

Our Ref: A39807

14 September 2012

New Zealand Productivity Commission
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Dear Sir/Madam

LOCAL GOVERNMENT REGULATORY PERFORMANCE

Ōpōtiki District Councils thanks the New Zealand Productivity Commission for the opportunity to comment on the Local Government Regulatory Performance Issue paper – July 2012.

We are informed that the Commission is seeking to develop principals to guide judgements on which regulatory functions are best undertaken at either local or central government levels.

The issue paper also seeks response from Council on 65 questions, while Council is pleased to have an opportunity to provide comments on the issues paper the workload required to provide comprehensive answers to all questions is too great to undertake within the timeframe and within our resources.

This submission will make comment and suggestions regarding principals and will response to selected questions.

Principles

1. Our local community, their desires and challenges are ours as well

Don't take the "Local" out of local government, strive to provide enabling legislation that provides for a framework that outlines the areas that should be consistent throughout New Zealand (such as the Building Act and the Sale of Liquor Act) but allow enough flexibility to ensure that the local community can manage their future, recognising that often there is no "one size fits all" solution. (i.e. the gambling Act)

2. Recognise the links between legislation

The development/review of Legislation should always be mindful of the linkage to other legislation. Often the links are lost when legislation is amended without consideration to these important links.

Example: The current piecemeal approach (up to amendment number 4) to amending the Building Act and increasing the "exempt" buildings inhibits the ability to implement the NES on contaminated sites.

Retaining walls (within a criteria under the building Act) of up to 1.5m high are now exempt. The construction of these walls requires earthworks which would trigger the NES on contaminated sites however, with the changes to the building Act property owners are no longer required to inform us or apply for consent to undertake this earthworks, unless we reduce the volume of permitted earthworks under the District Plan which just gets silly.

3. Appropriate Legislation and local policies and bylaws are a benefit to the community and to New Zealand

The issue paper seems to focus on the negativity of laws, policies and bylaws. Well researched laws, policies and bylaws are also a benefit for the community. It is agreed that inappropriate rules and draconian processes are a negative.

For example District Plan Objectives, Policies and Rules provide certainty as to what an area is zoned for and the certainty that should anyone want to develop something which is not consistent with the zone the existing community will get an opportunity to participate in the process.

As outlined in the issue paper, your challenge is to deliver regulation that promotes wellbeing, while at the same time minimising the associated costs to individuals, businesses and the wider economy. As a small struggling community we couldn't agree more, but we would caution you to consider the beneficiaries of legislation when recommending change.

QUESTIONS:

Q1 What is the relative importance of the range of the regulatory activities local government undertakes? Where should the Commission's focus be?

Community issues relating to regulations/ Dog Control and Noise Control and the ability to enforce are well supported in legislation, the delivery is up to District/City Councils and are influenced by budgets and community desires. The community have an ability to influence the level of resource through the LTP and Annual Plan process.

The focus should be on legislation such as:

- HSNO – Responsibilities are split with City/District Council's being responsible for private and public compliance with the HSNO and central government organisations for other areas. Expertise in this area is very hard to find, it is not reasonable to expect small authorities to have on staff or are able to contract the expertise to robustly delivery on its responsibilities. This would be far more efficiently handled by one organisation preferably at a national level.
- Forest and Rural Fires Act - City/District Council's are expected to maintain equipment and trained staff to respond to rural fires. Council would suggest that this activity would more appropriately sit with New Zealand fire service, perhaps efficiency of size would allow for more paid fire staff in rural areas?

Q3 Has the Commission accurately captured the roles and responsibilities of local Government under the statutes

Yes

However, Council believes it would be useful if the regulatory responsibilities' are identified as Regional Council or City/District Council responsibilities. City/District Councils have responsibilities for the delivery of all listed statutes, while regional Council responsibilities are limited. It is an important distinction as the two authorities have different roles and tend to have more different audiences.

Q4 Are there other statutes that confer significant regulatory responsibilities on local government?

The table should include:

- The Fencing of Swimming Pools Act 1987
- Local Government Act 1974 (Part 21 Roads)

- The Local Government Act 2002 (Part 8 Regulatory, enforcement and coercive powers of local authorities)
- Reserves Act 1977

For completeness the Resource Management Act should also be listed here, it is noted that the RMA is discussed in detail later in the paper.

Q7 Are communities expectations to “do more” about social issues leading to different approaches to regulation between local authorities

Social Issues does necessitate different approaches to regulation. Different communities have different expectation of their Council staff and City/District Council’s understand their communities. They understand the pressures and the needs of their communities.

Everyone needs to comply with the rules however, often people in small rural communities (like Ōpōtiki) are striving to get ahead and often take on projects with limited funding. This requires a high level of customer service from regulatory staff. Communities like Ōpōtiki expect to get this assistance from their Council staff. Larger communities may have different expectations from their Council and would often have greater access to qualified consultants.

The ability to pay costs, like dog registration, is sometime a challenge in smaller communities.

Council participates in a variety of sector groups, such as planning forums, building cluster groups and management groups, it is not our view that the standards of regulation and enforcement vary greatly however, as above sometimes local demands necessitate a different approach to facilitate compliance with legislation.

Q17 Can you provide examples of regulatory innovation by local government

In 2011 Opotiki District Council completed a broad assessment to identify those commercial buildings within the Opotiki township centre that may possess characteristics which could lead to them being defined as earthquake prone.

Opotiki District Council undertook a desktop exercise that identified 71 building did not meet the minimum seismic grading under the Building Act 2004 and therefore are identified as earthquake prone. This represented a major challenge for building owners who are faced with upgrade costs that many can’t afford.

Discussions with building owners identified that the community may benefit from Council’s assistance to facilitate this project and in doing so not only assist with the process but recognise savings from bulk purchases of expertise.

To this end Council is facilitating a process of procuring professional engineering services on behalf of the group of commercial building owners. While the Council is facilitating the process, the building owners are responsible for completing the works. To this end all contracts will be directly between the consultant and the building owners and the building owners will at all times sign off before any expense occurs.

As outlined in response to Q3, our community still needs to comply with the regulation. We, as Council, just need to go that extra step to help facilitate outcomes.

Q19 What mechanisms or incentives are there for local authorities to share innovations (or experiences with “failed innovations) with others.

We have many opportunities and different forums in the Bay of Plenty to share innovations, experiences and generally seek support from others. These include but are not limited to:

- Lakes Cluster Building Group – who are developing joint manuals forms and policy
- Planning forum – researching opportunities to share knowledge and wherever possible prepare joint policies
- Zone meeting – Chief Executives and Mayors meet regularly to discuss relevant issues
- Most regulatory activities have annual conferences and sector group meetings, such as Animal Control, Liquor Licensing, and Environmental Health.

Yours faithfully

Barbara Dempsey
PLANNING AND REGULATORY MANAGER