Submission

to the

New Zealand Productivity Commission

on

Local government regulatory performance

from

Tauranga City Council

August 2012

Introductory remarks

Tauranga City Council welcomes the Government's decision to undertake a review of the regulatory framework which local government operates within and the regulatory functions it provides. Tauranga City Council also welcomes the Productivity Commission's invitation to contribute to this review.

While some, but not all, of the Commission's specific questions are answered below, Tauranga City Council also has the following general comments on the Issues Paper.

Costs and benefits
In explaining the Commission's approach in part 2 of the Issues Paper there is a sub-section headed "A cost-benefit approach". While some of the statements under that heading discuss improving regulatory outcomes the underlying attention is clearly focused on the cost of regulation[1]. This is highlighted by the large and prominent Box 4 which further elaborates on the different types of cost of regulation. It is noticeable that there isn't a similar drill-down on the various benefits of regulation.

Local government, like central government, establishes, monitors and enforces regulations for a reason. In the case of local government this is invariably to ensure benefits to the wider community. There appears to be very little recognition of this in the overall tone of the Issues Paper.

This underlying theme is at its most obvious in the wording of Question 40 – *"Which local government regulatory areas impose the greatest unnecessary regulatory burden?"* This implies that the Commission's view is that *all* regulatory areas impose unnecessary burdens and it is therefore only interested in those imposing the *greatest* unnecessary burden. The lack of a reference to benefits in this question, or a similar question along the lines of *"Which local government regulatory areas provide the greatest benefit to the community?"* is striking.

In considering the issue of local government regulatory performance further, and when preparing its draft findings, Tauranga City Council encourages the Commission to consider equally the costs *and benefits* of regulations.

Rules versus policy positions
Tauranga City Council is also concerned that the Commission may be focusing on the "rules" element of regulation without paying due attention to the public policy making aspects that precede the development of those rules. In short, it is not appropriate to consider the "what" of the rules without consideration of the "why" of the public policy background.

In particular, discussions on Resource Management Act 1991 processes in the Issues Paper may appear to be focussed on the "what" of the rules (see bullet two on page 11, and the relevant paragraphs on page 14). This focus should not be at the expense of the detailed public policy making process which may lead to rules or other regulations as a method of implementing the desired policy position.

This public policy making process involves a wide debate with the community on policy options, the city's environmental direction, local neighbourhood amenity, development choices and so on. From this debate specific rules may or may not emerge.

[1] For instance, the word "cost" occurs in the document almost three times as often as the word "benefit".

The Commission is encouraged to acknowledge that it is this public policy process that drives local government, not the desire to "make rules". If this is accepted then the above conversation regarding the costs and benefits of regulations will be easier to understand.

Rules and risks
In considering the current regulatory environment and any amendments to it, the Commission may wish to consider the roles of risk and productivity as they apply to regulation. A common complaint of any form of government or authority is that "there are too many rules". Another is that "the rules are stifling productivity".

In reality, rules and regulations are usually created to reduce a variety of risks. In a local government contest these may be risks of inappropriately located development, risks of buildings not being safe, risks to public health or safety, or risks that neighbours will be upset or offended by someone else's actions or inactions.

If communities, and the wider society they exist in, are prepared to accept increased risks then the need for regulation reduces and the potential to improve productivity increases. However, those increased risks will be borne by the community or some members of the community. The task for local government (and for all regulators) is to strike the right balance between freedoms and constraints, between the actions of the few and the consequences for the many.

Accepting more risk may disadvantage the majority if they are not potential exacerbators of any issue. On the other hand too much regulation may also disadvantage the majority in cases where regulations are made that cover behaviours that are normal and not actually a problem (comprehensive liquor bans to avoid unruly behaviour, for instance, also remove the opportunity for a quiet glass of wine).

The Commission is encouraged to consider the balance between regulation and risk in the New Zealand context and recommend tools to best address this matter.

Consistency with Government's proposed direction
It should be noted that some of the statements in Chapter 3 – *Local government and regulation* may become outdated depending on the passage of the Local Government Act 2002 Amendment Bill. In particular the opening statement on page 8 (which sets the tone for the chapter) and the definition of the purpose of local government in Box 5 (which sets the tone for everything that local government does) may need changing. This may result in a significant change in the Commission's focus within this review.

Chapter 3 – Local government and regulation

Q3 Has the Commission accurately captured the roles and responsibilities of local government under the statutes in Table 2?

Yes, though it should be noted that provisions under the Sale of Liquor Act 1989 may be out-of-date by the time the Commission reports if the Alcohol Reform Bill is enacted.

Q4 Are there any other statutes that confer significant regulatory responsibilities on local government?

Clearly the Resource Management Act 1991 and Local Government Act 2002 (and remaining bits of the Local Government Act 1974) are omitted from Table 2 but are referred to in the text on page 14.

The Waste Minimisation Act 2008 requires a territorial local authority to promote effective and efficient waste management in its district and to prepare and implement a waste management and minimisation plan to give effect to this. It also requires that any bylaw is not inconsistent with the waste management and minimisation plan.

Additional regulatory responsibilities arise under the following statutes or regulations:

- Amusement Devices Regulations 1978
- Camping Grounds Regulations 1985
- Fencing Act 1978
- Fencing of Swimming Pools Act 1987
- Electoral Act 1993

What, if any, regulatory roles of local government are missing from Table 2?

Note that Table 2 includes only regulatory roles that have been specified in legislation. In accordance with the definition of regulation in Box 2, there are other regulatory roles that are conducted by local government that are not a direct result of specific legislation listed in Table 2. For example, and at its extreme, imposing fines on overdue library books is one of the *"instruments through which … local government … seeks to manage the behaviour of citizens and businesses … in order to achieve particular economic, social and environmental outcomes."* In this case, the local authority is managing the social outcome of ensuring books are available for people to borrow.

Local authorities may also have policies on the use of council land (not just land administered under the Reserves Act 1977), on events, on mobile homes (beyond that required by the Freedom Camping Act 2011), on mobile shops or markets and a range of other topics where the intent is to *"manage the behaviour of citizens and businesses … in order to achieve particular … outcomes."*

Chapter 4 – Regulatory variation

Q6 Do the different characteristics and priorities of local authorities explain most of the difference in regulatory practice across local government?

Yes. Local authorities should and do reflect the characteristics and priorities of the communities they serve. This is what puts the "local" into local government.

Different communities have different characteristics and different clientele. As such, the mix of regulatory enforcement and education may be different

across different local authorities. For example, in Tauranga 62% of dogs are micro-chipped compared to a national figure of 45%. This is not due to regulatory enforcement but is because this community has taken responsibility to self-regulate, reflecting the attitudes of many of those living in the city.

Q7 Are community expectations to 'do more' about social issues leading to different approaches to regulation between local authorities?

To a certain extent, yes. Tauranga City Council has recently amended its Street Use and Public Places Bylaw to respond to negative public opinion following last year's "Boobs on Bikes" parade. Localised liquor bans and Class 4 gambling venues policies are other examples of local authorities responding to community expectations relating to social issues.

Q8 To what extent are local preferences a source of regulatory variation in New Zealand? How far should councils, when implementing a national standard, have discretion to reflect local preferences in their bylaws?

Where possible, national standards should allow for flexibility in the process by which they are applied, as long as the desired outcomes are not compromised. For example, national standards may provide a proposed approach to achieving an outcome, but also allow for alternative methods if they can be demonstrated to achieve the same outcomes.

If, though, central government has "must do" requirements that it wishes to impose on local government then this should be clearly stated.

Q9 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?

While not exactly a conflict between regulations, it is noted that central government has granted itself powers to fast-track various processes under the Resource Management Act 1991 but has not allowed similar parallel powers for local government. If, as a result of a review of the Phase 1 reforms of the Resource Management Act 1991 these changes are considered a success, extending the powers to local government should be considered.

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

Some local authorities actively inspect, monitor and enforce markets to ensure food hygiene regulations are complied with. Others do not.

Some local authorities issue infringement notices for unregistered dogs. Other local authorities just give warnings. The difference can be as great as $300 across boundaries.

Some local authorities issue infringement notices for breach of excessive noise direction notices. Others do not.

Some local authorities prosecute the owner of an attacking dog. Other local authorities will accept an attacking dog being destroyed as the end of the matter.

Local authorities are required to submit an annual report to the Department of Internal Affairs under the Dog Control Act 1996. We understand that not all local authorities comply with this.

Some local authorities have classified as "menacing" all dogs predominantly of the American Pit Bull Terrier type. Many councils still haven't completed this requirement which has been in place since 2003.

Some local authorities actively monitor compliance with liquor license requirements. Others respond to complaints only.

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

The inconsistencies listed above do not impose additional costs on businesses.

Clearly there are some regulatory functions that impose extra costs on businesses because they are different for different local authorities. For example, each local authority has its own District Plan which sets rules for what can and can't occur. However, it is often the *content* of these plans that creates the inconsistencies and hence the additional costs, not the "administration and enforcement" of them.

Q16 To what extent does variation in regulatory practice matter?

Where business costs are significantly increased because of cross-boundary variation this is a cause for concern. However, it is recognised that this is often the price to pay for the principle of subsidiarity or, colloquially, for providing "local solutions to local problems".

Tauranga City Council recognises that in some instances the principle of subsidiarity has been taken too far. For example, when central government wished to establish freedom camping rules prior to the Rugby World Cup it should have established the rules in legislation rather than requiring each local authority to address the issue individually. It is highly unlikely that tourists wanting to freedom camp in New Zealand will be able to understand the current fragmented situation.

Another example is the determination of "bulk and location" rules through every District Plan in the country. A more efficient (and possibly more effective) approach would be for nationally-prescribed regulations to be applied evenly across the country (with in-built variation for rural and urban areas, low- medium- and high-density areas and so on).

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

- Taking a stepped approach to enforcement depending on the severity of the breach. Typically this involves education, advice and negotiation in the first instance.

- Using brochures and newsletters to disseminate reminders regarding compliance responsibilities, legislation updates and so on.
- Liquor licence accords between council and licensees.
- Control purchase operations (where an under-age volunteer is sent in to make a purchase of liquor) undertaken in conjunction with the Police.
- Requiring the purchaser of liquor to sign a personal acknowledgement form stating that they do no intend to provide alcohol to under-age or intoxicated persons (actioned by retailers when they consider it appropriate to do so).
- Waiving all but one infringement notice where multiple infringement notices have been issued but compliance has since been effected.
- Offering a refund of dog impound fees where the owner causes the offending dog to be subsequently neutered.

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

The examples above apply to Tauranga City Council. It is not categorically known whether some or all are currently applied elsewhere. There is no reason that they could not be applied elsewhere.

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

The following sharing mechanisms are relevant:

- The quality planning website (www.qualityplanning.org.nz) which provides best practice guidance on the development of regional and district plans.
- SOLGM best practice tools (www.solgm.org.nz).
- Various professional institutes and associations which share good practice experiences among members.
- Local cluster meetings of relevant professionals.
- Conferences and general networking.
- Online tools such as ListServ groups.

The principal incentive for local authorities to share innovative approaches is that there is rarely a down-side to such sharing. If another local authority has identified an approach that meets the intention of the regulations but delivers it in an innovative way that better enhances the well-being of all concerned, then other local authorities would be keen to hear about it and consider adopting it in their own area.

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

Local authorities are encouraged to innovate if they are interested in achieving compliance in a non-regulatory manner. Tauranga City Council has found that incentives to do the right thing, together with self-regulation, are likely to better promote compliance than a pure regulatory approach.

Repeat offenders deter local authority innovation because they require more stringent, and therefore more costly, intervention. Innovative approaches are often unsuccessful with these offenders.

Chapter 5 – Who should regulate?

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

The key factors, in no particular order of importance, are:

- Preferences, and specifically the ability for the regulator to respond to local preferences
- Economies of scale
- Economies of scope
- National priorities
- Capability and capacity

The other factors should also be considered on a case-by-case basis but are not as critical:

- Externalities
- Information
- Innovation
- Competition
- Regulatory consistency
- Governance
- Constitutional considerations

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

Willingness

The factor currently described as "capability and capacity" should also encompass "willingness" (or alternatively "willingness" could be a separate factor itself).

There may be situations where both central and local government have both the capability and capacity to perform a regulatory function but there may be a significant difference in the willingness of those parties to take on the responsibility. An unwilling regulator is unlikely to be a good regulator.

Impediments to business

Where decentralisation is creating clear impediments to nationally-important business activity then there is a clear argument for considering centralisation of the regulatory function. For example, different rules on the location and acceptability of cell-phone towers is proving a hindrance to establishing the telecommunications network that New Zealand strives for. Similarly, with tourism a strong contributor to GDP, the fragmented approach to freedom camping rules may not be in the country's best interests.

Where local government requests centralisation

In situations where the local government sector collectively requests a centralisation of regulation-making, central government should respond.

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

Yes.

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

- Freedom camping regulations.
- Tools to address street prostitution (rather than Manukau / Auckland Council having to promote a separate Private Members' Bill).
- A national standard for tsunami sirens would be appropriate for a country with as much coastline as New Zealand.
- Broad national standards (adaptable for local situations) for land use, infrastructure, building envelopes and the like.

Chapter 6 – 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?

Tauranga City Council's significance policy is not a barrier to adequate consideration of the present and future costs and benefits of local government regulation-making.

Q27 Does the local government regulation-making process lead to good regulation?

Local government regulation-making processes are very democratic in nature: anyone can express their views and potentially influence the process. This in itself does not necessarily always lead to "good regulation" but it is a significant advantage to the process.

The bylaw-making process is considered to be a strong process, particularly the requirement of section 155 of the Local Government Act 2002 that a local authority determines that a bylaw is the most appropriate way of addressing the perceived problems. This forces a clear identification of the issues to be addressed and an equally clear assessment of the various options to address the issue. This process is likely to lead to better regulation.

With regard to Resource Management Act 1991 regulatory processes there are instances where the appeal process, and the significant costs involved, may not lead to good regulation. For example, where a local authority has determined its proposed approach within a district plan it then has to consider its approach to any subsequent appeals on a cost / benefit basis. There will be some matters where the cost of defending an appeal can not be justified in regards to the matter under appeal. Any negotiated, or conceded, solution may be pragmatic but may not necessarily be "good regulation".

If there is evidence to show that it does not, how could the process be improved?

In relation to the matter raised above, an additional step in the process to determine whether an appeal warrants being addressed by the Environment Court may reduce the risk of top-end costs inherent in some appeals. For

example, such a step may include removing the opportunity to appeal where there is no environmental impact but the appeal is based simply on the preferred approach of the appellant is different to that of Council.

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

There are three types of situation where this typically occurs.

Firstly, where legislation is passed requiring local authorities to act and then allowing for cost recovery through fees, at face value it would appear that this process is cost-neutral. An example of this would be the responsibility to assess and determine applications for class 4 gambling venue consent under the Gambling Act 2003. However, the cost-recovery provisions cover the operational and implementation costs only. They do not cover the substantial policy preparation costs incurred by local authorities. Instead that cost, made necessary because of central government legislation, is funded by local ratepayers.

Secondly, there are instances where central government has conferred responsibilities on local government and then set maximum fees which do not cover the costs of the activity. The shortfall can not be picked up by the exacerbators and isn't supplied by central government alongside the responsibility. As such it is again picked up by the local ratepayers. Examples of this, from the 2011/12 year, for Tauranga City Council are:

Liquor licensing expenditure	$359,798
Fees recovered	($158,841)
Balance funded by ratepayers	$200,957

and,

Environmental Health expenditure	$419,773
Fees recovered	($301,659)
Balance funded by ratepayers	$118,114

Thirdly, where central government has set operational standards that local government has to meet but has not provided sufficient funding to meet those standards. The most obvious example of this is with the changes in drinking water standards where central government provided approximately 25% of the total cost of the infrastructure upgrades required around the country.

Q29 How might central government better work with local authorities on the design, implementation and funding of delegated regulatory functions?

<u>Legislation design</u>
Better and earlier discussions with local government on issues that will ultimately effect local government is paramount. Coupled with this would be involvement of people within central government who have a background in local government affairs.

A very good example of central government properly involving local government in the development of legislation with an impact on the local

government sector relates to the Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Act 2011. The process of developing the legislation and establishing the implementation protocols, including a thorough understanding of the costs involved and where they should lie, was a partnership between the Department of Building and Housing and the local government sector from day one.

A very poor example of central government properly involving local government in the development of legislation with an impact on the local government sector is the recently-published Local Government Act 2002 Amendment Bill.

Setting of fees
Where fee levels are set by legislation, feedback should be specifically sought from local government regarding the likely nature of costs. Further, resulting legislation should allow for regular reviews of fee levels and preferably should build in automatic inflation-based increases.

For example, under the Amusement Devices Regulations 1978 local authorities must cause the site and device to be inspected by an appropriately qualified engineer. The maximum fee to be charged to the applicant is set at $10. However, the engineer's costs alone are usually greater than $200.

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

Involvement at an early stage in the design of new regulatory functions (including the establishment of the purpose for the regulatory functions) is critical. This involvement will help ensure the implementation is balanced and the resourcing and funding issues of all parties are understood. Through this process central and local government may not agree on the design, implementation and funding but at least all parties would be better informed.

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

Capability issues may arise where local authorities are unable or unwilling to invest in operational specialists. This is likely to be particularly relevant for smaller local authorities where the volume of work does not justify specialist roles.

Do capability issues vary between areas of regulation?

Yes.

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

Successes
The Quality Planning Website hosted by the Ministry for the Environment is a good example of central and local government working together on regulatory matters. The development of the Financial Assistance Programme, which involved some regulatory matters, mentioned in Question 29 is another.

The SmartGrowth initiative between Tauranga City Council, Western Bay of Plenty District Council, Bay of Plenty Regional Council and Tangata Whenua has provided significant regulatory cooperation in planning matters.

The District Plan zoning change and subsequent boundary adjustment between Tauranga City Council and Western Bay of Plenty District Council regarding the Pyes Pa West residential area and Tauriko Business Estate is a good example of two local authorities working together on relevant regulatory matters.

Failures
The national dog database. Although there is great potential for this to enhance regulation, many councils do not maintain the quality of information. We understand that to-do lists are not being up-dated and accordingly data matches are not being made.

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

Those functions that are covered by directive, rather than empowering, national legislation naturally better lend themselves to some form of coordination. For example, there are elements of liquor, planning, building, health, and dog control legislation that readily lend themselves to coordination.

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

- The two (or more) local authorities have the same or very similar levels of service.
- Consistency in application by the local authorities.
- Sharing resources and information among the local authorities.
- Regular communication between the local authorities at all levels – operational, management and governance.
- The local authorities undertake joint ongoing monitoring.
- The local authorities have similar (preferably identical) fee structures.
- The local authorities can reach an understanding on cost sharing.

Q37 Are opportunities for regulatory coordination being missed?

Opportunities can be missed where two (or more) local authorities can not agree on the level of service to be delivered through a regulatory function.

We also suspect that there are opportunities being missed through an attitude of 'patch protection' in some parts of the country.

Q38 What are the main barriers to regulatory coordination?

- Distance. Some local authorities are geographically very large. Coordinating functions across more than one local authority area simply increases the potential distance from the regulator's 'home base' to the matter needing attention.
- The inability or unwillingness of local authorities to commit to consistent (or at least similar) levels of service.

- Resolving the issue of cost sharing where one local authority provides a higher level of service than another, but where a coordinated approach is subsequently proposed.

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

- Cross-boundary planning issues will occur in many areas. In Tauranga this is particularly relevant with the Pyes Pa development which crossed the Tauranga City and Western Bay of Plenty District boundaries, and the Wairakei and Te Tumu developments at Papamoa which do the same.
- While not exactly "mutually recognising other's regulations", the Lakes' Cluster Group involves a number of Bay of Plenty councils working towards consistency across several areas including building consent documentation and quality assurance processes.

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?

"Taking effect" provisions

The process to change a district plan still requires further review despite changes to the Resource Management Act 1991 in recent years relating to this process. Any change to an operative (or deemed operative) Plan must go through an extensive and highly consultative process. For "minor" changes to improve the workability of Plans this can be a timely and costly process.

Proposed Plans that have recently passed the decision-making phase (on submissions) fall into this category. It is at this stage the proposed Plan has "effect" so people must take the new Plan provisions into consideration as these new rules now apply. Any implementation issues with the Plan discovered at this stage must be addressed by variation or change to the Plan. This is an involved process.

The "preparation of the draft" Plan earlier in the process is "good practice" and Tauranga City Council has followed this practice. Despite extensive consultation on the "draft" Plan certain development rules were not picked up by the development sector and it wasn't until the Plan reached a deemed operative stage where certain new rules actually applied did the development community respond. On one hand it could be said there is a clear onus on the development community to look carefully at the draft plan document and then submit on the publicly notified Proposed Plan. The reality in some cases is that there is a bedding in of a new Proposed Plan and implementation issues won't be picked up until these rules have effect. Tauranga City Council has found this.

It would be useful for the Ministry for the Environment to undertake a comparison of the new provisions under the Resource Management Act 1991 with the earlier ones – where a proposed Plan had effect earlier in the process i.e. at public notification. The earlier regime allowed for a testing of

the new rules and the opportunity to address these by submission rather than the more involved Plan variation process.

Submissions versus further submissions
The submission process is positive in addressing matters that are contentious or to fine-tune plan provisions. Every opportunity is taken to use submissions, where they will support sustainable management objectives, to fine-tune and amend provisions. But the submission process relies on active engagement by community to achieve amendments. The further submission process adds little to the process of good decision making and should be deleted.

Appeals
The opportunities to appeal decisions of the council, made for and on behalf of their constituent community, add considerable cost and delay to the plan making process. A number of appeals are made purely on private interest grounds but add little to the wider aims of section 5 of the Act. Appeals can delay making a plan operative, even with proactive case management, by up to 2 to 3 years. It is time to review whether appeals to the Court should be freely available, after local decision making, other on matters that are legally incorrect.

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

The timeframes and cost involved with heritage protection impose a significant cost on business. While the protection of heritage generally, and the work of the Historic Places Trust specifically, is important, the time delays and consequent cost impacts that can arise are often excessive. A recent development in Tauranga city centre incurred approximately $200,000 of additional costs while an Historic Places Trust archaeologist worked on the site. Nothing of consequence was unearthed. While it is acknowledged that the Historic Places Trust are under-resourced and often unable to respond more quickly, these delays are nonetheless very frustrating to the private sector.

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

The funding principles outlined in section 101(3) of the Local Government Act 2002 are well understood by the local government sector.

However, it should be noted that the principles in section 101(3)(a) are matters that have to be *considered* when determining funding approaches (as noted in the commentary on page 45) but local authorities don't necessarily need to "base" the funding of any activity on them (per question 44). In fact, section 101(3)(b) requires councils to also consider *"the overall impact of any allocation of liability for revenue needs on the current and future social, economic, environmental, and cultural well-being of the[2] community"*. It is just

[2] Noting that the Local Government Act 2002 Amendment Bill currently before Parliament proposes amending the clause to state *"the overall impact of any allocation of liability for revenue needs on the community"*.

as legitimate for a local authority, having considered the matters in section 101(3)(a) to "base" its funding allocation on the "overall impact" consideration in section 101(3)(b).

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

Not specifically. Tauranga City Council recognises that some people in the community are under pressure to pay fees for all types of activities, including regulatory ones. As a result, Tauranga City Council allows for the payment of infringement fees (among other things) by way of instalment. This process does not reduce compliance with regulations or their effectiveness.

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?

At Tauranga City Council there are no issues regarding elected member involvement in regulatory decision-making and outcomes.

Elected members involved in resource consent decision-making have to be accredited. This has been a good move and has helped ensure appropriately considered decision-making.

The other principal areas of elected member involvement involve trees and dogs – these processes are considered to work well.

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

The requirement to review a Class 4 gambling venues policy once every three years is excessive. Statutory review cycles of five or six years as a minimum are more appropriate. If a local authority, or the community it serves, determines that a review is needed before the statutory minimum that of course can still occur, but forcing a review every three years is an unnecessary burden.

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

Fundamentally there is merit in the principle that regulations should be reviewable by an independent body. However, in recognising this, Tauranga City Council is keen that a "regulation review industry" is not created.

There is an argument that an independent review body be able to review regulations for reasonableness on an as required basis. This could possibly be complaint-driven or on some form of randomised schedule. The intent of such a body would be to identify where regulations were poor in design or effect, or where they were markedly at odds with regulations in other areas. Once identified and reported back to the relevant local authority, the aim would be that the local authority would choose to improve those regulations. In this way, local authorities with weaker regulatory functions would be assisted to improve.

Note that an independent review body would incur costs. These costs should be met by central government.

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

Yes. Generally there are appeal rights to Council or through the Courts or both.

Q52 Are some appeal mechanisms used excessively, frivolously or for anti-competitive reasons?

Generally no, though there are instances where persistent complainants have a significant impact on local government resources.

Chapter 7 – How should regulatory performance be assessed?

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

It would be useful to extend the concept of the MFE Quality Planning site to other forms of regulation and best practice – led by central government. There is often a lack of availability of national data.

Q58 What regulatory performance indicators are most commonly used by local authorities? Can you provide examples of good input, output and outcome measures for regulations you have experience with? What makes them good indicators?

Good output performance indicators are those that measure the level of service you are trying to achieve.

Examples:

- Percentage of graffiti removed within 48 hours – target 99%
- Percentage of complaints of excessive noise responded to within one hour – target 99%
- Health – All registered premises inspected annually, twice for "at risk" premises (food).
- Liquor – All licensed premises inspected annually, twice for "at risk" premises (taverns)
- Complaints about dog aggression, as a percentage of registered dogs – target 2.1
- Percentage of known dogs registered as at 30 June – target 99%
- Percentage of impounded dogs that are claimed – target 80%

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

No. Tauranga City Council has a range of customer service and customer satisfaction performance measures. There is little to be gained by introducing another layer of measurement and evaluation.