

SUBMISSION TO THE NEW ZEALAND PRODUCTIVITY COMMISSION  
Local Government Regulatory Performance Inquiry – Draft Report

**Submission From:**

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**Introduction:**

The Invercargill City Council generally supports the findings of the draft report and commends the draft report as an accurate assessment of difficulties faced when Central Government regulation is delivered by Local Government. Invercargill City Council would support efforts to improve the performance of regulatory systems and supports the solutions offered in the 'Ways Forward' section of the draft report (p4).

We have structured our submission to follow the questions asked in the draft report.

<b>Ref</b>	<b>Invercargill City Council Comment</b>
Q3.1	Local Authorities represent a variety of different communities, in size, location, growth and needs. The importance of pursuing economic development on either a local or regional basis will differ for each local authority. The Invercargill City Council places importance on economic development and has recognised it as a key community outcome the Council can assist in delivering.
Q4.1	The right elements have been included, but Invercargill City Council would encourage the addition of an analysis of how a new regulatory role will impact an existing regulatory role within the same government level.
Q4.2	The guidelines are a good starting point but they may need to be broadened or amended to cater for different communities or different regulatory regimes. It will be important that the guidelines are flexible enough to ensure that the "unless there is a good reason to allocate elsewhere" section of the title can be utilised.
Q4.3	Yes.
Q4.4	Yes. Such an analysis should be undertaken at the earliest possible stage of the process. This in conjunction with early collaboration with the Local Government sector would assist in answering not only where the regulatory function should be situated, but whether there is a need for regulation at all.
Q4.5	Yes.
R5.1	Invercargill City Council supports this recommendation. This would assist Local Authorities to address funding implications of regulatory roles developed from Central Government.

Q5.1	Most regulatory functions can be funded through fees directed at the user / applicant. Development of policy required by Central Government as well as monitoring the effectiveness of the policy once in use are likely to be funded by rates and therefore better lend themselves to Central Government grants. The cost of developing good policy will be similar for most Local Authorities, whereas the ratepayer base to distribute the cost across can be substantially different.
Q5.2	Many indicators could be utilised, for example population / ratepayer base or socio economic status of the Local Authority.
Q5.3	The principles for funding in Box 5.2 are supported. Invercargill City Council recognises that some measure of performance is warranted when granting funds.
Q7.1 & Q7.2	Invercargill City Council believes that there should be better and more engagement with the Local Government sector when developing or reviewing regulation to be implemented by Local Authorities. Insufficient input can adversely affect the cost of implementing the regulation and the level of success it brings in achieving its objectives. Invercargill City Council also believes that Regulatory Impact Statements are a useful tool for analysing regulation, however we do hold concerns at how little weight the Regulatory Impact Statement held in the latest review of the Local Government Act. Nonetheless, Invercargill City Council supports the suggestion of an independent statutory board to undertake quality control or Regulatory Impact Statements.
Q8.1	Invercargill City Council agrees with the benefits and costs as set out in the report. We would like to emphasise that cooperation between Local Authorities is a priority for Invercargill City Council where it can lead to cost savings or a more efficient service, but it is also important for Council to consider the needs of its own community/ies and therefore where values are different from one Local Authority to another, it is not always feasible to cooperate in the delivery of regulatory functions. This does not mean that Local Authorities don't share good practice resources.
Q9.1	<p>Invercargill City Council has a culture of educating and informing our communities about rules, prior to proceeding with warnings and in the last instance prosecutions. The annual budget allowance for legal proceedings is adequate for the small number of enforcement issues that end in Court.</p> <p>The expansion of programmes such as the 'Making Good Decisions' qualification for Hearing's Commissioners into other regulatory functions would assist in raising the standard of decision-making, but Local Elected Members are elected to represent a view on different matters affecting the community.</p>
Q9.3	Most commonly, the reason for differing levels of satisfaction would be the different regulation applying to the industry. A secondary reason Invercargill City Council would offer is the individual Local Authority's interpretation of legislation. More guidelines would assist in consistency, but at the same time would diminish the flexibility of the Local Authority to cater to its individual needs. If Central Government was devolving the regulation to Local Authorities, one would assume that it was to allow for these individual values to be recognised.
Q10.1	Invercargill City Council is implementing a risk based approach to all of its compliance monitoring. This is a necessity due to the limited resource available. For example, the risk to pedestrians around schools is greatest during the start and end of the school day, which is the same time that Compliance Officers monitor parking around schools.
Q10.2	Limited resources affect the monitoring undertaken by Local Authorities. Areas where cost recovery is unlikely are significantly influenced by budget restraints. Monitoring is often carried out on a reactive basis when an issue is made known.

Q10.3	Bylaw enforcement would benefit from the ability to use infringement notices. Currently the only solution (other than requesting compliance) for a breach of a bylaw is a summary prosecution with a fine not exceeding \$20,000. As the cost of taking the enforcement action through the Courts is likely to be more than what is recoverable from the offender most enforcement action is not undertaken.
Q10.4	Invercargill City Council resources do not allow for a person to monitor the community for Resource Management Act breaches on a full time basis. We deal with situations that are brought to our attention or that staff come across while carrying out their duties as they arise.
Q10.5	Yes, more moderate penalties will assist in delivering better regulatory outcomes. Penalties should be in proportion with the offending. The bigger issue arises when the offender refuses to pay. It is not a prudent use of Council resources to spend at a minimum \$5,000 trying to recover a \$200 fine through the Court system.
Q10.6	Monitoring of liquor licences is undertaken in accordance with available resourcing. This is determined after public consultation by Elected Members when they set the annual budgets.
Q10.7	As Invercargill City Council moves along the scale of options available for enforcement, the burden of proof required to proceed also increases. In all cases, Council tries to act in an equitable and impartial manner on enforcement.
Q10.8	Wherever possible, Invercargill City Council uses mediation and negotiation rather than the more expensive option of hearings and / or prosecutions. There does appear to be a large void of options in between abatement notices and prosecutions. Invercargill City Council is also wary of using 'heavier' enforcement actions for low impact breaches of regulations even when these breaches are on-going.
Q10.9	As above, Invercargill City Council uses as many options as practicable to encourage voluntary compliance (education, provision of information, warnings, mediations) before using prosecution or more severe penalties. As this process tends to work there is little need for severe penalties.
Q10.10	In Invercargill, most licenced premises are owned by the Invercargill Licensing Trust and conditions are negotiated with them when working through the licence application. Due to our population there is little demand for variations, either all licenced premises are open or none are. We don't often have special events requiring variation.
Q12.1	The process of gaining approval from neighbours means no surprises, i.e. height on boundaries. This leads to more activities requiring consents, but better outcomes for the community.
Q12.2	The Invercargill City Council uses a mixture of regulatory and non-regulatory methods.
Q12.3	Evan after extensive consultation and engagement with the community, some parties may appeal as they hold concerns that the provisions may allow or not allow activities to occur. This is a trade-off best made by Elected Members as representatives of the community.
Q12.4	Court should only hear appeals on the decision, not a de novo hearing.
Q12.5	It is feasible to narrow legal standing, but it needs to remain a useable process for smaller submitters (i.e. an individual).

Q13.1	Invercargill City Council and other Southern Councils have a good working relationship with local iwi through Te Ao Marama Incorporated. Te Ao Marama is Invercargill City Council's first port of call for engagement with Maori on proposals that are being developed.
Q13.2	Invercargill City Council considers that its relationship with Te Ao Marama Incorporated through regular participation in Te Roopu Taiao meetings is a cost effective way of including Maori in decision-making. There is always the concern that resourcing will not allow for the level of engagement envisioned by both parties and to overcome this, Council provides technical advice, expertise, information and financial support to Te Ao Marama.
Q13.4	The use of Te Ao Marama as a vehicle to ensure engagement between the Council and local iwi is well tailored to Maori involvement.
Q14.1	The guide assists in framing Council's performance measure reporting but it is the Elected Members who assess what the final measures and expected outcomes mean from the information received.
Q14.2	The new purpose clause of Local Government ensuring Local Authorities focus on 'local infrastructure, local public services, and performance of regulatory functions' sufficiently focuses on regulatory capabilities without constricting flexibility for individual Local Authorities to interpret what is best for their communities. No further legislation requirements are needed.
Q14.3	The Invercargill City Council supports national consistency for prescribed forms and the like, but flexibility when setting levels of service. The Resource Management Act bi-annual survey is a good example of a performance assessment framework.
Q14.4	The Invercargill City Council would support any performance assessment that endorses a partnership between Local Authorities and Central Government when drafting or reviewing legislation. The Joint Health Check option would enable both the regulator and implementer to assess the effectiveness of regulation.