

6 March 2013

New Zealand Productivity Commission
PO Box 8036
The Terrace
WELLINGTON 6143

Dear Murray

**Environment Canterbury Submission to the Productivity Commission
On "Towards Better Local Regulation" Report**

Thank you for the opportunity to provide further comment on the Productivity Commissions investigation into the areas for improvement around delivery of local regulation. As we understand the terms of reference, your inquiry is as much about the assignment of regulatory functions from central government as it is about local government performance.

The draft report "*Towards Better Local Regulation*", examines the relationship between local and central government, who initiates regulations and how the costs and benefits of regulation are distributed. It includes a helpful stock take as to which regulatory functions are carried out on the direction of central government and which are carried out semi-independently by local government.

We support the principle that regulatory functions should be performed closest to the community that is affected, unless there is valid reason to centralise. Ideally, costs and benefits of regulation should remain within the same jurisdiction. Exceptions to this will be where regulations can benefit from economies of scale, avoid duplication of effort, or where the capability to carry out these roles is limited.

We wish to note that in designing a regulatory system one element that is clear is that close and constructive engagement between central and local government is essential in the design of effective and efficient regulation, especially where it is intended that local government be responsible for implementing the regulation. This is not often the case.

To that end, we would see that any future legislation that is developed and presented for parliament to consider should at least contain some general comment from the local government sector, in much the same way that occurs with affected central government agencies within the Regulatory Impact Statements accompanying the proposed amendments.

The draft report raises a number of questions for comment. Environment Canterbury, under the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act, is currently operating under special legislation and will do so for a further three years. Whilst making a general comment regarding the development and management of the transition of legislation between central and local government above and largely supporting your findings and recommendations, we will not make any further specific comments on your report, other than in respect of Chapter 13 – Local Regulation and Māori.

This part of the report explores a number of issues relating to regulation and Māori, primarily focusing on the Resource Management Act. Environment Canterbury has developed with Te Rūnanga o Ngāi Tahu a special working relationship across a broad range of activities and projects and we would like to elaborate on our experiences within this submission.

Kaitiakitanga

The concept of kaitiakitanga was presented within your report with the identification that “*a kaitiakitanga relationship is more complicated than a strict question of who owns or who regulates a resource*” and that the “*challenge local authorities face where Māori have a kaitiaki interest in regulation is to effectively mesh two governance systems in a way that works for both parties and the community*”.

In our experience, we believe your presentation of this concept is correct and should form the underlying principle for engaging with tangata whenua and should not start with the aim of addressing regulatory functions of the Council but should more seek to align with the general expectations of the treaty partners. This is not a strength of legislation currently and therefore we would need to see a shift in the way legislation is developed to give this greater effect.

It is noted within the report that the Treaty of Waitangi relationship exists between the Iwi and the Crown. However, moving into a world that has seen a number of significant settlements pass into law, the balance of this relationship now rests more and more with local government than with central government. As with all regulation development, the Crown has the ability to retain or delegate responsibility, but with such responsibility when delegated must come the accountability for local government to operate in such a way that supports the Crown’s agreements.

Therefore it may be appropriate for Central Government and respective Local Government agencies to engage more around the development of legislation that is borne not purely from resource management issues but from the relationship around the Treaty settlements and moving central and local government framework into a post-treaty world.

Capacity and Resourcing

Regulatory design is but one driver behind the issues relating to challenge of capacity and resourcing for iwi. Participation can be in accordance with statutory requirements and approached “as a minimum” but local government’s broader relationship can support early and less rule-bound engagement should that be the wish of the council. There is to us obvious benefit in taking a wider approach to engagement than focussing on what is statutorily required.

Within Canterbury, there is an evolving relationship between the iwi and Environment Canterbury. As treaty partners, there is a need to recognise and a need to move into a more enabling and collaborative partnership. This change has in part been driven through legislative change with the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act as a prime example.

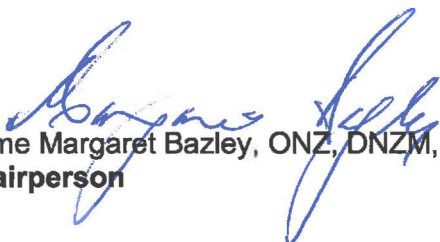
This Act has led to a greater focus on a “no-surprises” approach, which has in turn required more briefings and face to face contact, and additional training opportunities for Environment Canterbury and Ngāi Tahu staff and volunteers.

The Act has also provided the Council with an opportunity to have an appointed Ngāi Tahu commissioner in the governance structure. The commissioner was nominated by Ngāi Tahu and is a senior member of that iwi, bringing a wealth of expertise and experience. Whilst this was a proposal presented for the Auckland Council structure and subsequently not taken up, it has worked immeasurably well in Canterbury in that a trusted and respected member, with the confidence of the Iwi, is able to contribute to the ultimate decision making process of our council on significant land, water and environmental matters. This has been a significant component of the growing relationship with Ngāi Tahu and we believe that appointment opportunities for iwi members in local government governance structures should be considered.

However, we also must balance the changes required above with recognition that most Māori hapu and rūnanga should, having finalised Treaty settlements, also expect appropriate levels of resourcing and support from their iwi management structures in order to ensure adequate engagement with local government can occur to support and enhance participation in decision making.

If there is an opportunity to speak to our submission we would gratefully take the invitation. Should you require any further information or discussion please ask.

Yours sincerely



Dame Margaret Bazley, ONZ, DNZM, Hon D.Lit
Chairperson