26 February 2013

New Zealand Productivity Commission
PO Box 8036
The Terrace
Wellington 6143

Dear Commissioners

**Draft Report – Towards Better Local Regulation**

Thank you for the opportunity to respond to your draft report.

**Overview of Waitaki District Council submission**

Waitaki District Council believes that the draft report is a good summary of the challenges besetting local government regulation and of approaches that would drive improvement.

In particular, Council strongly agrees with the Commission’s draft view that the quality of local regulation is constrained by the quality of central government processes. This may well be an unpalatable message from the Commission to Government, but it is a message that must be heard.

We share the “strong belief within the sector that central government neither understands, nor adequately considers, the impacts of new regulatory functions it assigns to councils.” There are many reasons for this, not the least of them being the presumption that all Councils are alike, and that all communities have similar circumstances and aspirations.

We also very strongly agree that the “the tendency of central government agencies to operate independently has resulted in regulatory functions being conferred on local government without considering their interaction and impact on existing regulatory functions administered by local authorities.”

We also agree that local government needs to continue to invest in improving its own performance and that this will require more and smarter collaboration between local authorities, as well as “pragmatic approaches to building better relationships between central and local government”.

Importantly, the communities and businesses that all levels of government strive to serve need to be better integrated into these approaches.
Chapter 2 – Local government in New Zealand

We support the findings in Chapter 2. We note, in respect to finding 2.2 that, during his tenure as Minister of Local Government, the Hon Rodney Hide had highlighted the issue of the constitutional relationship of local to central government. While it appears to have “fallen off the radar” of the Government in its current term, the Commission is correct to identify this as an underlying cause of tension between the Sectors.

Chapter 3 – Diversity across local authorities

We generally support the findings in Chapter 3.

In regard to finding 3.1 & 3.2, we believe that, if anything, these are understated. Our understanding of the underlying dynamics of numerical aging and structural aging on NZ is that, in the medium to longer-term it is likely to amplify the extent of diversity between the growth foci (such as Auckland, Tauranga, Hamilton, Christchurch – and some smaller centres like Selwyn District and Queenstown) and the rest of the country. This will heighten the need for Government to understand the variation between regions – and within regions. This is true in respect of its regulatory decision-making and indeed across many other areas of government decision-making.

In regard to finding 3.7, this also appears to be understated. The recent Local Government Act Amendment Act 2012 has appeared to circumscribe the role and purpose of local government, for the second time in as many years. At the same time, this seems to be at odds with Government’s focus on economic growth.

For example, in our district, irrigation is seen as a driver of productivity and economic growth. Government is keen to invest in irrigation. Council has previously invested in irrigation and believes this investment has been vitally successful. It is odd to find that we are simultaneously so closely aligned with Government’s high order policy objectives, and at the same time at odds with the direction of recent Government legislation in regard to our role and purpose. It would appear that Government has handed opponents of economic development a tool to inhibit Council’s entering this sphere to support a key government objective.

Chapter 4 – Allocating regulatory responsibilities

We generally support the findings in Chapter 4.

In regard to finding 4.8, we strongly agree with this observation. One size often fails to fit all. We also strongly agree with finding 4.11. The impact of demographics on our workforce will only exacerbate the capability gaps, so investment in human capability in both sectors is essential. We cannot agree more strongly with finding 4.13.

Chapter 5 – The funding of regulations

We strongly support the finding in Chapter 5 and recommendation R5.1. A good example is fees under the Sale of Liquor Act (now replaced by the Sale and Supply of Liquor Act) which are a fixed fee, set by regulation and infrequently reviewed. We cannot recover
actual and reasonable costs under the historic arrangements and our cost recovery has worsened over time – driving up rates.

Chapter 7 – Regulation making by central government

We very strongly support the points made in the findings from Chapter 7. This may well be an unpalatable message from the Commission to Government, but it is a message that must be heard.

Finding 7.5 highlights an issue we see time and again. We have seen proposals for changes to the Building Act that fail to address the need for building proposals to comply with District plans. We are currently reviewing a discussion document on development contributions that seems to completely misunderstand the relationship between development contributions policies and revenue and financing policies, even though both those policies are requirements of the same Act, administered by the same department.

A facet of Central government thinking that is not “joined-up” is the potential for multiple changes of legislation to come out of different arms of Government at the same time, so that local government finds itself addressing multiple issues at once. This is extremely challenging. Right now, our Council is dealing with:

- Implementation of the TAFM reforms from the last Government, including:
- Implementation of the Local Government Amendment Act 2012, including
- Responding to the second phase of Better Local Government, including this submission
- Responding to the discussion document on development contributions and affordable housing
- Responding to the discussion document/proposal on earthquake-prone buildings/seismic safety – a huge issue for our community with a substantial legacy of Oamaru stone Victorian architecture
- Responding to/Implementing the various elements of Building Act reforms, including:
  - Risk-based consenting
  - On-line consenting
  - Skills and qualifications requirements
  - On-going accreditation requiring continuous improvement
  - Nationalisation/Regionalisation of Building Control
- Implementing the Alcohol Law Reforms in our district
- Implementing water supply upgrades driven by legislation – over 21 schemes in 8 years
- Addressing roading issues including
  - A flat-lined roading budget
  - A declining financial assistance rate
  - Review of roading governance

This list is not exhaustive, merely indicative. We understand the Government’s sense of urgency and the fiscal drivers for that. Nevertheless, the list reminds us of a former road safety campaign – “the faster you go, the bigger the mess”.

Finding 7.7 is another we strongly agree with. Two Council officers are currently working collaboratively with central government and local government agencies on the fostering of
the "Better Business Cases" approach into Government and local government decision-making processes. We see this as a potentially very useful tool for local and central government, and it is based on principles and practices that could be usefully applied to the regulatory impact statement process.

It was extraordinarily disappointing to note that the Local Government Act Amendment Bill, which passed into law late last year, contained statements acknowledging that the RIS on that proposal was inadequate. To quote:

"There is limited evidence to inform the development of these proposals and the timeframe within which these proposals have been developed has restricted the ability to assess multiple options. The problem analysis and option assessment rely on assumptions that are not, or are only partially tested."

Finding 7.8 is also agreed with. We commonly find ourselves doubting whether the consultation is "real", and whether Government is genuinely approaching an issue with an open mind. The public statements of Ministers are a contributing factor to those doubts.

Finding 7.9 is true of both sectors. We have learned lessons ourselves from failures to fully assess the implications of policies of our own making, let alone those of Government. And we are well aware of examples such as Building Act changes, where the implementation timeframes have had to be extended because they were initially unrealistic. While grateful for the time extension, it was frustrating to us that the original timeframes were so unrealistic.

Chapter 8 - Local government cooperation.

We agree with finding 8.1 and would add that there remains potential for more cooperation. We note that this needs to be fostered and dissemination of good practice encouraged as collaboration can be very resource intensive.

Attached is a spreadsheet listing areas of local authority collaboration that Waitaki was involved in. This dates back a few years now, and if anything, the collaboration focus has grown, not shrunk.

Chapter 9 - Local authorities as regulators

We agree with the findings in Chapter 9. We can do more to get our own house in order. There is a natural tension between some regulatory roles and Council's natural desire to see its district grow and prosper by being "user-friendly". Some approaches to regulation, such as the IANZ audit of building control functions, focus quite strongly on approaches to managing risk that are perceived by staff as user-unfriendly. This issue also ties back to finding 3.7 and greater clarity about the role of local government in economic development.

Chapter 10 - Local monitoring and enforcement

We agree with the findings of Chapter 10, especially finding 10.2. In our district, we have not always recognised the need to put resources in place to effectively implement, monitor, enforce and improve the policies we create. In the trade-off between compliance and
keeping rates down, there has been under-investment. We see that finding 10.2 also has linkages to finding 7.11.

Chapters 11, 12 & 13 – The cost impact of local government regulation on firms; Making resource management decisions, and the role of appeals; Local regulation and Maori

We support the findings in these Chapters, and note in regard to finding 11.1 that some issues with the sequencing of multiple requirements and decisions stems from the lack of a "joined-up" approach to the creation of regulations by central government.

Chapter 14 – Assessing the regulatory performance of local government

We generally support all these findings. We are uncertain whether we would unreservedly describe IANZ auditing processes and the biennial MfE performance survey as “leading practices” but there are elements of both processes that we like, as well as aspects that do not obviously add value from our perspective. For example, we find the IANZ audit approach can be very “pure” and focussed on minimising risk to an extent that some recommended approaches appear completely unhelpful to customers who need guidance through the world of consenting. We fear this is driving BCAs away from a customer service culture into a risk-avoidance culture, instead of embracing the best of both.

As a general observation, the MfE performance survey is an example of both the strengths and weaknesses of benchmarking. There is value in being able to compare our performance with others, but there is also a considerable investment in participating which adds cost for Council. There are new questions added to each new survey which can create work in back-capture of information. Some cost:benefit analysis on the survey might highlight ways it could be streamlined to deliver better value. We support benchmarking, even as we recognise that the results can be seized on by interest groups for their own agendas, when they don’t understand the drivers for variation in performance.

Yours faithfully

Richard Mabon

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