



Our Ref: A46314

5 March 2013

Inquiry into Local Government Regulatory Performance
New Zealand Productivity Commission
P O Box 8036
The Terrace
WELLINGTON 6143

Dear Sir/Madam

OPOTIKI DISTRICT COUNCIL SUBMISSION PRODUCTIVITY COMMISSIONS REPORT ON "TOWARDS BETTER LOCAL REGULATION"

Thank you for the opportunity to make a submission on the consultation document "Towards Better Local Regulation".

Congratulations on taking a holistic approach to reviewing regulatory performance and the barriers to Local Authorities in relation to regulation.

Welcomed Timeframe

Local Authorities are often bombarded with various reviews/amendments to legislation and are required to respond within a very short timeframe. When considering these amendments it is often extremely frustrating that it is obvious that the authors do not have a comprehensive understanding of local government and there are often examples of changes to one piece of legislation that contradicts another, so from our point of view your holistic approach and the suggestion that local authority staff have more involvement in the process is welcomed. Please remember the smaller Councils when seconding staff to participate.

Links to Police

Council would like to acknowledge the support that they receive from the local Police when implementing legislation and local Bylaws. Council staff are often put in positions of danger to themselves when dealing with non compliance, in particular Dog Control and Noise Control having local Police available, with their powers is imperative to effective compliance. The impact of any reduction of Police numbers in rural New Zealand affects Regulation staff in the delivery of their responsibilities.

Holistic Approach to Business and Synergistic effects

An important matter for consideration in regulation is that despite the "ring fencing" of regulatory aspect, Councils do conduct their business in a holistic manner. Particularly in the smaller organisation where the span of control is more manageable, there is interaction and synergistic knowledge flows between the different processes. There are many examples of how this occurs such as:

- Economic Development work provides valuable insight and testing to compliance costs and regulatory barriers.
- Building Act, RMA and asset management, often overlap, with efficient outcomes that ensure an applicants design meets all purposes in the first instances reducing the risk of re-work.
- Councillors who sit on any decision making panel gain valuable experience to draw on in policy making.
- Our relationships with our community, particularly iwi are enduring, making individual processes easier.
- Enforcement activity is closely planned with the local police and intelligence transferred for better and more efficient outcomes.



2 -

Attached are the detailed Opotiki District Council comments in relation to the questions in the document.

Yours faithfully

Aileen Lawrie
CHIEF EXECUTIVE

Enc. Submission

Ref	Productivity's Commission's question	Opotiki District Council Comment
Q3.1	To what extent should local government play an active role in pursuing regional economic development?	<p>Opotiki District Council believes that local government has a very important role in pursuing economic development on a local and regional basis. The community look to their Council, or in particular their elected members, to pursue and encourage development that will grow, or at least sustain the local economy.</p> <p>Councils role in Economic Development gives the organisation valuable insight into the barriers faced by business, and that includes regulatory matters.</p> <p>In the Eastern Bay of Plenty the three councils fund an arms length entity to consider strategic economic development opportunities. The benefits are that they have decision makers that are selected for their capability and take an advocacy role more effectively.</p>
Q4.1	Have the right elements for making decisions about the allocation of regulatory roles been included in the guidelines? Are important considerations missing?	<p>Yes, the key elements of cost/benefit analysis, information, capability and risk are covered in the guidelines.</p>
Q4.2	Are the guidelines practical enough to be used in designing or evaluating regulatory regimes?	<p>The guidelines provide a helpful framework.</p> <p>Council believes that any preferred approach that emerges by using the guidelines should be tested prior to implementation. For example, if the holding of information and organisation capabilities suggest a national standard is justified (e.g. for contaminated sites management), it would still be helpful to first test the proposed national standard at a local level to ensure it is workable.</p> <p>While a national standard for contaminated sites has been a sensible move, there are elements of detail in the provisions which are proving problematic in implementation and creating unnecessary costs on people wishing to subdivide or develop land.</p> <p>Seconding local government staff to central government to assist in policy development (option 1 in Table 7.2) would be helpful in this regard. It is recommended that Central Government work with a range of smaller Councils to assist them participating in policy reviews and testing proposed changes.</p> <p>The value of smaller councils is that staff often have a broader range of responsibilities and experience and are attuned to likely barriers and costs that may arise.</p>

Ref	Productivity's Commission's question	Opotiki District Council Comment
Q5.1	Do any regulatory functions lend themselves to specific grants? If so, what is it about those functions that make them suitable for specific grants?	<p>Specific grants could apply in situations where central government requires local government to undertake significant public policy-making processes the costs of which can not be recovered through subsequent user fees.</p> <p>An example of this is the workload that has been imposed on Council to prepare Local Alcohol Policy (LAP), District Licensing Committees, set up meeting administration and make operational changes to meet the requirements of the Sale and Supply of Alcohol Act. The workload is huge, the act was given royal assent just before the Christmas break and we have local government elections in the twelve timeframe to undertake the required workload</p>
Q5.2	If general grants were to be considered, on what basis could 'needs assessments' be undertaken? What indicators could be used to assess need?	<p>Population and relevant demographics i.e. smaller Council gets the large cut of the pool available. The workload for Opotiki in the above example is the same as for a larger city such as Tauranga but we do not have the staff resource that can accommodate the extra workload.</p>
Q5.3	What would appropriate accountability mechanisms for funding local regulation through central taxation look like? How acceptable would these be to local authorities?	<p>Any method of funding local government for regulatory functions imposed by central government is likely to be acceptable.</p> <p>As above and funding must recognise that no matter the size of the Council the same policy, bylaws etc are required. The only difference is the size of the community to consult with.</p>
Q7.1	What measures, or combination of measures, would be most effective in strengthening the quality of analysis underpinning changes to the regulatory functions of local government?	<p>Opotiki District Council would welcome any processes that allowed central government a better understanding of the consequences on local government when legislation is made.</p> <p>At present we agree with the Commission that central government's understanding of the consequences of legislation is generally weak.</p> <p>Ōpōtiki District Council would support secondments of staff to central government policy teams and encourage this to happen at the outset of a process i.e. at the problem analysis stage. Past experience is that proposals are usually well developed before the implementers are given an opportunity to comment. An additional point is that unintended consequences are often not considered in much detail, and these are usually quite obvious to the implementers.</p>

month

Ref	Productivity's Commission's question	Opotiki District Council Comment
Q8.1	<p>What are the benefits and costs of cooperation? Are there any studies that quantify these benefits and costs?</p>	<p>The potential benefits of cooperation are broadly set out in the Commission's document: economies of scale; access to skills and expertise; exchange and adoption of best practice; improved service delivery; and implied compliance with legislative standards.</p> <p>A very tangible benefit to cooperation is the benefit to our community, consistency of understanding and implementation of various legislation must be of huge benefit to people who work with various Councils.</p> <p>Cooperation and collaboration will minimise different interpretation however, well written and tested legislation will also help minimise differences.</p> <p>One of the costs of collaboration is the speed that things can be achieved at. Time is needed to plan any project and the more parties to the project the longer it takes. Councils are often given a task by legislation, to carry out within a timeframe, and then criticised for lack of consistency at a later date. The current Alcohol legislation is a case in point. Despite the short timeframe, Bay of Plenty Councils are endeavouring to work together and will pursue alignment to the extent they can.</p>
Page 138	<p>Does the involvement of councillors on independent hearings panels undermine the purpose of having such panels?</p> <p>Is it possible for a councillor to be independent in such decision-making?</p>	<p>The requirement under the RMA for hearings commissioners to be accredited and undertake the necessary training to fulfil that requirement has certainly assisted Councillors who sit on hearings to appreciate the quasi-judicial nature of consent hearings and the need to bring an independent perspective. A good model for hearings is a professional independent Chair, a technical expert and a local councillor to bring local knowledge. An important aspect for councillors is also the experience gained in hearings providing insight that becomes valuable in district plan processes and policy decision making.</p> <p>Councillors do of course participate in many meetings and processes run under the Local Government Act and the Local Government Official Information and Meetings Act.</p> <p>Yes Councillors can be independent in decision making however, as within many decisions there are instances where Councillors need to step aside due to conflict of interest situations but that is not unusual and simply requires appropriate management. Many LGNZ courses provide training on how to handle conflict of interest.</p>

Ref	Productivity's Commission's question	Opotiki District Council Comment
Q10.1	Are risk-based approaches to compliance monitoring widely used by LAs? If so, in which regulatory regimes is this approach most commonly applied? What barriers to the use of risk-based monitoring exist within LAs or the regulations they administer?	<p>Obviously those with a higher risk factor require more attention. Liquor licensing monitoring is based on potential adverse effects. For example, tavern style licenses receive more monitoring than restaurant style. Similarly a special liquor licence for a large scale event would receive more monitoring attention than a special liquor licence for a wedding ceremony (though both pay the same licence fee).</p> <p>Bylaws are monitored depending on risk trend i.e. monitoring restrictions included in Beach Bylaws high risk times are seasonal.</p> <p>The main barrier to further risk-based monitoring is resourcing and in the case of Bylaws the lack of any penalty (for most Bylaws) other than prosecution.</p>
Q10.2	The Commission wishes to gather more evidence on the level of monitoring that LAs are undertaking. Which areas of regulation do stakeholders believe suffer from inadequate monitoring of compliance? What are the underlying causes of insufficient monitoring? What evidence is there to support these as the underlying causes?	<p>As above, smaller LAs have insufficient levels of monitoring because of the costs of monitoring and the limited means of recovering costs and the central government focus on processing.</p> <p>Monitoring for compliance with the District Plan can be challenging and often relies on residents complaints. There are also no effective cost recovery mechanisms for permitted activities. This lack of ability to collect fees or information for permitted activities contributes to the number of small activities requiring consent. While this is not prevalent at ODC there are a range of resource based consents required by Regional Councils such as bores, gravel etc, driven by the need to collect the data to enable management of the resource.</p> <p>Often Bylaw offences will be monitored on a reactive basis rather than proactive. This is mainly because of the restrictions identified at question 10.3.</p> <p>Note: There is 3098 sq kilometres of area to cover when monitoring compliance in the Opotiki District Council</p>
Q10.3	Which specific regulatory regimes could be more efficiently enforced if infringement notices were made more widely available? What evidence and data are there to substantiate the benefits and costs of doing this?	<p>Local Government Bylaw offences. Summary prosecution costs are prohibitive and extremely out of proportion with offending. For example, a local bylaw may prohibit the keeping of roosters in a residential area. If the offender refuses to comply the only solution available is a summary prosecution with a fine not exceeding \$20,000. The cost of taking such a prosecution through the Courts and the work involved would generally be around \$5,000 and is unlikely to be recovered from the offender.</p> <p>Collecting data would be difficult, presently the only way to achieve compliance (other than above) is education, formal correspondence, seeking help from family and schools. The time spent facilitating compliance would be difficult to estimate.</p>

Ref	Productivity's Commission's question	Opotiki District Council Comment
Q10.4	Is there sufficient enforcement activity occurring for breaches of the RMA, other than noise complaints? If not, what factors are limiting the level of enforcement that is occurring?	Yes - Opotiki has Compliance Officers who cover the range of non compliance with regulations, RMA enforcement action is largely driven by complaints and observations by staff.
Q10.5	Should the size of fines imposed by infringement notices be reviewed with a view to making moderate penalties more readily available? What evidence is there to suggest that this would deliver better regulatory outcomes?	Penalties have to be in proportion with offending. Failing to provide a date of birth under the Dog Control Act can result in an infringement fine of \$750 yet the infringement for failing to keep a dog under control is \$200.00 Under the current regime most Bylaws carry no penalty other than prosecution, there must be consequences of actions. Enforcing the Dog Control Act shows that, in most cases, the issuing of an infringement notice for failure to register is the only way to encourage offenders to register their dogs.
Q10.6	Is sufficient monitoring of liquor licences occurring? What evidence and data exists that would provide insights into the adequacy of current monitoring effort?	The best way to gauge performance is by monitoring. Monitoring of Liquor Licences is usually undertaken jointly with the Police. Joint monitoring with Police facilitates compliance of rules a lot easier than in the instances when Council are solely responsible for monitoring.
Q10.9	Are the more severe penalties not being used because there is insufficient monitoring activity by local authorities to build sufficient proof for their use?	No. ODC has sufficient resources to undertake monitoring activities. Initial attempts are made to achieve compliance using a more non-regulatory approach (advice, education, support etc). The use of negotiated settlements is considered effective and a step before placing the matter before an authority. This would be gauged by the level of offence and the frequency of offending.
Q10.10	Why are relatively few licences varied?	Initial applications are vetted and the correct licence type and most suitable conditions are identified in the first instance. Most applicants will wait until renewal before varying licence conditions as this is more cost effective.

Ref	Productivity's Commission's question	Opotiki District Council Comment
Q12.1	Is the very low number of consents declined best explained by risky applications not being put forward, the consent process improving the applications, or too many low-risk activities needing consent?	<p>The low number of consents declined signifies that</p> <ol style="list-style-type: none"> 1. Processes are generally effective – many proposals are altered through the process as improvements/concessions are made. The consent process has historically been more flexible than many may appreciate, although recent amendments especially the 2009 amendments make flexibility more difficult. 2. Consent conditions are an effective way of making activities acceptable, and much progress has been made on ways and means of placing conditions on consents 3. Offset mitigation – either proposed or imposed are an effective means of managing. 4. Businesses make prudent decisions and don't often put forward inappropriate proposals. <p>Opotiki District Council staff put considerable effort into pre-lodgement meetings to ensure applications address relevant matters required to be addressed under the District Plan. Staff work closely with applicants to ensure better quality applications and a smoother path through the consent process.</p> <p>This also extends to working with the applicant and their consultants throughout the processing of the consent, often resulting in changes to a proposal and or further mitigation measures.</p> <p>In our experience declined consents should be considered a failure of the process to deliver an acceptable outcome. A better measure may be the number of consent appealed.</p>
Q12.4	Overall, would it be feasible to narrow the legal scope of appeals?	<p>Yes the legal scope of appeals could be narrowed particularly in respect of policy and plans. Central Government should reduce the ability of the Environment Court to make Policy decisions which rightfully belong to Local Authorities who are accountable to their community and will be judged at the ballot box.</p> <p>In plan appeals, often planning provisions become “watered down” as a result of small wording concessions, and to avoid the costs of court processes. Councils tend to make judgements about the effect on the policy against the costs of pursuing the case in court. With pressure on budgets and rates, making concessions and settling appeals is incentivised, potentially at the cost of the policy intent.</p> <p>Appeals are a complex matter and it is suggested that further analysis of why appeals occur and what could have prevented them would be a valuable piece of work.</p> <p>There are also some non legislative actions that could reduce the likelihood of appeals for example Central Government could take a lead in educating potential applicants of the importance that robust iwi and public consultation plays in achieving their desired outcome in the RMA process.</p> <p>While Council's can play their part often the larger corporates need to re-consider their relationships with the community in which they wish to operate, in particular iwi, and ensure they have enduring</p>

		<p>relationships that extend beyond the current consent application that they are making.</p> <p>Central Government need to take a lead in educating potential applicants in the importance that robust iwi consultation plays in achieving their desired outcome in the RMA process. While Council's can play their part often the larger applicants think they can present a almost completed application to iwi and get upset when there are issues. Iwi should be involved from the start of a project.</p>
Q12.6	<p>What features of the bylaw-making process are distinct from the district plan-making process, and how might you use practice under the one to improve the process under the other?</p>	<p>Both bylaws and district plan provisions are 'localised' regulation.</p> <p>Bylaws under the Local Government Act (LGA) are usually specific and very focused in scope and outcome (e.g. traffic bylaws or dog) and do not have the wider policy drivers or complexity inherent in the RMA based policy provisions. There are also different enforcement mechanisms.</p> <p>The attraction of the LGA process is its timeliness and relatively low cost compared to Schedule 1 RMA. Further, appeals relate to points of law and process rather than complex policy compared to the RMA. If the aim is to reduce the <u>cost</u> of regulation process (not the amount of regulation) and increase the speed of processes, then it is recommended that the Commission further explore lessons from the LGA submission process; one submission step, hearing and then Council decision legally reviewable only by judicial review, and see whether that is appropriate for the greater policy complexity of the RMA.</p> <p>The Council does not believe it desirable that the RMA process apply to Bylaws.</p>
Q14.3	<p>Have local authorities encountered difficulties in dealing with different performance assessment frameworks across different forms of regulation? Which forms of regulation do a good job of establishing performance assessment frameworks, in legislation or by other means?</p>	<p>Council has not experienced any difficulties with the different performance frameworks applying to its regulatory work.</p> <p>The Building Act and Resource Management Act provide good examples of performance frameworks (e.g. the Building Consent Authority accreditation requirements and the RMA bi-annual survey). The requirement for a bi-annual audit of a Building Consent Authority is a particularly good example as it considers a range of performance measures both quantitative and qualitative.</p>
R5.1	<p>Regulations should be reviewed to remove specific fee amounts and make those fees at the discretion of local authorities, subject to the requirements of section 101(3) of the Local Government Act 2002.</p>	<p>Council supports the recommendation.</p>

