



Hospitality New Zealand

TO THE PRODUCTIVITY COMMISSION

SUBMISSION ON
LOCAL GOVERNMENT FUNDING AND FINANCING DRAFT REPORT

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Overview:

1. This Hospitality New Zealand (Hospitality NZ) submission relates to the Local Government Funding and Financing Draft Report July 2019 (“Draft Report”).
2. Hospitality New Zealand submitted on the Local Government Funding and Financing Issues Paper November 2018 (“Issues Paper”) and we welcome the opportunity to comment further on the Draft Report.
3. We appreciate the work and consultation already undertaken by the Productivity Commission, and we would welcome and encourage the opportunity to work further with the Productivity Commission on this issue.
4. This Hospitality NZ submission will focus only on the specific areas with which we wish to make further comment. Our overall position on Local Government Funding and Financing remains entirely unchanged from our prior submission on the Issues Paper.
5. **In particular, we do not support the recommendation to allow Councils to implement an “Accommodation Levy”.**

Accommodation Levy:

6. We have particular issue with this recommendation as it does not align with either the ‘principals for local government funding and financing’¹ (“Principals”) established in the Draft Report or the “benefit principle” which the Commission has indicated as being its preferred decision making framework when allocating the financial burden of local government services.
7. **Hospitality NZ does not support the recommendation of the Productivity Commission to introduce legislation enabling Councils to implement an “Accommodation Levy”.**

Principals for local government funding and financing:

8. It is our view that an accommodation levy should not have been assessed as an adequate option for local government funding and financing because it does not align to the Principals in the following ways:
9. Appropriate for local government use: We believe that the funding of mixed-use infrastructure and services that benefits both locals and tourists and is of a national benefit, is more appropriately funded by central government rather than local Councils. Tourism

¹ New Zealand Productivity Commission. (2019). Local Government funding and financing: Draft Report. Available from www.productivity.govt.nz. At 1.

benefits New Zealand as a whole and the solution to the funding of mixed-use infrastructure needs to be a coordinated nation-wide approach, rather than an ad-hoc local council approach. A national approach would enable better coordination for projects, such as roading and public facilities, plus have cost efficiencies of scale.

10. The Draft Report repeatedly states that the financing and funding framework must “*incentivise good performance*” and that services must be “*effective, efficient, and affordable*”.
11. We know that Councils do not often have the skill-sets, knowledge, or experience to make the necessary and appropriate funding and financing decisions. This view is supported by the Commission who in the Draft Report state “*Governance and financial capability across the local government sector is patchy, with a number of councils lacking the necessary systems and skill-mix for effective decision making*”.²
12. Feedback from our members echoes this sentiment. Our members have indicated a decreasing level of trust in Councils to be fiscally prudent and transparent in their decision-making process. As an example, some Councils are looking to increase alcohol licensing fees. However, despite continual requests, these Councils have not provided sufficient evidence of attempted budgeting, costs savings, or plans for increasing productivity to justify increasing alcohol licensing fees.
13. In our initial submission, we established that another example of this type of behaviour was the introduction of the Auckland Council Accommodation Provider Targeted Rate (APTR). At the time, Auckland Council did not provide, or appear to undertake, a proper cost / benefit analysis for the APTR. Nor did they consider the distribution of the benefits that the APTR sought to fund, or the affordability and economic impact of the APTR on the businesses that it applies to. In the view of our members the APTR was ill conceived, inequitable, and implemented without sufficient basis, consultation, or cost/benefit analysis.
14. We have serious concerns that Councils lack of fiscal responsibility, failure to consult adequately, and dearth of transparency will be exacerbated if Councils obtain the power to impose an accommodation levy on the commercial accommodation sector. In our experience, Councils appear to view and use levies, targeted rates (and other local taxes), as an easy way to raise revenue and do so without adequate justification or analysis.
15. We do not share the view articulated in the Draft Report that permitting Councils to impose levies on accommodation meets the requirement to incentivise good performance. It is our view that it may have the opposite effect; de-incentivising good performance as Councils will be given an easy revenue-gathering mechanism, and will use it rather than looking at their own practices and seeking efficiencies and costs savings first. Additionally, the Draft Report does not appear to provide any recommendations for provisos or limits on either the amount Councils can set as an accommodation levy or for ring-fencing the revenue from a levy to ensure that it funds the infrastructure programs that it is intended to fund.

² Above 1 at 134.

16. Coherent: Allowing Councils to set their own accommodation levy rate (in addition to the International Visitor Levy) will lead to a situation where there is no coherency throughout the country, or from one local body to another. It could also lead to situations where Councils undermine each other as Councils ultimate responsibility is to their individual area. The Draft Report itself warns “*Without careful coordination, different levels of government that share the same tax base can impair coherence. For example, each level could set its tax rate without considering the rate set by the other – which could result in a damagingly high combined rate*”.³
17. Perversely, Councils that do work together in setting an accommodation levy, may trigger Part 2 of the Commerce Act 1986 as this action could be said to be anti-competitive, cartel type behaviour.
18. Efficient: The Draft Report states⁴ “*Taxes can cause harmful effects by distorting people’s decisions about consuming, working, saving and innovating relative to what would be most economically efficient... In general, taxes cause less inefficiency when producers and consumers are less inclined (or less capable) to reduce their tax bill by switching... to more lightly taxed good and services*”. Yet we believe the Commission does not appear to have considered the accommodation levy in light of this.
19. We foresee, as an unintended consequence of an accommodation levy, consumers choosing to shift their accommodation decisions to providers who are not captured by an accommodation levy - for example from commercial accommodation to Airbnb, which the consumer may perceive as being more economically efficient. Some current commercial accommodation providers may choose to shift their business model to one which would not have the competitive impairment of a levy.
20. Other unintended consequences we foresee include; more visitors choosing to day trip in areas where they once would have stayed, and more people choosing to freedom camp, or stay with family or friends over traditional commercial accommodation providers. Domestic tourists may shift their travel to international destinations, and international tourists may shift their travel to alternative countries, or decrease their length of stay in New Zealand to avoid the negative financial impact of the levy. These situations may also inhibit investment in the commercial accommodation sector.
21. If visitors look for ways to avoid an accommodation levy but continue to visit areas where a levy is imposed, they will continue to create externalities that they do not pay for. It is our view that the Commission needs to undertake a fuller risk and impact assessment of these issues.
22. Equitable and Fair: We have long advocated that an accommodation levy (or any type of accommodation-only levy, rate, or tax) is neither equitable nor fair.

³ Above 1 at 139.

⁴ At 139.

23. An accommodation levy does not equitably or fairly capture all those who use, and benefit from, mixed-use infrastructure and funding. Further, an accommodation levy is a blunt inefficient instrument that does not even capture all those who receive accommodation in New Zealand.
24. We believe an accommodation levy does not meet any of the possible tests of fairness as set out in the Draft Report⁵.
25. Sustainable: To be sustainable an accommodation levy must not be easily avoided. As we have set out above, we believe that an accommodation levy as suggested by the Commission can be avoided by both consumers and businesses. Without legislative oversight preventing or disincentivising avoidance, we are concerned that any levy that is introduced will be ineffective and result in unfairly targeting the commercial accommodation sector.
26. We are also concerned that an accommodation levy (if widely introduced) will be unsustainable for certain Councils in certain areas who do not have a predictable flow of tourists into their territories.
27. **On assessment of the Principals against an accommodation levy, the recommendation for an accommodation levy must fail.**

Benefit Principle:

28. The Commission have made clear throughout the Draft Report that their preferred method of allocating the financial burden of local government services is through the benefit principle.
29. The Commission have defined the benefit principle as being, “*those who benefit from, or cause the need for, a service should pay for its costs.*” adding “*Some local assets and their associated services could benefit local residents and national interests. In these cases, the benefit principle points to shared funding (with a contribution from central government)*”.⁶
30. The Draft Report touches on the need for investment into “*mixed-use infrastructure and services*” defining “mixed-use” as being infrastructure and services that are used by, and benefits, both locals and tourists.⁷
31. We believe that an accommodation levy fails the benefit principle primarily because an accommodation levy does not capture Freedom Campers, day visitors, those transiting/passing through an area/Council district or people who chose to stay with family and friends. All of these groups create externalities by using and benefiting from mixed use services and infrastructure which they do not pay for, and would not be caught by an

⁵ At 141.

⁶ At 4.

⁷ At 251.

accommodation levy. Therefore, on that basis we believe that an accommodation levy cannot meet the benefit principle. As those benefiting from the mixed use services are not paying for them.

32. Further, unless a formal and legislated national regulatory framework for peer-to-peer short-term accommodation is implemented, whereby those operating in the share-economy are registered and identifiable, then those visitors who choose to stay in peer-to-peer short-term accommodation will also not be captured by, and required to pay, an accommodation levy.
33. While we acknowledge that Airbnb has *“indicated its willingness to collect such a levy”*⁸, we do not have confidence that the platform (or others) will voluntarily comply with Council regulations without legislation. To the best of our knowledge, they are yet to do so in areas such as Auckland, Queenstown, or Rotorua which have specific local policies regarding short term accommodation.
34. The Draft Report states that accommodation only accounted for \$3 billion of the total \$39.1 Billion that tourism revenue generated in New Zealand for 2018.⁹ By comparison retail accounted for \$12 billion and food and beverage accounted for \$4 Billion.¹⁰ Despite this, the Commission has continued to push for an accommodation levy which only applies to one part of the tourism sector, ignoring that fact the benefits of tourism flow to more than just accommodation providers and that accommodation, by comparison, contributes less to the total tourism revenue gathered than retail or food and beverage.
35. The ‘benefit principle’ therefore simply cannot support a levy being applied to one sector of the tourism industry as the benefits of tourism are wide reaching and the tourism sector as a whole, and all those who benefit from it, should be responsible for funding the necessary infrastructure to make it successful. It is clear that an accommodation levy does not capture all those who cause the need for, or benefit from, the mixed-use infrastructure and services.
36. The benefit principle requires, by definition, being applied to a wide range of people, businesses and sectors, as there are many who benefit from tourism in New Zealand. An accommodation levy that does not apply to all those who benefit from tourism therefore, cannot and does not meet the benefit principle.
37. **We believe that an accommodation levy does not meet the benefit principle, and therefore should not be used as a method of local government funding.**

Further comments on the proposed accommodation levy:

38. The Draft Report suggests a number of options to aid the funding of mixed-use facilities. The Draft Report acknowledges that several submitters support option three (Councils in tourist

⁸ At 177.

⁹At 79.

¹⁰At 79.

areas receiving a portion of GST from tourist spending). However, the Commission do not see this as a viable option as it is not possible to identify GST by location, or by the identity of the final customer. We believe that the same can be said for accommodation, as it is not possible to identify the purpose that accommodation is taken for, or the pressure that the user of the accommodation is placing on mixed use facilities. For example, an individual traveling for business will place less pressures on mixed use facilities and infrastructure than a family on a holiday.

39. We are concerned that the logic used by the Commission for rejecting option six is flawed when examined in light of their support of option five (an accommodation levy). It is argued that option six should be rejected as it fails to charge domestic tourists for the funding of mixed-use facilities.¹¹ Yet, the Commission supports accommodation levy which fails to charge freedom campers, day visitors, those staying with family or friends or those staying in peer-to-peer accommodation for the funding of mixed use services. Therefore, it is illogical to reject option six because it does not charge all those who use mixed-use facilities whilst simultaneously supporting option five, which also does not charge all those who use mixed-use facilities.
40. We are also concerned that an accommodation levy lacks horizontal equity which is a criterion that the Commission has identified as being of value in allocating the burden of the funding mixed-use facilities. The Draft Report acknowledges that an accommodation levy would not capture significant portions of those who engage with the tourism sector in New Zealand including freedom campers, day visitors, or those staying with family and friends. Therefore, horizontal equity will not be achieved as those providing or receiving accommodation are not being treated equally.
41. We know that tourism benefits locals, communities, and New Zealand as a whole in both tangible and intangible ways. Yet, an accommodation-only levy actually subsidises all the other industries and parties that benefit from tourism to the detriment of accommodation providers. Other solutions that more fairly share the burden of financing and funding in our view are fairer and more equitable as they would not amount to an industry subsidy, given the wide-ranging benefits of tourism.
42. In our initial submission we set out our concerns about whether or not Council imposed rates and levies can actually be directly passed on to consumers rather than being another cost absorbed by businesses. We also set out the impact that the APTR has on the financial viability of businesses and the hardships it can cause. We are concerned that the Commission does not appear to understand, have properly considered these issues, and the impacts on accommodation providers and customers.
43. Finally, the Draft Report acknowledges *“The ability to introduce an accommodation levy will not solve the funding gap in all tourist destinations.”*¹² Therefore, it cannot, in our view, be used as the silver bullet to solve local government funding concerns. We believe that an

¹¹ At 176.

¹² At 252.

accommodation levy is not the solution, and when assessed against the measures the Productivity Commission have used to inform their work, it simply cannot proceed as a solution.

Peer-to-Peer Accommodation:

44. We are extremely disappointed that the Commission has made no recommendations to legislate and regulate the peer-to-peer short-term accommodation sector.
45. Regardless of any other final recommendations, legislation must be put in place to compel peer-to-peer accommodation provider platforms and their users, to comply with regulations and legislation. We believe that peer-to-peer short-term accommodation providers that operate as businesses must be treated as businesses and pay their fair share of commercial ratings and compliance costs imposed by Councils and Government.
46. There must be horizontal equity across the wider accommodation sector, which we believe includes peer-to-peer short term accommodation providers that operate like businesses. Unless nationwide regulation is imposed on peer-to-peer accommodation providers to ensure they are treated like businesses, we believe they will continue to evade rates and compliance costs further impacting on commercial accommodation provider's ability to compete with them. With the explosion of this sector in recent years, this has a significant impact on local government funding and financing issues.
47. We refer the Commission to our initial submission which includes recommendations on developing a national regulatory framework for peer-to-peer short term accommodation providers and urge the Commission to include our recommendations about the regulation of peer-to-peer short term accommodation in the final report.

What is the solution?:

48. It is our view that there needs to be due consideration, focus and consultation on a sustainable, equitable and nationwide approach to the funding of local infrastructure. This cannot be left up to individual Councils to be considered on an ad-hoc basis.
49. All funding decisions at local (and central) government must be fair and equitable to both those who pay for and those who benefit from that funding.
50. The potential proliferation of targeted rates to fund infrastructure throughout the country must be halted.
51. Freedom Campers and those using and operating peer-to-peer accommodation need to appropriately and fairly contribute to the cost of the infrastructure and facilities that they need and use.

52. Councils should do more to increase transparency and efficiencies, aiming to minimise their costs, and cut wasteful spending.
53. We recommend that in order for Councils to strike a better balance between the ability to pay and the beneficiary pays principle, Councils should:
- a. Focus on the wider picture of what they are trying to achieve when creating and implementing policies rather than looking at what is immediate, obvious or convenient.
 - b. Undertake mandatory cost / benefit analysis and provide objective justification when looking to impose any targeted rates / levies. The decision to impose targeted rates / levies should be based on evidence-based studies.
54. We believe that some of the local government funding tools currently available are not being used effectively. More effective/efficient use of current funding tools (e.g: Tourism Infrastructure Fund, Provisional Growth Fund, and the International Visitor Levy) should be properly explored before new levies, rates or taxes are introduced.
55. We do not support the current ad-hoc approach of Councils imposing levies and rates when addressing funding shortfalls. This approach can significantly increase the cost to visitors, shift the pressures of visitor numbers and infrastructure to neighbouring Councils, push tourists into options like freedom camping or alternative destinations, and unfairly discriminate against one particular business or industry sector.
56. We believe that there is a case for greater central government investment into tourism infrastructure, given its benefits to New Zealand as a whole, and that New Zealanders are also the users and beneficiaries of improved infrastructure.
57. Everyone who uses and benefits from mixed-use infrastructure and services must contribute to its costs.
58. **Ultimately, we believe a fair, equitable, sustainable, and coherent funding and financing solution that adheres to the benefit principle should be sought, and this can only be achieved through careful, in-depth investigation and consultation with all interested parties.**
59. **The Productivity Commission should remove the accommodation levy from their final proposal.**

Conclusion:

60. We thank the Productivity Commission for the opportunity to provide further feedback into the Local Government Funding and Financing Draft Report.
61. We would be happy to discuss any parts of this submission in more detail, and to provide any assistance to the Commission that may be required.

About Hospitality New Zealand:

62. Hospitality NZ is a member-led, not-for-profit organisation representing approximately 3,000 businesses, including cafés, restaurants, bars, nightclubs, commercial accommodation, country hotels and off-licences.
63. Hospitality NZ has a 115-year history of advocating on behalf of the hospitality and tourism sector and is currently led by Chief Executive Vicki Lee.
64. We have a team of 8 Regional Managers located around the country, a National Office in Wellington and we have our own in-house Solicitor in Wellington.
65. Hospitality NZ has a Board of Management, made up of elected members from across the sectors of the industry, and an Accommodation Advisory Council, made up of elected members from the accommodation sector.
66. We also have 18 local Branches covering the entire country, representing at a local level all those member businesses which are located within the region. Any current financial member of Hospitality NZ is automatically a member of the local Branch.
67. In addition to the Branches, Hospitality NZ has 16 Accommodation Sector Groups. The Accommodation sector groups are designed to ensure the local branches of Hospitality NZ have a strong accommodation focus in every region on issues relating directly to the commercial accommodation sector.
68. Enquiries relating to this submission should be referred to Nadine Mehlhopt, Advocacy and Policy Manager, at nadine@hospitality.org.nz or 0274 305 071.