

31 August 2012

The Commissioner - Sally Davenport
Inquiry into Local Government Regulatory Performance
New Zealand Productivity Commission
PO Box 8036
The Terrace
WELLINGTON 6143

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cc: sally.davenport@productivity.govt.nz

Dear Sally,

Re: Local Government Regulatory Performance: Issues Paper July 2012

Thank you for the opportunity to participate in this opportunity to provide an initial submission to inform the Commissions inquiry into local government regulatory performance.

Please find our submission attached.

We look forward to further opportunities, both formal and informal, to engage in this inquiry and look forward to watching the progress towards a final report in April next year.

Yours sincerely



Philippa Barriball
Manager, Local Government & Community Relations

Fonterra Submission – New Zealand Productivity Commission: Local Government Regulatory Performance Issues Paper July 2012

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I confirm I am authorised on behalf of Fonterra to make this submission

Introduction

Fonterra

Background

Fonterra Co-operative Group is the world's largest milk processor and dairy exporting company, owned by 10,500 NZ dairy farmers. Our 16,800 staff work across the dairy spectrum; from advising farmers on sustainable farming and milk production, to ensuring we meet exacting quality standards and deliver dairy nutrition every day in more than 140 markets around the world.

Dairy provides 26% of New Zealand's exports and as our Cooperative is 100% owned and controlled by New Zealand farmers, money flows right back into the local economy.

Fonterra owns and operates 26 manufacturing sites across the country, including two of the world's largest dairy processing sites – our Edendale site in the Southland Region and our Whareroa site in the Taranaki Region.

Our success is backed by sophisticated systems for collecting more than 15.4 billion litres of New Zealand milk and transporting more than 2.4 million tonnes of dairy product annually. Globally we process more than 20 billion litres of milk globally and own leading dairy brands in Australasia, Asia, Middle East and Latin America. Our global revenue is just under \$20 billion.

Fonterra Vision

Our vision is to be the natural source of dairy nutrition for everybody, everywhere, every day. This vision will be achieved through:

- Delivering sustainable co-operative performance
- Growing lasting customer partnerships
- Building trusted brands in chosen markets

Sustainability

Fonterra believes sustainability to be one of the defining issues for the success of Fonterra and for the global dairy industry. Public and consumer expectations about the performance of our industry are increasing around sustainability issues and we acknowledge the need to continuously improve

our performance. To this end, we are currently redeveloping our sustainability strategy and a specific work programme around long term objectives for responding to climate change and water sustainability across our global business. Whilst this work will focus on long term delivery, some of our recent sustainability progress includes:

- Dairy and Clean Streams Accord with local and national government to mitigate dairy's effects on streams and rivers – 99% of farmers now have nutrient budgets (and 46% have nutrient management plans) to minimise excess use of nutrients, at least 78% of Accord waterway banks have permanent stock exclusion in place, and 99% of Accord crossing points being bridged or culverted;
- Establishment of an on the ground team of 15 Sustainable Dairy Advisors who provide support and advice to farmers across all our supply regions;
- From August 2010 we instituted a new programme to check dairy effluent infrastructure on every supplier's farm every year (Every Farm, Every Year). Every Farm, Every Year has achieved 2,500 outcomes over the past two seasons where farmers have invested in infrastructure to ensure they are compliant 365 days of the year;
- As part of the Pastoral Greenhouse Gas Consortium we help fund research to find practical ways of reducing Greenhouse gases; and,
- We continue to take a lead on issues that impact the dairy industry's business model, working with the global dairy industry on topics such as the carbon footprint of our products.

Our submission

Thank you for this opportunity to comment on the Commissions Local Government Regulatory Performance Issues Paper. We have responded to a number of the specific questions set out in the Paper below. We welcome this Inquiry into Local Government Regulatory Performance and support the intention to improve regulatory performance of local government with considerations for Central Governments' role in realising this.

We thank the Commission for the invitation extended to us to meet with the Commissioner and Senior Advisers during the consultation period and we would welcome further opportunities to meet with the Commissioner during the course of the Inquiry where it would help inform the final report.

The Commission's Approach

1. *Where should the Commission's focus be?*

Across Fonterra's operations, there are a number of touch points with local government regulation, largely across the Local Government Act, Resource Management Act regulation as well as pest management, building consents, hazardous substances, waste, and roading and transport.

We would support Table 2 (pp. 11-14) forming the basis of a comprehensive register of the national laws for which local government has a role in administering, enforcing or where local government has a role in referrals and appeals.

Fonterra supports the Commission identifying regulatory improvements across these regulatory responsibilities by assessing the identified areas of –

- How the allocation of regulatory functions between central and local government can be improved;
- How central and local government can improve regulatory performance in the local government sector;
- How the regulatory performance of the local government sector can be measured in a manner that leads to continuous improvement in the way it regulates.

And in as far as the remit of the Inquiry allows we support conclusions around:

- Systems for improved integration across the different consultative demands placed on councils
- Principles that deliver best outcomes for New Zealand while minimising regulatory costs; and,
- Administration costs, compliance costs and wider economic costs of the administration, implementation and monitoring of regulation.

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

Sustainability is a significant consideration across energy use, water quality, continued access to water for our manufacturing sites and for our suppliers, and soil quality. Our environmental performance is not just important to us and the communities in which we operate but also to our global market.

Water quality and quantity issues are arguably the main policy trend likely to affect local government regulatory functions and the primary sector. Reliable access to water for farming practices and related industry is vital to ensuring continued land-based agricultural activity and to grow production with the intention of meeting national export growth. The level of investment needed and the ability to make investments in such operations relies on certainty around reliable and economic future access to water.

Water quality provisions, and land use provisions as they relate to water quality, presently being proposed in a rapid timeframe [relative to the timeframe required under the NPS for Freshwater] look at a range of limits which are likely to have a significant impact on current farming practices and ultimately the ability of the sector to increase primary sector exports. While dairy and other industry bodies recognise and take responsibility for their role in improving on-farm best practice in relation to water and land use, the [lack of] justification for some stringent measures, public perception on water quality targets coupled with the relatively quick progress of local government regulation in this space and public perception issues around farming practices, are considerable problems for the sector to contend with at once.

An economic and environmental trend that will affect us is the issue of food nutrition and the changing rural environment. Some Councils, such as Hasting District Council have outlined this issue well ahead of informing their rural land provisions. How do local areas in New Zealand ensure productive rural land is able to deliver national and even global nutritional needs? When and how should provisions be made to allow rural land subdivision? The competition between high quality productive rural land and housing/subdivision is something Fonterra is aware of and is an important consideration in how we grow our business and meet export growth targets.

Local Government and Regulation

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

It appears the section has captured the core roles and responsibilities in regulation, although to aid discussion this could have looked further at the distinction between our regional, unitary and territorial authorities as a way of identifying a) overlap and b) where there is a strong need for coordination and transparency between local government bodies.

We note the Commission has developed the table to help focus its inquiry, however given the importance and the impact of the Resource Management Act on business it ought to have greater weight here. The Commission will see that the majority of our comments and examples will relate to the implications of the Resource Management Act and the Local Government Act.

Regulatory variation

6. *Do the different characteristics and priorities of local authorities explain most of the difference in regulatory practice across local government? And,*
8. *How far should councils, when implementing a national standard, have discretion to reflect local preferences in their bylaws?*

The Sources of Variation list (page 18) does set out a number of relevant influences for creating differences or inconsistencies across local government regulatory practice. However this is not a complete list and we suggest other significant influences include:

- A lack of clear overarching central government national priorities under which these regulations sit and are subsequently implemented by local government which help to inform how local government manages trade-offs
- A lack of assessment at the central government level of the ability and resource across each local government body to administer, implement and monitor new regulation in the expected timeframe and transition times. On this point we note the Regulatory Impact Statement¹ prepared by the Department of Internal Affairs following their assessment of the options for responding to recommendations in Better Local Government. The Statement declared a lack of time or ability for the Department to carry out a full analysis: 'There is limited evidence to inform the development of these proposals [for amending the purpose of local government and introducing fiscal responsibility] and the timeframe within which the proposals have been developed has restricted the ability to assess multiple options. As a result, the problem analysis and option assessments of specific proposals rely on assumptions that are not, or only partially, tested.'

In addition, we have noted local government bodies who are inconsistent across their own planning and legislative documents. This could be evidence of the complexity and vast range of documents local government bodies are required to have in place, as well as a possible lack of oversight and scrutiny which ensures firstly that regulations are consistent with national frameworks and secondly that individual local government regulations are consistent across themselves.

In this same example, the Council has set a Bylaw beyond the interests of the public with direct impacts on local businesses and has failed to supply a Cost/Benefit analysis to underpin its Bylaw currently under consultation.

Example 1 – Solid Waste Bylaws

Background

Under the Waste Minimisation Act, Councils had until the 1st of July 2012 to review or enact a Solid Waste Bylaw. Councils have proposed differing plans, which may refer to their differing situations.

From a study conducted for Fonterra, 17 of 78 councils have in place provisions that would require licensing for the transporting of waste/recycling (depending on the different definitions used by each Council). Even though Fonterra is not a large transporter of waste or recycling, our contractors who assist us in recycling and waste minimisation activities nationwide may be required to meet 17 different licensing provisions. This is one example of how a nationwide approach would simplify this particular situation.

A further example highlights some other inefficiencies that we perceive and is detailed below:

How was regulation allocated between Central and Local Government?

Nationally the Waste Minimisation Act was enacted in 2008 placing a requirement for local bodies to review or enact a solid waste bylaw and to have in place a Waste Management & Minimisation Plan

¹ Department of Internal Affairs (May, 2012) <http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-dia-blg-may12.pdf>

by a certain date in order to have access to Waste Minimisation Levy funding. It appears that there could be confusion about the scope that local bodies are to focus on.

The positive/negative impacts on the business?

Council A has noted in their Waste Management & Minimisation Plan (WMMP) that they have the ability to influence the residential and Council controlled waste management and recycling for their city (17%). However, in their proposed Bylaw – the scope is extended so as to conflict with their WMMP with provisions to control all waste and recycling activities in their city.

It appears that this approach would only add inefficiency to the system. In the case of a system that Fonterra has set up for large scale de-packaging and composting of food waste involving transporting of food waste from Auckland sites for recycling just outside of Auckland. If this Bylaw were enacted it would require Fonterra to have its' recycling partner licensed to transport the product, then all product would have to go through an approved Council transfer station. Neither of these steps would increase the amount of waste that was being diverted away from landfill, and would only add extra costs to Fonterra.

Our Preferred Approach?

Some oversight of Bylaw development that could allow for standardisation where very similar provisions are proposed by many Councils would be beneficial, in this case regarding licensing. To prevent industry needing to raise the issue of a solid waste bylaw conflicting with the Waste Minimisation Act, if there were an approval process where Bylaws were reviewed by an independent body prior to being consulted on, this could save time and cost for all stakeholders.

We recognise that it is appropriate that local government is best placed to reflect local values and priorities in their services and to a degree through their policies and regulations. However, we would support the Inquiry in making recommendations to inform concurrent work around Best Practice Regulation principles which ensure:

- Best Practice Regulatory Principles are formed at national level and applied across all regulation;
- These Principles will set a requirement that Central Government carries out a sufficient assessment of local government's capacity to administer and enforce regulation before a new regulatory role is delegated to them. A prime example of where this would be usefully applied is to Section 32 assessments under the Resource Management Act. In our experience these have not been delivering meaningful evaluation of the appropriateness of objectives within proposed regional and district plans (or plan changes) in order to legitimise the need for a change to existing plan provisions.
- The Principles will also require guidance and training, and where feasible a Plan/Strategy Template, setting out how to administer and enforce regulations and to what degree the regulations may reflect local preferences. Guidance should cover the process for assessing the impact of laws through a standardised impact or cost/benefit assessment. An example of a successful training model is the Ministry for Environment 'Making Good Decisions programme'. This programme has made a significant improvement in the skill level of elected members to perform their roles as decision makers in Resource Management Act processes.

On the final point, we recognise that for local government bodies to develop meaningful Cost/Benefit Analysis they will require details of the cost impacts from stakeholders, and for Fonterra's part, we commit, where we are able to disclosure details, to help inform such analysis.

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?

Presently there is a significant conflict between:- the Government's target under the Economic Growth Agenda to increase exports to comprise 40% of GDP by 2025 and, directions to local government under the Resource Management Act which have the potential to negatively impact agricultural productivity and growth needed to meet that national target.

Fonterra is both New Zealand's largest exporter and importer of goods and recognises there are opportunities to increase the value of our exports while continuously improving our performance in relation to environmental and nutritional sustainability.

Local government activities and regulatory functions governed by the Resource Management Act and the Local Government Act, appear to set priorities which as the NZ Treasury recognises², present 'possible areas of material concern' with respect to best practice principles of: supporting growth, being proportional, providing certainty and predictability, and, raise questions on whether local government is a capable regulator.

Some of the areas we are specifically mindful of include:

- Land Use, Zoning and Subdivision (TLAs)
- Land Use activities as they related to water management (Regional Councils) - and the introduction of land use consents being required for dairy conversion and/or the continuation of existing dairy farming.

Example 2 – National Irrigation Funding and Regional Land and Water Policy

Background

The Government announced in May a package of measures around water to recognise the strategic value of water to New Zealand's economy and way of life. The package included an Irrigation Acceleration Fund (IAF) over five years to 'unlock the economic growth potential of our primary sectors by developing more efficient and effective water infrastructure, such as storage and distribution'.

At the same time the National Policy Statement on freshwater management included in the same Government package, put further responsibility on local government to set 'regulatory framework for setting water quantity and quality limits to govern the allocation and use of freshwater'.

Dairy farming and processing infrastructure requires significant investment – and such investment decisions are made based on the availability of and access to water. Our processing infrastructure is regionally and nationally significant and ongoing certainty of access to sufficient water supply is paramount. Accordingly, we seek certainty with respect to the ability to renew water takes for dairy manufacturing purposes.

What are the positive/negative impacts on the business?

Fonterra has supported the introduction of the Irrigation Acceleration Fund and the uptake within regions such as Canterbury and the Hawke's Bay. We have also recognised the need to improve environmental performance within dairying and have introduced a number of outcomes for water quality through our Supply Fonterra Environmental Programme. The Environment Programme has a focus on regulatory requirements and waterway management.

Despite the ongoing efforts across a number of agricultural and horticultural bodies to improve land use management and impacts on water quality, along with efforts to improve water efficiency, there remain concerns around farming practices and uneasiness around further intensification. These concerns are borne out through proposed provisions within local government plans which have the potential to not just bring down growth in agriculture and land use change, but also to prohibit current

² New Zealand Treasury (July 2012), 'The Best Practice Regulation Model: Principles and Assessment'

farming operations. This has serious implications for agricultural sectors as well as for the Government to meet their aims around primary sector economic growth and in turn realise the aims of the IAF. across some local government bodies and other stakeholders around water quality and reliable future access to water

Our Preferred Approach?

We have welcomed the multi-stakeholder approach of the Land and Water Forum to inform freshwater management, however considerations for water quality and nutrient limits and water quantity and transfer provisions are already upon us at the regional council level. Our preferred approach is to see greater cross-departmental coordination and assessment of policies and initiatives which identify the trade-offs and balances required at local government level and then result in guidance on prioritising such policy priorities. We expect timely guidance and where necessary, template planning documents, showing how national priorities should be translated into local government and local priorities.

14 Examples of inconsistencies in the administration and enforcement of regulations between local authorities? And,

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

16 To what extent does variation in regulatory practice matter?

While there are inconsistent approaches across local government bodies which could be addressed through such initiatives as:

- Government assessment of the impacts and ability of local government to carry out new duties and responsibilities.
- Government set guidance and planning templates
- Processes for greater coordination, information sharing and joint procurement between local government bodies

We have also witnessed inconsistent regulation and policy setting across plans within a single local government body. We suggest this is due to a lack of protocol across Council officers and in others, it alludes to a lack of scrutiny and oversight across the number of plans and policies local government bodies are required to have in place. We are unable to say if this might reflect a lack of resource and expertise to implement certain regulatory functions, though expect that given the variation in size and resource available to individual local government bodies that this is something that Government must assess before devolving more powers and responsibilities to local government.

Example 3 – Inconsistent Administration and Enforcement within a Council

Background

Fonterra is committed to assisting farmers in assuring their effluent systems have the infrastructure in place to ensure they are able to be compliant with regional council rules and regulations 365 days of the year. Additionally, it is important farmers adopt best practice where appropriate, over and above these rules to ensure impacts to fresh water quality in New Zealand are minimised in line with public expectation.

Some regions in New Zealand still permit treated effluent to be discharged to water under the conditions of a Resource Consent. Fonterra does not consider this to best practice both in terms

freshwater quality, best use of effluent as a nutrient source and addressing lwi concerns of water quality and health.

Fonterra supports the rapid transition of systems that discharge to water to those that discharge to land. It is important that this is a consistent message from all parties involved including regional councils. At the minimum, Fonterra would expect water discharge sites to be monitored and enforced with the same rigor as land treatment options, particularly when the resulting environmental effects could be significantly greater.

Introduction

A Regional Council ('RCX') currently has 400 farms holding a Resource Consent to discharge treated effluent to water. In the 2011/12 season, 91 of these discharges were monitored for compliance against their resource consent conditions. Only 10% of these monitored sites achieved full compliance.

The RCX response to the 90% that did not achieve full compliance was a request to the farmer to rectify the non-compliance through a letter of direction and promotion of land treatment as the preferred option at the time of consent renewal. Contrastingly, the enforcement action to the 23% of farms not achieving full compliance against the permitted activity rule for land application involved:

- 34 formal warnings
- 47 infringement notices
- 4 prosecutions
- 9 abatement notices
- 57 letters of direction

In respect to these actions, RCX also states "Enforcement decision making processes are in place to ensure that compliance is undertaken in an even-handed manner"

Fonterra does not believe this to be a fair and equitable response to non-compliance against effluent rules and regulations. Farmers discharging effluent under a Resource Consent are immediately at an advantage of being unlikely to receive formal enforcement action for non-compliance. Arguably, the environmental effects of discharging partially treated effluent directly and regularly to a water course, are greater than a singular non-compliance incident in a land treatment system.

What are the positive/negative impacts on the business?

Farmers are not being treated in an equitable manner by RCX when they monitor and enforce effluent compliance rules. Fonterra believes that farmers that are likely to have a consistently greater effect on water quality are less likely to receive enforcement action. Farmers are being sent mixed messages. Fonterra are requiring farmers to upgrade their systems to meet council rules and regulations, yet farmers discharging to water are not being enforced to the rules of their consent in the RCX region. RCX are still issuing resource consents to farmers for treatment systems that to the best of current knowledge cannot comply with the conditions of that consent.

Our Preferred Approach?

- All effluent rules and regulations whether through consents or permitted activity status are monitored and enforced in a consistent and equitable manner.
- Farmers are sent clear messages that inform their decision making for implementation of practices that minimise environmental effects.
- Farmers are not issued resource consents that contain conditions with which they are unlikely to ever comply with.

Example 4 – Approach showing inconsistency across different local government bodies/provisions

Background

Central Government has enacted the Hazardous Substances and New Organisms Act (HSNO Act). That Act puts in place a comprehensive set of requirements relating to the storage, use and transportation on hazardous substances. The only issue not covered by that legislation (and falling within the domain of district plans) is the appropriate location for the storage and use of hazardous substances.

Fonterra's position has been that there should be no argument that industrial zones (particularly Heavy Industrial Zones or Specialised Dairy Industrial Zones) are appropriate locations for the storage and use of hazardous substances (wherein they should be permitted activities subject to compliance with the requirements of the HSNO Act). In fact, the storage and use of hazardous substances is typically a defining characteristic of an Industrial Zone.

Where the inconsistent approach lies and the subsequent impact on business?

However, most district councils adopt the Hazardous Facilities Screening Procedure (HFSP), or some alternative approach, which typically gives rise to the need for a Resource Consent at low thresholds for an industrial zone. The subsequent requirement for a Resource Consent application (usually publicly notified – and therefore costly) typically results in no additional requirements beyond those required by the Hazardous Substances and New Organisms Act (e.g. manner of storage, bunding, labelling, separation, etc).

Fonterra has experienced situations whereby the construction of a silo for the storage of milk (up to 400,000 litres each) is a permitted activity in an Industrial Zone, but filling the same silo more than 1.7% results in the need for a resource consent under the HFSP (due to the medium level ecotoxicity of milk being defined as a hazardous substance).

A further implication from the HSNO Act was found where a territorial authority put rules in place around the maximum measure for hazardous substances that could be stored without consent. Their definition of hazardous substances captured farm effluent (ponds) and milk. This matter was costly to resolve and could have been avoided with a consistent approach being set from Central to regional and to territorial authority government bodies.

Our Preferred Approach?

Fonterra has often solved this problem by seeking exemptions for its dairy factories (similar to the HFSP provisions relating to the storage of petrol) but has had to do this on a case-by-case basis at a significant cost each time.

The preferred solution to this and similar issues, is to rely on the provisions of the national legislation, in this example the HSNO Act and significantly restrict Council control of such matters to considerations of location (whereby industrial zones are deemed to be appropriate locations resulting in permitted activity status).

Example 5 – Approach showing inconsistency between central and local government provisions

Background

We support the management of solid waste to encourage waste minimisation and decrease waste

going to landfill. Fonterra already has a number of its own current programmes in place which serve these waste minimisation objectives.

However, we have significant concerns about how Council Y has proposed to manage waste through use of a Bylaw. We view the Bylaw as being in conflict with the Waste Minimisation Act 2008.

Where the inconsistent approach lies?

The introduction of this Bylaw is, we believe, duplicates existing requirements under the Resource Management Act 1991 as well as existing information gathering and reporting under the Waste Minimisation Act. This additional layer of legislation also appears inconsistent with local government reform objectives to improve efficiency of council processes. We consider that the Bylaw is unlikely to result in benefits over and above those which Fonterra is already achieving in relation to its operations and solid waste.

The Bylaw is also inconsistent with Council Y's own Waste Management and Minimisation Plan which focuses on the domestic waste stream. The Bylaw as currently drafted includes provisions over the entire waste stream.

The Bylaw also differs significantly from the management of solid waste imposed in other regions. Fonterra operates across the county and could find itself in a difficult business-environment due to localised bylaws.

What are the impacts on the business?

This introduces an additional layer of legislation, and this Bylaw in our view will make it more difficult and more expensive for business to operate in this area. By and large, the restrictions and controls seem unnecessary and disproportionate to any benefit that may be achieved. The result of an increase in waste costs for industry under the Bylaw will likely constraint private sector innovation, this is also in conflict with Council Y's own Waste Management and Minimisation Plan which has a strategic focus on innovation and being business-friendly.

Some provisions could have detrimental effects on the commerciality of private waste collecting businesses.

Our Preferred Approach?

Our preferred approach would see outcomes which are consistent with overarching legislation and adopted plans, recognising the need to remove unnecessary regulation and allow for growth and development. We would expect Council Plans to be streamlined and consistent amongst themselves. Given the number of complex and detailed plans councils are responsible for we would welcome a framework for streamlining these and scrutiny which ensures provisions across plans are aligned where relevant.

Fonterra considers that the power over control or prohibition of disposal of waste should be reserved in the Governor-General alone, and not be subject to bylaws which differ dramatically between districts which businesses, particularly those operating nationally, must be in compliance with.

Who should regulate?

- 21. Has the Commission captured the dis/advantages of centralisation and decentralisation for each of the factors? and**
- 22. Which of the factors discussed in this chapter are the most important for allocating regulatory functions locally or centrally? and**

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

We have noticed worthwhile schemes conceived nationally which then are bound by administrative and implementation issues at the local government level, removing much of the intended benefit.

Example 6 – Disadvantage of decentralised approach

Background

In 2009 Fonterra submitted on the national Draft Land Transport Rule: Vehicle Dimensions and Mass Amendment Rule 41001/5.

With our operations based throughout the country, and is both the country's biggest exporter and importer of goods. As such, Fonterra is a major user of New Zealand's local and state highway networks for collecting milk from farms to processing sites and moving product between sites and to port.

Fonterra has a significant interest in such proposals, recognising that in order to be competitive on the world market Fonterra requires an efficient, sustainable and equitably funded transport system.

We expressed concerns around the proposed permitting system which we viewed as unwieldy, with the potential to dissuade the use of highly productive vehicles which the proposed changes were seeking to promote. We sought that the administration and application for permits be held by a central body.

The responsibility held with Road Controlling Authorities appeared to conflict with their interests around maintaining the serviceability of roads and raise queries around how additional revenue might be made available to remedy possible wear and tear from any resultant uptake.

A further concern was that the significant increase in Road User Charges above the 44,000kg was viewed to disadvantage the dairy sector. In our case, the vehicle is at or near maximum load for only a short portion of the total journey. We stated our preference was for the use of smart technology that tracks weight by route.

How was regulation allocated between Central and Local Government?

At the time, a rule for vehicle dimensions and mass might have had the potential to close the gap on our international competitors already enjoying many of the mass dimension benefits outlined in the proposed amendments.

However, the administration, operation and funding of the permitting system held by multiple Road Controlling Authorities resulting in a system which detracts from the other benefits of the system and ease of access and coordination.

Impact on the business?

The amendment had the potential to allow for a number of improvements for vehicle and freight movement. While we have, primarily through the increased investment in rail use, managed to reduce freight movements and thereby improving traffic congestion problems and reduce our traffic emissions anyway, the merits of the amendment have not been fully realised by Fonterra, largely due to the devolved system of administration.

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

We question whether the Drinking Water Standards were imposed with proper consideration of the funding implications for Local Government. We note that the timeline for meeting the new standards was extended but again reiterate our concern that the Regulatory Impact Statement's applied to legislation that impacts Local Government is adequately analysed.

We welcome the Commissions chapter and analysis therein of who should regulate. Further to our response to Question 9, a key component missing from the 'Standard Setting' is an oversight and scrutiny function to ensure any new regulatory regime, regardless of the agency, is consistent with existing areas of law and in particular can align with a set of overarching Government priorities such as export growth. Priorities need to be set and agreed across central government and local government. Presently local government is tasked with regulation and bylaws under the RMA and LGA and is asked to 'balance' the four well beings. We note the recent biennial assessment from NZ Treasury released in July 2012 highlights material concern around [economic] growth against the LGA and the RMA, which on the face of it does not recognise that the regulatory function of local government to consider this against other social, cultural and environmental issues at the local level.

Getting Regulation Right

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

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

31. How could the Regulatory Impact Assessment framework be improved to promote a fuller understanding of the impact of devolving new regulatory functions to local authorities?

Handled with questions from Getting Implementation Right

43 For which aspects of the regulatory process could compliance costs to business be reduced without compromising the intent of the regulation? And

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

- Where it is appropriate for local government to hold the responsibility for regulation

We note the Local Government Efficiency Taskforce is currently looking at current financial reporting requirements and practices. We believe this require is also an opportunity to inform central government around the delegation of regulatory functions. A change in financial reporting through the long term planning process ought to require a consistent (electronic) reporting approach across all Councils to firstly inform central government of the revenue, current and expected expenditure on core activities and regulatory functions and secondly, to ensure through the public consultation process, both residential and business ratepayers have an itemised breakdown of how their rates relate to council expenditures on which to be consulted on.

We found through the recent Long Term Plan consultations, there was a great contrast between the individual councils on the accessibility and transparency of their financial reporting. There was also a move towards a tougher position on cost recovery in relation to Council RMA regulation and environment work – particularly in Southland where significant targeted increases in rates were proposed for dairy farmers.

A Regulatory Impact Assessment should be improved to promote fuller understanding of both current and future regulatory functions sitting within local authorities. Any cost/benefit analysis would be informed by the improved financial reporting by informing the cost assessment and the benefit analysis ought to signal and inform back to local government where the burden of costs should sit across ratepayers.

- Where it may be appropriate for Central Government to retain control and oversight Central Government initiates a wide range of economic and social strategies which by their nature need to be advanced through RMA planning processes. It is grossly inefficient for one arm of government (e.g. an SOE or government agency) to be seeking resource consents for an economic activity only to be opposed by another arm of government.

The solution is to develop a 'whole of government' position in relation to developments which are deemed by Central Government to be of national significance or importance. Fonterra would welcome its major developments (e.g. new dairy manufacturing sites) being considered as developments of national priority.

Example 7 – Principles for deciding funding

Background

Though somewhat anecdotal, there is evidence to suggest that the principles for deciding funding on regulatory activities, is poorly applied in some instances.

Example of Dog Control Fees

The expectation for dog registration fees at these are a form of cost recovery from the dog owner for Council administration and enforcement around dog control. Whilst there appears to be an easy argument that the activity would not be required if it were not for dog owners, there is some evidence that unregistered dogs present a significant part of dog ranger time.

There is also little evidence that rural dogs contribute to the dog rangers time. We therefore question, that where a farmer, who may own up to five dogs, and is therefore contributing a significant proportion of their registration fees in dog control activities, is a clear beneficiary. We appreciate that some councils do place limits on the number of dogs registrations required to be paid, but this is not uniformly applied.

Our Preferred Approach

There are two proposals we put forward in response to the applying principles for funding, the first is to ensure that those responsible for carrying out the process are skilled enough to have discussions on the private and public benefit of the local government functions they are responsible for. Secondly, the financial systems could be improved by being more open and transparent as they ought to be for the purposes of public consultation. Uniformity around itemised reporting across revenue and expenditure is vital to allowing ratepayers can comment and engage in the process. This latter point also points to how procurement, say for software, could usefully be procured and rolled out from a central body.

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

Example 8 – Coordination to Improve Regulatory Performance (Inspection)

Background

Manufacturing sites often have inspection requirements as conditions of Resource Consents, in addition to this local Councils and/or the Department of Labour will inspect sites in relation to the Hazardous Substances and New Organisms Act.

Our experience under the current council inspection and licensing regime

Experience has shown that often a different Council representative may need to visit a site related to each Resource Consent the site may have, which has cost and resourcing implications for all involved parties.

Our Preferred Approach

To simplify, and reduce the number of times that manufacturing sites are required to host official inspection visits where there it is feasible to coordinate visits to by streamlining the issues relevant to the site so that one Council visit could focus on all or a number of Resource Consents and HSNO could streamline the process ultimately reducing the resource and possibility for duplication involved in the current inspection regime.

Reviewing Existing Regulation *handled with* How should regulatory performance be assessed?

- 48 Are the current processes for reviewing existing regulation adequate? Could they be improved? And**
- 49 In which regulatory areas are there good, poor or insufficient regulatory review mechanisms? And**
- 50 Who should undertake regulatory review – the responsible agency or an independent body? And**
- 63. Of the performance indicators commonly collected by local authorities, do any naturally lend themselves to systematic benchmarking of regulatory performance? And**
- 64. What new performance indicators could meaningfully measure the regulatory performance of local government? And**
- 65. Is there a role for a third party evaluator to measure customer service standards in local authority regulatory functions?**

Regulatory review is an important part of ensuring we have best practice regulation and we would welcome linkages here to regulatory performance measurement which would inform any review. We welcome this to ensure:

- Consistency with agreed national priorities.
- Consistency across the regulatory policies and plans of any individual body
- Consistency of approach across regulatory bodies, where necessary carried out through benchmarking and regular monitoring on agreed key indicators
- Commonality of recording information and reporting to allow for central government and public transparency and consultancy. We appreciate that there is a concern here around benchmarking leading to 'local government leader boards' but performance indicators

We note that the Regulatory Standards Bill recognises there is still limited strength in requiring policy-makers to confront regulatory effect on productivity and economic costs and hope the Commission can make recommendations to address this.

The responsibility for setting performance indicators should sit with central government in consultation with local government and the wider public. Performance Frameworks exist across UK local government and were streamlined into a set of performance indicators to avoid duplication and consistency across the relevant government departments and limit burden on local government. Overview and scrutiny panels combining appropriate representatives from central government departments and local government should hold responsibility for reviewing whether existing regulation is adequate. We note a number of advisory groups or taskforces are working concurrent particularly to inform the local government reforms and believe recommendations from these could form a useful test bed for overview and scrutiny.

Where appropriate/feasible individual representatives for the interests of wider stakeholder or interest groups should be included in review and assessment processes, the Land and Water Forum is an example of how this might work in this respect.

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

We have alluded to a number of possible improvements throughout our response but to highlight these, they are listed here again briefly:

- Guidance and planning templates for expediting the process and eliminating inconsistent approaches to the national priorities/objectives from the outset.
- Seek to reduction in the number of RMA planning documents required by local government
- Commonality of approach, reporting, and monitoring across boundaries.

Closing Comment

We thank the Commission, and the Commissioner for the opportunity to comment on the Issues Paper and for the opportunity to meet with representatives of the NZPC to discuss local government regulatory functions. We look forward to seeing the draft report in the coming months and would welcome further opportunities to meet with the Commission to further inform the inquiry.