

**SUBMISSION BY THE NEW ZEALAND WIND ENERGY
ASSOCIATION ON:**

Towards better local regulation, Draft Report

To: Inquiry into Local Government Regulatory Performance

New Zealand Productivity Commission

PO Box 8036, The Terrace, Wellington 6143

1. This is a submission on the draft report "Towards better local regulation" ('the draft report') by the New Zealand Wind Energy Association (the 'Association').
2. The Association's submission focuses on local government regulation affecting the wind industry under the Resource Management Act 1991 (the 'RMA').
3. This submission is structured as follows:
 - Part A:** About the New Zealand Wind Energy Association
 - Part B:** The wind industry's interest in the RMA and an outline of the problem
 - Part C:** The Association's submission
 - Part D:** Conclusion and requests of the Productivity Commission

The Association has not commented on industry concerns with local government rating and development contribution matters, which are outside the scope of the draft report.

The Association welcomes the opportunity to discuss any of the issues and requests raised in this submission.

Signature of person authorised to sign on behalf of the Association:



Eric Pyle
Chief Executive
Date: 6 March 2013

Address for service:	New Zealand Wind Energy Association
Address	PO Box 553, Wellington 6140
Attention:	Eric Pyle
Telephone	04 4995048
Email:	eric@nzwea.org.nz



PART A The New Zealand Wind Energy Association

About the Association

4. The Association promotes the responsible, sustainable and significant uptake of New Zealand's abundant wind resource as a reliable, renewable, clean and commercially viable energy source.
5. The Association is a non-Governmental, non-profit organisation. Our activities are funded by our members and by industry events such as our annual conference.
6. The Association's main activities include:
 - (a) Policy advocacy with local and central government and regulatory bodies such as the Electricity Authority;
 - (b) Organising conferences, seminars and other educational events;
 - (c) Promoting the economic, environmental, social and other benefits of wind energy through, for example, the media and schools; and
 - (d) Providing a forum for external and internal networking and co-operation amongst the wind energy industry and its members.
7. The Association was formed in 1997. Membership includes around 65 companies and organisations that represent a wide range of interests.
8. The Association's members include:
 - (a) Electricity generators and retailers
 - (b) International and local wind farm developers
 - (c) Transpower
 - (d) Lines companies
 - (e) International and local turbine manufacturers
 - (f) Engineering, planning and specialist wind energy consultancies
 - (g) Law firms
 - (h) Construction companies and engineering service providers
 - (i) Government (EECA) and local government bodies
9. The views of the Association may not necessarily reflect the views of each individual member.
10. The Association considers that wind energy has a substantial role to play in New Zealand's power generation portfolio, and strives to ensure that New Zealand's world-class wind resource is harnessed in a responsible and sustainable manner.

11. The Association's Mission and Objectives are set out in the Association's Rules under the Incorporated Societies Act 1908 as follows:

Mission

The mission of the Association is to promote the uptake of New Zealand's abundant wind resource as a reliable, sustainable, clean and commercially viable energy source.

Objectives

The objectives of the Association are to achieve its mission ... by means of:

- (a) policy advocacy with local and central government officials and elected representatives, regulatory bodies, industry groups and other interested organisations to raise the awareness of, and develop the concept of wind energy in New Zealand;*
- (b) organising seminars, conferences and other promotional and educational events, and to distribute information, relating to wind energy in New Zealand;*
- (c) providing a forum for external and internal networking, discussion and co-operation amongst persons with an interest in wind energy in New Zealand;*
- (d) promoting the economic, environmental, social and other benefits of wind energy in New Zealand; and*
- (e) promoting research and development of wind energy technology in New Zealand.*

12. Further information on the Association, its members and activities, and the New Zealand wind energy industry in general is available on the Association's website: www.windenergy.org.nz.

Part B the wind industry's interest in local government RMA regulation and an outline of the problem

The experience of the wind industry in the RMA

13. Regulation affecting wind farm development under the RMA is provided in the form of regional plans, district plans, or unitary plans ('Local Plans'). There is no national regulation for wind farms under the RMA.
14. 40 wind farm proposals have been through the RMA consenting process. Of the consented wind farms 16 are now operating and one wind farm is currently under construction. Cumulatively the wind industry has injected hundreds of millions of dollars into the New Zealand economy.
15. Like any national infrastructure project wind farm proposals often create controversy regardless of their design or location. That is simply the unavoidable conflict that arises when any new national infrastructure project is proposed in someone's backyard.
16. Wind farm projects have been increasingly subject to delays and barriers in the resource consent process that are contributing to investment uncertainty and delaying decisions. Often wind farm projects have been identified by Ministers as demonstration of the need for RMA reform.
17. The problems with consenting wind farm developments has been recognised as evidenced in the wind farm case studies used in the Governments Technical Advisory Group Report of the Minister for the Environment's Infrastructure Advisory Group (August 2010); and Providing national guidance on infrastructure through the RMA (September 2010); and the fact that the National Policy Statement for Renewable Electricity Generation (NPS REG) requires all councils to provide for wind farm development in their Local Plans to the extent applicable in their district¹.

¹ National Policy Statement for Renewable Electricity Generation, Policy E3

18. The problems with planning and consenting wind farms has, to varying degrees, resulted in:
- Some wind energy developers seeking to utilise the Act's 'call-in' or 'direct referral' consenting processes.
 - Considerable investment from wind energy developers and the Association into local plan preparation, including appealing against or in support of numerous council level decisions on plan making to the Environment Court and in some cases the High Court.
 - The development of the national policy statement for renewable electricity generation.
19. The Association is an active participant in national and local RMA policy development issues. Since 2009 the Association has been actively involved in and/or formally submitted on:
- the 2009 RMA Reform Bill
 - the 2010 reform of the urban & infrastructure planning system discussion document: building competitive cities
 - the 2010 National Coastal Policy Statement
 - the 2011 National Policy Statement for Renewable Electricity Generation and associated non-statutory guidance
 - the 2011 Proposed National Policy Statement for Indigenous Biodiversity
 - the 2012 Heritage New Zealand Pouhere Taonga Bill
 - Numerous local and regional RMA policies and Local Plans across New Zealand, ranging from Northland down to Southland.

An outline of the problem

20. Central Government is failing to provide leadership on the implementation of the NPSREG. In the absence of central government direction councils are re-inventing the wheel around New Zealand and the result is unnecessarily variable and expensive. The overall outcome is a wasted opportunity for some good outcomes and many millions of dollars unnecessarily spent by industry and councils around the country.
21. Without a national consenting framework for wind farm development many of the consenting issues wind farm developers face derive from unhelpful local Plan policy and regulation, regardless of the consenting approval path an applicant takes (i.e. via the ordinary resource consent path, the direct referral path, or the call in path).
22. Much of these costs and delays can be attributed to:
- (a) Consenting regulation created by Local Plans that are ambiguous and/or favour local concerns over matters of national significance.
 - (b) Inadequately resourced consenting authorities (namely Council's).
 - (c) Inadequate and inconsistent administration of Environment Court processes.
23. Consequently, the Association and its members are heavily involved in local RMA policy making throughout New Zealand to improve the consenting regime imposed by Local Plans.
24. The Association has been directly involved in over 20 local RMA plan and policy processes since 2010 and we expect to be involved in many more plan processes over the next few years, as most Council's amend their Local Plans to give effect to the NPS REG (we estimate over 100 separate Local Plans need to be amended to give effect to the NPS REG).

25. This RMA planning deluge has the potential to provide significant opportunities for the wind industry in terms of clearer Local Plans, but equally, it could potentially and perversely result in worse outcomes for the wind industry.
26. What has become clear is that the NPSREG is not having the desired effect of requiring councils to consistently provide for wind farm development in Local Plans². The way in which some different Councils are recognising the nationally significant benefits of wind farms and providing for wind farm development can only be described as ‘chalk and cheese’. In our view some Councils are actively and appropriately providing for wind farm development while other Councils are actively using their Local Plans to provide regulatory road blocks, namely in the form of the *non-complying* activity status.
27. Without any visible support from central government the Association and some of its members are attempting to achieve some form of consistency across the country for consenting wind farms. In other words members of the renewable energy industry are trying to individually and reactively ensure each Council is implementing the NPS REG. The challenges we are experiencing in engaging with local policy development include:
 - (a) Resourcing. There are 78 councils and potentially more than 100 local policies that are mandated under the NPS REG to provide for wind farm development. We estimate the cost to the renewables industry of engaging consultants and staff time these policy processes (excluding the significant amount of in house time spent on each case) easily exceeds \$2m since 2010. Council costs may be similar. The costs into the future for the wind industry and councils will be significant (8 figures).
 - (b) Lack of central government leadership/guidance. The government simply isn’t delivering support for the effective implementation of the NPS REG or the government’s renewables target. Due to a lack of effective guidance for the NPS REG councils and the Environment Court are in practice applying the NPS REG somewhat randomly.
28. The Association expects many more wind farm proposals to be subjected to RMA consenting processes over the next two decades and we firmly support the Governments view that the RMA needs to, and can be, reformed to improve economic efficiency without compromising underlying environmental integrity.
29. Accordingly, reforming the RMA to improve the formulation of local regulation and make consenting processes more efficient and effective is of significant interest to the wind industry.

Costs of RMA processes

30. The Association considers it is relevant for the Productivity Commission to acknowledge two additional issues facing electricity generators:
 - (a) Electricity generators construct and operate national scale infrastructure projects in an immensely competitive market system.
 - (b) Despite being recognised as nationally significant, electricity generation projects cannot be ‘designated’. Rather, they must be consented through the same regulatory consenting paths as any other development proposal. This is significant because the designation process allows the developer to circumvent local regulation (rules in Local Plans).
31. These factors create a unique problem for consenting electricity generation projects compared to New Zealand’s other national utility infrastructure projects. For example:
 - (a) It is well known that consenting costs for the wind industry are large, in the tens of millions of dollars, if not hundreds of millions (cumulatively). But due to the competitive nature of the industry it is difficult to get accurate information “on the record”.

² As stated on page 5 of the *National Policy Statement for Renewable Electricity Generation 2011 Implementation Guide*, a reason for the NPSREG was to provide a more consistent national approach to REG activities

Consequently it is extremely difficult (to the extent that it is not practical) for the industry as a whole to gather and present statistical data required to paint an accurate picture of the actual costs and delays associated with individual RMA consenting and plan preparation processes.

- (b) The only other competing national infrastructure industry is the telecommunications industry. This industry is not comparable to electricity generators because telecommunication developers can designate land for telecommunication purposes. Also, the National Environmental Standard for Telecommunication Facilities provides a nationally consistent consenting rulebook.
- (c) Other national infrastructure providers (i.e. KiwiRail, NZTA, Transpower) do not operate in a competitive market and are more capable of producing statistical data necessary to inform cost benefit analysis. They also have the ability to designate land required for their respective national infrastructure projects.

Part C Submission

Providing for infrastructure proposals with nationally significant benefits, as stipulated in National Policy Statements

- 32. The wind industry warmly welcomed the launch of the NPS REG at our annual conference in 2011. We expect industry involvement in local RMA policy development to increase over the next few years as Councils give effect to the NPS REG. We estimate there are more than 100 local planning documents that need to be amended to give effect to the NPS REG and provide for wind farm development alongside other renewable electricity generation activities.
- 33. To date results for the wind industry (and other development sectors) have been mixed. The NPS REG is not having the desired effect of requiring councils to consistently provide for wind farm development in Local Plans. What we are seeing is a random and eclectic approach to regulating wind farm development. In the worst cases perverse outcomes are being reached – councils have used the opportunity to review their Local Plans to in effect ban wind farming.
- 34. The Association's involvement in over 20 local RMA plan and policy development processes since 2010 has identified a number of significant challenges that need to be addressed to improve the consenting framework for wind energy development:
 - (a) The resourcing and finances required to be involved in local RMA policy development. There 78 councils and potentially more than 100 local policies that are mandated under the NPSREG to provide for renewable energy development. We estimate the costs to be in the tens of millions of dollars.
 - (b) As Local Plans are revised to give effect to the NPS REG there is increasing inconsistency in the way that councils provide for wind farm development. The NPS REG is actually resulting in greater inconsistency in planning documents.
 - (c) The outcomes of plan changes etc are uncertain and the NPS REG seems to have had little impact on this uncertainty.
 - (d) There is a lack of central government leadership/guidance, including a lack of audibility and accountability for implementing the government's renewables target and national policy statements.
- 35. Overall the Association has some serious concerns about the implementation of the NPS REG. Some Council's are using the plan change process to actually make it harder to develop wind farms.

Particular problems with local government RMA regulation - the 'non-complying' activity status

36. A particular concern we have is that some Councils are choosing to amend their Local Plans to classify wind farm activities as *non-complying activities*. This means a proposal can be bound by the objectives and policies of the Local Plan and decision makers cannot always recognise and provide for the national significance of renewable electricity generation activities – a requirement of the NPS REG.
37. In other words Councils can use the non-complying activity status (regulation) to provide a shield against an NPS. We believe this represents a logic flaw in the RMA. The 'non-complying' activity status present real and substantial risks to wind farm development proposals. As it stands the 'non-complying activity gateway test' under section 104D(1) does not ensure the nationally significant benefits of renewable electricity generation activities will be considered alongside the matters in sections 6 & 7. Rather the gateway test dictates that decision makers on resource consent applications can only grant consent if the adverse effects are minor or the proposal is not contrary to objectives and policies of the Local Plan. In other words the benefits of a nationally significant infrastructure proposal will not be considered in a resource consent application for a non-complying activity if the Local Plans' objectives and policies favour local environmental values over and above the provision of new national infrastructure development.
38. This is problematic for the wind industry (and all renewable electricity generation activities) because:
- The purpose of national policy statements is to state objectives and policies for matters of national significance that are relevant to achieving the purpose of this Act. The NPS REG seeks to ensure, among other things, that the nationally significant benefits of a project are considered alongside matters of national importance as set out in section 6 of the Act, and with matters to which decision-makers are required to have particular regard under section 7 of the Act. Accordingly it fits that the objectives and policies set out in a NPS should be considered in resource consent applications. However, increasingly local plan objectives and policies are favouring local environmental values over nationally significant development interests, particularly infrastructure development. We observe that decision makers on Local Plans are struggling to resolve the inherent tension between writing local policy that both provides for nationally significant interests while protecting local interests. The fact is local planning provisions are fundamentally driven by local politics, not national policy, making it very difficult for Local Plans to implement national policy effectively.
 - For renewable electricity generation activities the non-complying activity status can prevent decision makers on resource consent applications considering the nationally significant benefits of a proposal. Ultimately this undermines the intent of the NPS REG.
 - Attempts to reconcile these issues in plan change processes have simply extenuated the time and cost issues associated with developing Local Plan regulation. We expect this issue to worsen as councils amend their Local Plans to give effect to National Policy Statements.
39. When a council sets rules (regulation) that make wind farms non-complying activities it means wind farms can fail the gateway test of the RMA. In turn this makes it much harder, and some cases practically impossible, for wind farms to gain consent than if they were a discretionary activity.
40. In addition to the non-complying status issue we are seeing a divergence in planning approaches across New Zealand. There is little consistency in the planning approaches in response to the NPS REG.
41. We do not believe it was the Government's intention that under the NPSREG:
- Wind farms would be made non-complying activities across significant areas of Districts.
 - There would be a divergence and lack of consistency in planning approaches.

RMA amendment required to provide for developments afforded nationally significant status under a national policy statement

42. We believe the RMA needs to be amended to correct this failure in the RMA and position National Policy Statements appropriately.
43. Our preferred approach is to amend 87B to ensure that the benefits of any nationally significant activity can always be considered in a resource consent application processes. Section 87B of the Act already provides for such an approach. An alternative amendment could be the insertion of a new clause in s104(D)1 that ensures the non-complying activity 'gateway test' does not apply to activities that need to be provided for as a matter of national significance in accordance with a NPS.
44. We consider these amendments present no risk to the purpose or principles of the Act. In fact, given the role of an NPS is to state objectives and policies to enable sustainable management, we believe the amendments will sharpen the way activities attributed nationally significant status in a national policy statement are provided for in a way that better aligns with the concept of sustainable management overall. Our proposal removes a flaw in the logic of the RMA that enables councils to create a 'regulatory shield' to foil national direction.

Benefits of amending s87B or s104D to provide for activities with a nationally significant status under a NPS

45. These subtle amendments would be very effective and enable activity related NPS' to deliver the kinds of results that Parliament intended. They would:
- Reduce risks & costs associated with consenting nationally significant infrastructure (i.e. activities to be provided for as a matter of national significance as set out in national policy statements, such as renewable electricity generation, and the national grid); and
 - Support the implementation of National Policy Statements; and
 - Result in substantial cost savings in the preparation of local RMA regulation.
46. Either amendment will help deliver on the government's aspirations to make the RMA work better for New Zealand. It will demonstrate that this government is serious about providing stronger central government leadership and reducing unnecessary bureaucracy and is prepared to take practical and tangible steps to improve the RMA.
47. In effect the certainty provided by the discretionary activity status is such that infrastructure providers will not need to contest the policy and rule framework in the development of Local Plans. This results in the following overall benefits:
- Significantly reduced costs and risks associated with planning and consenting nationally significant development throughout New Zealand.
 - Supporting a nationally consistent planning and consenting framework for nationally significant activities. This supports and will speed up the implementation of the NPS REG and the NPS Electricity Transmission, which are not being implemented consistently, effectively or efficiently.
 - Enabling nationally significant development proposals to be planned and consented more efficiently, effectively, transparently, clearly and equitably.
 - Allowing local planning documents to focus more on local planning matters, rather than implementing national policy.
48. There are specific benefits to consenting infrastructure under the RMA:
- The initial consenting framework becomes simplified and streamlined, thus saving developers and councils significant time and money while reducing timeframes and the risk of litigation and delays.

- The provision of certainty that all environmental effects and benefits of individual proposals will be considered on their merits, rather than presenting a risk of development proposals not passing the s104D gateway impediment.
 - Improves national consistency by providing a clearer and simpler consenting framework.
 - Addresses some of the issues raised in section 4.3 (increased streamlining and flexibility for nationally significant activities) in the Governments 2010 Discussion Document: *Building Competitive Cities Reform of the Urban & Infrastructure Planning System*, and issues raised in the Government's 2013 Discussion Document: *Improving Our Resource Management System*.
49. These benefits will in turn result in specific benefits in the formulation of Local Plans, for example:
- Streamlined and less expensive plan change processes.
 - Empowerment of councils to focus their planning provisions on grass roots issues, rather than nationally significant activities.
 - Realises many of the benefits associated with removing the non-complying activity status (recommended by the Infrastructure TAG and proposed in the initial Simplifying and Streamlining Bill) without imposing costs on councils.
50. Amending s104D(1) as discussed above would result in the same benefits highlighted above but to a lesser extent (because resource consent applications would still have to pass the s104D(1) gateway test, rather than being specifically provided for as a discretionary activity).
51. We note additional benefits to the consenting of any nationally significant infrastructure could be realised if the amendments suggested above were extended to capture other infrastructure development and not simply limited to activities subject to a National Policy Statement.
52. Political support for either amendment would be recognised as supporting renewable generation and a tangible signal from Parliament that it is serious about the 90% renewable electricity target. Either amendment would send a signal to councils that National Policy Statements should be taken seriously and the direction in the National Policy Statement followed.

Specific comments on the findings provided in the Draft Report

53. The following provides some specific feedback on particular findings and recommendations provided in the Draft Report, which are relevant to the wind industry.

Chapter 2 - Local government in New Zealand

54. As highlighted earlier in this submission the Association firmly believes central government intervention and support of local government is required to improve the consenting of nationally significant infrastructure development.
55. Accordingly, drawing on this information and other findings already provided in the Draft Report, the Association considers the following additional findings (or findings with like effect) should also be provided in the Productivity Commission's final Report:
- New** There is an inherent tension between national policy directives and local government regulation, particularly under the Resource Management Act where local plans are formulated in a way that primarily addresses local or regional resource management issues, not national resource management issues.
- New** When formulating regulation under the Resource Management Act there can be a significant disconnect between national policy directives and local government regulation if central government does not support local authorities by providing specific guidance about how to interpret and implement national directives.

Chapter 3 – Diversity across local authorities

- F3.7 The appropriate role of local government in fulfilling its mandate to pursue economic growth has been left unclear by central government.**
56. The Association agrees with finding F3.7 and we suggest the same can be said for the mandate of local government, under the Resource Management Act, to recognise and provide more matters of national importance and matters of national significance. Specifically, the Association considers that the government needs to provide better centralised support and guidance to local government on how to implement section 6 of the Act and National Policy Statements.
57. Accordingly, drawing on this information and other findings already provided in the Draft Report, the Association considers the Productivity Commission include an additional finding in the final Report, such as:
- New The appropriate role of local government in fulfilling its mandate under the Resource Management Act to recognise and provide for matters of national importance (as set out in Section 6 of the Act) and matters of national significance (as set out in a national policy statement) have been left unclear by central government.**

Chapter 4 – Allocating regulatory responsibilities and Chapter 7 – Regulation making by central government

- F4.3 There are advantages from local decision making if preferences are heterogeneous because local governments are better at aligning local preferences than central governments, but where preferences are more homogenous across the country, there may be advantages from reducing the effort and cost of multiple decision makers.**
- F4.4 When allocating regulatory responsibilities, consideration should be given to what level of government has, or can most efficiently obtain, the relevant information needed for effective decision making and implementation.**
- F4.6 Good regulatory outcomes are more likely to be achieved when there is clarity of role and coordination between levels of government responsible for standard-setting and implementation.**
- F4.7 Good regulatory decision making and implementation will be compromised if the level of government responsible is inherently inefficient or unaccountable.**
- F4.8 Submissions point to a mismatch between national and local preferences and priorities when it comes to regulation. Around half of local authority survey respondents agreed that there are conflicts between local priorities and regulations originating at central government level.**
- F4.9 Approximately 70% of businesses in New Zealand only deal with one council and for those businesses that operate over more than one jurisdiction, this is over a limited range of regulatory matters.**
- F4.10 Targeted approaches could be adopted for reducing the costs for businesses operating across multiple jurisdictions while maintaining the benefits of local tailored regulation.**
- F4.11 There are issues with insufficient regulatory capability but this can be found at all levels of government. There are a number of ways of dealing with capability gaps that do not always require a reassignment of roles to a different level of government.**
- F4.12 A misallocation of risk can have costly consequences. Insufficient attention has been given in the past to the ability to manage risk when allocating regulatory roles.**
58. The Association firmly supports these findings. The Association considers these findings (and the issues leading to these finding) support our submission and rationale for the new findings and recommendation we are seeking to be included in the Productivity Commissions final report.
59. The Association suggests the Productivity Commission apply these finding, and the evidence supporting this finding, to insert new findings in the final report as sought by the Association elsewhere in this submission.

Chapter 7

- F7.1** Regulation making at the central level is below leading practice. This is having a material impact on the quality of regulations devolved or delegated to the local government sector.
- F7.2** Current institutional arrangements can shield central government agencies from the full fiscal and political cost of decentralising regulatory functions.
- F7.3** When regulations are developed centrally and implemented locally, the incentives faced by central government to undertake rigorous policy analysis are reduced. However, care needs to be taken not to confuse implementation problems with inadequacies in the underlying design of regulations – this requires careful post-implementation analysis.
- F7.4** The degree of Ministerial pressure on the public service to provide quality advice on local government regulatory issues is a key influence on behaviour. It is therefore important that Ministers have strong incentives to ensure that the advice they receive on these issues is of high quality and the product of a rigorous policy process.
- F7.5** The tendency of central government agencies to operate independently has resulted in regulatory functions being conferred on local government without considering their interaction and impact on existing regulatory functions administered by local authorities.
- F7.6** An opportunity exists to use the Better Public Service Initiative to promote a more joined up, whole of government approach to regulatory policy involving the local government sector.
- F7.7** The RIS process has a valuable role to play in ensuring the quality of regulations delegated or devolved to local government. However, at present this value is not being fully realised and improvements to the process are required.
- F7.8** While there are some examples of leading practice, consultation with local government on the design of new regulations is generally poor.
- F7.9** There is evidence to suggest that implementation analysis is a generic weakness of regulatory policy analysis in New Zealand. This weakness impacts on local government because local government is often the implementer of government policy.
- F7.10** The financial, capability, capacity and risk management challenges faced by local government in implementing regulations appear to be poorly understood within central government. There is little analysis of how these challenges will impact the successful achievement of regulatory outcomes.
- F7.11** A spectrum of measures exist that would help improve the quality of regulation delegated or devolved to local government. Many of these would have broader benefits for the overall standard of central government regulation making.
- F7.12** While guidance and training material on good policy practices are available, the incentives on agencies to ensure they utilise this material are weak. Perhaps the most relevant example of this is the limited traction obtained by DIA's policy guidelines for regulatory issues involving local government.
- F7.13** Pragmatic approaches to building better relationships between central and local government are needed. These relationships must be based on a mutual understanding that both levels of government ultimately exist to create public value and that their ability to create public value is tied, at least in part, to the actions of the other.

Chapter 8 – Local government cooperation

- F8.4** Cooperation can capture many of the benefits of centralisation while maintaining the advantages of local decision making (such as the ability to cater for spatial variations in community preferences).
60. The Association does not agree with this finding in terms of local regulation for wind farm development. For the reasons set out in Part B and the first part of this submission, the Association is of the view that cooperation (between councils) is not resulting in discernible benefits in the provision for wind farm (and renewable energy) development in local plan regulation. In some cases, the wind industry is observing perverse outcomes where collaboration does occur. The Association is of the firm view that central government regulation

is required, and that collaboration between councils cannot occur to the extent required in order to deliver more effective and cost efficient regulation for wind farm development across New Zealand.

Chapter 9 – Local authorities as regulators

- F9.3 The independent hearings panel process can be a good way of ensuring the views of interested parties are heard fairly and lead to recommendations being made to councils.**
61. The Association has had first-hand experience with the problems associated with elected officials sitting on hearings panels for Local Plan regulation. The Association agrees entirely with this finding.
- F9.4 Centralising functions or providing more national guidance is often seen as a solution to inconsistency. However, inconsistency more often than not occurs because of the different understandings or approaches of local officials working on the ground. Greater consistency is more likely to be achieved through sharing good practice and coordination between local authorities, which could be facilitated by relevant departments and ministries....**
62. The Association does not agree with this finding in terms of local regulation for wind farm development. While sharing of best practice will achieve more consistency, for the reasons set out in Part B of this submission, the Association is of the view that sharing best practice (between councils) will not result in discernible benefits in the way wind farm (and renewable energy) development is regulated under the RMA. In some cases, the wind industry is observing perverse outcomes where sharing of 'best practice' does occur. The Association is of the firm view that central government regulation is required, and that collaboration between councils cannot occur to the extent required in order to deliver more effective and cost efficient regulation for wind farm development across New Zealand.

Chapter 11 – The cost impact of local government regulation on firms

- F11.1 Delays in obtaining responses from local authorities, and the sequencing of multiple regulatory requirements and decisions by local authorities, can impose substantial holding costs on business.**
- F11.2 The Commission's survey of businesses showed that almost three quarters of businesses had at least some contact with local government through the regulatory process. Of those that did:**
- **39% report that local government regulation places a significant financial burden on their business.**
 - **Nearly half of respondents thought the time and effort involved in complying with local authority regulations is too large (and nearly half were neutral or disagreed), and 70% were dissatisfied with the fees charged.**
 - **'Planning, Land Use or Water Consents' and 'Building and Construction Consents' have the greatest cost impact on businesses. Both of these local government regulatory areas are typically associated with new projects such as expanding or building something new.**
 - **Around 40% of surveyed businesses had contact with the local council over four or more separate regulatory areas.**
63. Based on our experience in the RMA, outlined earlier in this submission, we are not surprised with these findings. We would expect 100% of wind farm developers to report that local government regulation places a significant financial burden on their business, think the time and effort involved in complying with local authority regulations is too large, and would have had contact with a local council over four or more separate regulatory areas.
64. While the Association considers 'Planning, Land Use or Water Consents' and 'Building and Construction Consents' would have significant cost impacts on business, these costs are not the greatest business cost impacts on wind farm developers.

Chapter 12 – Making resource management decisions, and the role of appeals

F12.1 Explicit consideration of the more moderate options included in the LAC guidelines for appeals processes needs to be included in any discussion of changes to the plan-making process.

65. The Association supports this finding. As outlined earlier in this submission the Association is of the view that a top to bottom review of role of the Environment Court in formulating and administering local regulation is required.

Specific comments on the recommendations provided in the Draft Report

66. The Association notes there is only one recommendation in the whole report:

R5.1 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.

67. The Association considers the Productivity Commission should provide more recommendations, particularly for RMA regulation that affects matters of national importance (set out in Section 6 of the RMA) and matters of national significance (as prescribed in a National Policy Statement).

68. The Association requests the following recommendation (or a recommendation with like effect) be included in the final report:

New: Regulations under the Resource Management Act for matters of national importance (as set out in section 6 of the Act) and matters of national significance (as set out in a national policy statement) should be reviewed, because it appears centralised regulation for these matters will be more effective and efficient overall.

PART C Conclusion

69. The Association has three key problems with local government RMA regulation:
- There is a logic flaw in the RMA related to national policy statements.
 - Institutional arrangements for implementing RMA regulation.
 - The Environment Court.
70. The first can be fixed by an amendment to the RMA to circumvent local regulation without overriding local environmental matters. The second and third problems relate to institutional arrangements and the court system, and are more fundamental problems.
71. First we believe there is a logic flaw in the RMA related to national policy statements that needs fixing. The logic flaw is that a council can impose local regulation, in the form of Local Plan rules that classify activities as *non-complying*, which can provide a ‘regulatory shield’ against a matter set out in a national policy statement as a matter of national significance. We believe Councils should no longer be able to use the *non-complying* activity status in this way and that the Productivity Commission should highlight that an amendment to the RMA could eliminate this logic flaw in the RMA.
72. Second we request that the Productivity Commission considers the institutional arrangements for implementing RMA regulation. These arrangements cannot readily be addressed by amendments to the RMA. By institutional arrangements we mean roles, responsibilities and resourcing to carry out those roles effectively. In a nutshell we see an important role for the Environmental Protection Authority (‘EPA’) to assist councils on technical issues and to support councils through the consenting process. We believe that having the EPA in the background, for example, providing technical support for councils decisions will result in better decisions, greater community support for decisions and fewer appeals to the Environment Court. We suggest that the conversation on institutional arrangements needs to begin and the Productivity Commission has a role in starting this.
73. The third issue we have is the Environment Court. A key issue for the wind industry is the way the Environment Court conducts its business, right through from the use of electronic systems to the way hearings are conducted. The processes and procedures need streamlining. A top to bottom review of the Environment Court is needed. We suggest that the Productivity Commission recommends such a review, i.e. the Productivity Commission starts a conversation about the performance of the Environment Court.
74. Having regard to the matters raised in the Draft Report and in this submissions, the Association respectfully asks the Productivity Commission to please:
- i. Amend the Draft Report to acknowledge that developing renewable electricity generation projects carry inherently unique circumstances that make it difficult to identify costs associated with local RMA regulation.
 - ii. Amend the Draft Report to acknowledge that local government requires greater centralised support or intervention to improve the implementation of RMA regulation overall.

- iii. Amend the Draft Report to recommend ways in which better direction and support can be given to councils, for example an enhanced role for the EPA to provide technical support to councils.
- iv. Amend the Draft Report to recommend a top to bottom review of the role of the Environment Court in making and administering local government RMA regulation.
- v. Amend the Draft Report to recommend an amendment to the RMA to ensure that the benefits of any nationally significant activity can always be considered in a resource consent application processes.
- vi. Retain findings: F3.7, F4.3, F3.4, F3.5, F3.7-F3.12, F7.1-F.13, F9.3, F11.1, F11.2
- vii. Amend the Draft Report to provide the following additional findings (or findings with like affect):
 - a) *There is an inherent tension between national policy directives and local government regulation, particularly under the Resource Management Act where local plans are formulated in a way that primarily addresses local or regional resource management issues, not national resource management issues.*
 - b) *When formulating regulation under the Resource Management Act there can be a significant disconnect between national policy directives and local government regulation if central government does not support local authorities by providing specific guidance about how to interpret and implement national directives.*
 - c) *The appropriate role of local government in fulfilling its mandate under the Resource Management Act to recognise and provide for matters of national importance (as set out in Section 6 of the Act) and matters of national significance (as set out in a national policy statement) have been left unclear by central government....*
 - d) *The appropriate role of local government in fulfilling its mandate under the Resource Management Act to recognise and provide for matters of national importance (as set out in Section 6 of the Act) and matters of national significance (as set out in a national policy statement) have been left unclear by central government.*
- viii. Amend the Draft Report (by amending the following findings or stating otherwise) to acknowledge/recognise that the following findings do not relate to the formulation and administration of local RMA regulation affecting nationally significant infrastructure development:
 - F8.4** *Cooperation can capture many of the benefits of centralisation while maintaining the advantages of local decision making (such as the ability to cater for spatial variations in community preferences).*
 - F9.4** *Centralising functions or providing more national guidance is often seen as a solution to inconsistency. However, inconsistency more often than not occurs because of the different understandings or approaches of local officials working on the ground. Greater consistency is more likely to be achieved through sharing good practice and coordination between local authorities, which could be facilitated by relevant departments and ministries.*
- ix. Amend the Draft Report to provide the following additional recommendation (or a recommendation with like effect):
 - a) *Regulations under the Resource Management Act for matters of national importance (as set out in section 6 of the Act) and matters of national significance (as set out in a national policy statement) should be reviewed, because it appears centralised regulation for these matters will be more effective and efficient overall.*