

CLUTHA DISTRICT COUNCIL

SUBMISSION TO NEW ZEALAND PRODUCTIVITY COMMISSION INQUIRY INTO LOCAL GOVERNMENT REGULATION

Introduction

In general terms, the Clutha District Council supports the intent of this review. We agree that the allocation of regulatory functions, and the performance of those functions, could be improved. In particular, we would support a clear, consistent and principled approach to allocating functions and responsibilities between local and central government.

In general, we are lodging this submission to express our support for the submission by Local Government New Zealand. We have provided input into that submission, and ask that the Commission recognise that submission as representing the wider local government sector. For most of the questions set out in the Issues Paper, we rely upon the response made by LGNZ.

However, there are a number of points where we wish to provide extra emphasis or examples ourselves, and this submission sets those out.

Scope of local government regulation

The Issues Paper is unfortunately somewhat misguided in this regard. Local government in fact has very few regulations of its own – basically just local bylaws, which are generally tightly constrained by the parent legislation (eg Local Government Act, Freedom Camping Act, Sale of Liquor Act). Most regulation is set by central government, and local government can only implement the regulations it is given. In some cases it can develop the details at a local level (eg District Plans under the Resource Management Act, and Earthquake Prone Building Policies under the Building Act), but these are also generally quite constrained and must be implemented within the framework of the relevant Act.

Context of the cost of local government regulation

We also note that the impact of regulation *by* local authorities is much smaller than the impact of regulation *on* local authorities. To illustrate this, in 2011/12 our Council's total amount charged for regulatory functions (building consents, resource consents, liquor licensing etc) was \$450,000. We pride ourselves on providing good customer service in processing those approvals, and meet the relevant timeframes in 100% of cases, so that delays and uncertainties for applicants are minimised.

However, those costs are minor compared to the costs to our District of regulation imposed on Council. In order to meet the National Drinking Water Standards, Council has already spent \$3.5m on plant upgrades and has a further \$2.5 m of work programmed. This was an absolute requirement on Council, despite the fact that independent analysis showed a negative cost-benefit ratio for small-medium schemes such as ours. If Council had been able to make its own choices there could have been much better uses of \$6m (eg road safety, where a similar investment

would save many lives instead of simply reducing the incidence of stomach upsets). It is also quite possible that ratepayers themselves would have had other priorities for that money, whether through rates or by retaining it themselves.

Similarly, sewage treatment improvements to meet current discharge standards are adding around \$200/year to rates for connected consumers (ie approx 100% increase in sewer rates, 15% increase in overall rates), and new standards proposed by the Otago Regional Council would add a further \$200 to over \$1,000 per year with no discernible decrease in actual environmental effects.

Another example of the effects of regulation on local authorities is the requirement for Building Control Authorities to be accredited. This has involved huge investment by our Council in both cash costs and staff time, but before the regime is even fully in place the Government is looking to scrap the local BCAs and roll them into a small number of centralised organisations. The wasted effort as a result of this will be many millions of dollars across the country, which has all been paid for by building consent applicants and ratepayers.

In all of these cases, poor allocation and management of regulation has forced inefficiencies and poor quality spending by local authorities on behalf of their ratepayers. The resulting costs are many times the entire cost of regulation by our Council. Therefore, we strongly support the need to improve how regulation is allocated and we believe that one of the principles should be that, as far as possible, decision-making should rest at the level of those who will bear the costs.

Specific questions raised in the Issues Paper

In terms of specific points, we rely on the LGNZ submission except for the questions where we provide additional comment below:

Question 1

The first priority for the Commission should be to establish a clear set of principles for the overall allocation of regulatory functions, rather than picking on particular pieces of legislation. Unless there is a clear rationale for allocation, there will always be inconsistencies. For example, central government is currently driving more centralisation of building control functions, but at the same time more localisation of alcohol control. Both these shifts represent an ad hoc reaction to particular issues which have arisen, rather than being part of an overall clear framework.

Question 6

We consider that much of the variation appropriately reflects differences between authorities. For example, land use controls under the Resource Management Act should be different in areas of high population or growth pressures than in rural areas where those pressures do not exist. As a small rural council, this allows us to differentiate ourselves from larger urban councils, which helps support the retention and growth of our local economy. It also quite properly reflects the very different expectations of our rural communities, who see rural land as a working environment, compared to urban communities who may wish for greater protection of remaining open space. It is important to the vitality and viability of communities that we can continue to make our own choices about such matters.

However, we do accept that there are also differences which are not justified in this way. This is often a matter of implementation rather than the regulation itself, and local government is working to improve this. To continue the land use control example, we are currently working with other local authorities in Otago to develop a common set of definitions for District Plans – while it is appropriate that the triggers for land use consents are different in Clutha District to in Queenstown, the framework in which those triggers are set and defined should be consistent and comparable.

There is certainly scope for more collaboration between central and local government to help improve such consistency. Unfortunately, efforts to date have not been very productive. Despite the Resource Management Act having been in place for 21 years, there are only a handful of National Policy Statements and Environmental Standards, and these represent a series of ad hoc responses to particular issues or pressure groups rather than any overall framework. A recent and particularly disappointing example is the National Policy Statement on Renewable Electricity Generation. Despite an extensive public consultation process and a good level of involvement by the local government sector, the end result was very much driven by Wellington legal bureaucrats and does little more than tell councils that they need to have policies without setting any clear direction or expectations for those policies.

Our Council would strongly support more measures to improve consistency in regulatory implementation.

Question 8

This confusion in this question illustrates the key point made above, that New Zealand needs a clear and principled framework for allocation of regulatory responsibilities. Minimum *standards* (eg for health and safety requirements) are generally speaking set nationally via legislation. However, the purpose of *Bylaws* is to allow local variation – eg national legislation sets a framework for parking control, but local communities use bylaws to decide which streets have parking restrictions, what hourly charges apply, etc. This use of Bylaws is entirely appropriate and needs to be retained.

Question 10

We note that this question is somewhat loaded, as differences in effectiveness and outcomes will often be in the eye of the beholder. As an example, the current proposals to centralise building consent processing will offer benefits to national franchise building companies, by improving consistency and making it easier for them to manage processes from 'head office'. However, those same changes will disadvantage smaller local builders, by forcing them to invest in new technology for on-line processing and reducing their ability to resolve issues directly through their working relationships with local staff. Similarly, a District Plan which takes a permissive approach to wind farms would be seen as effective in terms of the national need for renewable electricity, but considered ineffective in protecting the environment by opposing neighbours.

Again, these issues highlight the need for a clear set of principles about which issues are dealt with nationally versus those that are dealt with locally. All too often local authorities end up caught in the crossfire between national and local needs.

Question 14

We are sure that the Commission will receive much evidence of inconsistencies. However, as with Question 10 above, we note that whether those consistencies are a good thing or not will be very much in the eye of the beholder.

Question 19

We strongly support the comments by LGNZ regarding the lack of support by central government. The Ministry for the Environment has largely withdrawn from work to support consistency (eg Quality Planning Website, liaison with local authorities, preparation of templates and guidelines), and National Policy Statements and Environmental Standards have been ad hoc and either pointless (NPS on Renewable Electricity Generation) or so poorly drafted that they only add to confusion and inconsistency (NES for Assessing and Managing Contaminants in Soil to Protect Human Health).

We do accept though that there are areas where consistency could be improved without losing the ability to reflect local considerations. We would support more and better collaboration between central and local government to address this.

Question 25

This question seems to only look at allocation of the regulatory functions themselves. However, in our experience there are substantial issues, and potential for improvements, in the activity that occurs *within* the legislation. To return to the example of the NPS for Renewable Electricity Generation, the main issue for most resource consents for these developments is how to balance the national benefits of the generation against the local adverse effects on the environment. The NPS failed to give any meaningful direction on this, and instead required each council in the country to develop its own policies on the matter. It would have been much more effective and efficient if central government had actually taken responsibility for the national interest and set clear direction through the NPS.

Question 30

This is a critical question. Most of the examples of inefficiencies and failures given above could have been avoided through better involvement of local government in the development and implementation of regulation.

The first requirement for improving implementation is to have a clear framework of principles on how roles and responsibilities are to be allocated.

Once a framework is place, there needs to be much more involvement of local government in developing and implementing the relevant regulations. This is not just a case of consultation (in many cases there is adequate consultation, but it does not influence the outcomes), but of collaboration or partnership in dealing with shared responsibilities.

Question 33

We note that it is important to distinguish between capability issues and levels of service. By way of example, some people may consider that our Council lacks capability because we are not highly proactive in enforcing our Freedom Camping Bylaw. However, in fact this is a case where Council has gone through a public consultation process and chosen not to have dedicated enforcement patrols. It is important that councils retain the ability to set such priorities for themselves – if all councils were expected to be fully capable of dealing with all issues that arise across the country then there would be a huge amount of extra cost and wasted effort. Local communities need to retain the ability to set their own priorities within the national framework of legislation.

Question 48

There is real scope for improving local government's ability to review its own regulations. Most actual regulation is done through bylaws, and any changes require a full Special Consultative Procedure under the Local Government Act. There is no recognition that many changes are minor, and fit within the established framework of the Bylaw. Examples of this include imposing a freedom camping ban on a particular layby due to problems occurring there (or conversely, opening up a previously prohibited site), or relaxing controls on trading in public places to allow for a short-term event.

Similarly, it is very difficult to make even minor changes or improvements to District Plans without high cost and many months of legal process. Examples of this would be updating a heritage register to remove controls on a site when they become no longer relevant, or updating references to national standards and guidelines to keep them current.

There would be real value in allowing more scope for councils to make such changes through a simplified procedure (eg by Council resolution following consultation with any directly affected parties).

Conclusion

The Clutha District Council supports the overall intent of this inquiry. In particular, we can see real value in having a clear set of principles for allocating regulatory roles. To avoid inefficiencies and poor quality spending, these principles need to allow councils much more ability to address the cost implications for ratepayers.

Once roles are allocated, we would strongly advocate for much more collaboration between central and local government to ensure that the implementation is as effective and efficient as possible.

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