

# Productivity Commission Submission

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## Ashburton District Council

The following submission on local government regulatory performance is from Ashburton District Council.

Ashburton District Council also supports the submission from Local Government New Zealand.

Thank you for the opportunity to comment.

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

Planning and building are the two most significant activities and together have the biggest impact. However the Commission's focus should equally be on the interaction between almost all of the regulatory activities, as this is where the greatest efficiencies could be made. The regulatory Acts of Parliament that local government administers have largely been written in isolation of each other and the lack of recognition between them can make life difficult for applicants, complainants and local authorities.

- 2) What are the main economic, social, demographic, technological and environmental trends that are likely to affect local government regulatory functions in the future?

(a) The affordability of land and housing and the tension between higher density versus urban sprawl.

(b) The rebuild of Christchurch has already had an impact on Councils' abilities to attract and retain qualified building consent officials and building inspectors.

(c) Competition over the use and allocation of water.

(d) Technological improvements which allow online applications and processing, and mobile solutions for regulatory functions carried out in the field.

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

Yes, however some are missing.

- 4) 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?

Local government is also responsible for administering various New Zealand Standards under the Standards Act 1988. For example Drinking Water Standards, which require regular testing of water to ensure compliance, and National Environmental Standards such as for Air Quality and Contaminated Sites. It is also required, through the Building Act and the Resource Management Act, to give effect to certain provisions in the Historic Places Act. This includes the requirement for Archaeological Authorities and notification to NZHPT of applications involving heritage buildings and places. Local authorities are also responsible for addressing (allocation of road names and property numbers). This is a requirement under the Local Government Act.

- 5) Are there any other local organisations with regulatory responsibilities that the Commission should consider?

Police.

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

While some are open to levels of interpretation or enforcement, the appropriate level may be set for different communities. One rule doesn't always suit all.

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

ADC is not aware of Councils being asked to do more about social issues. If this is a real trend, then the only regulatory option available to local authorities is to make bylaws, such as liquor bans.

- 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?

The examples discussed in this section of the issues paper appear to reflect a combination of community expectations and problems specific to those communities. The exception is the Manakau City Council (Regulation of Prostitution in Specified Places) Bill 2010, which is now the Auckland Council Bill. This proposed variation highlights the problems associated with street walking, which are not confined to Auckland alone. Street prostitution should be subject to national legislation and enforced by central government through the Police. It is not an issue that local government can effectively deal with, despite community concerns and expectations, and should perhaps not have been devolved to local government in the first place.

The New Zealand examples discussed in section 4 of the issues paper are not as significant as the Australian examples. Variations to the New Zealand Building Code are based on geographical differences such as snow, wind and seismic risk. These are determined by central government and cannot be changed by local government. The only scope for variation other than bylaws that Ashburton District Council (ADC) is aware of is through Councils' respective Dangerous, Earthquake Prone and Insanitary Buildings Policies. The Building Act requires all TA's to adopt such a policy, however the policy guidance published by the then Department of Building and Housing allows for flexibility in approach. Councils in parts of New Zealand with a high risk of seismic activity may choose to take an active approach and require earthquake prone buildings to be strengthened to a higher level than required by the Building Code within relatively short timeframes. The proposed changes to liquor legislation will also allow appropriate differences in policy development.

- 9) 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?

No, however there are variances between central and regional government regulation which then impact on local government. For example, the Resource Management (National Environmental Standards for Air Quality) Regulations require Ashburton to have no more than 3 exceedances of the 50mg/m<sup>3</sup> PM<sub>10</sub> by 2016 and no more than 1 by 2020. However the Ecan Natural Resources Regional Plan requires Ashburton to have no more than 1 exceedance by 31 August 2013. This is not a preference of the Ashburton community, which feels somewhat aggrieved at having been singled out by Ecan, especially when neighbouring Timaru has far greater air pollution but no requirement to meet shortened timeframes. This therefore is not a diversity of community preference, it is simply the Regional Council's preference.

- 10) 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?

Probably not, however not everything can be regulated through District Plans. With regard to bylaws, sometimes legislative change is necessary before effective bylaws can be produced. For example, boy racers and gang patches in public places.

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

Treaty of Waitangi requirements are incorporated in both the Local Government Act and the Resource Management Act.

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

It places a resource demand on Maori, local authorities and applicants.

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

No, although there are differences in District Plans and in various policies and bylaws between districts.

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

No

- 15) Do these inconsistencies impose extra costs on businesses? If so, are these extra costs significant?

- 16) To what extent does variation in regulatory practice matter?

ADC has seen no evidence that different approaches to regulation or inconsistencies between local authorities is widespread. Most variations have been to meet local issues and associated community expectations, and this flexibility is seen as positive.

- 17) Can you provide examples of regulatory innovation by local government?

Meetings of Canterbury Councils have been held recently to see if a uniform approach can be adopted for relocated houses being moved from the Christchurch red zone. South Island Councils have also worked collectively on Building Consent Authority accreditation and freedom camping issues.

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

This was in response to unique circumstances created by the Canterbury earthquakes. The difficulty in adopting a uniform approach is that each Council has different rules in its District Plan for relocated buildings. This raises the obvious question, why? Sometimes there are good reasons for different rules in different districts, but often there are not. The costs associated with ten year reviews of District Plans could probably be reduced if standard terminology/definitions and a range of standard rules for the most common zones were applied across all of the country.

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

Cluster group meetings, list serves, Local Government New Zealand and government departments such as MfE and MBIE. Cluster group meetings are particularly useful. A common recent theme is the use of technology to improve service and SOLGM best practice guidelines.

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

Cost savings, best practice, improved environmental outcomes and better outcomes for all parties are drivers for innovation. However risk is a deterrent. By its very nature, regulation tends to discourage innovation and hence an emphasis on process improvement tends to be favoured. A significant deterrent is liability, especially in the wake of leaky homes.

- 21) Has the Commission captured the advantages and disadvantages of centralisation and decentralisation for each of the factors?

Some analysis of models in other comparable countries would have been helpful. New Zealand has a higher degree of centralisation than many of its counterparts overseas. It would be worth exploring the reasons for this.

Centralisation may result in slower decision making. There is a perception, rightly or wrongly, that applications would disappear into a vast black hole in Wellington and that the sheer size of the bureaucracy required to carry out regulatory functions on a national scale would not be of benefit to end users. Linked to this are concerns regarding "Wellington knows best" versus local knowledge. Local solutions for local issues is considered more effective.

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

Governance and local preferences.

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

What the government's overall position is regarding centralisation versus devolution of power. Centralisation may provide some economies of scale, but these need to be carefully evaluated taking into account all sector issues. Back room versus front line capacity also needs to be considered.

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

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

See answer to Question 6.

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

Generally yes, however it is often difficult to quantify present and future costs and benefits. For example, Councils have struggled in this area when formulating policies for earthquake prone buildings. It can also be difficult to determine levels of acceptable risk and liability.

- 27) 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?

Generally yes. Alternatives have to be considered, which usually prevents the introduction of bylaws that are not needed. The requirement to use the special consultative procedure is also a good filter.

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

A recent example is the National Environmental Standard on Contaminated Land which took effect in January of this year. This imposes significant investigative requirements on territorial authorities in identifying contaminated sites and the level of contamination, along with the responsibility to assess applications and make recommendations on applications submitted under the NES which relate to levels of contamination. This assessment can also require peer review of data through external consultants where in-house expertise is not available. Whilst most of these costs can be passed on to applicants, it has strained the administrative resources of many Councils.

Another recent example is the release of decisions on Environment Canterbury's Regional Policy Statement, which Canterbury territorial authorities must give effect to. This is unfortunate timing from an ADC perspective, having just finished a lengthy and expensive District Plan review. The Regional Policy Statement may require amendments to the Ashburton District Plan which have not been anticipated. This would require Variations to the document, with associated costs to ADC and another period of uncertainty for those relying on the District Plan when planning developments.

Other examples are the Hazardous Substances and New Organisms Act, the Gambling Act, the Prostitution Reform Act, Sale of Liquor Act, Dog Control Act and Fencing of Swimming Pools Act.

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

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

It would be helpful if central government had a better understanding of what local government actually does. Some time spent with local authorities at the coalface would be beneficial. More dialogue and communication between local authorities and central government in a spirit of collaboration rather than politically driven ideology ought to result in more productive outcomes. It may also result in a better understanding of what the real issues are, rather than reacting to negative stories in the media.

It would also be helpful if guidelines were developed prior to the introduction of new legislation. The new National Environmental Standard on Contaminated Land referred to in Question 28 is an example. Chaos reigned as Councils scrambled to work out how to implement the new Standard. Joint meetings were set up by Mid and South Canterbury Councils together with the Regional Council to try and decipher the requirements and develop a consistent approach. Concerns about the legislation were then referred back to

the MfE Taskforce for review. It would have been more efficient to have sorted these issues out before the legislation was introduced.

In a similar vein, greater care in drafting new legislation would improve efficiency and reduce costs. Recent amendments to the Building Act are an example. Amendment Bills No. 3 and 4 are fragmented and piecemeal. Many sections are ambiguous and will remain unclear until definition by regulation at some future date. This haphazard approach does not provide a clear picture of the proposed changes. Neither Bill has fully addressed warranty or surety issues for building owners, and nor has proportionate liability.

A proposed change to the Building Act is a shorter timeframe for processing straightforward building consents. This will require major changes to Council computer systems to allow the new timeframe to be measured and reported upon. It will also require the development of a new process. Even straightforward building consents such as garages need to be checked by planning for compliance with the District Plan, and often have to be forwarded to other Council departments such as roading and water. Significant lead-in time will be required to allow Councils to make the necessary changes. These changes will be costly. Furthermore, there is a risk that in diverting resources to fast track simple consents, statutory timeframes for larger consents may be exceeded. On balance it is difficult to see a compelling cost benefit argument for reducing the consent processing time for the likes of garages from ten days to five.

Central government ought to conduct more evaluations of legislation it has produced. For example, the recent introduction of the Licensed Building Practitioners scheme. ADC has observed that some LPB's continue to provide substandard plans to the TA and substandard work to their customers. Recently a building in the District was so poorly constructed that the wall framing, concrete slab and foundations had to be removed and the project restarted. It remains to be seen whether the LPB Scheme achieves its objective of raising skill levels across the industry.

- 31) How could the RIA framework be improved to promote a fuller understanding of the impact of devolving new regulatory functions to local authorities?
- 32) 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?

The problems associated with the recent introduction of the National Environmental Standard for Contaminated Land suggests the guidance document has not been successful.

- 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?

This has largely been covered in the answer to Questions 29 and 30. Capability issues tend to vary more between Councils than between areas of regulation.

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

Local government cluster groups share experiences and training. For example, Selwyn District Council runs training seminars for building officials and invites staff from other Canterbury Councils to participate free of charge. Another recent example is the engagement of a consultant to prepare a submission on Ecan's Regional Land and Water

Plan on behalf of various Canterbury Councils, who will share the cost. This is a more cost effective approach than each Council preparing its own submission, especially when many of the points covered in the submission are common to all. Another example is the sharing of resources, with neighbouring Councils processing consents for each other if one is on overload and the other has some spare capacity.

- 35) What types of regulatory functions more readily lend themselves to coordination to improve regulatory performance?

The Building Act and the Resource Management Act. The Food Act and the Sale of Liquor Act.

- 36) What are the most important factors for successful regulatory coordination?

Project management, good communication and well informed applicants.

- 37) Are opportunities for regulatory coordination being missed?

Sometimes. As mentioned in response to Question 1, regulatory Acts rarely have regard to other legislation.

A significant opportunity that is not covered in the issues paper is regulatory coordination between regional authorities and local authorities. The Clean Heat programme in Ashburton would not have enjoyed the success it has had without close collaboration between the Council and Ecan. A further opportunity currently being explored is an initiative from Ecan to work with each Canterbury local authority in developing district plans that are compatible with new chapters of Ecan's Land and Water Plan as this progresses through the various local zone committees. If successful, this initiative should save a considerable sum of money because it will prevent the need for each local authority to lodge submissions on Ecan's Plan and vice versa. It will also mean that local authorities will not have to amend their District Plans in order to be consistent with Ecan's, as described in response to Question 28. Further advantages are the introduction of common terminology in all plans and assistance from Ecan in plan preparation for small councils with few resources.

- 38) What are the main barriers to regulatory coordination?

Geography, including distance. Timing can also be a barrier, with the production of District Plans and Regional Plans as described in Question 28 above.

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

Local authorities often work together on bylaw development.

- 40) 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?

Subdivision and land use applicants would probably say planning, particularly now that they have to comply with the NES for Contaminated Land and the often significant costs (time and money) associated with the requirement to obtain an Archaeological Authority under the Historic Places Act if the site predates 1900. A recent example in this District cost the applicant over \$30,000. The archaeological survey of his site produced the base of an old green bottle.



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

Reviews of District Plans are too complex and too costly.

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

A robust pre-application process for applicants proposing large and/or complex developments can reduce time and costs. If an applicant requires building consent, resource consent, a food licence and a sale of liquor licence for example, pre-application meetings with all of the relevant local authority staff (including roading and water engineers as required) results in a co-ordinated and streamlined approach for the applicant with no surprises and faster results. It can also result in better environmental outcomes because opportunities are not overlooked, whereas they often are if a piecemeal approach is taken.

- 43) 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?

Possibly the reintroduction of mandatory Project Information Memoranda (PIMs) in advance of large building consent applications. Very few applicants apply for stand alone PIMs now that they are no longer mandatory. Consequently they receive the PIM information at the same time as the building consent, only to discover that there are problems which need to be addressed before the project can proceed. This often leads to costly delays. Applicants should know as early in the process as possible if they require resource consent or an Archaeological Authority, or if their site may contain contaminated land. A stand alone PIM would not increase the cost for applicants because if they elect not to apply for a PIM they are charged for a PIM check anyway through the building consent fees.

Compliance costs to business could also be reduced if the role of the Environment Court was limited.

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

Variations certainly exist in Revenue and Financing policies adopted by local authorities. This in turn affects the amount of revenue that may be required from rates to subsidise regulatory activities. An old bone of contention around most of the country is that the owners of registered dogs are generally paying for the problems created by unregistered dogs. Overall, however, these policies are included in long term plans and the public has the opportunity to submit and be heard on these issues.

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

No.

- 46) 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?

With the exception of Resource Management hearing panels, councillors at ADC are not involved in the administration and enforcement of regulation. The split between governance and management is generally understood. Regulatory activities, including enforcement, are delegated to staff.

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

A lack of political will in some Councils appears to have impeded regulation. For example, a reluctance to develop a policy for earthquake prone buildings and unwillingness to approve funding to enable inspections of swimming pool fences.

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

They could be improved, as answered in Question 29 above.

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

Most regulatory review mechanisms are poor. Local authorities are tasked with administering legislation that is often out dated and unsuited for modern needs.

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

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

Yes.

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

Some appeals to the Environment Court are frivolous.

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

The Building Act, Resource Management Act and the Dog Control Act are monitored externally. Internally, bylaws are reviewed every 5 years and all regulatory activities are monitored through performance measures in the long term plan, which are audited externally.

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

Building Consent Authority functions under the Building Act are audited every 2 years, and a successful audit result is required to maintain accreditation. However Territorial Authority functions under the Building Act (such as the Fencing of Swimming Pool Act and Certificates of Acceptance) are rarely monitored.

55) 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?

The current monitoring system is generally effective. An example of successful improvements through the feedback loop is the MfE survey of RMA compliance, which is used to develop best practice recommendations.

Less helpful are certain aspects of the audit process for Building Consent Authorities. Whilst the bulk of the audit is useful and worthwhile, the insistence that building consents cannot make any reference to Resource Management Act matters is impractical and exacerbates the lack of coordination between different regulatory Acts. Applicants need to know if resource consent is required, and it seems nonsensical not to be able to advise them of this as part of the building consent process.

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

Time. The more time spent on measuring and reporting, the less time there is for getting the work done. This can largely be overcome if software has strong reporting capabilities.

The most difficult area is developing performance measures relating to environmental outcomes, especially measuring the degree of success or failure of District /City Plans.

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

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

The current framework for performance management works well.

- 59) 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 most common performance indicators relate to statutory processing times. Assessing the final outcome of regulation is more important, but it is also far more difficult to measure and consequently it tends to be avoided.

- 60) What kind of centrally provided data would enhance the local government regulatory monitoring regimes?

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

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

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

Sharing examples of innovation and best practice is considered more productive than benchmarking.

- 64) What new performance indicators could meaningfully measure the regulatory performance of local government?

None. The current performance indicators used by local government are externally audited and meet the needs of their respective communities.

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

No, because it would impose additional and unnecessary costs. Local authorities conduct annual surveys of residents on a range of matters, including customer service.

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