

The loopy rules report: New Zealanders tell their stories



**Rules Reduction Taskforce Report
to the Minister of Local Government**

August 2015

Message from the Taskforce

New Zealanders are fed up wasting time and money trying to work with loopy rules. We were tasked with identifying rules and regulations which are not fit-for-purpose and which impose unnecessary bureaucratic burdens on property owners and businesses.

Everyone we heard from has had tales to tell of loopy rules - requirements that are out of date, inconsistent, petty, inefficient, pointless or onerous. These are the things that really annoy people, whether they run a business or own their own home.

In the last few months we have travelled around New Zealand listening to people in their communities. We have also met with councils, sector interest groups, and government agencies. We thank all those who have candidly shared their frustrations and given us their views on how rules could be changed to make more sense.

We did hear of rules that protect people, the environment, infrastructure and our heritage but which still enable individuals, businesses and our economy to prosper and grow. But we are struck by the number of instances where the good intentions of the rule-makers are somehow lost in the translation to the real world.

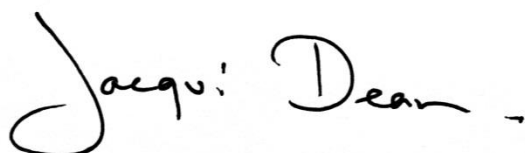
Examples abound of inappropriate interpretation, over-zealous enforcement, and lack of focus on the customer. New Zealanders have told us they are confused and frustrated by frequent changes in the rules. They are exasperated by inconsistency, time-consuming processes and unreasonable costs.

It was a surprise to us to find out that a number of the loopy rules are in fact just myths. They are misinterpretations and misunderstandings that have been repeated so often that they have taken on the status of facts. We heard many examples where people are not clear about what they need to do and why. Myths fill the gap when clear information is hard to find. We highlight these myths in this report along with the loopy rules that need to be changed or removed.

We discovered that loopy rules are difficult to get rid of because they're part of a wider system, because a focus on the customer is absent, or because of the interests of experts or the fears of their administrators. What's clear is they thrive when rule makers fail to take responsibility for them.

Most importantly, we identify opportunities to fix many loopy rules and bust the myths. Our top ten fixes are listed on page 7.

We call on both central and local government to stop making more loopy rules.



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In a nutshell

What makes property owners unhappy

The Rules Reduction Taskforce received submissions on more than 2,000 topics covering what submitters call loopy rules. Around two-thirds are in the context of the Resource Management Act 1991 (RMA) and the Building Act 2004. Three quarters of the issues raised are about the responsibilities and actions of councils.

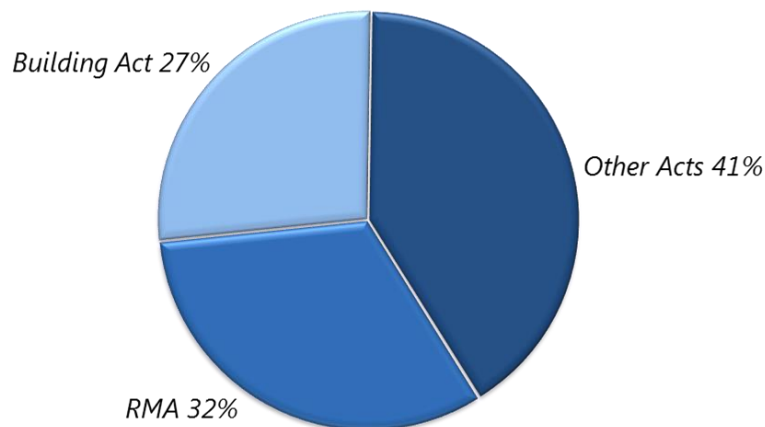


Figure 1: Percentage of Resource Management Act (RMA) and Building Act submissions

These rules are usually the unintended results of a well-meaning act, regulation, or a practice instituted by a local council.

We find that some loopy rules are based on people's mistaken beliefs or on incorrect advice from an agency. Other times, a rule is simply bad practice that has become a rule only because someone says it is.

Such rules make people angry because they are simultaneously insulted by them and bound by them. The very real financial loss they can cause adds to the frustration.

What is a loopy rule

Submitters find many kinds of rule annoying. Some of these are shown below:

Table 1: Examples of loopy factors

The loopy factor	Example of what people said
The rule is not practical	<i>The owners of a bus depot structure that has no walls are forced to install four exit signs, just in case people can't find their way out if there is a fire.</i>
The rule makes no sense	<i>The Health and Safety mining regulations define a tunnel as 'what it is not' rather than 'what it is'.</i>
Compliance with the rule defeats its very purpose	<i>An owner of a rural property had to spend \$30,000 putting in a driveway and watertank to meet the fire requirements. The tank was at the back of the house. When the house caught fire, the fire chief would not drive his truck past the house to the tank in case it caught fire too.</i>

The loopy factor	Example of what people said
A small change is treated the same as a big change	<i>As part of the refurbishment of an earthquake-damaged building, a pharmacy is being added to the front of a 1950s building. The pharmacy is to be 3.5% of the building. The rest is residential. The pharmacy has triggered the need to upgrade the fire rating of the entire building at a cost of \$50,000.</i>
The rule sets a standard that can never be achieved	<i>Converting a shop into a two-bedroom residential unit required a reduction in noise levels from 70db to 35db. We tested the required noise levels in our brand new home; the only place that complied was the wardrobe.</i>
The rule is inflexible and imposes costs far in excess of any benefits	<i>Under direction from Wellington, our council enforces clean air standards. For 12 days of the year our town does not meet the standard for PM10 particles. For the other 353 days of the year the air is great. The council has subsidised the replacement of hundreds of fires – often very efficient ones – and replaced them with inferior models for little or no change.</i>
The rule requires permission to fix something the property owner doesn't want	<i>An owner had two protected trees on his property, listed by the council. One was dying, the other was unsafe and needed trimming. The owner is expected to get resource consent to maintain the trees on behalf of the council.</i>
The rule means I cannot assume to benefit from value I have created from my own efforts	<i>A farmer planted 5,000 kauri trees and asked the council if he could eventually harvest them. The council said it could not guarantee he could harvest them because they were kauri.</i>
A rule can be interpreted in many ways	<i>Having a level entry to showers: Some councils say yes, some say no, and then charge for an opinion or ruling.</i>
There is no mechanism to update legislation as circumstances change	<i>Long ago, hairdressers were once a source of infection – but no more. Even so, councils must register and inspect them yearly.</i>
A rule has a compliance regime that does not allow for the fact nothing may change	<i>Rigging loops have to be put in to a specified standard but then must be re-certified each year. If a year is missed, they must be abandoned and new ones inserted into the concrete, which would weaken the concrete.</i>
The rule arises from officials' zealotry and has no material effect	<i>A council advised a farmer it was going to classify his land as a significant natural area under the Resource Management Act. Such a classification would limit his ability to use the land in certain ways, including turning his car lights on at night in case it disrupted the flight of Westland Petrels. The council acknowledged the birds never landed, swam, nested or mated there. It was simply on their flight path.</i>

Where we found the loopy rules

Loopy rules are everywhere: Acts of Parliament, regulations, codes of practice, district plans and guidance material.

Five acts in particular are a source of trouble for property owners:

- Building Act 2004
- Resource Management Act 1991

- Health and Safety in Employment Act 1992
- Local Government Act 1974
- Local Government Act 2002.

Around 400 (22%) topics are related to other acts.

The relative level of topics received on each of those acts is shown below.

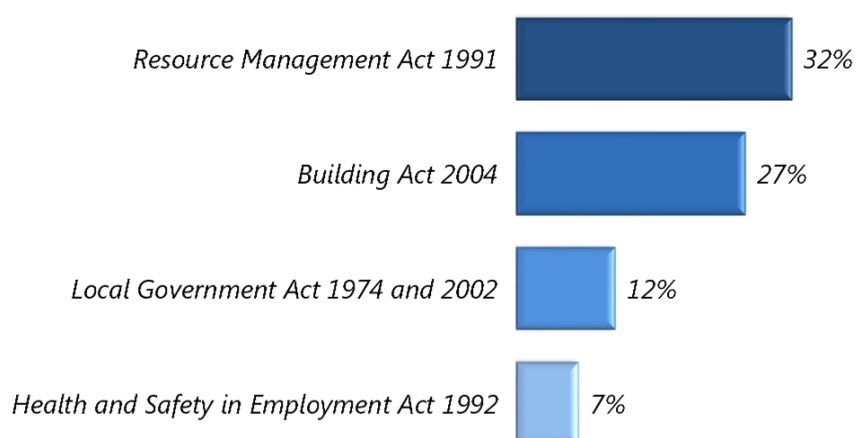


Figure 2: Percentage of topics raised for each main act

Who is annoyed by loopy rules?

Property owners from various backgrounds were keen to tell us about their issues with red tape.

Homeowners are often also DIY builders, and they and tradespeople have many issues in common.

Other submitters have a very broad understanding of the loopy rules because they run businesses, are landlords, and/or carry out property development.

Around half of all councils took the opportunity to directly write to us or attend community meetings. Substantive written submissions were made on behalf of all councils by Local Government New Zealand, and by the Society of Local Government Managers. Sector groups were happy to tell us about the experiences of their members and make suggestions about fixing loopy rules.

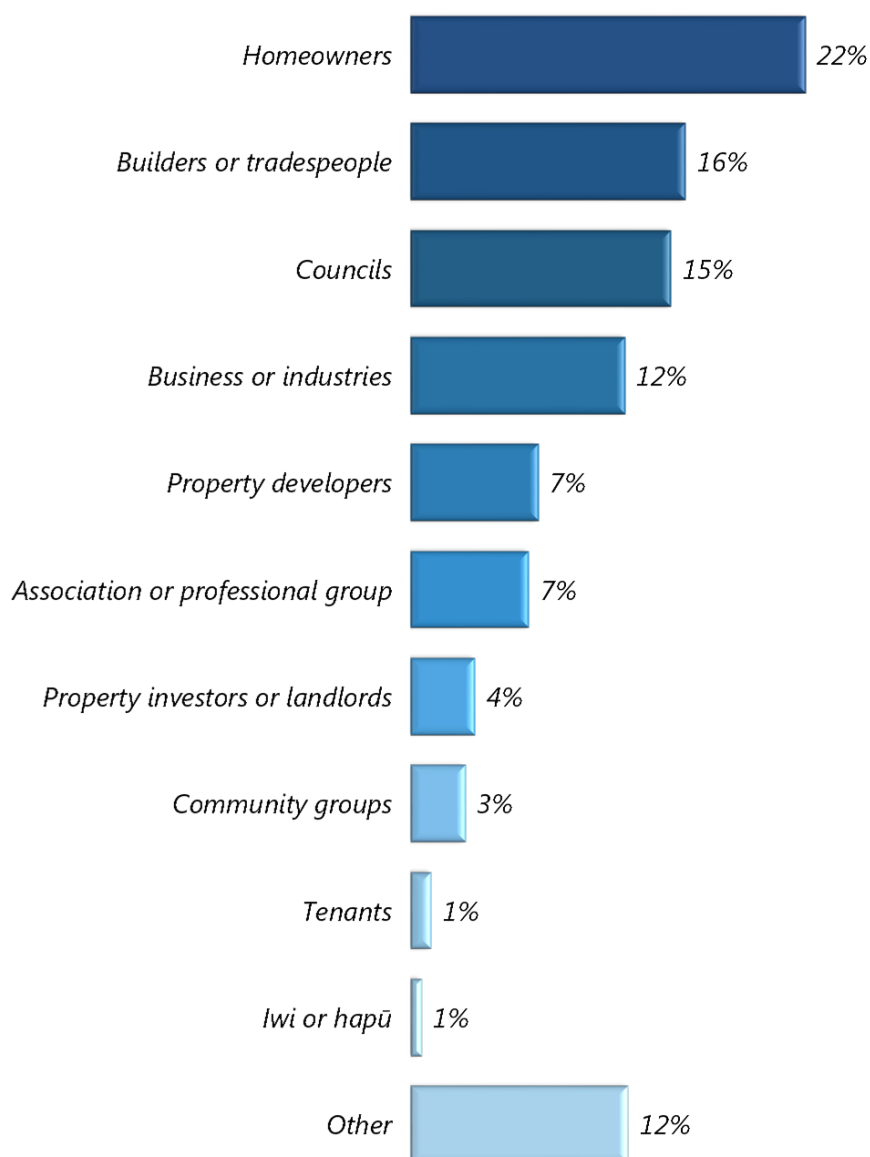


Figure 3: Percentage of submitters by category

The impact of loopy rules

Loopy rules not only annoy property owners, workers and tenants, they also frustrate agencies with the job of enforcing them, such as councils. They add needless complexity, clog up decision-making processes and add unnecessary cost. Submitters rate their adverse effects in the following order:

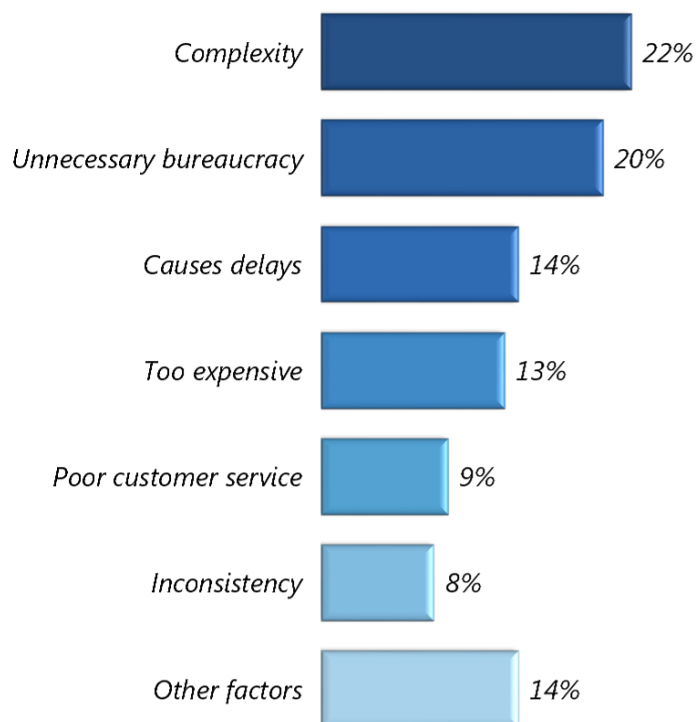


Figure 4: Impact of loopy rules

It is not always the written rule that causes these problems. A lack of customer focus can turn good rules bad. And often a rule is flawed in more than one way, multiplying the problems they cause.

Complexity

Councils are responsible for administering 37 Acts of Parliament (according to Local Government New Zealand), many of them very complex. Their complexity is a frequent cause of inconsistent decisions – and also of complaints from submitters trying to plan their affairs and transact business dealings. The proliferation of policies and criteria add up to a potent brew:

A section 42a report done for a subdivision had to be assessed against 59 objectives and policies.

Many problems of non-compliance arise from unintentional breaking of a rule. People simply can't understand what is required of them, in spite of numerous guidance documents. The sheer number of such documents, along with

the number of agencies issuing them, compounds the confusion.

And finally, the heavy reliance on technical terms by those drafting the rules increases the complexity still further, putting them beyond the reach of ordinary people.

Unnecessary bureaucracy

Some rules are there "just in case" a problem might arise in future, with little evidence that it will.

Other rules are decades old and have lost their reason for existing, either because of technological advances or from changes in practices or community expectations:

The Council was not up-to-date with modern deer farming – deer are no longer seen as a “noxious pest”. The district plan rule uses a revoked law (Noxious Animals in Captivity Regulations 1969) and an out-of-date industry standard. Resource consent is required if we didn’t meet this standard. But the regulation was revoked in 2008 and replaced by a DoC gazette that does not label farmed deer as a noxious animal. Very remiss of the Council to not research this, and unfair to regulate us on an outdated law.

Causes delays

The time taken for consent applications to be processed by councils is a big concern for many. The ability of councils to “stop the clock” on applications was a frequent complaint. Submitters question the value of a legislative timeframe that can be overridden at will, with the result that the 20 days for consent can turn into several months.

To try to keep their figures good, the council will send out a letter (before issuing the consent) on the 18th or 19th day, asking for more information and in many cases, that information is totally irrelevant.

Too expensive

The costs of compliance are a frustration for submitters, whether incurred directly as a fee or indirectly through holding costs for property investors who are held up by repeated questions from officials.

Average building consent fee is 1% (including BRANZ fees). This is \$5,000 on a \$500,000 house. How can it cost so much?

Vague, open-ended rules need interpreting about how they apply to a specific business or situation, creating a market for consultants and lawyers.

Poor customer service

Councils like to avoid making mistakes. But the fallout from the leaky homes saga, together with an affinity for sticking to the rules and a desire to minimise liability, results in councils failing to treat their ratepayers first and foremost as customers.

It is less risky for an official at a front desk to follow a standard procedure than to recommend a deviation. As a result, many submitters say they seldom feel valued in their dealings with councils, let alone treated as customers:

He has made about 15 phone calls every week for six months trying to resolve the drainage issues for a building project when it is a non-active drain. He has dealt with three different people in council... and no one will sign off or make a decision.

Inconsistency

Councils’ inconsistent interpretation of rules is a cause of frustration. Inconsistency can occur even among staff in the same council, something most evident when councils are either exercising discretion or trying to make sense of an unclear meaning.

Misalignment of interpretations within one council and between district councils creates situations where the building industry gets stuck in the middle of interpretations.

Our top ten fixes

Fixing individual rules that don't make sense is the main priority, and we have identified many opportunities for central and local government to consider. Most of our report looks at these. But collectively our future objective must be to stop the creation of more loopy rules.

Regulators don't set out to make silly rules. Making laws and regulations takes place within a wider system with its own culture and practices.

1. *Make it easier to get building consents*

- Speed up the development of risk-based consenting and investigate other ways to simplify the consenting of minor structures.
- Promote the use of building consent exemptions under Schedule 1 of the Building Act 2004.
- Complete the fix-up of the building fire upgrade regulations this year. Ensure additional requirements imposed reflect the extra costs imposed and the benefits to be gained.
- Use progressive building consents so work can begin sooner, with non-structural details confirmed later.
- Streamline the determinations process for applicants.

2. *Get serious about lifting the skills of building sector*

- Develop an industry-wide strategy to lift the professional practices of builders.
- Work towards builders certifying their own work so as to deal with joint and several liability pressures on councils.

3. *Make it easier to get resource consents*

- Establish an end-to-end relationship management approach for all resource (and building) consenting within councils.
- Require councils to report publicly on their actual performance in meeting the statutory 20-day deadline (for building and resource consents), as well as the total time (including all delays resulting from information requests and so on).

- As part of the planned Resource Management Act 1991 reforms, eliminate the need for resource consents for minor and technical breaches.
- Introduce a faster, more flexible process for changing plans under the Resource Management Act 1991 reforms.

4. *Reduce the cost of consenting fees*

- Cap government building levies.

5. *Sort out what "work safety" means and how to do it*

- Define what is meant by "all practicable steps" in the Health and Safety in Employment Act 1991 and any replacement term in the Health and Safety Reform Bill.
- WorkSafe should do more about myth-busting, correcting misunderstandings and providing consistent information.
- Develop clear and accessible guidelines and codes of practice once the Health and Safety Reform Bill becomes law, working with all other agencies involved.

6. *Make it clear what the rules are*

- Define what is meant by "as nearly as is reasonably practicable" in the Building Act 2004.
- Require the Ministry for the Environment to work more closely with the other agencies to provide more timely and comprehensive guidance when developing and issuing national directives.
- Make government agencies accept their responsibility to correct misunderstandings about their policies and regulations, particularly in the building and resource management areas, and as noted in health and safety.

7. Establish a new customer focus the public sector

- The State Sector Act 1988 and the Local Government Act 2002 should include customer service responsibilities for chief executives.
- All Local Government Chief Executives should have a customer focus component in their Key Performance Indicators. They should consider utilising the Customer Champion and Fast Fix approaches.
- To maintain a permanent focus on loopy rules, establish a website for people to report loopy rules, which are then referred to the responsible agency to put right.

8. Departments should introduce a stakeholder engagement approach to developing local government policies and regulations

- Require all government departments to adopt a stakeholder approach, such as that used by the Ministry of Transport. The Ministry signals policy changes in advance, involves stakeholders early on and is open to critical feedback.
- Require central government to develop a project-specific engagement approach when developing policies and regulations that local government must implement. This approach could be useful for example, in the development of proposed changes to amended shop trading hours (Easter Sunday trading) and the implementation of the Building (Earthquake-prone Buildings) Act.

- Amend the guidelines for Cabinet papers so they include "consultation with the Minister of Local Government" when a proposal will affect local government.

9. Reform the Local Government Act 1974 and the Reserves Act 1977

- Update the remaining provisions of the Local Government Act 1974 Act.
- Review and update the Reserves Act 1977.

And, most importantly:

10. Stop making loopy rules

- Develop a coordinated pipeline approach to regulation.
- Include a cost-benefit analysis prior to development.
- Create a mechanism to actively review central and local government regulations.
- Extend Treasury's annual review of departmental regulations, and incorporate an assessment of local government regulations.

The Building Act 2004

Opportunity: Get the building sector to the point where it can certify its own work

At the time, the Building Act 2004 introduced a whole new approach to building controls. As part of the new approach most councils have become building consenting authorities, requiring them to interpret the building code when assessing consent applications and to inspect and approve the work done. Councils are liable for any errors they make under the “joint and several liability” regime, which has cost them millions in legal actions.

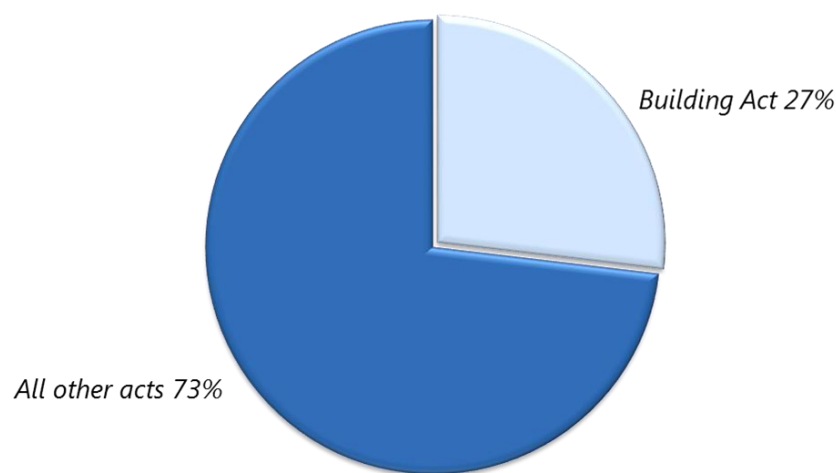


Figure 5: Percentage of submission topics on the Building Act

Councils have become more risk averse since incurring these losses, and this approach leads to arguments with designers and builders over, for example, acceptable solutions, as well as detailed and repetitive inspection processes. The situation creates undue cost, frustration and delay to the person on the other side of the counter.

Risk-averse behaviour is likely to continue as an underlying driver of decisions as long as councils remain in charge of consenting. The long term solution is for the building sector to carry responsibility for its own work. As we note, upskilling the industry is a critical first step and Government needs to lead the way alongside sector leaders.

The Ministry for Building, Innovation and Employment (MBIE) is the Government’s key agent for Building Act 2004 issues. We note the State Services Commission’s updated performance review of MBIE in December 2014 (the Performance Improvement Framework) described the Department as “needing development”. We are confident ongoing Government support and monitoring will assist MBIE to provide the leadership needed to fix New Zealand’s loopy building rules.

Problems with the role of councils

Councils apply inconsistent and occasionally over-the-top interpretations

Designers and builders often disagree with their councils’ interpretations of which products are needed to meet the building code. Councils have a natural bias towards known solutions because they are the safe option, making it difficult to get new products, designs or systems approved.

Even if a solution is known to them, councils sometimes require more than the building code. They often disagree among themselves about the right approach. Invariably, this leads to disputes with applicants and delays in processing applications.

The opposite is also true - councils also complain of building consent plans which are well below standard (see [The 20 day illusion](#) on page 12).

Councils do not always know more than builders

As well as some significant workforce consistency issues, many experienced and capable people working in the wider building sector believe that they know more than the council staff. This leads to disputes over items such as suitable building techniques and engineers' reports.

Councils keep quiet about their powers of discretion

We are told that the Building Act 2004 is performance-based, that Building Consent Authorities (which, for convenience, we call councils) can be flexible, and that applicants can negotiate individual approaches, known as alternative solutions.

Yet councils feel caught between helping applicants and ensuring compliance with the Building Act 2004. They cannot but help having their own views of acceptable practices and how to meet the building code. Discretion itself becomes discretionary.

A strategy for the building sector

Industry associations have told us that, despite some initiatives, there is no plan for lifting the competency of people working in the sector.

The Ministry of Business, Innovation and Employment (MBIE) should facilitate a plan as part of its wider objective of increasing productivity and competitiveness in the economy.

Building consent costs are too high

Opportunity: Cap building levies

Councils' building consent charges consist of a:

- consent fee to cover their work under the Building Act 2004, usually around 1% of project cost
- building research levy, which pays the running costs of the Building Research Association of New Zealand (BRANZ) the building industry's independent research and testing company
- building levy, which covers MBIE's work under the Building Act 2004. This is set at \$2.01 per \$1,000 of the estimated cost of building work.

The BRANZ levy and building levy apply only to work with an estimated construction cost above \$20,000.

Councils retain 3% of the levy as an administration fee.

Property owners object to the size of the combined fees and levies, regarding them as disproportionate to the cost of projects and to the service received. They just do not see value for the amounts charged.

We consider council fees of around 1% to be low, given their liability is up to 50% of the project cost if the building fails. Council fees seem to be a relatively small part of the problem.

On the other hand, the building levy has no cap and rises as building costs rise. We are particularly concerned at the inequity of uncapped levies on commercial property owners and those building big homes and apartments. Compared to the project cost the percentage is small, but the dollar cost can be hundreds of thousands of dollars. It is difficult to see how any owner can be getting that much value from their levies.

Councils frequently – and unfairly – get the blame:

Once building value exceeds \$1M, the cost goes up substantially. For example, a recent consent costing \$156,000 was made up of \$16,000 in council costs and \$140,000 in central government costs, yet council got the blame for the scale of the fee. The fees charged often bear no relation to the amount of processing work required.

Achieving the opportunity

- Review and cap building levies.

When is a consent really needed?

Opportunities: Speed up risk-based consenting and promote exemptions more widely

The principle of Schedule 1 of the Building Act 2004 is to exempt minor low-risk work when there is little benefit in an inspection (although the work must still comply with the building code).

Property owners are finding that the exemption is not working as it should:

The Act prevents me building a freestanding barbecue and washing drying area with a clear plastic roof over a concrete area, so as to form a shelter from rain.

Requiring carports that are not attached to an existing building to have building consent is excessive, particularly in the case of kitset carports that can easily be erected over the course of a weekend.

The stifling, needless bureaucracy regarding simple buildings and additions/alterations to hay sheds/barns/greenhouses/tool sheds.

Schedule 1 is misunderstood and under-used. It needs to be made clearer and councils need to be more specific about what is and is not covered by it.

Many jobs do not need a building consent as shown in [Appendix A: Building Act 2004, Schedule 1 \(exempt building work\)](#) on page 59. This list has been expanded twice in recent years.

Also, councils have discretion to exempt any work from consent (so long as it still complies with the code).

Note that the building owner is actually responsible for determining whether or not the building work is exempt. Even if the work appears to be exempt, most owners will still need expert advice to be certain.

Since councils are the authority here, they should be giving advice on how proposals can meet the code without the need for consent. This is important to make sure quality control remains. We understand many may be reluctant to give this advice or issue exemptions.

One reason is because it provides a record of the work done for future owners. Another is that councils also use consenting as a way to check on unrelated matters at a property such as natural hazards, storm water disposal and resource management and heritage compliance. Councils need to find another way to check on such work.

Part of the solution may be risk-based consenting, in which the amount of plan checking and inspection mirrors the work's risk and complexity, and workers' skills and capability.

MBIE's website promises the introduction of risk-based consenting "by mid-2012", yet this initiative is still only at the trial stage (see www.building.govt.nz/proposed-changes).

Achieving the opportunity

- Speed up risk-based consenting and investigate other ways to simplify the consenting of minor structures.
- Encourage councils to exercise their discretion to exempt structures in Schedule 1.
- Review Schedule 1 exemptions, including those proposed by the Society of Local Government Managers (see [Appendix B: Suggested Schedule 1 exemptions](#) on page 61).

The 20 day illusion

Opportunities: Councils report more accurately on consenting times, and offer building consents in stages

Submitters told us the actual time taken for councils to process building consents is generally well in excess of the 20-working-day statutory target. Councils make many requests for information and “stop the clock” until their information requests are satisfied.

Very often, councils seek clarification about designs. But to be fair, applicants (or their designers) often use councils as de facto peer reviewers. Applicants also submit building consent applications without realising they also need a resource consent, which can delay the building consent:

Any changes that the applicant makes to comply with the RMA require reconsideration of the building consent. This is not only time-consuming and costly for the applicant, but it also significantly hinders councils' ability to be proactive and customer focused to the end delivery.

As the Office of the Auditor-General said in its review of the Auckland Council building consent function:

“The fact that 70% of consent applications lodged go “on hold” pending further information suggests that there is a large gap between what Building Control expects and what customers believe is expected of them.”

Industry studies have found that councils vary widely in their expertise and practices:

“...poor product or building systems knowledge result in [councils] requiring overly onerous approvals processes or

sometimes refusing use of a product or system. Often [councils] request appraisals or other certification on products that are widely used across other [councils].”

(BRANZ, The impact of regulation on housing affordability, Dec 2014)

Further, councils expect applicants to submit complete designs, when owners often don't know what they want until further into the project. Forcing applicants to make decisions too early creates a lot of costly reworking of plans later on.

Some councils have good practices. We especially like one council's internal reporting regime. It is, of course, still bound by the 20-day rule, but it also measures itself against the total elapsed time between application and granting of consent, including the time to receive more information. Its target using this yardstick is 40 working days.

We also like Queenstown Lakes District Council's idea of a “living consent”. Structural work is approved in the first stage, and non-structural work (such as final product design for kitchens and bathrooms) follows when the property owner is ready.

The same sorts of problems with consenting times arise under the Resource Management Act 1991. The two consents overlap so frequently that solutions cannot be conceived in isolation. Indeed, we think that councils should treat building and resource consent applications on the same proposal as a single application.

Achieving the opportunity

- Encourage councils to actively manage building (and resource) consents from beginning to end, using an end-to-end relationship management approach (see more on this in [Creating a customer service culture](#) on page 55).
- Require councils to report publicly on their performance in meeting the statutory 20-day deadline, as well as the total time (including all delays resulting from information requests and so on).
- Promote the staged processing of building consents so structural work can get under way before non-structural work is approved.

The secrets of the building code system

Opportunity: The building code system should enable builders

New building products and systems are being introduced all the time. The rate of change and amount of new information being generated leaves builders and designers unsure of which solutions meet the code.

Submitters generally regard the way the building code system operates as opaque and inflexible:

[There is a] bombardment of new requirements that builders need to keep abreast of.

The construction of a house for charity saw 70 builders working together. There was lots of time lost discussing the best way to install panels etc. This is because the rules are so complex and poorly understood among tradesmen. Also every building inspector has a different perspective on how to use each building product.

There is a determinations mechanism to hear disputes between councils and building consent applicants about the application of the building code (as well as to hear disputes about the issuing of code compliance certificates at the end of the job). It is administered by MBIE and its decisions are binding.

We support this process, but it is not aimed at resolving disputes for jobs in progress. Most disputes are only heard after the consent application, and can take up to 60 days to resolve.

It is difficult for applicants to find and manage property information. Access needs to be improved:

The council has access to all the BRANZ appraisals via the internet. There is no point printing two copies of every appraisal for every single project submitted for building consent!

A modified system of access to the standards is needed for designers and local authorities.

Submitters want simpler and more user-friendly processes for approving new products, systems, and approaches under the building code. We support cheaper and quicker ways to locate building standards and information.

MBIE's recent proposal for a web portal to administer consent applications is a step in the right direction. Such a tool needs to work on mobile devices so builders can use it on-site.

Achieving the opportunity

- Better manage the pace of change in the administration of the building code.
- Make it easier and cheaper to access building information.
- Streamline the MBIE determinations process.

Change of use – a matter of degrees

Opportunity: Ensure the requirements imposed by councils justify the benefits

There is still discontent at how provisions under the Building Act 2004 trigger rules around fire and access.

For example:

As part of the refurbishment of an earthquake-damaged building, a pharmacy is being added to the front of a 1950s building. The pharmacy is to be 3.5% of the building. The rest is residential. The pharmacy has triggered the need to upgrade the fire rating of the entire building at a cost of \$50k.

Section 115 says that a partial conversion of a commercial building to residential use triggers changes in the applicable parts of the building code, in particular those provisions dealing with escape from fire and access for the disabled.

The degree of change (that is, conversion from one use to another) has no bearing on the trigger decision, yet the extra work needed to ensure the renovated building complies “as

nearly as is reasonably practicable” with the building code can be a huge expense.

MBIE has acknowledged the poor job done developing the existing fire engineering regulations (see [The Building Act 2004 – the myths](#) on page 17), and we are very pleased to hear they are revising these now.

Councils have total discretion in deciding what that “as nearly as is reasonably practicable” looks like. But property owners told us they feel discouraged from upgrading their buildings. They have little confidence councils would exercise their discretion sensibly, and expect that the result would be a lot of extra work and expense.

Additional requirements must not be imposed by councils if it is clear they do not justify the expected benefits.

A fuller explanation of “as nearly as is reasonable practicable” would be highly valuable.

Achieving the opportunity

- Define and provide guidance on “as nearly as is reasonably practicable”, as used in the Building Act 2004.
- Guide councils on their application of discretion when assessing proposed changes of use, including ensuring fire and access upgrades are appropriate to the scale of the project.
- Complete the fix-up of the building fire upgrade regulations this year.

The LBP scheme doesn't keep "cowboys" out

Opportunity: Lift the professionalism of the building industry

The licensed building practitioner (LBP) scheme sought to restore confidence in the building industry in the wake of the leaky home issue.

Many builders and DIYers have not reacted well to tougher rules about who can do what in the building industry. We got a mixed picture of the industry as both full of "cowboys" and yet unnecessarily restrictive. Changes under the scheme are too slow for some and too fast for others:

The implementation of the LBP scheme has been pretty poor, with the "cowboys" (as everyone calls them) being the first to get licensed. What level of confidence does this give anyone?

Builders who are not certified can become LBPs. This leads to apprentices being trained by relatively unskilled builders.

The LBP renewal process is lengthy, costly and frustrating, especially as it took no account of my status as a member of a professional organisation or the council's awareness of my track record. I have to go through two sets of assessments when one should be enough.

Demonstrating professionalism should attract a premium and distinguish a good builder from a bad one. The scheme could reward good builders and encourage the pursuit of excellence. Only a third of builders belong to one of the two industry associations, and this proportion needs to increase as builders embrace the idea of greater professionalism.

More skilled builders are needed, but building sector groups tell us there is no plan for how to achieve this. MBIE should develop a strategy in conjunction with the sector to make this happen. Self-certification exists among electricians and gas-fitters. This provides a better way of operating because it puts the onus on the person doing the work to perform. One objective of the strategy must be for builders to reach the level of skills required for self-certification.

A consistent approach to occupational licensing would see those constructing residential buildings as being able to construct commercial buildings. This would require more builders to become licensed, which would increase competitiveness and quality across the construction industry.

Achieving the opportunity

- Lift the professionalism of the building industry, and boost the number of apprenticeships.
- Encourage self-certification by builders who would have to achieve minimum levels of registration under the LBP scheme, so as to deal with joint and several liability pressures on councils.
- Extend the LBP scheme to cover commercial building practitioners.

Too many peer reviews

Opportunity: Make peer reviews the exception not the rule

Councils are requiring more reports, as well as peer review of reports, on sites and building designs. Such reports and reviews can add several thousand dollars to the cost of a new home. This is also an issue under the RMA.

Submitters agree:

Consultant reports are requested on everything developers do. [Our council] is de-risking the consultancy process; they're very risk averse. Everything is "peer reviewed," so costs are doubled or tripled.

Registered architects and engineers cannot self-certify, even though they know more than council engineers.

Why refer engineers' reports for peer review? Levies are charged on building owners for the training of building inspectors so they should be capable of reviewing these reports.

We consider a risk-based, rather than hazard-based, approach is warranted.

Most professional trade associations are governed by legislation and their members have professional indemnity insurance to cover the consequences of any errors. Councils should be able to rely on reports from members of such bodies, except when there is an exceptional reason to question a report's findings. And in such cases, applicants, as the ones paying for a peer review, should be able to choose who does it, perhaps from a pre-vetted list.

We suggest professional bodies talk to local government representatives about establishing the parameters for peer reviews of engineering reports.

Achieving the opportunity

- Recognise the expertise of professionals to reduce the need for peer reviews. (This could be a combined effort by LGNZ, MBIE and the Ministry for the Environment).

The Building Act 2004 – the myths

People consider the Building Act 2004 to be far more restrictive than it actually is, and we heard several myths about its limitations.

Property owners, including do-it-yourselfers who are not licensed under the LBP scheme, have more leeway than they realise to do work without a consent, or without having to engage a licensed building practitioner to supervise it.

This may be because much of the Building Act 2004 deals with restricted building work, which calls for a high degree of care and workmanship. Most of the Act's provisions are about the more complex aspects of building.

However, much building work is exempt from needing consent under Schedule 1 of the Building Act 2004. Schedule 1 should be the first port of call for anyone contemplating a small building project.

Table 2: Building Act 2004 myths

The myth	The truth
<p>You can't work on your own house:</p> <p><i>For a simple deck going between the house and a bank 2m away, I could get the materials for less than \$10,000 and build it myself, but I have to get a LBP which will cost about \$5000. This makes it uneconomic to build.</i></p> <p><i>Not being able to build one's own dwelling, having to use a licensed building practitioner, kills off a basic Kiwi DIY right.</i></p>	<p>There are 43 exemptions under Schedule 1, (see Appendix A: Building Act 2004, Schedule 1 (exempt building work) on page 59). A deck less than 1.5m high is an example where no licensed building practitioner is necessary.</p> <p>What's more, councils have discretion to exempt work from needing a building consent.</p> <p>Even if work is restricted, homeowners can undertake it.</p>
<p>Licensed building practitioners can do only one class of work:</p> <p><i>The ability of all LBPs is underestimated in that many can do more than one task yet can only have ONE designated allowable task.</i></p> <p><i>Many Site 2 LBPs have trade background skills and these are now "lost" to the industry ... A Site 2 person is now not able to do the trade works such as carpentry, foundations, roofing etc. This is not helpful as these people should be able to continue and do the work they have trained for and have good experience records for.</i></p>	<p>In fact, a licensed building practitioner can hold more than one licence and can therefore do work performed before the introduction of restricted building work.</p>
<p>Existing houses must comply with the building code:</p> <p><i>There is no easy way to find out if your house is currently up to council consent standard.</i></p>	<p>Buildings need only meet the building code in effect at the time they were constructed. In the same way, subsequent alterations and modifications need only meet the building code applicable at the time.</p>

The myth	The truth
<p>You must make the whole building compliant with s115 of the Building Act if you upgrade it for a new use.</p> <p><i>Section 115 of the Building Act requires that if you do anything then you have to do everything, such as earthquake strengthening, have a minimum number of toilets, fire and egress, disabled access.</i></p>	<p>Section 115 of the Building Act 2004 is about the change of a building's use. It specifies the work required (including some specific upgrading to such things as toilets, escape from fire, access and so on) but only "as nearly as is reasonably practicable", taking into account the nature of the existing building.</p> <p>Councils decide what is reasonably practicable on a case by case basis, but confusion arises in the way some councils exercise this discretion. Relatively minor renovations should not trigger a requirement for major investment to upgrade the building's fire safety systems. Rather, work required should be proportionate to the scope of a project.</p>
<p>You can't use overseas building technologies in New Zealand:</p> <p><i>Building codes in countries such as Finland and Canada are stricter than in New Zealand and materials are the same or better. Yet they provide technologies which are not widely accessible in New Zealand ... because... everything in NZ must comply with NZ building code and many engineers and developers don't want to take advantage of international developments.</i></p>	<p>Any alternative design that meets the relevant performance standard in the code may be used. So-called "alternative solutions" can use international standards as evidence of compliance with New Zealand's building code.</p>

The Resource Management Act 1991

Concerns with the Resource Management Act 1991 (RMA) are not solely about the legislation itself; implementation is a big complaint, too. We also realise that the catch-all cry, “it’s an RMA problem” hides a raft of issues with district plans and other documents developed by councils and the Ministry for the Environment (MfE). One submitter told us:

[There are] too many councils administering too many plans, containing too many rules, requiring too many interpretations, issuing too many resource consents, and having to pay too many lawyers.

We know the Government is planning further reforms to the RMA, but at the time of writing no specific details have been announced.

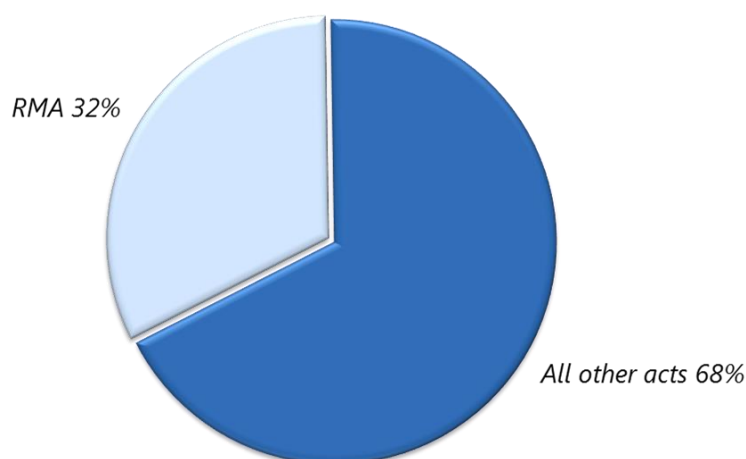


Figure 6: Percentage of submissions on the RMA

The RMA is complex and requires specialist language and knowledge

Developers, building professionals and the public told us of their frustration with the complexities of the RMA and councils’ plans.

Elected representatives and council staff shared their frustrations about the plans they are charged with developing and implementing for their communities. They are also unhappy with the inflexibility of the RMA’s processes.

The RMA is complex in its own right, but even more so when taken in conjunction with its regime of district plans, regional plans, national policy statements, and national environmental standards.

Submitters told us that people at all levels need specialist knowledge and language, on top of considerable experience, to navigate their way successfully through a resource consent application. And councils’ frequent calls for specialist reports and peer reviews bear out this view.

Elected representatives struggle as much as the people they represent to understand the

intricacies of policy decisions they must make to develop district plans and other documents. Some feel power really lies with council planning advisors, who are thought to be the only ones qualified to understand everything.

Consultation with local government

We heard that MfE needs to improve the way it consults local government when national policy statements and national environmental standards are under development. Council submitters say central government too often imposed national direction on them, but left them to interpret and implement the resulting policies or standards.

The State Services Commission follow-up performance review of MfE in August 2014 commented the Department needed to “double its efforts to keep stakeholders aligned”. Work is still required in this area.

Poor customer service

Submitters repeatedly express dissatisfaction with the level of customer service they receive (see [Creating a customer service culture](#) on page 55).

Another 20 day illusion

Opportunity: Introduce proactive relationship management of the consenting process

We heard many tales of frustration as individuals and developers struggled through the process of securing resource consents, particularly subdivision consents. Promised a 20 working day turnaround, they are perpetually disappointed, which is exactly the same story we heard about building consents.

Time and time again we were told it just takes too long and costs too much:

We applied for resource consent in March 2011 and received approval in January 2012. Our application was professionally constructed ... but was returned for further information for stupid reasons on the 20th working day for almost a year.

The processing time is too long and the process is very lengthy...The time involved from the day a developer starts working on securing the necessary consents, to the time of completion of the project and issuance of titles, is anywhere between 6-8 months and the process is extremely expensive.

The initial conversation with Council said that the process would be completed within 21 days. After providing one set of information, new criteria would arrive. Council would just keep moving the goal posts. He has completed the criteria at least four times.

Submitters say it is impossible to get a non-notified resource consent within the statutory deadline of 20 working days.

Also, councils do not tell people the actual processing times; that is, the number of days from application to approval, including all the periods when they "stop the clock" until applicants come back with more or clearer information.

We obtained one council's statutory processing times, which showed that it put 45 per cent of consents on hold at some point. It does not keep records of actual times.

We are surprised that councils do not have to report the number of consents completed

within 20 working days, average consenting times, and the number of consents that exceed 20 days.

Submitters say their first hint of a delay usually comes late in the process. They say their councils are regularly "stopping the clock" on day 17, 18 or 19 with requests for further information.

If an application is deficient in some way, councils should tell submitters well before the 20 days are up. If councils need specialist input, applicants should be told early on and given a chance to respond immediately.

We are curious about why some councils insist on peer-reviewing professionally prepared information (such as engineers' reports) at applicants' expense.

This submitter's comment sums it up:

The council needs to adopt a helpful and flexible approach to development.

Submitters told us they strongly suspected councils do not begin working on applications until late in the piece – hence so much stopping the clock on day 17, 18 or 19. What they want, naturally enough, is for council officers to begin on day one or two.

Some submitters suggested solutions:

Why can't they have a one stop shop centre to expedite the processing of applications which involve building and subdividing and creating new titles?

There should be an advisor at the council where you can go for advice on all aspects of subdivision.

We want to see a can-do attitude that extends beyond frontline council staff. Within the consents department of councils, a relationship management approach should be established. This would see one council officer assigned the responsibility to coordinate the consent application and proactively liaise with the applicant throughout the process.

We consider there should be a whole-of-council approach that helps applicants move their development proposals through the process as smoothly and swiftly as possible. Currently, we seem to have a system set on creating, rather than overcoming, obstacles.

Incentives are used in many organisations to encourage better performance. From what we have been told, a shift in focus that makes customer service the first priority for councils would go a long way to addressing people's frustrations. Making customers the priority could also include looking at a range of

incentives for councils to comply with statutory timeframes.

One approach that caught our attention is the "red carpet" process for some developers at Dunedin City Council. In a bid to instil a proactive, business-friendly approach throughout the organisation, the council set up a relationship management model. We have heard good feedback from one of the developers allocated a relationship manager. Benefits include faster responses to requests for information and a generally more consistent, integrated response from the council.

Achieving the opportunity

- Councils should adopt an end-to-end, proactive relationship management approach to processing resource (and building) consents.
- Councils should consider incentives for growing a culture of performance.

It is too easy for someone to object

Opportunity: Narrow the test of an affected party

We are concerned to hear that those deemed affected parties in a resource consent application sometimes seek a payment in exchange for their written approval. The sums of money can be large. Applicants rightly view this as little short of bribery – pay up or risk a costly application process. On occasion, a neighbour is genuinely affected, but we still question the appropriateness of such payments:

Neighbours deemed as "affected parties" do not have to sign the form. If they are away overseas, not contactable, don't like the idea of intensification, are envious someone else is making money, any personal or petty reasons... then the resource consent application will be processed on a limited notified basis.

By not signing an "affected party form" a development is routinely processed with "limited notified" status by the council. This costs a significant amount of money in delays, time, and cost. Often the developments revert to a hearing which is typically at least \$50,000 in itself...

On a related matter, we feel councils often take an excessively wide view of who is an affected party, and this hardly helps to contain the problem of cash payments.

It is wrong that a payment of money smoothes the process, and equally that a refusal to pay forces an applicant into a costly and time-consuming resource consent application.

Achieving the opportunity

- Narrow the test of an affected party.
- Stop the practice of demanding money to sign an affected party form.

Time-consuming cultural impact assessments

Opportunity: Cultural impact assessments should be time-bound

Submitters express concern about the necessity of consulting iwi when seeking a resource consent for a site that has the potential for cultural, spiritual and historical significance.

Most submitters accept it is important to protect such sites, but they say the cost and time entailed in assessing the need for such protection are too high:

Recent alterations meant applying for consentConsent was delayed until iwi were satisfied that we were not changing the existing footprint of the new build. Had we been doing so, iwi would have had to be on site to observe the land disturbance and be paid for doing so. If items of historical significance are discovered, the works are halted costing the owners, the contractors and councils, thousands of dollars until iwi are satisfied. Meantime there is a consulting fee and an hourly cost whilst the works are overseen by iwi.

The RMA does not set any deadlines for the consultation process with iwi, including how long it should take iwi to respond during that process. The result can be quite significant delays to developments. We suggest specifying a reasonable time within which to expect a response:

My question relates to costs and charges made by iwi when there is no legislation under New Zealand law that directly relates to such. The present situation imposes an obligation on local authorities to delay consenting issues, until iwi decide if they are interested or not. If they are, they advise that there will be an hourly rate of charge for observance of the activity, plus other costs such as mileage.

We were also advised that:

The issue of wahi tapu sites and the requirement for consultation with iwi is frequently cited as a cause of the delay and cost in granting consents. However, out of 8,000 applications received by Auckland Council only 36 needed a cultural impact assessment at an average cost of around \$2,000 per application.

The same submitter pointed out that delays are more likely when applicants leave contacting Māori until the end of the application process instead of at the design stage of the development proposal:

Auckland Council has a facilitation service to assist applicants to meet the consultation requirement of the RMA. It's up to the applicant to consult and many leave this late or wait until there is a hearing date. This causes time and cost pressures for both applicant and iwi.

Achieving the opportunity

- Develop detailed guidance material on how resource consent applicants should carry out cultural impact assessments.
- Ensure such guidance material contains timeframes for iwi consultation and information on any costs.

A resource consent that benefits no-one

Opportunity: Remove the need for a resource consent for minor or technical breaches of plan rules

Many people told us they feel it is unfair for relatively small or simple proposals with only minor effects to be subject to all the expense and delay of a full resource consent application. We agree. The cost and time taken to assess a proposal should be proportionate to its complexity or effects.

Councils have no discretion under the RMA to deal with such applications in an alternative way, even if all affected parties agree, or even when applicants own the adjoining affected properties. We have already described submitters' concerns about the time and cost involved in resource consent applications. It is undesirable to put people through an uncertain and expensive process when there are only minor, neighbour-to-neighbour concerns. Finding a better way to deal with simple applications is overdue:

Resource consent is required for minor yard setback and height plane breaches, even when the affected parties have provided their written approvals.

We were wanting to make alterations to our house which involved lifting it up. This impacted a height to boundary issue under the RMA...We approached the neighbour and showed them the plans and got their approval. So, \$4000 later, the council tells us it's all okay.

A simple rule which requires a consent for a discretionary activity takes two to three months. And the fees which councils charge are exorbitant.

Building a shed on the boundary isn't allowed without resource consent, even if the affected neighbour gives consent. Who in their right mind is going to put a shed bang smack in the middle of the lawn?

We note the Government's intention to work on this perennial issue of minor projects that are subject to disproportionately long and expensive resource consent processes.

We support the idea of giving councils the ability to exempt minor projects from the need for a resource consent. We hope that councils, if given this discretion, would actually exercise it and not shy away from its use for fear of "getting it wrong". We encourage MfE to prepare guidance material for councils to help them implement such a legislative change.

Achieving the opportunity

- Remove the need for a resource consent if a breach of a plan rule is minor and/or technical in nature.
- Give councils guidance material on when they can waive the need for a consent.

That is just a crazy timetable

Opportunity: Quicker changes to plans prepared under the Resource Management Act 1991

Council submitters told us that it takes too long to change plans prepared under the RMA. They also say the process does not allow them to respond quickly to changing local circumstances or new technologies.

The drawn-out nature of plan changes is inevitably expensive because council staff must devote so many hours to the task, and also because of the requirement for consultation at each stage. Delays in making changes can also stifle economic growth and allow unsatisfactory consequences of existing rules to persist longer than is necessary.

Councils' urban design rules often come in for a lot of flak, but council submitters feel that even if the rules are no longer fit for purpose, they have no quick fix option for getting rid of the rule.

Another problem submitters raise is the lack of proportionality – small plan amendments can be as onerous to get through as significant changes. Nelson City Council, for example, was taken to task about a district plan rule that in effect required palings on a boundary fence to have a gap of a certain size. But to fix this loopy rule, the council must go through a full RMA Schedule 1 process, which entails an opportunity for submissions, followed by hearings, and potentially appeals. Until such time as the amendment is made, the council must continue to enforce a rule it now knows to be silly.

Regional councils also told us they are frustrated by the hassle of making technical or

relatively straightforward changes. For example one regional council told us that if new types of wood burners come on the market and meet the air quality standards specified in the National Environmental Standards for Air Quality, a full plan change process is still required:

That is just a crazy timetable - years to plan, more years to build. One boss I had used to say - could you do it faster if your life depended on it?

The ability to quickly provide certainty in plans is essential for business, for communities and for all stakeholders. The process should take months, not the years it currently does... Local Government Act processes, on the other hand, can deliver long term plans, annual plans and bylaws covering a wide range of local authority regulatory and service delivery functions in a matter of months.

Plans are irrelevant if they are not timely. Our planning processes can't keep up with the reality of changes in the environment in which they are being placed...Plan agility (or lack of it) is a very serious problem and needs to be fixed.

The Government is planning reforms to the RMA to fix slow, cumbersome and inflexible plan-making processes. We support this effort.

Achieving the opportunity

- Make plan changes quicker by amending the Resource Management Act 1991 so technical adjustments can take place without a full Schedule 1 process.
- Give councils guidance on when they should invoke this provision.

Guidance comes too late

Opportunity: Involve councils in the development and implementation of national policy statements and national environmental standards

We have heard from councils that some national policy statements and national environmental standards either have no accompanying guidance on implementation, the guidance came long after the statements or standards, or the guidance is so vague and unhelpful that councils largely have to decide themselves how to implement the statements or standards. The national policy statements on electricity transmission and fresh water are the most commonly cited examples in this regard:

National policy statements don't provide enough guidance about acceptable practice for example under power lines, fresh water and coastal national policy statements.

Need timely national guidelines. They often come too late.

MfE says it intends to run workshops for councils and also to give them timely, comprehensive guidance material before it

releases any more national policy statements or standards. We support this approach.

Submitters' concerns are not limited to the implementation of statements and standards. In their view, the development phase of these documents lack sufficient consultation with, or input from, councils:

The local government sector should have been more involved in the development of the national environmental standard. More thought was also required on implementation...

We were also told the national environmental standards for air quality are a typical example of well-intentioned, but poorly executed, regulation that has little input from councils. MfE set the standards, and left councils to work out implementation – and to bear the brunt of public opposition. We have more to say on that particular national environmental standard later.

Achieving the opportunity

Require MfE to:

- consult councils when developing national policy statements and national environmental standards (see the new stakeholder engagement proposal in [Creating a customer service culture](#) on page 55)
- produce timely guidance to accompany all such statements and standards
- make this guidance material part of a broader implementation programme that involves councils.

What is significant vegetation?

Opportunity: Provide guidance on section 6(c) on natural and significant habitats

Section 6(c) is one of the most contentious areas of the RMA, and we heard a lot about it from submitters, mainly in relation to its impact on private property rights.

To be clear, section 6(c) says that everyone involved in giving effect to the RMA must “recognise and provide for areas of significant indigenous vegetation and significant habitats of indigenous fauna”.

And to clear up a myth, the RMA makes no reference anywhere to “significant natural areas”. In meeting its obligation under section 6(c), a council may choose from among several possible approaches, one of which is to designate such vegetation and fauna as a significant natural area.

We are aware that this issue has been debated since the early days of the RMA. We accept that it is rather controversial, especially in some parts of the country. Lack of definitive

guidance for councils to help them address concerns about compliance costs and impacts on private property rights has contributed to the development of restrictive rules:

On a large farm it is impossible to get resource consent every time I need to control a 100m² patch of native vegetation.

The confiscation of private property with no right of redress under significant natural areas. We own farming property that has been devalued as the result of a considerable area [of land] that we are unable to continue to develop and use.

MfE has done work on a proposed national policy statement on indigenous biodiversity (see the Ministry’s website). MfE should take this work further and produce a national policy statement (together with accompanying guidance).

Achieving the opportunity

- Prepare guidance material for councils on how to implement section 6(c), particularly as it relates to private property rights.
- Progress a national policy statement on indigenous biodiversity.

Whose hazard is it anyway?

Opportunity: Better define contaminated sites

We have heard many concerns about the implementation of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES for contaminated sites). This standard works in conjunction with the Hazardous Activities and Industries List, which details those activities and industries considered likely to cause land contamination as a result of the use, storage or disposal of hazardous substances.

Submitters told us this list casts too wide a net, with the result that the most unlikely candidates, such as sports fields, fall within its reach.

They also say the cost of conducting soil tests are high, and that tests are sometimes needlessly duplicated. For example, they say councils are making landowners retest sites that have previously shown no evidence of contamination. The onus of proof seems to be with the wrong party, because at present a

landowner must prove a site is not contaminated, whereas it ought to be up to a council to prove that it is. There is an opportunity here for councils and landowners to share the cost of testing:

The standard has introduced a lot of cost for applicants when the risk from contaminated land would seem relatively low.

All council sports fields are now classified as contaminated under the new regulations relating to soil health. We have to spend large amounts of money every year testing our sports fields for contaminants before we can start any type of earthworks on the fields.

Achieving the opportunity

- Review the national environmental standard for contaminated sites, and the Hazardous Activities and Industries List.
- Revise the definition of sports fields as contaminated sites.
- Require councils to have evidence of potential contamination before imposing a test, and to share costs where a test or re-test proves negative.

Clean air and water, but at what cost?

Opportunity: Fully identify the costs and benefits of national requirements

We heard from submitters about the implications of national level guidance for managing air and water.

Many submitters complain about the National Environmental Standard for Air Quality (NES for Air Quality), and in particular how councils are implementing them. They say regional councils are interpreting the standards as requiring the replacement of old open fires and log burners – the cost of which falls on individual property owners.

Some submitters say councils are setting the bar higher than the national standards:

...despite a wood burner complying with the emissions standards the local council would not allow that wood burner to be installed in that city...

Unnecessary expense to upgrade wood burners which are burning efficiently and well.

For 12 days of the year [we do] not meet the standard for PM10 particles. For the other 353 days of the year the air is great. The regional council have subsidised the replacement of hundreds of fires - often very efficient ones - and replaced them with inferior models for little or no change. This has been a misuse of ratepayers' money.

Similarly for water we heard:

The national policy statements on water quality and water allocation are restricting the regional government and creating perverse effects. The statements are ill-conceived and far too prescriptive (and the settings are dialled too tightly).

We agree that improving air and water quality is important, but wonder whether there has been sufficient consideration of the financial burden the standards impose on home- and land-owners.

Achieving the opportunity

- Consider the financial implications of implementing national environmental standards and national policy statements.

Tree protection – too much, too little

Opportunity: Revisit the tree protection provisions

Some submitters had concerns with the costs associated with having a protected tree on their site. Others told us of implementation issues with the general tree protection rules, particularly in Auckland.

Submitters' remarks include:

It is my understanding that the RMA was amended and general tree controls were removed. However in my residential zone in Auckland City, I am still unable to remove almost any tree over six metres in height without consent.

Property owner had two protected trees on his property, listed by the council. One is dying and unsafe, the other needs trimming. He is expected to get resource consent and maintain the trees on behalf of the council. He has no personal control but is expected to pay for upkeep. His only course of appeal is to the Environment Court, which involves huge costs which are out of proportion to the problem.

We sympathise with landowners who end up bearing the majority of costs associated with protecting, what often amounts to, a public benefit. We believe a review of these issues may be warranted.

Achieving the opportunity

- Review the recent tree protection changes to address the concerns raised.

The Health and Safety in Employment Act 1992

Opportunity: Be clear about who should do what, when and why

Health and safety and WorkSafe's role are the fourth highest topic of submissions. At meetings we heard from people who have serious concerns about the negative impacts of the current health and safety regime. We were told of high compliance costs, overzealous enforcement, disproportionate fines, excessive paperwork, a lack of personal responsibility for safety, lost productivity, and general confusion about how to comply. We are sure Parliament never intended any of this.

WorkSafe New Zealand is the workplace health and safety regulator charged with enforcing the Health and Safety in Employment Act 1992 and its associated regulations, as well as for producing guidance material for employers and employees. WorkSafe officials told us their current focus is on industries with the worst safety records: mining, forestry, construction and agriculture. This seems sensible.

It is clear there is a gap between people's awareness of safety requirements and the work of WorkSafe. Submitters talk of being willing to meet their obligations, but being unsure of what they are.

What many submitters believe is required, and what is actually required, are often very different. Urban myth is part of this, something better guidance material would help dispel. In addition, the gold-plated solutions marketed by consultants as legal-minimum solutions do not help matters.

Our review took place as the Health and Safety Reform Bill was going through Parliament. Many of the submissions are about issues with the implementation of health and safety legislation and regulations, and we think this information could be usefully considered when the new legislation is put into effect.

Taking personal responsibility

Complying with safety processes has become a goal in its own right. Responsibility for this lies with an apparent focus on shifting responsibility from the individual to employers managing compliance processes.

Submitters refer to this new mentality as "tick box" safety, and one result has been to lessen

individual employees' responsibility for their own safety:

I pleaded guilty when an employee fell off a scaffold ... because it was cheaper. The accident occurred because the employee was behaving foolishly on the scaffold.

Climate of fear

Submitters say they are unclear about what is required of them and in the absence of clear, straightforward advice, they are afraid they might be doing the wrong thing. A common comment was: "Just tell me what I have to do to comply."

WorkSafe inspected a sawmill when the owner was absent and put a prohibition notice on one particular machine and advised the staff if any accidents occurred in other areas that had not been inspected the staff would be liable. The staff panicked and closed the mill down for a week until the owner returned from overseas.

Work safety consultancies offer advice to building companies, much of it "top end" rather than what is needed in the circumstances.

WorkSafe needs to do more to get clear information to the audiences who need it:

There is an OSH industry of non-productive people and safety gear yet people still get badly injured in the work place. ...Law needs to be simplified, be consistent site to site, be meaningful, and more responsibility placed on the individual.

Let's be clear

Improve the language used

The language used by WorkSafe "all practicable steps" (a requirement of the Health and Safety in Employment Act 1992) is so broad that neither employers nor employees know what to do to comply. In addition, WorkSafe's extensive (over 400) list of guidance documents can make it difficult to identify what is actually required in any given circumstance. This considerable amount of material can be difficult for small and medium size workplaces to digest and understand.

For example: the 64 page *Working from Heights* guide refers to 32 New Zealand and Australian standards, 10 European standards, six codes of practice and 10 best practice guidelines but it does not state what exactly is required in any given circumstance.

To put up a new sign on shop fascia scaffolding had to be erected. This involved...completing a "mountain of paperwork", reading the rules and understanding what was required to be compliant, obtaining quotes from different scaffolding companies and organising a traffic management plan to park the scaffolding truck on the main road...The scaffolding cost more than the sign...

Submitters express considerable concern about their difficulty in getting access to understandable information:

There is no clarification as to what we are allowed to do, every case is a test case. The workplace safety rules are pedantic and unclear. I read in a Department of Labour book that step ladders are not to be used as they have no fall restrictors, but on the next page, it said stilts are fine to use!

Again and again, submitters describe their difficulty in finding understandable information to guide them through what they needed to do. They feel swamped with inaccessible information and at the same time over-regulated. Clearly, WorkSafe has work to do here.

Confusing data

It's hard to make international comparisons about New Zealand's workplace safety record because other countries use different definitions of what constitutes a workplace, and also because they collect different data according to their compensation systems.

Even granted that, the Taskforce found data presented to it from WorkSafe to be unconvincing, outdated, and difficult to understand.

There needs to be better and clearer reporting on fatalities and serious injuries. It will be difficult to evaluate the results of health and safety initiatives without accurate available data.

WorkSafe practice

We do think that WorkSafe has an obligation to tell industry what standards they should be complying with and to correct the myths that are so easily spread. We also consider that the matter of employee responsibility for the safety of themselves and others is poorly understood and needs further clarification.

We think WorkSafe has an obligation to step up and address this confusion.

Achieving the opportunity

- Require WorkSafe to take active steps to correct common misunderstandings in the industry.
- Require central government agencies, to work with councils, employer groups and trade unions to develop clear, easily understood regulations, codes of practice and guidelines to support the Health and Safety Reform Bill once it becomes law.
- Require WorkSafe to review its website and guidance documents to fix the confusing and hard-to-read material and hard-to-find material currently available.

Health and safety – the myths

As already noted, misunderstandings abound about what the Health and Safety in Employment Act 1992 (HSE Act) requires. While the focus of the HSE Act is to promote the prevention of harm to people in workplaces, WorkSafe is also responsible for education, guidance, and co-ordinating enforcement across the system.

WorkSafe is the regulator, but it needs to be more of an educator.

We found that submitters are not getting clear information, nor are myths being swiftly debunked. The need to sweep away misunderstandings was emphasised in your recent speech to the Local Government New Zealand conference¹:

What is clear to me is that there are some rules that genuinely need changing. However, it's also abundantly obvious that there are a lot of people who have heard myths about what they can and cannot do, and as a result no longer focus on the reality...

If we can bust the myths and cut through the things that have been interpreted wrongly or just aren't correct, then both your staff and the public will be free to focus on the rules that are actually important.

Table 3: Health and safety myths

The myth	The truth
<p>You can't work at heights without a harness or scaffolding:</p> <p><i>The rule requiring a service person working on kid climbing towers taller than 800mm to wear a harness and hard hat is silly. Some of the kids climbing towers go up to 3m high, but the kids don't wear a harness.</i></p> <p><i>Three - step ladders are banned. Working above 800mm requires a harness or the site must be fully scaffolded.</i></p> <p><i>Regulations for Health & Safety have gone to the extreme, Scaffolding and Harnesses required for work 800mm (millimetres) off the ground.</i></p> <p><i>We can't get on a roof legally without a harness but that harness is extremely hard to work with in my line of work and causes safety issues wearing it.</i></p> <p><i>A harness that might be used 3 or 4 times a year is required to be tested every 6 months at a cost of hundreds of dollars. While there needs to be some rules I feel things have gone completely crazy.</i></p>	<p>There is no rule that someone working more than 800mm above the ground must be harnessed or that the property must have scaffolding.</p> <p>The legal requirements are not specific – it's the likelihood of a fall and potential harm that matters. The likelihood must be assessed and any risk managed.</p> <p>The HSE Act says employers, employees and visitors must "take all practicable steps" that are reasonable in the circumstances to keep safe. It does not ban the use of any equipment.</p> <p>The HSE Act does require that equipment such as three-step ladders must be used in the way they have been designed. For example, manufacturers often recommend that for stability reasons, a user should only stand on the lower rung if using the ladder as a work platform.</p>

¹ Hon Paula Bennett, Minister of Local Government: speech to the Local Government New Zealand Conference, 2015, Rotorua.

The myth	The truth
<p>Standing on sawhorses to work is banned:</p> <p><i>We have had a contractor given a final warning because he was standing on a sawstool to fit polystyrene cavity batten to a house with a hip roof on perfectly flat land. He could stand on a sawstool and reach the soffit. The poly was in strips 45mm wide, 20mm thick and about 1.2m long. No weight.</i></p>	<p>Standing on sawhorses is not banned.</p> <p>Sawhorses are not generally recognised as suitable work platforms because they are not designed for this purpose and are not particularly stable because of the way they are treated (such as being thrown in the back of a truck).</p>
<p>Every power cord must be tested and tagged every three months:</p> <p><i>Tag and test of power tools takes 1.5 days per month. It stops people bringing tools onto site. Costs \$500 a month to pay someone to test his tools, including mobile phone chargers - most of our gear is battery run with RCD on site. I have purchased a tester, created a register of tools and trained someone on my staff how to use the tester. It's insulting to staff who are not allowed to do the work that they used to 5 years ago.</i></p>	<p>Testing is not mandatory. Residual-current devices (RCDs) work in many cases. However, they do not completely prevent electrical shocks and may be unsuitable in situations where a shock could cause someone to fall or where, in a confined space, someone cannot get away from the source of the shock.</p> <p>Employers can carry out regular power cord inspections and record the results. This will be sufficient in many instances, such as in offices.</p> <p>In a high risk environment however such as on building sites, in a marine environment, or where cords are regularly rolled up, a test and tag regime may be the best way to ensure worker safety.</p>
<p>WorkSafe officials are hiding in unmarked cars to catch people out:</p> <p><i>It is becoming very hard to do ones everyday work with the threat of the Labour Dept trawling the streets checking on our safety equipment.</i></p>	<p>This is not official WorkSafe practice.</p> <p>WorkSafe officials do not have any unmarked cars or the time to sit around waiting for people to work in an unsafe way.</p>
<p>Farmers being warned for having a quadbike helmet on a nail in a shed and not on the bike:</p> <p><i>I've had the workplace safety lady call into the cowshed. She took my name and details and gave me a warning for not wearing a helmet on my quad. She never saw me riding my bike just noticed there wasn't a helmet hanging on my parked quad there (her words).</i></p>	<p>There is no evidence of such a warning to the farmer about his quad bike helmet. However, a WorkSafe official may have discussed wearing a helmet with the farmer as part of educating people about the safe use of quad bikes.</p>
<p>Volunteers are too scared to contribute their time for fear of being held liable if there is an accident:</p> <p><i>The H&S rules are written for forestry and mining You have to hire a H&S officer, which adds cost. Council is liable for people on public reserves. This kills fundraiser and fun events as volunteers become liable.</i></p>	<p>Volunteers working in a volunteer-only environment do not have to comply with the HSE Act. Organisations with paid employees and volunteers have the same duty to ensure the safety of volunteers as they do their paid employees.</p>

The myth	The truth
<p>Farmers are liable if someone walking on their land trips on a tree root:</p> <p><i>Health and safety rules make a farmer liable if a visitor to his farm trips over a tree root. As a result farmers are closing their properties to the public.</i></p>	<p>The HSE Act does not apply if someone walking on a farm trail hurts themselves because the farm is not a workplace in these circumstances.</p>
<p>Can't run a lolly scramble anymore because children might be hurt:</p> <p><i>A planned Santa Parade where the customary lolly scramble was to be banned due to safety concerns.</i></p>	<p>Being hit by a flying lolly would not be defined as a significant hazard.</p>
<p>Sole operator tradespeople have to hold a daily meeting with themselves:</p> <p><i>Contractors and farmers have been told to have a daily meeting to discuss the previous day and the coming day and to have these minuted. In some cases one man operations are having a daily meeting with themselves to consider the meeting they had the day before with themselves.</i></p>	<p>Employers must systematically identify and manage hazards. There should be a mechanism to log and review these. A person working alone needs to take all practicable steps to ensure the workplace is safe, both for them and for any others coming to the workplace. They do not need to have a daily meeting with themselves.</p>

Local government legislation

Councils affect the lives of ordinary New Zealanders in a multitude of ways. Local Government New Zealand has identified that there are 37 pieces of legislation councils are required to administer, so it's hardly surprising some of these Acts featured in submissions.

New Zealand has 78 councils. They are widely different in size, resources, the cultural makeup of their residents, and the particular concerns and challenges they face. Amid such diversity, a one-size-fits-all approach will struggle to work well.

Councils' powers and responsibilities are found mainly in the Local Government Act 1974 and the Local Government Act 2002. The latter repealed much, but not all, of the former, and this is a source of frustration to councils and ratepayers.

Local government challenges

A balancing act

The job of local councils is to provide good-quality infrastructure and services, and carry out regulatory functions in a way that is most cost-effective for households and businesses (Local Government Act 2002).

Councils also have to administer multiple sets of rules and costs imposed by central government through legislation and regulations. Levies and statutory timeframes for building consents are examples of this.

When laws are deficient or unclear, it falls to councils to interpret them:

The custodians of the legislation are councils. They have to reflect that, but if the legislation is poorly defined, they are not in a position to interpret using common sense. The law is the law.

Some councils struggle to balance what they see as conflicting roles:

- advisors to their ratepayers
- regulators to meet local concerns, and
- enforcers of compliance requirements.

These obligations can make it difficult for councils to create and present a customer-

focused culture (see [Creating a customer service culture](#) on page 55).

There are systemic issues

The frequently noted aversion of councils to any form of risk does not help. It is clear that councils are particularly concerned about potential liability:

Risk averse councils, and personal responsibility not being taken at some point. Implementation of the rule/regulation is often very different from the initial idea behind the rule.

Councils as regulators

Under the Local Government Act 2002, councils can make bylaws and charge fees for costs they incur, permits they issue and so on.

The Minister can set out infringement fees for breaches of bylaws that are infringement offences. If this has not happened then councils have to manage breaches by using other approaches such as education, warning notices or seizures of equipment (under warrant) or by undertaking prosecutions.

The Local Government Act 1974

Opportunity: Repeal and replace the parts of the Act that cause confusion

Much of the Local Government Act 1974 was repealed or replaced by the Local Government Act 2002, but parts remain in effect. The following topics are cited by submitters as causing particular irritation:

Encroachment – let's give a little

Opportunity: Make encroachments rules consistent

An encroachment authorises the private occupation of a public space, often for an annual fee. Common examples in residential areas are garages, and parking structures on legal roads.

The Local Government Act 1974 gives councils the power to grant specific encroachments, such as for pipes under a road, gates and airspace above a road. However, the law is unclear about whether local authorities have the power to approve encroachments beyond these cases.

Local Government New Zealand tells us the uncertainty about the law leads to inconsistent interpretation and variations in what councils charge property owners.

Problems also arise over restrictions on the transfer of leases when properties are sold:

Existing leaseholders should be able to convert to the lifetime lease based on a specified per meter charge, rather than having to pay thousands for a valuation. The lease should be part of the building and should not need to be transferred separately to the new owners.

Old apartments with a balcony are charged an annual rental for encroaching public space, with a minimum fee. When ownership changes a new lease is needed with additional fees charged. So most of the cost just covers administration. New builds are able to get a lease for the life of the building which is paid once as part of building consent fee. But a change of ownership fee is still charged.

Achieving the opportunity

- Clarify what encroachments councils can approve.
- Give councils advice on how to interpret the law.
- Make it easier to update leases.

Getting rid of abandoned vehicles

Opportunity: Give councils authority to dispose of abandoned vehicles more easily

Councils noted that the disposal of abandoned vehicles under the Local Government Act 1974 is a cumbersome process that takes up a lot of staff time and resources.

The process requires councils to:

- contact the registered owner of a vehicle to request its removal
- tow away the vehicle if it has not been moved
- store it for 10 days
- advertise in two issues of a daily newspaper.

The owner is responsible for all expenses incurred in these steps, but councils bear the costs of removal, storage and disposal if they cannot find the owner.

Councils are allowed to dispose of vehicles of little or no value without giving the required notice. However, this applies only to vehicles obviously abandoned and not roadworthy.

We sympathise with councils trying to tidy up the environment by removing abandoned vehicles, and we consider the process could be streamlined while still taking account the rights of the owners of vehicles.

Achieving the opportunity

- Streamline the process for disposing of abandoned vehicles.

Unblocking temporary road closures

Opportunity: Align the rules about temporary road closures by councils

Councils can temporarily close a road for such reasons as road works, fairs, markets and parades.

The power to temporarily close a road for specified purposes is in the Local Government Act 1974 and the Transport (Vehicular Traffic Road Closure) Regulations 1965.

These two pieces of legislation are different in some aspects. For example the Regulations allow for an objection process for a temporary road closure, whereas the Local Government Act 1974 does not.

Objections slow the process of assessing the application. They also impose administrative costs:

Clause 11 of Schedule 10 to the Act contains a number of limitations that are restrictive, possibly out-dated and cause administrative problems ...(such as the number of market days in shopping centres cannot exceed 31 in any year). Often objections can be commercially based or subjective and delays or cancellation of events become necessary...There are also risks that a popular community event (such as a parade or celebration) cannot be held as sufficient notice has not been given and it is easy for someone to object...The legislation requires that a special council meeting is required to approve a request if the advance notice period as set out in the Transport Regulations is not complied with.

Achieving the opportunity

- Make the requirements of the Local Government Act 1974 and Transport (Vehicular Traffic Road Closure) Regulations 1965 compatible with each other.
- Make it easier for councils to temporarily close a road.

The Local Government Act 2002

Opportunity: Clarify parts of the Local Government Act 2002

Submitters identify the following issues as causing confusion:

Infrastructure connection requirements – inflexible and dated

Opportunity: Make new infrastructure connections optional and negotiable

Submitters express concern about their inability to negotiate with infrastructure suppliers, and having to pay for something they do not want and would not use:

Telephone connections are required for every section in a new subdivision but modern telephony means you don't need a cable connection. And rural areas often don't have phone lines anyway.

Having no or few options to choose a supplier is cited as the cause of increased charges:

Having only one supplier of water and waste disposal means they are free to charge whatever they like. Example: A connection four years ago was \$4,500. Two years ago it was \$9,000. The current charge for a new connection is \$13,000.

The issue ... is the cost of \$12,000 to have a water meter connected to a small section subdivided from an existing section. It is highway robbery undertaken by a monopoly organisation. I don't buy their argument that it covers the capital cost of providing water and wastewater infrastructure. They charge the customer for the capital they want and then charge them for a market return on capital they got free.

Some developers complain that they had no choice but to use the infrastructure company's sub-contractors:

Inflated charges by (often privatised) monopolies or their sub-contractors to connect utilities, typically power and telecommunications, (and sometimes water). Because of a lack of competition, these monopolies and sub-contractors charge as they see fit for connecting each individual section to the system. There is no transparency as to the link between that connection cost and the true cost of providing that connection.

We have some sympathy with submitters' concerns, especially since advances in technology mean "hard" connections may no longer be the sole means of delivering a service. We are, however, also aware that a potential future owner of a property may expect such connections and may not think to check that these are on site when negotiating a purchase.

We would like to see infrastructure companies working with councils to give information on connections. Prospective purchasers can then decide for themselves if the technology suits them.

Achieving the opportunity

- Make it easy to find out what type of connection is provided to a property.

Development contributions – unfair and unclear

Opportunity: Councils should have clear policies and practices about development contributions

Councils were given the power to charge development contributions in 2002; the policy has been contentious ever since.

Development contributions are the fees charged by the council for the additional community and network infrastructure needed as a result of growth development projects. Examples include stormwater, public transport, recreation, and community facilities.

A territorial authority can charge a development contribution under the Local Government Act 2002, and a financial contribution under the Resource Management Act 1991, but not for the same purpose for the same development.

Many people view development contributions as costly and unnecessary:

We developed [a] big site for a multi-national, 8000m² building [and] put our own sewage plant and water plan into a high-tech building. Council charged \$540,000 for the development contributions (the actual consent costs will come on top of that). That's a lot of money before you even start.

The concept of the developer "generating demand" for infrastructure is fallacious. The contribution fees are simply a tax on production. The fees are patently unfair and need to be abolished.

Submitters also comment on what they saw as "double dipping":

Reduce or eliminate development contributions as the landowners have to pay to install the system anyway and shouldn't be paying twice.

When subdividing a property councils require the land owner to install and pay for all infrastructure (wastewater, stormwater, water, power etc.) to the sections and connect these up to the council system. These can cost up to \$50,000 ... Then on top of this cost council requires the landowners to pay development contributions... Landowners have to pay for the system and then pay again to connect. Seems like double dipping to me.

Changes on 1 July 2015 focused on improving transparency of calculation and accountability of councils in charging contributions. These changes happened after the closing date for submissions to the Taskforce and may not have been known to some submitters.

We note that a lot of work has been done to improve understanding of development contributions, and in particular we commend the Department of Internal Affairs' work on the development of a single national guidance document.

Achieving the opportunity

- Require councils' development contribution policies and calculations to be reasonable and understandable.

Council controlled organisations – different laws for different people

Opportunity: Review council charging for water infrastructure growth

Watercare has its own rules

Watercare is a council-controlled organisation wholly owned by Auckland Council.

Some developers told us that Watercare's monopoly position is an issue, in particular its actions in requiring developers to both fund and hand over infrastructure, and also to pay the infrastructure growth charge and connection fees.

The charge is just like a development contribution but without the same legal protections for the consumer. Submitters comment that Watercare is using its monopolistic powers to force this charge on new connections:

We developed a sewerage/water scheme for a development which was required to have a 100 year life. Watercare charges a connection fee (around \$10.5k per house for connection to a water meter) even though all costs for development were loaded on to the developer.

The scheme development was for everyone in that area (not just the development) and was handed over to Watercare free of charge. No reimbursement of any costs relating to the percentage used by the development. It's a roort having to pay for much more than what is being used.

Watercare staff assured us that all of its revenue is used to fund existing operations and to develop new infrastructure and, as required by law, they keep costs to customers at minimum levels (Local Government (Auckland Council) Act 2009).

While we accept Watercare's assurances, it is clear that developers think that both the costs and their inability to negotiate are loopo.

In our discussion with developers we were told that other infrastructure providers pay back to the developer the percentage of the cost not used by the development and we think that Watercare should consider this.

We note that water companies are not regulated industries under section 36 of the Commerce Act 1986. This means the Commerce Commission is unable to examine water company charges.

Achieving the opportunity

- Require council controlled organisations to provide the same protections in regard to infrastructure development, as provided for development contributions in the Local Government Act 2002.

Additional acts affecting local government

In addition to having to implement the requirements of the Local Government Acts, councils have responsibilities defined in other acts. Some of these cause problems to our submitters and to councils that have to administer or work within them.

Derelict buildings – hazardous hurdles

Opportunity: Make it easier to demolish or dispose of derelict buildings

Councils have told us about the hurdles in the way of removing derelict buildings. Requests for action come from many sources, including neighbours and health officials. Buildings in serious disrepair can be a risk to health, a potential fire hazard, and a site for criminal behaviour.

An owner may no longer be around or may have little ability to meet any costs awarded by the court.

Under the Building Act 2004, councils are limited in what they can do to compel owners to repair or demolish their properties, clear overgrown sections and remove rubbish.

Putting up signs to warn of danger and fixing any immediate danger do little to resolve the problem.

Local Government New Zealand cites a typical case:

A particular derelict property has caused the council to incur costs in excess of \$60,000 on consultants' reports and legal advice over a period of five years as the councils lack the ability to simply require its demolition.

We agree that more should be done to assist councils to dispose of or demolish derelict buildings.

Achieving the opportunity

- Make it easier under the Building Act 2004 for councils to require that derelict properties be maintained or to order their demolition.

Land Information Memoranda – slow and risky

Opportunity: Provide Land Information Memoranda to meet customers' needs and manage councils' risks

A Land Information Memorandum (LIM) contains all the relevant information a council holds on a property or section.

Councils are required to make the information available within 10 working days under the Local Government Official Information and Meetings Act 1987.

Submitters noted that provision of a LIM usually takes the 10 working days but that it can be received much quicker if an additional fee is paid:

Councils are allowed 10 working days to supply a LIM. The problem is that they usually do take the whole 10 days, unless a higher fee is paid for an urgent LIM. In this case a LIM can be supplied overnight.

It is suspected that councils routinely complete the work as soon as it is requested but withhold supplying the LIM until the 10 days are up.

The Taskforce has heard that a recent Supreme Court ruling places a duty of care on councils to ensure information on LIMs is accurate. Mistakes in the preparation of a LIM therefore expose ratepayers to potential liability.

We have also been told that most councils do not price legal risk into their fees for LIMs. Some councils do provide faster LIMs for a higher price recognising costs associated with dedicating resources to this task, but do not cost risk into the fee.

LIMs provide potential property purchasers with a degree of assurance about a property.

We believe consumers should have a choice:

- to get a LIM quickly and cheaply without the expectation of a legal duty of care by the council, or
- for the council to take due care to fully investigate and prepare a full report, at an appropriate fee, in exchange for taking responsibility for its accuracy.

We are also aware that at some property sales a copy of the LIM is circulated amongst all potential buyers. In this instance we would not expect a council to have a duty of care other than to the original purchaser of the LIM.

Online LIMs will be possible once the Integrated Property Services (IPS) system is in place. However, this is not expected to happen until 2025.

Submitters also note that LIMs sometimes contain inaccuracies which are very difficult to get councils to correct:

The council has incorrectly mapped our suburb resulting in over 250 properties having their LIMs incorrectly tagged.

When we reviewed the mapping for the property, we found it to be grossly inaccurate. As an example, it showed wetlands extending over medium hill country which was in fact productive pasture. This inaccurate mapping had the potential to severely limit the economic activities on the property and the ability to remain as a viable farm.

Achieving the opportunity

- Develop a LIM process that recognises customer requirements and the council's risk.
- Give councils the ability to provide two levels of LIMs: one quickly but without the expectation of a legal duty of care, or a full report within 10 days with the council having full duty of care.

Traffic control – confusing signals

Opportunity: Make traffic control legislation more flexible

The Land Transport Act 1988 empowers councils to make bylaws and regulations specifying offences and penalties for breaches of traffic control.

The Local Government Act 2002 sets out requirements and processes when decisions, such as making a bylaw, are made by local authorities.

Councils find this a bit confusing:

The relationship between statutes, regulation, rules and bylaws that currently govern traffic controls are very confused. This means the current position of the law regarding traffic controls is ineffective and inefficient. Even legal specialists in the area cannot agree on how they interrelate.

The entire area of traffic control needs to be simplified and streamlined in terms of where the authority to implement traffic controls comes from and how these powers can be delegated. Because of the way the traffic law is currently being interpreted by the courts, all traffic control decisions are required to be made in an inefficient and ineffective way.

Management of speed limits and parking restrictions. In the current regulatory requirements, it is a major exercise to make any changes to any speed limit area or parking restriction area. There is a need for change to a simpler process.

Councils also have concerns that the rigidity of some requirements can mean local bylaws made for safety or aesthetic reasons are in conflict with the legislation:

The Council proposes the New Zealand Transport Agency amend the Land Transport Rule: Traffic Control Devices 2004 (Clause 12.7) to enable road markings for parking to be made using other methods, not exclusively white [or yellow], or enable these decisions to be delegated under a Council policy.

We accept the need for some consistency throughout the country so as not to cause confusion among road users but consider there should be room for flexibility to meet local interests.

Achieving the opportunity

- Amend the two acts to ensure sound legal backing to councils' traffic control decisions.

Road stopping – complicated and expensive

Opportunity: Make the process of stopping roads clearer and simpler

Councils look after unformed legal roads, commonly known as paper roads. Such roads have a legal existence whether on private or public land.

Many were created in the early days of settlement when land was set aside for roads to ensure public access once the land was developed.

The power to stop roads is regulated through the Local Government Act 1974 and the Public Works Act 1981. The approval of the Minister for Land Information may be needed to stop a road.

A complicating factor is the Walking Access Act 2008 which ensures an enduring right to access the outdoors. This includes public resources such as unformed legal roads.

Submissions came mainly from councils concerned at the expense and complexity of stopping an unformed legal road, either partly or wholly:

Signs noting the proposed stopping have to be placed at each end of the road that is the subject of the stopping proposal.

...the council must give public notice twice while the plan is open. Strangely the period is longer and requires more notification than processes for matters as important as consulting on a long-term plan.

...road stopping in rural areas needs Ministerial approval...why only in rural areas as defined in District Plan, and why at all, given there is already a public objection process? This slows the overall process and adds additional processing and approval cost for no benefit.

The road stopping procedure under this Act currently requires a survey plan for stopping local roads vested in the local authority as a prerequisite to public notification. These plans are expensive and there is no guarantee that the road stopping will proceed (for example, it could be declined upon application to the Environment Court). We suggest a scheme plan diagram...with a survey plan required once it is certain the stopping will proceed.

We are also aware organisations such as the Walking Access Commission want the current unformed legal road network retained and to be the basis of the country's walking and biking trails.

Achieving the opportunity

- Streamline the process of road stopping while still ensuring appropriate public access.

Mastering dog registration and control

Opportunity: Make dog registration and control easier for owners and councils

Stray, dangerous, and mistreated dogs are frequently in the news.

The primary statute relating to dog control is the Dog Control Act 1996 and subsequent amendments. Councils are required to consult with their communities on dog control policy and bylaws.

Dog owners complained about having to pay fees to manage the behaviour of “bad” dog owners:

...why register dogs? So that people can walk down the street without getting attacked by a dog. Except the good dog owners pay (they have dogs that don't attack) and bad ones don't - they're the ones with the problem dogs.

All dogs (except working farm dogs) must be micro-chipped and this is usually done by a veterinarian. Micro-chipping remains contentious:

Get rid of the law requiring micro-chipping of dogs as it doesn't serve the intended purpose and causes unnecessary compliance costs.

Some people are confused about micro-chipping information stored on the National Dog Database run by the Department of Internal Affairs and councils, and information stored on the companion animal database run by organisations such as the SPCA.

In fact, councils review the microchip information when the dog is first registered and record it on the National Dog Database.

Councils are particularly concerned about the lengthy process they have to go through to destroy dangerous dogs:

If a dog attacks a person and the owner is not prepared to sign the dog over to the council, then the council has to go to a court hearing. This incurs legal fees.

One suggestion is that if a dog attacks a person or kills another animal it should be automatically euthanised.

Achieving the opportunity

- Develop better information and resources to help dog owners and councils to manage their responsibilities.

Freedom camping – regulations without teeth

Opportunity: Fix the problems with freedom camping infringements

Freedom camping can cause problems for local residents and imposes costs for councils and the Department of Conservation.

The Freedom Camping Act 2011 enables councils to make bylaws about where freedom camping can take place:

The Act also only covers land controlled by councils or the Department of Conservation. There are issues where people are camping on land controlled by Land Information New Zealand (LINZ) or Land Transport. This is an issue as this cannot be enforced and results in an unenforceable legislation.

The Act enables vehicle hire companies to charge infringement fees to customers' credit cards or to pass on contact information (not credit card details) to councils to collect the fee. In practice, companies are more likely to pass on customer information to councils than to charge fees to customers' credit cards.

Most infringement notices are issued to overseas visitors, only about a third of whom pay the fine. No authority can enforce the fine – or indeed many other types of fines – once visitors have left the country.

Hire companies are assisting offenders to circumvent the rules/infringements.

We have received submissions from councils expressing frustration their only tool to force payment of fines is to take offenders to court, meaning that infringement costs are out of proportion to the seriousness of the offence.

We consider there needs to be other ways to deal with this problem, such as education, warning notices, and the seizure of vehicles.

Achieving the opportunity

- Enable councils to collect fines for freedom camping infringements.

Property numbering – where is #13?

Opportunity: Simplify the allocation of street names and property numbers

The Cadastral Survey Act 2002 places responsibility for title surveys and the allocation of property numbers with the Surveyor-General at Land Information New Zealand.

The purpose of the statute is to ensure streets are unambiguously numbered for a number of practical reasons, such as delivery services, electoral purposes, and emergency services.

Councils are responsible for the actual allocation of street names and property numbers, but their decisions are subject to the Surveyor-General's approval.

Submissions from councils highlight the need for some flexibility to allow them to meet local requirements:

Having to change addresses can be very time consuming, expensive, distressing for the property owners and tenants, and achieve no practical benefit if a Chief Surveyor's request is not reasonable. ...the Australian/New Zealand Standard for Rural and Urban Addressing (AS/NZS 4819:2011) is an excellent guide... Councils should have discretion to allow exceptions...

...a solution would be to just ask Chief Surveyors to allow councils some discretion when allocating property numbers, provided there is no adverse impact for emergency services.

Achieving the opportunity

- Make councils solely responsible for allocating street names and numbers.

Other acts that create loopy rules

Here are some of the other strange rules identified by submitters:

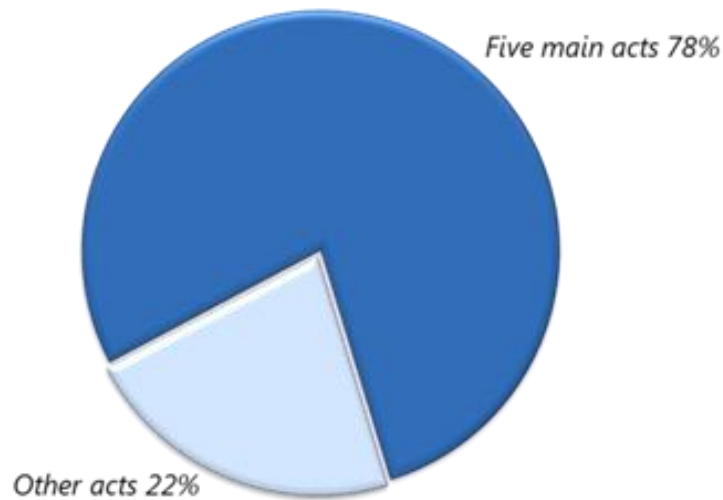


Figure 7: Percentage of submissions not on the five main acts

Reserves Act 1977 – time for a makeover

Opportunity: Modernise the Reserves Act 1977

The Reserves Act 1977 is almost 40 years old. We heard from council submitters that some of the provisions are overly restrictive, create duplication, and reduce councils' flexibility to manage reserve land.

We were also told that these issues are a long-standing problem. In 1998 Local Government New Zealand and the Department of Conservation prepared a report *Improving Administration and Understanding of the Reserves Act 1977*. The report included several technical amendments that apparently have never been implemented.

Councils told us the Reserves Act 1977 is out of touch with modern-day life. Sports clubs, for example, are not allowed to hold social and commercial functions in buildings on recreation reserves. This is loopy. Some commercial use of reserves can generate income without distracting from the main purpose which is a venue for recreation.

While we appreciate the importance of maintaining public land we do think that

councils could be given powers to manage reserve land on behalf of their ratepayers.

Some of the operational issues include:

The process should be amended to give greater flexibility to the local authority to decide how much reserve land is needed and avoid having assets that are in the wrong place or no longer providing value for money.

The Act should recognise modern means of communication and provide greater flexibility to avoid costly public notification.

In some circumstances there are council-owned recreational or local purpose reserves that are no longer required. Currently the Minister holds the power to revoke the reservation over such reserves. These should be able to be more readily disposed of, without reference to the Minister and noting councils' consultation obligations under the LGA.

There is overlap with Resource Management Act 1991 requirements which create extra work:

Another example is the requirement to classify all reserves, including reserves created on vesting as part of subdivision under the Resource Management Act 1991. The requirement to continually classify reserves on vesting creates an administrative burden on local authorities and an unnecessary duplication of effort.

It seems loopy to have to run consultation and hearings processes under both pieces of legislation for one proposal. Planned reform of the Resource Management Act 1991 may correct this problem. The Reserves Act 1977 needs an update.

Achieving the opportunity

- Update the Reserves Act 1977 and ensure co-ordination with the Resource Management Act 1991.

Boil and bake, but don't microwave

Opportunity: Update housing regulations

The Housing Improvement Act 1945 authorised the making of regulations about minimum standards in homes.

The resulting Housing Improvement Regulations 1947 deal with such matters as the type of rooms every dwelling must contain (for example, a kitchen, a bathroom, a bedroom), the minimum size of rooms and essential services such as adequate means of preparing and cooking food, "both by boiling and by baking".

The Housing Improvement Act 1945 has been repealed, but the regulations remain, despite being clearly outdated:

The provision of a microwave in an apartment did not meet section 7 (2)(b) of the Regulations and a stove had to be provided.

Microwave ovens for cooking did not exist in 1947, and nor did all-in-one benchtop cookers,

electric frying pans, and microwaves. Plainly, this is out of step with modern-day housing trends. It should be possible to provide modern appliances that meet the intent of the Housing Improvement Regulations 1947.

In addition, the aspects of the regulations relating to overcrowding are inconsistent with definitions in the Residential Tenancies Act 1986, the predominant legislation on tenants' and landlords' rights and obligations.

Things were further confused with the introduction of the Building Act 2004 which has further specified minimum housing standards.

We think it's time to make the Housing Improvement Regulations 1947 consistent with the Building Act 2004 and Residential Tenancies Act 1986.

Achieving the opportunity

- Modernise the Housing Improvement Regulations 1947.

Liquor licensing – confusing and inflexible

Opportunity: Clarify the law relating to the sale and consumption of liquor

The Sale and Supply of Alcohol Act 2012 covers the safe and responsible sale, supply, and consumption of alcohol and the minimisation of harm caused by its excessive or inappropriate use.

Recent changes to the Sale and Supply of Alcohol Act 2012 allow councils to develop alcohol policies in consultation with residents and ratepayers.

This is sensible, yet we heard from submitters who are irritated by the Act. For example, submitters told us that where as a community group wanting a liquor license for funding events used to be able to get one for a year, now they have to get a license for each event, as well as provide non-alcohol drinks, a taxi number (difficult in rural areas), and food:

More flexibility is required and individual circumstances taken into account. Common sense should prevail. One law does not fit all.

The Act change means a committee with a minimum of three members and two community reps is required to sign-off temporary authorities to enable a change of administrator or owner. This creates a gap in licensing arrangements that prevents continuous trading and a smooth transition in ownership.

Applications for liquor licences must be submitted 20 working days before an event (excepting funerals). This applies to the most minor of events (serving one glass of wine requires a licence) and represents a major cost for voluntary groups. Why does the Act over-ride local decision-making powers? We need more flexibility for smaller events.

The legislation requires retirement villages that supply alcohol to residents, or if residents themselves operate a "happy hour" to get a liquor licence. This is far in excess of what is required to provide limited amounts of wine and beer to a relatively small number of people, most of who live in the retirement village. The risks are negligible yet they are treated in the same way as a venue that's open to the public.

The Sale and Supply of Alcohol Act 2012 is complex and still bedding down. Submitters have a number of concerns about how it is intended to work. We were told many stories that turned out to be myths and consider there is a need for further guidance for the public.

Achieving the opportunity

- Improve understanding of the law around the sale and supply of alcohol.

Removing the bugs from hairdresser licensing

Opportunity: Stop the requirement for the annual registration of hairdressers' premises

The Health (Hairdressers) Regulations 1980 and Health (Registration of Premises) Regulations 1966 require councils to register hairdressers each year, in accordance with the Health Act 1956.

Submitters question the public health benefits such requirements:

Hairdressers were once the source of infection. This has not been so for fifty years. Every year local authorities have to register and inspect them.

The products used and practices employed do not pose a health risk proportionate with the need to regulate.

Registration involves an inspection of premises to ensure they can be adequately cleaned and operated to prevent the spread of disease. This includes appropriate sterilisation of scissors and razors.

We are now in 2015 and we think this is a loopy rule.

We note that other services such as tattooing, nail bars and beauty parlours do not have the same registration requirements. Some councils however have bylaws to manage the risk to public health that may arise from such services.

Achieving the opportunity

- Remove the requirement for annual licensing of hairdressers and barbers.

Improving how we make rules

The pipeline approach to regulation

Opportunity: Develop a coordinated “pipeline” approach to regulation

The making of good regulations has been improved through requirements for regulatory impact analysis, Cabinet Manual guidelines, best-practice documents, and annual reviews of regulatory impact statements undertaken by the Treasury. In addition, the Minister of Regulatory Reform, Hon Steven Joyce, recently announced his intention to improve collaboration between regulators and stakeholders (*Hon Steven Joyce, 28 July 2015, Government drive to lift regulatory quality, beehive.govt.nz*).

We believe there are opportunities to consolidate this advice. The concise Code of Good Regulatory Practice is an unappreciated aid and an excellent place to start (see [Appendix C: Code of Good Regulatory Practice](#) on page 62). In little more than two pages it provides key reference points to anyone thinking of new rules. We think this should be kept concise but updated, and then widely publicised within both central and local government.

Many opportunities exist to improve the regulatory framework. We feel it is important to show why loopy rules are still getting through and how good rules are made. This section considers how regulations are designed and implemented. It covers the four main phases of the pipeline of new rules: design, implementation, administration, and review.

Designing new regulations

Opportunity: Integrate an updated Code of Good Regulatory Practice into the regulatory management system

Regulatory design

Rules and regulations take many forms, including statutes, regulations, codes of practice, guidelines, and standards. Based on what submitters have told us, the following should be included when designing rules and regulations:

- Question: Are regulations the best way to solve the problem (assuming the problem has been well articulated)? All alternatives to regulations should be considered before going down this road.
- Purpose: The purpose of regulation should be clear.
- Consult: Regulations should be designed in consultation with the people who have to administer and enforce them and the people who have to use them.
- Cost: The costs of enforcement and compliance and the benefits should be clearly identified.

- Compliance: Staying within the rules should be straightforward and reasonably priced.
- Clear: Regulations should be written in plain language, should be clear about what is expected and what is required to comply.

Treasury's *Best Practice Regulation: Principles and Assessments* document (February 2015) is a good tool for ensuring rules and regulations effectively support legislation and help users understand their rights and obligations. We note that as it is 89 pages long a summary document would make it more accessible and effective. The revised *Code of Good Regulatory Practice* could serve this purpose.

Regulatory impact analysis is important

The *Cabinet Guide* states:

"The government expects that departments will not propose regulatory change without:

- *clearly identifying the policy or operational problem it needs to address, and undertaking a Regulatory Impact Analysis (RIA) to provide assurance that the case for the proposed change is robust; and*
- *careful implementation planning, including ensuring that implementation needs inform policy, and providing for appropriate review arrangements."*²

A regulatory impact analysis and then a regulatory impact statement (RIS), if necessary, should be undertaken for any policy work involving regulatory options that may result in a paper being submitted to Cabinet. "Regulatory options" means the potential introduction of new legislation (bills or regulations) or changes to/the repeal of existing legislation.

However, we regard the development of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health as an example of poor policy-making. Submitters told us that the regulatory impact analysis is inadequate and does not consider the costs and implications of implementation.

The development of the current fire engineering regulations is another example. As regulations, they did not have to go through a RIS process.

We have observed problems with how the regulatory impact framework functions.

Practices are inconsistent

We were told that a regulatory impact analysis and statement may not always happen or be adequate. We commend Treasury and the Cabinet Office on the clear information on what is required for such analysis and statements, and reinforce the importance of the process in helping to ensure that regulations work as intended. If a minister or department decides not to do a regulatory impact statement, they should tell Cabinet why.

² [cabguide/regulatory-impact-analysis](https://www.cabguide.govt.nz/regulatory-impact-analysis)

We consider there is an opportunity for the Treasury to extend its annual review of regulatory impact analysis performance to note departmental good practice and wider opportunities for improvement. These could be used as a tool for improving risk analysis within departments.

Local government also makes regulations

Councils are also involved in developing rules and regulations through their district planning and bylaw development processes. However, while the purpose of local government requires it to function in a cost-effective way, no comparable process is in place for assessing regulatory impacts. We suggest local government adopt the updated *Code of Good Regulatory Practice*, and that Local Government New Zealand help with its implementation.

Stakeholder engagement is irregular

Councils are particularly concerned about a lack of involvement when central government agencies are considering new or amended regulations that would affect them.

We have been told how some regulatory changes suffered from poor consultation with stakeholders, creating considerable compliance problems and cost issues for the relevant sector, as well as further costs for government in trying to address the problems.

One submitter says of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health:

The [local government] sector should have been more involved in development [of the NES]. More thought was also required on implementation...

We also heard that the National Environmental Standards for Air Quality are an example of regulations that are well intentioned, but poorly designed and lacking sufficient local government input in their implementation. The standards were set at the national level, but the details of implementation are left to councils to sort out. Councils bear the brunt of public frustration with the standards.

In fact, we were told that when the Ministry for the Environment issues national direction under the Resource Management Act 1991 (such as the National Policy Statement on Freshwater Management), it either does not

give timely guidance on how councils should implement it, or the guidance lacks substance and still leaves much of the decision-making about implementation to councils.

To their credit, MBIE told us directly about a loopy rule the Department of Building and Housing created in 2012:

"The approach taken by its predecessor organisation, the Department of Building and Housing, to the overhaul of fire engineering regulations in 2012 was not ideal. While the changes were motivated by a need to address examples of inadequate fire engineering design, key stakeholders such as commercial property owners were not consulted.

Because of this, there has been widespread dissatisfaction with the 2012 regulations. Many regard them as unworkable. MBIE commenced a process in 2014 to address and recover from this situation. With widespread sector involvement the results, though not complete, seem promising."

A better way to consult

Local government and other stakeholders cite the Ministry of Transport as a case study of how to consult sector interests. Only a few years ago, it rated very poorly for consultation and engagement. It is now seen as a model agency by many.

The turnaround is due to several factors. The Ministry accepted the need to make improvements. It went to councils and talked to them about their concerns. It didn't create some new engagement model. It simply overhauled the way it interacted with stakeholders.

This new approach was carried out with ministerial approval. It included:

- building trust and trying to be more open with all stakeholders
- appointing senior people as relationship managers
- holding discussions with stakeholders to demonstrate that the Ministry was committed to establishing a relationship of trust
- sharing its forward work plan and eventually putting it on its website.

Also, the Ministry did not stick stubbornly to its policy framework and did not bring pre-determined solutions to workshops with local government representatives. It accepted it had to explain to people outside central government what it and other agencies are doing and planned to do.

We think the Ministry offers an excellent example for other central government agencies to follow. When a new policy, law or regulation is considered, central government should adopt a project-specific engagement approach with stakeholders, particularly where local government will be involved in implementation.

Achieving the opportunities

- Develop a coordinated pipeline approach to regulation.
- Require all government departments to adopt a stakeholder approach, such as that used by the Ministry of Transport. The Ministry signals policy changes in advance, involves stakeholders early on and is open to critical feedback.
- Require all government departments to develop a project-specific engagement approach when developing policies and regulations that local government must implement, for example, with the planned changes to Easter Sunday trading and the implementation of the Building (Earthquake-prone Buildings) Act, once passed.
- Integrate an updated Code of Good Regulatory Practice into the forthcoming Government strategy for the regulatory management system and promote the Code more widely, including to the local government sector.
- If a proposal will affect councils, Cabinet papers should include "consultation with the Minister of Local Government".

Implementation, administration and review

Opportunity: Assess and review the impact of new regulations on councils

Implementation

Submitters told us they wanted:

- accessible information, using clear language and in a variety of mediums
- information, advice and feedback that is continuing, not intermittent or a one-off
- reviews soon after implementation and at least every five years thereafter.

When councils are to be responsible for administering new rules and ensuring compliance, they want:

- to be involved early on in the design of the regulations
- a balance to be struck between the costs and benefits of enforcement and compliance
- sufficient time to train staff and to design local implementation and compliance processes
- rules to come into effect only once staff are ready.

As one submitter told us:

If a Minister were to propose undertaking a new regulatory role, it would have to go through quite detailed and exhaustive processes. There is no corresponding level of scrutiny of the costs being generated by legislation allocating roles to local authorities. The level of scrutiny applied typically extends no further than a reassurance to Ministers that “there are no fiscal implications for the Crown”, and that “local authorities have the power to recover costs through the rating system or by setting fees”.

Administration

We were told frequently of problems related to the administration of rules and regulations, such as delays, a lack of an apparent basis for fees charged, poor customer service, risk aversion to the point of unhelpfulness, overly bureaucratic processes, and restrictions on what information can be sent online.

We believe administrators should be able to design systems that:

- have the customer at the heart of the process
- are co-ordinated within the agency and across similar organisations
- are costed appropriately.

Review

Parliament’s Regulations Review Committee examines all regulations, investigates complaints about regulations and performs other functions so Parliament can effectively scrutinise and control regulations.

Central government operates no systematic review of regulations. The only restraints on regulations are sunset clauses, and we do not recommend these due to their inflexibility.

Instead, stewarding agencies should actively seek out or act on feedback from affected parties about loopy rules.

Achieving the opportunities

- Include a cost-benefit analysis prior to development.
- Provide guidance to councils and other compliance agencies on major matters of interpretation of new regulations, for example, use of discretion.
- Extend the Treasury’s annual review of government regulation to tighten up the quality of regulatory impact analysis and statements.
- Require the Treasury and the Department of Internal Affairs to assess, monitor and report back on the impact of legislation and regulations on councils.

Creating a customer service culture

A new approach to customers

Opportunity: Put the customer first in central and local government policy and practice

No government or council will ever be able to remove every loopy rule. But at the heart of any sound system of rules must be a genuine focus on the customer – a focus on explaining the rules and helping people navigate through problems. Again and again, submitters emphasise this lack of a customer service culture.

Frustration and confusion with local and central government

The Taskforce heard from many people frustrated and confused about their experiences with some of the council staff they are dealing with on their planning and consent matters:

Culture at council is an issue among those who implement legislation. For example, some staff won't make a decision until there is a legal decision that they can refer to.

Submitters say they are confused about what is required for consent to be granted and how to get guidance when there are problems:

Councils often don't provide good information on what is needed.

For their part, councils told us about similar problems when they worked with central government agencies:

Legislation affecting the sector (local government) is "owned" by a variety of departments and Ministers. This means policy issues are dealt with by different Cabinet committees, and legislation scrutinised by different parliamentary committees. Cabinet and official committee processes are more concerned with the "politics" of a decision, and the impact on central government processes.

Councils are often left confused about how to implement new or amended regulations and can find it difficult to get to the right person in a central government agency to discuss or help resolve their difficulty. New regulations and standards are established without adequate guidance on how to implement them. This seems to be a particular problem for smaller councils:

Failure to consider risk when designing accountability processes so that a small council ... must provide the same level of information and meet the same accountability requirements as a large council ... Compliance first, advice second.

Customer service is not a core value

There are tens of thousands of people working hard at their jobs in the country's 78 councils and 48 government agencies. But what seems to be missing is a systematic approach within local government and parts of central government to treating people in a customer-focused way.

The State Services Commission has no overall customer strategy for government agencies, and the State Sector Act 1988 does not refer to customers. Similarly, the chief executive provisions in the Local Government Act 2002 talk about managing resources, finances, staff and policies, but not customers.

"Improving interaction with government" is one of the four key priorities in the Government's delivering better public services programme. Results areas 9 and 10 focus on businesses and individuals being able to access one-stop online services for advice and transactions. While this is a useful service it does not address the concerns raised by submitters about the difficulties they experience in getting information or action.

The Productivity Commission identified these difficulties in its report³. They are difficulties the Taskforce is also concerned about.

³ New Zealand Productivity Commission: Towards better local regulation, May 2013

We know that risk management is a core part of the work of government agencies and councils. But the public sector needs to take a lead from other sectors (such as banking) that have to regularly balance providing effective customer service against identified risks.

We are certain that an agency with a strong customer culture can effectively enforce regulation as well as provide prompt, sound and friendly service to homeowners and businesses.

Central government processes

Many problems cited by councils can be put down to central government's inconsistent consultation processes.

Councils are particularly concerned about a lack of consultation when central government agencies consider new or amended regulations. Despite government's requirement that regulatory impact statements should accompany papers to Cabinet, such statements do not always seem to include effective and timely consultation.

Submitters' remarks include:

There is a lack of analytical rigour undertaken on the costs and benefits when central government develops rules/legislation required to be implemented by councils in much of the advice going to central government.

There is insufficient attention to implementation needs or how a new regulatory function will be funded.

Councils mentioned regulations coming into effect within very short lead times and with poor timing (such as 1 January). As a result, councils may have limited time to train staff and organise implementation.

Councils also mentioned excessively bureaucratic procedures when dealing with some government agencies. They say regulations are imposed on them without apparent understanding of how councils work with their communities. Required changes assumed resources that only bigger councils possessed, and ignored the sometimes limited resources of small and rural councils.

Local government risk aversion

Many submitters speak of council staff seeming to have extreme aversion to the smallest risk, to the point where getting straightforward advice on rules and regulations is impossible.

It is clear past problems, such as the leaky homes saga and material failures have had a negative impact on councils' willingness to provide advice that might expose them to liability:

The planners are like rabbits in a headlight; they're frightened to do anything in case they get it wrong. They rather say no, you can't do that, rather than enabling you.

Much of this is caused by the "joint and several" liability regime which has generally left councils (and therefore ratepayers) as the "last man standing" when problems arise.

This aversion to risk has resulted in such poor customer focus that in some councils, officers seem to be expressly trained to not give advice:

On top of this, your resource consent application is allocated to an external planner. They charge \$165 per hour as a minimum, which makes the bill horrendous. This whole process is not enabling and is not efficient... The cost and time taken to get through the process/to get things processed/done is unfair.

An example of this is where a building consent application might be returned for more information a few days before the 20-day deadline expires:

Wanted to build two apartment blocks 460 sq m, three levels. Launched consent in November 2013 –council wanted one thing and then another, there was always missing information for them to grant consent – took eight months to get consent approved after nagging. We feel like new issues kept being created in order to get consent = time and money was lost.

We do note that there are statutory processes required, for example under the Building and Resource Management Acts, and these may be partly to blame for the poor culture and practices perceived by businesses.

Frustrating interactions

Often submitter's frustrations are not about a rule or regulation, but more basic. They are about the difficulty of getting reliable, consistent advice, or of getting reasonable implementation of a rule, or of getting reliable enforcement policies and practices:

The consent process under RMA has become too difficult and depending on whose desk your application lands on the process could be a breeze or it could result in \$10,000 in fees. "How do you budget time and money when there is no consistency?"

...made about 15 phone calls every week for six months trying to resolve the drainage issues for a building project when it is a non-active drain. ... dealt with three different people in council, ... and no one will sign off or make a decision...can't understand why there are two different departments and council engineers, dealing with this...can't get a building consent until the drainage issues are sorted.

We have found that at the heart of many of the problems mentioned about rules is the way that council staff deal with the person in front of them. We heard that the way we operate our property rules system sees a suspension of any normal customer service practices that may be in place.

Many submitters say they are treated as supplicants and that staff seem to want to find problems with applications rather than try to help applicants:

The council is very unresponsive. There is no one responsible person to talk to within council. Councils are inconsistent within their staff. They use the same form, but different processes.

A way forward

We consider that councils could do better in managing their customers' expectations and needs.

In addition to the end-to-end relationship management process we have referred to, councils could also designate an existing senior manager in the consents and operations areas as a Customer Champion to help focus improvements in the customer experience.

Another option is to establish a "Fast-Fix" team within council to assist frustrated and unhappy property owners, and to help the organisation build a stronger "fixing" culture itself.

We think that government could usefully set up a website where people could report loopy rules and have these assessed by the responsible department.

Achieving the opportunity

- Require government departments to adopt a stakeholder approach similar to the one used by the Ministry of Transport.
- Amend the State Sector Act 1988 and the Local Government Act 2002 to include customer service responsibilities for chief executives.
- Councils should consider utilising the Customer Champion or Fast Fix approaches.
- Establish a dedicated and supported central government website where people can send in loopy rules, which the responsible agency would be required to fix.

Appendix A: Building Act 2004, Schedule 1 (exempt building work)

The purpose of Schedule 1 is to exempt building work that is low-risk from requiring a building consent, because the costs associated with obtaining consent are likely to outweigh any benefits that requiring building consent may offer.

Schedule 1 exemptions are generally for building work that will not affect the building's structure or fire safety and that do not pose a risk to public safety.

Note that Schedule 1 exemption 2 is the only case which requires a decision from building consent authorities. This allows them to use their discretion in exempting any type of building work from requiring a building consent.

The list below is taken from *Building work that does not require a building consent (third edition, 2014)* issued by MBIE:

Part 1 - Exempted building work

General

1. General repair, maintenance, and replacement
2. Territorial and regional authority discretionary exemptions
3. Single-storey detached buildings not exceeding 10 square metres in floor area
4. Unoccupied detached buildings
5. Tents, marquees, and similar lightweight structures
6. Pergolas
7. Repair or replacement of outbuilding

Existing buildings: additions and alterations

8. Windows and exterior doorways in existing dwellings and outbuildings
9. Alteration to existing entrance or internal doorway to facilitate access for persons with disabilities
10. Interior alterations to existing non-residential building
11. Internal walls and doorways in existing building
12. Internal linings and finishes in existing dwelling
13. Thermal insulation
14. Penetrations
15. Closing in existing veranda or patio
16. Awnings
17. Porches and verandas
18. Carports
19. Shade sails

Other structures

20. Retaining walls
21. Fences and hoardings
22. Dams (excluding large dams)
23. Tanks and pools (excluding swimming pools)
24. Decks, platforms, bridges, boardwalks, etc.
25. Signs
26. Height-restriction gantries
27. Temporary storage stacks
28. Private household playground equipment

Network utility operators or other similar organisations

29. Certain structures owned or controlled by network utility operators or other similar organisations

Demolition

30. Demolition of detached building

31. Removal of building element

Part 2: Sanitary plumbing and drainlaying carried out by a person registered under the Plumbers, Gasfitters and Drainlayers Act 2006

Plumbing and drainage

32. Repair, maintenance, and replacement

33. Drainage access points

34. Minor alteration to drains

35. Alteration to existing sanitary plumbing (excluding water heaters)

Water heaters

36. Repair and maintenance of existing water heater

37. Replacement of open-vented water storage heater connected to supplementary heat exchanger

38. Replacement or repositioning of water heater that is connected to, or incorporates, controlled heat source

Part 3: Building work for which design is carried out or reviewed by chartered professional engineer

39. Signs

40. Plinths

41. Retaining walls

42. Certain public playground equipment

43. Removal of sign, plinth, retaining wall, or public playground equipment

Appendix B: Suggested Schedule 1 exemptions

The following types of work were suggested by the Society for Local Government Managers for inclusion in Schedule 1 of the Building Act 2004:

- detached outbuildings, currently outside the scope of Schedule 1(3) exemptions, such as stand-alone garages of proprietary design (Versatile, Skyline etc.)
- carports, currently outside the scope of Schedule 1(18), with a floor area of less than 40m² and open on at least two sides
- residential stair lifts
- non-habitable building work on rural zoned land greater than 1 hectare
- single span stock bridges not exceeding 10m in length - currently outside the scope of Schedule 1(24)
- public playground equipment compliant with NZS 5828
- installation of solar water installation compliant with AS/NZS 2712
- conservatories of proprietary design which are external to the thermal envelope of the house.

Appendix C: Code of Good Regulatory Practice (1997)

Efficiency

Adopt and maintain only regulations for which the costs on society are justified by the benefits to society, and that achieve objectives at lowest cost, taking into account alternative approaches to regulation.

Efficiency guidelines

- Consideration of alternatives to regulation: Regulatory design should identify and assess the most feasible regulatory and non-regulatory alternative(s) to address the problem.
- Minimum necessary regulation: When government intervention is desirable, regulatory measures should be minimal, and the least distorting, to achieve desired outcomes.
- Regulatory benefits outweigh costs: In general, select and implement proposals with the greatest net benefit to society.
- Reasonable compliance cost: The compliance burden imposed on society by regulation should be reasonable and fair compared to the expected regulatory benefit.
- Minimal fiscal impact: Regulators should develop regulatory measures that minimise the financial impact of administration and enforcement.
- Minimal adverse impact on competition: Regulation should have a minimal negative impact on competition.
- International compatibility: Where appropriate, regulatory measures or standards should be compatible with relevant international or internationally accepted standards or practices to maximise the benefits of trade.

Effectiveness

Regulation should be designed to achieve the desired policy outcome.

Effectiveness guidelines

- Reasonable compliance rate: A regulation is neither efficient nor effective if it is not complied with or cannot be effectively enforced. Regulatory measures should contain compliance strategies that ensure the greatest degree of compliance at the lowest possible cost to all parties. Incentive effects should be made explicit in any regulatory proposal.
- Compatibility with the general body of law, including the statute which it amends, statutes which apply to it, and the general body of the law of statutory interpretation.
- Compliance with basic principles of our legal and constitutional system, including the Treaty of Waitangi, and with New Zealand's international obligations.
- Flexibility of regulation and standards: Regulatory measures should be able to be revised, adjusted and updated as circumstances change.
- Performance-based requirements that specify outcomes rather than inputs should be used, unless prescriptive requirements are unavoidable. This helps ensure predictability of regulatory outcomes and facilitate innovation.
- Review regulations systematically to ensure they continue to meet their intended objectives efficiently and effectively.

Transparency

The regulation making process should be transparent to decision-makers and affected parties.

Transparency guidelines

- Problem adequately defined: Identifying the nature and extent of the problem is a key step in the process of evaluating the need for government action. Properly done, problem definition will itself suggest potential solutions and eliminate others that are clearly not suitable.
- Clear identification of the objective of regulation: The policy goal should be clearly specified against the problem and have a clear link to government policy.
- Cost benefit analysis: Regulatory proposals should be subject to a systematic review of the costs and benefit. Resources invested in cost benefit estimation should increase as the potential impact of the regulation increases.
- Risk assessment: Regulatory proposals should be subject to a risk assessment, which should be as detailed as is appropriate in the circumstances.
- Public consultation should occur as widely as possible, given the circumstances, in the policy development process. A well-designed and implemented consultation programme can contribute to better quality regulations; identification of the more effective alternatives; lower costs to business and administration; ensure better compliance; and promote faster regulatory responses to changing conditions.
- Direct approaches to a problem: In general, adopting a direct approach aimed at the root cause of an identified problem ensures that a more effective and efficient outcome is achieved, compared to an indirect response.

Clarity

Regulatory processes and requirements should be as understandable and accessible as practicable.

Clarity guidelines

- Make things as simple as possible while still achieving the regulatory objective.
- Plain language drafting: Where possible, regulatory instruments should be drafted in plain language to improve clarity and simplicity, reduce uncertainty, and to enable those affected to better understand the implications of regulatory measures.
- Discretion should be kept to a minimum, but be consistent with the need for the system to be fair. Good regulation should attempt to both minimise and standardise the exercise of bureaucratic discretion to reduce discrepancies between government regulators, reduce uncertainty, and lower compliance costs.
- Educating the public as to their regulatory obligations is fundamental in ensuring compliance.

Equity

Regulation should be fair and treat those affected equitably.

Equity guidelines

- Obligations, standards, and sanctions should be designed so they can be imposed impartially and consistently.
- Regulation should be consistent with the principles of the New Zealand Bill of Rights Act 1990, and the Human Rights Act 1993, and meet the expectations of those affected by regulation regarding their legal rights.
- People in like situations should be treated in a similar manner. Similarly, people in disparate positions may be treated differently.
- Reliance should be able to be placed on processes and procedures of the regulatory system: A regulatory system is regarded as fair or equitable when individuals agree on the rules of that system, and any outcome of the system is considered just.

Appendix D: Submissions process

The Taskforce was charged with hearing from property owners, builders, tradespeople and businesses that have experienced the effects of irrelevant or unnecessary regulations. We sought submissions online, in writing and at community and other meetings.

Our goal was to encourage views from a wide range of people and organisations.

Online and written submissions

Online submissions opened in October 2014.

Submissions were scheduled to close on 1 June 2015, but that was extended until 15 June.

As expected, most online submissions came from homeowners. The online submission form was largely designed for submitters with one or two points to make. The form was publicised through press releases, the Taskforce's Facebook and Twitter pages, and on a printed postcard distributed to MPs offices and sector groups.

Written submissions were encouraged, especially from organisations, so we could get more comprehensive content to consider. To do this, we contacted key organisations

directly, and also emailed key stakeholders including:

- organisations from the building and construction sector
- business organisations
- professional associations
- the legal sector
- Māori and iwi groups.

We also received written and oral submissions from local authorities and sector groups.

Submissions outside the Taskforce's terms of reference will be referred to the responsible agencies.

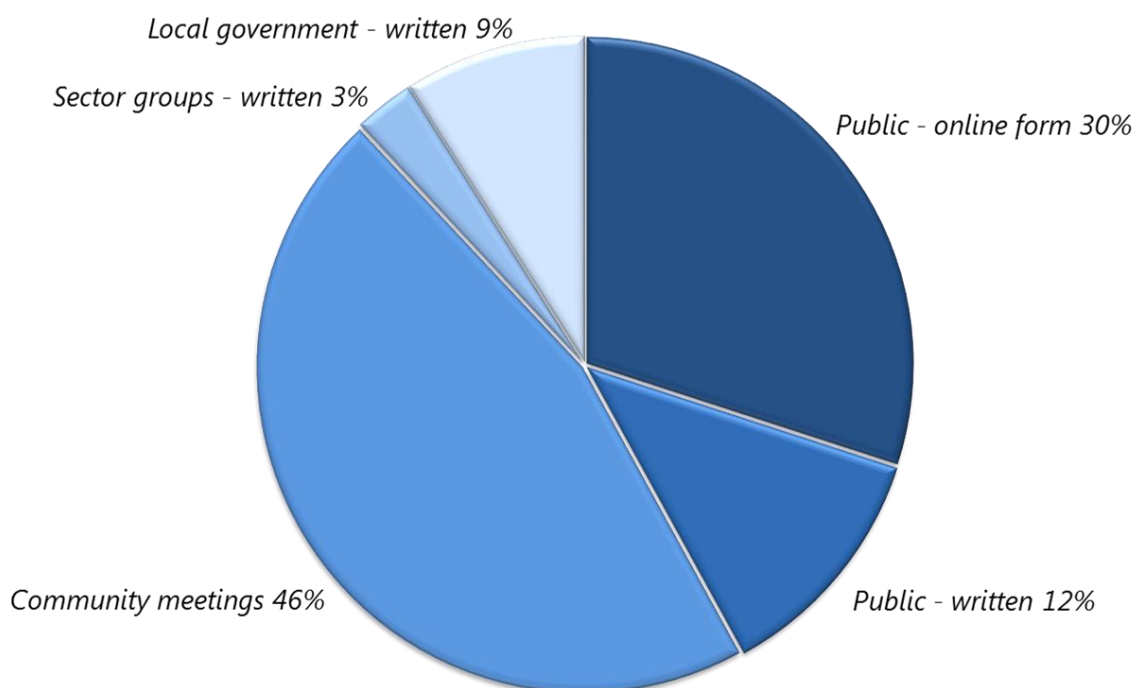


Figure 8: Sources of submissions

Community meetings and oral submissions

We arranged a series of community meetings throughout the country, beginning in Invercargill on 9 March 2015 and ending in Auckland on 12 June. Table 1 below shows where meetings were held. Our goal was to visit as many areas of New Zealand as possible, hearing people's views face to face. Local MPs' offices and councils helped set up meetings.

Both assisted with publicity. We also promoted the meetings on the Taskforce's Facebook page. Pre-registrations were unnecessary; anyone could attend.

Audiences included tradespeople, property developers, homeowners, farmers, landlords and council officials and councillors.

Table 4: Locations of community meetings

Kaitia	Hamilton	Hawera	Fairlie
Kerikeri	Cambridge	Whanganui	Lake Tekapo
Auckland:	Waitomo	Palmerston North	Twizel
• Orewa	Tauranga	Masterton	Waimate
• Glenfield	Rotorua	Wellington	Wanaka
• Hillcrest	Tokoroa	Lower Hutt	Oamaru
• Newmarket	Te Puke	Nelson	Ranfurly
• Meadowbank	Taupo	Blenheim	Cromwell
• Mt Roskill	Napier	Christchurch central	Queenstown
• Mt Wellington	Gisborne	Christchurch east	Alexandra
• Papatoetoe	New Plymouth	Rangiora	Roxburgh
• Beachlands	Inglewood	Hokitika	Gore
• Pukekohe			Invercargill

Sector group submitters

Sector group submitters included:

Bed & Breakfast Association

Building Research Association of New Zealand (BRANZ)

Certified Builders Association

Civil Contractors New Zealand

Construction Strategy Group

Employers and Manufacturers Association

Federated Farmers of New Zealand

Food and Grocery Council and Brewers Association

Hospitality New Zealand

Living Streets Aotearoa

Master Plumbers, Gasfitters & Drainlayers, NZ Inc.

Motel Association of New Zealand

National Beekeepers Association

National Road Carriers

New Zealand Food and Grocery Council

New Zealand Institute of Architects

Property Council New Zealand

Registered Master Builders

Resource Management Law Society (RMLA)

Retail NZ

Rural Contractors New Zealand

Straterra

Structural Engineering Society

Local government submitters

The following councils and local government organisations made submissions or attended meetings:

Ashburton District Council	New Zealand Society of Local Government Managers (SOLGM)
Auckland Council	Opotiki District Council
Central Hawke's Bay District Council	Palmerston North City Council
Central Otago District Council	Queenstown Lakes District Council
Christchurch City Council	Rangitikei District Council
Dunedin City Council	South Taranaki District Council
Far North District Council	South Waikato District Council
Gore District Council	Southland District Council
Grey District Council	Tasman District Council
Hamilton City Council	Tauranga City Council
Hastings District Council	Waikato District Council
Hawke's Bay Regional Council	Waikato Regional Council
Horowhenua District Council	Waimakariri District Council
Hurunui District Council	Waimate District Council
Hutt City Council	Waipa District Council
Independent Māori Statutory Board	Waitaki District Council
Kawerau District Council	Waitomo District Council
Local Government New Zealand (LGNZ)	Wellington City Council
Marlborough District Council	Western Bay of Plenty District Council
Masterton District Council	Westland District Council
Napier City Council	Whakatane District Council
Nelson City Council	
New Plymouth District Council	

Consulted agencies

The Taskforce is grateful for the advice it received from officials in government agencies. These agencies helped in various ways, by reviewing topics raised, presenting to the Taskforce on their areas of responsibility, or reviewing drafts of the relevant sections of this report. Their advice was comprehensive, frank, and timely.

Canterbury Earthquake Recovery Authority	Ministry of Business, Innovation, and Employment
Commerce Commission	Ministry of Health
Department of Conservation	Ministry of Transport
Department of Internal Affairs	State Services Commission
Department of Prime Minister and Cabinet	The Treasury
Land Information New Zealand	WorkSafe New Zealand
Ministry for the Environment	

Appendix E: Taskforce member profiles

Jacqui Dean MP – co-Chair (Oamaru)

Ms Dean is the MP for Waitaki and the Parliamentary Private Secretary for Tourism and for Local Government. She is the Chairperson, Justice and Electoral Committee.

Michael Barnett ONZM – co-Chair (Auckland)

Mr Barnett is the Chief Executive of the Auckland Regional Chamber of Commerce & Industry. He has experience in local and central government and has extensive board/taskforce experience.

Christopher Burke – Member (Auckland)

Mr Burke is the Managing Director of ICB Retaining and Construction in Auckland. He is the past Chair of the NZ Contractors' Federation, Auckland branch, Executive Member of Civil Contractors New Zealand and Executive Member of Auckland Business Forum.

Hon John Carter QSO – Member (Awanui)

Hon John Carter is the Mayor of the Far North District Council. He was previously the MP for Northland and was formerly the Minister of Local Government.

Stephen Halliwell – Member (Oamaru)

Mr Halliwell works as a local government financial management and governance consultant across the country. He is a member of the New Zealand Institute of Chartered Accountants.

Hon Tau Henare – Member (Auckland)

Hon Tau Henare is a former New Zealand First and National Party MP. Mr Henare has held a number of ministerial posts including Minister of Māori Affairs and was a former Associate Spokesperson on Treaty of Waitangi issues and Māori Affairs (Treaty Negotiations).

Philippa Murdoch – Member (Christchurch)

Ms Murdoch is a business partner/office manager for Pacific Helicopters in Christchurch. She is experienced in property management.

Rachel Reese – Member (Nelson)

Ms Reese is the Mayor of the Nelson City Council. She is a member of the Resource Management Law Association and has experience in local government, resource consent and plan change processes.

Mark Thomas – Member (Auckland)

Mr Thomas is the managing director of Serviceworks Group, a consultancy company. He is also a deputy chair of the Orakei local board, responsible for economic development. He was a former executive with the ANZ Bank, and has been involved as a volunteer in a wide range of community groups.

Connal Townsend JP – Member (Auckland)

Mr Townsend is the Chief Executive of the Property Council, which represents the interests of the commercial property and investment industry in New Zealand. Prior to joining the Property Council, Mr Townsend held senior management roles in the finance industry, and was a regional manager at Housing New Zealand.

Ian Tulloch QSO, JP – Member (Gore)

Mr Tulloch has had a long career in local government, business and the community. He was Mayor of Maitua Borough Council for six years until 1989, and Mayor of Gore District Council until 1995.

Appendix F: Other issues raised by submitters

In this report we cover much of what we heard from submitters. There were some examples of loopy rules however that we did not include for reasons such as: they fell outside of our terms of reference or because the issues raised were in the process of being addressed by the responsible agency or because the issue raised was only relevant to the individual submitter or to a very small group of submitters.

Act	Specific concern
Amusement Devices Regulations 1978	Council involvement
Arms Act 1986	Pest and animal control
Biosecurity Act 1993	Plant pests Biosecurity regulations
Building Act 2004	BCA accreditation Building warrant of fitness Disabled access Earthquake prone buildings Elevators Flood plain rules Implied warranties Leaky homes Natural hazards
Canterbury Earthquake Recovery Act 2011	Orders in Council
Civil Defence Emergency Management Act 2002	Non-specific
Conservation Act 1987	Mining related issues
Crown Minerals Act 1991	Access to land for mining
Earthquake Commission Act 1993	EQC levies – body corporates
Fencing Act 1978	Fencing
Fencing of Swimming Pools Act 1987	Fencing of spa pools Fencing of swimming pools Bylaw-making powers
Food Act 2014	Sale of homemade food Disposal of left-over food
Forest and Rural Fires Act 1977	Fire permits
Health and Safety in Employment Act 1992	Asbestos removal
General Statute	Housing affordability
Gambling Act 2003	Non specific
Hazardous Substances and New Organisms Act 1996	Licensed certifiers
Health Act 1956	Drinking water standards Camping grounds Psychoactive substances

Act	Specific concern
Heritage NZ Pouhere Taonga Act 2014	Archaeological sites
Land Transfer Act 1952, Property Law Act 2010 and Unit Titles Act 2010	Cross leases
Land Transport Act 1998	Licensing – general Promoting public transport Road management plans Road signage/design Sharing of fines Speeding tickets Vehicle licensing
Local Government Acts 1974 and 2002	Drains Kerb crossings Rights of way Road maintenance Traffic control Uniform charges Water rates
Maori Land (Te Ture Whenua) Act 1993	Right to use land
Overseas Investments Act 2005	Non specific
Property Law Amendment Act 2010	Pruning Vegetation
Public Works Act 1981	Compulsory acquisition Disposal of properties
Local Authorities (Members' Interests) Act 1968	Duties of councillors
Rating Powers Act 1988 and Rating Valuations Act 1998	Non-specific
Residential Tenancies Act 1986	Rental standards Rental warrants of fitness
Resource Management Act 1991	Activities subject to RMA consent Māori land - RMA Outstanding natural landscapes Parking Relocated buildings Resource Consent hearings Rural subdivision Sunlight rules Zoning Noise Signage
Roading Powers Act 1989	Limited access roads