LOCAL GOVERNMENT NEW ZEALAND'S SUBMISSION TO

The Productivity Commission

In the matter of Local Government Regulatory Performance

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Introduction

Local Government New Zealand thanks the Productivity Commission for the opportunity to make this submission in relation to Local Government Regulatory Performance.

Local Government New Zealand makes this submission on behalf of the National Council, representing the interests of all local authorities of New Zealand.

It is the only organisation that can speak on behalf of local government in New Zealand. This submission was prepared following consultation with local authorities. Where possible their various comments and views have been synthesised into this submission.

In addition, some councils will also choose to make individual submissions. The *Local Government New Zealand* submission in no way derogates from these individual submissions.

Local Government New Zealand wishes to be heard by the Productivity Commission to clarify the points made by this written submission as necessary.

Local Government New Zealand policy principles

In developing a view for the Productivity Commission inquiry on Local Government Regulatory Performance we have drawn on the following high level principles that have been endorsed by the National Council of *Local Government New Zealand*: We would like Productivity Commission to take these into account when reading this submission.

- **Local autonomy and decision-making:** communities should be free to make the decisions directly affecting them, and councils should have autonomy to respond to community needs.

- **Accountability to local communities:** councils should be accountable to communities, and not to Government, for the decisions they make on the behalf of communities.

- **Local difference = local solutions:** avoid one-size-fits-all solutions, which are over-engineered to meet all circumstances and create unnecessary costs for many councils. Local diversity reflects differing local needs and priorities.

- **Equity:** regulatory requirements should be applied fairly and equitably across communities and regions. All councils face common costs and have their costs increased by Government, and government funding should apply, to some extent, to all councils. Systemic, not targeted funding solutions.

- **Reduced compliance costs:** legislation and regulation should be designed to minimize cost and compliance effort for councils, consistent with local autonomy and accountability. More recognition needs to be given by Government to the cumulative impacts of regulation on the role, functions and funding of local government.

- **Cost-sharing for national benefit:** where local activities produce benefits at the national level, these benefits should be recognised through contributions of national revenues.

Introductory Comments

As noted above we are pleased to offer the following comments in response to your discussion paper Local Government Regulatory Performance. As the paper notes, the Productivity Commission has been asked to "develop principles to guide the allocation of regulatory functions between levels of government and to identify functions that should be reallocated to a different level of government".

Where the national sentiment is less strong a rationale exists for sub-national governments having a devolved regulatory power that is able to reflect regional and/or local preferences, assuming that these are likely to be different.

We need to distinguish between regulatory roles which are delegated by a central government agency and those which are devolved and allow councils a level of discretion regarding levels of service and compliance. Whether a regulatory framework is delegated or devolved tends to reflect the importance Parliament places on the particular issues regulation has been designed to address.

A constant theme that we have heard from our members (and as the national agency experience on a regular basis) is the lack of local government involvement in the design and review of regulatory frameworks. As a result we have used the discussion paper to promote the Department of Internal Affairs guidance document *Policy development guidelines for regulatory functions involving local government* which was published in 2006. We should make use of good advice if it already exists.

While the assignment of individual regulatory functions to local government is worthy of review by the Commission, the cumulative impact of having to perform across the range of

activities also needs to be considered. There are funding, capacity, and accountability issues which are often overlooked when central government assigns new responsibilities to local government. We agree that sufficient capability and capacity within local government can be an issue - but in our experience so too can it be an issue in central government in many areas.

In the allocation of functions due consideration also needs to be given to the allocation of liability. There are examples where local authorities assume unnecessary liability as they execute required functions. Sometimes this is a result of central government establishing policy and making it operative without full consideration of the consequences for delivery of the policy.

By way of example the Building Act 2012 defines a category of building work ("restricted building work") whereby only a person with the requisite license may perform the design or construction. This requirement came into effect on 1 April but a large approval backlog at Department of Building and Housing meant that a large number of the Auckland design community had yet to receive their licenses. The implications of strict compliance would have unnecessarily disrupted the Auckland development industry. Another example is the existence of "joint and several" liability which has the effect of influencing councils' behaviour as regulators - to make them conservative.

Our answers to the specific questions set out in the Discussion Document are set out below.

Responses to Questions in the Issues Paper

The Commission's approach

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

The role of local government is crucial in implementing a variety of regulation, all of which is set within a regulatory framework which central government devolves to local government.

Local government plays a key role in regulating a range of activities under a number of acts, from the Building Consent Authorities (BCAs) processing consent applications and checking and enforcing compliance with building standards, environmental health officers (EHOs) monitoring and certifying food premises and other service delivery, regional councils implementing the Resource Management Act (RMA) and determining resource consents and enforcement when there is non-compliance.

Local Government New Zealand (LGNZ) would want to see a principles based framework established which ensures consideration of LGNZ and sector expertise and knowledge when new regulations are being developed or existing regulations reviewed. There needs to be an assessment of the level of, or opportunity for, local government participation in the national instrument decision making process and recognition that a lack of local government involvement poses a problem for implementation.

It is useful to note that the Australian Productivity Commission identified a lack of federal government guidance as a key issue in the implementation of regulations in Australia.

Local authorities are creatures of statute and simply put, can only implement established regulation. The challenge is to provide sufficient national direction to enable beneficial outcomes without impeding the ability of local authorities who can factor local risk into their decision making, alongside communicating with their community about local circumstances.

The efficacy of the current regulatory framework would be assisted by greater involvement between the local government sector and central government to ensure that the technical implications of implementation of any act are carefully considered in the design stage. This will develop a regulatory framework which is more user-friendly and has clarity and consistency in its directives.

LGNZ believes that there is an opportunity for the Commission to identify, through working with the sector, those responsibilities or activities that local government undertakes which are uniformly applied throughout the country, and to look at ways that they can be more efficiently implemented.

In tandem with this approach the Commission also needs to identify those activities for which the local government sector is not resourced, equipped or funded to deliver. Also the Commission should assess where the necessary in-house skills and capacity issues to properly conduct regulations are likely to be.

LGNZ agrees that the variability in how the regulatory framework is applied in practice all too often results in local authorities bearing risks which should be borne by other parties. The current amendments to the Building Act should continue to strengthen the framework and place accountability at the appropriate level.

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

LGNZ believes that the main economic, social and demographic, technological and environmental trends that are likely to affect local government regulatory functions are as follows:

Economic – the country is not immune to the financial economic crisis which has affected the world, in terms of GDP growth. This in turn affects the local government sector in a number of ways. Lower growth rates affect housing and development, there is less activity in resource consenting, and this is set against a background of increasing costs in terms of infrastructure spend, which in turn is reflected in development contribution requirements being seen as costly.

In many areas the decrease in disposable income also affects the ability of local government to realistically manage a cost recovery model based on user pays. The cost of compliance is seen as a barrier to the consumer and therefore leads to activity being undertaken which is non-compliant. Affordability is a major factor which influences the ability of local government to maintain a high level of compliance in the regulatory environment. Not all regulation is 100% cost recoverable, there are costs which are borne by councils which are non-recoverable and to try to recover all costs would be unachievable and not acceptable to the community.

Social – the social trends affect the way local government needs to respond to the enforcement of regulation. This is often evidenced in areas of deprivation where there is less compliance with regulation due to a lack of information or lack of an ability to afford to be compliant, e.g. licensing requirements, dog control and registration, non compliance with speed limits, alcohol misuse, noisy neighbours, etc.

Demographics – changes in the demographics of an area are a vital indicator of growth or decline; these models are used to determine the future planning of all service delivery. New Zealand has an ageing population which is growing. This age group have particular needs and requirements which affect the way regulation is delivered, e.g. parking regulation concessions, disability parking, disabled access and design etc. The change in demographics will also affect the way local government communicates the regulatory requirements to its community. An ageing population will respond very differently to a younger age group in terms of accessing information and they will have differing expectations.

Technological – The changes in technology now and in the future will change the standards we set in regulation, the compliance standards which are monitored and the quality of the services we deliver. Monitoring compliance will become more and more technology driven and the need for local government to respond to the pace of technological innovation will increase. There will also be changes in the expectation of communities for local government to be technologically advanced in their systems for communication and interaction e.g. online consenting etc.

Environmental – there will be an increased expectation for local government to balance the approach to economic growth and development with the need to protect the environment for future generations. This is evidenced on a regular basis as local authorities deal with

resource consents, building consents, development and compliance with the Resource Management Act.

Regional councils have quite different roles and responsibilities from territorial authorities. This fact, together with the large geographic scale of most regional councils, means that regional councils are different in their focus, concerns, and relationship with communities and stakeholders, compared to territorial authorities. It is important therefore that the debate about local government reform is very clear about whether it is referring to regional councils, territorial authorities or both.

This is very briefly acknowledged in the Issues Paper where it states that "Regional councils have responsibility for the physical environment and cross boundary functions that require an integrated approach, which includes regional land transport, biosecurity, civil defence and some resource management."

We request therefore that the Commission, in its report back to government, is very clear about the nature and particular roles of regional councils, as distinct from unitary authorities and territorial authorities, and that discussions about the issues and solutions clearly distinguish how they relate to the different levels of local government and their respective roles and functions.

Local government and regulation

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

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

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

Q 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?

See the answer to question 3 above. There is a wide range of statutes that provide councils with a variety of regulatory roles, some of which are narrowly focussed while others are written more broadly.

Q 5 Are there any other local organisations with regulatory responsibilities that the commission should consider?

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

Regulatory variation

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

This question is phrased in a manner which suggests variation is less than optimal and consequently misunderstands one of the major reasons for delegating or devolving regulatory roles to local government. Communities differ and councils' regulatory roles are generally designed so that the regulatory responses are fit for purpose for our different communities, recognising different preferences. If governments want regulatory regimes to be applied uniformly across the country then a national delivery agent may be better placed, unless there are significant benefits by co-locating regulatory roles.

Differences in regulatory practice are also driven by differences in the capacity and capability of councils, which in turn reflects the size of the authority and its ability to fund the service. Larger authorities have more specialised staff or can afford to have more specialist consultants delivering the service.

LGNZ also agrees that the differences within the sector can also be driven by a lack of guidance and a lack of standard templates. Central government designs regulation but often leaves it up to councils to design their own process for implementation.

Within each area of local government the sector has to reflect the expectations of their individual communities and there are regional and sub-regional differences in the expectations of those communities and what they see as priorities for their area. Rural communities and their councils will have different expectations from those in the urban and metropolitan centres. However, the processes and practices do not necessarily have to vary.

Q 7 Are community expectations to "do more" about social issues leading to different approaches to regulation between local authorities?

We suspect the notion that councils are being asked to do more about social issues to be largely myth. If the Commission has better information we would certainly appreciate it.

The only regulatory instruments that councils are able to employ as a matter of total discretion are their bylaw making powers. The purpose of bylaws is to:

- Protect the public from nuisance
- Protect, promote and maintain public health and safety
- Minimise the potential for offensive behaviour

We have no evidence that councils have been making more bylaws over time. In fact the contrary seems true, the number of bylaws seems quite modest and the LGA 2002 provisions ensure that any bylaws are reviewed regularly.

Other than bylaws councils' regulatory roles are defined in legislation and seriously limit a council's ability to pursue objectives, such as "doing more about social issues", that are not expressed in the principal statutes.

We have found recently that councils have had to approach Parliament to deal with new issues simply because their bylaw making powers are inadequate to deal with the problems. Recent examples are tagging, boy racers and street prostitution. This indicates the degree to which councils' regulatory roles are bound and Parliament has shown a preference for locally specific legislation to deal with the issues.

In another example the Queenstown Lakes District Council has a focus on the provision of affordable housing but is limited to using the provisions of the RMA to give effect to its housing policy. Unfortunately the RMA is poorly suited to this task.

Q 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 preference in their bylaws?

Unfortunately this question confuses bylaws with councils' broader regulatory roles. The purpose of bylaws is specifically to enable councils to develop regulations to deal with local issues. By definition they will reflect local preferences and we would expect a high degree of variability. For example, tagging may be a concern to South Auckland and Hutt City requiring local regulation but is of little concern to Waimate or Hokitika, neither of which appear to have regulations addressing the issue.

When developing a regulatory framework central government needs to be clear on the subject of whether national consistency is important or whether the priority is for local variation. Where national consistency is important then a decision to devolve or delegate the regulatory function must be examined closely.

LGNZ believe that some national standards should not be localised. For example, Health and Safety standards should be national standards. If a national standard is set there should be national consistency in the delivery.

Local preference should be reflected at a much more appropriate level, for example in the implementation of the Freedom Camping regulations, or the setting of bylaws.

Q 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?

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

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

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

In some cases the regulatory hierarchy might be unclear and there might be confusion as to what level of government should be involved in certain regulations. One example is the Hazardous Substances and New Organisms legislation where there is some duplication between the Hazardous Substances and New Organisms Act 1996 and district plans under the RMA. The same issue arises with tolls etc. This is often overcome through liaison committees. At a local level we "get around the table" and make it work, but this is not an efficient process and better clarity and consistency is needed.

Q10 Does the way in which a local authority chooses to exercise its regulatory powers – through bylaws or through its District Plan – lead to differences in effectiveness and outcomes for communities?

At present there is considerable overlap between regional and local regulatory roles, particularly with respect to land use and natural hazard management. For example, territorial authorities, through their district plans, are responsible for establishing land use zones and granting subdivision and land use consents. The regional council is responsible for the integration of land use and infrastructure and for the control of the use of land for purposes such as water quality management and natural hazard management. Regional councils also have important transport management responsibilities, and there is a strong relationship between transport and land use management. Some integrated processes would improve the situation.

There are different mechanisms used in bylaws for a territorial authority to exercise its regulatory powers. In practice many councils share their templates on policies and bylaws, but there is still room for differences in effectiveness of delivery and ultimately differences in the outcomes. The sector would welcome the use of best practice templates and guidance wherever possible. Whilst it is vital that local government retains the right to local choice, some improvement in consistency of implementation in the processes would be welcomed.

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

The Treaty of Waitangi has influenced local authorities when undertaking their work under the Resource Management Act.

Local authorities address consultation in many ways, with some local authorities set up with representation mechanisms which make consultation processes easier. However, the volume of regulation requiring consultation is often overwhelming not only to the authority concerned but to the iwi and hapu involved as well. There is a huge problem with the capacity within iwi and hapu to be able to sufficiently consider the matters being addressed in many of the consent applications and also the timescales involved in the considerations. This in turn has a profound impact on the planning process and the ability of local

government to do its business in a more inclusive way, which is the principal intent of the Treaty of Waitangi.

The Local Government Act includes several provisions that require councils to take account of the principles of the Treaty of Waitangi, as well as maintaining and improving opportunities for Māori to contribute to local government decision making. Most regional, city and district councils have some kind of formal mechanism for involving local iwi.

The Greater Wellington Regional Council has a charter of understanding signed by the seven iwi in the region and has an active relationship with these iwi. Each of them has a different role and each was invited to nominate somebody with the skills that the new committee requires. When we last surveyed councils on this topic more than 50% of councils had negotiated charters of understanding with local iwi or hapu.

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

With regard to relationships with Māori variation is a strong positive as Māori communities are organised quite differently throughout New Zealand. Experience is quite clear; there is no "one size fits all" model.

In general, as a result of the consultation approaches it does mean Māori are more included in the dialogue, but it is a costly process both in terms of time and resources. Māori find that local authorities in many areas are more approachable than in the past, and the relationships which exist in day to day working practice are more positive. However, the process is still cumbersome and slow for both parties.

Q13 Are there other significant sources of variation in local authority regulatory practice than those described in chapter 4?

Local authorities may transfer some of their regulatory function to iwi or other statutory bodies. Joint management agreements are becoming more common as Treaty settlements progress. Co–management agreements are formed to manage natural assets. These Joint Management Authorities can also carry out resource consenting processes.

There are likely to be differing arrangements across the country to reflect the particular relationship with Māori and local authorities.

Chapter 4 provides a fair description of the diversity of approaches taken by councils.

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

Local Government New Zealand has no information on the degree to which there are inconsistencies in the administration of regulation other than to note we would expect there to be considerable differences, reflecting the diverse capacity of councils, the priorities and preferences of local communities and pressure from elected members to push for efficient and effective management of such regimes in their various cities, districts and regions.

Without inconsistency we will not have innovation.

Depending on the nature of the regulatory framework clear strategic direction is required from central government departments when considering new regulatory instruments. This would help to resolve the problem of lower level regulatory implementation having disparate and misaligned processes and procedures. This framework could provide high level policy guidance through better usage of the Regulatory Impact Analysis (RIA). It could also allow better alignment of environmental, economic, social and cultural objectives.

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

Most businesses would find that the inconsistencies between councils in terms of cost variation are likely to be minimal. However, there are considerable costs in larger more complex development projects and these could introduce a higher variable in costs incurred between regions.

In some regulations added costs to business are created if there is a requirement for additional monitoring and remediation. If compliance is met at the first interaction costs are reduced.

The same applies to consents, where costs in terms of time and resource are an addition. However if the information requirements are met at the first part of the process then these additional costs are avoided.

We need to note that councillors are elected in most cases to grow their local economy. Without growth the fiscal impost of infrastructure maintenance will place a major demand on future generations. The incentives appear more than adequate for elected members to ensure local regulatory frameworks do not impose unnecessary costs on business.

Q16 To what extent does variation in regulatory practice matter?

Some standard regulations applied throughout New Zealand would make it easier for people to do business, especially for national business organisations. Uniformity in process and practice makes it easier for companies to do business when working across different authorities. However, there are local requirements which apply to specific areas in the country and this must also be considered when determining the level of standardisation required.

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

In some councils applications with related regulations are managed in "one case". The case management approach allows the applicant to go through a series of interrelated processes in one seamless service. So all the consents required to undertake a project may be obtained in one place with a one-stop "customer focused" approach. Often the case is managed by a single person who takes the applicant through all the stages without referring them to several people in the council.

Other innovations include a shared service approach to regulatory services. This allows sharing of resources, capacity and capability between councils, especially the smaller authorities.

Some regional councils have standardised their planning templates, which means that any district plan within the region has the same features, layout and overlay definitions and descriptions. The same look and feel to all the planning documentation makes it easier to have consistency across, what were, district boundaries.

Another example of innovation is the use of a joint monitoring approach for consents where there are both regional and district council interests. Waikato has a Waikato Regional Compliance forum where ideas and best practices are shared and discussed every four months. Monitoring of consents/information sharing is reasonably free flowing between councils and the regional council within this group.

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

There is considerable scope to standardise plan presentation. This would have advantages for councils, residents and businesses. Councils could use a readymade template when creating new land use plans and strategic plans, such as Annual Plans etc, rather than having to draft plans from scratch. Residents could more easily understand plans that follow a commonly used format. Businesses could spend less time and money deciphering a bewildering variety of different local zones and definitions, when developing their businesses.

A system for standardised plans has been introduced in New South Wales. It sets up a template so that all local plans look similar, with similar content in similar places. It provides

standard descriptions for planning zones (such as industrial zones or rural zones) and standard definitions for common planning terms. Some standard provisions must be included in every plan, but local variation is allowed to address issues such as local hazard overlays, objectives for neighbourhood character, and objectives to reflect outcomes of local strategic planning. This may be a useful model for the Commission to consider, although it could not be mandatory as many are already amending their plans now.

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

Local authorities already have a culture of sharing best practice within the expert disciplines of their service delivery. This is often through professional bodies such as the NZ Planning Institute, Institute of Professional Engineers and other similar bodies. The Ministry for the Environment used to be involved in this area but less so now. An initiative which appeared to work very well was the "Quality Planning Website" which provided a space where councils could share good practice and look for advice. Funding has decreased for this.

There is also the Annual Compliance Forum where best practice examples and learning from interesting cases are discussed over a two day period. Over a hundred participants are involved in this each year.

Most of the documentation produced by local authorities is in the public domain so widespread sharing of ideas happens at different levels.

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

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

Who should regulate?

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

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

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

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

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

LGNZ agrees that because local governments are closer to local communities and businesses they may have better information about their preferences and local conditions, and may be better able to design or implement regulations in a manner that reflects local needs and preferences.

However there may be instances where national consistency is important and should outweigh local preferences. Conformance to international standards e.g. ISO 9000 would be a requirement for many of our export businesses.

Central government guidance through a National Policy Statement (NPS) or National Environment Standard (NES) can help to remove the need for multiple local debates on the same RMA issue. Local government needs to be involved in determining which national instruments should be prioritised.

Also LGNZ believes that there could be areas where local government does not have the capacity to implement a particular regulation, especially where highly specialised technical skills and expertise are required.

Perhaps the most important factor is whether or not the issue to be regulated is a national priority. This reflects political values as expressed through Parliament. National priorities would tend to lend themselves to a universal regulatory approach. Issues that are not national priorities should be allocated to the relevant level of government based on the technical characteristics of each issue and their degree of localness.

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

Geographical differences and the urban or rural considerations may well be additional factors that are important to consider. In the end how the outcomes are achieved and how

they impact on the customer should also be a consideration in the mix. We recommend the following framework for determining the distribution of regulatory roles:

In order to work better with local authorities on regulatory functions, Local Government New Zealand suggests that central government should:

- Have clear, transparent criteria around where regulatory functions will lie (i.e. whether a matter will lie with central or local government).

- Make sure local authorities have the right regulatory tools and processes before regulatory functions take effect. For example, if councils are required to have rules to address an issue in a particular way, sufficient time needs to be provided to make those rules operative. Alternatively, national standards should contain sufficient teeth to be effective. For example, if new solid fuel burners are banned, those requirements should be included in national air standards rather than each regional council having to promulgate their own regulations around this, so wasting time and effort and increasing regulatory cost.

- National Policy Statements and National Environmental Standards that are effective, and provide specific, clear guidance or practice directions. These should be developed with 'technical groups' of specialist staff from relevant local authorities (i.e. regional council or district/city councils). Central government also needs to provide sensible, useful implementation guidance. Guidance or practice directions are needed at the time the NPS/NES is released – not some time down the track. If central government wants regional councils to achieve a standardised approach about resource allocation or management, then specific methodology is needed in tandem with the policy. For example, central government direction will be needed on how to assess the efficient economic use of water. Without such direction, each regional council will be challenged on every resource consent decision that involves an assessment of efficient economic use. That would clearly add to costs and reduce regulatory performance.

- We would advocate that given the absolutely central role of local government to effective and efficient implementation of the Act – local government should enjoy a more elevated status in the decision-making processes regarding national instruments rather than being regarded as "just another stakeholder".

- The costs incurred by local government in implementing national instruments under the RMA need full consideration.

- Show the interaction and relationships (i.e. hierarchies) between National Policy Statements to assist regulatory implementation. A particular problem will be managing the relationship and implementation of the Renewable Electricity Generation and Fresh Water National Policy Statements.

- Clarify the overlap of roles between regional councils and district/city councils to achieve the efficient delivery of regulatory functions. A current problem is the management of natural hazards under the Resource Management Act. Any future regulatory functions need to be clearly and definitively assigned to a specific level of government or agency.

One council expressed the view that the tools are available, however sometimes the political will within councils may not be – perhaps because of the costs associated with a failed court case or if the regulatory instrument that is used is challenged in court. This cost can be a restricting factor on taking regulatory action.

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

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

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

There could be more clarity on natural hazards functions. At the moment the functions are split between territorial authorities and regional councils and this has resulted in confusion and in some cases inadequate attention being paid to natural hazards with respect to planning. Some councils have suggested this needs to be examined in terms of providing more certainty.

One council suggested an area where more clarity would be helpful is biodiversity. Wetlands and lakes are managed by the regional council but forest biodiversity is managed by the district council. Even with catchment management there is a slight overlap between the two with regard to biodiversity.

Getting regulation right

Q26 Do local authority significance policies allow for adequate consideration of the present and future costs and benefits of local government regulation making?

Significance policies are not relevant to this discussion. Regulatory roles are either delegated or devolved directly to councils by specific legislation. Significance policies apply to the application of councils' general powers contained in the LGA 2002. Regulatory decisions are informed by the provisions of their principal statutes.

In general significance policies vary in content and detail to reflect the community's expectations. Councils are not only required to consider the "present and the future" in terms of cost benefits if a decision is significant in terms of their significance policy, but the Local Government Act s76 requires them to consider present and future costs in all their decision making, whilst s79 provides that the degree of complexity of this consideration can be related to the significance of the matter.

Q27 Does the local government regulation making process lead to good regulation? If there is evidence to show that it does not, how could the process be improved?

It is not clear what the phrase "regulation making process" actually means. All councils' regulatory making processes are set in statute by Parliament – councils lack discretion to change them. This question needs to be considered in relation to each of the numerous regulatory roles councils play as each has a different decision making process.

In general good regulation is made by local government because its decision making processes require a full analysis of the options, the need for regulation to be justified, and the best option to be chosen. The need for the community to understand the purpose and benefits of the regulation being applied also leads to a fuller exploration of the consequences before regulation is implemented. However, there are times when there are emotive issues, such as the fluoride debate, which require extensive technical and health considerations which are complex for councillors to make judgements on.

The Local Government Act 2002 modernised the process for making bylaws (ss155-160) and we find it a good process. Every bylaw has to be reviewed within 5 years after the date they are made. A review must e conducted in the same way I which the ways were made under the Act.

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

Price Waterhouse Coopers carried out an extensive survey in 2009 regarding the cost of regulatory imposts. The main recommendation stated that:

"Closer scrutiny and clearer thinking by law makers about the aims of legislation and its impacts on Council activities could deliver significant net benefits."

The report also stated that the focus on process design, decision rules and execution could likewise deliver significant net benefits.

The Price Waterhouse Coopers survey considered the cost burden of four legislative initiatives:

- The Long Term Plan requirements with the LGA 2002
- Public Transport Management Act
- Health Drinking Water Amendment Act
- Land Transport Management Act

The time spent was broken down into the following components;

- Becoming familiar with requirements
- Gathering and assessing relevant information
- Preparing figures
- Reporting
- Communications
- Other activities

The total hours spent on these initiatives in 2009 were **753,359** or **94,169** working days across 56 councils.

The total spending on external expert consultants on the details of the Acts was $97,888,753. Gathering and assessing relevant information was the most time consuming and expensive. The cost of gathering and assessing information for the Long Term Plan in preparation for consultation and Audit, including staff time and consulting, amounted to 360,000 hours and $30 million expenditure.

The highly legalistic nature of the Resource Management Act resulting in court actions means that there are extremely high legal costs associated with the administration of this Act. This in turn means that the RMA is very costly to local communities who may see no direct correlation between this work and the day to day services they receive. There are no provisions for infringement notices under the Local Government Act. The cost of taking someone to court for a minor offence such as a rooster in the backyard outweighs the benefits to the community and the level of offending. There is also the cost associated with defending infringement notices/abatement notices if they are challenged.

The Sale of Liquor Act 1990 sets a fee for inspections in the legislation. As councils cannot set their own fees they are now all subsidising the costs of regulation carried out under this Act.

Q29 How might central government regulation-making better take account of the costs and impact on local authorities from the delegation of regulatory functions?

It depends on the nature of the regulatory function, what is at stake and how important it is that national consistency be achieved.

In our view any decision to delegate the implementation of regulations to local government needs to be principle based so that departments are approaching the task of delegation in a similar manner. The principles need to take into account the question of capability (will small councils have the ability to enforce the regulations) as well as the issue of cost and mechanisms for councils to recover actual and reasonable costs.

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

One of the local government sector's ongoing frustrations is the lack of a local government voice when departments are developing or reviewing regulatory responsibility. (For example, the current review of the Resource Management Act is being undertaken with no local government input at the most senior level.) The lack of a local government perspective is likely to lead to regulatory frameworks that are difficult to implement at the local level.

Local Government New Zealand and SOLGM are agencies able to identify suitable practitioners to contribute to regulatory policy discussions held by departments.

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

The Regulatory Impact Analysis fails to require departments to consider any costs likely to be faced by councils when dealing with a delegated regulatory function. (We would note that Regulatory Impact Statements never consider costs to local authorities, as illustrated by the RIS prepared for the current Local Government Bill). DIA's guidelines, "Policy development guidelines for regulatory functions involving local government" should be incorporated in the RIA for consideration when delegated responsibilities are under consideration.

Q32 How successful has the guidance document "Policy development guidelines for regulatory functions involving local government" been in improving the consistency and coherence of central government policies that involve local government?

Local Government New Zealand is not in a position to comment on the degree to which departments have taken note of the Guidelines. However, we are aware that DIA itself

believed other departments were failing to take notice of the guidelines and on more than one occasion has promoted their use within the bureaucracy. LGNZ has also worked with DIA to promote the guidelines, however recent practice, namely the phase 2 RMA reforms (from which local government is largely excluded), suggests that they are still to be embedded.

Q33 To what extent is the effective implementation of regulations delegated to local government hampered by capability issues in local authorities? Do capability issues vary between areas of regulation?

While many small local authorities undertake their regulatory responsibilities very well it is a constant challenge to attract and retain professional staff in the regulatory area, particularly outside the large cities.

Capability will vary, however we are witnessing a range of approaches where small and medium sized councils look to share regulatory services to make best use of professional staff. The discussion paper itself uses the example of Waitomo, Otorohanga and Waipa sharing environmental health services. Another example involves McKenzie and Waimate Districts contracting Timaru District to undertake a number of regulatory functions on their behalf.

We are not aware of many examples of cooperation with central government agencies. However examples that we are aware of involve alcohol control initiatives, road safety and spatial planning.

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

Throughout New Zealand councils are cooperating with their neighbours on a range of initiatives, many of which involve regulatory responsibilities. It is common for regional councils to work with territorials within their jurisdiction on a range of functions, particularly RMA responsibilities.

An example worth considering is the Greater Christchurch Urban Development Strategy involving territorial authorities, the regional council, and government departments.

Manawatu District and Palmerston North City Councils provide another example. Whenever demand for building inspections exceeds capacity in Manawatu District they contract Palmerston North City to service excess demand. Secondly, Manawatu District has contracted Palmerston North City Council to undertake their earthquake assessments.

Masterton, Carterton and South Wairarapa District Councils cooperated to produce the country's first Combined District Plan. This is the only example of a combined district plan in New Zealand and we note that the legislation already provides for this to occur. These three authorities have continued with standardised forms for resource consents, LIMs and other regulatory forms, and standard templates for decisions. They are now well down the track with a set of Wairarapa bylaws.

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

All regulatory functions lend themselves to some form of sharing solutions, process design and processes for implementation. Some regulatory functions, for example, pest management and environmental health, are likely to cross jurisdictional boundaries and require more inter authority cooperation than others which are more local in scale.

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

This question implies that coordination is always "good". However, whether it has advantages or imposes an unnecessary cost depends on the regulatory regime. Alcohol control regulations are unlikely to benefit from coordination in most areas.

Coordination will be important where regulatory effects cross borders and result in either under or over production.

The discussion on cooperation should not take away the value of competition. In many respects devolved regulatory regimes should be designed to encourage councils to achieve better regulatory outcomes than either any national performance standard or the average performance of the sector. For example, Hutt City has adopted performance targets for building and resource consents that require compliance within 18 working days rather than the statutory 20.

Being able to show that their regulatory performance is better than their peers allows councils to market themselves to businesses and citizens that they are good places to do business.

Q37 Are opportunities for regulatory coordination being missed?

Collaboration amongst officials in councils is common. Not all regulatory regimes will benefit from coordination – it depends on the scale of the regulatory regime itself. Local Government New Zealand is not aware of problems caused by a lack of coordination.

Q38 What are the main barriers to regulatory regulation?

See above.

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

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

In some cases LGNZ itself has developed templates to assist councils implement a new regulatory regime. The Gambling Act gave councils the responsibility to regulate the location and number of class 4 gaming machines. To reduce the cost that would have occurred if all territorials developed their own policies from scratch, LGNZ commissioned its lawyer to prepare three template policies – a status quo policy, a policy that reduced the number of gaming machines and a policy that allowed diversity within cities – and provided these free to all councils. There was a 100% take-up, with councils that didn't have gaming issues adopting the status quo policy template.

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

Once again each of the regulations mentioned are imposed by central government, they are only administered by local government. Central government requires councils to administer these areas presumably because it believes that if left unregulated the welfare of individuals in particular would be at risk in one way or another. In other words the regulations presumably exist to protect communities from a broad range of threats, the cost of which would significantly outweigh the cost of complying with the regulation, e.g. the cost of wandering stock on highways, the cost of infection in food premises or the cost of leaky buildings.

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

The answer to this question will vary significantly, depending on the regulatory area involved. Our preference is for councils to have the ability to charge actual and reasonable costs for administering regulations. Councils themselves can then make the choice as to

whether or not to subsidise the costs of regulation for equity or affordability or public interest reasons.

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

Councils are acutely aware of the effect of regulatory costs, as costs that are significantly higher than charged by their neighbours may influence location decisions and either encourage or discourage development.

This question is ultimately about levels of service rather than minimising unnecessary compliance costs, as it suggests compliance costs are unnecessary, a proposition we disagree with.

While costs are influenced by the administration processes used to administer a regulation they are mostly affected by levels of service. This is markedly evident when comparing the relative costs of different dog control policies. Issues, such as the time it takes to pick up a stray dog, reflect a level of service which ultimately reflects the number of dog control officers a council employs. Levels of service are set by elected representatives in consultation with citizens and rightly vary considerably over the country.

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

Councils need greater flexibility when it comes to the process of adopting levels of service. In many cases councils are required to use the special consultative process to adopt regulatory levels of service, for example prostitution and gaming require that policies be subject to consultation. In both cases councils are able to 'piggy back' consultation with other consultative exercises, for example, an annual plan consultation.

The most important change that would reduce the cost of the regulatory framework significantly would be to reduce the role of the Environment Court to matters of process in RMA policy and planning matters. The Court's *de novo* role is extremely costly to business and communities, has been susceptible to 'greenmail', (individuals or firms referring projects to the court to cause delays) and is extraordinarily undemocratic.

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

As Table 6 of the discussion paper indicates councils are required to apply a set of criteria when determining how an activity is to be funded. As this is a democracy we should not be surprised that different communities will have different preferences.

Matching funding with the preferences of citizens is economically efficient. The result will be that some communities, through their representative, will value economic efficiency above other values. Other communities will place greater value on effectiveness or equity. Some councils may decide to subsidise a regulatory regime in order to encourage or discourage an activity.

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

Not that Local Government New Zealand is aware of. However, the may be examples of regulatory polices such as skin piercing and tattooing where costs do deter operators from being compliant.

Q46 To what extent are councillors involved in the administration and enforcement of regulation? Has this raised issues in regard to the quality of regulatory decision-making and outcomes?

The only examples that we are aware of involve a small number of regional councils where prosecutions are signed off by elected members. To our knowledge in almost all cases officers' recommendations are followed. Local Government New Zealand does not consider the former to be good practice. Other than the example given above, all councils have strict barriers between the political and enforcement roles of the authority.

The LGNZ KnowHow programme is planning to develop courses for councillors on undertaking their regulatory responsibilities.

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

Not that we are aware of.

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

In our view they are not adequate and need improving. For example, the RMA while enacted in 1991 was not subject to a significant review until 2005. Since then it has been under almost constant review, creating an unstable environment that is highly likely to lead

to greater costs as councils are uncertain of the likely outcomes of the various reviews it is subject to. Another example is the Sale of Liquor Act which is currently under review more than twenty years since enacted.

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

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

At one level, the select committee process provides an important opportunity for the public and local government sector to make submissions on legislative reviews of regulation. The problem lies with the lack of a framework that requires that regulations administered by councils are reviewed regularly by departments responsible for the delegation. The Health Act 1956 which authorises a number of regulatory roles (including roles which prevent actual and reasonable fees being set) has not been reviewed since 1956. Although councils have been consulted by the Ministry of Health on a number of occasions over the last fifteen years none of these reviews have been endorsed by the Government of the day.

The lack of a framework by which regulatory regimes are regularly reviewed ends up costing individuals and businesses as it stops councils (and the government) making changes to the regimes to get value from new technologies, or synergies by adopting common administrative procedures.

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

In most cases it should be the responsible agency, that is, the agency responsible for delegating the regulatory responsibility to councils. For a number of reasons, such as the degree of public interest or the complexity of the regulatory function (such as the degree to which it may overlap with another agency's regulatory regime) it will be politic to ask a third party to undertake the review.

Local Government New Zealand has had very good experiences with reviews carried out by the Law Commission. We find such reviews more inclusive and less partisan then reviews undertaken by 'responsible agencies' which are frequently driven by the partisan views of their ministers.

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

Absolutely. In fact as we note above the Environment Court's ability to undertake *de novo* hearings is a major impost not only on councils but communities and businesses.

Q52 Are some special mechanisms used excessively, frivolously or for anti competition reasons?

As noted above, appeals to the Environment Court have been used for what we see as frivolous sand vexatious attempts to create costs to competitors by delaying approvals. Changes were introduced to the RMA by the previous government to reduce the ability to make such appeals and we are yet to see whether those changes are successful.

How should regulatory performance be assessed?

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

Councils monitor their own performance by designing performance measures which are included in their Long Term Plans and Annual Plans/Reports and assessed by the Office of the Auditor General. The Ministry for the Environment actively monitors compliance with the RMA.

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

Councils will monitor their own regulations (bylaws) 5 years after the date they are made. External monitoring by the agencies responsible for delegation varies considerably. For example, the Ministry for the Environment actively monitors the time it takes for councils to issue resource consents and publishes a league table of information collected. In contrast there is no external monitoring of the Prostitution Act as it was a private member's bill and while the Ministry for Justice undertook a review a few years ago no department really wants to own it.

Q55 Is the current monitoring system effective in providing a feedback loop through which improvements in the regulatory regime can be identified and rectified? What examples are there of successful improvements to a regulatory regime?

Councils regularly review their performance measures and also receive feedback from the Office of the Auditor General should performance measures fail to meet OAG's standards.

External monitoring is another matter. We assume that the Ministry for the Environment uses information collected in its annual monitoring to influence the design of future regulatory reform (for example the decision to impose a fee for late processing).

The lack of systematic monitoring would undermine any attempt to introduce an effective feedback loop.

The Department of Building and Housing carries out technical reviews as part of its function to monitor and review the performance by territorial authorities and building consent authorities of their functions under the Building Act 2004. The purpose of a technical review is to assist the territorial authority or building consent authority under review to improve its building control operations.

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

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

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

As discussed elsewhere the Office of the Auditor General not only audits the quality of performance measures used for regulatory functions, it also advises councils on how to improve their performance frameworks, as part of the audit. As a result we see quite a convergence in the type of measures councils use. Targets of course will vary.

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

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

In our opinion the current performance framework works well and is highly regarded internationally. We agree with a comment made in the submission from Waimakariri District that "continuing to highlight innovation and examples of best practice in sector publications

and conferences is a preferred approach, rather than benchmarking". The author notes that the sector interacts regularly in a way that disseminates information about achievements and improvements.

Q59 What regulatory performance indicators are most commonly used by local authorities? Can you provide specific examples of good input, output and outcome measures for regulations you have experience with? What makes them good indicators?

See answer to Q 63

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

It is not clear to us that central government departments have access to data that would help councils in their regulatory functions other than the information it currently provides which councils use in their performance measures, for example, councils' performance on timeliness of resource consents.

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

We are not sure any of the nationally maintained data sets are that relevant to local regulatory functions.

There are exceptions: take for example councils' responsibilities to regulate class 4 gaming machines. The Department of Internal Affairs provides data on the number of gaming machines broken down by territorial authority and the allocation of grants by territorial authority area; and the Ministry of Health provides information on the number of problem gamblers, all of which is useful to councils when setting gaming venue policies. The value of this information is helpful to territorial authorities.

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

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

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

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

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

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

In the regulatory area councils use remarkably similar performance measures, however targets vary considerably. And it is important that targets vary as they reflect levels of service and community preferences. They are also a degree to which councils compete with some councils setting standards that are within the statutory timeframes set by regulating agencies departments.

The most commonly used performance measures are:

- Citizen satisfaction with the performance of the regulatory regime (usually measured by survey carried out by independent agency) or level of dissatisfaction (Dunedin). Targets vary, for example Dunedin has an 82% satisfaction target for its dog control service (a dissatisfaction target of 18%) while Manawatu has a target of 71% satisfaction.

- User satisfaction. A number of councils survey users of their various regulatory functions to identify level of satisfaction with the process.

- Compliance with statutory timeframes. Where a regulatory regime has statutory timeframes (targets) set by the delegating department, councils will report on the percentage of consents that meet the statutory time frame. Note that some councils, for example, Hutt will set themselves targets which are within the statutory time frame – this is an example of councils competing with each other to achieve a reputation for the responsiveness of their regulatory roles.

- Output measures: where a council sets its regulatory department specific targets such as that all or a percentage of food premises will be inspected within the year. The nature of this target will impact directly on the cost of the regulatory function as more staff will be required if the target is an ambitious one. For example, Kapiti Coast District Council requires 50% of licensed premises inspected annually and 100% of food premises inspected annually.

- Process measures whereby a council's regulatory team has achieved some form of code compliance for the quality of its staff and processes, such as meeting an audit standard or recognised by a delegating authority that it has achieved "civil defence readiness".

There are a limited range of performance measures that can be used without significant investment in time to measure the outcomes of regulation. The resources required to measure the outcome of regulations would inevitably fail the cost benefit test councils are required to apply when setting charges.

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

For example, regulating gaming is a high priority in South Auckland and we would expect Auckland Council to invest strongly in its regulatory function. In contrast councils on the West Coast of the South Island are unlikely to set challenging targets and may not invest at all. Put another way, nationally determined targets are likely to be too low for South Auckland and too high for much of rural NZ.

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

The current range of indicators used by councils is generally appropriate and we can have confidence in them. It is important to note that the Office of the Auditor General audits the quality and relevance of local government performance indicators, including indicators used to measure the performance of regulatory functions.

The role of the auditors is to ensure performance measures are fit for purpose and all councils are subject to what is a form of external assessment. Auditors will assist councils to improve the quality of their performance measures where necessary and one effect of this has been the sharing of good practice. Auditors not only have guidance provided by OAG

they are also able to share good practice as they are networked and also audit more than one council. As a result we find a high degree of commonality in the measures councils use.

We are not aware of new performance measures that would be helpful or meet a cost benefit test. The current range of measures that councils use for their regulatory functions are fit for purpose.

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

No. Councils use third party agencies to asses levels of satisfaction with their regulatory functions, the quality and independence of which are monitored by OAG through their annual audit of Annual Reports. Secondly, councils are run by representatives of each community. Elected representatives by definition reflect the attitudes and preferences of their communities. They are ultimately responsible, and are held to account every three years, for the quality and effectiveness of regulatory regimes, particularly if the regulatory regime is one where a local authority can exercise discretion with regard to levels of service.

As noted above, in some cases elected members will set targets that are more ambitious than the targets set by statute (a form of over investment) in order to be seen as more responsive and attract investment from new businesses. We assume this is something any government would be keen to promote.

In some communities however community preferences are such that a council will under invest in a regulatory regime. The majority of councils, for example, don't have policies regulating the placement of brothels. This is rightly seen as an urban issue and any rural councils that invested staff time and resources in this issue, without a local issue, would be widely criticised by voters.

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

Regional Council Specific Issues

Introduction

The New Zealand Productivity Commission's Issues Paper on local government regulatory performance is an important part of government's reform process for local government. Local Government New Zealand and the Regional Council sector of Local Government are keen to focus on many of the issues touched upon in the Issues Paper. In this Regional Council focussed section we would like to highlight the following issues for the Commission:

- Recognise that Regional Councils are different [questions 3,5]
- Develop underpinning principles for regulation development [questions 21,22,23];
- Improve the plan making processes [questions 28,40,41]; and
- Effective monitoring and assessment of performance [questions 50,64,65]

Recognise that the role of regional councils is different

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

Q 5 Are there any other local organisations with regulatory responsibilities that the commission should consider?

The Productivity Commission needs to be very clear about the different parts (forms) of local government (regional councils, unitary councils and territorial authorities) and the different roles they have when considering regulatory performance and how it might improve that performance [questions 3,5].

Regional councils have quite different roles and responsibilities to territorial authorities. This fact, together with the large geographic scale of most regional councils, means that regional councils are different in their focus, concerns, and relationship with communities and stakeholders, when compared to territorial authorities. It is important therefore that the discussion and consideration by the Commission about local government reform is very clear about which sector of local government they are referring to.

Discussions about local government (in a generic form) reform can be misleading if they focus on 'local government' as a single entity. We therefore suggest that the Commission, in its investigation and report back to government, is very clear about the nature and particular roles of regional councils, as distinct from territorial authorities, and that discussions about

the issues and solutions clearly distinguish how they relate to the different levels of local government.

The Commission's consideration of the issues concerning regulatory roles of local authorities needs to differentiate between the issues that are relevant to regional councils and those relevant to territorial authorities. The different regulatory roles mean that regional councils face quite different challenges to territorial authorities in carrying out their roles. Regulatory activities [Table 2, pg 11] under the Soil Conservation and Rivers Control Act, River Boards Act and Land Drainage Act are all pieces of legislation that relate specifically to regional council and unitary council functions – these are not listed but they are a considerable area of expenditure for regional councils. Civil defence and emergency management is another key function of all local authorities and is fundamental to the structure and make up to local government.

Develop underpinning principles for regulation development

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

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

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

It is worth restating the reasons for local government involvement and interest in the regulation of activities as these were understated in the discussion paper [question 21, 22, 23]. The reasons include:

- Local government exists, and has a statutory concern for the social, economic, environmental, and cultural well-being of communities, as required by the Local Government Act 2002 (notwithstanding the proposed amendments to the purpose of local government);
- The opportunity to reflect local aspirations and to share the responsibilities of governance;
- Local government is local and has a presence at a community level where regulation is often delivered (local authority regulatory service centres are located in most towns and cities);

- Ease of access by the public to records, information and advice, and the permits, licences, and conditions that may be issued as part of the delivery of regulatory services;
- Opportunity to integrate regulation across the range of local government functions, including the integration of regulatory services so that all of the consents required to undertake a project may be obtained in one place - a one-stop “customer focused” approach.

There needs to be better recognition by the Commission that regulation is not a "necessary evil" in itself but serves to protect the public interest and level of public investment made on behalf of communities. It is noted that the private sector also imposes its own regulation to protect its investments which a council has little control over (e.g. private covenants on titles). The issue is not whether to regulate or not, but to put in place regulation (and allocation of functions) that is fit for purpose. The recent systemic issues associated with "leaky buildings" is just one example of the devastating financial costs, loss of property value and human costs associated with a poor regulatory environment.

In the development of legislation and regulation for implementation by local government the principles for assignment should:

- be transparent;
- reflect the balance of national and local/regional interests in the outcomes sought;
- align governance arrangements and funding responsibilities with the extent of discretion conferred;
- in relation to local government functions, be consistent with the Local Government Act 2002 and other regulatory responsibilities;
- recognise risk, liability, transition, and implementation issues; and
- include clear accountability arrangements - greater certainty is required in each instance, about the exact role expected of local government and its employees.

From a regional council perspective the issues that are most important when allocating regulatory functions [question 22] are:

- National priorities - there is an obvious need for centralised standards to address issues that are common across the country (e.g. building standards). There are also ‘hard decisions’ that require strong, future-focused regulation that are probably best made at central government level as there is a danger that in some communities, vested interest groups may have an influence on regulation that is inverse to their actual community representation. That effect may be contrary to the long-term interests of the wider community or the environment. The importance of an issue should therefore be a factor in deciding the allocation of regulatory functions.
- Externalities - it is important for environmental externalities to be internalised in order to achieve overall environmental standards and avoid adverse downstream effects.

- Information - regional councils generally have the best information about local natural resources, and can develop regulation that is suited to addressing an issue within an area.
- Economies of scale - This factor is particularly important when linked to national priorities, and Information.
- Capability and capacity - this is a secondary factor to consider when allocating regulatory functions. We are not sure the comments in the Issues Paper are particularly useful when considering the allocation of regulatory functions. Capability and capacity matters can be overcome through assistance provided by central government, or shared services with other regional councils. Specialist expertise can also be contracted in when needed to smaller councils.
- Constitutional considerations.

Improve the plan making process

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

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

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

It is not clear if the Issues Paper is concerned with regulation under the Resource Management Act 1991 (RMA). The vast majority of regulation by regional councils is under the RMA. There is also a separate review by central government of the RMA being undertaken now. The Commission needs to clarify the scope of the regulatory performance paper on this matter.

The Commission should consider the potential improvements to the plan making process. Local Government New Zealand is concerned about the cost of regional policy and plan processes under the RMA [question 28,40,41]. For example the Waikato Regional Plan Variation 5 (provisions to protect the water quality of Lake Taupo) took seven years to complete from the time the Variation was notified. Five of these years were to resolve appeals to the Environment Court. The role of the Environment Court in RMA plan and policy making has been a focus of sector advocacy in recent years and is referred to as "plan agility". The role of the Environment Court is part of the wider question about how the Schedule 1 RMA process can be improved. It has gained momentum in respect of the discussions around water reform (through the LAWF process) but the arguments are equally

applicable to the wider resource management framework. LGNZ submitted on this matter at the last fundamental review of the Resource Management Act.

The single change that can transform the pace and costs of resource management policy making is to remove recourse to the Environment Court on RMA policy matters. The current role of the Court in making policy decisions is anomalous and causes perverse incentives that compound to make policy-making too slow. Without a change of this nature policy-making will continue to substantially lag behind the dynamic and rapidly changing effects associated with changes to land use and our economy. The full paper is located here:

http://www.lgnz.co.nz/library/files/store_025/Proposed_reform_of_the_resource_management_act.pdf

We suggest the Commission considers a reduction in the number of RMA planning documents, and better ways to integrate these documents. For example, in the Waikato region, the cost of 11 territorial authorities individually producing and reviewing their own district plans, along with the planning framework of the regional council, is hugely expensive to the regional community. The individual processes, with multiple submission, hearing and Environment Court processes, invariably produce different responses to the same issues. This is repeated across the country.

The Technical Advisory Group (TAG) which recommended changes to sections 6 and 7 of the RMA provides a long awaited opportunity to consider how to better integrate regional and district planning instruments. Where there is no structural change there needs to be a statutory mechanism to ensure better integration of plans. We would argue that the 2005 amendment to the RMA, requiring a district plan to "give effect to any regional policy statement", does not go far enough in respect of a statutory mechanism to require integration of resource management plans.

We are aware that work is under way on the concept of "a single resource management plan for every district". We support exploring the idea of a simplified planning framework which can be applied across the current two tier framework of local government but in relation to the idea of a "single resource management plan for every district" we are very concerned that:

- these discussions are occurring in isolation from the local government sector
- the cost implications of any change will be significant
- we want to explore, with central government, other ways of simplifying the planning framework.

By way of example, the TAG recommended that there should be a combined regional and district natural hazards plan. We support the principle behind this recommendation i.e. that the regional planning provisions should not be "watered down" through the Schedule 1 process but we do not support the idea of a separate, and additional, resource management plan. The suite of the TAG's recommendations on section 6, when read together with the

proposed new definitions, would require regional policy statements to have greater significance and needed to complement this is a mechanism to strengthen the relationship between the regional and district planning instruments. We do not underestimate the difficulty or complexity of this but consider it to be a priority for the sector. At the heart of this matter is the need to clearly identify, in the statute, the regional planning role and the district planning role.

The RMA statute allows for combined plans now and we draw your attention to the example of a combined plan: The Wairarapa Combined District Plan. This is the only example in the country to date. There are, however, many examples of combined strategies eg the Hawkes Bay Hazards Strategy.

We do caution, however, that while changes in this area may be necessary, they will be a costly exercise due to 20 years of devolution under the RMA with no mandate for consistency (in either structure or content) between policy statements or plans.

Strategic direction

Local Government New Zealand suggests that the Commission should look at how greater clarity of strategic direction between regional and district planning activities, whether under the RMA, Local Government Act (LGA) or Land Transport Management Act (LTMA), might be achieved. The Auckland Plan provides this strategic, over-arching role in Auckland for the unitary plan, but there is currently no easy way for this to be done in other regions. Clearer strategic direction at the regional level would help to resolve the problem of other (district) plans having disparate and unaligned objectives within the region. It could provide high level policy guidance that means high level issues do not need to be repeatedly re-litigated across the region through district level planning processes. It could also allow better alignment of environmental, economic, social and cultural objectives. Such a plan process could include many elements of the current Regional Policy Statement and perhaps also integrate the Regional Land Transport Strategy. The current model also requires that a strategic plan prepared under the LGA is implemented under the RMA. Associated with this is duplication of consultation and hearings and the Environment Court at the tail of the process.

At present there is considerable overlap between regional and local regulatory roles, particularly with respect to land use and natural hazard management. For example, territorial authorities, through their district plans, are responsible for establishing land use zones and granting subdivision and land use consents. The regional council is responsible for the integration of land use and infrastructure, and for the control of the use of land for purposes such as water quality management and natural hazard management. Regional councils also have important transport management responsibilities, and there is a strong relationship between transport and land use management. Regulation of land use would be clarified significantly if regional councils had explicit responsibility for strategic guiding, integrated land use management and transport and infrastructure planning.

Monitoring of implementation and effectiveness

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

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

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

The Issues Paper indicates that the Commission would like to recommend methods for reporting on regulatory performance [questions 50,64,65]. While we understand the need for improving the monitoring of regulatory performance, simple indicators may not be a useful way of doing this. Often they measure things that can be measured rather than things that give useful information about the matter they are intended to measure. For example, it is common to attempt to measure regulatory performance based on the time and cost of consent processes. Such measures ignore more important issues such as the quality of the consent process and appropriateness of the decision and can lead to unintended consequences.

Local government has never shied away from the need to put in place systems and processes that provide assurance of an ability to achieve quality in the delivery of legislative requirements. However, the cost and effort involved in the process, in our view, must not be disproportionate to the benefits. Multiple agencies are already involved in the audit of local government, including the Office of the Auditor-General, the Parliamentary Commissioner for the Environment, the Ombudsman, and the central government department with lead responsibility for any particular regulation. Audit, monitoring, and information-gathering demands may be made of local government with sometimes limited ability to recover the cost of these demands. We do not see this as a capability issue but more so a co-ordination issue for central government agencies.