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Director
Inquiry into Local Government Regulatory Performance
New Zealand Productivity Commission
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Dear Steven

On behalf of the Rangitikei District Council, I wish to thank the Commission for its thoughtful issues paper. It certainly raises key issues for the way in which local government can most usefully discharge regulatory functions. Below are the Council's comments and suggestions.

1 The Commission's approach

- 1.1 In some instances, local government implements a regulatory environment set by central government – such as resource consents, building consents, liquor licensing, dog control – although some local discretion is generally permitted. In others instances, local government is empowered to determine its own distinctive regulatory environment, most obviously through the bylaw-making provisions of the Local Government Act 2002 (and also through provisions in District or Regional Plans).
- 1.2 The first of these is relatively more important, but the Council suggests it is important that the Commission's review covers both types of environment – at present there is no way of knowing the collective impacts and costs of local government's bylaw regime or requirements of District and Regional Plans.
- 1.3 Increasing urban concentration is likely to mean an increased demand for regulatory services, to settle conflicting uses of property and behaviours. The trend for tougher management of environmental impacts will also be associated with a more prescriptive (and costly) regulatory regime. So the way in which the regulatory environment is structured and managed will become increasingly important. Technological advances should enable approval/consenting processes to be streamlined (and thus faster and less costly) and make it easier to monitor behaviours and keep people informed when they raise complaints.

2 Local government and regulation

- 2.1 The presentation of roles and responsibilities of local government as prescribed in statutes is comprehensive. One omission is in describing the Building Act: there is no mention of the building warrant of fitness requirements or those sections of the Act concerning earthquake-prone, dangerous or insanitary buildings. While food hygiene regulations are noted, those relating to undertakers and hairdressers are not.
- 2.2 In addition, it may be worth adding the Fencing of Swimming Pools Act 1977 (requiring local authorities to take all reasonable steps to ensure compliance with the Act's fencing requirements) and the Land Drainage Act 1908 (which assigns to local councils not within a drainage district the same powers as elected drainage boards – and allows an individual to compel a local authority to order removal of weeds and obstructions).

3 Regulatory variation

- 3.1 At first sight the different characteristics of local authorities explain most of the difference in regulatory practice across local government – particularly in reflecting on differences between rural and urban councils. However, there are significant differences between different rural councils and between different urban councils, throwing doubt on the impact of different characteristics as being the *key* driver for different local regulatory environments. Rather, we suggest that the lack of standard approaches is the major contributor to differences in regulatory practice. This, coupled with local authorities being allowed discretion, encourages seeking points of difference rather than addressing common needs. Auckland Council can make and monitor bylaws spanning its very diverse landscape and population, which suggests that different characteristics of local populations can be exaggerated when establishing regulatory (and policy) environments.
- 3.2 A further cause is competition. Liquor licensing hours are an example. When a local authority has longer opening hours than its neighbours, it is likely to attract business – and disturbance – not necessarily confined to times when the neighbouring pubs are closed. This issue emerged recently in Rangitikei, with the local police urging alignment with opening hours generally observed in other parts of the Central Police District.
- 3.3 Community expectations to 'do more' about social issues may lead to different approaches to regulation between local authorities but this will also be caused by the political environment in each local authority. Some local authorities will push back on such expectations on the basis that the resources required will outweigh the benefits. This is the case for Rangitikei. For example, requests are periodically made to have parking enforcement in the central business areas. But while there are local incidents of congestion and disruption, Council has preferred to rely on pressure from community and business leaders to minimise these impacts.
- 3.4 Local preferences certainly are an influence on the regulatory environment. Rangitikei District Council endeavours to have a minimal number of bylaws. We accept that there may be particular issues which a local authority sees the need for regulation. The obvious examples are the bylaws on gang patches (sought by Wanganui) and on prostitution (sought by Manukau/Auckland). The Council's preference is that where such issues are identified, there is ability for councils to engage in regulation. This could

be given effect to by broadening the powers for bylaw making in the Local Government Act 2002.

4 Who should regulate

4.1 Many of the regulatory functions exercised by local authorities have been in place for many years, reflecting the practical realities of distances and the certainty that local administration would be more effective and efficient. However, that has low relevance today. One ongoing consideration is the possibility of inappropriate political pressure from local politicians and within the council organisation itself. This latter tension is recognised in section 39(c) of the Local Government Act 2002.

4.2 Of the factors suggested by the Commission, we suggest that regulatory consistency, economies of scope, and national priorities (in that order) are the most important in allocating regulatory functions locally or centrally. However, we wonder where public safety fits within the factors. That seems to us a (if not the) major priority, and would point to significant (if not complete) administration by central government. Dangerous dogs need to be dealt with in the same way in any part of the country.

5 Getting regulation right

5.1 The Commission wonders whether significance policies allow for adequate consideration of the present and future costs and benefits of local government regulation-making. In Rangitikei's case, the significance policy has not been applied in this way. In formulating (and reviewing) bylaws, Council has had regard for the stepped consideration in the Local Government Act (and its own policy of minimal bylaws, noted above). The development of model bylaws through Standards New Zealand has been a useful ingredient to maintaining a useful bylaw regime in our District.

5.2 However, some bylaws and policies are required by other legislation, and these have varying relevance. Given that much of the regulatory functions carried out by local authorities derives from central government requirements, there is a case for reviewing where an 'opt-in' approach could be substituted and where enforcement might be more effectively (and efficiently) conducted on a centralised basis. An historical example is the removal of driver licensing away from local authorities to the New Zealand Transport Agency.

5.3 Costs to local authorities in undertaking regulatory functions come from two main causes. First is where the regulatory regime has to be developed. Council must spend staff time in undertaking the necessary research and public consultation to secure the required bylaw or policy. Second is where the regulatory regime is prescribed, but the local authority needs credentials to enforce it. Building accreditation has placed significant costs on local authorities. Potentially too the regime proposed in the Food Bill will have funding implications. Part of the problem for small local authorities is that the comparatively small business base means a tendency for a considerable part of the costs to be borne by the entire ratepayer community.

5.4 Where the mixed regulatory regime is seen as the most effective, its development (or review) should be undertaken in conjunction with local authorities. This means more than having joint working parties. It also means spending some time in a range of local

authorities, to gain local insight into the potential costs and impacts – and ideas how the regulation-making could be more effective. Council also suggests that the Commission try to determine what savings accrue to central government in a sample of mixed regulatory regimes – and then recommend that these savings be shared with the local government sector.

- 5.5 One undesirable feature of the current regulatory environment is the ability of central government to determine the final outcome, despite local authorities undertaking research and consultation and deliberating on the results of that. An example of this is in the setting of speed limit bylaws. A local community may feel strongly about the speed restriction which should apply to local roads, but this may be (and in Rangitikei's experience has been) over-ruled by the New Zealand Transport Agency. When central government considers that an external expert perspective is needed, we suggest that it is sufficient to require local authorities to gain that perspective, but not adopt it instead of a stricter approach. If it is rejected, then that decision needs to be transparent to the community.
- 5.6 Capability is a critical issue, particularly for smaller councils where expertise typically lies in a small number of staff. This can easily lead to a dependency on external advisers, resulting in higher costs and no development of internal capability.
- 5.7 Shared services can assist with this issue, evidenced by the shared service for animal control between Manawatu and Rangitikei District Councils. This provides a single team of staff servicing both districts, and has proved a more reliable and cost-effective solution. For the time being, each council still retains distinctive dog control policies, bylaws and performance monitoring. These benefits are precisely those evident in the more substantial shared services arrangement (again with Manawatu District) for asset management services. Rangitikei also has arrangements with Wellington City and Stratford District Councils to process building consents. This has become possible because Rangitikei has implemented a tablet-based inspection system. It has helped Rangitikei manage workload peaks.
- 5.8 Successful shared services depends on an agreed perception of increased capability/diminished risk, economies of scale, improved customer service, and (in the case of regulatory functions) the degree of local differences and how enforcement is to be conducted. We are aware that three Wairarapa councils developed a shared district plan. Possibly that was a missed opportunity for Rangitikei, but the timing of our review of the District Plan did not fully coincide with those in neighbouring authorities. In addition, the scope of the reviews was different – Rangitikei opted for a full review (whereas neighbours preferred a rolling review), and wished to minimise the cost of this exercise.

6 How should regulatory performance be assessed?

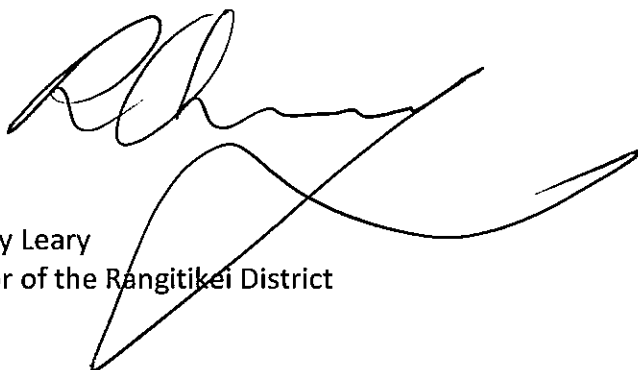
- 6.1 The answer to this question is largely dependent on two further questions – who needs to know and who is funding the monitoring and reporting processes. The performance framework in the Long Term Plan enables Council to assess and report regulatory performance to our community. This focuses on timeliness of processing of consents and licences and responsiveness to requests for service, together with possessing the

relevant authorisations from central government. These are supplemented by more detailed measures of workload (number of consents etc.) and of requests for service. Council monitors the effectiveness of its bylaws when reviews are undertaken.

- 6.2 In addition, however, there are assessments required by central government – performance under the Resource Management Act has the highest profile, but there are also requirements to report under legislation (e.g. Dog Control Act and the Sale of Liquor Act) which seem more for the purposes of government bureaucracy than community awareness and understanding of such functions. These are purely quantitative. Beyond such measures, national performance regimes need to take account of population numbers and density and the geographical extent of the area being managed. For example, responsiveness to requests about dogs in the Rangitikei District is likely to be longer than in (say) Wellington City. Communities are typically interested in value for money, so indicators of comparative costs for the same regulatory function could be instructive. As noted in the issues paper, costs for regulatory functions are often not fully user-pays, but have a component of ratepayer funding on the principle that there is an element of public good in (for example) having premises which comply with the building codes and food handling requirements. This is the case for the Rangitikei District Council which has between 45% and 65% of the cost of regulatory services funded by rates. Having access to such information would be a useful input into the discussion into how these costs should be funded and the level of fees set.
- 6.3 The legal compliance modules developed by the Society of Local Government Managers (SOLGM) have proved useful guides to ensure that Council's processes are correct and efficient.

The Council hopes these comments are helpful.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Chalky Leary', with a long, sweeping flourish extending to the right.

Chalky Leary
Mayor of the Rangitikei District