

Submission to the New Zealand Productivity Commission

‘Local Government Regulatory Performance Inquiry – draft report’

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Submission from:

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Introduction:

The South Taranaki District Council would express general support for the findings in the draft report. The draft report identifies many difficulties that exist with the administration of regulatory functions in New Zealand. It is likely that some efficiencies can be easily found, while others will always remain, despite consideration through this process. The South Taranaki District Council would endorse any effort to improve the implementation of regulation in New Zealand and to obtain better outcomes suited to individual communities, as opposed to a ‘one size fits all’ solution.

We would provide our comments below on the findings in the report;-

Chapter 2 – Local government in New Zealand

We would agree that the current tension between central government and local government is unhelpful and unproductive, especially for New Zealanders. This situation has been developing for many years and appears to have resulted from central government manifesto commitments to amend legislation that was perceived to be unnecessarily constraining development and business. Examples of this are the ‘Streamlining’ of the Resource Management Act, which has only resulted in more complexity in administering the act. The current initiative to facilitate land for new housing development around large urban centres has an uncomfortable parallel to similar initiatives, such as the move to deregulate construction, which resulted in ‘Leaky Homes’.

There seems to be a pattern of central government overlooking ‘due process’ that has developed in local government for good reason. That ‘due process’ produces a sound outcome based on process; To start with the answer and attempt to work backwards in justification, creates considerable risk.

The reason that Local Government exists is to represent the more intimate and differing needs of local communities, to the extent that a centralised government cannot. We support the recognition of the constitutional place of each form of governance in the findings.

Chapter 3 – Diversity across local authorities

We endorse the findings that recognise that Local Government represents the variety in our communities and the differences in size, growth and needs.

The current uncertainty in the role of Local Government being involved in economic growth and development needs to be addressed by central government. Improved direction is very much needed. Falling rural populations are a significant issue for rural councils. The change to the Local Government Act 2002 purpose and services to our communities that this affects will also be significant. Certainly, Local Government Reform and Earthquake Prone Buildings will affect Local Government over the coming years. Local Government is better placed to respond to the individual community needs that they represent in this regard.

Chapter 4 – Allocating regulatory responsibilities

Cost recovery and consistency between Councils is a complex issue. There are both benefits and disadvantages in all options. For instance, consistency in some regulatory charges is advisable, eg traffic infringements for standing vehicle offences, (WoF or Registration offences). While the ability for a community to individually recover the actual costs in delivering regulation and determine policy on the Public / Private Benefit is important. This will inevitably result in variation which reflects the reality and preferences of individual communities. Local Government should not be criticised for the variety of outcomes in setting regulatory fees.

Finding F.3: An example of the failure to develop an efficient and homogenous regulatory model across the country is found with the need for Building Consent Authority Accreditation. The Crown set standards using regulations to the Building Act. This required every Council to develop individual procedures in response. To date, many Councils struggle to retain their accreditation when audited and receive corrective action requests. Had the Department of Building & Housing released a comprehensive manual of procedures, this variety would have been avoided.

Finding F.13: Some regulatory responsibilities are spread between central government departments and local government. Examples can be found in Liquor Licensing and also in Food Hygiene Regulation. There are examples in both regulatory areas that work well and also, that work poorly, depending on the willingness of individuals to perform in their roles. Improved efficiency is available through improved direction, or guidance for government departments when participating in local government regulatory functions, eg Liquor Licensing.

Chapter 5 – The funding of regulations

Many regulatory functions are passed to Local Government with the implication that ratepayer funding is available. These regulatory functions can at times be developed with a large urban perspective and can be unsuited to smaller rural councils. An example can be found in the difficulty of recruiting and retaining specialist staff to rural New Zealand, eg Building Control Officials and Environmental Health Officers.

Secondly, some functions are delegated to Local Government when there is a clear National Benefit, eg Significant Natural Areas of national importance. Yet funding for this initiative is with the local community. There needs to be funding from the national purse – in recognition of the national benefit. Other examples are protection of significant landscapes, heritage protection and esplanade reserves.

Chapter 7 – Regulation making by central government

Regulation making by Central Government can be motivated by political commitments and conducted without sufficient input from Local Government, or consideration of how the regulation will be implemented. This can affect the success of the regulation and the cost to the community. We would ask for increased partnership with Local Government when regulations are being developed.

There is also a need for Central Government to actively support Local Government when regulations are created and to be implemented. This support and liaison can reduce variability and increase the success of regulations. An example could be with functions under the Building Act, when MBIE could provide more guidance on best practice.

Implementation Analysis by Central Government should be open and well consulted on with Local Government. This will improve the success of current and future regulation. We endorse the recognition of need for improved and closer relationships between Central Government and Local Government.

Chapter 8 – Local government cooperation

Local Government has always been inherently open, co-operative and networked between Councils and Officers. This has resulted in a greatly increased level of efficiency in Local Government. It does not appear to be recognised or appreciated by Central Government.

Chapter 9 – Local authorities as regulators

Local Government, due to its intimate contact with its communities, does face the difficulty of being impartial. Local Elected Members also struggle with regulatory principles at times, this can result in inconsistent implementation of regulation. More education of Local Elected Members on the role of regulation in Local Government would assist this matter.

There will always be variability in how regulations are administered between councils; An example is how some Councils use Infringements under the Building Act as an income stream, when other councils have never issued an Infringement under this act.

Independent Hearing Commissioners are an effective method of demonstrating impartiality to the community. The 'Making Good Decisions' qualifications has been very successful in raising the standard of decision making and most Independent Hearing Commissioners hold that qualification.

Chapter 10 – Local monitoring and enforcement

There is a high level of variability in Local Government Monitoring between different councils. This can relate to resourcing and policy commitment to conduct monitoring. Producing a meaningful Statement of the Environment Report is not always achieved. There is little national consistency with monitoring activities at a Local Government level.

The law relating to Enforcement is complex and costly to navigate. The time and cost of obtaining an Enforcement Order from the Environment Court is considerable and a deterrent to a Council to undertake enforcement action in this manner. The reality is that legal action for enforcement purposes is a last resort. Most enforcement action to achieve compliance, involves dialogue, written communication, followed by an Abatement Notice. This reality favours consent holders who have little respect for the law and warnings issued by a Council.

Improved support and guidance from Central Government would assist in achieving a higher and more consistent level of compliance.

Chapter 11 – The cost impact of local government regulation on firms

Regulatory costs imposed by Local Government are generally in accordance with cost recovery policies and fees & charges adopted by the Council. There is a public process for the community to submit on the level of proposed charges, also.

The cost of regulation often relates to the potential scale of effect that an activity has. There is a benefit in that regulation for business when statutory compliance is demonstrated to the consumer.

Large building developments often have a greater component of Central Government Levies charged, than Local Government processing costs.

Chapter 13 – Local regulation and Māori

The participation of Maori in regulatory processes is variable at best. Their involvement is often hampered by a lack of knowledge of the process, plus resourcing to participate and having available the skills within their community to adequately participate. The solution is uncertain, but should involve capacity building opportunities for iwi and hapu Administrators.

Chapter 14 – Assessing the regulatory performance of local government

The Ministry for the Environment Bi-Annual Survey has demonstrated successfully how performance of Planning Authorities can be compared on a national basis. There is great potential for other activities to be assessed in a similar manner. Confidence in Local Government would be increased if national surveys were conducted to demonstrate the actual level of regulatory activities carried out successfully by Local Government.

The IANZ audits of Building Consent Authorities is not a comparable example, as the audit is largely based on how the work process is conducted in accordance with a unique set of documents, procedures and manuals of the BCA, albeit it reflecting the Building Act and regulations.