

12 September 2012

Inquiry into Local Government Regulatory
Performance
New Zealand Productivity Commission
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Dear Sir/Madam

Local Government Regulatory Performance Issues Paper - July 2012

Thank you for the opportunity to comment on the Productivity Commission's Local Government Regulatory Performance Issues Paper (the 'issues paper'). Greater Wellington supports the intent to improve regulatory performance - we consider that there are ways to reduce the cost of regulation for councils, communities and businesses, particularly in relation to implementation of the Resource Management Act 1991 (RMA).

There are several matters we would like to focus on in response to the issues paper. These are:

- The focus of the inquiry
- Local government roles and responsibilities
- Improving the plan making processes
- Effective monitoring and assessment of performance
- Other matters.

Focus of the Inquiry

The issues paper asks where the Commission should focus its inquiry (Question 1). Greater Wellington believes that a major focus of the Commission should be on the effectiveness of regulatory processes in the RMA. While regional councils are responsible for a range of regulatory functions, the RMA activities are by far the most time and resource intensive. We include in the definition of RMA activities policy development, consenting, monitoring and enforcing, and associated science and research activities.

The issues paper asks (question 2) the main trends that are likely to affect local government regulatory functions in the future. We believe they are:

Economic: The government has stated that lifting the rate of economic growth is its highest priority. Councils in the Wellington region have recognised, through the Wellington Regional Strategy, that we need to be more ‘business friendly’. The perception that councils may not be ‘business friendly’ is perhaps due to our regulatory responsibilities. While the integrity of our regulatory processes needs to be retained, some of projects and processes we will be working on are:

- Standardising processes to improve consistency and certainty for business, e.g. improving consistency of district plan processes across the region.
- Providing a dedicated and coordinated response to business projects, initiatives and needs that span political boundaries e.g. the Ultra-fast Broadband Initiative, and having sufficient land for a wide range of industrial and commercial uses in the right locations and with high quality connections.
- Strengthening links with key regional businesses and economic stakeholders, and collaborating with companies and property developers to facilitate the design and build for the next generation.
- Developing and providing inventories of information about the region required by existing and incoming businesses e.g. land available for industrial use, appropriate buildings and science capability.

Demographic: The changing demographic, in particular, changes to ethnic composition and the ageing population are important trends that local government need to consider. These demographic trends have implications in a range of areas such as mobility, access to services, location of infrastructure and the labour market.

Technology: Technological advances are increasing competition and changing the ways of doing business. Regulation needs to be supportive of such advances.

Environmental: The two main environmental issues or trends that likely to affect local government in the future are the management and use of water (allocation, quantity, quality and its relationship with land use) and managing the risks arising from climate change, including sea level rise.

Local Government roles and responsibilities

Greater Wellington is concerned that the role of regional councils is not well understood or articulated in the issues paper. Regional councils have different roles and responsibilities to territorial authorities and we believe that the Commission needs to both understand and be clear which level of local government they are referring to when investigating and making recommendations - regional councils, territorial authorities or both.

Table 2 of the issues paper contains significant gaps in terms of the key roles and responsibilities of regional councils. The following table provides information about those regulatory responsibilities that were not included in the document.

Legislation and Agency	Regulatory responsibilities of local government
Building Act 2004 and Building (Dam Safety) Regulations 2008	<p>Section 161 requires regional councils to adopt a policy on dangerous dams.</p> <p>The Building (Dam Safety) Regulations 2008 prescribe the criteria for dam specification and came into force on 1 July 2012.</p> <p>Regulations that prescribe the standards and criteria for determining moderate and threshold event earthquakes and floods in section 153 and 153A of the Building Act are yet to be finalised. These standards and criteria are key components of the Dangerous Dams Policy.</p>
Land Transport Management Act 2003	No direct regulatory effect but does direct funding and investment through regional land transport strategies.
Local Government Act 2002	<p>We note that the issues paper refers only to territorial authorities when discussing the power to make bylaws under the Local Government Act 2002.</p> <p>Section 149 of the Act gives regional councils powers to make bylaws in relation to parks and forests that the regional council owns or controls; and water supply and flood protection work undertaken by the regional council.</p>
Maritime Transport Act 1994 and LGA 2002	<p>In addition to the functions identified in the issues paper, regional councils also have the power under the Local Government Act 1974 to regulate shipping movements for the purpose of navigational safety. Regional councils can do this by making bylaws and through powers exercised by appointed harbourmasters.</p> <p>In addition, regional councils have a power and a corresponding duty to erect and maintain aids to navigation, remove obstructions and impediments to navigation and to execute and maintain works to improve navigation.</p>
Resource Management Act 1991	We note that the issues paper refers only to city and district councils and district plans in relation to regulatory functions under the Resource Management Act. Under the RMA regional councils are required to prepare Regional Policy Statements and Regional Coastal Plans. Regional councils may also prepare other regional plans for a range of other functions (refer to section 30 and section 65 of the RMA). All regional councils do prepare such plans and they are critical

	documents for resource management throughout the country.
Reserves Act 1977	Section 65 gives the administering body of any recreation reserve the power to pass bylaws to control public access and movement. This includes regional councils.

We note that the issues paper does not distinguish between delegated regulatory functions and devolved regulatory functions. The difference lies in the extent of discretion a local authority has to administer the responsibilities or the extent to which it can create its own regulatory intervention. For example, the RMA devolves the responsibility for plan development, subject to any national prescription, to local authorities.

The RMA is written in a way that allows a person to do whatever they choose with their land unless there is a rule in a plan that prohibits it (or requires resource consent). However, subdivision and activities in the coastal marine area and the beds of lakes and rivers are restricted under the RMA - a person may not undertake any activity in relation to these resources unless there is a rule in the plan which allows it or they obtain resource consent. Many rules in regional plans therefore allow people to undertake activities they would not otherwise be able to carry out without the need for resource consent. In looking at local government regulatory performance, these enabling provisions need to be acknowledged and considered.

Improving the plan making process

Plan development process

Greater Wellington is in the process of reviewing our five regional plans¹. The intention is to combine them into one integrated and streamlined plan, and to achieve resolution of the most contentious issues by a collaborative process with key stakeholders. The greatest threat to not achieving these outcomes is the potential for lengthy appeal processes.

The plan development process under the RMA Schedule 1 is a lengthy process, of which a considerable portion is the time taken to resolve appeals. Appeals are lodged with the expectation that further modifications will be made between the parties after the hearing process. Greater Wellington considers that changes to the Schedule 1 process, including limiting of appeal rights, should be considered by the Commission to support persons performing functions and exercising powers under the Act to achieve timely and effective processes. Such a change would need to be in tandem with a more collaborative process for the development of plans involving all interested parties. This was proposed in the second Land and Water Forum (LAWF) report and is the approach currently being undertaken by Greater Wellington in our plan reviews.

¹ Regional Coastal Plan, Regional Freshwater Plan, Regional Soil Plan, Regional Air Quality Management Plan and Regional Plan for Discharges to Land.

National guidance

Many of the problems with the RMA, such as lengthy processes and lack of clarity in outcomes, have occurred as a result of lack of national guidance. Advice and direction from central government was part of the premise with which the RMA and the devolution of responsibility to local government was bounded. In the absence of such guidance, the system has become increasingly adversarial as both authorities with functions under the Act and those wishing to either use or protect natural resources sought redress through the Courts.

We note that, in addition to national guidance, there is also the potential for streamlining of local government regulation through greater use of national environmental standards (NES). There has been very limited use of these provisions over the years, and their use has not been very effective. We believe that there is scope to use these provisions to regulate activities that do not need to be catchment or region specific, e.g. controlling stock access to streams and providing tools to manage stock effluent disposal.

Integrated or spatial planning

Greater Wellington considers that district and regional planning requires a strategy that provides high level guidance on what the various statutory planning activities are aiming to achieve, and ensuring the integration of functions under the RMA, Local Government Act (LGA) and the Land Transport Management Act (LTMA). The Auckland Plan provides this strategic guidance within Auckland, but there is currently no process for this to occur in other regions. Clear strategic direction would ensure the regional, district and other local authority plans and policies are aligned and co-ordinated within the region, removing any duplication of activity as well as reducing the ability for extensive litigation and all levels of the planning process. It could also allow better alignment of environmental, economic, social and cultural objectives.

Such a structure, in combination with the changes suggested to RMA Schedule 1 above, have the potential to significantly reduce the costs of the RMA planning process and provide a comprehensive and effective long-term strategy for regions' growth and development.

Governance

Spatial planning appears to be the answer to many of the land use and other planning issues we face, but the link between the policy development/planning and implementation is also important. We can observe from Auckland that the spatial planning regime looks to be successful, largely because the development of policy occurs in the same organisation as will be implementing it.

As discussed above, Greater Wellington is very interested in the possibility of spatial planning at a regional scale. Currently, this would have to be done either by the regional council (and would rely on voluntary implementation across the region), or all the region's nine councils working collaboratively and jointly signing off the final plan. Our experience has been that preparing plans in a collaborative way is a difficult and time consuming process, and the resulting plan is invariably compromised

because of the competing interests of the nine councils signing it off. Relying on voluntary implementation by nine agencies is also patchy and commitment to the plan inconsistent, even when there is agreement to the document.

It is our view that spatial planning as in Auckland could not be replicated in the rest of the country, and certainly not in Wellington, under the current governance arrangements.

Monitoring of Implementation and Effectiveness

The Issues Paper indicates that the Commission would like to recommend methods for reporting on regulatory performance. While we understand the need for improving monitoring of regulatory performance, it is difficult to identify simple indicators to do this. The Ministry for the Environment's (MfE) biennial RMA survey is a valuable performance monitoring system. In our opinion, this survey provides the best measure of comparative performance and information about local authority implementation of the RMA.

We note however, that the MfE survey only measures the things that can be measured, for example, the time and cost of consent processes. Such measures ignore more important issues such as whether the objectives of a regional or district plan are being met or the quality of the consent process and appropriateness of the decision. While these things can and are measured by councils at a district or regional scale, measuring outcomes on a national scale is more difficult. This is because the objectives stated in any regional or district plan are unique to that region or district, and comparison of data across regions or districts will therefore not be meaningful.

We note also that regulation is not the only means of achieving the objectives of the RMA or regional plans, and it is therefore difficult to measure the impact of regulation alone. Greater Wellington uses a range of non-regulatory tools such as education, community projects and plantings (e.g. along waterways to help manage run-off) and incentives, as well as regulation, to achieve the objectives in our Regional Policy Statement and regional plans.

Local government has never shied away from the need to put in place systems and processes that monitor performance and the delivery of legislative requirements. However, the cost and effort involved in the process, in our view, must not be disproportionate to the benefits. Multiple agencies are already involved in the audit of local government, including the Office of the Auditor-General, the Parliamentary Commissioner for the Environment, the Ombudsman, New Zealand Transport Agency, and the central government department with lead responsibility for any particular regulation. Audit, monitoring, and information-gathering demands may be made of local government with sometimes limited ability to recover the cost of these demands. This may be more of a co-ordination issue for central government agencies rather than a capability issue for councils.

Other matters

Bylaws

In contrast to territorial authorities, where bylaw making powers generally cover the control of nuisance and offensive behaviour, and protecting public health and safety, regional councils may make bylaws only in relation to: parks, forests, reserve and other land it owns or controls; flood protection and flood control works; navigational safety and water supply works.

Although bylaws are only one mechanism used by local authorities to regulate activities, they remain an important and valuable regulatory instrument. Bylaws provide local authorities a level of discretion to expeditiously and effectively respond to local needs and circumstances. The operational areas where bylaws have been most useful for Greater Wellington are in policing coastal marine areas and protecting public safety in the regional parks and forests, where our maritime police and park rangers have used them as an enforcement tool.

It should be noted that s161 of the LGA Transfer of bylaw-making power, gives territorial authorities the ability to transfer bylaw making power to a regional council or another territorial authority, and vice versa, enabling bylaws that apply to a number of different district and regions. This is a useful tool as it allows consistent measures to be taken throughout a whole region rather on a district-by-district basis, which can lead to inconsistencies and anomalies.

Dangerous dams

The issues paper asks for examples of regulatory innovation and regulatory cooperation and coordination by local government that presents opportunities for wider adoption. Section 161 of the Building Act makes regional councils responsible for identifying, consenting and certifying dangerous dams (as defined by s153 of the Building Act 2004). This is a much specialised area of building and engineering certification. Because Greater Wellington and other regional councils are not registered building consent authorities and do not possess the technical expertise to assess and issue code compliance certificates for such structures, regional councils have worked together on this matter. Several regional councils have become accredited Building Consent Authorities and they process building consents on behalf of all regional councils. While we retain administrative functions and overall responsibility for the building permit process, Greater Wellington has transferred these specific powers to Environment Waikato.

Conclusion

Greater Wellington supports the intent to improve regulatory performance and believes that there are ways to reduce the cost of regulation for councils, communities and businesses, particularly in relation to implementation of the RMA.

While much of the work being undertaken as part of the Government's 'Better Local Government' programme is outside the remit of the Productivity Commission, co-ordination of each of the elements of the eight point reform programme is essential. Greater Wellington therefore encourages the Commission to consider how this work programme links in with the other reviews.

Greater Wellington would welcome any opportunity to be involved in discussions about the matters raised in this submission.



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