

# Resource Management *Gazette*

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### Guest Editorial

### Resource Management Act regulatory processes: future possibilities

#### Introduction

The regulatory processes under the Resource Management Act 1991 ("RMA") are arguably the primary current determinants of environmental quality in New Zealand. Why then has there been so little analysis of the quality of these processes, their products, or their contribution to the achievement of environmental outcomes? To date, there seems to have been a preoccupation with analysing the time taken to process resource consents at the expense of taking a broader perspective on assessing the success or otherwise of regulatory processes.

The purpose of this paper is to stimulate interest in existing and developing initiatives in a number of local authorities throughout New Zealand.

Increasing pressures on local authorities to meet the performance expectations of a wide range of stakeholders mean that systems need to be implemented to ensure that we are delivering world class performance. However, high quality performance by itself is not enough: it has to be measurable and comparable with performance in other local authorities. Only when we have achieved this, will we be able to demonstrate performance to ourselves and our stakeholders.

The RMA's regulatory processes are broader than just the resource consent process; they include permitted activities, subdivision consents, compliance monitoring, and enforcement activities. The time taken to process

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a resource consent is only one performance indicator, albeit one that is relatively easy to measure. There are many less easily measurable indicators that cumulatively could provide meaningful information to assist in assessing the success of a major component of the RMA.

There are six areas that warrant further attention:

1. Best practice;
2. Performance indicators and benchmarking;
3. Quality assurance;
4. Integration with environmental monitoring;
5. Reporting regulatory process information; and
6. Qualitative and quantitative regulatory performance indicators.

### **Best practice**

Best practice can be defined as the use of superior methods and innovative practices that contribute to improved performance, ie doing the right thing in the most effective way within resource limitations.

The Ministry for the Environment and the Parliamentary Commissioner for the Environment have produced a number of best practice guides for some of the processes set out in the RMA. However, not every aspect of these "best practices" has been accepted as such by practitioners. For example, it has now been acknowledged that an amendment to the RMA is necessary to provide a clear definition of when the resource consent "clock" starts. The full range of regulatory processes established in the RMA has not yet been examined critically to identify a full range of nationally agreed best practices.

Having a statutory framework and case law developed under the RMA and earlier legislation helps to determine best practice. There are numerous examples of best practice in local authorities throughout New Zealand. Equally, as recent reports have indicated, there are frequent examples of poor practice in regulatory processes. The reported decisions of the Environment Court frequently identify the Court's interpretation of best practice. However, there appear to be significant obstacles preventing some local authorities from identifying and implementing these and other best practices. For example, the Environment Court has assisted in identifying some fundamental attributes of quality resource consent conditions: they must be "DICE", ie,

- D — defensible in both a legal and technical sense;
- I — *intra vires*;
- C — certain; and
- E — enforceable.

I have seen recent examples of conditions on resource consents and subdivision consents granted by major local authorities that do not meet any of the above basic criteria.

Why is the quality of regulatory processes so variable throughout New Zealand? The answer probably lies with a combination of factors including: limited training opportunities, political and management support for resourcing the processes, and the limited tertiary training in the relevant disciplines. However, probably the most important factor is the lack of appropriate inter-council performance comparisons to identify opportunities for improvement.

### **Performance indicators and benchmarking**

Benchmarking can be defined as the process of systematically comparing and measuring products, services, and work processes with successful organisations to achieve continuous improvement and best practice.



To ensure that informed debate is possible on local authority performance, meaningful comparative performance indicators are needed. These indicators can be used to assist in benchmarking processes that will enable local authorities to learn from one another and to report to the public on performance.

The need for quantitative and qualitative performance indicators is increasingly recognised internationally by both public and private sector organisations wanting to report meaningful information to stakeholders. New Zealand's central government agencies and the public are becoming more aware that indicators can be used to assist in assessing the performance of local authorities. Examples of performance indicators that are used overseas to assess the performance of territorial authorities include: the cost per resident of rubbish collection, the cost of a building consent for a building of a certain value, the number of public toilets per resident, the percentage occupancy of council houses, etc. Clearly these indicators can be used both for internal "benchmarking" purposes and for external comparative assessment. Performance indicators appear to be less developed for organisations like regional councils with fewer service delivery functions and comparatively more environmental management functions, compared to territorial authorities.

There is a range of stakeholders who are interested in regulatory process information. Those stakeholders include: the Council that delegated statutory power to decision-makers, central government agencies with a responsibility to oversee the performance of local authorities, consent holders, the Tangata Whenua, environmental groups, etc. While each stakeholder group may have different concerns, there will be many overlaps. For example, councils will have a general concern to ensure that delegated powers are exercised in accordance with the law; an environmental group's concern may be more limited, for example, wanting to be reassured that consent holders are complying fully with the conditions of consents. A resource consent applicant may be particularly concerned with the time and costs of the resource consent process, as well as wanting to know likely resource consent conditions.

To date, central government agencies have had a relatively haphazard and superficial interest in the regulatory processes undertaken by local authorities. Each local authority has generally chosen different methods to report resource consent information to stakeholders. No central government agency currently carries out any systematic comprehensive comparative performance review of local authorities. However, both the Ministry for the Environment and the Audit Office have indicated interest in working with local authorities to develop such reviews.

### **Quality assurance**

Quality assurance systems are designed and implemented to provide confidence to stakeholders on procedures and outputs. All organisations have procedures, the trick is to proactively identify the most appropriate or "best practice" procedures, document them, ensure that they are implemented, then periodically review the procedures to identify possible improvements.

The private sector has generally recognised the potential advantages of having quality assurance procedures independently certified to provide customers with confidence about the quality of products and services. While there may be some cynicism about the collection of paperwork to satisfy a perceived market need or one particularly demanding stakeholder, independent certification should focus an organisation on quality assurance. The public sector appears to be slower in adopting externally certified quality assurance systems.

The advantages of adopting formal quality assurance systems have been well documented for both the private and the public sectors. One of the important issues that is driving the development of formal quality assurance systems in leading local authorities is the increasing recognition of the costs involved in errors. Legal action is increasingly being used by parties adversely affected by errors. Until recently, the response to errors was usually focused on enhancing review systems or – put simply – more inspectors. This approach is gradually shifting to a greater emphasis on implementing systems to reduce errors and limiting the need for inspection.



The apparent increasing popularity of judicial reviews of notification decisions is indicative of a greater recognition of the availability of legal recourse to settle a dispute about administrative decisions. Implementation of quality assurance systems will significantly reduce the exposure of a local authority to potentially expensive liability claims.

The complex technical, legal, and administrative processes involved in the regulatory provisions of the RMA are ideal candidates for the application of formal quality assurance systems.

### **Integration with environmental monitoring**

All local authorities have environmental monitoring responsibilities under section 35 of the RMA. Regional councils have considerable experience in monitoring natural resources such as water quality, river flows, groundwater levels, etc. Territorial authorities have both less experience with environmental monitoring and arguably a more difficult task to monitor the natural and physical resources that they are responsible for managing.

The work initiated by the Ministry for the Environment on the state of the environment, and environmental performance indicators, reveals not only the extremely limited information on the state of the environment at a national level, but also the limited information on the state of the environment at some regional and district levels.

There is increasing recognition that local authority annual reports need to provide a greater focus on outcomes rather than solely outputs. An increasing number of local authorities are producing "state of the environment" reports. Increasingly these "state of the environment" reports will be the litmus test of a council's RMA performance.

Regulatory database information can be an essential complement to environmental monitoring information. Information from environmental monitoring and investigation programmes will not always accurately reflect the stress that a resource is under. For example, if Christchurch has a particularly windy winter, air quality monitoring alone will not reveal the potential air quality. Similarly, monitoring of groundwater levels without taking account of authorised abstractions could lead to inappropriate conclusions about the potential stresses on that resource.

The integration of environmental and regulatory monitoring will be a significant challenge for local authorities. In the absence of a complete understanding of a resource, there needs to be a good link between "pressure" and "state" monitoring.

### **Reporting regulatory process information**

The Internet will become an increasingly important means of making regulatory information available to a wide range of stakeholders. The public sector is presently making extensive use of the Internet. However, there are very few examples of its use for reporting detailed regulatory information.

The Internet provides a means for making complex, extensive databases publicly available. Examples of regulatory databases that could be made available on the Internet include: resource consent and other authorisation details, compliance monitoring reports, and enforcement/incident responses. This regulatory information can be integrated with geographic information systems and environmental monitoring information.

The Internet has the potential to reduce the need to report detailed regulatory information to formal council or council committee meetings. Instead, key performance information could be provided to council and the



Internet could be used to provide more detailed information. Councillors could maintain an overview of the processes but would be freed up to concentrate on important policy issues – the “ends”, not the “means”.

### Qualitative and quantitative regulatory performance indicators

It is generally recognised that no single performance indicator can provide comprehensive performance information. However, a suite of appropriate indicators can cumulatively provide meaningful performance information.

At an organisational level, RMA regulatory performance indicators should be linked in with a local authority's overall resource management objectives. Below this level there is usually a vast array of performance measures used by managers and councillors to assess the performance of those that report to them. The key challenge will be to identify appropriate indicators for reporting to different stakeholders. Care must be taken to identify indicators that can provide answers to critical performance questions. Some considerations that should be taken into account when attempting to identify appropriate performance indicators for external reporting include the:

- Possibility of factors beyond the control of a local authority influencing the results;
- Need to recognise the risks of indicators being data-driven;
- Results which can be used on a comparative basis;
- Need to use an appropriate balance of indicators to address the likely shortcomings of any one indicator; and
- Need to either establish performance targets or develop them from indicators.

It is surprising, with the attention given to performance indicators in the United States, the United Kingdom, and Australia, that there has been such limited development of local authority comparative performance indicators in New Zealand. One reason may be the greater level of central and/or state government control in those other countries, where central and/or state government funding agencies require detailed local government comparative performance reporting.

Performance indicators can be grouped into discrete categories for example, customer satisfaction, quality of process and product, timeliness, quantity context, cost-related, and environmental. The information from indicators developed under these headings could be used to meet the needs of a range of stakeholders. The examples given below are just an initial outline of possible indicators. There does not appear to have been any significant development of such indicators in New Zealand or overseas. The challenge will be to develop indicators that meet the identified needs without imposing excessive additional costs on existing systems. Table 1 outlines some possible indicators that should provide a basis for discussion and development.

**Table 1 An outline of some possible Resource Management Act regulatory comparative performance indicators (based on a financial year period)**

Category	Examples	Comment
1. Customer satisfaction	Satisfaction levels of parties directly involved in regulatory processes, eg, resource consent applicants, submitters, consent holders, etc.	The level of customer satisfaction is a fundamental component of organisational performance. Potential difficulties for consent applicants to differentiate council policies and consents/refusals from the overall regulatory processes.



2. Quality of process and product	<p>Assessment and grading by independent auditors of compliance with agreed protocols and best practice.</p> <p>Percentage of consent holders assessed and found to comply with consent conditions. Expenditure on compliance monitoring, including permitted activity compliance relative to total RMA expenditure. Expenditure on enforcement activities relative to total RMA expenditure.</p> <p>Frequency of compliance monitoring for specified activities.</p> <p>'Success' of appeals to Environment Court and higher courts.</p>	<p>Potentially a critical performance indicator – significant resourcing is required to develop agreed protocols and best practices.</p> <p>Indicators of effort invested to ensure achievement of environmental outcomes.</p> <p>Different levels of control for similar activities will make comparisons difficult.</p> <p>'Success' is a difficult term to define.</p>
3. Timeliness	<p>Percentage of consents complying with specific statutory time constraints.</p> <p>Response time to reported incidents.</p>	<p>This is the only category of indicator presently reported on a national level.</p>
4. Cost-related	<p>Average cost of relatively standard consents, eg, bore permits.</p> <p>Percentage cost recovery from applicants and consent holders.</p>	<p>May be very difficult to identify truly standard consents.</p> <p>Indicative of interpretation of Local Government Act provisions.</p>
5. Quantity context	<p>Number of consent applications processed.</p> <p>Number of reported and actioned environmental incidents.</p> <p>Legal action undertaken, eg, abatement notices, enforcement orders, prosecutions.</p>	<p>Quantitative information provides a context for interpreting other indicators and can be indicative of resource pressure.</p>
6. Environmental	<p>Quantities of contaminants authorised to be discharged into a catchment or airshed, number of water abstractions permitted in a catchment area, number of billboards per square kilometre, etc.</p>	<p>Indicators that provide information complementary to that resulting from environmental monitoring &amp; investigations. Assists in reporting on achievement of environmental outcomes sought.</p>

## Conclusions

The purpose of this paper has been to stimulate discussion on possible directions for future management and reporting of regulatory processes under the Resource Management Act.

This paper has identified a need for local authorities and central government agencies to work together to benchmark performance indicators to identify best practice and enable comparative regulatory performance under the Resource Management Act to be reported to a broad range of stakeholders.



Local authorities in New Zealand are at the cutting edge internationally of a progressive approach to environmental management. There are many examples of international best practice in relation to regulatory processes. There are also some important regional council and territorial authority initiatives under way that need to be encouraged. However, there are still some major challenges that have to be overcome.

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