

Submission to New Zealand Productivity Commission on Local Government Regulatory Performance.

From: Ruapehu District Council

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1.0 Introduction

1.1 Council would like to thank the Productivity Commission for the opportunity to submit on the Issue Paper: *Local Government Regulatory Performance*.

2.0 Background: The Ruapehu District

2.1 Ruapehu District Council covers a large geographical area (673,019ha). The majority of the District is rural, although there are large areas of Conservation Estate, including the Tongariro National Park.

2.2 The District also includes a number of townships, with Taumarunui in the north, Pīpiriki to the west, and Waiouru to the south.

2.3 Despite having a small population (resident population = 13,572¹, number of rateable assessments = 8,719), we deal with a number of the growth related issues that the larger Council's deal with, for example:

- Development pressure around Ohakune and National Park (including pressure on existing infrastructure), and in the surrounding rural areas e.g. around Tongariro National Park;
- High peak demands on infrastructure associated with tourism (At the peak of the ski season there can be more than 7,500 people skiing on Mount Ruapehu. The two closest towns: National Park and Ohakune have a normally resident population of 240 and 1,101 respectively);
- Protection of outstanding landscape; and
- To some extent, liquor licensing and noise complaints associated with tourism.

¹ 2006 Census

- 2.4 This is combined with the issues of a smaller Council, specifically a small population and rating base to cover the costs of Council services, including a significant road network (41% of our activity expenditure is devoted to Land Transport).
- 2.5 Significant areas of the District has also been identified as having high levels of deprivation, especially around Pipiriki, Raetihi, Ohura and parts of Taumarunui.

3.0 Response to questions in the Issues Paper

- 3.1 We have only responded to questions in the issues paper where we have specific points we wish to make.

3.2 Chapter 4: Regulatory Variation

Question 8

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?

Response:

Where there are issues, such as natural hazards and contaminated sites, where:

1. standards are set based on good quality and robust science and research;
2. there are reasonable levels of certainty; and
3. especially where the issues dealt with involve significant risks

then it makes sense to establish these as National Standards, with little opportunity for local preferences, or only opportunity for alternative approaches if evidence is produced to justify the approach.

However, where standards are based on:

1. more subjective criteria, for example, urban design, or activities that can be undertaken in public places; or
2. where there are multiple legitimate approaches, e.g. the level of development allowed for within an Outstanding Landscape; or
3. involve communities tolerances e.g. noise levels in commercial areas, or number of liquor outlets/areas where people are allowed to drink in public;

then it is reasonable to allow for local variation. Although national guidance may well be warranted.

Greater consideration also needs to be given to how national standards are funded, and the cost implications for small Councils (and their ratepayers).

Question 9

Are there areas of regulation where local and central government regulation is in conflict?

Response: Not so much conflict, but there are areas where there are multiple agencies with slightly different functions controlling the same issue. For example, biodiversity – there are Regional and District Council functions (and mechanisms within the RMA which enable responsibilities to be clarified), but then there is also Sustainable Forestry Permits regulated by MAF, and requirements for consultation with the Department of Conservation.

It would be useful to simplify the processes, especially for the applicant, while still ensuring that the functions that each agency carries out are undertaken efficiently.

Hazardous substances is another example where we have functions, along with central government. Stronger support and co-ordination between the two would help, especially specialist support.

3.3 Chapter 5: Who should regulate?

Question 21

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

Response: Yes

Question 22

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

Response: Capacity and Capability is an issue for us as a small Council. As noted above, National Standards in areas where in-depth technical knowledge is required would be beneficial from our perspective.

An example of this is Hazardous Substances. As a small Council we are now in appeals over our hazardous substances chapter of the District Plan. The appeal looks specifically at how the storage of fertilizer by farmers should be regulated.

This is a technical issue that in general should be treated the same across the country. Instead, each Council is trying to assess the issue, each employing experts to write provisions that in general are very similar.

Organisations like Federated Farmers and HortNZ then have to submit and where necessary appeal each Council Hazardous Substances chapter. For both Councils and stakeholders this situation is highly inefficient. In situations like this, where issues are predominantly technical, a national approach is preferable.

Comment: Where regulatory functions are allocated locally, strong central government technical support would be useful, especially for the smaller Councils.

Question 25

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

Response – As outlined above, establishing standards in relation to Natural Hazards and Hazardous Substances at a national level would be beneficial. But ensuring that the quality of these standards is high is critical. As is ensuring that the standards comprehensively cover an issue (e.g. all natural hazards), and take a comparable approach e.g. to risk. For example, there is natural hazard guidance from MfE on flooding, fault traces and climate change, while I'm unaware of guidance on other topics.

3.4 Chapter 6: Getting Regulation Right

Question 27

*Does the local government regulation-making process lead to good regulation?
Could it be improved?*

Response:

- The RMA plan change process has become very litigious, costly and time consuming.

It is important that regulations are well considered, but due to the above, Councils seem to have become risk adverse. The legal costs for many Councils for planning advice are likely to be significantly higher than they were 20 years ago.

Initiatives such as the *local government list serve*, and the quality planning website are invaluable and continual funding of these is critical. Any other mechanisms to provide Councils with good quality information to make decisions, while minimising the need for legal advice would help to reduce both time and costs.

- Consultation – there is a strong emphasis on consultation associated with local government regulation (both LGA and RMA). Consultation is important and can raise critical issues. However, often the quality of feedback is not high, while at the same time the process is costly & time consuming (especially the associated administration – summarising submissions, responding to applicants, phone queries etc).

Simplifying these processes to ensure that residents do have a genuine opportunity to comment, while reducing administration requirements would reduce the cost of the process without significantly affecting the quality of regulation.

In comparison to central government regulation making, local government has, in some areas, much greater consultation requirements. For example, the plan change process in the RMA compared to the consultation requirements for establishing NES/NPSs.

Question 28

Do you have examples of regulatory responsibilities being conferred on local authorities with significant funding implications?

Response:

- The NZ Drinking Water Standards – these standards have imposed significant costs on Local Authorities. As a District we have a large number of small Water Treatment Plants (WTPs). The cost to get our WTPs compliant with the NZ Drinking Water Standards will be significant, when there are alternative approaches which may have been more appropriate in certain situations (assess risk profile, implement mechanisms to mitigate risk e.g. monitoring).

Any legislation which imposes significant costs needs to be suitable for a range of situations and provide for alternative mechanisms where appropriate.

In addition, consideration needs to be given to the ability of local communities to pay for improved standards. (Note, Council has received Ministry of Health funding for some upgrading works, but ratepayers in some communities will have significant costs).

- New Regulations – in the last few years there have been a large number of amended or new regulations (amendments to legislation affecting local government and new National Environmental Standards and National Policy Statements). Cumulatively these impose a significant workload on local authorities in terms of:
 - up-skilling of staff,
 - updating databases e.g. the NES for assessing and managing contaminants in soil to protect human health
 - amending planning documents, bylaws etc.

Many of these regulations are necessary and/or helpful but they need to be:

- Well considered – a number of the changes coming through from central government are processed in very tight timeframes, without thorough consideration of the implications. Ensuring thorough consideration of regulations is crucial to ensuring they achieve the intended outcome efficiently.

For example, section 86F of the RMA (2009 Streamlining amendments) amended when rules in a proposed plan were to be treated as operative.

Under s86F some rules must be treated as operative after the submissions period closes; others after further submissions; other after appeals close; and others as appeals are mediated.

This adds a new administrative step in the process which is time consuming for Council staff, and is also confusing for planners processing applications (as you'll have slightly different rules at a number of steps throughout the District Plan Review process).

We are not disagreeing with the change to this section of the Act, but simply highlighting that due consideration does not appear to have been given to the impacts of this on Local Government, and simpler solutions were available.

- Central government needs to recognise that the costs of new regulation end up being passed on to ratepayers.

Question 29

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

Response:

- A risk analysis might be the first tool to use in considering the need to regulate. Such an analysis could also assess ratepayers' ability to sustain the costs associated with the regulations. Where ratepayers are unlikely to be able to meet the costs of regulation, central funding may be more appropriate.
- Practical assessment of what the regulations would involve for a Local Authority.
- Ensuring that presentations relating to new or proposed standards are of a high standard, and provide web links to meetings where-ever possible.

For us, attending a presentation in Rotorua, Palmerston North, Wellington or Whanganui involves significant time, travel and cost. Where presentations are of a high quality this can be time well spent, but the quality of presentations can be variable.

Question 30

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

Response:

- Design:
 - NES/NPS Priorities - Work with local government on identifying priorities for the development of delegated regulatory functions.

To-date, many of the NES's appear to have been driven by Industry (NES for Plantation Forestry, Telecommunication Facilities, Electricity Transmission). Priorities would include Natural Hazards and Hazardous Substances.

- More in-depth research prior to notification – a lot of Council time is spent on making submissions on NES's. This is wasted when the regulations don't

eventuate.

- Working Party Make-Up - Ensure an appropriate range of stakeholders are in the working party.

There also needs to be some recognition that there are so many new regulations produced at the moment that many Councils will not have the resources to thoroughly assess the implications (especially smaller Councils where the implications often differ from larger Councils). This can be addressed through ensuring that the working party includes people with good local government experience (at both a regional and district level), and with experience of both smaller and larger local authorities.

For example, the NPS on Freshwater Management has clearly considered the irrigators and users of water very separately to water abstractors who supply towns. However, many small communities have both rural and urban water users mixed as part of the function in setting up the scheme, and it is not possible to separate these two groups. Practicalities such as these need to be considered when standards are created.

- Clear Documentation – For example, providing a ‘track-changed’ version of the document once changes have been made.
- Implementation:
 - Ensure that the practicalities of the regulations are considered, including:
 - Costs; and
 - Impact on isolated Councils e.g. the practicalities of finding a suitably qualified and experienced person to undertake a Detailed Site Investigation for Contaminated Sites in Ruapehu.
 - Funding - consider central funding for some regulation to ensure that there is an ability to pay.
- Economies of scale are not just achieved by sharing resources between councils but also in contracting with large international companies. This provides access to innovative solutions, more capacity and capability transferred into local council for the short periods that experts are required, and allows Councils to lever off the companies international procurement agreements.

Question 33

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?

Response: As discussed above, capability is an issue for Council. But often this is dealt with through bringing in consultants, which has cost implications for ratepayers.

Greater use of shared services would help.

Question 34

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

Response: We have previously used planning staff from Whanganui, and have also looked at sharing planning staff with Taupo. However, a major constraint is the amount of travel (it takes approximately 2 hours to get from one of the District to the other). Staff coming from further away will have even greater travel times.

Improved networks between Councils would help (including greater use of technology).

Question 36

What are the most important factors for successful regulatory coordination?

Response:

- Simplicity – are the regulations the same from one District to another (potential for confusion/errors)
- Processes – are the processes similar
- Technology – interchangeable?
- Practicality – drive times will be a constraint for us as a Council

Question 38

What are the main barriers to regulatory co-ordination?

Response: Distance, and the process involved in setting up more co-ordinated regulation.