project, after the initial seed-funding is exhausted. Expansion Potential is a measure of how the model, coverage, technology and economics may accommodate additional users and services over time. Whilst there is some relationship between these two criteria, we believe they are different enough to warrant individual evaluation.

The 15% weighting for Sustainability and Potential Expansion is considered to be too low. The ability of the plan to succeed after the seed-funding is exhausted is critically important and should rate just below that of Project Benefits. It is considered more important than Commitment and Capability of the Applicant because a well designed plan should be capable of surviving the vagaries of commercial partners and decisions they may make outside of the broadband environment. A well designed duct and fibre network is a passive, stable and long term investment, whereas the expertise, experience and financial viability of any partner is measured at a moment in time.

There is a requirement to demonstrate how the network can be extended to provide FTTH at some later date (Clause 9.2(f)). Waitakere City Council believes that FTTN is a low aspiration and we would not wish an application to be penalised because it sought to deliver FTTH on day-one.

Waitakere City support the Interconnection Requirements detailed in Appendix 1.