

19 March 2014

The overriding direction of my submission relates to transparency in the operation of the enforcement arm of Regional Councils. My views may also reflect the operation of Territorial Authorities but I do not think to the same extent.

Regional Councils are in a position where they act as both the regulator and the enforcement arm in matters that relate to the protection of the environment. While a Council's legislative powers, in this regard, stem from the Resource Management Act, the Act provides for Councils to make their own environmental protection rules [through their Regional Resource Management Plan Rules] and to issue Resource Consents that permit the controlled discharge of contaminants into the environment and/or reduce any harmful effects arising from those activities. While this might not be too unusual, where a serious conflict arises is when the Regional Council is compelled to 'police' the activities of its own organisation and that of territorial authorities.

A Regional Council has several operational divisions within themselves. These include planning, scientific investigation, issue of resource consents, drainage, agriculture, economics, tourism, transport, biosecurity and earthmoving. Some of these activities require a resource consent [issued by the Council themselves] or involve activity that potentially has an impact on the environment. The task of enforcing and monitoring these activities falls to another part of the Council, the Compliance and Enforcement teams within the group. Territorial Authorities also undertake activities that require resource consents issued by a Regional Council and also undertake other business activities that potentially impact on the environment. In the case of an Unitary Authority, the UA's compliance team is responsible for overseeing the operations of all of these environmentally linked activities. I would think this situation is unique in that the roles of both 'poacher' and 'gamekeeper' are undertaken by the same organisation.

I don't believe any exploitation of this position is widespread but the potential for such is great and the public perception has potential to be very damaging. There will always be opportunity for the public and business to assert cronyism, favouritism or corruption but there is a need for transparency that either or together removes the grounds for such accusation and easily demonstrates independent oversight of any decisions made that might involve a perceived conflict.

The draft summary document refers to:

Regulatory independence is a key consideration for designers of regulatory regimes

'it will usually be appropriate for regulatory powers to be exercised independently of political control so they are not used for partisan purposes'. There is the potential and ability to minimise exposure in this area by appropriate oversight and audit, however, local government does not appear to have the same level of checks and balances as central government. I don't believe there is the same level of public oversight in terms of conflict and personal gain at local level as there is nationally and it certainly doesn't receive the same level of media attention. Central government has certainly had recent concerns in this area and sought to address it in some way by forcing some regional councils to cease the practise of having enforcement decisions made by Councillors and having such decisions made at arm's length from elected representatives. This largely removes the ability for elected councillors to apply inappropriate pressure on regulators but the process is still

open to both real and perceived abuse. There remains the opportunity for council hierarchy to unduly influence the performance of the regulatory/enforcement function. Some examples of real and perceived situations are as follows:

- Individuals and business owners that have broken the law have approached councillors and Council executive members to intervene on their behalf when enforcement action has been initiated against them. In some cases attempts have been made to have the matter dropped, on one notable occasion this was successful. The position of the enforcement officer involved was very delicate in that the officer held their position and delegation on the authority of the person exercising the undue influence. To object to the exercise of this influence would have been a career threatening move on their part.
- Territorial authorities have been treated differently than other businesses or individuals have been for the same level of offending and non compliance to 'preserve' the working relationship between local Councils. There are many situations where Territorial Authorities have either received warnings or personal contact with an executive member rather than been the recipient of a fine or prosecution, when the same level of offending by anyone else would have resulted in enforcement action.
- Council staff have burned vegetation and trees in circumstances that breach regional rules where similar activity by others would result in a more formal response.
- Territorial authorities have been blasé in relation to their requirement to provide reports and data, as required by their resource consents and have been given excessive leeway to 'preserve' the working relationship between councils.
- Regional Councils operate activities that are subject to resource consent and despite breaches of conditions that would normally result in enforcement action being taken, such action has not been taken.

Fundamentally the issues has been not one of dishonesty on the part of the enforcement officer but a pressure [both real and perceived] that as they have to work for the organisation and work with the people that are offending, to take enforcement action will have them treated as a pariah within the workplace and place undue hardship and mental strain on the officer. To press for a more equitable outcome with their own employer is not a position they should be placed in. It is not unusual for other offending parties to ask why they are being treated in a 'harsh' manner while the Councils are not subjected to the same level of enforcement action.

Regulation, operational, budgetary and institutional influences all have a negative effect on a regional council's ability to enforce in a fair and transparent manner.

I have spoken to a member of MfE about the appropriateness of having the enforcement/audit arm of the Resource Management Act operating under the Regional Council umbrella, when such obvious conflict exists. It was related to me that Central Government supports the view that local decisions should be made locally by local people. I would suggest that could still happen with the enforcement function operating from elsewhere and outside the influence of the regional Council or Territorial authority. The method of building policy and rule making can remain as Council functions

but the enforcement of these rules should be carried out by a group that is independent from councils. An obvious parallel is the police, apart from the Arms Act, they are not responsible for writing any other legislation except to enforce it in a fair and equitable fashion.

My proposal is that serious thought be given to having the enforcement and monitoring functions of regional councils, transferred to an independent organisation. The Ministry for the Environment is an obvious vehicle for such a restructure.

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