

Submission from the
Palmerston North City Council
on the Productivity Commission
Issues Paper on Local Government Regulatory Performance
12 September 2012

Thank you for the opportunity to comment on your discussion document. Thank you also for meeting with us, and other Councils, in Palmerston North last month. We found this very helpful.

Our comments cover three main areas:

- A framework for deciding the appropriate level for setting, administering, enforcing, and monitoring regulations. These comments mainly address your questions 21-24, plus questions 28-29.
- Our experience with collaborative arrangements. These look at issues raised in your questions 34 – 36.
- Our experience with the RMA call-in provisions.

Firstly though, we want to endorse your point that good regulations have wide public benefits that help achieve broad economic, social and environmental goals for our communities. Regulation should not be seen as only a cost or a constraint.

This does not mean that regulations are always appropriate tools. One of the challenges we face in a regulatory environment (particularly for bylaws), is the expectation from the community that a bylaw is the best way to resolve a problem or conflict. This appears to have become a default response for many people and groups – ban or restrict the activity, and punish the offenders. Some examples of this include suggested approaches to begging in the street, heavy vehicles parked on residential streets, boy racers, and so on. The Local Government Act requires that we consider all the alternatives, and must determine that a bylaw is the most appropriate response before proceeding any further. For many of the above issues, therefore, a social or community-based response, with a focus on education, is probably more appropriate. Nonetheless, there is a community and political pressure to respond to these situations with regulation.

Setting, administering, enforcing, and monitoring regulations

We believe you have identified the issues that need to be taken into account when deciding at what level regulations should be set, administered, enforced, and monitored.

The difficulty is that these issues form separate continuums and there is no single point at which one “right” option would emerge. Furthermore, within each issue different people will come up with different “right” options.

We believe that the best way forward is for local Councils, after weighing up local preferences, to set, administer, enforce, and monitor local regulations within an overall national framework. This national framework would set minimum standards where necessary. These national standards would particularly be

in areas of public health and safety. Hence, the Building Act sets minimum safety standards nationally, but local preferences set other more variable standards such as height and parking conditions.

Where there are national standards central government would have some role in accrediting and monitoring local Councils to ensure that they are properly meeting the standards. We accept this, but, at times we find that the cost of this outweighs the benefits, e.g. the costs of maintain Building Accreditation status.

However, we also note that in the past this setting of standards has sometimes happened without adequate input from local government. It is especially important that Central Government has a clear understand of the range of issues facing different Councils and the range of resources that they have. Large metropolitan Councils are quite different to small rural Councils. Also, while a regional approach may suit areas such as metropolitan Auckland, they do not always suit other regions, where there is a much wider mix of Councils and communities.

Within our preferred approach it is possible to have model regulations and bylaws that can be taken by Councils and adopted to their particular needs. This would increase consistency of approaches across the country, reduce the costs of preparing regulations and bylaws, while still allowing for local preferences to be reflected. Examples of this approach are the Standards New Zealand model bylaws, and the SOLGM listserve and good practice guidelines. This would be most appropriate for basic functions or common services (e.g. water/wastewater/storm water, or possibly even dog control). It is dubious whether there needs to be 75 different water supply bylaws, when basic requirements should be standard across the country, with perhaps a few technical requirements (e.g. the location of a supply point) determined by a Council resolution.

In terms of delivering regulatory services, we believe that economies of scope are particularly important. However, they are often overlooked. Having, for example, building consents, planning services, infrastructural asset management and urban design all being managed by Councils gives cost efficiencies, as well as giving customers a one stop shop and allows an integrated approach to the overall planning of an area.

Giving a one-stop shop for customers is very important. For example, when the local shopping mall (The Plaza) was redeveloped several years ago the Council set up a Major Projects team to work with Kiwi Income Property Trust (the Plaza's owners). Kiwi Income were given a single point of contact within the Council to cover all areas – health, building, planning, traffic, stormwater, wastewater, water, etc. We were aware of all of their needs and could work to ensure that the redeveloped Plaza was up and running as quickly as possible within the regulations. This led to a very positive relationship between the Council and the Trust. Chris Gudgeon, CEO of Kiwi Income, noted the \$93m development was a significant undertaking for the Trust. He was very appreciative of the Council staff who processed 150 consents. He acknowledged they did what was necessary including working weekends to meet deadlines. He was very happy with the outcome.

One area where we believe there is an opportunity for improvement is central benchmarking of fees. We find it difficult to compare our fee levels with those of other Councils. This is partly because each Council does things slightly differently (to meet local preferences) but it does mean comparisons are difficult. Rather than each Council try to make these comparisons we believe a two yearly Central Government survey of Council fees, grouped according to Council type such as metropolitan, provincial and rural, would allow Councils to more easily benchmark their fees.

Another area for improvement is around enforcing bylaws. Bylaws such as the Dog Control Bylaw are enforced by issuing infringement notices and charging a penalty. These infringement offences and penalties are established by statute, however, not through the bylaw. This makes the penalty for failing to keep a dog under control the same in every local authority, irrespective of their bylaw. For many other bylaws (for

example, controlling signs in public places, keeping animals) the Council is not able to create an infringement offence or issue a fine. While there are a range of enforcement tools (seizing property, prosecution), these are often inappropriate for smaller offences. A possible solution could be to allow Councils to set infringement offences and penalties through bylaws, subject to oversight by Department of Internal Affairs perhaps, to ensure that infringement offences and penalties are not revenue-driven or unjust. An alternative solution could be to set in legislation a generic “breach of bylaw” infringement offence with a standard penalty of \$50-\$100, for breaches of a bylaw where no other infringement offence has been stipulated. This would allow for bylaws controlling minor offences to be directly enforced without recourse to the courts.

Palmerston North City Council’s experience with collaborative arrangements

Palmerston North City Council may well be the Council with the greatest experience in New Zealand of collaborative arrangements with other Councils. Currently we have collaborative arrangements with twenty-eight Councils to provide a centralised after-hours call centre service. A further four Councils have expressed an interest in entering into a service arrangement with us. We also provide an after-hours call centre service to three private companies.

Palmerston North City Council is collaborating with Massey University on the development of a rehabilitation centre for injured birds.

Palmerston North City Council has good collaborative arrangements with Manawatu District Council in supporting Vision Manawatu, Destination Manawatu, Sport Manawatu, and a business growth initiative.

We also provide the full range of building consent services to Manawatu District Council. We recently agreed with Horowhenua District Council to utilise two seconded building staff from Horowhenua to assist PNCC in better managing workloads.

The agreement with Manawatu has many advantages, including administrative economies of scale - eg only our Council needs to be an accredited Building Consent Authority and there is a single certification process for clients of both Councils. It also allows for a better management of workload between the two Councils and makes it easier for PNCC to recruit and train staff across both Councils. However, because we do not run a central processing team, people in Manawatu can still lodge consent applications in Feilding and can still talk to local building officers. This is an important part of providing local services.

Our Council has also worked with some of our wider neighbours to offer level three building inspection services (for complex commercial and industrial consents). These are infrequent consents and working with our neighbours in this way means that expertise can be shared amongst us, instead of each Council trying to maintain its own expertise.

One downside to these arrangements is that Palmerston North is predominantly an urban area and our neighbours are mostly rural so at times there are different priorities.

However, we believe that the arrangements work well – they offer efficiencies and yet still provide local services to local people. If much bigger area were included then we could lose this localness of service and lose the advantages of economies of scope previously discussed.

Our Council also works closely with other organisations in the regulatory area. For example, we have a Memorandum of Understanding with MidCentral Health for local liquor enforcement protocols and we have a Liquor Combined Agency Group that involves PNCC, MidCentral, Police and Fire Service so that all these

organisations can work together to ensure there is a consistent, efficient and co-ordinated approach to liquor licensing issues, with the overall aim of reducing liquor related harm. There is an additional Liquor Liaison Group that meets bi-monthly. This group consists of the Liquor Combined Agency as well as representatives from the Liquor Industry (HANZ), Liquor outlets and security firms. This is a voluntary group and normal attendance is approximately 25 individuals.

However, there are risks from collaborative approaches. In recent years some of these collaborative arrangements have been ended by our partner Councils, and this has had cost implications for us. For example:

1. Council A: Civil Defence and Rural Fire service.

The non-renewal of the contract arrangements resulted in one staff redundancy at Palmerston North City Council, at a cost of \$40,216 to us.

2. Council A: Gardening service.

The non-renewal of the contract arrangements did not result in any direct loss to us.

3. Council B: animal control contract.

We had an animal control contract with Council B from 2002 until 2009. In early 2009 Council B advised us that it was reviewing the future of the service. Later in 2009 we were advised that the contract would not be renewed.

Close to the end of the contract period we were advised that Council C was to become the new contractor but Council C would not agree to automatically transfer any of the Palmerston North City Council staff affected by the loss of the contract between Council B and our Council. Council C required all interested staff to apply through the usual advertising and recruitment process. Our Council staff encouraged Council C to accept a transfer of a City Council staff member so as to avoid a redundancy situation and associated costs. We received very little interest to this idea. Thankfully our staff member was eventually appointed but this was not due to any special consideration of our circumstances.

4. Council B: waste and recycling contract.

We had an arrangement for over twelve years with Council B for the provision of waste and recycling collection. Towards the end of the contract Council B decided to invite expressions of interest as a precursor to selective tendering. We were not considered for tendering for the service. Eight jobs will be lost at our Council and we are currently working to minimise redundancies.

5. Council D: Laboratory Service contract.

In 2001 Council D and Palmerston North City Council laboratories were merged with our Council taking on Council D staff and purchasing some of Council D's equipment.

In 2009 Council D reviewed the laboratory arrangement prior to the expiry of the Council D /Palmerston North City Council contract in 2010. Council D decided to enter into a new contract for service with Auckland Regional Council. This represented 24% of the laboratory work for which we had no other partner to fill the gap. We also had a long term lease of premises to undertake work for both Councils. The bottom line for us in terms of the laboratory operation was that the loss of Council D work made the whole laboratory unviable and as a result 11 staff were to be made redundant at a cost of \$150,000. In addition, our Council faced

stranded lease costs of \$81,000 per annum. Fortunately, through initiatives by our Council staff, we were able to attract a buyer and so the jobs were saved and we assigned the lease.

These comments are not meant as criticisms of the Councils that made these decisions as we accept that each Council has to make decisions in their own best interest. We raise these points to illustrate that having collaborative arrangements with other Councils can bring liabilities as well as benefits.

RMA Call-in provisions

These comments come from our experience with the Turitea Wind Farm call-in process.

The Turitea Wind Farm proposal was highly significant for the future of Palmerston North, and had the potential to cause serious adverse environmental effects, particularly in terms of cumulative landscape effects and residential amenity. Our Council considered it to be crucial that the decision of the Board of Inquiry reflected the best interests of the sustainable management of the City's resources. For this reason our Council resolved to fully engage with the call-in process by means of submissions and subsequent representation at the Hearing. This decision was taken in order to ensure that the decision of the Board would be informed by a full suite of expert evidence.

The Government's stated aim behind the use of the call-in process was to enable a more efficient decision making process, with reduced timescales and costs from what would be incurred in a two stage process of local hearing followed by Environment Court appeal. This aim also underpinned the RMA reform direct referral mechanism and the process by which matters of national significance may be lodged directly to the Environmental Protection Authority. In practice, the experience of the Turitea wind farm call-in and hearing demonstrates that the desired efficiency gains were not be realised. It is informative to compare the Turitea consenting process with that of the similar recent proposal by Motorimu Wind Farm Limited. Both applications were for over 120 turbines, but whilst Turitea was called-in, Motorimu went through the two stage Council hearing / Environment Court appeal process. For Motorimu, the total cost for legal end expert witness representation over both the initial hearing and the appeal was \$315,398 – for Turitea the equivalent cost incurred by the City Council acting as submitter was over \$1m.

The key issue appears to be the sheer complexity of the Turitea hearing. The hearing by the Board of Inquiry was a 'one step' decision making process. This meant that the full range of issues relating to the proposal had to be considered in depth from first principles in a judicial environment, with filing of statements of expert evidence and intensive cross examination of witnesses. In comparison, in a conventional appeal situation many matters will have already been resolved through the local hearing stage to the point where only a relatively narrow amount of issues are left to consider before a final decision is made. In the Motorimu case it was only noise and landscape matters that remained to be considered in depth through the judicial appeal process – other issues having largely been resolved through the first instance Council hearing. This comparison indicates that while it may be thought intuitively that the conventional two stage resource consent process would take a longer period of time and cost more than a single stage call-in process, in practice the perceived benefits of the call-in process are severely eroded by the increased complexity of the hearing.

A further concern with the Turitea call-in was that not only were the costs incurred by our Council high, but they are also unrecoverable. This had significant implications not just for us, but for Councils across the country. Even for a relatively large authority such as our Council, the cost of the call-in process proved to be a considerable burden – for many smaller Councils it may prove impossible to adequately fund representation at a hearing, thus effectively shutting local communities out of the decision making process.

This has serious ramifications for local democracy, and we consider this situation to be manifestly unreasonable.

It is appreciated that the irrecoverable nature of the costs incurred by local authorities that engage in a call-in process has been amended as part of the recent Resource Management (Simplifying and Streamlining) Amendment Act 2009. The RMA now provides for an explicit role for local authorities in the call-in process. The newly formed Environmental Protection Agency is now required to commission a report from the local authority to contextualise the application. Unlike the current Turitea call in process, the costs of preparing this report is to be borne by the applicant. It is still a little unclear whether or not the report that contextualises the application can include independent expertise over and above that that can be provided by a local planning officer.

Summary

There is no single answer to questions about where regulations should be set, administered, enforced, and monitored. This is because these are complex issues and different people will have different answers. We believe that the best solution is for local Councils, after weighing up local preferences, to set, administer, enforce, and monitor local regulations within an overall national framework. This national framework would set minimum standards in areas like public health and safety.

The national framework would set some standards, and would take into account the costs of these to Councils (and hence to local communities) and the different situations of different Councils – such as the difference between metropolitan, provincial and rural Councils.

Many Councils are already working together to provide regulatory services. Generally this works well, especially when the geographical area covered allows for localised access to the services and when it takes into account economies of scope as well as economies of scale. However, there are risks to these arrangements and working together in this way needs to be entered into locally, not centrally imposed.

Thank you for this opportunity to have input into your report. We appreciated the extended time for comments that you gave to Councils.

If you have any questions please contact Andrew Boyle, Head of Community Planning, Palmerston North City Council, phone 06 356-8199 or email andrew.boyle@pncc.govt.nz

A handwritten signature in black ink, appearing to read 'Paddy Clifford', written over a horizontal line.

Paddy Clifford
Chief Executive