

Submission on Issues Paper Titled “Local Government Regulatory Performance Issues Paper, July 2012”

1.0 Introduction

- 1.1 The Hastings District Council (“the Council”) thanks the New Zealand Productivity Commission for the opportunity to provide comments on the Local Government Regulatory Performance Issues Paper, July 2012.
- 1.2 This submission is from the Hastings District Council and was authorised by way of resolution on the (date TBC) September 2012.
- 1.3 The Hastings District Council (HDC) is supportive of the inquiry, but feels there needs to be a clear context set around this investigation. The Council believes that it is not self evident that all Local Government are performing poorly.
- 1.4 The inquiry needs to consider that it is not just about efficiency and correcting market failures, but should consider key matters of public safety, community policy preferences, Central and Local Government.
- 1.5 How Central Government perform and how it interacts are significant factors in this inquiry.
- 1.6 In making this submission, Council’s view of regulation is about:
 - Giving effect to Government policy priorities
 - Protection from harm for its community
 - Giving effect to community policy priorities

As already mentioned in person to the Commission, the Council also agree efficiency is important.

- 1.7 Through the submission process you will hear a lot from the regulated. The difficult task will be to separate legitimate concerns from those which are attempts to externalise costs and obligations.
- 1.8 This inquiry process is not value neutral and appears already to have a clear driver. Alongside efficiency for business and individuals, will any changes improve the ability for communities to enforce the obligations they consider necessary.

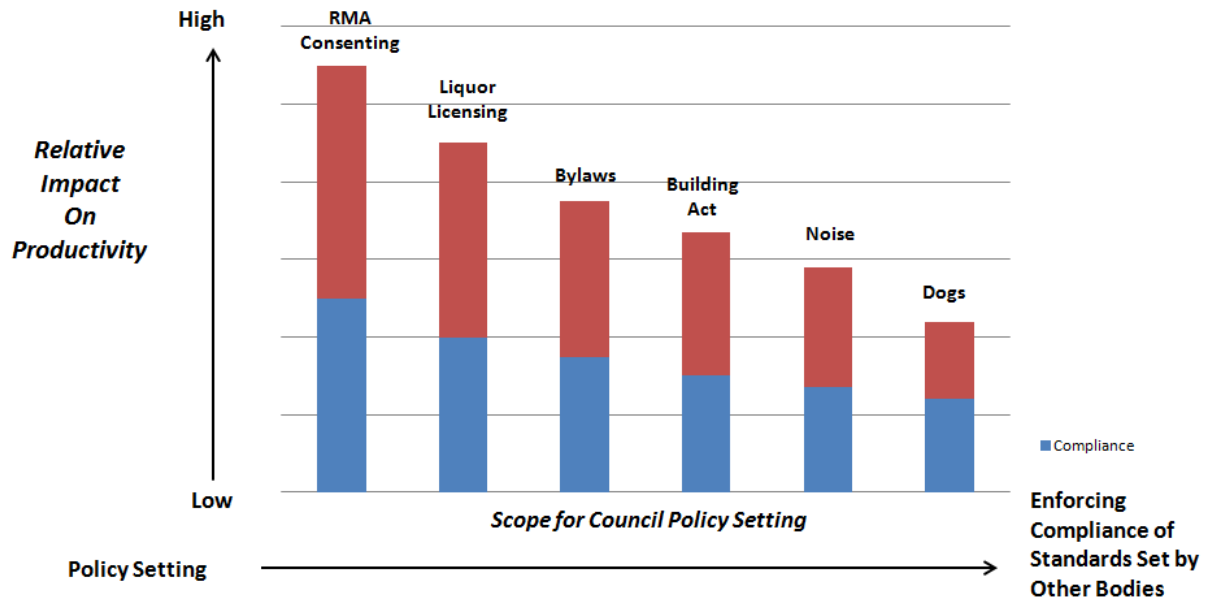
2.0 Submission Format

The Council has already taken the opportunity to address the Commission in person on their recent visit to Hastings.

For clarity, the remainder of the submission has been made in relation to the questions asked by the Commission. Not all 65 questions have been addressed, rather those questions where the Council can offer practical input have been responded to.

The Commission's approach

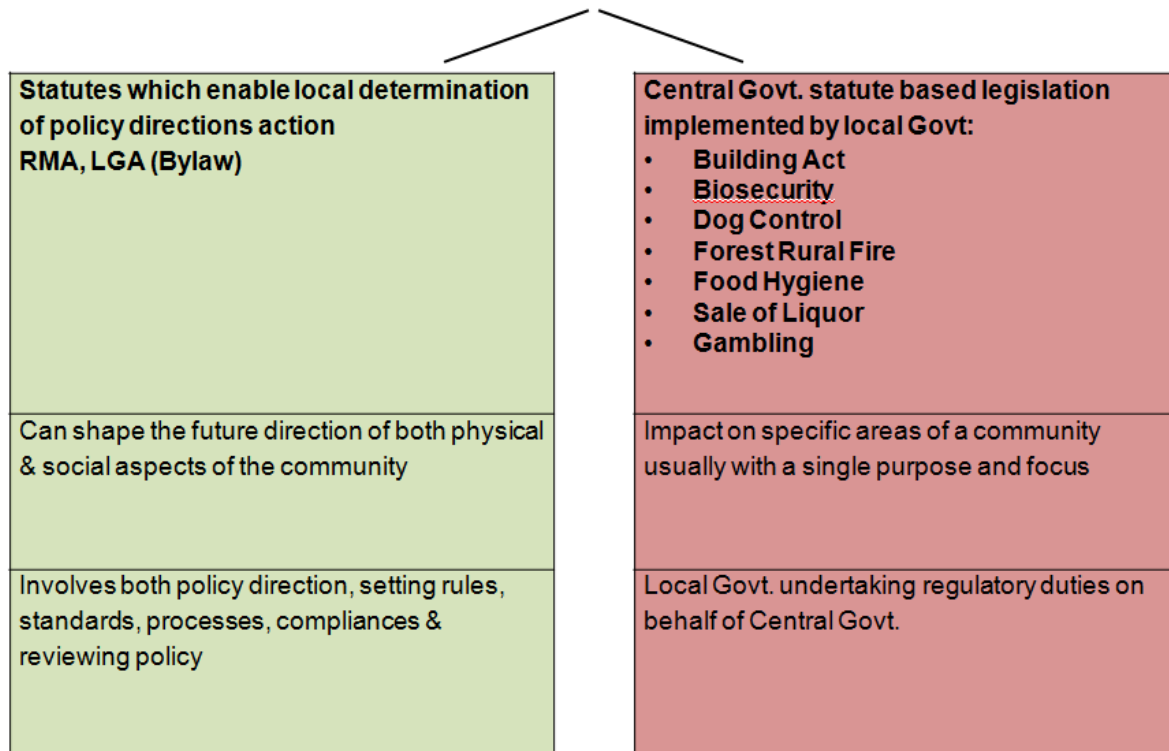
Q1 What is the relative importance of the range of the regulatory activities local government undertakes? Where should the Commission's focus be?



The graph above attempts to rank the relative importance of different regulatory activities that Local Government undertakes and the scope of these activities to enable local policy setting by Councils (as opposed to enforcing compliance of standards set by Central Government or other bodies).

The colours of each bar on the graph represent an attempt to quantify where one part of the activity is policy setting (red) and the other part merely compliance/implementation (blue). The activities with greater local policy component are considered by Council to have the greatest importance to local communities.

Putting Regulatory Responsibilities into Two Categories



The focus for Local Government (where the most positive outcomes can be made by local regulations) are those activities categorised with a greater policy influence (green box).

Council considers it vital that in terms of the Commission's focus, it should be about integrating delivery of regulation, avoiding duplication of the need for multiple consents or dealing with both Central or Local Government on one matter.

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 most significant trends that will affect Local Government are:
 - An ageing population
 - Increased proportions of ethnic groups making up the 0-25 year old age category (and their lack of knowledge and understanding of the need for regulation and therefore acceptance of regulation)
 - High levels of unemployment in the youth segment of the Hastings District
 - The disconnect of both young and old members of the community who do not have access to the internet, the unplugged or disconnected
 - A greater awareness of environmental issues that affect local issues. Ie. examples such as Genetically Modified Organisms (GMO), water and environmental quality
 - The need for Councils to respond more quickly using increased technology. It is conceivable that there will be online applications, quicker responses and approval processes
 - Affordability of being compliant and quality of applications having to be increased to match requirements

Local government and regulation

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

HDC believes the table captures some but certainly not all of the roles and responsibilities of local government under the statutes table. The following should also be included:

- Waste Minimisation Act 2008
- Soil; Conservation and Rivers Control Act 1941
- Walking Access Act 2008
- Public Works Act 1981
- Historic Places Act 1993
- Civil Defence and Emergency Management Act 2002
- Airport Authorities Act 1966
- Reserves Act 1977
- Fencing of Swimming Pools Act 1987
- Land Drainage Act 1908
- Climate Change Response Act 2002

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?

(See Q3 above)

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

Local government often works hand in hand with the Police in terms of infringements and the enforcement of Bylaws such as liquor bans and boy racing and other related crime prevention regulation.

Regulatory Variation

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

In HDC's case, its characteristics in terms of geographic area (substantial rural hinterland and urban centres), demographic profile, aging population, increasing ethnic percentages and economic base will influence a difference in regulatory practice. Some broad examples of this are:

- Council desire to avoid the expansion of urban development onto the versatile soils of the Heretaunga Plains has resulted in the Heretaunga Plains Urban Development Strategy (HPUDES). This document sets out an urban development plan for both Hastings and Napier cities.
- HDC's approach to the management of dangerous and menacing dogs which is detailed in Appendix 1.

- The development of District Plan provisions to enable Papakainga housing is a direct reflection of the ethnic makeup of the district.
- The development of the non-statutory Key Account system for larger developments within the district reflects the desire to deliver integrated regulation. A number of larger food processors have used this system to achieve a better development outcome when going through regulatory consent processes. Appendix 2 outlines in detail the Key Account system.

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

Communities have a higher expectation to have a greater influence over areas of regulatory decision making related to social issues, such as:

- Risk management approach to managing leaky buildings
- Approval of liquor outlets
- Childcare facilities in residential areas
- Location of cell phone towers
- Allocation of consents for water/discharge consents
- Rezoning of high versatility agricultural land to residential/industrial use
- Councils do attempt to address broader social policy through their LTP and District Plans
- With the GMO issue (genetically modified organisms), there could be significantly different approaches between Councils and Central Government
- Fracking

The first three issues listed above (liquor outlets, childcare facilities and cell phone towers) are specific examples where different approaches are being taken under various District Plans across the country due to concerns expressed locally.

As an example, some District Plans may require public notification of those three activities depending on their scale and the zoning of where they may be located where other plans may not. This can mean that one national business which is opening a nation-wide network for any of these activities will face different costs, process timeframes and consent conditions.

Where activities or infrastructure are of national or regional significance, then a NES may be the appropriate way to deal with consenting.

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?

HDC strongly supports the ability to be able to vary national standards and have discretion to reflect local preferences in their bylaws. HDC consider that 75% of Council's regulatory work is generic and 25% is variable. The local variation enables Councils to act more quickly. Liquor bylaws are an example.

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?

Central and local government are constitutionally different. Both receive their power and authority from parliament but whereas central government is concerned with the issue of national well-being local government is concerned with the well-being of local or regional communities. Frequently the priorities of the national community and local communities will be unaligned.

This question again is based on a mis-understanding. The only local government regulations that exist are bylaws – councils enact relatively few bylaws and we feel confident in stating that none of them are in conflict with national legislation (with the exception of a possible bylaws banning GE crops which is of doubtful legitimacy)

All the other regulatory functions undertaken by councils are undertaken on behalf of the Government, consequently it is only in those areas where councils are given some discretion e.g. town planning, where local priorities might not be in line with the priorities of the government of the day. By explanation district plans have a ten year focus whereas government can change every three years and government policy and priorities can change even faster.

Differences are a vital feature of our democracy.

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 choice of the implementation mechanism can affect how effective interventions are on the outcomes are for a community.

One local example is the use of a water services bylaw to achieve a discharge standard over the unconfined aquifer in Omahu Road, Hastings.

It is proposed to use a bylaw to ensure that the nature of storm water being discharged to an open drainage swale system meets the Council's discharge consent. The bylaw can be more specific on such matters as the type of sumps utilised etc., so that there can be more certainty for meeting the discharge standard requirements.

There is considerable overlay between Regional and local Regulatory roles particularly with respect to land use and natural hazard management.

District Plans can lead to big variations and outcomes for communities. It is important to have discretion and flexibility to deal with those issues.

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

Each Local Territorial Authority has a unique community to serve, and this includes the unique personality of the tribal domain which it serves.

Each hapu whanui has its own history and its own particular relationship with Central and Local Government.

At HDC, Ngati Kahungunu has a history of positive collaboration, and due to the Heretaunga and Ahuriri purchases by the Crown in the 19th century, the local hapu quickly joined the local economy first as landowners, then as a labour force working for settlers who depended on them for their place in the viability of the wool, meat and horticultural markets. This has led to a division of labour around the means of production. Socially, the hapu and the mainstream communities have a pattern of political quietness at Local Government level between the Treaty partners.

In this environment any Central Government prescription of express Treaty duties would be out of step with local realities and create difficulties where there are none in a tenor of increasing good faith. Therefore the Council has made gains in its development of positive relationships with Maori and through the establishment of two committees has been fit to enable the effective participation by Maori in the decision making processes.

By developing positive relationships at every level, HDC has been able to achieve a high level of facilitation with resource management and the regulatory process to ensure engagement, participation and ownership of values that are wholly consistent with the best practice models intended in the RMA. This has resulted in regional and district strategies and policy documents that have all taken into account the aspirations and expectations of tangata whenua with mana whenua at every stage and in every aspect. This also applies to the development of policy through the District Plan review, the Long Term Plan and the Annual Plan documents.

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

Due to the significant areas of rural Maori landholdings in the Hastings District and relatively high proportion of Maori population (24% of the 73,200 total population at the 2006 census) the relationship of Maori to their land is an important issue in the Hastings District. This is particularly so with regard to the potential of this land to be better utilised in meeting the aspirations and needs of its owners.

It is on this basis that the Hastings District Council has entered into a relationship with Te Puni Kokiri and the Maori Land Court in seeking to promote 'papakainga housing' development on Maori land. This relationship commenced in 2007 and resulted in the publication of the 'Papakainga Development Guide' in 2008. The guide is intended to provide the necessary information for assisting Maori through the many steps (including Maori Land Court and Council processes) necessary to be able to build houses on multiply owned Maori land. The guide can be accessed from Council's website: <http://www.hastingsdc.govt.nz/papakaiinga-development-guide>

Since the release of the Guide Council have retained the relationship with Te Puni Kokiri and the Maori Land Court which has proved beneficial for guiding the improvement of the Papakainga section of the District Plan as part of the District Plan Review. These processes have also generally assisted Council in establishing relationships and trust with hapu groups, which has assisted in meeting Resource Management Act and Local Government Act consultation obligations.

Currently Council officers are involved in a Joint Advisory Group with Te Puni Kokiri and the Maori Land Court in identifying and assisting groups aspiring to develop papakainga housing on their land access available funding (non-Council) opportunities so that the aspirations may be realised.

In summary the involvement of the Hastings District Council in this process has been beneficial in a number of ways for developing and retaining positive relationships with Maori, at agency, hapu and individual levels. The promotion of papakainga housing is not however an appropriate activity for all territorial authorities. Council's with small rural land bases and / or low Maori populations would not see the same benefit as the Hastings District Council from being involved in such a project.

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

A local example of this has been the approach championed by the Mayor of Hastings in dealing with the issue of Dangerous and Menacing Dogs and the programme developed around this issue. A direct comparison can be made with not only other local Councils in Hawke's Bay but across NZ. The significant difference was the political will to address this issue and resource the enforcement. See Appendix 1 for example.

Another example is the variation in local liquor bans.

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

- Hastings District Council and Napier City Council have recently instigated as a result of Council's Building Forum, a Building Consistency Group. Attached are the minutes from the previous meeting where inconsistencies have been identified (see Appendix 3).
- Dog regulation plus building and resource consent charges differences between HDC and NCC
- Bylaw differences between HDC and NCC (eg. liquor bans)
- Significant differences in the level and commitment of consultation by different Territorial Authorities
- A clear local example is how heritage buildings are protected under the Hastings and Napier District Plans

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

These variations in the administration and enforcement of regulations can result in extra costs being imposed.

Q16 To what extent does variation in regulatory practice matter?

A fundamental strength of Local Government is local representation and with that comes the ability to respond and innovate to community aspirations. It is vital that the ability to pursue variation in regulatory practice is maintained so that local solutions can be achieved.

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

HDC examples of regulatory innovation are:

The Best Home® Concept

Best Home® is an initiative that has been developed by Hastings District Council to encourage group housing companies and builders to design and build homes that are more sustainable and energy efficient.

Best Home® provides an integrated approach between local government and the building industry, the purpose of which is to improve the performance of New Zealand's new housing stock. Best Home® is an approach providing for and encouraging performance improvement in home design and construction to a level above current building code standards. Included in this initiative is a "green tape" building consent process.

Best Home® offers the training, access to home concept and working drawings for Best Home® plans, construction management tools, Homestar™ rating assessments, brand licensing arrangements and marketing collateral, together with a green tape building consent processing and marketing support. In essence it is a programme that mainstreams sustainability to the home construction industry.

A Best Home® is defined simply as any home that has been constructed to:

- Achieve a minimum Homestar™ rating of six stars or more with the potential to be built for no more than 5% additional cost of a standard build.
- A six star Best Home® is desirable as it provides a warmer, more comfortable, drier and healthier home while saving money on water heating, space heating, and energy consumption.

Refer to the Best Home® website for further information: www.besthome.org.nz

Key Account

As mentioned previously in this submission, the general principle of a "one size fits all" approach to regulation does not necessarily meet local community aspirations. The Key Account concept is one of an integrated regulation, where the Council establishes a single point of contact (a Key Account Manager) that is responsible for project managing the seamless delivery of Council services. Attached as Appendix 2, a training presentation for Key Account Management.

Dogs Programme

In 2009, Politicians and Managers requested the then Community Safety Manager to investigate the implementation of a targeted work programme focused on Dangerous and menacing dogs. This was driven by a number of attacks that occurred in the District caused by roaming dogs, and, in particular, Pit Bull type dogs.

At the time there was a concern that owners of such dogs were not meeting their obligations under the Act, so the intent of the work programme was primarily to follow up with all known Dangerous and Menacing dogs to ensure that these obligations were being met on an ongoing basis. However, it was also seemed important to increase the presence of the ACOs in the community through patrolling key areas, and including weekends and evenings in normal patrols.

Critically, it was also determined that Officers should work to the letter of the law with regards to retrieving fees and impounding dogs.

This new approach commenced in late 2009. However, in order to be able to sustain the effort, it was necessary to increase the number of Animal Control Officers from five to seven. Attached as Appendix 1 is a case study on this initiative.

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

These innovations could be adopted widely across the NZ Local Government sector:

- Dog Control
- Best Home®
- Key Account

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

Local Government tend to develop their own solutions and experiences of innovation are shared through the channels of SOLGM and LGA using conferences, training seminars and their publications.

Areas in which innovation could be shared are:

- Joint decision making RMA consenting
- Integrated computer technology nationwide
- Dog control encouraged desire for community safety
- Key Account management to encourage economic development and reduce costs to business
- Best Home™ to encourage sustainable building practices
- Use of joint committees: HDC Maori Joint, Waste Minimisation and Landfill committees

Where lessons can be learnt, then those should be passed on through LGNZ and SOLGM.

Possibly consider that LGNZ be resourced to establish a Centre of Local Government Excellence.

It is considered that 75% of Local Government functions are the same and approximately 25% vary, therefore there are strong grounds for sharing innovation.

Formalising the exchange of ideas may help with wider adoption of innovations. Innovations tend to be driven from the T.A. local preferences circumstances.

The Quality Planning website also shares good practice and advice.

Q20 What factors encourage (or deter) local authority innovation? (eg, the (in)ability to capture the cost savings from innovation)

Local authorities are driven towards innovation by the ever pressing need to do more with less. Whether this is in order to produce cost savings and reduce overheads or whether it is to avoid penalties, there is an increase in innovative approaches to service delivery. They need an empowering framework which allows some discretion.

Other factors which encourage and deter local authority innovation are:

- Political will/community safety
- Their risk management approach

- Knowledge and awareness of emerging trends such as sustainability practices for housing. This includes the way in which codes of land development are approached. ie. allowing low impact sustainable alternatives.

Who Should Regulate?

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

Yes, the Commission has developed a very comprehensive list of factors.

Other factors that might be considered are that assignment of regulatory functions should:

- Be transparent
- Reflect the balance of national and local interests in the outcomes sought
- Align governance arrangements and funding responsibilities with the extent of the discretion conferred
- Recognise risk, liability, transition and implementation issues

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

From a Local Government point of view, if it is not fully cost recoverable, then it should be a Central Government function. Why transfer costs to Local Government ratepayers?

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

Common themes through the Issues Paper July 2012 are: costs to business, efficiency to business and delays to business. Council accepts that the Commission's approach identified one of the purposes of regulation is to achieve wellbeing; but this seems to be partly lost in the cost-benefit approach.

The Council agrees with the principle of subsidiarity – “that matters ought to be handled by the smallest, lowest or least centralised competent authority”.

Council believe the Commission has captured the significant advantages and disadvantages of centralisation and decentralisation for the factors identified.

It is however the Council's opinion that no one model best achieves the most effective delivery of regulatory functions. It is considered that unless regulation needs to be implemented at a central level for reasons such as the NES (National Environmental Standards) which often require extensive research and specific specialist knowledge, it should be implemented at a local level.

It is considered the performance auditing of regulation should be carried out by a separate body.

More than any other factor, the need for certainty in regulation is critical. The majority of business interests want certainty around the following factors: “cost, time, process, likely outcome”.

What can be the most frustrating factor from a business perspective is not being able to obtain certainty (whether it be 'yes' or 'no') from those in the regulatory fields. Sometimes this position is reached due to lack of quality information around the proposal.

Council staff have often been told by experienced developers that they would rather receive a clear 'no' than a 'yes' tempered with doubt.

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

Yes. Any decision about the level at which a regulatory function should be located will need a principled approach to making trade-offs between these factors. However these factors are helpful in making that considered judgement in a risk assessment process.

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

Under Regional Plans and Territorial Authority District Plans, coastal marine structures often require consent from both authorities. Even with joint hearings, the process can be costly and frustrating. There should only be one approval required.

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?

The significance policy is not the driver for allowing consideration of costs and benefits, rather the significance policy sets a framework towards public consultation. The decision making requirements of Section 77(1)(b) of the Local Government Act are more relevant within the context of Local Government regulatory making.

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?

The Council believes that the Local Government regulation making process does lead to good regulation. Some good local examples are outlined below:

Plan Change 54: Havelock North Framework Change	Resource Management Act change to District Plan
Plan Change 55: The Flaxmere Town Centre Change	Resource Management Act change to District Plan

Plan Changes 54 and 55 can be viewed on HDC website links:

www.hastingsdc.govt.nz/planchanges/54
www.hastingsdc.govt.nz/planchanges/55

Q28 Do you have examples of regulatory responsibilities being conferred on local authorities with significant funding implications?

Local Government NZ has produced a comprehensive report titled "The Impact of Government Policy and Regulations on the Cost of Local Government 2012".

The highly legalistic nature of the RMA results in expensive court actions associated with administering this 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?

- Improve the quality of "Regulatory Impact Statements"
- Tap into the expertise that both SOLGM and LGNZ have when new regulation is being considered
- A poor example has been the implementation of NE standard on "contaminated soil"
- Obvious issues could have been avoided if consultation had taken place with Local Government practitioners
- When delegation of regulation to Local Government is proposed, then capability needs to be considered as well as costs and recovery.

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

Recognise Central Government does have capability issues around experience in Local Government regulatory areas, therefore ensure that Central Government makes use of the expertise or contacts that both SOLGM and LGA have.

One example of this conflict between Local and Central Government regulation was the introduction of the National Environmental Standard (NES) for assessing and managing contaminants in soil to protect human health.

Most Councils would agree that there was a need to protect human health from the effects of contaminants in soil and that there should be a consistent approach across the country. However due to a lack of effective consultation within regions most affected by the proposed change, the NES has brought about greater regulatory costs and has not resulted in any real consistency across the country.

Those Councils that already had rules relating to soil contamination in their plans understood the issues of the region and they were dealing with those issues through the regulatory process. The NES has disadvantaged those Councils by introducing an NES that through drafting has resulted in retrospective rules that developers and landowners must comply with when building houses (despite having already remediated the land during the subdivision development). Not only has the NES brought about greater costs of development, the NES does not provide a standardised approach for the country.

There are requirements in the NES that require Council Officers to make judgement calls about if and how an activity should comply with the standards. As a result, each Council is having to put in place their own policies and processes for implementation of the NES. The soil contaminant levels are the only certainty of the standard. Whether or not a site in Auckland, identical to a site in Christchurch is permitted under the NES, is up to the interpretation of those Council Officers.

Attempts were made by many Councils to advise the Working Party developing the NES of the potential issues. A lengthy submission was made by HDC. However, very little consideration was given to these concerns and submissions. The NES cost benefit analysis was clearly wrong regarding no additional costs occurring for those Councils and developers in districts with existing rules.

While it is accepted that to achieve national consistency for national issues, there may still be conflict between Central and Local Government. With good consultation and more thorough investigation of implementation issues at the local level, much of this conflict could be avoided. Attached is Appendix 4 for article: "With Change Comes Challenge".

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

Why not ensure that any RIA completed are thoroughly balanced and of a professional standard rather than necessarily changing the RIA framework.

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?

There is a huge degree of inconsistency in which Government departments follow the guidelines. There is a need for departments to be consistent and consultation to be undertaken with people in Local Government at the coalface.

Short timeframes make the provisions of quality submissions difficult. The recent consultation on food licensing is a good example.

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?

- Yes, there are capability issues which tend to be cyclical depending on the economic environment
- Qualified Planners/Engineers were hard to employ in Local Government during periods of boom due to the higher market rates/employment conditions offered in the private sector
- Obtaining suitably qualified/experienced Building Consent Officers has been an issue
- Smaller rural based Councils have issues with regard to attracting, training and retaining staff in regulatory fields such as Health, Building Inspection, Planning and Development Engineering
- Scholarships have been offered by HDC to planning students to bond them once their training has been completed.

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

- HDC contracting to Christchurch City Council (CCC) to process building consents by cloud computing

- Positive outcome for an economic efficiency perspective because it avoids relocation of skilled building officers to Christchurch, selling homes, raising salary levels for this sector
- Has enabled HDC to keep its consent processing teams intact and improve revenue
- It will also mean CCC could focus more of its energies on inspection work
- HDC contracting to CHB District Council as a trial for shared services
- HDC trialling pilot programme for risk based building consent processing
- Joint liquor strategies have been developed between Hastings District Council and Napier City Council

Q35 What types of regulatory functions more readily lend themselves to coordination to improve regulatory performance?

- A Building Consistency Group between HDC and NCC to address consistency issues from interpretations of the Building Act.
- Functions which require high levels of technical training and the maintenance of a quality assessment system as required under the Building Act
- Regulatory functions which require continued professional development as well as work place mentoring. Small authorities may not be able to offer this.
- NCC, CHB and HDC have aligned their GIS mapping product being Intramaps so data sets can be shared

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

- Political and organisational will
- Clear policy and implementation guides

Q37 Are opportunities for regulatory coordination being missed?

Collaboration amongst Local Government officials is common. A local example is the Joint Liquor strategy between HDC & NCC. However, yes there are missed opportunities.

Q38 What are the main barriers to regulatory coordination?

- Political will
- Legislative requirements to review plans/bylaws and other regulatory controls are often not on the same review deadlines and thus have different priorities for different organisations
- Resource allocation to project priorities
- Systems inertia, cost and institutional resistance to change

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

This question shows that the author is confused between councils' own regulations and regulations being carried out on behalf of government agencies. In our experience all councils would be aware of the approaches taken by their neighbours when setting standards in a regulatory framework, such as a district plan or even liquor bylaws.

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

- The complexity of regulation is often driven by political direction or in reaction to failures of regulatory systems
- The leaky homes crisis is one such example where legislative change to open up new housing design, materials and construction methods new to the NZ context has resulted in huge private loss and eventually Central Government and Local Government intervention
- Included below is an excerpt from the publication “The Leaky Building Crisis – Understanding the Issues”.

“The Building Act was an ill-considered attempt to respond to the need to make home ownership more readily affordable. The authors of the report that preceded it hoped to achieve that end by discarding established building requirements and throwing open to the market-place building design regulated by either local body or private sector experts who could be sued if adequate standards were not met. The lessons of a comparable unhappy experiment in Canada shortly before were never learned. How local bodies could be expected to provide the services the Act imposed upon them, without meticulous arrangements for education and training, was never thought through. Like the comparable failure in the United Kingdom that gave rise to the so-called “Mad Cow Disease”, the failure giving rise to the disaster was systemic. It extended from legislative process to the processing of building consents and inspection of work in progress.”

Source: The Leaky Building Crisis. Understanding the Issues. 2011

The reason for inclusion of this paragraph is to remind the Commission that sometimes good intentions do not translate to good outcomes with regulation, rather have unintended outcomes.

- Any kneejerk reactions which change our risk management framework can impose greater costs
- In Consenting areas, paperwork needs to reflect the scale and risk of the job

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

Often it is the combination of regulatory requirements that have been developed at different periods in time that combine to present a picture of complexity.

Local authorities are required to administer all the regulatory requirements listed in Table 2 of the discussion document. This can present a significant disincentive to a general member of the public. This is why specialist advice is often required.

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

- On larger scale projects HDC nominates a Key Account Manager to guide the consenting process
- This individual is responsible for managing the total project through all Council consenting requirements

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

- An area of significant cost reduction to business would be the improvement of quality of information provided to consenting authorities and the requirement to undertake pre-application meetings so that both parties clearly understand the information requirements
- Significant improvements in processing times and avoidance of further information requests have been achieved by Councils not accepting deficient applications lodged at the front end. This applies to applications for Building Consents under the Building Act and also Resource Consent applications under the Resource Management Act.
- Ensure consistent advice is obtained between Regional and Territorial Councils

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

As Table 6 of the discussion paper indicates councils are required to apply a set of criteria when determining how an activity is to be funded. As this is a democracy we should not be surprised that different communities will have different preferences. All funding policy is based on a private/public good split.

Q45 Are there examples of where cost recovery is reducing compliance with regulations and reducing their effectiveness?

When HDC instigated a policy of exempting low risk farm buildings, the number of exemptions granted exceeded consents granted in previous years. Rural dwellers were not prepared to pay for a consent.

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?

At HDC, there is a clear separation between elected representatives and officers involved in the administration and enforcement of regulation.

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

Not that HDC are aware of.

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

In our view they are not adequate and need improving. For example, the RMA while enacted in 1991 was not subject to a significant review until 2005. Since then it has been under almost constant review, creating an unstable environment that is highly likely to lead to greater costs as councils are uncertain of the likely outcomes of the various reviews it is subject to. Another example is the Sale of Liquor Act which is currently under review more than twenty years since enacted.

Central Government has been tardy at best or unwilling at worst to review regulatory frameworks which have been delegated to local government, and often fails to include local government representatives in those reviews (the review of the Sale of Liquor Act undertaken by the Law Commission was an exception to this rule with excellent involvement by the local government sector).

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

From the HDC perspective there are good regulatory review mechanisms in place for Bylaws and the District Plan.

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

The Council considers that this depends on the significance of the regulatory review being undertaken. For example most bylaws would not justify an independent review. External engagement of an independent reviewer would have associated costs which would fall with the regulator (being Council). These activities are generally rate payer funded.

An independent body should be used for peer reviews audits. It is considered that the performance monitoring of regulatory functions should be carried out by a separate body.

If there is an independent review, it will also need to take account of the local preference element as well as the legislative intent.

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

- The Council considers that there is an adequate range of mechanisms for resolving disputes and reviewing regulatory decisions of local authorities
- With the increasing resources/funding given to the Environment Court and mediation services, Resource Management Act matters are being dealt with more quickly
- The Council's experience with determinations under the Building Act have been less positive, with determinations often being of no practical value and very specific to individual circumstances

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

Yes. Appeals to the Environment Court have been used for what we describe as 'greenmail' – frivolous and vexatious attempts to create costs to competitors by delaying approvals. Changes were introduced to the RMA by the previous government to reduce the ability to make such appeals and we are yet to see whether those changes were successful.

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

(See Q.55 response)

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

(See Q.55 response)

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?

In both the resource consenting and building consenting areas, there are effective monitoring processes in place.

The biennial Ministry for the Environment Survey of Resource Consent Activities is an effective process where consent performance in a range of aspects is compared across different sized consent authorities. It clearly indicates which percentile group your performance has you in and can be effectively used to improve performance in those areas identified.

The Ministry also audit Council returns randomly by undertaking onsite audits.

As a Building Consent Authority (BCA), Hastings District Council is required by law to be accredited in accordance pursuant to the Building Act and Regulations. BCA's are accredited by International Accreditation NZ (IANZ) and registered with the Ministry of Business, Innovation and Employment.

As part of the accreditation process IANZ completes a biennial assessment of all functions and activities undertaken by the BCA. Corrective Actions and Recommendations may be issued as a result of these assessments. These have to be completed to ensure the BCA maintains its accreditation status.

As part of the accreditation programme a quality assurance system and continuous improvement programme (including internal audit programme) must be in place and be maintained. The BCA keeps a record of all continuous improvement activities. These activities are monitored internally and externally through the biennial accreditation assessment programme. These assessments enable national benchmarking of all BCA's.

The continuous improvement programme provides for the day to day identification and resolution of internal policies and procedures to ensure the BCA is operating as efficiently and effectively as possible within the requirements of the regulatory framework BCA's are bound to observe.

Examples of system, process or procedural changes arising out of the continuous improvement and internal audit programme include:

- Streamlining consenting processes for low risk building consents
- Universal exemptions for farm building consents
- Development and improvements to the Council's building consent vetting programme (Plansmart)

Q56 What challenges or constraints do local authorities face in developing and sourcing data for better practice regulatory performance measures?

Smaller councils may have capacity constraints as they may not be able to afford to internalise the necessary expertise or they may fail to generate sufficient quantum of work to justify a full time position. In relation to some regulatory roles such gaps might be filled either by the regional council, particularly in relation to the RMA, or by contracting with a larger neighbouring authority.

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

As discussed elsewhere the Office of the Auditor General not only audits the quality of performance measures used for regulatory functions, it also advises councils on how to improve their performance frameworks, as part of the audit.

While large councils can afford to undertake more detailed monitoring of the effects of their regulatory interventions, for smaller councils the benefits of such expenditure is outweighed by the cost.

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

- Providing Central Government funding to enable annual surveys (with random audits) of both Resource Management and Building Consenting activities
- Continuing to highlight innovation and examples of best practice in this sector

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?

The main type of performance indicators used by the Council are input/output (ie. costs of inspections, number of inspections, processing times). This is common across the Local Government sector.

The Council produces a State of the Environment report every 3-5 years. This tends to draw together all the various sources of environmental monitoring data collected across the Council into one source. This report also uses data collected by the HB Regional Council.

There appears to be a benefit or economies of scale of collecting data for delegated regulatory regimes on a nationally consistent basis. Although, if this is just collecting existing input/output which is already collated by MFE and other government departments, it may be of limited value.

When assessing the effectiveness or outcomes of District Plans, a largely qualitative assessment needs to be made against the plan objectives, generally accepted principles or best practice (which will be extremely difficult to benchmark and could offer little value).

Targeted customer surveys.

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

The continued improvement of the bi-annual survey under the MFE and continual improvement in the IANZ audits of building consenting authorities.

It is not clear to HDC that the centre has access to data that would help Councils in their regulatory functions other than the information it currently provides which Councils use in their performance measures, for example, Councils' performance on timeliness of resource consents.

Benchmark against similar organisations.

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

The Council agrees that there are significant and longstanding concerns about the reasonableness of comparisons between Councils being meaningful and whether common performance indicators can be developed. The Council would be interested in being involved in the process.

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

A significant number of regulatory activities in Councils use process indications such as time, cost, percentages completed. These indicators of regulatory performance are possibly the most comparable available at present.

The phrase "regulatory performance" is problematic as it suggests that councils' different regulatory roles can somehow be aggregated into some kind of local or regional index. Regulatory roles can be divided into the following:

1. Delegated regulatory functions where the delegating agency expects consistency of approach and consistency of outcomes
2. Devolved regulatory roles where councils are required to set rules and standards without any expectation that these will be uniform throughout NZ
3. By laws: councils use of Section 145 of the LGA 2002 to adopt local regulations to promote well being

It is only in category 1 that comparability is practical, and generally it already occurs. Categories 2 and 3 create problems for comparability as communities are able to set their own levels of service.

There is also the problem of defining what is desirable, for example it is theoretically possible to develop a performance measure which measures the cost it takes for an environmental health officer to visit and check a food premise. It is not clear whether a low cost or a high cost should be considered desirable.

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

In the regulatory area councils use remarkably similar performance measures, however targets vary considerably. And it is important that targets vary as targets reflect levels of service and community preferences. They are also a degree to which councils compete with

some councils setting standards that are within the statutory timeframes set by regulating agencies departments.

The most commonly used performance measures are:

- Citizen satisfaction with the performance of the regulatory regime (usually measured by survey carried out by independent agency) or level of dissatisfaction.
- User satisfaction. A number of councils survey users of their various regulatory functions to identify level of satisfaction with the process.
- Compliance with statutory timeframes. Where a regulatory regime has statutory timeframes (targets) set by the delegating department, councils will report on the percentage of consents that meet the statutory time frame.
- Output measures: where a council sets its regulatory department specific targets such as that all or a percentage of food premises will be inspected within the year. The nature of this target will impact directly on the cost of the regulatory function as more staff will be required if the target is an ambitious one.
- Process measures whereby a council's regulatory team has achieved some form of code compliance for the quality of its staff and processes, such as meeting an audit standard.

There are a limited range of measures that can be used without significant investment, which would be required to measure the outcomes of regulation. The resources required to measure the outcome of regulations would inevitably fail the cost benefit test councils are required to apply when setting charges and would provide only limited information as outcomes are influenced by more than simply regulations. For example, how do you establish responsibility for the leaky buildings syndrome?

Most councils use similar measures but set quite different targets so the question is whether or not all councils should have the same targets? The answer is clearly no, as undertaking a regulatory regime in a large rural authority will involve a great many more challenges than undertaking the same regime in a compact urban authority. In addition we need to acknowledge local preferences and the degree to which they wish to invest in achieving high regulatory standards.

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

(Refer to Q.65)

Q65 Is there a role for a third party evaluator to measure customer service standards in local authority regulatory functions?

Councils presently use third party agencies to assess levels of satisfaction with their regulatory functions, the quality and independence of which are monitored by OAG through their annual audit of annual reports. Secondly councils are run by representatives of each community. Elected representatives by definition reflect the attitudes and preferences of their communities. They are ultimately responsible, and are held to account every three years, for the quality and effectiveness of regulatory regimes, particularly if the regulatory regime is one where a local authority can exercise discretion with regard to levels of service.

In some communities however community preferences are such that a council will under invest in a regulatory regime. The majority of councils, for example, don't have policies regulating the placement of brothels. This is rightly seen as an urban issue and any rural councils that invested staff time and resources on this issue, without a local issue, would be widely criticised by voters. Ultimately it is more efficient than a regulatory regime with national performance targets that would see over investment in most parts of the country.

Where a regulatory regime is a delegated one then the delegating agency should be undertaking the evaluation role and ensuring councils achieve whatever national standard they are required to. Regulatory regimes carried out by councils are too varied for a single agency to 'add value' – it would simply be another bureaucracy which would create additional costs.