SUBMISSION

"TOWARDS BETTER LOCAL REGULATION"

DRAFT REPORT - DECEMBER 2012

General

This is a comprehensive and thought-provoking report which clearly sets out the present difficulties around the formulation and enforcement of local regulations and has some astute recommendations for measures to bring about improvements. Congratulations to the Commission on this achievement.

I hope for success in its being able to persuade those with the authority to implement these recommendations, that they should at least consider them, and do so with an open mind.

My submission to the Commission's Draft Report, along with those of a number of other submitters, dealt with the relatively little access that Territorial and Regional Councils have to include Infringement Offence provisions in local regulations (bylaws). The need for them to be more readily available is dealt with admirably in the report. Thank you for this input.

The Central Government/Local Government Relationship

The Draft Report indicates the existence of a less than harmonious relationship between local government and central government and suggests that this is mainly because of the latter's almost "master/servant" way of dealing with local government.

From the viewpoint of someone who has worked in local government for more than 25 years, I agree with this verdict in the case of head office people. However, I cannot say the same about various government departments that I have dealt with regional and district level. My experience has been that people are very approachable, helpful, and not at all condescending at that level in central government.

Although I do not have a lot of contact with central government agencies at a head office level, one experience is perhaps illustrative of the type of central government attitude to local government that the Draft Report refers to.

I have been the Returning/Electoral Officer for South Waikato District Council since 1995. In 2001 the Local Electoral Act was enacted. Shortly afterwards I had to conduct a by-election, so it was necessary for me to study the new Act very carefully for any changes in electoral procedure. In the course of this, I came across a new provision that had, as an unintended consequence, done away with a longstanding right for any candidate to be able stand for both Mayor and Councillor for the same Council at the same election.

Such a fundamental change had not been signalled in the lead-up to the new legislation, so it was reasonable to assume that it had been a mistake, an entirely unintended consequence arising from a provision that had been introduced for another entirely different purpose.

Having discussed the situation with the Mayor and senior managers of the Council, it was decided that we should try and get the "offending" provision modified to restore the status quo. I contacted a reasonably senior manager in the administering government department, to be told that they would only look at it if supported by a legal opinion. This is despite my then experience and training as a lawyer and electoral officer. The legal opinion effectively comprised me telling the law firm what to write, sending it on to the government department, and in the fullness of time, the legislation was changed.

My point in relating this is that the legal opinion was a needless waste of time and money which came about because of the unwillingness of someone in the head office of a government

department to accept that a lawyer and electoral officer in local government who should, through their skillset, have been capable of a relatively simple bit of statutory interpretation, had read the situation correctly. Even if my contact had not felt competent to research my findings himself, I am sure that someone with the requisite skills exists in that department who could have investigated.

Central Government - "Do as I Say, Not as I Do"

I personally believe that there is some friction between central and local government arising out of the imposition on the latter of very public Long Term Council Community Plans (now Long Term Plans) having effect over 10 years, when there is little of the same discipline seemingly being applied by central government to its own operations.

I recall a situation about a decade or so back when the head of the Contractors Federation asked Transit NZ for a programme of work on State Highways and motorways for 10 years ahead. The reason for this is so that contractors could resource properly to be able to carry out the programme, without being left either under- or over-resourced due to vagaries of the then government practice of "making it up as they went along" Rather disappointingly, but not unsurprisingly, the answer was that no such programme would be forthcoming. Has this approach changed since then?

However, a 10 year planning cycle is exactly what central government has imposed on local government. I happen to believe that is a good concept, especially for infrastructure assets. If it is good for local government, why not central government? Or, maybe it is happening now in central government?

Central Government - Overlapping Policies and Processes

Again, based on my experiences, there is fertile ground for resentment against central government practices because of occasions when it is expected that officials will behave in a certain way, based on precedent, and they do something totally different.

It appears that there are in certain central government activities contradictory or overlapping policies, rules, or provisions. I see this in its dealings with real property generally, and even more so where there is a possibility of land being used in a Treaty of Waitangi claim settlement. I suspect that the judicious application of certain rules or provisions is seen as a reason for officials to be able to justify doing nothing. The end result is that there will be times when this can lead to the loss of an opportunity for a more productive result than is, in fact achieved.

Here is an example from my own experience. My employer Council had for many years managed an ex-domain under a delegation from the Crown. The administering department was the Department of Conservation. For some years 12 hectares had been leased out for growing a maize crop and this lease was bringing in a rent of $8,500 plus GST when the land was resumed by the Crown in 2009. The maize grower contacted me to see if there was any chance of continuing to crop the land. I contacted the DOC office in Hamilton, and received a positive response, so prepared an agreement between the Crown and the maize grower. However, when the matter was referred to Wellington, the message was very different. The maize grower would have to prepare a case, submit it to DOC, Hamilton, a report would have to go to Wellington, and it would be shuffled on to the Office of Treaty Settlements for a final decision.

At that stage, the maize grower gave up in disgust and my further involvement ended. I have heard that the land is leased out for grazing at $2,000 per annum. I don't know whether the lessee is paying anything in lieu of rates. It is four years since the Crown took the land back; four years of relative stagnation. Although this involves a relatively minor amount of money, it is very likely that this sort of situation will have been replicated throughout the country, and with possibly much larger amounts of money involved.

Unfortunately, outsiders like me are never quite sure what is behind this sort of decision. There is no question in my mind that overlapping rules and policies can be used arbitrarily to stand in the way of constructive outcomes. Coherent procedures should be in place for all central government

activities. They should not overlap or contradict other procedures. Where there is conflict, the steps to be followed need to be clear and unambiguous.

Local Government - Shared Information

This is well covered in Chapter 8 in the Draft Report.

My position in a territorial authority involves my having an oversight over the process of making bylaws. This usually involves obtaining reasonably generic bylaws from other local authorities and (with their approval) adapting them for our own purposes.

The formulation of bylaws and policies are the sorts of activities where local authorities can learn and benefit from work that others have undertaken. I do not think that too much should be made of the varying characteristics and demographics between local authorities. There are some types of Council activities where this does not matter at all.

For example, this Council recently passed Waste Minimisation and Trade Waste Bylaws. The bylaws of another local authority served as the model for these. I do not know which authority provided them, but their application was so generic that they could equally well have come from a major metropolitan, or from a small district, authority.

I agree with the Draft Report that a co-operative approach can be more problematic when it comes to enforcement of regulations. To be successful, this really involves the alignment of enforcement policies between the various participating authorities. Then the concept has to, at least, be communicated, and perhaps accepted, by stake-holders in those authorities. Relationships between Council and stakeholders may break down over nothing more than, say, different people from the usual turning up unannounced at a building site to see that the building code is being complied with.

Measuring Performance - Benchmarking

I agree with the Commission's view that it is important that the performance of local authorities in the formulation and application of regulations should be measured and data obtained used to try and improve that performance.

However, there are some caveats on that:

1. The process should not be so time-consuming or resource-hungry that it becomes almost a costly self-perpetuating industry in its own right (or wrong). A balance between cost and anticipated benefit from measuring performance must be struck. It is usually evident to even the casual observer when regulations are not successful in terms of the outcomes that were expected not being fulfilled. It is likely that suitable correction measures can be applied relatively inexpensively. The benefits may be significant for little cost. Conversely, if a lack of performance is so difficult to detect that it requires the hiring of consultants to examine matters in detail to see what is lacking, then it is likely that any defect will be relatively minor and not worth significant expenditure.

2. I agree strongly with the Commission's suggestion that measurement should concentrate on the quality of performance, not the soft options of, say, timeliness, or processing cost, or how many appeals are lodged against RMA decisions. The difficulty comes with being able to frame suitable and meaningful standards against which to measure the quality of performance. Even more so if it comes to local authorities having to agree on those standards for the purposes of benchmarking.

3. Most local authorities run periodic surveys amongst a selection of their residents asking for feedback on their performance in selected areas. If the questions asked are consistent from survey to survey, trends in performance levels across various functions can be seen and measures taken to improve those areas where action is seen to be required. Used appropriately, this sort of approach can be used to measure the satisfaction levels of people or organisations who have had an encounter with Council regulations. If there are repeated negative responses to a particular regulation, or its application, it is evident that something needs to be done about it. This need not

mean that the regulation needs to go, but may involve providing better education about it, or a different approach being taken by enforcement officers. Some drilling down in to the responses of respondents may be required.

Action Plan

At various points in the Draft Report, reference is made to responses received from local government, and some actions are suggested based on those responses. I urge the Commission to be very careful and not accept those responses at face value, unless they represent the views of most territorial and regional authorities. If only a small sample has responded and they are of one type (say, large metropolitan), the Commission is likely to have information slanted towards the interests of large metropolitans. This may result in a concentration of effort and resources towards issues that are not a priority concern for the majority of authorities. The Commission has a balancing role in this regard to point resources towards finding solutions that provide maximum benefit across all local authorities.

General Observations

Like certain central government authorities, local government also must avoid the perception that some of its activities are simply "revenue-gathering".

Thank you for the opportunity to make this submission.

Richard Fisk