

6 March 2013

Inquiry into Local Government Regulatory Performance
New Zealand Productivity Commission
PO Box 8036
The Terrace
Wellington 6143

Dear Sir/Madam

Response to 'Towards better local regulation – Draft report'

The Waikato Regional Council (WRC) thanks the Productivity Commission for the opportunity to provide comment on the inquiry into local government regulatory performance. This feedback responds to the Commission's draft report dated December 2012 and builds on our response to the Commission's earlier discussion document.

WRC notes that a number of comments previously submitted have been picked up in the draft report. However we remain concerned that the important role played by regional councils has not been distinguished and emphasised. WRC requests that the Productivity Commission, in its final report to government, is clear about the nature and particular roles of regional councils (including their integrative role), 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.

WRC supports the development of stronger best practice processes and shared regulatory frameworks across councils. This will lead to better financial performance for ratepayers and an efficient and effective regulatory environment for customers to operate and grow their businesses in.

WRC agrees there is a degree of cooperation between councils however we also consider the Commission under-states issues and costs relating to inconsistency between councils. The biggest opportunity for efficiency and effectiveness gains will come from mechanisms that strongly encourage institutional barriers to be overcome so greater organisational and process alignment can be achieved for the collective good.

Role of regional councils

Regional councils have quite different regulatory roles, responsibilities and opportunities to territorial authorities. Regional governance or regulation is about allocation of resource; space, water etc, as opposed to regulation at the local level which is about controlling impacts of activities on people and property. Regional governance or regulation is focussed on common good resources, whereas local regulation has impacts on individuals and property rights. The different regulatory responsibilities together with the large geographic scale of most regional councils, means that regional councils are different in their focus, concerns, world view, and relationship with communities and stakeholders, compared to territorial authorities.

WRC considers the distinction of the role of regional councils is an important one for the Commission to make. Regional councils:

1. Provide an over-arching and integrated regulatory environment for a region through documents such as Regional Policy Statement, Regional Plan, and Regional Land Transport Strategy.
2. Enable the integrated management of natural and physical resources for both regional and national benefit
3. Provide a pool of professional and expert staff to support standard of processes and outcomes achieved across the region.
4. Provide regional data and advice to support good decision-making

Regional functions

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

Greater clarity of role and purpose provides a better platform for the delivery of effectiveness and efficiency. It provides a clear sense of direction for participants and the ability to have increased accountability.

There needs to be much clearer delineation of roles of regional councils and territorial authorities, particularly around land use, transport and hazards planning. We advocate a change to legislation to provide that:

- regional councils have responsibility for land use, transport, infrastructure and hazards planning, and
- territorial authorities have responsibility for community based planning activities such as amenity features and town plans.

Regional councils should undertake regional strategic planning. WRC considers that territorial and regional planning, whether under the Resource Management Act, Local Government Act or Land Transport Management Act, needs to have a strategic basis that provides high level guidance on what the various planning activities are aiming to achieve.

Economic development

F3.6 Local variation likely drives different regulatory approaches. Part of this variation in regulatory approach appears to be differing interpretations of local government's role in promoting economic growth.

WRC considers that the local variation of regulatory approaches is more often as a result of different regulation-making processes, submitters and decision makers, than local variation of social, economic, cultural or environmental conditions. Although there are differences between districts for example, in many cases these are no more extreme than the differences within districts.

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

The OECD and other international research emphasizes the importance of regional development for both the national and regional economy. Clearer central government guidance on the role of local government in economic development would assist the creation of more effective policy and regulation. The recent emphasis on the importance of local economic development and its incorporation into WRC's vision for the Waikato demonstrates the ability of regional council to respond to demands for greater regional leadership in response to world events.

In the absence of further guidance WRC refers to LGNZ's six priority areas for local government to make to economic growth ('Local Government Economic Indicators Framework', BERL Economics, 2010):

1. Leadership (incorporating partnership and facilitation): setting, supporting and driving a vision for economic growth.
2. Spatial planning and infrastructure: ensuring that the physical and built environment is conducive to economic growth.
3. Regulation: create a quality regulatory environment to make it easier for businesses to grow, invest and create jobs encouraging economic growth.
4. Services: effective coordination and delivery of key council activities that support the effective functioning of local communities.
5. Business and industry development: facilitating investment, industry and employment growth; and implementing measures that support a conducive business environment.
6. Social and community: an environment that supports wellbeing and enables communities to participate; contribute to economic growth.

Council cooperation and coordination

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

As has been highlighted in the draft report there is often significant disconnect between central policy creation and its implementation - staff experienced in the subject matter are required to build more effective processes and linkages. There are also some good examples of regional and central government staff working together to achieve better policy and environmental outcomes such as increased protection for Lake Taupo, the Tui mine remediation, and opening up space for more marine fish farming in the Waikato.

Recommendations are:

- The involvement of potentially affected local government staff in the development of regulation by central government
- Resourcing central government departments and regional councils with sufficient capacity and capability to have staff who are proficient and knowledgeable in the area of policy development they are working in.

F8.1 There is significantly more cooperation, coordination, and sharing of resources occurring amongst local authorities than is commonly known.

It is true that there are examples of cooperation, coordination and sharing of resources among local authorities. However, it is also true that there are many areas where cooperation is not common. Examples of shared services among local authorities can be cited, but sharing of services is the exception rather than the rule with New Zealand local authorities. There are examples of shared regulatory documents, but they are extremely rare in New Zealand. In the Waikato region alone each of the eleven territorial authorities has its own statutory plans (often structured in their own unique way), numerous strategies, and even more numerous policies and bylaws. Over the next three years Waikato councils need to review and consult on more than 500 different policies, codes of practice, management plans and bylaws.

Cooperation occurs where there is shared motivation, similar organisational structure, and consensus. As described in the draft report, with the vast array of different communities served, the varying capacity, capability, and organisational structures of territorial authorities; and the parochial desires of local governance, local government is far more heterogeneous than homogeneous. The biggest opportunity for efficiency gains will come from mechanisms that strongly encourage institutional barriers to be overcome so greater organisational and process alignment can be achieved for the collective good.

Greater statutory recognition for strategic planning would be useful to achieve alignment between agencies. A “regional strategic plan” could combine many elements of the current Regional Policy Statement and the Regional Land Transport Strategy, with a new function of spatial planning, as provided for in Auckland. The advantages of a regional strategic plan include providing:

- clear strategic direction, which would help to resolve the problem of lower level plans having disparate and unaligned objectives within the region
- for scarce resources to be managed to best economic advantage for the region and New Zealand
- best return on infrastructure investment, such as by avoiding: (a) duplication of sunk infrastructure cost, from servicing too much industrial land; and (b) ribbon development clogging state highways
- high level policy guidance so that high level issues do not need to be repeatedly re-litigated across the region through lower level planning processes
- better alignment of actions to achieve environmental, economic, social and cultural objectives.

F4.9 Approximately 70% of businesses in New Zealand only deal with one council and for those businesses that operate over more than one jurisdiction, this is over a limited range of regulatory matters.

WRC is not surprised by the figure of 70%, given that the vast majority of businesses in New Zealand are small to medium sized enterprises. However, we consider that the statement is misleading and under-states the problems of variation in regulation between councils. The Commission appears to have aggregated building permits, subdivision consents, land use consents and all discharge consents to reach its figure of 70%. The remaining 30% of businesses who do encounter cross-jurisdictional issues are likely to be larger national and international companies and those involved in our important economic sector such as food manufacturing, forestry and wood processing. These 30% of businesses are likely to contribute significant value to the economy. Any regulatory impedance is likely to have a high economic cost for these companies and the country. It would be illuminating to see the break-down of this 30% of businesses in regard to their size and contribution to the economy in the Commission’s final report.

Local monitoring and enforcement

WRC agrees that the inability of many councils to adequately resource monitoring and enforcement capacity and capability is a far greater determinant of enforcement outcomes than individual economic, social and environmental circumstances needing different approaches.

WRC considers that on the whole the enforcement tools currently available are sufficient and that there are matters of practice that could be improved to achieve greater consistency of outcomes.

Q10.1 Are risk-based approaches to compliance monitoring widely used by LAs?

WRC agrees with the principles of Braithwaite's enforcement pyramid but would disagree with the inference that an enforcement process for an individual should travel the continuum from the 'softer' options to the 'heavier' options if compliance is not forthcoming. This may be appropriate for an industry sector but individual enforcement decisions need to be based on the particular situation. A professional approach is required where the appropriate level of enforcement is selected in the early stages of the process.

WRC uses a risk-based approach following Braithwaite's principles to assist the decision-making process as to where resources are best focussed. As an example, it is used to programme where to best target monitoring dairy effluent disposal and significant industrial consent-holders. It is an approach that does not appear to be widely used and even where it is used it requires an accumulation of experience and development of the process for it to be fully effective.

Q10.2 Level of monitoring

It should be noted local authorities are expected to recover costs as far as possible directly from those causing the costs, i.e. the user pays principle. In regard to monitoring of resource consents, the RMA provides the ability to recover these costs, although the pressure on councils to keep costs down can impact on the extent of monitoring that does occur. However, there are activities that can have an environmental impact even though they are 'permitted' under Regional or District Plans. Current legislation does not enable direct recovery of the cost associated with monitoring these activities. The willingness to provide public funding of monitoring and enforcement of such activities can vary widely, and hence the extent of monitoring also will vary widely.

If there was a requirement to reduce the number of activities requiring resource consent and replace these with more permitted activities, an alternative means of funding monitoring environmental impacts would be required and one that as far as possible directs the cost towards the activity itself rather than the general ratepayer. We recommend section 36 of the RMA be amended so councils can recover costs from monitoring permitted activities.

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

A detailed analysis of enforcement activity is likely to show that relatively few councils undertake enforcement activity to a significant degree and that the majority of activity at the prosecution end of the scale is by a few councils.

It is also likely that activity is largely determined by the appetite of local elected representatives to support enforcement activity and the lack of staff resources available to take enforcement action if that is an option chosen.

Enforcement activity is a specialist function that requires expertise from the initial scene attendance through to prosecution and court attendance. It requires expert knowledge of process as well as statute. Local government has the added complication of elected representatives being close to the activity which often occludes the separation of roles. Effective and efficient enforcement action requires a dedicated enforcement team with sufficient skill, experience, and capacity to professionally deliver regulatory activity.

The majority of councils simply do not have the resourcing to provide this. The result is the inability to correctly undertake enforcement activity so it is avoided, or, if it is undertaken it is by engaging external professionals at significant cost that strongly discourages this option.

Q 10.5 Should the size of fines imposed by infringement notices be reviewed with a view to making moderate penalties more readily available? What evidence is there to suggest that this would deliver better regulatory outcomes?

One area of improvement would be the ability to issue an infringement notice to a corporate body with a higher dollar amount. The quantum currently available simply does not have sufficient regulatory impact to deal with larger corporate non-compliance.

F10.2 Local authorities need a wider range of enforcement methods to ensure they can always take a proportional approach to enforcement

A provision that would provide more effective enforcement options would be the ability to apply to the Court to suspend or cancel a resource consent in a similar way that occurs for 'licences'. This would not only provide a greater deterrent effect but also enable repetitive offending to be curtailed.

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

The restrictive nature of the RMA which often requires consent be held if a plan does not permit an activity has resulted in a number of relatively low-risk activities needing consent in first generation RMA plans where the process did not specifically provide for an activity. In some cases these first generation plans may have followed a more 'precautionary approach' in their development. Council policy effectiveness work is presently being undertaken by WRC and other councils the results of which will inform and improve next generation planning documents.

That in part is one reason for the low number of consents that are declined. More importantly from the WRC perspective is that often the RMA process involves dialogue between the applicant and regulator. This discussion commonly leads to agreement where matters of contention have been resolved or conditions attached to consents to enable resolution prior to consent having effect. It often results in applicants being quite realistic about the likelihood of success of their consenting process. Even where applications with risks are submitted a process of significant negotiation is likely to occur, not only with the regulator but also with parties who may be affected by the proposal. It is important that fixed timeframes for processing resource consents do not undermine the ability for working together to achieve good outcomes.

Conclusion

WRC supports the Commission's inquiry into opportunities to improve local government regulatory performance. WRC agrees that good regulation provides benefits to business and the community, and improved regulatory performance will yield further benefits.

Greater local government regulatory performance will be achieved when there is:

- central policy guidance which has been developed with local government input;
- clearly defined and separate roles for regional councils and territorial authorities; and
- a shared performance framework.

WRC thanks the Commission for the opportunity to provide further input and is happy to provide further information or assistance as necessary.

Yours faithfully

A handwritten signature in cursive script, reading "Katie Mayes". The signature is written in a dark ink and is positioned above the printed name and title.

Katie Mayes
Programme Manager, Regional Strategy
Waikato Regional Council