Productivity Commission *Towards Better Local Regulation* - Draft Report New Plymouth District Council Submission	
Chapter 3 – Diversity across local authorities	
Q3.1	To what extent should local government play an active role in pursuing regional economic development?
	It needs to be recognised that virtually all activity undertaken by local government influences economic growth. This ranges from the provision of essential infrastructure to planning for growth, the funding of events to various activities and programmes designed to enhance the quality of life and attract new residents, businesses and visitors. This is in addition to the economic development activities funded by many local authorities through independent economic development agencies. A recent BERL report on the New Plymouth District Council (NPDC) and Economic Development highlighted the contribution of local government to leadership, infrastructure, service delivery, regulation and social services, which all support economic development at a regional level. Fostering economic development in its district and region is a key activity for NPDC and considered crucial in meeting the Council's strategic intent and outcomes. The Council's investment in economic development has wide support within the community and is consulted on annually through the Annual Plan process and three yearly through the Long-Term Plan process. Central government has also regarded the economic development work undertaken by local government, and its economic development agencies, as an essential component in achieving its national economic development strategies.
Chapter 4 – Allocating regulatory responsibilities	
Q4.1	Have the right elements for making decisions about the allocation of regulatory roles been included in the guidelines? Are important considerations missing?
	The guidelines are useful although don't seem to account for size of the Territorial Authority (T/A). For example, in the case of Hazardous Substances the work is very specialised and most T/A's don't have volume of work to employ in-house specialists and the delivery of the service becomes very expensive. We question if that type of specialist regulatory requirement should be delegated from central government at all. It needs to be recognised that the size of the community does not make a difference when evaluating and/or managing risk as consultant costs are the same no matter what the population. NPDC agrees that the allocation of regulatory functions should be kept local unless there is good reason to allocate elsewhere. Any change in regulations must be carefully thought through. Change costs a lot to implement as setting up the systems accounts for much of the expense. This is particularly true if there is a lack of central support and information.
Q4.2	Are the guidelines practical enough to be used in designing or evaluating regulatory regimes?
	As above. Any guidelines will need to be broad enough to allow for the vast range of regulatory regimes.

Q4.3	Are the case studies helpful as an indicative guide to the analysis that could be undertaken?
	Yes.
Q4.4	Should such analysis be a requirement in Regulatory Impact Statements or be a required component of advice to Ministers when regulation is being contemplated?
	Early consultation is very important to allow local government an opportunity to have meaningful input into, and have confidence in, an RIS. RIS's are good tools, but timing is important. For an RIS to have value to local government it should be involved from the first stage of the process. The identification of possible regulatory tools should be consulted upon with local government before any decisions at central government are made. An RIS should not be used too late in the process or if government has already determined the regulatory / policy tool it wants.
Q4.5	Should the guidelines be used in evaluations of regulatory regimes?
	Yes.
Chapter 5 – The funding of regulation	
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?
	It may be useful to have specific grants available. Possible examples include if a T/A has significantly more than their share of a particular natural feature or biodiversity, natural habitats, waahi tapu, heritage sites, surf breaks etc which are identified as nationally significant. In these cases the regulatory costs of protection/management should be contributed to by central government. Another case for special grants could be where there is an absence of clarity at a national level about policy objectives that T/A's need to meet and more support should be given. A significant cost to many areas is earthquake strengthening works in identified heritage buildings, a number of which are nationally significant. Grants specifically for heritage earthquake strengthening work should be introduced for such buildings.
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?
	NPDC agrees that general grants could be "used to ensure that the same minimum level of service is provided across local authorities". For example, where there is a disproportionate requirement as outlined above, with regard to a large number of waahi tapu sites, or a large volume of heritage buildings. This relates back to clarity of what are the objectives and priorities of central government – transparency and resourcing is required so that a T/A can adequately fulfil the regulatory functions it carries out on behalf of central government. It is important to evaluate what challenges require a greater level of support. When regulation is being formulated, true consultation should identify what is required.

Q5.3	What would appropriate accountability mechanisms for funding local regulation through central taxation look like? How acceptable would these be to local authorities?
	Central government has a lot of experience in contracting out to other organisations and accountability is certainly a part of this. The principles of funding are supported. It is important to ensure application processes are not overly complex or expensive (e.g. sustainability fund applications) or there a risk that only the well resourced larger T/A's are able to access funds.
Chapter 7 – Regulation making by central government	
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?
	All of the measures are useful but only if they are aligned to government priorities – clarity of purpose.
Q7.2	What measures, or combination of measures, would be most effective in lifting the capability of central government agencies to analyse regulations impacting on local government?
	NPDC agrees that the capability needs improving and supports the eight options in table 7.2. The key is dual development of the regulations at the outset. The concept of secondment of staff is supported but a partnership on the objectives of regulation is critical and deemed to be of more value at the outset. The Sale of Liquor Act was a good example of LGNZ, T/A's and the Ministry of Justice working together. There was a clarity of purpose and an outcome that local government and central government are reasonably happy with. Time taken with the process and interagency relationships help the outcome.
Chapter 8 – Local government cooperation	
Q8.1	What are the benefits and costs of cooperation? Are there any studies that quantify these benefits and costs?
	Flexibility to decide where and when to cooperate is important. Costs and benefits for all parties need to be weighed up for each case. NPDC has a strong cooperative approach in respect to neighbouring T/A's. Councils meet regularly to look at local issues and how to deal with them in a uniform manner. As noted in the report, wider collaboration is done in many ways including through networks like listserve.
Chapter 9 – Local authorities as regulators	
Q9.1	Are there potential pooled funding or insurance style schemes that might create a better separation between councillors and decisions to proceed with major prosecutions?
	NPDC agrees with LGNZ that the cost of initiating prosecutions or appeals is not the major determinant of whether such actions are taken or not. We are not convinced that there is a problem that would benefit from a mutual style fund.

Q9.2	Are bylaws that regulate access to council services being used to avoid incurring costs, such as the cost of new infrastructure? Is regulation therefore being used when the relationship between supplier and customer is more appropriately a contractual one?
	No.
Q9.3	What factors (other than the type of regulation most commonly experienced by different industry groupings and the size of businesses in these sectors) explain differences in the satisfaction reported by industry sectors with local authority administration of regulations?
	Problems may arise, for example, where a small business with a tight budget and timeframe may not have an experienced project manager with the necessary knowledge. This is often the case, for example in the hospitality sector. The T/A can help to provide clarity on what they require early on in order to not delay the project and/or add huge cost. There is often a very low expectation of what is required by some small business owners. Small businesses can be disadvantaged because their activities can cover a large number of regulations. The complexity of the system can lead to the need for multiple consents. In our experience, it is delays rather than fees or cost which is more concerning to a small business. There is an onus on council to coordinate all the regulations for the customer and we become a de facto project manager for many people.
Chapter 10 – Local monitoring and enforcement	
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?
	Risk based approaches are generally used in securing regulatory compliance. For example, in the environmental consents area permitted activities are not generally monitored (on the basis that they are activities considered to be within the rules to have minor environmental impact) and only complaints are investigated and actioned.
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?
	An example of a monitoring issue recently improved is parking. NPDC recently installed technology which means that we can now very efficiently monitor and enforce limited parking areas. However, not everything has or needs a technology solution The level of monitoring activity undertaken relates to the perceived risk, budgets, resources, availability of information and availability/development of monitoring systems and technology. A proactive, monitoring approach such as with food safety has led to good compliance. Monitoring against the conditions of consent is very resource hungry but there are significant savings on reactive work. The decision of where to invest resources is very important – it often takes much more time at the beginning to set up an effective monitoring regime. Compliance monitoring is largely non-cost recoverable.

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?
	RMA infringement related costs are largely borne by ratepayers. The very limited ability to set infringement notices for bylaw breaches, only when specific provision to do so, is a problem. E.g. smoking in parks, fires on beaches or skateboarding. Sometimes instant fines are very effective. General provision (in line with power of general competence) in LGA to set fines under conditions would be of considerable assistance. There needs to be adequate provision for cost recovery. Reliance on summary conviction is not a good enforcement tool as the cost involved is often prohibitive.
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?
	All reported non-compliance complaints are investigated and followed through. Depending on the level of activity, timeframes may exceed expectations. Some enforcement regimes are specialised so require their own officers rather than being able to use a pool of enforcement officers.
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?
	RMA infringements are a good tool and effective if applied consistently. They change behaviours e.g. signage– nuisance to enforce and resource hungry but infringement notices are effective. However, the size of fines imposed needs to be reviewed – a lot of the fines are too small to justify, particularly if we have to go to court.
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?
	We are monitoring and this will be further enhanced under the new Sale of Liquor Act. We have dedicated people who consider applications, undertake monitoring of that part of legislation and have very good relationships with the relevant agencies. Multi-agency partnerships including the liquor license holders are key.
Q10.7	How high is the burden of proof for each kind of enforcement action? Is it proportional to the severity of the action?
	The burden of proof is very high for all kinds of enforcement action. It is evidence based and because regularly monitored we have the data.
Q10.8	Is the different 'gradient' in the use of compliance options because there are missing intermediate options?
	Options under the RMA are good now – infringement notices, abatement notices and prosecution.
Chapter 12 – Making resource management decisions, and the role of appeals	
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?

	The consent process in a number of cases does add value to development. If we have a fundamental issue with an application we say so early on. Also if there are affected parties they also have input through direct consultation and an applicant often modifies their proposal to 'appease'. It is important to tell an applicant if there is a problem up front. They can either mitigate (or modify aspirations) or proceed and risk a difficult application process such as when others affected make submissions. Doing the work upfront and education and communication can positively influence processes.
Q12.2	Would different planning approaches lead to less revisiting of regulation? What alternative approaches might there be?
	The New Plymouth District Plan is effects based and is flexible in this regard (although there is zoning the plan does not list activities). This is close to a performance based approached. A plan needs to articulate strong environmental outcomes to allow for such a performance based approach. With flexibility does come with it less certainty for communities. These need to be carefully balanced. If a development is inconsistent with the district plan then a private plan change may be appropriate for activities that were not anticipated. This is a more rigorous process and if private plan changes are not available then likely to get more complex consent applications (some which may be impossible to approve under the existing plan). Although an investment, a private plan change provides flexibility and if approved, certainty. Even minor applications can require significant administration and reporting to counter risk. A combination of better risk management and making it possible to consent to simple applications with minimal paper work would help. There is often too much legalise. There are non regulatory methods which are more effective as per Section 32 of the RMA. Necessary to look at education and advocacy instead of regulation. Riparian planting is a good example – education and encouragement rather than regulation has resulted in a huge success. A collaborative approach with landowners and a strong monitoring regime to balance it up has been very successful.
Q12.3	What factors have the strongest influence on whether a District Plan or Regional Policy Statement are appealed?
	Consultation at the outset is the key but can't get right all of the time. Identifying stakeholders and making sure they are well informed is important. In some cases where there are conflicting land uses, values or views it will go to appeal irrespective of the time put in at the outset. Is there any value of having these reheard when they have already been through a process?
Q12.4	Overall, would it be feasible to narrow the legal scope of appeals?
	Eliminating those who simply appeal against something because they don't like it would help. It could be argued that removing appeals would actually increase collaboration. In some cases true engagement and refinement of issues does not occur until the appeal stage. If the appeal stage is limited it will be in everyone's interest to engage early as there is only one opportunity for approval.
Q12.5	Would it be feasible to narrow legal standing?
	Probably, by asking people to explain how their appeal has any standing – a

	checking/filtering/advisory process before goes to court. We endorse the LGNZ position regarding limiting legal standing to those who have previously submitted.
Q12.6	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?
	Yes District Plan and bylaws can be complementary. Need to remember that bylaws generally deal with public spaces/rights (with some exceptions) while the District Plan relates to how someone can develop private land. The property rights issues are fundamental to the RMA which is why it has a stronger public participation focus. If there is a desire to streamline RMA processes then the more simplified process provided by bylaws would be a good model. Fundamentally this would be reducing levels of public participation in RMA process. Bylaws can often be less prescriptive, enabling more flexible decision making. The speed of the bylaw making process generally can be easier to enforce. They are different frameworks and generally deal with different issues. Community priority is more reflected in for bylaws – they touch people more. One process can complement the other for example when something is in the District Plan but easier to enforce in a bylaw.
Chapter 14 – Assessing the regulatory performance of local government	
Q14.1	How have local authorities used the Society of Local Government Managers guide on performance management frameworks – or other guidance material – to assess local government regulatory performance?
	We have used this and other material.
Q14.2	Is there a sufficient focus on regulatory capabilities in local government planning and reporting under the Local Government Act?
	No, more focus is required under the act. Focus tends to be on financial performance more than regulatory. There is more focus on efficiency than effectiveness and quantity rather than quality.
Q14.3	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?
	We have so much regulation that having a coherent assessment and monitoring framework would be extremely beneficial. The most effective areas are where there is a partnership approach e.g. liquor, gambling and building.
Q14.4	Which of the Commission's performance assessment options have the best potential to improve the efficiency and effectiveness of assessment of local government regulatory performance and improve regulatory outcomes? What are the costs and benefits of these options? Are there other options in addition to those that the Commission has identified?
	Shared outcomes, shared responsibility and partnerships between central and local government are important. Clear standards where there is accountability is much more effective and meaningful such as with the liquor licensing authority model.