29 August 2012

Productivity Commission

Dear Sir/Madam

Issues Paper - Local Government Regulatory Functions

Thank you for the opportunity to provide feedback on your recent issues paper. We have structured our response using the question format provided in the document, as we are aware that this is an information gathering exercise rather than a more formal submission process.

**S.1 Overall Comments**

The Commission should keep in mind:

- a) Most regulatory functions of local government are prescribed by central government, and this is often done with little guidance that would ensure consistency or good outcomes;
- b) Increasing regulation prescribed by central government, without compensatory financial consideration. Local government is therefore often left to fund such regulations through rates or user charges;
- c) At the same time, central government is criticising local government for excessive rate rises and introducing the possibility of capping future rates rises. Central government needs to consider other avenues or options to fund local government activities, including regulation.
- d) Ongoing changes to legislation, including regulatory regimes, are in themselves costly for local government. These are often driven by political considerations rather than practicality, yet impose substantial costs on other parties, including local government. For example, ongoing reviews of the Building Act.

**S. 2 The Commission’s approach**

**Q1 What is the relative importance of the range of the regulatory activities local government undertakes? Where should the Commission’s focus be?**

Local government, whether territorial or regional, undertakes a wide range of functions with the territorial authorities having the broadest range of functions and responsibilities. Compared with jurisdictions in Europe and North America, local government undertakes a reduced number of functions. For example some responsibilities and functions around health and education are apparent in many European jurisdictions, whilst education is the function of local councils in North America. This limited role of local government in New Zealand also means that there is more fragmentation of responsibility as more central institutions needs to be involved in local area.

As the arm of government closest to the public, local government regulatory culture is often driven by local preferences. Local preferences will often be the source of variation between local governments. Local preferences will also be driven by historical views and approaches, especially in more rural areas. Local preferences themselves can also be driven by whether the local government being urban, rural or mixed in culture, with larger urban centres often being the most involved in a wide variety of actions.

From the perspective of territorial authorities, planning functions and building functions would arguably be the most important regulatory functions, whereas for regional authorities, environment regulation would arguably be the most important. However, for the public, the highest priorities may be more related to dog control and noise management (and the costs and fees associated with it) which often receive the highest level of submissions and interest from the public.
Q2 What are the main economic, social, demographic, technological and environmental trends that are likely to affect local government regulatory functions in the future?

The strong drive in the public service for more outcome orientated, rather than process or management orientated regulation.

The desirability of more partnership approaches, and alignment of funding, whether between community and government, private industry and government, Iwi and Government and so on, in order to maximise outcomes.

The aging population across New Zealand as a whole, but especially evident and prominent in provincial or rural areas.

Increased regulatory functions within urban areas as urban population density increases and results in increased complaints, as well as increased complaints in urban fringe areas.

Increased use of maturanga Maori in environmental management.

Increased use of internet technology.

Increased intensification of high quality land, whether rural land use or urbanisation.

Declining quality of environment and ecological services from highly productive and urban lands. This may be partially offset by increased services from marginal land that is being retired.

S.3 Local government and regulation

Q3 Has the Commission accurately captured the roles and responsibilities of local government under the statutes in Table 2?

No. Whilst the listing of functions was mostly accurate, the section gives no indication of the relative importance, scale or scope of the identified functions, including the level of resources needed for implementation. For example, Building Act functions or Health Act functions require significant resources, whilst the Litter Act may not be quite as resource intensive. In addition, regulatory functions such as the Building Act have been the focus of significant investigation, review and change as a result of successive government’s different views. Each new review requires a significant amount of investment in capacity and development by local government and industry practitioners, including staff skills or information technologies, and result in considerable cost to local government.

Q4 Are there other statutes that confer significant regulatory responsibilities on local government? What, if any, regulatory roles of local government are missing from Table 2?

There are a number of other regulatory functions that already result in high resource needs that have not been recognised in the table. For example, most large public reserves are subject to provisions in the Reserves Act, and many require the development of a Reserve Management Plan to govern and regulate their use. In addition, public land can often be subject to encroachment by private interests, especially in coastal areas, and will require some level of regulatory action.

The Fencing of Swimming Pools Act is another piece of legislation that can require extensive regulatory action, including inspections and court cases, as is the Building (Infringement, fees and forms ) Regulations 2007.

Whilst the Resource Management Act and Local Government Act are discussed later in the document, they should perhaps be included in this section as well, especially as they both result in extensive regulatory action.

Q5 Are there any other local organisations with regulatory responsibilities that the Commission should consider?

As a result of Treaty of Waitangi Settlements and proposals by the Land and Water Forum, a number of new resource and catchment based institutions may emerge, similar to the Waikato River Authority. At a smaller scale, the increased use of Building Improvement Districts in commercial areas of cities may lead to very localised (and probably amenity based) regulatory responsibilities. The Historic Places Trust and New Zealand Fish and Game are also organisations with regulatory functions. Whilst the Department of Conservation is not a local organisation, the increased use of concessions on public land, and possible consequences for surrounding non-public land may also need to be considered.
S.4 Regulatory variation

Q6 Do the different characteristics and priorities of local authorities explain most of the difference in regulatory practice across local government?

Yes, often most of the differences are due to different characteristics and priorities of local authorities, along with their own particular histories. Such differences have emerged in response to local concerns and in an absence of central government guidance (e.g. National Environment Standards and National Policy Statements), especially in the development of regional and district plans. The Department of Internal Affairs is notably absent in providing guidance and generally takes a hand-off approach in regard to standard setting, unlike similar agencies in other jurisdictions internationally.

Specific mention should be made of historically poor economic performance in a given local authority, which can result in changes in regulatory performance, especially in boom and bust areas. In addition, more provincial or rural areas may have a slower uptake on some issues perceived as “issue of the day” rather than being issues of long-standing future importance.

Q7 Are community expectations to ‘do more’ about social issues leading to different approaches to regulation between local authorities?

Yes. Expectations are rising, and are evident especially from working with organisations representing sectors such as disability, youth and the elderly, advocates on community safety, alcohol, gambling and through the distribution of community funding.

However, it is not just community expectations that are driving this need to do more. Some of the pressure to act is also coming from central government agencies and ministries that see local government as having some additional levers and tools that they cannot access. In short, there is an increased use of partnership approaches being developed.

The increased centralisation of central government affairs (and associated reduced regional presence of such agencies) is also leading to a vacuum in which community organisations are expecting local government to fill. Whilst funding is still available from central government agencies, the level of competition has also increased over the years.

Q8 To what extent are local preferences a source of regulatory variation in New Zealand? How far should councils, when implementing a national standard, have discretion to reflect local preferences in their bylaws?

Local preferences are the main source of regulatory variation in New Zealand, and some allowance for local discretion will always be required. However, in the main, national standards should be implemented relatively consistently across all regions.

Q9 Are there areas of regulation where local and central government regulation appear to be in conflict? If so, how far should such conflicts be accepted as a consequence of the diversity of preferences?

Regulations in regard to the Health Act between Council and Health Board responsibilities can be the source of conflict, especially when there are disagreements over the actual preferred outcome.

Q10 Does the way in which a local authority chooses to exercise its regulatory powers – through bylaws or through its District Plan – lead to differences in effectiveness and outcomes for communities?

The RMA is more legally enforceable but bylaws can be faster to use. However, our council rarely uses bylaws as there is little flexibility contained within their enforcement capacity. There are significant costs in preparing bylaws but in many respects there is little enforcement capacity. Whilst there have been signals about improving tools for enforcement from central government over many years, these have not yet resulted in action.

Q11 In what ways has the Treaty of Waitangi influenced how local authorities have undertaken regulatory functions delegated to them by the Crown?

To date, the Treaty of Waitangi has only been a bit player in terms of influence on local regulatory function in our district. As yet, few Northland Iwi have settled with the Crown but as settlements increase in this region, it is our expectation that influence will increase. However, some important geographical
resources in the region, e.g. the Kaipara Harbour, are governed by a number of different agencies and different Iwi, some of whom have settled with the Crown. This can lead to variation in the way that the geographical resource is managed and potential clashes. WAI 262 is another decision that may have future implications for local decision-making.

Q12 What does this variation mean in practice – for Māori, the local authority and for the regulation of the resource?

Variation amongst local authorities approaches to regulatory functions is the source of endless frustration for Iwi and Hapu throughout Northland, and there has been a long standing calls for better alignment of regulatory functions amongst agencies that have an influence on a particular resource. However, variation in preferences amongst Iwi and Hapu whose rohe cross can also be a source of frustration to local authorities, especially where a number of different rohe are evident over the same geographical area. In terms of resource management, there are significant differences amongst Iwi Management Plans, sometimes over the same area, which can also be difficult to resolve.

Q13 Are there other significant sources of variation in local authority regulatory practice than those described in this chapter?

One is the impact of international trends and concerns, for example in competitive city-regions. Auckland quite clearly is competing in an international context. Its recent spatial plan is meant to help competition with locations like Sydney and Melbourne – so Auckland’s frame of reference and view is wider than many other councils in New Zealand. More export driven local economies may also be cognisant of export production needs, and the need to meet international standards, which is also reflected in local regulatory practice.

Q14 Can you provide examples of inconsistencies in the administration and enforcement of regulations between local authorities?

Larger firms in New Zealand, especially when negotiating on resource management matters, tend to raise this type of issue (especially supermarket and service stations). Whilst we look at other councils’ operations in terms of best practice, local preferences and capacity will tend to drive local administration and enforcement.

Q15 Do these inconsistencies impose extra costs on businesses? If so, are these extra costs significant?

This may create extra costs on business – especially those of a significant scale to operate over a number of different jurisdictions. However, most operations would generally be of a significant enough scale that they could employ specialists to deal with such issues and cost at a low level. By in large, businesses in New Zealand tend to be of a small and medium size, which would often only operate in one or two locations(with the possible exception of Auckland until recently) and would only need to deal with minimal inconsistency. However, increased agglomeration of businesses may mean this is becoming an increasing concern across the country.

Q16 To what extent does variation in regulatory practice matter?

We find that when we attempt to implement nationally imposed directions or policies, we tend to get very negative responses from the public. For example, the present NES on Electricity Transmission is receiving much negative publicity and pressure on our council.

Q17 Can you provide examples of regulatory innovation by local government?

Online regulatory tools e.g. lodging consents and applications and tracking processing e.g. Thames Coromandel District Council and others.

Q18 Is the innovation specific to a particular local authority and its unique circumstances, or could it be adopted more widely?

Could be adopted more widely, but depends on demand i.e. some areas don’t have enough development to warrant it.

Q19 What mechanisms or incentives are there for local authorities to share innovations (or experiences with ‘failed’ innovations) with others?

The main way is probably through Local Government New Zealand, although the Upper North Island Strategic Alliance may also be important in terms of interregional alignment and sharing. Also professional or local government conferences and seminars.
Q20 What factors encourage (or deter) local authority innovation? (eg, the (in)ability to capture the cost savings from innovation)

- Financial resource and local capacity.
- Possibly of ongoing changes from central government (e.g. Building Act Reviews)
- Upfront costs versus long term costs saving can also be difficult to address, especially in terms of limited electoral cycles, where benefits accrue in downstream periods but can affect present day politics.

S.5 Who should regulate?

Q21 Has the Commission captured the advantages and disadvantages of centralisation and decentralisation for each of the factors?

- More or less, but it doesn’t cover the relative scale of important for each factor in its conception and the ongoing costs of continual change.

Q22 Which of the factors discussed in this chapter are the most important for allocating regulatory functions locally or centrally?

- Preferences, information, capability and capacity. Please note that externalities are not just spatial in scope, but can also be temporal.

Q23 Which other factors might be important for considering whether a regulatory function should be undertaken locally or centrally?

- These appear to capture the main factors.

Q24 Are the factors discussed above helpful in thinking about whether a regulatory function should be relocated?

- Yes. But keep in mind, any changes initially create increased compliance and administrative costs. The long term benefits should significantly outweigh these increased costs.

Q25 In the New Zealand context, are there regulatory functions that need reconsideration of who (central, local, community) carries them out?

Using Table 2, we believe that many are relevant for local government to administer, but more direction and guidance from central government is required. In terms of specific Acts:


S.6 Getting regulation right

Q26 Do local authority significance policies allow for adequate consideration of the present and future costs and benefits of local government regulation-making?

- Unsure – many of our Council’s significance policies are primarily directed to issues that impact on a number of different departments in council. Lowering the significance threshold would likely lead to increased costs as particular departments would need to have more inputs into regulation making than they presently do.

Q27 Does the local government regulation-making process lead to good regulation? If there is evidence to show that it does not, how could the process be improved?

- Rather than reflecting a simple will of Council, most of the substantive regulation making is a series of compromises between Council and partners or private interests in the community or is a result of central government direction being interpreted to better fit the local context. Therefore it is often good regulation for the local preferences, rather than being good regulation in the wider context or for private interests that operate over a number of jurisdictions that this question seems to imply.
Q28 Do you have examples of regulatory responsibilities being conferred on local authorities with significant funding implications?

Almost all regulatory responsibilities are conferred on local government by central government legislation and most have significant funding implications. Examples include Drinking water standard under the RMA, as does increased responsibility under the Sale of Liquor Act.

Q29 How might central government regulation-making better take account of the costs and impact on local authorities from the delegation of regulatory functions?

In our experience, cost estimates made by central government agencies in terms of RMA functions tend to underestimate the real cost to councils. Such underestimates may be a result of misunderstanding local politics or preferences of some communities or it could be the result to averaging costs across the sector as a whole. For example, legal costs when resolving a regulatory function in environmental management in a rural context can be very high, whereas in the next jurisdiction it may be relatively low due to different community preferences. They should specifically consider these costs when imposing or changing regulations in consultation with local government. In addition, there are occasions when new legislation is essentially sprung on local government, with the recent National Environmental Standard on Contaminated Sites (HAIL) being foisted on territorial authorities who rarely had the skills or information system to handle these new requirements.

Q30 How might central government better work with local authorities on the design, implementation and funding of delegated regulatory functions?

Work with local government to develop a better plan of action on the roll-out of its different functions, and through developing more guidance or standards for local government. Co-development of guidelines should mean that central government is more aware of the costs of implementation that is presently the case.

They should also consider methods of financing these extra costs on local government, either by subsidies from central government or increased powers of general competency.

It should be noted that whilst local government may have the power of general competence in terms of undertaking activities that the communities desire under the LGA, it does not have the power of general financial competence or choice in the use of financial instruments. Local government in New Zealand has few options in terms of activity funding when compared with local government in other jurisdictions. For example, some municipalities in the United States have the ability to set local sales taxes to help fund activities.

Q31 How could the RIA framework be improved to promote a fuller understanding of the impact of devolving new regulatory functions to local authorities?

Not sure. Perhaps better cost breakdown in terms of capacity building.

Q32 How successful has the guidance document Policy development guidelines for regulatory functions involving local government been in improving the consistency and coherence of central government policies that involve local government?

Not sure.

Q33 To what extent is the effective implementation of regulations delegated to local government hampered by capability issues in local authorities? Do capability issues vary between areas of regulation?

Capability is a substantive issue for local government, especially smaller councils with reduced resources, especially when dealing with the ‘one size fits all’ legislation that conflicts very strongly with local preferences.

Capability in financial resources for small councils and in attracting and retaining skilled staff to implement regulations is important. Using flying squads to help small councils such as that in Victoria, Australia would also be beneficial.

Q34 Can you provide examples of regulatory cooperation and coordination between local authorities or between central and local government, and describe successes and failures?

The most positive examples tend to be when local authorities work with the Police around liquor issues or in community safety type programmes. Cooperation and coordination between local authorities can be affected by political differences.
Q35 What types of regulatory functions more readily lend themselves to coordination to improve regulatory performance?

Liquor, Gambling and Transport are the best options. Under the RMA, certain activities or issues, such as hazards, landscapes, biodiversity etc would be better regulated in a cooperative and coordinated manner, often at a regional basis.

Q36 What are the most important factors for successful regulatory coordination?

Political will and harmonious relations between regulating local authorities.

Between local authorities and central government, successful regulatory coordination is often increased by the presence of local representatives/regional offices of central government departments (where public service officers actually live). This means that central government agents are more aware of local preferences.

Q37 Are opportunities for regulatory coordination being missed?

Yes, certainly under the RMA.

Q38 What are the main barriers to regulatory coordination?

Lack of political will. Inharmonious relations between local authorities, particularly between regional and territorial authorities.

Q39 Are there examples in New Zealand where local authorities mutually recognise each other’s regulations?

Apart from some powers under the RMA (e.g. in the Manawatu region), we are not aware of many others. Of course, under the RMA, territorial authorities are required to recognise regional policy statement and regional plans.

Q40 Which local government regulatory areas (e.g., planning and land use, building and construction, environmental regulation, public safety and food safety) impose the greatest unnecessary regulatory burden on individuals and businesses?

This is something of a loaded question, with major assumptions being made by the Productivity Commission — there can be differences between greatest unnecessary burden and greatest regulatory burden. The greatest regulatory burden should have been canvassed as a question first, then question 40.

Q41 In what ways are these regulatory areas unnecessarily costly (e.g., are they too complex, prescriptive or unclear)?

Haven’t ascertained what is unnecessary regulatory burden.

Q42 Are there particular examples where local government approaches to regulatory responsibilities are especially effective at minimising unnecessary compliance costs for individuals and businesses?

Most council responses to regulatory responsibilities try to minimise costs associated with compliance. In fact, despite some widely helped views, minimising compliance costs is often a political necessity.

Q43 For which aspects of the regulatory process (e.g., approval, monitoring, enforcement and appeals) could compliance costs to business be reduced without compromising the intent of the regulation? How could this be done?

No strong guidance on this question. However, we would argue that more monitoring, and therefore costs, is required, especially with the shifts in environmental management that are emerging. Reducing appeals would reduce compliance costs but may not be in the interest of natural justice or be acceptable to business of public.

Q44 How well are the principles on which local authorities are required to base the funding of regulatory activities applied?

We believe our approach is quite clearly articulated through our fees and regulations which are subject to public scrutiny and are therefore transparent. However, the split between private/public goods is sometimes a political/economic decision ie reducing costs to business to encourage development.
Q45 Are there examples of where cost recovery is reducing compliance with regulations and reducing their effectiveness?

Cost recovery at Whangarei District is generally limited to between 30% and 50% for dogs, environmental health and building although swimming pools is at 80%. Cost recovery is more often less than the true cost rather being more than true cost.

Q46 To what extent are councillors involved in the administration and enforcement of regulation? Has this raised issues in regard to the quality of regulatory decision-making and outcomes?

There is some Councillor involvement in administration and enforcement of regulations at WDC. Decision to prosecute are vetted and sometimes vetoed by councillor. Decisions are not delegated to staff.

Q47 Are there any other governance issues which impede the efficiency of local government regulation?

Councillors sometimes respond to complaints by the public over complaints and enforcement processes without consulting staff and complicate processes. Occasionally, Members of Parliament also respond to complaints from the public and get involved in regulatory functions.

Q48 Are the current processes for reviewing existing regulation adequate? Could they be improved?

Bylaws and resource management provisions are subject to regular scrutiny, as are a number of different regulatory functions. Reviews used to be more ad hoc, but now there is a much stronger process and programme of review within our systems.

Q49 In which regulatory areas are there good regulatory review mechanisms? In which regulatory areas are there poor or insufficient regulatory mechanisms?

RMA requirement for plans to be reviewed every 5 years is sufficient. Rolling reviews are a good way to undertake this, rather than a one-off review of whole document. The LTP process is another source of regular reviews, including cost recovery structures. Few other mechanisms for other regulatory functions are evident in other legislation.

Q50 Who should undertake regulatory review – the responsible agency or an independent body?

This should be a role for Department of Internal Affairs to be involved. In some cases, the review can be in-house ie RMA plans and policy Statements. In other case an independent could be better.

Q51 Is there a sufficient range of mechanisms for resolving disputes and reviewing regulatory decisions of local authorities?

In RMA, mediation could be used more frequently and arbitration is worth considering.

Q52 Are some appeal mechanisms used excessively, frivolously or for anti-competitive reasons?

Little evidence of this happening in Whangarei District, although there has been vexatious appeals in resource management.

S.7 How should regulatory performance be assessed?

Q53 In what areas of local government regulation is performance being monitored effectively?

Only in those areas that this discussion document has already identified. For example, LGA processes, RMA processes, and Building Act processes. On occasion, through specific queries to parliamentary institutions such as the Ombudsman, other regulatory performances can be measured independently but this is not a regular occurrence.

Q54 Are there areas of local government regulation where performance is not being monitored and assessed?

Performance is usually assessed in terms of adherence to process rather than quality of outcomes.

Q55 Is the current monitoring system effective in providing a feedback loop through which improvements in the regulatory regime can be identified and rectified? What examples are there of successful improvements to a regulatory regime?

Not sure. Whilst councils pay attention to resource management results and processes, it is less so in term of other aspects of other regulatory function management approaches and therefore review may only be addressed in broad terms. RMA processes are monitored reasonably well. RMA outcomes ie environmental outcomes less so.
Q56 What challenges or constraints do local authorities face in developing and sourcing data for better practice regulatory performance measures?

A mixture of in-house capacity (or lack thereof) and a lack of promotion by central government agencies (or indeed an appetite to share this information). Monitoring and reporting on performance measure can require significant resources (time and money) and is often under-resourced as other activities are given higher priority.

Q57 Are there examples where local authorities are using better practice performance measures? What, if any, obstacles exist for wider adoption of these measures?

Not aware of any.

Q58 What kind of regulatory performance measurement would add maximum value to local authorities, their communities and New Zealand?

Some level of benchmarking may be useful in this regard, as long as it was resourced appropriately.

Q59 What regulatory performance indicators are most commonly used by local authorities? Can you provide examples of good input, output and outcome measures for regulations you have experience with? What makes them good indicators?

We address a number of indicators as part of the Annual Report process, and will review them regularly for their efficacy as indicators. We also use such processes as Communitrack and other public survey process etc to gauge our perceived performance from the public. When Communitrack is used, specifically prepared questions are used to get public guidance on matters of importance to the community as well as questioning users of resource management documents.

Q60 What kind of centrally provided data would enhance the local government regulatory monitoring regimes?

National state of the environment (or national state of sustainability) data in terms of regulatory functions on a regular basis that is able to be disaggregated to regional or territorial levels would be useful. It is interesting to note the type of information has emerged in the report on local government regulatory functions by the Australian Productivity Commission as part of their assessment and review.

Q61 Are there quality issues in existing nationally available data sets that would need to be resolved before developing national performance measurement regimes?

No specific comment on this question, although perhaps much more guidance on what is available from the holders of national available data sets to local government would increase their use and usefulness.

Q62 What are the specific characteristics of individual local authorities that make local authorities comparable with regard to their regulatory performance?

Not sure. Very few types of council in New Zealand are easily comparable as there are significant differences in their social, cultural, environmental and economic drivers. Whilst programmes such as NZ Core Cities may be useful for metropolitan comparisons, there are fewer options for smaller provincial government. At one point, there was an attempt to better compare provincial centres, in a grouping called G9. This grouping was primarily focussed on the North Island and included Gisborne, Hastings, Napier, New Plymouth, Palmerston North, Rotorua, Tauranga, Wanganui and Whangarei. Most of these districts, with the exception of Tauranga and Napier, had substantive urban centres as well as extensive rural areas within their jurisdiction. Tauranga has since graduated to being a Metro area, and overall the G9 grouping is not the focus of research. But even without Tauranga, the present population across the remaining 8 councils is approximately 530,000 people and perhaps should be treated as an important topic for research. Notably, only one of these centres (Palmerston North) has a significant tertiary education or research presence.

Q63 Of the performance indicators commonly collected by local authorities, do any naturally lend themselves to systematic benchmarking of regulatory performance?

Need to get Audit NZ input into this as they look at all Council LTP’s as part of their auditing process, including measurements of levels of service. Many RMA functions are already assessed and benchmarked through the 2 yearly survey by MFE.

Q64 What new performance indicators could meaningfully measure the regulatory performance of local government?

Environmental outcomes under the RMA, including outcomes in the built environment.
Q65 Is there a role for a third party evaluator to measure customer service standards in local authority regulatory functions?

Not sure. Is this question simply in relation to regulatory function customer services or is it something wider than that. There are a lot of fish-hooks in this approach, especially given the massive differences in the size and scale of local government in NZ.

Yours faithfully

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