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28 February 2013

Productivity Commission

<http://www.productivity.govt.nz/make-a-submission>

Dear Commissioners

PRODUCTIVITY COMMISSION INQUIRY - DRAFT REPORT TOWARDS BETTER REGULATION

Thank you for the opportunity to comment on your draft report "Towards Better Regulation". The Northland Regional Council notes that the report demonstrates significant progress (since the issues paper) in understanding and representing local government regulation, particularly in the difference between regional and territorial local authority functions, in the role of local government vis a vis central government and the "constitutional place of local government", and between devolved regulation and delegated powers.

We support the *Local Government New Zealand* submission and have specific Northland examples that apply to the following questions you pose:

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

Q8.1 - What are the benefits and costs of cooperation? Are there any studies that quantify these benefits and costs?

Q10.1 - Q10.5 Monitoring and Enforcement

We have also commented on the cost impact of local government regulation on Northland and New Zealand businesses.

Yours faithfully



Craig Brown
Chairman
Northland Regional Council



Submission

By the: Northland Regional Council
On the
Productivity Commission Inquiry - Draft Report Towards Better Regulation

To: Productivity Commission
<http://www.productivity.govt.nz/make-a-submission>

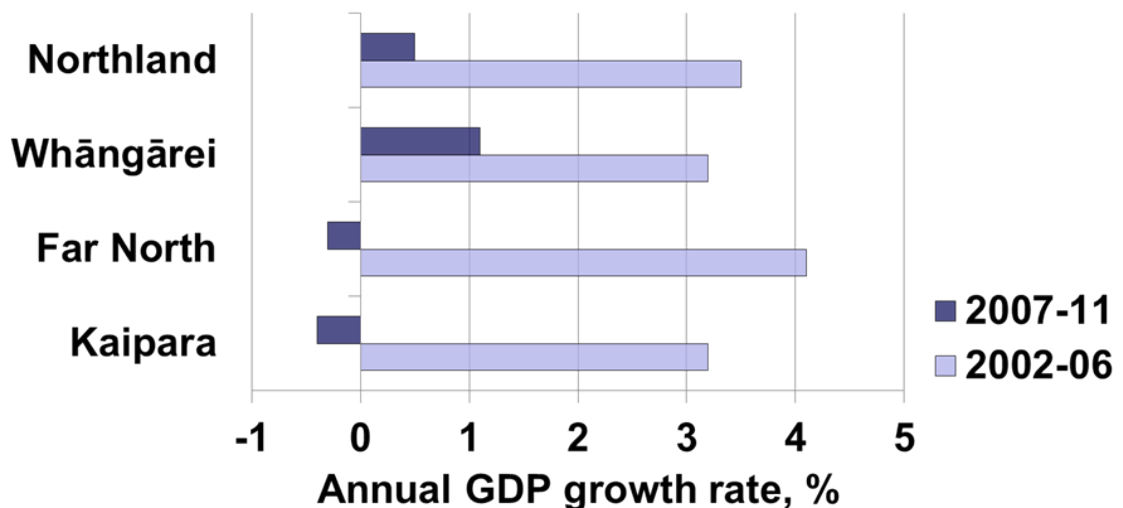
1. The Northland Regional Council ("council") is grateful for the opportunity to provide comments on the Draft Report.
2. We have participated in earlier sector contributions to your inquiry through *Local Government New Zealand* and your survey of Chief Executives.
3. We support the comments of *Local Government New Zealand* on the draft report and have the following specific comments to make based on the Northland context:

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

- In the context of this investigation, there can be no doubt that local authorities must take an active role in pursuing and promoting economic development. As the draft report notes, regulations are an important tool for advancing public interests, correcting market failures and improving the efficiency of resource allocation (section 1.2, p. 7). Regulations have an impact on business productivity and regional economic development / growth.
- Therefore local authorities, at a minimum, must be aware of the impact of regulations on business and the regional economy. But this minimum is not satisfactory. Local government, as much as central government, is driven by a desire to improve the wellbeing of their communities. There are also

statutory requirements to consider the costs and benefits of options, such as section 32 of the Resource Management Act 1991 and the decision making sections of the Local Government Act 2002, which must be met.

- The Commission's report also highlights the divergent economic growth rates being experienced by territorial authorities. Our experience in Northland indicates that this divergence has been much greater since the Global Financial Crisis in 2008. For example, in the five years 2002-06, the Northland economy as a whole and the three Territorial Authorities were growing at a rate of between 3-4% per annum. However since then they have grown very differently – with Whāngārei continuing to grow but the Far North and Kaipara going backwards. The fact that different districts are experiencing different economic growth paths means that local government needs to play a role.



3.2. *Chapter 11 – the cost impact of local government regulation on businesses*

- While no questions were asked regarding Chapter 11 – the cost impact of local government regulation on businesses, one of the findings of the report was that 39% of business who had at least some contact with local government report that regulation places a significant financial burden on their businesses (F11.2, page 172). This is potentially an important finding that may have an influence on the conclusions that will be drawn. For example, Figure 11.4 was one of the few results highlighted in the SOLGM Webinar

"Towards Better Local Regulation" - the Productivity Commission's Draft Report.

- The Commission should provide more information to back up the credibility of this conclusion. In particular, was any definition of "significant" provided to businesses in answering this question or was this left entirely up to their judgement?
- A further finding from the survey of business was that "planning, land use or water consents" and "building and construction consents" have the greatest cost impact on businesses – with a comparison made with tax regulations and employee superannuation. It would be useful for the Commission to comment on how these survey results compare to the conclusions drawn from various other studies of compliance costs, and why the differences exist. The other reports use different methods for determining the cost but all come up with a similar ranking – which tend to rank resource management costs lower down the scale than the Commission's study. For example:

The Impact of Business Compliance: Perceptions of New Zealand Firms by Massey University for MED in May 2003.

http://www.brad.ac.uk/irq/documents/archive/Perceptions_Of_Firms_On_Business_Compliance.pdf

"On this basis the issues of most concern to the 490 respondents (the whole sample) were:

- The regulations that apply to releasing a person who no longer suits the business (46% said this was a factor that diverts or distracts them, compared to 39% who said that this factor was not a concern).
- The ACC insurance arrangements as they relate to the firm business (37% said this was a factor that diverts or distracts them, compared to 58% who said that this factor was not a concern).
- The arrangements that are needed for health and safety of employees business (32% said this was a factor that diverts or distracts them, compared to 59% who said that this factor was not a concern).
- Providing a range of employment and other data on the firm to government agencies business (30% said this was a factor that diverts or distracts them, compared to 57% who said that this factor was not a concern)...
- ...Respondents who identified 'getting consent to use land, water and air' as a factor that diverts and distracts them were most likely to be from firms that: employ more than 11 FTEs and those that employ 6-10 FTEs, export, are neither 'mature' nor 'new, intend to contract and are from the food and primary sectors."

The Report of Business New Zealand-KPMG Compliance Cost Survey in August 2003 <http://www.businessnz.org.nz/file/598/BusinessNZ-KPMGComplianceCostSurveyReport.pdf>

- “35.5% of respondents selected tax as their top compliance cost priority, followed by the health and safety in employment (HSE) (22.8%), employment relations (10.5%), and ACC (7.9%). However, when combining the respondents’ top three priorities, HSE came out on top (64.9%), followed closely by tax (60.8%), and with employment relations (47.6%) and ACC (38.7%) further behind.”
- “On an industry basis, the primary industry reported the highest compliance costs. Respondents from the Northland/Auckland and Canterbury regions reported relatively low compliance costs.”
- In terms of estimated costs the survey found that 30.1% of total compliance costs were for tax-related issues; 29.4% for employment-related issues and 24.5% for environment-related issues.

Alexander, Bell and Knowles (2003), Quantifying Compliance Costs of Small Businesses in New Zealand, University of Otago, Economics Discussion Papers No. 0406,
<http://otago.ourarchive.ac.nz/bitstream/handle/10523/980/DP0406.pdf>

- “The most commonly encountered compliance costs were those relating to tax regulations (Panel A of Table 2), employment relations (Panel B), health and safety (Panel C), checking and filing ACC premiums¹³ (Panel D), filling in Statistics New Zealand questionnaires and filing returns with the Companies Office (Panel E). All of these affected at least half of the firms in the sample.”

The most recent and comprehensive survey of compliance costs that we have seen is a report prepared by NZIER for MAF in 2007 titled Off-farm Agribusiness Compliance Costs.
<http://nzier.live.egressive.com/sites/nzier.live.egressive.com/files/07.05%20Off-Farm%20Agribusiness%20Compliance%20Costs.pdf>

- “When considered by policy area, taxation and ACC accounted for the highest total compliance costs of \$24,463. Opportunity costs accounted for almost 44 percent of this compliance burden. When opportunity costs are taken into account, Employment and OSH increased its ranking to become the policy area with the second largest compliance burden (of \$14,320). Opportunity costs accounted for a little over 70 percent of this burden.”

This is backed up by Business NZ and KPMG Compliance Cost Survey Report 2008
<http://www.business.govt.nz/companies/pdf-library/business-nz-and-kpmg-compliance-cost-survey-report-2008-215-kb-pdf>

- “The 2008 survey indicated that tax is still the dominant cost priority for businesses. The total tax priority has increased from the 2007 figures. This indicates that businesses want change in this area. Health and Safety in Employment remains in second place and the Employment Relations Act is also a priority for businesses. Both of these areas have dropped slightly in the amount of people who rate this as the top priority from previous years.”
- It should be noted that these surveys focus on on-going compliance costs. In this regard they probably underestimate the compliance costs of obtaining a

resource consent. This distinction between one-off initial costs (and any “renewal” costs for the consent – sometimes up to 35 years later) and on-going costs appears to be an important issue that deserves more attention.

- A further point for consideration is that in 2012, the Northland Chamber of Commerce asked businesses in Northland to provide them with examples of the difficulties experienced in obtaining resource consents. They received only four responses – of which only one was a resource consent related issue. Two responses were simply supporting the concept of seeking feedback on this issue and the third was concerned about parking restrictions (a non-resource consent issue).
- Northland Regional Council is also working with our local economic development agency, Northland Inc., to assess the extent to which resource management issues are considered an impediment to business development. Questions covering resource management issues have been included in a business assessment questionnaire that Northland Inc. use as part of their business health check, which also covers areas such as finance, human resources, growth potential, etc. We are meeting with Northland Inc this month and can forward findings to the Commission.
- While the reports we have studied do not come to the same conclusions as the Commission’s study, we agree that councils and central government should be doing more to measure the cost impact of local and central government regulations, including devolved regulation and delegated.
- A useful recommendation of the report would be for some tools to be made available to local government to assess the cost impact of regulations. For example, we tried in early 2012 to contact the then Ministry of Economic Development about their Business Cost Calculator which helps calculates the compliance costs of regulatory proposals on business, and can be used to measure, monitor and report on compliance costs over time. Apparently it is accessible only to employees of New Zealand government agencies through the Public Sector Intranet. Unfortunately we received no response from Ministry of Economic Development. If this tool works at the central government level and has proved useful, perhaps it should be made available

to local government too as part of package of tools to achieve better regulation.

- Northland Regional Council promotes economic development through its council-controlled organisation, Northland Inc., which itself in turn supports the Northland Economic Advisory Group.
- Council has an Investment and Growth Reserve with can fund specific development projects (and there are criteria and business case assessments that apply to this Reserve) and provides some operational funding to Northland Inc. We also use our own investments and return on those investments to promote economic development within Northland. For example through strategic property investments.
- We are developing quarterly economic reporting and our economist plays a significant role in council policy, including specific regulatory assessments such as those required by the Resource Management Act (e.g. section 32).

3.3. Q8.1 - What are the benefits and costs of cooperation? Are there any studies that quantify these benefits and costs?

Regional Policy Statement / One Plan

- During 2009 we investigated the potential for a one plan approach to regional resource management in Northland. The following categories and assessment criteria were used to asses a range of options from the status quo through to a fully combined (district and regional) One plan.

4.

Category (and explanation)	Assessment Criteria
<p>Decision making <i>This category captures potential differences in the way decision making occurs</i></p>	<ul style="list-style-type: none"> • Decision makers • Hearings / deliberations • Appeals and consent orders
<p>Administrative complexity <i>This category captures potential differences arising from the way in which key administrative elements are established and managed</i></p>	<ul style="list-style-type: none"> • Roles • Consultation • Submissions • Hearings • Variations / Changes • Monitoring • Fees and charges • IT and Mapping / GIS • Shared servicing

<p>User-friendliness <i>This category captures potential differences arising for the main user-groups as a consequence of plan integration</i></p>	<ul style="list-style-type: none"> • Definitions / interpretations • Overlaps and duplication • Customer focus
<p>Integration <i>This category captures potential differences arising from the way in which key elements required for an integrated management system are managed</i></p>	<ul style="list-style-type: none"> • Resource management • Technical / specialist resources • Decision making • Issues / resource gaps / overlaps • Cross-boundary • Outcome focus
<p>Development costs <i>This category captures potential differences in the way in which costs associated with developing a plan (up to formal notification) arise</i></p>	<ul style="list-style-type: none"> • Plan preparation • Plan changes and variations • Hearings and appeals
<p>Implementation costs <i>This category captures potential differences associated with the way in which direct costs of implementing the plan arise</i></p>	<ul style="list-style-type: none"> • Educational / promotional • Notification • Review • Professional training
<p>Timeframes <i>This category captures potential differences arising from timeframe implications</i></p>	<ul style="list-style-type: none"> • Operative status • Resource consents
<p>Statutory linkages <i>This category captures potential differences in the way in which functions across key other local government statutes are integrated</i></p>	<ul style="list-style-type: none"> • Relationship to LTCCP / AP / Community outcomes/ RLTP • Responsibilities under LGA • Responsibilities under Building Act

- Of the options studied the new one plan was the most favourable option for nearly all the decision making drivers. (If costs/timeframes were the only driver, then it ranked slightly lower due to the length of time it would take to complete the whole process and the costs involved in starting afresh within the current planning process.)
- Due to the lack of political buy-in within Northland district councils, we could not pursue a one plan approach to all regional resource management planning. This in itself represents an opportunity for improved regulation forgone.
- Instead we proceeded with proposing a new Regional Policy Statement for Northland to set an improved and consistent framework for resource management that took a balanced approach to both economic and environmental consideration, including considerations of affordability and the costs of regulation in our section 32 analysis.

- One of the positives to emerge from the development of the Proposed RPS was that all councils agree to work together on it and a committee of council with regional and district councillors was established to oversee the process. While this has not eliminated submissions from individual district councils from the process, there has been significant support for many of the issues, objectives, policies and methods in the Proposed RPS and a narrowing of the areas of contention.
- We also ran a comprehensive stakeholder process prior to the notification of the Proposed RPS (including workshops and meetings with stakeholders, and included time for comments on an Issues and Options paper and a Draft RPS). This collaborative process has ensured that there was much support for the Proposed RPS and again a narrowing of the areas of contention. (The main areas of submitter concern relate to:
 - the mapping of the coastal environment, (outstanding) landscapes, natural features and natural character within the coastal environment, and generally these are at an individual property level. One of the key concerns is that the RPS does not contain rules and there is a level of distrust amongst submitters that the district councils will promulgate rules that will deny landowners the ability to reasonably use their land.)
 - what isn't included in the Proposed RPS – e.g. genetic engineering / GMOs and prohibitions on mining.)
- While it is difficult to quantify any savings at this stage, and acknowledging we have still received many submissions, we think that the process of refining the material to be included in the Proposed RPS with stakeholders and with political support from the district councils has been beneficial, has reconciled competing views, priorities and accountabilities (both at the district and regional level, as well as between stakeholders) and has led to positive planning, maximised co-ordination, and will lead to more consistent planning throughout the region. Cross boundary issues and inter-council responsibilities are also clearly addressed.
- We intend to review and combine the remaining regional plans once a decision on the Proposed RPS has been made and there is an intention to

work with the district councils on combined plan changes around significant resource management issues, such as the rules for outstanding landscapes etc., to be included in district plans.

- It is interesting to note that the Government is now consulting on fewer resource management plans and the potential for a combined plan for districts (or larger areas such as region if that is agreed).
- It is likely that our current Proposed Regional Policy Statement could “slot into” such a plan or plans, but the initial lack of buy-in to working together on a one plan (and simultaneously developing the district rules to implement that relevant objectives and policies) can be seen as “cost” Northland could have avoided. (In that sense, collaboration from the outset may have been even more cost effective than originally thought.)

Hikurangi Swamp

- The Hikurangi Swamp Drainage scheme crosses two district council boundaries (Whangarei – 85% and Far North – @ 15% of the land area). Rates can only be collected by the territorial authority responsible for the district in which the property is situated. The scheme is administered by the Whangarei District Council. That means, that Whangarei District Council is unable to rate properties in the Far North District.
- In previous years, the Far North District Council set a rate based on an expense (payment to Whangarei District Council) equivalent to the rates required for the Hikurangi Swamp. Far North District Council have refused to continue this arrangement and the Whangarei District Council have not been able to find a way to “force” collection. The amount payable by the properties in the Far North District is around \$14,000 plus GST for the 2012-2013.
- Some of those within the scheme are now looking to the regional council to take over running the scheme (at least in part) to ensure that all within the scheme are paying (although there are other issues with the scheme that some feel are also unresolved.)

3.4 Q10.1 - Q10.5 Monitoring and Enforcement

- We use a risk based approach to compliance monitoring – ranging from the way we respond to incidents to the individual compliance monitoring programmes, for example:
 - for Farm Dairy Effluent. Our regime is among the most comprehensive in New Zealand. It is based around on-the-ground visits to every single dairy farm in the region (978 last year) without any prior notice during the busy milking and wetter part of the dairy season, from mid-August to late November, when any problems are most likely to occur. This area of monitoring is prioritised by council given the potential adverse effects if things do go “wrong”, the agreed national programme for monitoring, and the importance our councillors give to efforts to improve regional water quality. This monitoring is supported by one-on-one follow-up visits to all significantly non-compliant farms, one-on-one visits to farms where requested by their owners, the development of effluent publications and resources for farmers, the promotion of Effluent Management Plans tailor-made to each farm, and the council taking a lead role in the Northland Effluent Improvement Project Group.
 - Major discharges, including those from large scale industrial sites and municipal sewage treatment systems, are monitored more frequently than those from smaller industrial sites and sewage treatment systems.
 - We monitor around 310 resource consents which have permits to discharge into the air. Many of these consents are for small-scale sewage treatment and disposal facilities which need appropriate controls placed on air emissions to prevent odour problems from arising. We focus our monitoring on approximately 90 discharge to air consents (based on the risks posed by the activities) to ensure that there are no significant adverse effects arising from the exercise of these consents.
 - Coastal Structure monitoring, and the monitoring of small scale domestic sewage discharges and minor water takes (lower risk, lower frequency of monitoring).
 - In addition, to regular compliance monitoring of consents, each summer we test the water quality at a number of Northland’s popular coastal and freshwater swimming spots to check its suitability for swimming. Testing starts in late November each year and can continue for up to 18 weeks through to March the following year. This picks up water quality issues that can be related to consents, permitted development and the general

state of our freshwater (including the effects of rainfall), which is also relevant for assessing our water quality against national guidelines.

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- At times our monitoring efforts and priorities change, due to the need within a small council to use resources wisely. For example last year we dropped some routine water quality monitoring where we had sufficient trend data which allowed us to focus on other state of the environment and compliance monitoring work within the region. In addition, at times we need to shift our resources and programmes around to ensuring we are effective – such as when resources need to be moved from general compliance monitoring to dealing with one or more prosecutions for significant non-compliance.
- 10.5 Infringement notice fines – There is always room for re-examining whether the level of fines available (and also those imposed) are acting as a sufficient deterrent to unlawful behaviour. While the 2009 amendments have provided for higher fines for serious offences, fines of between \$300-\$1000 e.g.
 - contravention of section 9 RMA regarding restrictions on use of land - \$300;
 - contravention of section 12 RMA regarding restrictions on use of coastal marine area - \$500;
 - contravention of section 13 RMA regarding restriction on certain uses of beds of lakes and rivers) - \$500;
 - contravention of section 15(1)(a) and (b) RMA discharge of contaminants or water into water or onto or into land where contaminant is likely to enter water - \$750

are at the low end of the scale given the range of adverse effects, offences and offenders involved. While infringement notices (and fines) were introduced as an additional enforcement tool to deal with more minor breaches/offences (i.e. those that do not warrant prosecution), the level of fine has not increased since they were introduced in 1999.

4 Funding

- While not addressing a specific question there are significant wider cost benefit issues for local government the arise from discussions of the

allocation of regulatory responsibilities in chapter 4 and the principles for funding that are included in the report in chapter 5.

- The lessons are also applicable to the delivery of other non-regulatory services. For example, small communities such as those in Hihi, in the Far North, are at a disadvantage due to their population size when it comes to being able to afford appropriate levels of sewerage treatment if the capital investment is raised, as it is in Hihi, through targeted rates. There needs to be a careful examination of not only who benefits but also what needs to be done to secure policy objectives, such as clean water, and efficient service delivery. Sometimes it is necessary for a wider community to pay to ensure the policy objectives and efficient service delivery is achieved.

5 Conclusion

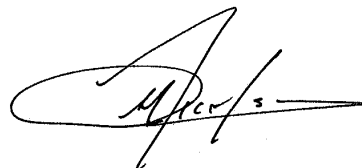
Thank you for the opportunity to feed further information into the inquiry. The draft report shows a significant evolution in the commission's thinking on local government regulation and we consider it is heading in the right direction.

One recommendation we would like to see the commission make in its final report is that central government shares with local government those tools that it uses to assess the cost impact of regulations, for example, the Business Cost Calculator.

Signed



Craig Brown
Chairman



Malcolm Nicolson
Chief Executive Officer