MILLENNIUM
HOTELS AND RESORTS

Introduction to MCK:

Millennium & Copthorne Hotels New Zealand Limited (NZX:MCK) is a hotel owner – operator based in New Zealand with 21 owned / leased / franchised hotels under the Millennium, Grand Millennium, M Social, Copthorne and Kingsgate brands. As part of the Millennium & Copthorne Hotels group, we are proud to be part of a global network of over 120 properties in gateway cities across Asia, Europe, North America, the Middle East and New Zealand. MCK is also the majority shareholder in land developer CDL Investments New Zealand Limited (NZX:CDI). With a history going back over two decades in the hospitality, tourism and land development businesses in New Zealand, MCK is able to comment on a number of matters with regard to local government funding and financing.

Submission on the Productivity Commission's Working Paper on Local Government Funding and Financing:

MCK welcomed the opportunity provided by the Productivity Commission to make submissions on local government funding and financing arising from its November 2018 Issues Paper. We made our submission in February 2019 and referred to our most recent experiences with various territorial authorities in relation to the imposition of the Accommodation Providers Targeted Rate (APTR) or 'bed tax' purpotedly to raise funding for infrastructure and other initiatives and other matters.

With the release of the draft report by the Commission on 4 July 2019, MCK is now submitting on the draft findings of the Commission and making further submissions with regard to the Findings and Recommendations contained in that draft report.

Executive Summary:

- While the draft report is generally speaking a well-researched and a thoughful and considered document, the Commission has scored a spectacular own goal with regard to its findings on tourism and in particular, its recommendations on an accommodation levy. The proposed levy is not, in our view, consistent with the other findings and recommendations in the draft report;

- The Commission appears to be suggesting more transparency and fairness apply to the application of rating tools and other such measures such as "benefits test" but with regard to tourism and accommodation providers, it appears to have completely ignored all of those criteria and logic and has bought in to the argument that accommodation providers are the only group that should be specifically targeted in order to fund more tourism infrastructure rather than engage in a properly consulted, industry-wide levy or charge that will actually be paid by visitors to regions with high tourism. That is unfair, inefficient and economically nonsensical when the vast majority of visitor spend is on items other than accommodation;

- No guidance as to a "modest levy" is provided and we believe that this has been ducked because the Commission has no idea as to what might work;

- Within the accommodation sector, it is likely that different segments will be treated differently. The draft report is silent on this issue and we believe it is because the Commission has no answers because it has not considered the relevant problems;

- The draft report recommendations may trigger Commerce Act issues in relations to some of its recommendations. This is absurd;

- The Commission appears to be completely ignorant (willfully or otherwise) of the fact that the Accommodation Provider Targeted Rate (APTR) imposed by Auckland Council cannot be passed on to visitors by owners and has failed to state this in its draft report. Not only does this create a highly misleading impression but the draft report also states that the APTR was imposed "*within existing rules*" which we take issue with given the fact that the APTR has been taken to judicial review on this point.

MCK'S SUBMISSIONS AS TO THE DRAFT FINDINGS AND RECOMMENDATIONS IN THE COMMISSION'S DRAFT REPORT

F5.1 – 5.12	**Improving decision making**
R5.1-R5.8	**Improving decision making - recommendations**
	Findings 5.1, 5.2 and 5.4 are damning and show the lack of governance frameworks that currently exist in local government. Finding 5.3, namely that the accountability of local government to local communities is highly reliant on the transparency of its processes, decision making and performance is self-evident and Finding 5.7 that there is scope for greater transparency and showing how councils have reached decisions and taken into account community views is also something we agree with. In our original submission, we noted Auckland Council raised the APTR as part of the revision of the Long Term Plan and engaged in a truncated and flawed consultation process to justify its reasoning and imposed the ATPR without consideration to how accommodation providers would pass this on to end consumers. In order for hotel owners and operators to get a better understanding of how Council actually reached its decision on how and why it believed that the APTR was appropriate, the only practical option to obtain the background information was to commence a judicial review action which by any measure is an extreme step.

F6.1 – F6.17	**Future funding and financing arrangements**
R6.1 – 6.10	**Recommendations - Future funding and financing arrangements**
	Our greatest concern with the draft report lies with Section 6. We believe that the Commission has got a number of things wrong. In relation to the recommendation in Sections 6.1 and 6.3 that the "Benefit Principle" should play a primary role in determining who should pay most for council-supplied goods and services, we agree. We also agree that fairness demands that the cost of a large investment should be spread over time so that all who benefit from it pay for it. But this is not something new. Section 101 of the Local Government Act 2002 already contains a benefit test and this is highlighted in Section 7.1 of the draft report. We address our views on that below but would agree with the Commission when it states that current legislation is not clear on how the benefit principle should be interpreted. In view of the Commission's desire to foster a greater awareness of governance at the local government level as outlined in section 5, we submit / suggest that part of that improved awareness could cover how councils should best apply section 101 in their decision making process with regard to funding generally. Compliance with this section should be a detailed and meaningful exercise and "*not just paying lip service to what is required of them so far as taking into account relevant considerations*" (as Heron J noted in *South Waikato District Council v Electricity Corporation of New Zealand* HC Wellington CP16-93, 18 August 1994 at 33). We agree and understand that as stated in Finding 6.3 local government funding is under strain in the area of tourism. We see it. But Finding 6.17 which proposes an accommodation levy is totally wrong. The Commission has regrettably fallen into the same logical trap as the local authorities it has been reviewing for largely the same reasons. This is a significant "own goal" on the Commission's part. The Commission needs to admit that tourism is not just made up of accommodation providers alone. The benefits of tourism extend to the retail, food and beverage, entertainment / attractions and transport sectors as well. We and other submitters drew the Commission's attention to MBIE statistics which clearly show that the percentage spent by visitors is approximately 10% of total visitor spend. As we and others have pointed out, Auckland Council's APTR put 100% of the cost of the rate on to accommodation providers alone without any thought or intention on obtaining any contribution from any other sector of any other industry. The Commission's finding that an accommodation levy is appropriate simply endorses this unfair and economically illiterate

	arrangement. How the Commission can therefore justify that an accommodation levy is "*effective and principled*" beggars belief. Accommodation providers are not the most direct beneficiary of expenditure by Councils or central government to raise visitor numbers. They should not be singled out as the party most likely to pay. If the Commission can show that they are, then the final report should say so in detail. In the first instance, the Commission has not robustly examined whether any levy can be actually passed through to the party that should actually pay it. We agree with the Commission when it says that "*the most straightforward result would be that the tourist pays the levy as a straight addition to part of their accommodation bill*". But that is where the issue appears to end. It is also clear that the Commission has not undertaken any detailed analysis about the accommodation sector in New Zealand and does not have sufficient economic information to realise that the percentage of visitors who stay in commercial accommodation are actually the minority. In Auckland, for example, we understand that only 25% of the total guest nights are in commercial accommodation with the average stay being less than two nights. For whatever reason, it appears to us that the Commission is unaware as to how competitive the accommodation industry actually is. While it is all well and good to postulate that a small increase in costs may not affect tourism numbers from an umbrella perspective, the fact remains that any increase in price due to fixed costs (as any rates, taxes or levies would be), would affect demand. The accommodation market is extremely dynamic and depends on a wide range of factors such as availability, the standard of the accommodation being provided, the range of guest amenities and services, the location and reputation of the premises. There are direct parallels between the airline industry and the accommodation industry with regard to their inventory. In both cases, their inventory (airline seats and room nights) are perishable overnight. There is an important difference between the two in that accommodation assets, unlike airlines, are unable to be physically moved to another location or country. In such a dynamic environment, hotel owners / managers cannot easily pass on or collect additional revenue simply because their input costs have increased. Further, the price of accommodation is not determined by the cost of operating or owning the accommodation assets themselves. These issues must be addressed by the Commission in its final report if it intends to recommend an accommodation levy. Clearly the Commission has no practical idea as to what a "modest levy" would look like and how it would be structured otherwise it would have provided some guidance on the matter rather than engage in word play. We note that in rejecting the proposal that a portion of national GST or income tax be used to provide local councils with funding for growth, the Commission itself conceded that "*a fair allocation is likely to provide elusive….and would be highly complex and costly to determine these shares*". We submit that the same reasons apply for any "modest levy" especially given that the need for tourism infrastructure is not even across the country and cite that as another reason why it should be rejected.

	On the GST issue, we note that the Commission has not looked into how value added taxes are applied to cities in which visitor taxes are imposed. It should have. In key tourism-heavy European cities for example, there is a differential in value added tax rate for hotel accommodation including Paris (10% VAT on accommodation, standard rate is 20%), Berlin (7% VAT on accommodation, standard rate is 19%), Amsterdam (6% VAT on accommodation, standard rate is 21%), Venice and Rome (10% VAT on accommodation, standard rate is 22%), Barcelona (10% VAT on accommodation, standard rate is 21%), Lisbon (6% VAT on accommodation, standard rate is 23%),Brussels (6% VAT on accommodation, standard rate is 21%) and Vienna (6% VAT on accommodation, standard rate is 23%) [1]. But it is also notable that Ireland, Cyprus, Turkey, Denmark, Finland, Norway, Sweden, Estonia, Poland, Latvia and Luxembourg do not impose any tourism taxes at all. The Commission will also need address in detail the impact of any fluctuations in exchange rates, price changes in key competitor locations to New Zealand destinations such as Australia, the deterrent impact of a new tax on visitor numbers and other factors that would impact on tourism generally before making any recommendation on a tourism / accommodation levy. This would also need to include assessing the impact of the recently imposed International Visitor Levy which, according to the Ministry of Business, Innovation and Employment will raise over $450 million over the first five years of its imposition and will help ensure tourism growth is sustainable as well as the government's use of the Provincial Growth Fund and Tourism Infrastructure Fund which are briefly referred to in the draft report. If we use the APTR as a case study, the Commission should understand the effect of what appears to be a "*modest levy*" based on capital value. In some cases it has resulted in a rates bill more than half of which constitutes the APTR. Naturally this is highly prejudicial to the ratepayers who have been burdened with it and clearly is not the sort of response the Commission intends but this is an actual result of a flawed process which is in place now. We strongly disagree with the Commission's comment that once that the costs of compliance and administration of any accommodation levy are "*likely to be modestly greater than other targeted rates*". To ensure that the final report is factually accurate and complete, it must refer to the Auckland Council APTR as an example and in particular its remissions policy which, to put it bluntly, has been an administrative nightmare. Remissions given in the first year of the APTR (2017) were not available in 2018 as the Council changed its policy having made errors in the prior year. Many of the failures stemmed from the lack of accurate information in Auckland Council's property database which required owners to point out these errors to Council at significant time and cost to them which was not "*modest*". Because the draft report contains no detail as to what the Commission's preferred model of an accommodation levy is, it is impossible to assess what the actual impacts would be. These would likely vary depending on whether the levy was to be a flat rate per person per night or per room or a percentage levy (flat rate or stepped) or otherwise. Further, the use of a targeted rate in the manner used by Auckland Council for its APTR is a good case study which would support the findings made by the Commission in Section 5 of its

[1] Chapter 4, *Options for a tourism levy for London – A publication for the London Finance Commission* (GLA Economics, January 2017)

	report and which we have commented on above. The issue which we wish to highlight is that in general, targeted rates have a clearly identifiable group benefiting from a specific council activity such as waste management, water management, restoration or the building of roads or other infrastructure. In other words "*everyone paying the rate receives the service, the significant beneficiaries of the spending all pay the rate and the payees are not subsidising anyone else*". An accommodation levy based on rates or capital value will fail this principle as not everyone will be paying the rate, not all the significant beneficiaries will be paying the levy and the payees are subsidising everyone else. In other words, the Commission seeks to fully endorse the proposition that if an increased number of tourists mean that there is increased societal costs including pollution, increased land usage and public utilities, accommodation providers are the only ones that must pay. That is totally illogical. Accommodation providers do not exacerbate tourism and the industry and those who work in it should not be disproportionately punished. Moreover in section 6, the Commission refers to horizontal equity as being a factor that should be considered when weighing up what is equitable and fair (page 141 of the draft report). If the Commission is truly serious about advocating for horizontal equity then it must recognise that different parts of the tourism sector will be treated differently. The Commission seems unable (or unwilling) to deal with this issue as already in its comments on its proposed levy, it believes that in smaller tourist spots a levy would not work so it is already more than happy to override any equity principle it is seeking to endorse. This is another "own goal" on the part of the Commission. Even within the accommodation sector, it is likely that different segments will be treated differently. Will Airbnb properties be subject to a levy? The Commission appears to think so. Will properties under a lease or management arrangement be subject to the levy and can it be paid by such properties and does the owner or manager pay? And what about rates / contracts for rooms agreed before the implementation of any levy? The draft report is silent on this issue and we believe it is because the Commission has no answers because it has not considered the relevant problems. We are very concerned that the Commission has unwittingly overstepped into areas which might trigger Commerce Act issues. In its comments (page 177), it refers to co-ordination of accommodation levies between adjacent jurisdictions. Is this a form of or close to price-fixing ? Is this anti-competitive behaviour or would this trigger cartel provision issues under section 30 of the Commerce Act? The Commission must address these in its final report. Recommendation 6.7 is therefore severely flawed. A blanket power to allow councils in tourist areas to charge levies will inevitably result in different levies for different regions as councils seek to bridge the funding gap for infrastructure by perceived need. If there is to be any levy, central government should legislate and apply the principles of taxation for such a levy as they would for any tax. Revenues from any levy must by hypothecated to the sector from which they are taken. In summary, there is no way that an accommodation levy set by local government can be considered to be fair, be targeting the "right group" (as there are more components to the tourism sector than just accommodation), be considered practical in view of the other central government taxes and charges already in place which are designed to assist with provision of

	tourism infrastructure and are certainly not economically efficient for the reasons we have stated above. Recommendation 6.7 and Finding 6.17 must be deleted.
Q6.1	**How desirable and useful would a tax on vacant residential land be as a mechanism to improve the supply of housing for New Zealanders ? How would such a tax measure up against the principles of a good system of local government funding and financing ?**
	We do not support the concept of a tax on vacant residential land. The issues as to affordability relate to building and development costs which are comparatively higher in New Zealand than elsewhere in the world. A tax on vacant residential land in a development environment where zoning changes are resource consents take up considerable amounts of time would, in our view, act as a disincentive for residential development and would likely result in postponement or deferral or development in future years.
F7.1 – 7.8	**Equity and affordability**
R7.1 – 7.6	**Recommendations - Equity and affordability**
	In large measure we agree with the draft report on these issues: --We agree that section 101 of the Local Government Act 2002 could / should be amended to provide additional support for allocating rates primarily according to who benefits from council services; --We agree that more practical guidance be given on how the benefit principle should be applied rather than reliance on "rule of thumb"; --We agree that the benefit and ability-to-pay principles are separate steps; --However, we do not understand why the Commission finds that abolishing the rates rebates scheme is equitable while an accommodation levy somehow is. The Commission should explain the difference in logic in its final report.
F8.1 – 8.8	**Adapting to Climate Change**
R8.1 – 8.6	**Recommendations - Adapting to Climate Change**
	In principle, we support recommendations 8.1 through 8.3. There does need to be a collaborative approach between central and local government to deal with guidance on climate change. However, our view is that the (independent) centre of knowledge and the source of scientific data should be centralised (i.e. run and be funded by central government) with support teams / units in or seconded to local councils where climate change risks are more apparent.

	With regard to Finding 8.4 we disagree with the language used. The heading "*insurance will be of limited help*" is too provocative in our opinion and overstates the risk that insurance may not become available in areas which are prone to the effects of climate change risk. Insurers are right to factor in the actual and potential risks of climate change but should not use such factors to increase the costs of insurance to unaffordable levels or withdraw cover arbitrarily. We agree with the Commission's point of view on Finding 8.4 that insurance communicates the level of risk properties face from natural disasters and do not indicate how risks will evolve over time but some better guidance should be able to be provided if the insurance industry engages actively and collaboratively with the centre of knowledge for climate change and adjusts its risk profiling in line with the findings from same. This will promote certainty and clarity in relation to future pricing and risks. Sadly, we consider Recommendation 8.4 to be garbled. We agree with the highlighting the Commission has made in relation to the dilemma Councils face in terms of the risks on council planning that will occur if restrictions on development are premature or overly precautionary. We ask how those risks will be outlined in something like the Long Term Plan if, as the Commission states, the climate change risks are "constantly changing". If the guidance is to change every three years when such plans are subject to review and the identification of risk factors and mitigations measures keep changing to meet the risks at the time, this will lead to additional costs, delays in development, uncertainty as to whether to proceed with future development and possibly a reduction in future investment in certain areas. From our perspective, that may lead to further affordability issues in the housing market and reduce overall productivity. On Finding 8.5 / Recommendation 8.6, we think that these make sense in principle but would be sceptical about how this would be structured or funded. We do not believe that it should be a compensation fund per se but rather a fund that provided assistance after a sudden event or to assist with relocation and redevelopment in areas where the effects of climate change over time have become too difficult to fix. We note that all of the examples quotes in the draft report (ACC, EQC, MPI adverse events, NZTA and NWASCA) are controlled and funded by central government. What is surprising is that there is no mention made of any initiatives or involvement by the new Infrastructure Commission or the Infrastructure Transactions Unit whose remits are to cover central and local government infrastructure projects. We believe that the draft report should mention both and that the Productivity Commission should reach out to the Infrastructure Commission and the Infrastructure Transactions Unit to provide more guidance and support on these issues.

Conclusion:

By recommending an accommodation levy, the Productivity Commission has both undone the most important findings in its report but also trashed its overall goals and mission statement with regard to impartiality and objectivity. It has not looked at what is fair and appropriate or economically sound and has simply taken the path of least resistance in targeting one sector of the tourism industry to provide funding for infrastructure when in fact it should be looking at the wider industry and actual costs, incomes and benefits.

If the Commission is serious about its findings in this regard and intends to issue a credible and factually correct report, it should and must engage further with the accommodation industry prior to finalising its report.

We were disappointed that the Commission chose not to engage with us directly on more detailed consultation to our original submission. Despite that, we are more than willing to meet in person with the Commission to expand upon our submissions above and to provide more information to allow the Commission to complete a factually correct and objective report.

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