



File Ref **2/0250**
To New Zealand Productivity Commission
From Manawatu District Council

Date 12 September 2012
Subject **Submission to The Local Government Regulatory Performance Issues Paper
July 2012**

Background

The government has asked the Productivity Commission – an independent Crown entity – to undertake an inquiry into local government regulatory performance, including an appropriate split between local and central government regulatory functions and opportunities to improve regulatory performance in the local government sector.

The Commission has produced an issues paper. This submission is formatted to align with the questions in the issues paper.

Key principles

Manawatu District Council believes that the three key principles to be considered are as follows:

1. A set of principles for regulatory assignment between central and local government must be established. Historically there has been lack of agreement between central and local government and we believe that decisions have been made without adequate or representative consultation.
2. Implementation of regulatory functions needs to be supported by effective training and guidance. Adequate and appropriate funding must also be considered and allocated.
3. The Submission process for the review of regulatory functions to central government must be open and effective. Local authorities must work in partnership with central government.

Responses to the questions from the issues paper

The commission's approach

Q1 What is the relative importance of the range of the regulatory activities local government undertakes? Where should the Commission's focus be?

The community relies on a range of regulatory activities to support and maintain safety and wellbeing.

The commission's focus should be on the best fit for regulatory function, local or central government.

We would like to see a principles based framework established to ensure that local government and sector expertise is considered when legislation and regulations are being developed or reviewed.

Q2 What are the main economic, social, demographic, technological and environmental trends that are likely to affect local government regulatory functions in the future?

Affordability, demographic change to high technology focus and environmental change eg, climate change

Local Government and regulation

Q3 Has the Commission accurately captured the roles and responsibilities of local government under the statutes in Table 2?

*Further legislation to be captured under table 2 would be:
Civil Defence and Emergency Management Act 2002
Fencing of Swimming Pool Act 1987
Historic Places Act 1993
Public Works Act 1981
Reserves Act 1977*

Q4 Are there other statutes that confer significant regulatory responsibilities on local government? What, if any, regulatory roles of local government are missing from Table 2?

Cannot see any regulatory roles missing from table 2

Q5 Are there any local organisations with regulatory responsibilities that the commission should consider?

*Police
New Zealand Fire Service – Rural Fire versus NZFS
Civil Defence and Emergency Management*

Regulatory variation

Q6 Do the different characteristics and priorities of local authorities explain most of the difference in regulatory practice across local government?

No – it is our opinion that differences in regulatory practice occurs because Territorial Authorities are often left to develop individual policies and frameworks under the legislation. The lack of adequate training or guidance documents compounds the problem.

Q7 Are community expectations to 'do more' about social issues leading to different approaches to regulation between local authorities?

Local authorities are under pressure from communities to meet their expectations relating to social issues. Local authorities are seen as the 'face' of community and 'accessible' compared to central government.

These expectations do not generally lead to different approaches to regulation, however responding to social issues derived from community expectations may result in reallocation of resources from the regulatory environment.

Q8 To what extent are local preferences a source of regulatory variation in New Zealand? How far should councils, when implementing a national standard, have discretion to reflect local preferences in bylaws?

Councils should have the ability to deal with local preferences, but should be strongly linked to principle 1 above.

Q9 Are there areas of regulation where local and central government regulation appear to be in conflict? If so, how far should such conflicts be accepted as a consequence of the diversity of preferences?

There are areas of misalignment between central and local government such as a district plan having a 10 year focus whereas government and policy changes occur at a faster rate.

Q10 Does the way in which a local authority choose to exercise its regulatory powers – through bylaws or through its District Plan – lead to differences in effectiveness and outcomes for communities?

Problems have arisen over differences between Territorial Authorities who share boundaries. In particular relating to variations in District Plans for development. This can lead to situations where certain activities are permitted on one side of the road and not on the other. This leads to an inconsistent built environment and frustrations for developers and the community.

Q11 In what ways has the Treaty of Waitangi influenced how local authorities have undertaken regulatory functions delegated to them by the Crown?

Not aware of any

Q12 What does the variation mean in practice – for maori, the local authority and for the regulation of the resource?

No comment

Q13 Are there other significant resources of variation in local authority regulatory practice than those described in this chapter?

No

Q14 Can you provide examples of inconsistencies in the administration and enforcement of regulations between local authorities?

EQP Buildings Policy is a good example where Territorial Authorities have taken very different approaches in terms of identification of buildings, policy strategies and enforcement. District Plans are the other obvious example.

Q15 Do these inconsistencies impose extra costs on businesses? If so, are these extra costs significant?

Development contributions legislation is too broad, thereby producing large differences in outcomes and costs for developers between local authorities.

Q16 To what extent does variation in regulatory practice matter?

Inconsistencies lead to confusion, mistrust and resistance.

Territorial Authorities where residents and businesses interact across boundaries would benefit from a consistent approach to enforcement – ie MDC and PNCC.

We suggest that the main 'focuses' and formatting of the district Plan could be consistent nationally and the outcomes could be specific to the community.

Q17 Can you provide examples of regulatory innovation by local government?

No

Q18 Is the innovation specific to a particular local authority and its unique circumstances, or could it be adopted more widely?

No comment

Q19 What mechanisms or incentives are there for local authorities to share innovations (or experiences with 'failed' innovations) with others?

No comment

Q20 What factors encourage (or deter) local authority innovation? (eg, the (in)ability to capture the cost savings from innovation)

No comment

Who should regulate?

Q21 Has the commission captured the advantages and disadvantages of centralisation and decentralisation for each of the factors?

We believe that the level of risk to life safety and health and liability needs to be recognised. Implementation issues should also be a consideration.

This is not an exact science. There needs to be good partnership and consultation between central and local government.

Q22 Which of the factors discussed in this chapter are the most important for allocating regulatory functions locally or centrally?

*Level of risk
Capacity and capability
consistency*

Q23 Which other factors might be important for considering whether a regulatory function should be undertaken locally or centrally?

No further comment

Q24 Are the factors discussed above helpful in thinking about whether a regulatory function should be relocated?

Yes

Q25 In the New Zealand context, are there regulatory functions that need reconsideration of who (central, local, community) carries them out?

It would be logical that legislation impacting on other central organisations should be driven centrally ie EQP and EQC/ACC.

We also believe that there needs to be more clarity on the responsibilities for natural hazard functions especially between TAs and regional councils.

Getting regulation right

Q26 Do local authority significance policies allow for adequate consideration of the present and future costs and benefits of local government regulation making?

Yes, if the originating piece of legislation is from Local Government.

No, if the legislation is thrust upon Local government.

Q27 Does the local government regulation-making process lead to good regulation? If there is evidence to show that it does not, how could this process be improved?

Yes, we believe that there is a robust process in place allowing for decisions to be made based on an analysis of the options available. It is often not clear on what basis central government regulation is made.

Q28 Do you have examples of regulatory responsibilities being conferred on local authorities with significant funding implications?

- *National Environment Standard for Assessing and Managing Contaminants in Soil to Protect Human Health*
- *The Building Act 2004 and BCA Accreditation Regulations*
- *The sale of Liquor Act 1990 – this has significant responsibilities with an insufficient cost recovery process.*
- *LGA 2002 – Long term plan requirements*
- *Health Drinking Water Amendment Act*

Q29 How might central government regulation-making better take account of the costs and impact on local authorities from the delegation of regulatory functions?

More effective consultation across large, provincial and small Territorial Authorities would assist central government to understand the real impact. The consultation process is often not representative.

Listening and acting on submissions.

More realistic timeframes to communicate and to consider submissions. They are often rushed through.

More transparency from central government in terms of the scope and motives.

Honesty and transparency is very important.

Q30 How might central government better work with local authorities on the design, implementation and funding of delegated regulatory functions?

Refer to principles above

Q31 How could the RIA framework be improved to promote a fuller understanding of the impact of devolving new regulatory functions to local authorities?

Manawatu District Council has never received an RIA to complete. The Regulatory Impact Analysis fails to require departments to consider any costs likely to be faced by councils when dealing with a delegated regulatory function. (We would note that Fiscal Impact Statements never consider costs to local authorities, as illustrated by the FIS prepared for the current Local Government Bill). DIA's guidelines, "Policy development guidelines for regulatory functions involving local government" should be incorporated in the RIA for consideration when delegated responsibilities are under consideration.

Q32 How successful has the guidance document Policy development guidelines for regulatory functions involving local government been in improving the consistency and coherence of Central government policies that involve local government?

Not aware of this document

Q33 To what extent is the effective implementation of regulations delegated to local government hampered by capability issues in local government? Do capability issues vary between areas of regulation?

Access to legislative interpretation by the legislating department is appalling. We have often been advised to consult with our lawyers when requesting clarification from central government departments.

Excessive costs for legal advice and prosecution costs for TAs is often prohibitive. The benefits of regulatory functions or changes to regulation are not well communicated and promoted at central or local government level.

There is also a disconnect between 'industry' capability versus regulatory compliance, eg Licensed Building Practitioners.

Q34 Can you provide examples of regulatory cooperation and coordination between local authorities or between central and local government, and describe successes and failures?

Palmerston North City Council (PNCC) contract Building Services to Manawatu District Council (MDC).

It is successful for the following reasons:

- *objectives, culture and vision are aligned*
- *Clear procedures are in place*
- *Clear contract expectations are set and there is good management of service delivery.*
- *Good communication is in place*

The success is supported by a very structured accredited framework. There are also clear contractual KPI's in place and regular meetings to manage service delivery. We are also relatively close geographically which is advantageous.

A joint IQP register has recently been established between MDC & PNCC. This is successful due to clear, robust process and good communication.

Failures occur where there is a lack of clear procedures/structure, clear contractual expectations, good communication to manage service delivery and vision alignment.

Q35 What types of regulatory functions more readily lend themselves to coordination to improve regulatory performance?

We believe that any regulatory function can be coordinated if the above success factors are addressed.

Q36 What are the most important factors for successful regulatory coordination?

See above

Q37 Are opportunities for regulatory coordination being missed?

Yes

Q38 What are the main barriers to regulatory coordination?

Culture and willingness to work together

Q39 Are there examples in New Zealand where local authorities mutually recognise each other's regulations?

Not that we are aware of

Q40 Which local government regulatory areas (eg, planning and land use, building and construction, environmental regulation, public safety and food safety) impose the greatest unnecessary regulatory burden on individuals and businesses?

The question should be "What is considered unnecessary?"

Latest Building Act changes and NES for assessing and managing contaminants in soil to protect human health impose large costs on individuals but are considered necessary to improve human safety and health.

Historically where regulation has failed there is a regulatory reaction to compensate for lack of skill, accountability and risk/liability management.

There appears to be a general lack of accountability amongst professionals in New Zealand and the ACC system and joint and several liability assists this culture.

There will always be the perception that there is an unnecessary burden on individuals and businesses in these instances.

If the regulation is considered unnecessary then we need to ask "why are we doing it?"

Q41 In what ways are these regulatory areas unnecessarily costly (eg, are they too complex, prescriptive or unclear)?

No comment

Q42 Are there particular examples where local government approaches to regulatory responsibilities are especially effective at minimising unnecessary compliance costs for individuals and businesses?

No

Q43 For which aspects of the regulatory process (eg, approval, monitoring, enforcement and appeals) could compliance costs to business be reduced without compromising the intent of the regulation? How could this be done?

If the legislative requirements are being administered accurately and efficient processes are in place, there are not many areas to cut costs.

There are however excessive costs with the involvement of people in certain legislative processes eg hearings, appeals.

Q44 How well are the principles on which the local authorities are required to base the funding of regulatory activities applied?

The levels of service assumptions and public private splits are applied well within local authorities. The general community perspective relating to regulatory costs will always be seen as too high as discussed previously.

Q45 Are the examples of where cost recovery is reducing compliance with regulations and reducing their effectiveness?

Councils are very aware of community expectations around costs and there is a limit to how high fees can be pushed. Inevitably the ratepayer pays the balance.

Q46 To what extent are councillors involved in the administration and enforcement of regulation? Has this raised issues in regard to the quality of regulatory decision-making and outcomes?

It seems logical that the public – private split would be consistent across New Zealand for mainstream legislation affecting safety and health but in reality the differences are vast. This can be attributed to political influence and culture within local authorities.

Q47 Are there any other governance issues, which impede the efficiency of local government regulation?

Local authorities are subject to Councillor's whims and changes in councillors within relatively short periods of time. This leads to changes in direction and priorities.

Q48 Are the current processes for reviewing existing regulation adequate? Could they be improved?

There does not appear to a consistent process for reviewing existing legislation.

Q49 In which regulatory areas are there good regulatory review mechanisms? In which regulatory areas are there poor or insufficient regulatory mechanisms?

No comment

Q50 Who should undertake regulatory review – the responsible agency or an independent body?

Responsible agency

Q51 Is there a sufficient range of mechanisms for resolving disputes and reviewing regulatory decisions of local authorities?

Yes.

Q52 Are some appeal mechanisms used excessively, frivolously or for anti-competitive reasons?

Yes, RMA

How should regulatory performance be assessed?

Q53 In what areas of local government regulation is performance being monitored effectively?

RMA state of environment report

BCA Accreditation

Local authorities also monitor their performance via performance measures included in the Long Term Plans and annual reports. These are assessed by the Office of the Auditor General.

These areas have an effective feedback loop.

Q54 Are there areas of local government regulation where performance is not being monitored and assessed?

In general, most areas are assessed

Q55 Is the current monitoring system effective in providing a feedback loop through which improvements in the regulatory regime can be identified and rectified? What examples are there of successful improvements to a regulatory regime?

No comment

Q56 What challenges or constraints do local authorities face in developing and sourcing data for better practice regulatory performance measures?

Gathering information from different agencies is very time consuming.

There is no central place for sourcing information.

Q57 Are there examples where local authorities are using better practice performance measures?

Not aware of any

Q58 What kind of regulatory performance measurement would add maximum value to local authorities, their communities and New Zealand?

We believe that it is important to evaluate and feedback ineffective regulatory implementation against what was intended by the legislation.

Q59 What regulatory performance indicators are most commonly used by local authorities? Can you provide examples of good input, output and outcome measures for regulations you have experience with? What makes them good indicators?

The most commonly used mechanism for regulatory performance indicators is a customer survey.

The quality of the questions is important for good outcomes.

Surveys are also inconsistent across local authorities.

Q60 What kind of centrally provided data would enhance the local government regulatory monitoring regimes?

Clear guidelines, advice or a best practice framework

Q61 Are there quality issues in existing nationally available data sets that would need to be resolved before developing national performance measurement regimes?

Not aware of any

Q62 What are the specific characteristics of individual local authorities that make local authorities comparable with regard to their regulatory performance?

No comment

Q63 Of the performance indicators commonly collected by local authorities, do any naturally lend themselves to systematic benchmarking of regulatory performance?

No comment

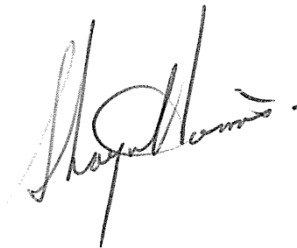
Q64 What new performance indicators could meaningfully measure the regulatory performance of local government?

No comment

Q65 Is there a role for a third party evaluator to measure customer service standards in local authority regulatory functions?

Customer service standards in relation to regulatory functions is very difficult to measure accurately due to culture towards regulation and lack of appreciation for its purpose as previously mentioned.

It is important to measure the responses from a representative group who have been affected by the regulatory function.



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