Submission of the Society of Local Government Managers on the Productivity Commission Draft Report *"Better Urban Planning"*

Who are We?

The Society of Local Government Managers (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.

Regulation of landuse and the interface with local infrastructure (by which we mean network and community infrastructure) have long been regarded as core roles for local government in this country. Changes in legal framework and what the report terms 'culture and capability' have a significant role in shaping local communities. SOLGM therefore thanks the Commission for the opportunity to comment on the draft report *Better Urban Planning* (the report).

[1] Numbers as of 1 July 2016.

In preparing this submission we have worked with Local Government New Zealand, and unless stated otherwise, we share their views and concerns. We have chosen to amplify on the comments they make in regards funding and capability matters. We thank Local Government New Zealand for its assistance.

Consultation and Appeal Rights

SOLGM concurs that a future urban planning system requires a greater degree of responsiveness to changing needs and circumstances. Fundamental to this is the need to reconsider the policy settings around consultation and appellate rights. In this section we consider issues around consultation, the concept of the merit based appeal, and the proposed Independent Hearings Panel.

Our starting point for considering each of these starts from the underpinnings of local democracy. Planning matters involve the balancing of a large number of considerations and the exercise of local discretion. Our system of local democracy is based on the election of representatives to make these judgments on our behalf, with rights to contribute to the process.

Removing merit based appeals

It has long been a tenet of administrative law that the Courts can intervene in circumstances where a decision-maker has failed to follow legal requirement or the decision-maker has misdirected themselves in the administrative law sense.[2]

This applies, with the occasional modification, to decisions that can have significant impacts on communities. For example a decision to build a major community facility and the financing of that facility can create a fiscal constraint on a community for years to come. Local authorities can set bylaws (within the confines of the New Zealand Bill of Rights).

Each of these can be as significant in its impact as a land-use planning decision. Yet appeals are confined to misdirection in law alone. Yet planning is the only area where the judiciary is empowered to inject itself into the decision-making process and substitute its judgement for that of elected officials. The Commission itself (at page 105) notes that the ability to appeal is 'now broad compared with appeal rights in comparable jurisdictions overseas' and that none of Australia, England, Wales or Canada have appeals of this nature.

Others have canvassed the perverse incentives that the allowance of a merit based appeals. The merit based appeal provides the litigious with a tactic to delay and frustrate the otherwise legitimately made decision. It is common for submitters to withhold information such as expert evidence during plan development and

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[2] That is to say that the decision-maker has taken irrelevant considerations into account, not taken relevant matters into account or made a decision so unreasonable that no reasonable decision-maker would have made it. The case in respect of unreasonableness uses phrases such as 'perverse', 'irrational', or 'outrageous in its defiance of logic'.

consultation to 'keep their powder dry'. It is even more common that submitters adopt confrontational or obstructive tactics in the plan-making phase knowing that the final decisions may be made by a body external to council.

We have seen estimates that removing merit based appeals reduces the time taken to set and make a plan by up to a third. We submit that the Commission should focus on the role of the merit-based appeal as means of promoting responsiveness. We also suggest that removing the merit based appeal would be a significant factor in reducing the 'need' for bespoke planning processes.

A second option that might be pursued if complete removal is not preferred is the limitation of evidence that can be presented at appeal to that which was presented during submissions and hearings. This would incentivise all parties to put the best evidence to the decision-makers at the earliest possible time, and by providing the best information removes one factor in low-quality decision-making.

Recommendation

That the Commission recommend the removal of merit based appeals from planning decisions i.e. that appeals should be limited to points of law (including administrative law).

Independent Hearings Panel

Given the above discussion it should come as no surprise to the Commission that SOLGM is far from convinced of the merits of a permanent Independent Hearings Panel (IHP) to hear 'new plans, plan variations and private plan changes' across the country'. We agree with Local Government New Zealand that decisions on policy and plans is the prerogative of local government elected members, unless they choose to delegate to independent commissioners.

As we understand it, the Commission's proposal envisages that there would be a single 'central panel' in operation. We consider that there would be significant capacity constraints in establishing a body that could be hearing submissions on any or all of the RMA policy and planning business in New Zealand at any one time.[3]

[3] LGNZ advises us that during 2014/5 there were some 357 planning processes started (that is the average local authority was running five processes).

We can see some benefit in that a central IHP might develop a degree of strategic capacity in that it can draw on a pool of qualified candidates from across New Zealand. In our view this is the most cogent reason for establishing a central IHP. But many of the benefits of a centralised IHP could be retained by putting more support into the development of decision-makers at local level. There is the Making Good Decisions programme – but more could be done to ensure those making decisions are 'kept up to date'.

We can see some benefit in that there might be a greater degree of consistency in the way that some issues are handled. However this consistency will come at the expense of some degree of 'localness' to decision-making. For example, how would an IHP based in Wellington or Auckland take the preferences of the residents of Buller or Opotiki into account? If the Government has concerns about a lack of consistency in the way particular issues are handled it has at least avenues open to it – legislation and/or use of the National Policy Statement framework (noting that there are a large number of NPS in development as we write this submission).

Recommendation

That the Commission abandon further work on proposals to establish a permanent centralised Independent Hearing Panel.

Spatial Planning

The Commission seeks views on its recommendation that a form of spatial planning be introduced that would be *"tightly defined and focus on issues closely related to land use, in particular the provision of water and transport infrastructure and community facilities, protection of high value ecological sites and natural hazard management."*[4]

SOLGM agrees that the Local Government Act, Resource Management Act and the Land Transport Management Act are not well integrated and do not form a coherent code for planning. But nor were these three pieces of legislation ever intended to form such a code. The disconnection between the three statutes reflects:

- a lack of a coherent understanding of local government and the role it plays in the governance of New Zealand, and New Zealand society in general
- the different political 'owners' of the legislation (i.e the Ministers of the Environment, Local Government and Transport), the different regulatory stewards, and the disconnection between them.
- different funding drivers (i.e. the processes laid down in the Land Transport Management Act gain greater status than they perhaps should because there is funding attached).

This is, by our count, the third attempt to launch a mandatory spatial plan for local government – the previous two were lost in a maze of competing departmental interests (each wanting to ensure 'their' outcomes came first). There no single coherent vision or policy framework for local government and its role and contribution to the country. In the absence of either central government will always struggle to contribute to the development of these plans, meaning that spatial planning fails to recognise its full potential and becomes seen as something that is 'done to' the sector as opposed to something 'done alongside' local.

The infrastructure strategy was seen as one of the means for promoting greater alignment between land use planning, transport planning, other infrastructure planning and financial strategy. Indeed the initial versions of what became s101B of the Local Government Act had integration as one of the stated purposes of the Act. Even so, the Cabinet paper that sought approval for the amendments noted that:

> *"The new requirement for 30-year infrastructure planning would take effect at about the same time (i.e 2015) as councils are being asked to work together to produce single resource management plans that contain improved land supply provisions under the RMA reforms. Logically councils would undertake their long-term infrastructure planning concurrently with their Regional Policy Statement-level (sic) land-supply planning (as the two depend on one another). They could*

[4] Productivity Commission (2016), *Draft Report – Urban Planning and Infrastructure*, page 236.

utilise the cross-council planning partnerships and processes that will need to be established to deliver the 'single resource management plans'."[5]

A local authority cannot produce a sound infrastructure strategy (or a financial strategy for that matter) without a good understanding of:

- present and future land use and urban development or decline within the district
- patterns of demand for network infrastructure (at present the five groups of network infrastructure are the only mandatory inclusions in the strategy – though we understand 19 local authorities included other groups, often parks and reserves).
- the location and nature of natural hazards and risks within the district, the likely impact and the measures the local authority intends to take to manage these hazards and risks.

SOLGM's observation of the 2015/25 infrastructure strategies was that many would have benefited from a better understanding of the local community and the local economy and their linkages to demand for infrastructure. We concur that these documents should be shaped by a council's vision (or set of judgements about the direction the community is heading in and the council's role be it an influencer or a passive shaper of events. This will influence the processes such as activity choice, levels of service reviews and asset planning.[6]

Spatial planning, as the Commission has defined it, would work well in those centres that are growing or where there are significant other 'development' issues (for example, Waimakariri and Selwyn each have significant reconstruction/recovery issues to resolve). But many of these centres have already voluntarily adopted a full spatial plan or some other instrument that replicates the planning the Commission has in mind. Some take a form akin to the Torremilonos model, others are more growth focussed (such as SMARTGROWTH in the Western Bay of Plenty sub-region)[7], others sit somewhere between the two (for example in Dunedin).

In most instances the councils concerned used the powers afforded by the competence clause of section 12 of the Local Government Act, and developed their own processes for engagement (often hybrids of statutory process and other 'best

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5 Minister of Local Government (2013), *Better Local Government: Improving Infrastructure Delivery and Asset Management,* paper to the Cabinet Economic Growth and Infrastructure Committee, page 9.

6 *Dollars and Sense 2018*, SOLGM's guide on infrastructure strategies and financial strategies All of SOLGM's LTP guidance is developed from six 'ground rules' (core principles) which, among other things suggests that *'a successful long-term plan must be grounded in an understanding of the demographic, economic, environmental and social factors that shape the world around it'*.

7 SMARTGROWTH is a joint initiative of the Tauranga City Council, the Western Bay of Plenty District Council and the Bay of Plenty Regional Council.

practice' processes). Regardless, most record that the process involved a substantial investment of time and resource.

We are less convinced that a full-blown spatial plan will provide much assistance to rural local authorities and those that are experiencing population decline. For many of those local authorities the costs would probably outweigh the degree of benefit. Spatial planning is not, and should not be regarded as a panacea.

Funding

SOLGM generally supports the principle that pricing signals should form a stronger part of our urban planning system, and land use planning in general. Policy settings that 'aggregate' or 'average' charging to an excessive degree or that preclude recovery of some costs, act as a subsidy to the economically inefficient use of land.

SOLGM notes that many of the policy settings that encourage subsidisation are the result of central government intervention. Often central government's intervention has been the result of some trading off with another laudable policy objective (the cause *du jour* is affordable housing). These settings would need to be reversed if, for example, the presumption in favour of development (which we support) were to be introduced.

Rates are limited in the economic signals they can send

"There is force in Mr Barton's submission for (Local Government New Zealand) that the rating system in all its diversity is more akin to a tax than to a system of user pays".[8]

SOLGM agrees with the Commission that the rating system is too blunt an instrument to be of much assistance as a tool to support urban planning. As the quote that opens this discussion notes, rates were designed primarily as a form of taxation, and therefore are mostly designed as a tool for raising revenue in a manner that has relatively low administrative costs.

While there are a wide range of bases to assess rates (there are thirteen separate bases on which to set a targeted rate – excluding metering water consumption), most relate to the characteristics of the property or the fact of ownership. For the most part it is the powers to differentiate by use or location that offer the few opportunities to support planning objectives. It should also be noted that targeting to the level that would mimic pricing signals would come with some cost in defining and maintaining areas of benefits and capturing the necessary information on the rating information

Having said that, some local authorities could make more use of the powers available to them. It's interesting to note that many of the growth centres in New Zealand are also those local authorities that have the <u>least</u> targeted rating systems. For example, Hamilton City Council traditionally raised more than 90 percent of its rate revenue

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8 Richardson P, *Woolworths et al* vs *Wellington City Council* (1996), decision of the Court of Appeal.

from a single value-based general rate.[9] This year Auckland Council will collect around 88 percent of its rate revenue from the general rate. The use of targeted rating remains a predominantly rural and regional phenomenon – there are some that set no, or minimal, general rates.

Recommendation

That the Commission note that New Zealand's rating legislation has created a system of tax designed to raise revenue rather than to send economic signals

Value capture may provide an additional funding option but have limitation

Value capture is a relatively targeted means of capturing some of the economic benefits of a particular project or item of expenditure.

Value capture in the form that the Commission has presented uses the lift in property values as the means for charging, and therefore still draws on property as the tax base

While TIFs are an additional option we note that value capture mechanisms are also more akin to a tax than a pricing mechanism, and therefore will not send the economic signals the Commission is looking for. That is to say that value capture should be regarded as a funding tool, as opposed to an economic instrument.

Other work that the Commission has undertaken has demonstrated that value capture tools do not sit well with our zero-based regime for financial management. While a local authority can set up an area of benefits our legislation would see the tax collected from the total tax base, not just the increment. Practically, value capture would require its own legislative provision.

The legislative framework is inconsistent in its support for pricing

Effective management of infrastructure usually involves an element of managing user demand for the service, either to make optimum use of an existing asset, or to manage the use of scarce resource. There is a substantial body of international evidence that shows that the introduction of pricing can have on demand, especially, but not exclusively for water. Local authorities can and do use a variety of non-

[9] The situation is more in flux with Hamilton's shift to capital value. The council is using targeted rating to manage the shifts in incidence during the transition.

pricing strategies – for example rationing or other physical limits on use (such as prohibiting sprinkler use during dry periods).

Pricing for demand management purposes is generally not feasible under the legislation as it currently stands. Legislation that empowers local authorities to set fees and charges either sets a maximum level of fees or refers to "actual and reasonable costs". In either case, as it currently stands, pricing that has any demand management component probably does not comply with the law and would be at risk if challenged through the Courts.

Legislation constrains local authority access to pricing mechanisms. We are unconvinced that there is any sound policy rationale:

- for continuing to restrict local authorities use of road-tolling
- explaining why options such as cordon tolling, electronic pricing sat in the "under further consideration" basket for almost twenty years. As we write this submission a joint Ministry of Transport/Auckland Council report (the so-called ATAP report) has signalled a "progressive move to a pricing system that reflects the actual costs of each trip". This is welcomed but needs to be extended beyond Auckland – other centres face similar issues on key routes
- explaining why a local authority can meter water consumption but cannot do the same with wastewater (either by using water consumption as a proxy or by utilising new technology to directly meter wastewater) unless they change ownership or governance arrangements. There are a number of other legislative 'wrinkles' that make application of water metering under the Rating Act practically difficult)[10].

Recommendation

That the Commission call on central government to review the policy settings for pricing for local infrastructure.

The case for change to the funding principles is flawed

The Commission suggests that the funding principles set down in section 101(3) of the Local Government Act could be amended to place local authorities under a stronger direction to recover the capital and operating costs of new infrastructure from beneficiaries.

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10 For example, local authorities that collect volumetric charges for water rely on a 'pragmatic compromise' when it comes to showing these rates on the rates assessment, it can be difficult to invoice multiply occupied properties where there is only a single outlet.

Local authorities have been applying the principles in section 101(3) or the forerunning 3 step funding process since the mid-1990s. In our observation of revenue and financing policies, the beneficiary pays principle is one of the better understood and better applied principles (especially in rural, provincial and regional authorities).

The Commission needs to remember that local authorities need to demonstrate consideration of all of the principles of s101(3). A revenue and financing policy that demonstrates inadequate consideration of one or more is at risk if challenged.[11] To effectively place beneficiary pays first would require dilution of this duty. Yet other principles may have relevance to the efficient charging for infrastructure – for example the intergenerational equity and excerbator pays principles each play some role in funding infrastructural needs.

The recommendation appears to be written with the situation and needs of growth areas in mind. We submit that a legislatively directed pure application of beneficiary pays would not translate well to the needs of areas where population is static or declining.

To take an example, many provincial and rural local authorities are facing the need to upgrade drinking water supplies in small communities. The cost of these schemes can add thousands of dollars to an annual rates bill – which some local authorities have overcome using network pricing approaches. In these instance a pure application of beneficiary pays might present a genuine threat to the viability of the community. While the Commission might argue that application of beneficiary pays would be impractical in these circumstances we submit that a legislative change of this nature would provide fertile ground for challenge.

SOLGM does not find the Commission's case at all convincing and suspects such an amendment would create more issues that it resolves.

Recommendation

That proposals to amend section 101(3) of the Local Government Act be excluded from the Commission's final report.

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11 For example, in *Neil Construction* vs *North Shore City Council*, the plaintiff developer was able to demonstrate that the councils revenue and financing policy as it applied to land transport had relied on consideration of exacerbator pays and not adequately considered beneficiary pays. That aspect of the council's revenue and financing policy and a subsequent decision to recover 95 percent of the funding for a busway from development contributions was struck out.

Culture and Capability

Central Government Awareness and Knowledge

> *"Central government agencies with oversight responsibility for regulations do not have knowledge of the local government sector commensurate with the importance of the sector in implementing these regulations.[12]"*

SOLGM generally concurs with the Commission's view that there are capability gaps in central government, and has submitted to previous Commission Inquiries along these lines.[13]

We were not aware of, but are not surprised by, the Commission's finding that fewer than 3 percent of NZPI members work in central government. This meshes with policies that agencies such as the Ministry for the Environment have that weight their recruitment processes towards those with 'generalist' policy development skills as opposed to knowledge of planning and resource management issues.

Central government's capacity to engage, while improving, could still be enhanced

> *"The importance of council willingness and capability and public acceptability, to the successful use of greater flexibility and choice is made clear. This highlights that the lack of wider consultation with local government and information about LGNZ and the reference group leaves a significant gap.[14]"*

> *"Yet limited engagement with local authorities by central government has been a consistent theme that has emerged throughout the inquiry. The Commission's review of six RISs found that four of the six illustrated inadequate public consultation.[15]"*

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12 Productivity Commission (2013), *Local Government Regulation – Final Report*, page 71 (Finding 4.3)

13 For example, our submission to the *Commission's Inquiry into Local Regulation*.

14 Department of Internal Affairs (2016), *Regulatory Impact Statement – Better Local Services,* page 5.

15 Productivity Commission (2013), *Local Government Regulation – Final Report*, page 71.

Quality engagement is a vital part of the policy development process. Quality engagement:

- improves the understanding of the objectives underpinning a change
- provides the decision-maker with a better understanding of the practical issues and impediments to their proposals

While quality engagement is important with all legislative and regulatory proposals it is especially important with planning legislation. The subject matter is complex and can be technical. Planning law can override property rights and requires the balancing of competing interests.

The quote that opens this section provides an excellent and recent example of a lack of willingness to, and capacity to engage with local government. This example is a quote from the regulatory impact statement that accompanies a piece of legislation that is currently before the House and where the Minister and his officials have been subject to bi-partisan criticism at Select Committee level for the failure to engage (and the degree of back-filling that has been required to account for the lack of engagement).

Our submissions on previous inquiries have noted that quality engagement with the sector has, or should have, two elements. The first, engagement with Local Government New Zealand, as the body that represents councils as bodies corporate, tends to focus on the headline 'is the general intent of (insert policy name) a good idea?'. This is appropriate, and generally occurs to some degree (though the policy initiative described in the quote that opens this section was notable for it's failing to do so).[16]

However we believe that there is a lot of scope for improvement of the more detailed design of legislation by a greater willingness to include managers and staff of local authorities in the more detailed development process. Our observation is that practice in this regard is highly variable among government agencies. The price however not doing so is that departments deny themselves access to a great deal of information which might actually better inform the consideration of options during the policy development process.

In our experience those departments that have stewardship of the planning legislation tend not to engage with us. We have not seen officials from the Ministry

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16 The Regulatory Impact Statement that accompanied this Bill mentions consultation with a group of current and former elected members and officials. An Official Information Act request revealed this group consisted of a former Mayor (who has been out of the sector for six years), a sitting Mayor, and a former Chief Executive (who has also been out of the sector for six years). All three came from metropolitan councils. While not criticising these individuals we suggest that this was hardly representative of opinion across the sector.

for the Environment for some years, though we understand that they do engage well with officials on the Regional Resource Managers group. We have engaged with officials on the recent National Policy Statement on Urban Development, both in development of the exposure draft, and on the implementation needs. It is worth noting that these were officials from MBIE as opposed to the Ministry for the Environment.

Some agencies are better at engaging with the sector than others. The engagement that the Ministry of Justice undertook in engaging with the sector on the Sale and Supply of Alcohol in 2011 and 2012 is still regarded as one of the leading examples of practice in the area. The Commission itself has identified the policy process that lead to the development of the Food Act as an example of leading practice
In recent years, the quality of engagement undertaken by the Ministry of Transport has also been cited as consistently high standard. Transport's approach is described as

"The Ministry accepted the need to make improvements. It went to councils and talked about their concerns. It didn't create some new engagement model. It simply overhauled the wat it interacted with stakeholders. This new approach was carried out with Ministerial approval it included:

- *building trust and trying to be more open with stakeholders*
- *appointing senior people as relationship managers*
- *holding discussions with stakeholders to demonstrate that the Ministry was committed to establishing a relationship of trust*
- *sharing its forward work plan (which eventually saw the Ministry post these plans on its website)."*[17]

Some of the common themes we encounter in engagement with Departments are:

- not allowing sufficient time for the engagement (usually seen alongside a second theme – leaving engagement until late in the process and expecting the sector to 'drop what it's doing')
- being unclear about the objectives for a particular proposal
- not clearly stating what the scope of the engagement is, what might be Ministerial 'bottom lines' and what truly might be 'open to feedback' (this is a particularly important point for SOLGM and Local Government New Zealand as many in the sector still consider that these processes are a negotiation)
- preparing proposals first and then approaching SOLGM for information 'to confirm' the case or objectives for the reform
- a lack of understanding of the constitutional independence of local authorities from Ministerial direction (generally). We see comments such as 'local government is not responsive to Government concerns' in draft papers on a

17 Rules Reduction Taskforce (2015), *The Loopy Rules Report: New Zealanders Tell Their Stories*, page 53

regular basis. an unwillingness to take opportunities to consult on the exposure drafts of legislation. Often practical concerns and matters of alignment do not reveal themselves until experts have the opportunity to look at the legislative language

- a lack of subject knowledge – especially amongst the junior-mid level officials. We concur that few central government officials have worked in local authorities for any length of time. There is often an 'educative' element to some of the responses we make. There have been instances where the number of errors or gaps in understanding have been so great that we have supplied a response several pages longer than the proposal
- no, or limited attempts to cost the impact of proposals for local authorities. Cost-benefit analysis tends to focus on the impact on businesses – not realising that a cost to a local authority is ultimately recovered through locally raised funding sources such as rates or charges
- historically there has been little understanding of the local government budget cycle and the optimum timing for proposals to 'arrive on local authority desks'. We are pleased to note that these processes are becoming better understood – for example both the New Zealand Transport Agency and Creative New Zealand have approached us regarding material for inclusion in our 2018 long-term plan guidance
- no focus on the cumulative impact that multiple reforms might create for the sector, or overall understanding that differing reforms may sent differing signals. This should be a core role for the local government policy team in the Department of Internal Affairs, yet this analysis has not been done (and as far as we are aware has never been done).

Often the nature of the engagement is dictated by the expectations of Ministers in terms of the timing of any engagement process, the time available for any engagement process, and the scope of the process. The example that opens this section is an example of a legislative reform where there was no engagement at all due to a Ministerially imposed deadline. But it is far from uncommon for SOLGM to receive a draft of a proposal with 1-2 days, or sometimes only a few hours, to comment. As an organisation with four frontline staff delivering policy development, good practice and learning and development services it can be challenging to manage what is an expectation that we 'drop what we're doing' when we are for example doing learning and development events.

We observe that until there is a consistent culture amongst Ministers that is supportive of engagement with the sector, the concerns that we have described in this section will continue to manifest themselves. To us this points to much stronger expectations and conventions being inserted into the Cabinet process (for example stronger expectations in the Cabinet manual).

Central government support for implementation needs is weak

Implementation is a critical, but often overlooked part of any legislative reform. Even the best designed policies can have little impact if not implemented well, or if implemented in a manner other than intended.

The multiplicity of concepts and approaches in the RMA, and other commonly expressed concerns can be traced to a lack of support for implementation. In a similar vein, although the Department of Internal Affairs provided a limited amount of funding towards the implementation of the Local Government Act 2002, many of its plans were deferred for political reasons.[18]

In its report Better Local Regulation the Commission noted that:
"Given the national interest in achieving good regulatory outcomes without imposing unnecessary regulatory burdens, central government has an interest in enabling local government to develop the capabilities to administer regulation. It can also enhance the capability of local government, by:

- *being clear about its own priorities, which can help local government to target its capability development*
- *providing better guidance material, to make local government's task in enforcing regulation easier, and to encourage consistency*
- *improving its training programmes, particularly when it requires local government to implement a new regulation*
- *implementing initiatives to address specific skill shortages*
- *making 'tools' for assessing or implementing regulation that it has developed available to local government*
- *supporting research into ways to raise capability that have a sector-wide impact*
- *sponsoring reviews of councils' regulatory performance, in order to spread good practice and undertaking reviews of particular areas of regulation."*[19]

We agree with all of these excellent points. They all apply to local government's ability to locally implement the planning requirements that central government imposes on the sector. These points all complement the SOLGM Eight Principles of Effective Implementation that are replicated in the Appendix. We cannot emphasise enough that effective implementation of legislative change must start in the policy development phase, and flow into legislative design.

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18 Departmental resources were switched at short notice into a review of dog control legislation after a high profile dog attack.

19 Productivity Commission (2013), *Towards Better Local Regulation*, page 156.

Potential solutions have been identified, what is needed is the willingness to change

Many of the issues highlighted in this section have been raised in other venues – including the Commission's reports on *Local Regulation* and *Regulatory Institutions and Practices*, and the report of the Rules Reduction Taskforce.

Departments would say that these matters are being addressed through initiatives such as the review of the Regulatory Impact Analysis handbook.[20] However, as of the time of writing neither SOLGM nor Local Government New Zealand has been invited to participate in such a review, or comment on any proposed changes.

There is a wealth of information available within SOLGM and Local Government New Zealand (though their material is more focussed at the needs of elected members). Much of this is suitable for use as an induction tool for new analysts in central government – especially the How Local Government Works Webinar Course and the induction guide that supports it.[21] From time to time, central government approaches us regarding making this information available.

Recommendations

We recommend that:

- the Cabinet manual be amended to include greater direction and clarity around the obligations to consult local authorities when making policy with significant impacts on the sector
- all proposals for change that affect local government be subject to consultation with the Minister of Local Government
- the Department of Internal Affairs (or whichever agency has responsibility for oversight of the Local Government Act) be tasked with monitoring the ongoing impact of legislative and regulatory reform on local authorities and that it report on these findings at regular intervals
- all papers to Cabinet that propose to introduce a new regulatory requirement on local authorities, or to change an existing requirement be accompanied by a statement of the implementation needs and a plan for meeting them
- any implementation plan be required to demonstrate that it has met the eight principles of effective regulation set out in the Appendix to this submission

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20 New Zealand Government (2016), *The Government's Response to 'The Loopy Rules Report: New Zealanders Tell Their Stories*, pp16-17.

21 Further information about this course and the guide that supports it can be found at https://www.solgm.org.nz/Category?Action=View&Category_id=1141

- the organisations represented at the Central/Local Government Chief Executives Forum develop a joint programme of training and resources that enhance central government's understanding of local government. SOLGM's *How Local Government Works webinar* course and guide might form a starting point for such a programme.

Appendix: Eight Principles of Effective Implementation

1. ***Start early*** - officials should not turn up in the office the day after the enactment of the legislation and start thinking about what to do about implementation. While the roll-out of implementation support programmes necessarily follows enactment (which in turn follows the policy advice), the design and development of the implementation programme should start earlier. Elements of this should be concurrent with the policy and legislative processes. Indeed it is difficult to see how a rigorous assessment of policy options can be undertaken without commencing the identification of the costs and practicalities of their being implemented.

2. ***Work with the stakeholders*** - for any legislative initiative impacting on local government there will be a range of groups with a stake in successful implementation. This includes not only the national sector organisations such as *Local Government New Zealand* and SOLGM but also related professional organisations, and a variety of occupational institutes and associations. Engagement with these stakeholders can do a lot towards achieving effective implementation.

3. ***A separate process*** – SOLGM has been pleased to see the increasing willingness of central government to engage with local government during the process of policy development. While engagement with local government on implementation is likely to involve many of the same stakeholders, it should be set up as a separate project.

4. ***A single shared plan*** - SOLGM and other sector stakeholders will often see it as part of their role to support the implementation of the new legislation by local authorities (they may for instance have existing good practice guidance they will need to revise). If the actions of central government agencies and local government sector organisations are not co-ordinated in some way however, then there are risks that some work on some issues will be duplicated while others falls between the cracks. A single agreed common plan of action around the implementation process avoids these risks and is likely to lead to the most effective use of the available resources.

5. ***Use the proven technology*** - stakeholder organisations will generally have the established and effective channels of communications with their constituents within local authorities. They may already have tools and guidance material that are widely known, recognised and used within local authorities. Government agencies should be encouraged to use these rather than establishing competing channels and tools.

6. ***Clarity about audiences and needs*** - there are a range of audiences, spanning elected local authority members, managers, and hands on practitioners in the specific affected areas of work. Their needs and the best means of addressing them are likely to differ. For instance, we would argue that the technology developed by our Legal Compliance Programme would often be best available technology for meeting the needs of managers and practitioners, but it does not address the needs of elected members.

7. ***Linkage to Select Committee process*** **-** If work on developing guidance material as part of an implementation programme is started early enough there are opportunities for this to feed back in a positive way into the Select Committee process. This reflects our experience with the development of the legal compliance programme modules. The detailed work undertaken to identify the practical means of complying with legislation sometimes highlights technical shortcomings in the legislation that is being worked on – gaps and disconnects, inconsistencies and contradictions, and areas of clarity. If the effort is made to start this work early there is the opportunity for these sorts of issues to be addressed prior to enactment.

8. ***Life-cycle approach*** - once legislation is enacted there is a necessary ongoing maintenance task for the administering department. New issues may arise, areas of uncertainty or contradiction may come to light, provisions may be interpreted in unexpected ways by either practitioners or the Courts or both. The ability of a department to respond effectively and properly maintain the legislation depends on the strength of its feedback systems from users. Engaging openly with stakeholders on implementation can assist this by establishing the foundation of relationships that can ensure open information flows into the future.