



Initial Submission on: **Local Government Regulatory Performance Issues Paper, July 2012**

To: New Zealand Productivity Commission

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Date: 31 August 2012

The Mackenzie District Council appreciates the opportunity to provide comment on the Issues paper.

The basis for the paper, and the summary set out in Box 1 which describes the key Inquiry questions appears to presuppose there are issues with local government regulation which require improvement, or are inefficient, or that 'fragmentation' leads to poor outcomes and higher costs. The Council accepts that this review is timely, and that seeking improvement is always appropriate. However it would caution against relying on such generalised positions as the inquiry progresses. The Council considers that identifying and addressing actual issues or impediments is the key to achieving meaningful and necessary improvements, rather than simply responding to general perceptions. The latter approach would ultimately fail to achieve the Commission's aims.

From its own experience and from its collaborative efforts with neighbouring local authorities, the Mackenzie District Council's view is that while there are some aspects of current regulation which could be amended to better serve the needs and desires of its community, the Council is largely able to work effectively within current statutory systems to achieve efficient outcomes in implementing its regulatory functions. The notion underpinning this is that the Mackenzie District Council has a unique understanding of local needs and circumstances, and is best able to protect its communities and support the type of growth important to the District.

We welcome the wider review of local government roles and responsibilities, of which this inquiry forms a part, as it provides an opportunity for improving those tools and processes for local government in undertaking this role. Going forward, the Council is concerned to ensure that any principles which are developed in terms of allocating regulatory responsibilities achieve the following:

- That the benefits of regulation (some of which are difficult to quantify), as well as its costs, are fully accounted for;

- That local communities are appropriately empowered in regulatory processes where local differences or effects are present; and
- That where Councils are given additional functions, funding implications are fully considered and appropriate mechanisms for efficiently and equitably funding new regulation are provided.

Specific examples illustrating these matters are outlined below.

We struggle to understand the relevance of some of the background material in the report, including Box 7 on page 17, to the scope of this inquiry. Variation between Councils on its own is no indication of regulatory efficiency between local and central government. It should be self-evident that population figures alone do not provide a complete or meaningful picture in relation to local authority effectiveness in implementing regulatory functions. For example, tourism figures, all types of rateable land and other assets (such as those in the Mackenzie district, which include hydro dams and holiday resorts with non-resident populations) are highly relevant when considering the purpose and efficiency of regulatory tools, as they also benefit from and are impacted by regulation. Indeed the 2012 BERL report, which provides an overview of economic performance at a local authority level, ranks Mackenzie District 15th of 66 local authorities¹. We consider that this should disprove any simplistic assumption that smaller local authorities or those with smaller resident populations are necessarily inefficient or impose higher costs in terms of providing for growth.

Regulatory Coordination

Local government at least in this region works together on many programmes and matters of common interest, including the application and implementation of regulatory functions. The Mackenzie District Council undertakes significant coordination and consultation with adjacent local authorities in many functional areas.

The Council also benefits from learned experience from the wider pool of local authorities in Canterbury, and nationally where it is relevant. Recent examples of this include joint planning approaches between the rural territorial authorities to submissions on regional policy documents and rules. In this way, efficiencies are achieved in collectively influencing, and then implementing the outcomes.

For some regulatory functions of the Council which are set by national standards or minimum levels but are more efficiently administered locally (for example, Health Act licensing, liquor licensing), the Mackenzie District Council retains the policy development at Council level but contracts out the processing, monitoring and enforcement of such activities to larger neighbouring territorial authorities who have existing staff trained and experienced in these areas. The policy-setting/community aspect of the regulations, and any decisions as to enforcement, are retained locally within the Council. This is very efficient and effective in reducing compliance costs to businesses while retaining strong local oversight and accountability.

While there is some argument to be made that commercial activities that operate across territorial authority boundaries could benefit from central government standard-setting and/or administration, it is difficult to see how central government could achieve the delivery of those services more efficiently, at least in the Mackenzie. Consultation and community input are likely to also be compromised.

Compliance costs to business

¹ *BERL Regional Rankings 2011*, BERL Economics, March 2012

The Council is able to deliver its regulatory functions efficiently and effectively, and can respond quickly (within the provisions of the legislation that prescribes the process for changes) to changes in circumstances. It has established processes and minimal overheads, allowing it to efficiently progress community plans and carry out its regulatory functions.

It is always mindful of the cost of regulation to individuals and businesses within its community, and usually seeks to intervene with regulatory tools only where alternative approaches do not prove sufficient and where it proves reasonably necessary, or is required by law².

Regulatory Inefficiency

The Mackenzie District Council considers that one matter which may be relevant in considering allocation of regulatory functions is whether the effects of a breach are the same on any person, community or environment, regardless of location.

At present the relevant legislation governing hazardous substances is complex and multi-layered, with central, local, and regional government involvement through HSNO and the RMA. For example, the RMA provides for all territorial authorities and regional councils to manage hazardous substances³. Both regional and local authorities are required to develop, consult on and implement policy and rules. Doing so results in a number of layers of policy development and implementation with associated costs, and a range of responses across the country.

More efficient administration could be achieved by national policy or standards and a single layer of implementation, rather than the present fragmented system. The issue with fragmentation in this case is not merely that the system is fragmented, but that there is no gain from having it so; hazardous substances are widely used nationally, and their effects could be managed more uniformly across the country. Put another way, it would appear that the effects of discharges of hazardous substances on the environment are the same whether they occur in Northland or Canterbury, so it is difficult to understand the justification for allowing for regional differences.

Similar issues apply to regulation for natural hazards management. While the type of hazards will vary across regions and districts, clear national direction establishing standards for managing the risks and responses to such hazards would be of value, and would avoid varying layers of regulatory approaches between districts and across regions. Local solutions may be appropriate for managing present risks to established communities, but regulatory standards for future development in terms of natural hazard risk would be more efficiently managed centrally rather than individual councils or communities having costly and repetitive debates over matters of policy and risk. This is reinforced by the expertise associated with various types of hazards being a significant cost to each Council. The value of allowing local or regional variation in approaches to natural hazard management is questionable when standards for managing risks should be similar across regions or nationwide.

It may be useful to consider the regulatory model that exists in the Building Code, which is a regulation of the Building Act 2004 and applies nationally. The means of compliance with the Building Code can be achieved through compliance with New Zealand standards, which require buildings to be built to differing specifications depending on location, for example to deal with local wind and snow conditions. We think this may be a useful approach as while the Building Act and its regulations apply nationally, the system encompasses sufficient flexibility to allow for buildings to be designed and built to meet local conditions.

² For example the Canterbury Regional Policy Statement requires the Mackenzie District Council to have rules for vegetation clearance on private land.

³ Sections 30 and 31, Resource Management Act 1991

Consistency v Variation in Regulation

The BERL study shows that small or medium-sized rural local authorities can be more flexible and supportive of development, and are often keen to encourage economic growth. The direct impact and cost of regulation on their communities is a matter that confronts smaller territorial authorities often.

Consistency is important in some functional areas of local authority activity, but not in all areas. What is viewed as 'inconsistency' may be a necessary part of managing local resource for local or national benefit, for example managing landscape in the Mackenzie Basin may mean that businesses seeking to locate there and capitalise on that landscape may be subject to additional costs and rules than if they locate in other areas of the region.

It would not be appropriate to use efficiency as the sole driver for an assessment of the suitability of regulation, as by the very nature of regulation it is needed to protect sometimes scarce or finite resources where the costs of not doing so are not able to be fully recognised or accounted for.

It is clear that the ability for land use planning to be highly responsive to its community is very important to retain at local authority level. For example, the planning for and management of the District's urban areas have developed over time and with community support or leadership, which in turn allows such development to be more easily and efficiently established.

Local regulation for these land use activities proves much more efficient for our smaller community than importing a larger scale administrative process and unnecessarily complex policy system from a larger authority elsewhere. While the benefits of a consistent approach may at first appear self evident particularly for businesses who operate in a number of districts, 'consistency' is not synonymous with efficiency or lower costs. It may well be that, provided effective planning has taken place, regulation in a smaller community is less cumbersome. Much of New Zealand's economy is made up of small businesses, which presumably benefit from local solutions. Such businesses may be disadvantaged in circumstances where 'consistency' for the sake of it is considered to outweigh local decisions.

Close liaison and integration with the Regional Council at the time such land use policy and regulation is developed is a necessary part of making the existing system successful, given the regional role in managing related resources. This should be done robustly in the early stages of regulatory development in both regional and district planning.

Local RMA plan and policy making is also made more effective by not 're-inventing the wheel', which will be a key feature of many second-generation district plans. This Council has a programme of liaising closely with adjacent Councils and those Councils who may have faced similar resource management issues, in order to inform local policy and processes. This is a matter of practice and the Mackenzie community expects that its Council will undertake such processes by evaluating the least-cost and most efficient ways to develop such plans. It has the advantage of informing the process but retaining the key requirement of flexibility in developing solutions and standards acceptable to the community.



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