HURUNUI DISTRICT COUNCIL

TOWARDS BETTER REGULATION: A RESPONSE TO THE PRODUCTIVITY COMMISSION'S QUESTIONS AND RECOMMENDATIONS

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Introduction

The Hurunui District Council is located in North Canterbury in the South Island of New Zealand. The 8,640 square kilometre district has a relatively small geographically dispersed population (11,300 people centred in 14 main towns and settlements). The district comprises of significant areas of farmland, conservation estate, and the fourth largest wine growing area in New Zealand. The Council employs approximately 130 full time equivalent staff, (approximately half work at the Hanmer Springs Thermal Pools and Spa complex owned and operated by the Council, and the other half provide a broad range of local government services). There are 8,000 ratepayers in the district. The Council's operating budget is approximately $30million.

The Hurunui District Council does not wish to be heard on this submission.

Submission:

Chapter 3: Diversity across local authorities

Q3.1 To what extent should local government play an active role in pursuing regional economic development?

Response:

We believe that councils do have a role to pursue economic development. Our council has a joint council controlled organisation with a neighbouring council, Waimakariri District Council, to promote and boost economic development in North Canterbury. The size and scale of activity (regional, district or city wide) would depend on whether or not this was supported by residents/ratepayers within our jurisdictions. We support collaboration at a regional level in terms of strategic planning and delivery of economic objectives if it makes practical sense to do so. Councils may have very different views on whether or not to pursue economic development and how this might be done, whether through specific initiatives or simply providing good quality infrastructure efficiently.

Chapter 4: Allocating regulatory responsibilities

Q4.1 Have the right elements for making decisions about the allocation of regulatory roles been included in the guidelines? Are important considerations missing?

Response:
The guidelines appear to contain the full range of necessary elements to sensibly allocate regulatory responsibilities between central and local government however the framework may need to differ depending on whether we are dealing with delegated regulatory functions from central government or regulatory functions given to local government directly by Parliament. The issue of capability depends on the local authority and the size of the population and cost the communities are prepared to spend. We have shared expertise with other councils to reduce the cost and share skilled personnel.

Q4.2 Are the Guidelines practical enough to be used in designing or evaluating regulatory regimes?

Response:
We would prefer the guidelines to be defined in broader terms to cater for different regulatory situations.

Q4.3 Are the case studies helpful as an indicative guide to the analysis that could be undertaken?

Response:
Yes.

Q4.4 Should such analysis be a requirement in RIS's or be a required component of advice to Ministers when regulation is being contemplated?

Response:
We would prefer for local government to be involved in the discussion when a regulatory response is being considered and to have involvement at the early stages of working through and deciding whether regulation is the appropriate tool to address a problem.

Q4.5 Should the Guidelines be used in evaluations of regulatory regimes?

Response:
Yes

Chapter 5: The funding of regulation

Q5.1 Do any regulatory functions lend themselves to specific grants? If so, what is it about those functions that makes suitable to specific grants?

Response:
We take a user pays approach to our regulatory functions and have a user charge, whereas policy development, bylaws, consultation and monitoring are paid for through a General Rate. We would support the concept of specific grants being available to assist with the costs normally paid for by the ratepayer, particularly for smaller local authorities such as ours. Meeting regulatory requirements such as water (NZ Water Standards) impose costs on local authorities and communities but do not take into consideration the low rating base small, rural council's such as ours have. Ideological targets are hard to achieve when they come at a high cost. A grant could apply in this type of situation.

Q5.2 If general grants were to be considered, on what basis could 'needs assessments 'be undertaken? What indicators could be used to assess need?

Response:
We agree with the suggestion that general grants could be used to assist councils lacking capacity to provide a higher minimum level of service and it is appropriate that councils have the discretion to allocate such funds as need requires. We already have a welfare system to provide for those in need. Central government has taken on this responsibility and has the system in place to determine need. We would be reluctant to take on a role of administering grants for those in need. We would also exercise caution that any grants were to provide a 'hand up' and not a 'hand out'.

Q5.3 What would appropriate accountability mechanisms for funding local regulation through central taxation look like? How acceptable would these be to local authorities?

Response:
Local government accepts the principle that with funding comes accountability. The proposed funding principles outlined in Box 5.2 (page 69) are supported. The Government has considerable experience of contracting and funding non-governmental agencies to provide service on its behalf. These models could be applied to any funding allocated to councils to enhance the performance of a regulatory function.

Chapter 7: Regulation making by local government

Q7.1 What measures, or combination of measures, would be most effective in strengthening the quality of analysis underpinning changes to the regulatory functions of local government?

Response:
The critical change must involve a more analytic approach to determining whether the regulation is one that should be decentralised to councils, and if so, the degree of discretion that should be given to councils. We support the recommendations that would strengthen the regulatory impact process and the quality of regulatory impact statements. We do have concerns about option 10 and whether a Select Committee to consider issues concerning local government regulation is practical but do support Option 8, the suggestion of an independent statutory body to undertake quality control of RIS. One of the issues faced with regulatory impact statements concerns the willingness of government to actually take them into account. We would note that the RIS accompanying the recent LGA 2002 Amendment Act 2012 was highly critical not only of the information on which the Bill was based but also some of the policy prescriptions. Decision makers appeared to ignore the RIS in its entirety.

Q7.2 What measures or combination of measures would be most effective in lifting the capability of central government agencies to analyse regulations impacting on local government?

Response:
We support the eight proposals outlined in Table 7.2.

Chapter 8: Local government cooperation

Q8.1 What are the benefits and costs of cooperation? Are there any studies that quantify the benefits and costs?

Response:
Cooperation makes sense where there are economies of scale and agreement on service levels or standards. We work collaboratively with partners where we can (for example, monitoring liquor licences).

Chapter 9: Local authorities as regulators

Q9.1 Are there potential pooled funding or insurance style schemes that might create a better separation between councillors and decision to proceed with major prosecutions?

Response:
Elected members have a valuable role to play in many regulatory regimes, such as their role as hearing commissioners and setting regulatory standards, however, as a matter of principle elected members should not be involved in decisions to determine whether or not individual prosecutions should be laid. Where appeals and prosecutions are likely to create a significant cost to ratepayers, with limited likelihood of success or limited ability to recover the cost, it is appropriate that governors are involved in the decision. The question is one of scale and whether the cost is proportionate to the scale of the problem. There are a number of regulatory areas where taking an offender to court for an unpaid fine will cost councils more

than the maximum fine able to be charged. In our experience the cost of initiating prosecutions or appeals is not the major determinant of whether such actions are taken or not. We are not convinced that there is a problem that would benefit from a mutual styled fund.

Q9.3 What factors (other than the type of regulation most commonly experienced by different industry groupings and the size of businesses in these sectors) explain differences in the satisfaction reported by industry sectors with local authority administration of regulations?

Response:
The issue here is whether dissatisfaction is with the process by which regulations are administered or with the standard users are expected to comply. Increasing consistency of process will arguably benefit firms dealing more than a single council but may also diminish the capacity for innovation. Increased consistency of regulatory standards undermines the argument in favour of decentralising regulatory functions and would assume that, at least in relation to this regulatory area, all communities have the same values.

Chapter 10: Local monitoring and enforcement

Q10.1 Are risk based approaches to compliance monitoring widely used by LAs? If so, in which regulatory regimes is this approach most commonly applied? What barriers to the use of risk-based monitoring exist within LAs or the regulations they administer?

Response:
We monitor land use resource consents when a monitoring schedule has been included and mainly based on risk of the effects.

Q10.2 The Commission wishes to gather more evidence on the level of monitoring that LAs are undertaking. Which areas of regulation do stakeholders believe suffer from inadequate monitoring and compliance? What are the underlying causes of insufficient monitoring? What evidence is there to support these as the underlying cause?

Response:
The cost of monitoring is expensive and our ability to adequately monitor across all areas is restrained due to budget constraints and affordability.

Q10.3 Which specific regulatory regimes could be more efficiently enforced if infringement notices were made more widely available? What evidence and data are there to substantiate the benefits and costs of doing this?

Response:
Swimming Pool regulations provide no other option other than prosecution for non-compliant swimming pools (and the maximum fine is $500). Perhaps the possibility

of an infringement notice would gain compliance more quickly. The amount of time spent chasing and following on non-compliant fencing where the owner doesn't do anything or make any attempt to get in touch is consistently a common problem which takes weeks to resolve. Another area is the Impounding Act. The only enforcement options available require a huge amount of work and because of this, they are often a last resort and rarely done. Offenders seem to know that we are unlikely to impound goods and as a result, are not often compelled to comply. An infringement notice would be preferable in this instance. Having this option available for second offences or where compliance has not been achieved via the agreed informal options, is desirable. Infringement notices work well for litter and freedom camping. They are a good deterrent and an efficient enforcement option. Infringements do not work well if they are issued to people who already have outstanding fines – then we are unlikely to see any benefit.

Q10.4 Is there sufficient enforcement activity occurring for breaches of the RMA, other than noise complaints? If not, what factors are limiting the level of enforcement that is occurring?

Response:
No. The enforcement policy is weak, and some of the tools available as enforcement options (such as abatement notices) are required to have council agreement first. This makes them harder and slower to use. This can mean that moderate RMA breaches are dealt with lightly or informally, or by threats of further action that are not able to be followed through on. If we were able to issue abatement notices earlier then we would probably save a lot of time. However, informal options are always preferable and usually adequate in most cases.

Q10.5 Should the size of fines imposed by infringement notices be reviewed with a view to making moderate penalties more readily available? What evidence is there to suggest that this would deliver better regulatory outcomes?

Response:
The size of the fines is adequate and significant enough to be a deterrent. Some other Acts that councils administer are dated and could be reviewed to ensure the fine is relevant in today's dollars (such as the Impounding Act). Having said that, the higher the fine does not necessarily mean higher compliance.

Q10.6 Is sufficient monitoring of liquor licenses occurring? What evidence and data exists that would provide insights into the adequacy of current monitoring efforts?

Response:
We monitor high risk licensed and food premises more often than the lesser risk premises. This is due mainly to the cost of having more resources to use in this area, therefore need to make assessments as to how and when we monitor those we do. Part of our risk assessment is based on the number of complaints we receive about premises - the more complaints the higher the risk.

Q10.7 How high is the burden of proof for each kind of enforcement action? Is it proportional to the severity of the action?

Response:
The burden of proof for a prosecution is high and investigating with a view to prosecution is time consuming. We consider this to be appropriate due to the seriousness of a conviction and consistent with other organisations that investigate offences where they may prosecute.

Q10.8 Is the different gradient in the use of compliance options because there are missing intermediate options?

Response:
In cases where there isn't an intermediate option, as a smaller council, we struggle to commit the time, money and resource to a prosecution unless the offence is extremely serious.

Q10.9 Are the more severe penalties not being used because there is insufficient monitoring activity by local authorities to build sufficient proof for their use?

Response:
For our council, we do not have many significant personal or environmental effects therefore do not require severe penalties. Yes we could prosecute more if we had the resources to build a case, but in most cases this is not necessary.

Q10.10 Why are relatively few licenses varied?

Response:
Most of the licenses in our district do not change and therefore do not require variations.

Chapter 12: Making resource management decisions

Q12.1 Is the very low number of consents declined best explained by the risky applications not being put forward, the consent process improving the applications or too many low risk activities needing consent?

Response:
Most consents are not declined because in most cases consent conditions can be identified, negotiated and applied to manage the negative effects of the development, while still allowing for the activity to proceed. For large or complex applications, it is often not immediately apparent as to what the right conditions might be to address community concerns. The statutory process is a useful way of drawing out these conditions and the most effective way of minimising or mitigating environmental effects.

Q12.2 Would different planning approaches lead to less revisiting of regulation? What alternative approaches might there be?

Response:
The length of time that the planning process has taken in the past has resulted in the key resource management issues of the day being poorly identified. District and Regional plans which are operative today were often drafted 10 or more years ago, to address the resource management of that time – not the present. Recently planning processes have occurred more rapidly, and this has assisted. There are occasions when an applicant can have several opportunities to be involved in the process which does not seem efficient and more bureaucratic than would seem sensible. For example, it is possible for the applicant to be involved in the informal and formal plan development process, the resource consent process, then (depending on what follows), participate in two or more resource consent hearings. This enables them to engage with the public about their application at least three times through the formal RM process. It is questionable if the issues identified during the Plan development and hearing are substantially different from the resource consent submission and hearing process(s). It may be logical to enable the plan development and consenting process to be processed jointly in some circumstances.

Q12.3 What factors have the strongest influence on whether a district plan or regional policy statement are appealed?

Response:
The key factor as to whether or not a plan is likely to be appealed is how significant the sectorial groups / individuals or the wider public thinks the issues are, and in many cases how much money can be made from a particular plan decision. Appeals can be narrowed by good, robust pre notification consultation.

Q12.4 Overall, would it be feasible to narrow the legal scope of appeals?

Response:
Yes. The Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 is an example. The Act reduced the estimated number of years of appeal to the Natural Resources Regional Plan (NRRP) and all 9 appeals received were resolved through mediation or withdrawn relatively quickly.

Q12.5 Would it be feasible to narrow legal standing?

Response:
Yes; to people who have previously submitted, for example.

Q12.6 What features of the bylaw making process are distinct from the district plan making process and how might you use practice under the one to improve the process under the other?

Response:
Bylaws follow a simpler process. There is no further submission process, no summary of decisions requested and no appeal to the environment court. Council is

able to decide through hearing and considering submissions rather than through independent hearing commissioners for example. Following a similar process would speed up plan making. Bylaws can take up to 12 months to finalise compared with plan making at two years minimum but usually significantly longer. Bylaws do tend to be more straightforward than resource management cases deals which can be complex.

Chapter 13: Local regulation and Maori

Q13.1 Are there any other ways that local authorities include Maori in decision-making that should be considered?

Response:
We feel that this area is regulated enough and that councils and Maori will form their own plans and working arrangements according to the needs of their particular area. Our council has a formal Memorandum of Understanding with Ngai Tahu and local Runanga. This sets out a formal agreement about how we will work together. We have agreed to consider two iwi management plans in our decision making. In practice though, informal processes for consultation and information sharing brings about the most gains. Examples of this: including Runanga in Council workshops as we review our District Plan; Runanga having membership on our water strategy joint committee (Hurunui Waiau Zone Committee); inviting Runanga to our citizenship ceremonies; meeting with Ngai Tahu policy/planning staff to familiar each other with items of joint interest.

Q13.2 What are some examples of cost-effective inclusion of Maori in decision-making you are aware of?

Response:
See Q13.1.

Q13.3 What more intermediate options could there be for including Maori in RMA decision-making?

Response:
See Q13.1.

Q13.4 What are some examples of decision-making systems well tailored to Maori involvement?

Response:
In our experience, strong formal and informal relationships are the most important.

Chapter 14: Assessing the regulatory performance of local government

Q14.1 How have local authorities used the SOLGM guide on performance management frameworks – or other guidance material – to assess local government regulatory performance?

Response:
We use guides on performance management frameworks for planning and monitoring cycles for Annual Reports and Long Terms Plans.

Q14.2 Is there sufficient focus on regulatory capabilities in local government planning and reporting under the LGA2002?

Response:
We would not advocate for further legislative requirements to be placed on councils.

Q14.3 Have local authorities encountered difficulties in dealing with different performance assessment frameworks across different forms of regulation? Which forms of regulation do a good job of establishing performance assessment frameworks, in legislation or by other means?

Response:
We would prefer to set tour own standards in consultation with local communities which are monitored annually by elected members.

Q14.4 Which of the Commission's performance assessment options have the best potential to improve the efficiency and effectiveness of assessment of local government regulatory performance and improve regulatory outcomes? What are the costs and benefits of these options? Are there other options in addition to those that the Commission has identified?

Response:
1. *Regulatory terms of reference documents:* We support this option to increase clarity about the purpose of regulatory regimes, the relative roles of local and central government and the manner in which performance will be assessed.
3. *Adopt elements of the PIF model:* We do not support this option and consider that the cost of a PIF approach would be excessive and outweigh the benefits.
4. *Increase focus on regulatory capabilities:* We do not support this option and again, consider the cost to outweigh the benefits.
6. *Reduce the frequency of regulatory performance reporting:* We support this option and the proposal to encourage central government to share data with councils to assist with performance assessment.