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Submission to: Productivity Commission
From: Wellington City Council
Subject: Towards Better Local Regulation
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Executive summary

1. We support the draft findings of the Commission as detailed in the draft report – *Towards Better Regulation* and thank the Commission for the opportunity to comment.
2. We acknowledge the questions raised by the Commission in the draft report, and note we have worked with, and support the submission made by Local Government New Zealand that answers each question raised by the Commission in detail.
3. This is a supplementary submission that focuses on what we consider to be the key issues.
4. We support the ‘whole of system approach’ the Commission has used to review the regulatory framework, and support its view that the performance of the entire system determines how well regulations achieve their objectives.
5. Our key points can be summarised as follows:

a) The decision to regulate (or not) is the most critical decision

The Commission’s review has been very thorough and detailed although has not covered this aspect in detail. Further analysis of the policy and decision making steps that lead to choosing regulatory interventions over other options is required to determine whether the process is robust enough and whether improvements are needed. A local government perspective at this policy stage could assist in the decision-making process to ensure the right intervention is taken.

b) The design of regulation needs to improve.

We agree with the Commission that the design of regulation is at times poor and that this largely stems from central government not effectively working with the local government sector on design and implementation issues. The remedies to this issue, including better and more consistent consultation and secondment of local government staff to assist with regulatory design.

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c) *The framework for allocating regulatory functions is sound.*

We agree with the principle of subsidiarity – that regulatory functions should be performed by the authority closest to the community to ensure local preferences are reflected, unless there are good reasons to centralise eg. spill-over effects (pollution), demonstrable efficiencies etc. The framework should be expanded to include the concept of *displacement* – where measures in one local authority (eg. graffiti control), can inadvertently move the problem to a neighbouring authority.

d) *Special grants should be made available for policy development and regulatory evaluation*

We support the Commission's recommendation that local authorities should be able to set all regularly fees under section 101(3) of the Local Government Act 2002. This would allow for full cost recovery for operational regulatory services, but policy development or regulation evaluation remains unfunded and has to be covered by rates. The costs associated with policy development (eg. for the new liquor licensing requirements) can be significant and consideration needs to be given as to whether special grants are needed to address capability and capacity issues for policy development to ensure the national regulatory objectives are not compromised by local authorities underfunding this important stage. Similarly, local authorities collect performance data and reflect on how improvements can be made. However, revenue from such regulation does not allow for more robust and wider ranging evaluation of how regulation can be improved. Where the benefits of such a review are wide ranging – and the benefits applicable to other authorities – special grants could be made available to address capability and capacity issues.

e) *The benefits of regulation are not adequately recognised.*

The review of regulation is largely based on a broad assumption that regulation is acting as a 'hand-break' on the economy because of the way it is designed and implemented. While improvements can always be made (and is the focus of this review), this perception does not accurately reflect the facts. Regulations are standards – largely derived from central government – that are applied to protect community investment and wellbeing. It is important to note that the benefits of regulation also accrue to businesses, for example, food safety provides assurance to customers,

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and planning restrictions ensure some activities are prohibited in areas where it would not be appropriate.

f) The structure and design of regulation may not always be the issue.

The Commission has focused primarily on design and structural issues to identify improvements to the regulatory framework – and we agree this an area that needs improvement. But consideration should also be given to whether customer service can address regulatory performance. Further work is recommended in this area to obtain a better understanding of which solutions or interventions are most appropriate eg. we need to avoid imposing regulatory interventions that could be achieved far more easily through changes in customer service practices.

g) Central and local government need to act as co-regulators.

Greater collaboration between central and local government is needed to more effectively achieve regulatory objectives. A mechanism is required that allows local government regulators and appropriate central government staff to come together and discuss regulatory issues with the aim of removing or amending inefficient and ineffective regulation that does not serve its intended purpose, or is adding unnecessary costs to businesses or the community.

Introduction – the decision to regulate (or not) remains the most critical decision

6. The Commission has undertaken a ‘whole of system’ approach to their review of regulation – from policy making, regulation design, monitoring, enforcement and review. The emphasis has been on design, monitoring and evaluation of regulation while the decision to regulate (or not) has largely been left out of the review. We believe further analysis of the policy and decision making steps that lead to choosing regulatory interventions over other options is required to determine whether it is robust enough and whether improvements are needed. A local government perspective at this policy stage could assist in the decision-making process to ensure the right intervention is taken.

There are divergent views on the role of local government and this can be addressed through better co-operation and recognising central and local government are co-regulators

Productivity Commission Key Finding:

7. *The Commission has found a growing tension between central and local government as a result of different understanding of the role of local government in New Zealand's regulatory framework and that it is constitutionally unclear.*
8. We recognise that much of local government regulatory work is undertaken within a national policy framework, but support the Commission's view that local authorities are largely autonomous, self funding with their own independently elected representatives that are accountable to local communities, rather than subsidiary 'arms' of central government departments and their ministers.
9. As noted in our first submission, we believe there needs to be better cooperation between central and local government in the delivery of regulation in New Zealand, and believe that through greater cooperation there will emerge greater clarity of the role of local government in the regulatory framework.

The benefits of regulation are not adequately recognised.

Productivity Commission Key Finding:

10. *The Commission has found that local authorities across New Zealand are diverse in terms of size, industry structure, labour markets and social demographics, and that local authorities adopt different approaches to regulation to reflect local preferences.*
11. *The Commission also found different interpretations (between local authorities) of the role of local government in promoting local economic growth and the Commission questioned what role local government should play in the future.*
12. The findings of the Commission indicate that the perception of local body regulation is poor and that it is often seen as a barrier to economic development because the regulatory standards are either unnecessary, set too high, and/or are inefficiently applied.
13. This prevailing view of regulation ignores the fact that standards are predominantly set by central government and largely exist to protect community interests and investments made by business and individuals over many years. The benefits of regulation accrue widely – from protecting

homeowners against inappropriate development in their area, to public health regulations that ensure appropriate hygiene standards are maintained – which protects both the customers and businesses.

14. The benefits of regulation accrue to all sectors of the community and this is not sufficiently recognised in the report.

Regulation should be performed at the lowest competent level of government to ensure local preferences are reflected

Productivity Commission Key Finding:

15. *The Commission has prepared a draft framework for allocating regulatory responsibility (across different tiers of government) based on the principle of 'subsidiarity'. The principle states that regulatory functions are best undertaken by the authority closest to the community to ensure local preferences are reflected, and that greater centralisation should be considered if there are:*

- *spill over effects to other jurisdictions (eg. pollution in rivers)*
- *homogenous preferences across boundaries (duplication of process/ decision-making can be reduced)*
- *a lack of key competencies or information is held more centrally*
- *clear and demonstrable efficiency gains from greater centralisation that outweigh local preferences.*

16. We support the framework developed by the Commission to allocate regulatory functions across tiers of government. We support the principle of *subsidiarity* – that regulation is best performed by the least centralised competent authority unless there is a demonstrable advantage to having the regulatory function performed at a more centralised level. We see this principle reflected in recent changes to the Liquor Licensing Act where more decision making has been devolved to local authorities to ensure local preferences are reflected.
17. We broadly support the framework as it relates to when greater centralisation should be considered, but believe it should be expanded to include consideration of *displacement* – where the actions of one local authority in enforcing regulation can negatively affect a neighbouring local authority e.g. some graffiti or liquor control actions can simply move the problem to a neighbouring authority.
18. We also note that the framework only refers to greater centralisation of regulatory functions – but not how that is best achieved. The Commission's work has discovered that 89% of local authorities cooperate in some way or

form when delivering regulatory functions and notes that cooperation has many of the benefits of centralisation while maintaining the advantage of local decision-making, including:

- cost savings (back office resources)
- access to skills / expertise
- best practice exchange
- economies of scale (procurement savings)
- improved service delivery
- improved compliance with legislation
- delivers efficiencies.

19. We support the framework as a guide for allocating regulatory functions but believe the framework should include the issue of displacement, and also recognise that the benefits of greater centralisation can also be achieved through greater cooperation.

Variances in regulation generally reflects local preferences

Productivity Commission Key finding:

20. *Variances in regulation reflects local preferences and does not impact a significant number of businesses.*
21. *We note and commend the work of the Commission with the business sector and note the key satisfaction findings of the survey that was conducted¹.*
22. We believe that many improvements can be made to the regulatory design (to be addressed as part of the review), but also believe that part of the solution may simply be local authorities operating in a more customer focused manner. A better understanding of this area will help decision-making in terms of which intervention to make.
23. The Commission's report also does not address the broader business and public perception of regulation. The prevailing view remains that it is a series of bureaucratic rules that is acting as a 'handbrake' on the economy because of the way it is designed and/or implemented. While improvements can always be

¹ Three quarters of businesses surveyed had some contact with local authority regulatory functions. Of those that did:

- 39% said it placed a significant financial burden on their business
- Nearly half thought the time and effort involved in complying with local authority regulations is too large
- 70% of respondents were dissatisfied with the fees charged
- 64% of business reported that complying with local government regulation has a greater cost impact than complying with central government regulations.

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made, this perception does not accurately reflect the facts. Regulations are standards – largely derived from central government – that are applied to protect community investment and wellbeing. It is important to note that the benefits of regulation also accrue to businesses eg. food safety provides assurance to customers, and planning restrictions ensure some activities are prohibited in some areas because of nuisance such as noise.

24. We also note the Commission’s findings that while inconsistent regulation across local authorities was an issue for some businesses, only a minority of businesses actually dealt with multiple local authorities, and when they did, it was mostly in one regulatory area. The Commission also found no evidence that the 'powers of general competence' was being abused to make unnecessary / new regulation which is a useful clarification.
25. While inconsistencies are clearly an issue for some business, we believe regulation applied to reflect local preferences and priorities remains desirable and necessary. Where you can walk your dog off the leash, where you can develop land, and how many liquor outlets are in each suburb should reflect local preferences.
26. That does not mean inconsistency across local authorities is ignored in the sector. Many Council’s actively work together to align aspects of their regulatory functions to make it easier for their customers that straddle local authority boundaries. By way of example, the same template, same process, and same quality management plan is used for Food Control Plans across the Wellington region to make it easier for businesses that have establishments across the region.
27. Central government also has cost effective levers to improve consistency across local authorities in some regulatory areas. It has the ability to– and has frequently been asked to by the sector – issue National Policy Statements to improve consistency in key RMA areas – however has largely not used this power to date to any significant level.

The quality of regulations reflects central government processes

Productivity Commission Key finding:

28. *The Commission has found “shortcomings” in the way that regulations are made at central government level including: “a lack of implementation analysis, poor consultation and weak lines of accountability.”*
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29. *The Commission has identified a portfolio of options to improve regulatory making by central government, including:*
- a) strengthening accountability of ministers and public servants for the regulations they make*
 - b) improving the quality of analysis / capability*
 - c) ensuring meaningful consultation is held with local government*
 - d) changing cultures – focus on recognising central and local government as co-regulators.*
30. We support the approach outlined above to improve regulation-making at central government level, and support the following practical steps to give effect to that approach:
- a) Develop guidelines for Regulatory Impact Statements (RIS) to make them more robust and consistent. We also support a structured programme of audits to ensure best practice is maintained and shared. It is important to note that RIS occur late in the work programme and local government participation in the early regulation design stages remains critical.
 - b) Greater collaboration between local government and central government in the design stages of regulation. This can be achieved through secondment of local government regulatory staff, or forming working parties of officers from local and central government (as is the case the Primary Industries review of the food bill), better training of local government staff to implement new legislation, and also more lead time to prepare for new legislation. The concept of secondments and working parties should also be extended to when existing regulations are being reviewed.
 - c) Strengthen consultation requirements, possibly through strengthening the Department of Internal Affairs mandate to make sure local government issues are taken into account in policy formation and that adequate consultation occurs.
 - d) Shifting away from the current view of the local / central government relationship that sees local government as a subset of central government, to one where there is greater collaboration to delivery greater prosperity.

All fees should be set by the local authority and grant funding should be made available for policy development

Productivity Commission Key finding:

31. *If the benefits of regulation accrue locally then costs should also be managed locally.*
32. *All regulation should be reviewed to remove specific fees set through legislation, and that setting fees is a local policy matter that should be determined by each local authority and subject to requirements of the LGA 2002 section 101(3) to allow for full cost recovery.*
33. We support the Commission's draft findings outlined above. Many fees are set through legislation and this prohibits local authorities from recovering an appropriate level of costs eg. we recover only approximately 60 percent of our costs for liquor licences because fees are set centrally.
34. We note that policy development and the review of regulations remains unfunded and question whether this can act as a barrier to achieving regulatory objectives set by central government. Full cost recovery makes sense at the local level for the application of regulation at an operational level, but policy development, and the review of regulation is left unfunded and has to be covered by rates. We support the development of special grants to be used for policy development and regulatory performance evaluation. For example, it is estimated that it will cost each local authority between \$40k and \$100k to implement the new liquor licensing requirements, and issues of cost, capacity and capability faced by some local authorities may impact they way the policy is designed and consulted on with their community that ultimately affects the overall regulatory objectives. Similarly, local authorities collect performance data and reflect on how improvements can be made, but revenue from such regulation does not allow for a robust and wide ranging evaluation of how regulation can be improved. Where the benefits of such a review are wide ranging – and the benefits applicable to other authorities – special grants could be made available to address capability and capacity issues.
35. We also support the development of specific grants for localised regulatory functions where the benefits are national. The Commission's example of Northland's regulatory requirements around protecting certain habitats for Kiwis is such as example.

How monitoring and enforcement of regulation can be improved

Productivity Commission Key finding:

36. *The Commission has identified that monitoring of local regulations varies across local authorities and regulations, that they are too focused on transactional measures, that monitoring may be under-resourced, and that focusing on less transactional measures or reporting less frequently could be needed.*
37. *The Commission has also found that there is a case for a broader range of enforcement tools.*
38. The systems to capture performance data need to be in place regardless of how often they are reported, and reducing how often performance is reported may not actually deliver any significant cost reductions. Reducing regulatory performance reporting also has to be balanced against the perception that this could be reducing the transparency of local government.
39. We agree with the Commission that more evaluation of regulatory performance needs to take place (beyond simple transactional measures) to identify how regulation could be improved. As noted in the previous section under funding, we support special grants to address capacity and capability issues so that local government can conduct in-depth reviews to identify and implement these regulatory improvements.
40. While recognising the above comments, it is important to note that we already carry out reviews to improve our regulatory services. By way of example, we include Case Study Audits as part of our building consent process to determine the quality of consent applications so they can analyse the feedback and make improvements. This programme ensures we are able to tailor advice to clients in the early stages when consents applications are being made to reduce consenting timeframes and improve the customer experience.
41. The issue of consistency of performance assessment frameworks across different forms of regulation is not seen as a problem – but simply reflects individual performance frameworks. It is also unclear why greater consistency is being sought, and current work in the sector with central government regarding the move to compulsory measures for core activities in the infrastructure space shows that benchmarking across local authorities is difficult for the same activities, let alone across different activities.
42. We support the Commissions view that local authorities would benefit from a broader range of ‘tools’ for noncompliant behaviour to ensure they are more

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proportionate to the offence and bridge the gap between a warning letter and prosecution. As an example, it costs approximately \$5,000 to prosecute where a food operator is trading without a licence – and it may be possible to encourage compliant behaviour through less costly enforcement action such as fines.

43. It is recommended that the Commission work with the sector (through LGNZ and SOLGM) to identify legislation that could benefit from a wider range of enforcement tools, but infringement notices need to be balanced against the cost of having warranted officers and collection costs.
44. Strengthening enforcement tools such as instant fines also needs to be considered against the fact that the Ministry of Justice has removed the ability of local authorities to recover debt through the Small Claims Court and the next level up – the District Court – has significant costs involved.
45. We agree that the feedback loop between local authorities and central government is weak in some regulatory frameworks and support working together to improve the information flow.

The Resource Management Act and the role of appeals could be made more efficient to reduce timeframes and costs

Productivity Commission Key findings:

46. *Resource management decisions under the RMA are devolved to local authorities with a strong element of public participation to reflect local preferences. Appeals are to the Environment Court and are heard on a de novo basis².*
47. *There are some weaknesses to the system – appellants ‘keep their powder dry’ for the court and at times do not present their full case at Council hearings which means any rehearing on de novo places Council decision-making in the hands of the Court.*
48. *The Commission has identified that only 2 percent of consents are appealed per year but this is also where costs and timeframes escalate.*
49. We are generally supportive of changes that would incentivise public participation in the Council led process at the local level, rather than litigating to create regulatory policy, and support the Commission to investigate more fully the risks and benefits associated with restricting appeals to points of law or process (preferably through a specialist Court such as the Environment Court as opposed to the High Court), and looking more closely at legal standing (who has

² The Court hears all evidence afresh and comes to its own decision on the merits of the case.

the right to appeal). These options have the potential to significantly reduce costs / timeframes and could facilitate participation in the decision making process.

Conclusion

50. Greater collaboration between local and central government is crucial to improving regulatory performance. As outlined in our earlier submission, we believe a regular forum where local authority regulators and relevant central government departments can work together to identify issues and solutions to regulatory problems will greatly enhance regulation in New Zealand. Ideally this could result in space on the legislative agenda for minor annual amendments to resolve non contentious fixes for regulations that for whatever reason are ineffective or are causing unnecessary delays or expenses to our regulatory clients.