



SOLGM Submission
on the
Proposed National Policy Statement on
Urban Development Capacity

The New Zealand Society of Local Government Managers (SOLGM) thanks the Ministry for the Environment (the Ministry) for the opportunity to submit on the Proposed National Policy Statement on Urban Development Capacity ('the NPS').

Who are we?

SOLGM is a professional society of over 625 local government Chief Executives, senior managers, and council staff with significant policy or operational responsibilities.¹ We are an apolitical organisation. Our contribution lies in our wealth of knowledge of the local government sector and of the technical, practical and managerial implications of legislation.

Our vision is:

Professional local government management, leading staff and enabling communities to shape their future.

Our primary role is to help local authorities perform their roles and responsibilities as effectively and efficiently as possible. We have an interest in all aspects of the management of local authorities from the provision of advice to elected members, to the planning and delivery of services, to the less glamorous but equally important supporting activities such as electoral management and the collection of rates.

Although we work closely and constructively with Local Government New Zealand, we are an independent body with a very different role. We have read Local

¹ Numbers as of 1 July 2016.

Government New Zealand's submission and generally agree with what they have said.

Housing affordability is a concern, but the NPS is a smaller part of a much bigger picture

The availability of affordable housing is a policy challenge that is endemic across much, but not all, of the developed world. For example, in the last four years Sydney house prices have increased by 57.5 percent, while Melbourne's have increased 39.4 percent.

Housing affordability is a multi-faceted issue where a 'systems thinking' approach is required. The NPS seeks to address one of the facets through ensuring that there is an adequate supply of plan-enabled and serviced land (we'll use the term 'developable'). This is a step forward. Other areas where demonstrable progress is required include:

- *addressing skills shortages in trades such as construction work , electricity and in civil engineering.* Without additional resource, we have concerns that merely making more funding available may create a demand-driven 'pull' on the price of a new house
- *addressing land banking.*
- *placing property investment on a level playing field with productive investment.* Some progress has been made in this area.
- *funding and financing of infrastructure.* Getting the trunk infrastructure in place to turn land that is merely plan-enabled into land that is developable is also a necessity, but poses major challenges (especially with the 2014 limitations on development contributions). Long-term solutions are needed
- *economic development policy (and especially regional development policy).* The five high-growth areas do not exist 'by accident', each is one the high growth areas of the economy. Migration both internal and external play a factor in the demand side of the housing affordability issue. One longer-term solution for excess demand in some areas is to generate real and sustainable employment in other areas.

There may be a disconnect with other aspects of the Government's reform agenda

The consultation period for this NPS has had the good fortune to overlap with submissions on the Local Government Act Amendment Bill that gives effect to the so-called 'Better Local Services' package.

The overlap in processes highlights that there is a potential disconnect in government policy. The NPS makes several references to a need for 'customer focussed consent processes' – which we take to mean processes which are both accurate (in the sense that they provide an accurate assurance of compliance) and rapid.

Both are promoted by having as few decision points as possible. Yet the Better Local Services reforms promote the establishment of arms-length bodies that will both own and manage water services and transport services. These so-called substantive CCOs have much the same powers, duties and obligations as the CCOs established under Auckland reorganisation – Auckland Transport and Watercare. The recent report *The Governance of Auckland: Five Years On* noted:

*"... concern that the restructuring of Auckland's governance has removed geographic siloes, creating instead – with the CCO model – functional services where assets and services operate independently from the rest of the council structure."*²

That is to say that the establishment of disjointed bodies to run water and transport services might easily lead to some duplication of approval processes and slow down response.

The NPS will create costs for all local authorities, not just the high growth areas

The NPS creates obligations for all territorial authorities. PA3 requires all local authorities to provide sufficient development capacity. Although not required to prepare housing assessments we submit that even a Mackenzie or a Kaikoura will need to have information on hand to satisfy itself that sufficient capacity exists. In other words, some degree of monitoring and assessment will be required of all local authorities.

²² Shirley et al (2016), *The Governance of Auckland, Five Years On* page 9.

We have seen conflicting viewpoints as to whether the NPS actually places a local authority under a direct obligation to provide infrastructure. The definition of development capacity refers to the provision of adequate infrastructure that is existing or likely to exist (that is to say land that is not serviced is unlikely meet demand).

Policies PD1-PD4 then appear to direct the provision of capacity. That is to say that there is some attempt within the NPS to set an expenditure priority for local authorities that overrides the democratic setting of funding and level of service options through long-term plans.

The other alternative, private provision is an option through what are known as developer agreements, this option is not used often in practice. Local authorities ultimately end up with the assets vested to them and bear the long-term risk, so its in the communities interest to ensure the developer builds to the same standards as the local authority. We also note that agencies such as the Productivity Commission have previously warned against over- fragmentation of infrastructure provision.³

In short, the NPS may or may not directly require the provision of infrastructure. Regardless we consider that the public expectation will be local authorities ensure that land where development is feasible will be serviced, in most cases by the local authority.

We therefore expect that the cost to communities of implementing the NPS will be ongoing and significant.

As we were completing this submission, the Government announced its proposed Housing Infrastructure Fund. We understand this is a 'one-off contestable fund' of \$1 billion which is available to the five high growth councils and is 'tightly targeted at core infrastructure supporting additional new housing'.⁴ While we welcome the fund as a step in the right direction, in the totality of our growth infrastructure needs \$1 billion is a small step.

An often overlooked factor in the discussion about local authority infrastructure is that infrastructure assets have a life-cycle. Once they are constructed, they need to

³ Productivity Commission, *Using Land for Housing*,

⁴ New Zealand Government (2016), *Housing Infrastructure Fund Q and A*, media release dated 3 July 2016.

be maintained, repaired and eventually renewed or replaced. That is to say that the infrastructure spend now, creates a funding need in both the present and the future. Policy-makers should consider this when contemplating the drivers that underpin rates increases/

The NPS does not align well with other planning legislation and practice

Policy PD7 requires the preparation of a future land release and intensification strategy that is support to identify the location, timing and sequencing of future development capacity and 'provide a process for flexible implementation' (whatever this means).

We are not certain that national policy statement is the best means of requiring planning authorities to prepare any plan or strategy. We suspect that legislating might have been the more appropriate action – and that the requirement shows some sign of having been developed in haste.

As a result we do not clearly understand how this strategy is intended to fit within the overall planning framework of the Local Government Act, Resource Management Act and the Land Transport Management Act. The NPS suggests only that the strategy is "alongside the relevant plans and regional policy statements".

This is an issue that has practical importance. For example, what is the relevance of the strategy to both planning decisions and decisions on resource consent applications? To what extent should this be identified and considered when preparing an infrastructure strategy and so on?

The definition of infrastructure proposed in the NPS includes 'passenger transport'. The framers of the NPS appear to have been aware that there is a definition of the term 'network infrastructure' in section 197 of the Act (though it refers to 'other transport' as opposed to 'passenger transport'). What has been missed however is that passenger transport is not one of the five groups of network infrastructure that local authorities must include in their infrastructure strategies. All of the growth councils other than Auckland and Nelson do not provide passenger transport.

We also note that development does not neatly follow local authority boundaries (or any other administrative boundary for that matter). For example, growth in Tauranga City spills over into the Western Bay of Plenty district, growth around Hamilton spills

over into the Waikato and Waipa districts. There is anecdotal evidence to suggest that the impact of a lack of development capacity in Auckland is beginning to manifest itself in house prices in Hamilton, Tauranga and (reportedly) Whangarei. Local authorities themselves recognise this, and adapt to this through the adaptation of regional and sub-regional growth strategies (such as the Tauranga-Western Bay of Plenty SMARTGROWTH and Waikato's Future Proof); and through other mechanisms such as minor boundary adjustments.

Recommendations

That:

- 1. the NPS or implementation guidance provide an adequate explanation of the 'fit' between the land release and intensification strategy.**
- 2. Policy PB1 be amended to clarify that housing assessments can be undertaken for areas other than the Statistics New Zealand areas where the affected local authorities deem it appropriate.**

Some value judgements are made about consenting processes

Policies PD2 and PD3 each refer to options that enable development that involve "customer-focussed consenting processes". Recent analysis undertaken by the Department of Internal Affairs showed that:

- most councils (52 out of 61) delivered between 90 to 100 percent of building consents within the statutory time frames
- similarly, the overwhelming majority of councils (63 out of 68) delivered between 90 to 100 percent of resource consents within the statutory timeframes.

We agree that compliance with the statutory timeframe is an imperfect measure. We concur with commentators such as the Auditor-General and Rules Reduction Taskforce that measures of 'total elapsed time' may be a better indicator of responsiveness. We suggest that a measure of total elapsed time is something that could be added to list of indicators to monitor.

Consenting is both an important and a thankless task. We observe that there will always be a tension or tradeoff between:

- a local authorities role as an enabler of growth and as a guardian of public safety and
- a desire to be responsive and a desire to manage risk (local authorities are guardians of public funds).

What is often cited as a lack of customer focus is in fact local authorities managing legal risk.

We concur with Local Government New Zealand that the design of consenting processes is a matter for guidance and good practice as opposed to placing in a National Policy Statement. Establishing a customer focussed consent process requires more than a wave of the rhetorical wand. It requires attention to: risk based compliance processes, joint and several liability and the upskilling in the exercise of regulatory discretion that is being undertaken through the Government Regulatory Compliance Initiative.

Recommendation

- 3. That references to customer focussed consent processes be removed from policies PD2 and PD3.**

It is not clear what degree of procedural robustness is required

Development decisions, particularly those that relate to affordable housing and what might be needed to provide it, can be among the more sensitive decisions that local communities need to resolve.⁵ The decision-making and consultation process will be one of the areas that the disaffected look to attack as a means of overturning other decisions.

We observe that:

- the requirement to prepare Housing and Business Land assessments are accompanied by an obligation to consult certain identified groups 'as they see fit' (Policy PB4) and

⁵ The Auckland Unitary Plan is an obvious and topical example of these tensions.

- the requirement to adopt a future land release strategy is a level even lower in that it requires a local authority to consider the views of certain identified group as they see fit (Policy PD9).

We suspect that this may be a drafting error. We suspect that reference to 'as they see fit' was intended to apply only to the identification of stakeholders other than those listed, as opposed to the obligation to consult *per se*. The intent needs clarification.

We submit that consultation processes for decisions of this magnitude should be clear and certain. While true of both requirements, the land release strategy leads to decisions, probably has the greater impact on markets and is therefore likely to attract more and wider interest.

A direction to consult only as a local authority sees fit does not sit well with the consultation requirements of the Local Government Act 2002 (the LGA). The test should be a higher one, but should allow for the circumstances of each of the local authorities. The LGA contains a test of significance, which allows local authorities to tailor their process to the degree of importance a decision has, and then requires local authorities to tailor a consultation process around set of principles in section 82.

We submit that allowing local authorities to develop a process in this way would allow those, especially medium growth councils, the flexibility to develop a process that provides opportunities to exchange views in a manner that is proportional to the real relevance of the decision.

The two requirements appear 'sequential', that is to say that a local authority prepares the two assessments, and if it needs to, it then does the release strategy. In that context, the lower level test is probably an appropriate way of avoiding placing local authorities under an obligation to consult twice.

It is possible, even likely, that community knowledge of the information in the assessments might well colour community perceptions about the timing and nature of land release. We submit that rather than a blanket requirement to consult in Policy PD9, what is needed is an obligation to consider the costs and benefits of further consultation, having had regard to the significance and engagement policy, and the provisions of section 79 of the LGA.

The uncertainties around process also extend to the publication of the assessments and monitoring. Policy PB1 suggests local authorities should consider the costs and benefits of publishing the assessments, with policy PB5 replicating this provisions with respect to the results of monitoring. We consider that the public interest in publication well and truly outweighs any negative effects of publication. In any case, a local authority that did not publish the assessments would find it extremely difficult to defend a decision not to release if requested under the Local Government Official Information and Meetings Act 1987.

Recommendations

That the NPS:

- 4. remove the reference to *'as they see fit'* from Policy PB4 and replace with *'as identified by the local authority, and in accordance with the local authorities significance and engagement policy and in a manner that gives effect to section 82 of the Local Government Act 2002'***
- 5. delete the second bullet point under Policy PD9 and replace with *'consider the costs and benefits of further consultation with infrastructure providers, land owners, the property development sector and other stakeholders.'***
- 6. amend Policy PB1 by deleting the last sentence and replacing with *'Local authorities must publish the assessments under policy PB1 within one month of completion'***
- 7. amend Policy PB2 by deleting the last sentence and replacing with *'Local authorities must publish the results of any monitoring under policy PB5 within one month of completion'*.**

Roads and the three waters do not make a community by themselves

The definition of infrastructure on page 9 of the NPS includes three waters infrastructure, roads and passenger transport. We agree that the first four of these are 'must haves' for development – we're less convinced about passenger transport.

Regardless, this isn't a complete list of the infrastructure that's needed to sustain modern development. In 2016, no development can exist without adequate access

to electricity and gas. While access to telecommunications might not be an essential for residential land, we suspect that the Minister of Economic Development might have views on local authorities purporting to open up land for business development without access to the internet.

Of course telecommunications and energy do not lie within the role of local authorities (though a few still own shares in energy companies that date back to electricity market reforms in the mid-1990s). It's not clear to us what roles or obligations are imposed on a Spark or a Genesis as a result of this NPS, or what role (if any) local authorities are meant to play in ensuring that this energy and telecommunications are available.

Central government needs to ensure that the networks within its policy and operational control are considering how they can support development capacity. Two examples that come readily to mind are the early childhood and school networks and the state highway network.

Similarly community infrastructure such as parks and reserves might not leap to mind as an essential for immediate construction, but is an essential for the long-term liveability of a local area.

We submit that central government needs to ensure that all of the networks that make for a successful community are adequately recognised in the NPS, and are placed under the appropriate obligations to recognise and act consistently with the NPS.

Successful urban planning models overseas recognise the short-term need to build houses, but they also recognise the long-term need to build communities.

Some data needs may not be readily available or sufficiently robust

The assessments require local authorities to forecast the likely level of demand for housing and business levels of demand. Any demand forecasting is only as good as the underpinning information and assumptions. Timely and robust data are essential to local authorities, especially over the range of information needed to forecast housing and business land demand.

Policy PB2 requires local authorities to consider the most recent Statistics New Zealand growth projections set out in an Appendix to the NPS. These projections are updated substantively after each Census, and more frequently to allow for births, deaths and migration. The NPS appears to be 'built to last', yet the way the NPS is worded it suggests the local authorities concerned must use the numbers in the Appendix and only those numbers. This may simply be a drafting error.

Additionally, the high-growth local authorities and some of the medium growth local authorities do not consider the Statistics New Zealand projections suitable for use in their own growth models. These local authorities tend to commission development of their own growth models, and use the Statistics New Zealand estimates and census data to check and calibrate their models.

We concur with Local Government New Zealand's comments that information to support business land assessments may be particularly difficult to source. Data to support forecast demand for different types and location of floor area for local business is especially difficult to source.

Recommendations

That:

- 8. Policy PB2 be amended by deleting the words " in Appendix A2"**
- 9. Policy PB2 be amended to allow high-growth local authorities to use their own projections**

Implementation is critical and December 2018 is sooner than some decision-makers may think

Any policy change is only as good as its implementation. One of the most frequently levelled criticisms of the RMA is that there was little attention paid to the implementation of the Act (and we would make that criticism of most government processes).

We are therefore pleased to see that the Ministry has begun considering how the NPS can be effectively implemented, and have sought to meet with us to discuss

needs. We realise how important the effective implementation of this NPS is and will do what we can, within the bounds of our other priorities, to ensure that this happens.

We realise that implementation guidance is often not seen as a priority by decision-makers. Temptation to downplay the role of implementation will be especially acute when the Government and Ministry are involved in a significant number of other NPS. We submit that whatever guidance and resources are produced will need to be available by the end of the first quarter of 2017 (calendar) at latest.

The first and most basic implementation need is that Statistics New Zealand needs the resourcing to produce timely and robust subnational demographic and economic statistics. In particular the lack of quality sub-national series that track economic activity is of major concern. SNZ is also struggling to deliver the next edition of its sub-national population estimates in sufficient time to support the round of long-term planning that is due by 2018. We have also highlighted other potential areas where there is a lack of quality data that will need filling well before December 2018. We suggest that discussion of the data needs and development of a strategy to fill them is something that is required as soon as consultation closes. SOLGM would be happy to facilitate this.

We suspect that the development community and decision-makers will expect the sector to use a common set of indicators for monitoring. We see some value in the sector developing a common set of indicators and a common understanding around the interpretation of the results.

Recommendations

That:

- 10. the Ministry for the Environment ensure that implementation guidance for this NPS is accorded sufficient resources and a high enough priority to see guidance completed by the end March 2017**
- 11. the Ministry for the Environment and SOLGM host a workshop to identify the data needs necessary for NPS implementation**

12. the Ministry for the Environment, SOLGM and the New Zealand Planning Institute develop a joint approach to monitoring and interpreting indicators.