Christchurch City Council Submission on the Productivity Commission's draft report "Towards Better Local Regulation"

1. The Council thanks the Commission for the opportunity to make this submission. This submission has been approved by the Council's Submissions Panel on behalf of the Council

2. The Council's submission includes general comments on the findings and other issues, as well as specific comments that address many of the questions posed in the draft report. The Council's resources are currently stretched as a result of ongoing earthquake recovery work and being in the midst of producing a draft Three-Year Plan (three-year variation on the Long-Term Plan). Consequently the Council's ability to consider and respond to the Commission's report has been compromised to some degree.

3. Should you require any further information, please contact Alan Bywater: by email: alan.bywater@ccc.govt.nz, or by telephone 03 941-6430.

General comments

4. The Council strongly supports many of the findings of the Productivity Commission. The Commission has clearly identified the issues facing local government. The "whole of system" approach to regulation that is taken by the Commission is to be commended.

5. The Council will urge central government to adopt the findings and recommendations of the Productivity Commission and make changes of real effect for local government. Clearly, local government has a part to play in making the relationship between central and local government work better. It is looking forward to a new partnership with central government in relation to local regulation.

6. The Council would also like to see a recommendation made to the government that the Minister for Local Government should always sit inside Cabinet. This would provide better recognition of the importance of local government in New Zealand, and would better enable two-way sharing of knowledge about local government matters at an appropriate level. The Minister for Local Government currently has no responsibility for any of the portfolios that are the component parts of councils' work e.g. transport, environment, planning. In addition the Minister for Local Government is under resourced with no dedicated ministry or department.

Chapter 2: Local Government in New Zealand

7. The Council agrees with the 3 key findings of the Productivity Commission in this chapter. As a general rule there is tension between central government and local government. Furthermore, it considers that at central government there is a lack of understanding of the nature and operation of local government. Local government has different roles, bureaucratic processes, funding sources and relationships with its community than central government. It is not a scaled down version of central government.

8. The Council finds that the better central government agencies to deal with are those that have an understanding of the role of local government. The Council supports options mentioned later in the report that are designed to address the tensions, but also suggests that central government

agencies can learn from each other. The agencies that do have good relationships with local government could be used as a best practice model for other agencies.

9. The Council agrees that clarity about the constitutional place of local government is important. Currently there is no clearly defined constitutional framework for local government and this needs to be resolved. A general understanding about how local government works is essential to improving the relationship and determining appropriate regulatory options. The Council agrees that most of its "regulation" activity comes from central government regulation, rather than the Council itself. Where the Council has exercised its powers to make a bylaw it has often done so because its community wants controls to be put in place (recent examples include the Cruising Bylaw and the bylaw being made under the Prostitution Reform Act 2003).

10. The Council is concerned by the contradictions in messages from central government. Central government develops legislation that requires local government to undertake certain functions or follow specific procedures and fairly frequently then either frustrates the fulfilment of those obligations or complains publicly about local government doing so.

Chapter 3: Diversity across local authorities

11. The Council is not surprised by the findings of the Productivity Commission on the diversity across local authorities, and that this diversity drives the different regulatory approaches of different authorities

To what extent should local government play an active role in pursuing regional economic development?

12. The Council believes that clarity is needed around what constitutes an economic development activity. It also considers there is a need for central government to provide direction, and assistance, in relation to economic development activities in a region. The work being lead by Local Government New Zealand and involving the Ministry of Business Innovation and Employment called the Core Cities Project is an example of some direction from central government. The Core Cities project recognises that New Zealand cities are small on an international scale and distant from markets. As a result those cities are frequently better to cooperate to develop the required scale to compete with cities elsewhere. Having said that, there is a need to look at competition between cities and regions for top events, and better coordination of these to ensure everyone gets a "slice" of the economic benefits internationally recognised sporting and cultural events can bring to a city or region. [

13. The ability for local government to play an active role in economic development, should be clearly provided for in the Local Government Act 2002 (LGA02). Local authorities can only carry out economic development activities if its community wants the Council to take that role, and the LGA02 already requires that Councils seek community views on decisions before they are made. Economic development activities will often be provided for in a long term plan, and will therefore be consulted on as part of the special consultative procedure to adopt that plan.

Chapter 4: Allocating regulatory responsibilities

14. The Council also agrees with the findings in this chapter. However, it has some minor comments to make on the guide and case studies and does so by answering the Commission's questions.

Have the right elements for making decisions about allocation of regulatory roles been included in guidelines?

15. The Council believes the right elements have been included in the guidelines, except it would like to see the funding implications/requirements of regulation better addressed. There is no express requirement to analyse how a regulatory activity will be funded and whether specific provision is needed in the design of the regulation to provide a funding mechanism, particularly if it is a regulatory activity for a local authority to perform.

16. One other matter that should be given consideration in the allocation of regulation is the breadth and scope of all of the various regulations that a council must work with. Looking at one regulated area on its own, does not recognise the context of all of the regulation that a Council must provide resources for. Too much regulation to be administered by a Council creates an obvious tension for resourcing and prioritisation.

17. The Council also considers that the heading/first question in the one page guide should reflect the earlier discussion in the draft report and the question asked in the case studies: "Where is the source of the regulatory problem?". The heading currently appears to address what that question should answer. It presumes the regulation should be local, but as identified in the draft report, not all perceived "local" issues are, purely local.

Are the guidelines practical enough and are the case studies helpful?

18. The guidelines appear to be practical to apply, subject to the comments above. The case studies are relatively simple to follow, but neither case study includes answers to all the questions in the framework. The case studies should clearly identify each of the questions in the framework/one page guide. Even if there is no clear answer on an issue it would be helpful for the case study to show how that situation should be acknowledged/ addressed by the evaluator.

Should analysis along the lines of the guidelines be a requirement in Regulatory Impact Statements or advice to Ministers?

19. Yes analysis along these lines should always be completed, and ideally discussed with local government at the outset, so it can have input into this process at the start. Analysis like this would demonstrate that the central government agency has properly assessed the issues and actively thought about who is best placed to be the regulator for a matter.

Should the guidelines be used in evaluations of regulatory regimes?

20. Yes, but this will need to be done over time and ideally, by the central government agency responsible for the Act that contains the regulation making power, in conjunction with local government.

Chapter 5: The funding of regulation

21. The discussion on funding raises some interesting questions. The recommendation that centrally set specific fees should be removed and Councils left to set fees themselves was a matter the Council could see had both advantages and disadvantages. Generally it appears the move in legislation is to provide for Councils to set fees themselves, as there are very few government set fees remaining. The Council can see the advantages for it in being able to set its own fees that reflect the actual cost to the Council.

22. In many cases, where centrally set fees remain, the Council has long sought increases in the fees as they are so far behind the actual cost to the Council it is almost pointless collecting the fee. For example, many of the Sale of Liquor fees, which will now be addressed by the new Sale and Supply of Alcohol Act, but the Amusement Devices Licence fees are only $10,00 per device whilst the Enforcement Inspection hourly charge out rate is $113.00.

23. The Council often receives the backlash from the public for setting fees, when it is simply required to charge a fee for a regulatory function central government has handed down to it. Therefore, an alternative to the recommendation made by the Commission would be to leave many fees set at a central government level but provide a mechanism to ensure the fees keep pace with inflation and the actual cost to local government.

24. In respect of the questions about grants funding from central government the primary point the Council would like to make is that if any grants are to be made by central government they need to be made without strings attached. There are cases overseas where central government funding has been used as a vehicle to 'control' the activities of local government, something the Council would not be in favour of.

Do any regulatory functions lend themselves to specific grants? If so, what make them suitable for specific grants?

25. Specific grants might be appropriate for regulation that controls behaviour the government seeks to encourage or behaviour it wants to deter, or so that local government can provide for better education to change behaviours.

26. Other possible areas where specific grants could be made would be to assist Councils to address national regulation such as national environmental standards and national policy standards, or where there are changes to legal requirements such as air quality or the recent health drinking water quality changes.

If general grants were to be considered, on what basis could 'needs assessments' be undertaken? What indicators could be used? What would appropriate accountability mechanisms for funding local regulation through central taxation look like? How acceptable would these be to local authorities?

27. General grants may be a better basis for providing additional funding to local government. This could possibly be done as a percentage per ratepayer grant, particularly for Councils with a smaller ratepayer base but who still need to fulfil the same regulatory functions as larger Councils

(and where those functions cannot easily be managed on a cooperative or clustered/centralised basis).

28. A general grant to facilitate local government participation in regulatory development would make it much easier for local government to offer staff to assist in this area but still have funding to keep its “front line” operating.

29. In addition providing better regulatory funding mechanisms in legislation that allow local government to collect fees over and above the actual cost recovery model could allow Councils to utilise the additional fees in monitoring and enforcement.

Chapter 6: The regulation-making system

30. The Council does not have any comments to make on chapter 6.

Chapter 7: Regulation making by central government

31. The Council is supportive of the Commission’s finding in general about the quality of regulation making by central government and the impacts that it has on local government. The political and financial costs of many of these regulations are only experienced at the point specific case by case decisions are made and enforcement action is carried out. The Commission correctly identifies that as central government is not involved in these parts of the regulatory regime, it does not directly experience those costs or feedback from the public.

32. As also noted the feedback mechanisms from local government to central government on these issues are poor. The Council suggests that those involved in developing regulation at central government level, and even the relevant Ministers, would gain great insight from participating in a typical local government regulatory environment. Perhaps sitting in on a panel deciding on whether or not to grant an exemption for swimming pool fencing or on an objection to a menacing or dangerous dog classification would provide experience first-hand of local regulation in action.

33. The Council agrees that an opportunity exists to use the Better Public Service Initiative to promote a more joined up, whole of government approach to regulatory policy involving the local government sector. However the Council questions whether this will receive significant focus given the broad aims of the initiative without a specific directive from the Government.

What measures, or combination of measures, would be most effective in strengthening the quality of analysis underpinning changes to the regulatory functions of local government?

34. Of the options identified by the Commission to strengthen the quality of analysis underpinning changes to the regulatory functions of local government, the Council is particularly in favour of the following:

    - *Require the Regulatory Impact Assessment Team to assess all Regulatory Impact Statements (RIS) impacting local government’s regulatory responsibilities.*

The Council would further like to suggest that some local government experience be recruited in to the Regulatory Impact Assessment Team when assessing RIS impacting local government's regulatory responsibilities.

- *Refuse a place on the Cabinet agenda for proposals without a RIS that fully meets Treasury requirements.*

  This would set a clear standard expected for RIS with a meaningful sanction for a failure to achieve that standard. The Council anticipates that there may be resistance from central government agencies to this initiative.

- *Post-implementation reviews conducted (by an external body).*

  This Council believes this option would produce useful feedback and learning to both local government and central government. It would also presumably be able to tease out the issues with a regulatory regime which have their root in the design of the regulations and those which are the result of the way the regulation is implemented.

What measures, or combination of measures, would be most effective in lifting the capability of central government agencies to analyse regulations impacting on local government?

35. Of the options for improving capability identified by the Commission the Council is particularly in favour of the following:

- *Training for local government (councillors and officers) when new regulatory responsibilities are passed to local government.*

  It is important that the quality of this training is high and that there is clear interpretation of the regulation that allows local government to implement it. The Council has experienced training in regulatory areas which has largely consisted of lawyers advising on possible differing interpretations of new regulation. The Council also notes the option identified of training programmes for new MP's and would like to suggest that training of councillors and MP's together would provide some interesting insights for both local government and central government.

- *Formal (and informal) partnerships between government agencies and external experts in regulatory and local government policy.*

  The Council notes that there have been examples where this approach has been used in the past to develop successful legislation. An example (albeit not in the regulatory area) is the development of the Local Government Act 2002 on which a joint central government/local government working party was used.

- *Improve the availability of regional/ local level economic, social and environmental data.*

There are multiple reasons why improving the availability of regional/local data would be advantageous to local government, provided it is not local government alone that is the sole source of having to provide/develop the data. Data available at this level would support a multitude of local government policy development and evaluation.

36. Of the options for improving consultation with LG on regulatory matters the Council is particularly in favour of the following:

- *Greater use of LGNZ by central government agencies.*

  The Council would like to suggest that if central government uses LGNZ in this way it should also contribute to the costs of LGNZ's operation, rather than this falling solely on local government.

- *Additional training for officers on effective consultation processes and techniques.*

  This training should be focused on consultation with local government if the aim is to achieve better outcomes for regulatory regimes split between the two levels of government. The Council is attracted to the idea of there being a sign off on the adequacy of consultation with local government when a proposal involves changing the regulatory functions undertaken by local government. However the Council has little confidence in any Minister of Local Government having sufficient grounded understanding of the way local government operates, nor being willing to withstand pressure from political party colleagues to perform this function adequately. Perhaps sign off by LGNZ would be a way to achieve the same aim but with a higher level of confidence from the local government sector.

Chapter 8: Local government cooperation

37. The Council does not have any comments to make on chapter 8.

Chapter 9: Local authorities as regulators

Is there a need for pooled funding/insurance style schemes to create a better separation between councillors and decision to proceed with major prosecutions?

38. The Council does not believe such schemes are needed. The Council considers that the issue of funding is over emphasised in the draft report.

39. This Council's approach is that prosecution should be the last resort for a Council. Performance measures and auditing that are linked to the Solicitor General's Guidelines on prosecutions would help ensure a consistent approach to enforcement across all Councils. If this approach is supported by a robust enforcement strategy which provides a graduated response to non-compliance it will ensure that only deliberate or repeated serious non-compliance would ever be considered for prosecution. As prosecution should therefore be a rarity, funding should not, as a general rule, be an impediment for any Council,.

40. Legislative change is needed to better recognise and delineate between the governance arm of Council and the enforcement and regulatory arm of Council. For example, a legislative

requirement on Councils to follow the Solicitor General's Guidelines, or something similar, would assist in removing the political element from enforcement/prosecution decisions. This is needed to better enhance the independence of enforcement related decisions, particularly as most political involvement occurs during the investigation phase, which can cause unnecessary additional time and cost.

41. This is not to say that Councillors should not assist their electorate constituents who may be dealing with the enforcement arm of the Council. Appropriate training for Councillors on an acceptable level of involvement in enforcement issues would be useful and funding from central government could assist with such a programme.

Are bylaws that regulate access to council services being used to avoid incurring costs such as the cost of new infrastructure?

42. The Council does not believe this is occurring in its district. As a result of the earthquakes it is now providing a large range of new and upgraded/repaired infrastructure. The question appears to relate to the role of trade-waste bylaws and whether a contractual model would be preferable.

43. The Council's Trade Waste Bylaw provides the statutory platform to enforce how dischargers connect to and operate with the publicly owned infrastructure. The rules in the bylaw are very important in controlling volume and quality of discharge and they also provide economic incentives to industries to pre-treat their discharges prior to passing them into the public system. The Council successfully brought a prosecution recently in respect of its Trade Waste Bylaw, for a very serious non-compliance. This is not something that could be achieved if a contractual model was used.

44. LGNZ developed a model Trade Waste Bylaw for use by local authorities to help provide similar trade waste conditions across the country. This is very important to ensure consistency of approach and to provide a level playing field particularly for primary and wet industries

Chapter 10: Local monitoring and enforcement

45. This chapter provides a useful summary of monitoring and enforcement in regulatory processes.

Are risk based approaches to compliance monitoring widely used by LAs? If so, in which regulatory regimes is this approach most commonly applied? What barriers to the use of risk-based monitoring exist within LAs or the regulations they administer?

46. This Council applies a risk based approach to most of its enforcement functions, with the exception of parking (as reflected in the Council's Long Term Plan Enforcement levels of service). Regulation is now more generally taking this approach (recent examples are the Sale and Supply of Alcohol Act and the Food Bill).

47. The risk based approach applies to almost all aspects of Council's regulatory enforcement functions including Building Control, RMA offences, general bylaw offences, health licensing breaches, and dog control.

48. In terms of the barriers to Councils using a risk based approach, the Council considers that the only impediment is recognising that regulatory compliance/enforcement is a technical discipline requiring specific training and skills.

49. Having competent enforcement personnel developing and overseeing the Council's enforcement strategy and functions logically leads to a best practice risk based approach.

Which specific regulatory regimes could be more efficiently enforced if infringement notices were made more widely available? What evidence and data are there to substantiate the benefits and costs of doing this?

50. The main regulatory areas that would be more efficiently enforced if infringement notices were available include:

    - an infringement regime for any bylaw offences,
    - offences under the Local Government Act (eg Fire Hazards),
    - offences under the Health Act for general nuisances and failing to register a premise.
    - The Fencing of Swimming Pools legislation would also benefit from an infringement regime for failure to bring a pool back into compliance with the Act following an inspection.

51. The Council does not have evidence and data readily available, however, the benefits of an infringement regime (given that prosecution should be a last resort) is self-evident, and there is likely to be national/international research in this area.

52. Laws that have no real punitive implication provide no incentive to comply. Even worse they raise expectations that Councils/regulatory authorities can control certain activities but when co-operation is not forthcoming in reality nothing can usually be done without an infringement regime as the many of the regulatory matters that Council controls do not usually warrant prosecution (as per the Solicitor Generals' Guidelines).

Is there sufficient enforcement activity occurring for breaches of the RMA, other than noise complaints?

53. Yes. In Christchurch there is sufficient "enforcement activity" of RMA breaches taking into account all enforcement activity including monitoring, corrective warnings (verbal and written, abatement notices, infringements for breach of abatement notices and prosecution).

54. There is a need to recognise use of public complaint as a legitimate monitoring mechanism. No regulatory authority (Councils or otherwise) can be, or can afford to be, everywhere at all times. The eyes and ears of the public must be used as a significant part of all breaches including RMA breaches. This is consistent with a risk based monitoring approach.

55. Weight must be placed on the need to balance the need to monitor against on going cost of compliance on the consent holder/business. For example, it would be unfair and unreasonable to charge the consent holder every six months to ensure the correct plants within a landscape plan remain in place.

Chapter 11: Cost impact of local government regulation on businesses

56. The Council notes that this chapter has findings but that the Commission has not asked any specific questions.

57. The Council would like to ensure that the Commission's observation that 'Regulation is important in achieving social, environmental and economic goals that underpin well being' does not get lost in the subsequent discussion of the cost impact to businesses. Regulation is put in place for a reason and would not be present unless these wider benefits are being achieved.

58. The Council acknowledges the finding that delays in obtaining responses from local authorities, and the sequencing of multiple regulatory requirements and decisions by local authorities, can impose substantial holding costs on business. This Council, as with many others, is working hard to reduce and eliminate any unnecessary delays in responding to regulatory consents and requirements. The Council has a number of detailed KPI's that relate to the time taken to process a number of key consents and these are reviewed regularly at a governance level.

59. The Council's experience is that fairly frequently delays are caused by businesses not supplying the required information to enable the processing of their regulatory consent or application. There is also a tendency of the consultants employed by businesses to prepare the information for these consenting processes to blame the Council when talking to their clients, for delays which actually arise from poor performance by the consulting organisation itself.

60. The Council is working hard with business to overcome a number of these issues. The Council offers pre-application meetings that can cover the range of regulatory matters facing a business are on offer and actively promoted by the Council. Where these take place there has been a marked reduction in delays. The Council is also actively engaged with the local engineering, architectural and design associations in an effort to find better ways of working together to speed consent processes

61. The key message from the Council is that central government, local government and businesses all need to play their part and work together to minimise the delays in regulatory processes.

62. In relation to the survey of businesses, the Council acknowledges the reasons the Commission carried out the survey but also notes that it has an element of 'asking turkeys to vote for Christmas' about it. The results are largely what the Council would have expected from a survey of this type on this topic.

63. The Council notes the results that 64% of businesses reported that complying with local government regulation has a greater cost impact than complying with tax regulations (eg, PAYE, GST and business income). A contributing factor to this result may be the differences in the frequency and regularity of the processes involved for business. The administration of tax regulations is an ongoing, constant activity for businesses and most will have developed (or purchased) the capability and capacity to manage these. As noted by the Commission itself, businesses interaction with local government regulation tends to be more episodic, particularly those associated with new plant or buildings. As a consequence of the infrequent involvement with these regulatory processes businesses tend to be less well aware of what is required and have less capability to deal with them efficiently.

64. The survey results that show that the compliance costs of local government regulation are reported by businesses as being higher than for complying with central government regulation, are nonsensical when put alongside another of the Commission's findings that, 'The majority of regulatory functions undertaken by councils arise from statutes emerging from central government'. Virtually all the regulation is central government regulation, albeit some is administered by LG.

Chapter 12: Making Resource Management Decisions, and the Role of Appeals

65. This chapter of the report is wide-ranging. While the Council agrees that there could be some refinement of the RMA appeals process, more analysis of the issues is required. Some of the assumptions used as a basis for discussion in this chapter and for the directions currently advanced, are questionable.

66. For example, the Council does not agree that appeals to the Environment Court are necessarily limited to the most significant matters. It is the Council's experience that the cost of the process, and particularly the cost of an actual hearing in terms of barristers and expert witnesses, deters many. The propensity to appeal decisions relates much more to the resourcing of the applicant or submitter than to the significance of the issue, with companies or organisations much more likely to lodge appeals. Many appeals are related to "minor" matters such as zonings which might confer or deny windfall gain, and restrictions on private property rights, rather than to strategic matters.

67. It is also not correct for the draft report to assume that the relatively wide appeal rights provided by the RMA currently, will automatically mean reduced participation in local hearing processes eg by parties assuming that the matter will be going to Court, so putting less effort into the Council hearing. (See p174.) This is an assumption which may be true for consenting requirements for regional activities and large scale projects, (possibly only about 2% of consents, many of which will now go through the direct referral route anyway), but it is not apparent for all other Council level hearings. The Council's experience is that a full range of evidence is presented by applicants and well-resourced submitters in opposition, and Council itself always mounts a full case. The only instances where corners may be cut in evidence at the local level would be where witnesses need to be brought from overseas, which occurs only very infrequently.

68. A significant gap in the chapter is the lack of any discussion of the Environment Court's approach to case management in recent years. There is extensive use of pre-hearing conferences and mediation, in an attempt to elicit as much agreement as possible prior to hearing (in fact many appeals appear to be lodged in order to protect positions and gain some concessions rather than with the actual intent of proceeding to hearing). Only a small proportion of appeals actually proceed to hearing and evidence is largely constrained to material giving context, and issues where there is disagreement.

69. Therefore, the Council does not accept that there is a causal or even any necessary connection between the propensity to appeal or time taken in the appeal stage, and what happens at the local authority hearing process. This argument should not be used to justify formalising the hearing process at the local level. Formalisation of hearings, including for example a requirement for a more comprehensive evidentiary record, is likely to increase delays at the local level, and deter

public participation. In addition formalisation would be contrary to section 39 of the Resource Management Act 1991 which states that hearings should proceed without unnecessary formality, and not permit cross-examination, There is a fundamental difference between the local authorities "quasi-judicial" role in hearings and the appropriate judicial role of a Court.

70. As a separate issue to that of appeals, there may indeed be opportunities to improve local decision-making processes. For example in recent years the Council has included independent and appropriately qualified Commissioners on all resource consent hearings panels. This has improved the quality of decision-making and added value to decisions. In addition there is a paper currently being prepared for Council on the way hearings run, and how they may be restructured to improve the process. Currently hearings where the applicant leads and has right of reply can enable the applicant to unduly dominate hearing time. Under section 41B of the Act, it is already possible to require pre-circulation of applicant's evidence, if the hearing is of some scale and significance.

RMA Appeal Issues

What factors have the strongest influence on whether a District Plan is appealed?

71. As noted above, it is the Councils view that there is a strong association, if not a causal connection between the resourcing of the appellant and the propensity to appeal an RMA decision. This is because of the costs involved in taking a case and the need for legal representation in order to be "successful" at mediation or in presenting a case. This means that most parties do participate fully in the local hearings process as they hope to achieve the outcome they seek at that level, at lesser cost.

Overall, would it be feasible to narrow the legal scope of appeals? eg to rehearing only, and taking into account developments since initial decision (FINDING 12.1)?

72. The Council considers that this could be beneficial and may speed up the appeal stages of resolving plan changes. It would be important to provide for developments since the initial decision to be taken into account. However it is probably true to say that it would be difficult to avoid the temptation for parties to want to adduce new evidence if they felt that there had been deficiencies in the presentation of cases at the local level, and that such evidence was important to the Court's decision-making.

73. It should be noted that the Environment Court with its current practices, already restricts its consideration largely to rehearing of contested issues, and therefore formally narrowing the legal scope of appeals may not make as much difference in practice as this chapter anticipates. For example, the Court frequently requires conferencing of expert witnesses before hearings, and the production of statements of agreed issues; and generally only hears evidence on points of disagreement. Evidence is pre-circulated and rarely read in Court. Witnesses may be required to pre-circulate evidence on a sequential timetable in order to take account of other parties' evidence. The objectives of case management by the Court (refer Environment Court of NZ Practice Note 2011) include "promoting the prompt and efficient disposal of cases".

Could legal standing be narrowed?

74. Yes, but at the cost of reducing democracy. For example the most obvious example of this is the lack of third party appeal rights in relation to planning decisions in the UK (only applicants can appeal a decision, not submitters).

75. Parties to appeals and further submission rights have already been narrowed in New Zealand eg appeals from trade competitors have been severely restricted, and further submissions have been restricted to those representing an aspect of the public interest or those with an interest in the proceedings greater than the public at large.

Plan Making and Consenting Issues Raised

76. The report raises several side issues about the plan making and consenting process, with an apparent intent of suggesting ways of improving the agility of the plan making process, and reducing the number of consents required, or private plan changes lodged.

Is the very low number of consents declined best explained by risky applications not being put forward, the consent process improving the applications, or too many low-risk activities needing consent?

77. This is likely to be a result of a combination of the factors advanced. Initial feedback often does lead to applicants not going forward with proposals which are not likely to succeed. The consent process frequently includes negotiation on ways to modify/improve applications, and conditions also represent Council going to a great deal of trouble to mitigate adverse effects. There may be a small proportion of low - risk activities which it could be argued don't need consent, but these are generally put on the "simple" consent track and consented within 10 days anyway. Review of the Council's District Plan is imminent and this will provide the opportunity to raising trigger levels for consent to exclude any activities which should not need consent at all.

Would different planning approaches lead to less revisiting of regulation (ie fewer consents required or private plan changes?) What alternative approaches might there be?

78. Fewer consents would be required if thresholds for consent or environmental standards were reduced, but it has to be said that it is difficult to set triggers for assessment and get them exact, as much depends on site specific analysis. Also in many cases it is hard to keep triggers simple eg shading performance standards could easily become over technical and overcomplicated. What is meant by the term "performance based approach to regulation" used in the report, needs much more consideration for a highly urbanised, modified environment, and for amenity issues.

79. Private plan changes are generally applied for (eg rezonings), to advance private interests, and are not necessarily in accord with Council's strategic directions or projected timing for development of an area. As private plan changes must be processed and are "resource hungry", the Council would favour restricting opportunities for private plan changes, and this in itself would speed up Council plan changes and District Plan reviews, including the revision/streamlining of outdated policies or rules, by allowing more resources to be directed to these work areas.

Land and Water Forum as a Model for Plan Making and Decision making:

80. On page 177 of the draft report, and following, the chapter describes the plan making and decision making process for regional freshwater plans under the Land and Water Forum, and suggests that this process could be considered for RMA plan-making and decisions. While the intent is "to get a full range of people and their interests involved in the process and working together", the report also correctly states at p 187 that this collaborative approach would be an exercise in participatory rather than representative democracy. There would be "a high responsibility for reaching agreement on the participants".

81. This Council's view is that it is likely to be unrealistic to consider that this approach could be applied to the District Plan preparation process other than in a limited way. A process requiring interest in environmental management and regulation and a significant time input would be by its nature unlikely to attract a representative selection of participants. It is likely to be difficult to reach agreement on the many planning issues covered in District Plans, so significant hearing time is still likely to be required.

82. A further concern is that the process could become very politicised, with Councillors likely to be put under pressure not to adopt unpopular provisions, as opposed to being able to make decisions in the wider public interest or in the interests of better environmental management.

What features of the by-law making process could improve RMA plan making process and vice versa?

83. It is not necessarily useful to compare by-law and RMA processes. District Plan reviews cover a much wider range of issues, and often affect private property rights in a much more extensive way, whereas many issues covered by by-laws relate to what can or cannot take place in public spaces. Bylaws generally adopt a black and white approach (although there are exceptions to this), whereas District Plan rules may cover several shades of grey, depending on degrees of "restriction".

84. While appeals and further submissions are not possible under by-law regime, which may appear superficially to be an attractive scenario, importing by-law processes would fundamentally change the nature of the RMA and change communities rights to assist in shaping their own local environments.

85. Council also notes that the comment on p187 that plan changes which are appealed "can take 10 years" is very uncommon. A typical time frame from public notification of a plan change to making operative would be 18 months, including plan changes which have been appealed, although some appealed plan changes do take longer than this to be resolved.

Chapter 13: Local regulation and Mäori

86. The Council notes that it has not used Maori Committees to date.

87. With regard to joint management agreements, the Council is a party to a draft Memorandum of Understanding with Wairewa Runanga along with the Department of Conservation and Canterbury Regional Council, dated October 2009. The purpose of the MOU is an expression of the present and future shared intent of the parties to work together for the benefit of

Wairewa/Lake Forsyth and its environs. A joint resource consent application has now been lodged in relation to lake opening and management of lake levels.

88. Consultation with Maori in the district is via Mahaanui Kurataiao Ltd (**MKT**). MKT holds a general mandate from the six papatipu runanga within Ngai Tahu which cover the Council's district, to provide information and advice to Council, about the potential implications and/or effects of programmes or proposals.

89. In relation to resource consents, the Council does not often require MKT input, because of the highly modified, urbanised environment that is predominant in the district. Information is usually only sought for waterways issues and in Banks Peninsula (less than 5% of consents).

Chapter 14: Assessing the Regulatory Performance of Local Government

90. The Council broadly agrees with the Commission's findings that there are a number of weaknesses in relation to local government regulatory performance assessment, including:

- insufficient focus on using performance information to identify potential improvements;
- lack of a system mindset in the development and administration of regulatory regimes (ie, there is a focus on individual parts of regulatory regimes but less focus on how the parts link up and depend on each other);
- lack of feedback loops between the central and local government components of regulatory regimes;
- lack of balance in what is measured (ie, overly focussed on timeliness and transactional measures); and
- a potential weakness in the accountability framework as it relates to assessing capability

91. Given the comments made by the Commission earlier in its report about the holding costs to businesses of delays in obtaining responses from local authorities, the Council notes that there remains a need to measure timeliness and that this remains an important aspect of performance of regulatory processes. The Council however accepts that this needs to be balanced by suitable outcome measurement.

Which of the Commission's performance assessment options have the best potential to improve the efficiency and effectiveness of assessment of local government regulatory performance and improve regulatory outcomes? What are the costs and benefits of these options? Are there other options in addition to those that the Commission has identified

92. Of the options identified by the Commission for improving the assessment of local government regulatory performance the Council is particularly in favour of the following:

- *encouraging local and central government to consider reducing the frequency of some regulatory performance reporting and reducing the external reporting burden.*

  The Council notes that in a number a cases there may remain a need for measuring regulatory performance at the existing frequency for management purposes even if it does

not have to be reported publicly. If this is the case the reduced frequency of public reporting will have some effect in reducing the burden on local government but possibly not to a significant level.

- *encouraging central government to share administrative data to reduce the need for local authorities to produce new performance information.*

  The Council supports the more joined up government approach in which central government agencies share administrative data in a structure manner.

- *creating documents that briefly describe regulatory regimes by setting out the purpose of a regulatory regime, the roles of different players in the regime and the types of benefits and costs that the regime will create.*

  The Council consider that creating these documents would be a good step to developing a shared understanding of the systems thinking around the various regulatory regimes that is shared by both central and local government.

- *convening small groups of people with responsibilities within a regulatory regime to briefly and jointly use existing performance information to assess the performance of a regime from the policy-making stage to delivery, including to identify key system issues and concerns. Such reviews could be progressively undertaken over time.*

  The Council believes that this would be a sensible approach and prove valuable in assessing the performance of regulatory regimes. It is important that there be involvement from the local government sector in this process rather than local government merely receiving the results of it.

- *improving the consistency of performance assessment frameworks across different forms of regulation.*

  The Council supports the idea of a more consistent approach across regulatory regimes as this would make it simpler for Councils to understand what is required, in what form and with what frequency to assess their performance.