



Department for
Communities and
Local Government

Reviewing the Nationally Significant Infrastructure Planning Regime

A discussion document

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Introduction

Delivering economic growth is the over-riding priority for the Government, and improving the efficiency and speed of the planning process, particularly for infrastructure delivery, is a crucial part of creating the conditions for sustainable growth. Government is committed to securing investment in new nationally significant infrastructure as part of its efforts to rebuild the economy and create new jobs. Ensuring that the nationally significant infrastructure planning regime is operating as effectively and efficiently as possible is therefore an important priority for Government, as part of its wider reforms to the planning system.

As part of this, the Government is now reviewing the nationally significant infrastructure planning regime – 5 years after the regime was implemented through the Planning Act 2008. The regime is still relatively new, with only 14 developments having been decided but there is an increasing flow of projects coming into the regime with around 70 projects currently in the pipeline. Significant improvements have already been made to the regime through the Localism Act in 2011 and the Growth and Infrastructure Act in 2013.

It is already clear that the new regime is an improvement on its predecessors and is delivering faster planning decisions. However, users have gained considerable practical experience of the regime and this review gives an opportunity to learn from this and consider ways in which the regime could be improved further.

This discussion document highlights those areas where users have identified that there is still room for improvement. For each area, it sets out the main issues which have been identified and a range of suggestions and options for change which have been put forward by users of the regime.

The Government is keen to get further feedback from users of the regime and other individuals or organisations who may wish to contribute to the review, to help to shape the final set of proposals for improvement, which will be implemented where possible by spring 2015.

Background

1.1 The Nationally Significant Infrastructure Planning Regime

The Planning Act 2008 created a new regime for development consent for certain types of nationally significant infrastructure - major energy projects, railways, ports, major roads, airports, water and waste projects.

The purpose of this new regime was to simplify and speed up planning consent by reducing the number of applications and permits which were required and enabling decisions to be taken faster.

The regime is different from the mainstream planning system under the Town and Country Planning Act. The system is deliberately front-loaded and developers are required to carry out all public consultation and show they have taken into consideration any views

expressed before they submit their application. This reduces the time needed for examination and ensures decisions can be taken quickly. The examination is focused on written representations rather than a public inquiry, with hearings on issues only being held where necessary. It is an open, transparent system with representations being published on the National Infrastructure website and hearings held in public.

The regime is underpinned by a series of National Policy Statements which set out Government policy on the need for certain types of infrastructure and the matters that need to be considered when determining an application for different types of infrastructure. 9 of the 12 National Policy statements which were anticipated when the regime was created have been published and a further statement on National Networks is expected to be published in draft by the Department for Transport before the end of the year. Subject to the outcome of a policy consultation which concludes on 5 December 2013, the Department of Energy and Climate Change is also proposing to produce a National Policy Statement on the geological disposal of higher activity radioactive waste.

These statements are seen by users as being one of the most successful elements of the new regime and enable faster decision making by addressing key aspects of Government policy and 'need' upfront and thereby removing questioning on these matters from the examination process.

Wales

The Planning Act 2008 applies to a more limited extent in Wales. In Wales, development consent under that Act is only required for energy generating projects above 50 megawatts and certain pipeline, overhead electricity line and harbour facility projects. The potential scope of a development consent order is also more limited in Wales. For example, there is a more limited range of consents that can be disapplied without the agreement of the relevant consenting body.

1.2 Changes to date

The regime has not remained fixed and has already been subject to some substantial changes which have significantly improved its operation and helped to speed up decision making since it opened for business in March 2010.

Legislative changes: Changes to the regime were introduced as part of the Localism Act (2011) and the Growth and Infrastructure Act (2013). The Localism Act abolished the Infrastructure Planning Commission and restored final decision making powers back to Ministers - a change which was seen as important in restoring democratic accountability back into the system. The Growth and Infrastructure Act made changes which will allow developers of large business and commercial developments to ask the Secretary of State for a direction to enable their schemes to be considered under the nationally significant infrastructure regime, which could speed up the decision making process for these types of schemes. It also removed the need for 5 separate consents and certificates to be obtained in addition to the development consent order and made changes to ensure that the Special Parliamentary Procedure is fit for future operation.

Light touch review of guidance: In 2012, the Department for Communities and Local Government undertook a light touch review of the guidance relating to the major

infrastructure planning regime. The review made changes to the 6 Department for Communities and Local Government guidance documents which underpin the regime, providing greater clarity over processes and addressing a number of technical issues and also ensuring that the guidance reflected recent legislative changes.

Threshold changes for and new infrastructure types: There have been some changes to the thresholds used to determine whether a project should be considered under the regime. Changes have been made to exclude small road and rail projects and short extensions to overhead transmission lines and also to expand the regime to include projects concerning the transfer and storage of waste water.

Expanding the 'one stop shop' for consents and establishing the new Consents Service Unit: Government removed a number of consents from regulations to expand and improve the regime's 'one stop shop' and also made changes to streamline the number of statutory consultees which would need to be consulted for each application. In addition, in April 2013, the Government set up the Consents Service Unit, which is based within the Planning Inspectorate, in order to improve the co-ordination and communication between developers, the Planning Inspectorate and other consenting bodies. The unit provides a bespoke service for developers and co-ordinates the approach to handling some of the important non-planning consents which are required in addition to the Development Consent Order.

Developers can also benefit from the Major Infrastructure Environment Unit which was set up in 2012. It works closely with developers and regulators on individual infrastructure projects, helping resolve issues stemming from the Habitats and Wild Birds Directives in pre-application and making sure the right people talking to one another and asking the right questions. The Unit has developed evidence plans as a way of allowing developers to agree evidence needs with regulators at an early stage.

Red Tape Challenge: In January 2013, Government launched the Planning Administration theme on the Red Tape Challenge website. The Government sought views on how to make the mechanics of the planning system more efficient and accessible, ensuring it is simple, clear and easy for people to use. The Government announced the initial outcome of theme on 29 October 2013, including that a number of redundant regulations relating to major infrastructure will be scrapped or improved. The wider comments raised by stakeholders on the nationally significant infrastructure planning regime during the Red Tape Challenge, which particularly focused on the processes under the regime and Development Consent Orders, will be considered as part of this review.

Ministry of Justice consultation on reforms to Judicial Review: The Ministry of Justice published for consultation further proposals for reform of the system of judicial review in September 2013. Their consultation document contained proposals in a number of areas including moving planning decisions to a specialist planning chamber which could help to speed up decision making further. The consultation closed in November and an announcement is expected in the New Year.

1.3 Performance

Inevitably, it has taken some time for the first applications to make their way through the system and the first project to be approved – Rookery South, an energy from waste

generation plant, was approved in October 2011. Since then a further 13 developments have been approved. There are another 21 applications, which have been accepted and are currently being considered and a further 55 are at the pre-application stage.

Details of all of the projects currently going through the regime can be found on the National Infrastructure website - <http://infrastructure.planningportal.gov.uk/>.

1.4 Why are we reviewing the regime now?

It is Government policy that Departments should review legislation between 3 to 5 years after it became law to see whether it is having the intended effect.

Over the summer, the Department for Communities and Local Government has been scoping this 2014 review and as part of this has conducted interviews with around 40 organisations and individuals who have real experience of the regime to get their views on how it is performing and suggestions as to the areas on which the review should focus.

Partners were very clear that they did not see the need for sweeping changes to the existing regime and felt that changes of this nature might damage confidence, deter investors and prevent applications from coming forward. They thought that on the whole, the regime was working well, is delivering its core objective of enabling planning decisions to be taken more quickly and with greater certainty than under the old regimes.

Nearly all of the partners who had experience of working on more than one application commented that the process was improving significantly as everyone involved becomes more familiar with the regime and as the Planning Inspectorate responded to feedback from users of the system. However, there was also a consensus that this review provided an opportunity to improve the regime further and they felt that there were some relatively minor changes which could 'smooth the rough edges' and would result in significant improvements in the overall user experience.

The remainder of this discussion document sets out those areas where there is a broad consensus from partners that changes could be made and in many cases sets out possible suggestions for improving the regime. In some cases, Government does not need to wait to put these improvements in place and changes are already being delivered and some of these changes are highlighted in the following text.

Government is now keen to get wider views on these areas where improvements are being suggested and more specific feedback on suggestions put forward through discussions so far.

We would also welcome any evidence that users of the regime are able to share on how the regime compares to its predecessors, in terms of timeliness, efficiency and costs.

1.5 How to respond

You are invited to put forward your views on the issues set out in this discussion paper by 24 January 2014

You can respond by email to 2014review@communities.gsi.gov.uk

When responding please ensure you have the words '2014 review discussion paper' in the subject line of your email. Please use the template provided at Annex A.

Alternatively you can write to:

Matt Prior
2014 Review Team
Zone 1/H6
Eland House
Bressenden Place
London
SW1E 5DU

When you reply, please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please give a summary of the people and organisations it represents and where relevant, who else you have consulted in reaching your conclusions.

Please be aware that any information you provide in response to this discussion document, including personal information, may be disclosed in accordance with the Freedom of Information Act 2000 and the Data Protection Act 1998. If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality. In addition, any opinions or evidence given may be quoted in future publications by the Department for Communities and Local Government or other government departments.

The Department for Communities and Local Government is aiming to publish a final report in spring 2014 which will set out the conclusions from this review including a summary of the feedback from this consultation alongside an implementation plan for any changes which are proposed.

Areas where the Review Team would like your feedback

Each of the following 5 sections is focused on an aspect of the regime where Government is keen to get your thoughts on how it is operating and how it can be improved. Each section contains a summary of the current position; feedback from the discussions the Department has already had with partners and in most cases sets out some ideas put forward during initial discussions on the Review. At the end of each section there are some specific questions that the Review Team would like your views on. In particular, we would welcome your views on which areas should be a priority.

Whilst not every issue raised by partners has been addressed in this document, the Department for Communities and Local Government continues to keep the operation of the nationally significant infrastructure planning regime under review to ensure it is operating as effectively as possible.

2. 1 Improving the pre-application phase and ensuring consultation requirements are proportionate

What is the current position?

One of the most important features of the nationally significant infrastructure planning regime is that it has an intentionally front-loaded system of consultation and engagement during the pre-application phase. In order to be accepted for the fast-track process of examination, recommendation and decision, applicants must submit a thoroughly prepared and detailed application which demonstrates how they have already carried out their consultation, environmental assessments and project refinement during the pre-application stage. They must also show how that they have had regard to any relevant responses from those consulted.

There is currently no fixed structure to the pre-application stage and the approach and time taken during this phase differs from case to case, depending largely on the approach taken by the developer and the size and complexity of the proposed development. The main components of the pre-application phase include:

- developing the scheme itself;
- complying with mandatory pre-application consultation and publicity requirements set out in legislation;
- undertaking any necessary project assessment (for example, Environmental Impact Assessment and/or Habitats Regulations Assessment as required under European law); and,
- preparing the draft Development Consent Order and other application documents.

As set out above, a number of changes have already been implemented by Government and the Planning Inspectorate to help improve and speed up the pre-application phase, including changes in the Localism Act 2011, the Light Touch Review of guidance, the expansion and improvement of the regime's 'one stop shop', the establishment of the Consents Service Unit, streamlining the list of statutory consultees and ongoing work by the Planning Inspectorate to improve their service at the pre-application stage.

What issues which have been raised?

Making improvements to the pre-application phase was the issue raised most often by users of the system. A range of issues were identified with the current approach, including:

- a need for greater structure, facilitation and pro-active oversight by the Planning Inspectorate of applications as they are developed and the handling of pre-application requirements by developers;
- concern that the pre-application phase is taking too long and that some of the requirements are too onerous and prescriptive, particularly in relation to consultation;
- a perception that risk aversion by applicants means that consultation and resulting documentation can sometimes focus on quantity rather than quality, with little sense of proportionality; that genuine engagement on difficult issues is sometimes left until too late in the process; and that consultation does not always appear to provide a genuine opportunity for communities to engage;
- concern that some specific regulations, guidance and practice could be improved to ensure the pre-application phase is more efficient – for example by allowing consultees

who have said they do not wish to be consulted or notified about a particular project to be removed from consultee lists, or for documents to be made available electronically;

- concern that the drafting of Development Consent Orders can be variable and that greater consistency would help improve users understanding; and
- concern that the statutory requirements around publishing preliminary environmental information are confusing with some applicants interpreting these requirements to mean that they must provide a draft of their full Environmental Statement during pre-application.

Ideas put forward on possible changes?

A number of possible ideas to help address these issues have been suggested during our discussions so far with users of the regime, including:

Further improving advice from the Planning Inspectorate

Ensuring that the Planning Inspectorate is less risk averse in its approach to advice, for example by being clearer on consultation requirements and what is needed in order to satisfy requirements.

An improved, more structured and transparent pre-application service offer from the Planning Inspectorate.

This could include using the inception meeting between the Inspectorate and the developer to agree a project management programme for the pre-application phase, with key milestones being set at which the Inspectorate and developer would need to meet to assess progress on matters such as:

- agreeing their approach to obtaining consents;
- Environmental Impact Assessment screening and scoping;
- Habitats Regulations Assessment screening and scoping;
- agreeing as far as possible their approach to Statements of Common Ground;
- key stages of consultation and preparation of draft application documents; and
- where appropriate, an engagement protocol with key statutory consultees and milestone review meetings which could include other bodies as required.

This new 'offer' could be set out clearly in a prospectus which sets out both what the Planning Inspectorate can offer and what they expect from the developer during this phase.

Providing more advice on drafting the Development Consent Order

Some partners highlighted that inconsistency in drafting between Development Consent Orders could potentially be confusing and suggested that further advice from the Planning Inspectorate, for example through an advice note could be helpful in addressing this.

Early Advice

Some partners suggested that developers are sometimes unwilling to seek early advice from the Planning Inspectorate due to the Inspectorate's practice of putting a record of discussions automatically and immediately on the National Infrastructure website, which sometimes unnecessarily raises concerns in communities about projects or versions of projects that may never come forward to the formal application stage. Although it is vital to maintain the high levels of transparency associated with the regime, it has been suggested it is only necessary to automatically publish specific project information once a developer formally notifies the Inspectorate of their intention to make an application.

Delivering improvements now – Improved pre-app service

The Planning Inspectorate has already made changes to ensure that their most experienced infrastructure casework lead planners are able to focus on offering pre-application advice to applicants and able to deliver the improved service approach set out above.

Streamlining bureaucracy and providing greater clarity around procedures and requirements

A range of suggestions were made for improving and streamlining current requirements and procedures during the pre-application phase. There are a number of requirements currently set out in legislation and guidance which are creating excessive bureaucracy or uncertainty for users of the regime and where it has been suggested that Government could helpfully 'smooth rough edges' to ensure the regime is more proportionate. These included:

- the need for more clarity over what requirements for communication can be undertaken electronically, including changes to guidance and regulations where needed – a number of users of the system identified barriers to using digital communication, even where this was the most appropriate approach and were keen to see these removed in order to make the regime more efficient;
- removal from regulations of prescription setting out precise details of the size and scale of maps and plans required for the application – where users have identified that excessively detailed regulations are causing some confusion and uncertainty;
- the ability for consultees to 'opt out' of receiving consultations and notifications which they do not want to receive – a number of users of the system were concerned that requirements currently meant that they had to continue to contact consultees even when they had asked not to be contacted further and suggested that tweaking these requirements would make the regime more efficient; and,
- further streamlining of requirements around statutory consultees – to ensure that developers only have to consult specific bodies where it is really necessary.
- additional clarity around statutory requirements for preliminary environmental information – a number of partners suggested that there should be more detailed guidance by the Department for Communities and Local Government or the Planning Inspectorate, or changes to the regulations, to give a clearer indication of the requirements for preliminary environmental information.

Highlighting examples of good documentation

A number of partners suggested that they would find it useful if examples of really good documents were identified and made available to all applicants through the National Infrastructure website in order to inform future applications.

We would welcome your views on:

- whether you agree with the explanation of the current issues that need to be addressed;
- whether you agree with the ideas which have been suggested so far and whether there are there other ideas you would like to be considered as part of this review;

- whether you agree that there are areas of the regime which could be streamlined and whether you have any suggestions on how this could be achieved;
- what steps could be taken to further streamline the pre-application stage in particular, and reduce the amount of time this stage takes;
- whether you would support the proposal to make examples of documents available on the National Infrastructure website and if so, are there any in particular;
- whether you see this as an area which the review should focus upon and whether there are any changes you would prioritise over others.

2.2 Improving the pre-examination and examination phase

What is the current position?

The move away from lengthy public inquiries, conducted in an adversarial style, towards an examination process based on largely written representations was one of the biggest and most noticeable changes introduced with the new regime. The Examining Authority is required by law to complete their examination within 6 months.

Pre-examination

Currently, once the Planning Inspectorate has accepted an application, the developer is required to publicise the acceptance and notify those who are potentially interested about how they can make 'relevant representations' to ensure they are registered as an interested party. At least 28 days is allowed for people to formally register and to lodge their views on the project or its impact. Once the deadline for registration has passed and the relevant certificates received, the Planning Inspectorate publishes these relevant representations on its website. It then appoints the Examining Authority which is comprised of 1, 3 or 4-5 inspectors depending on the size and complexity of the case being examined.

Preliminary Meeting

The examination process begins with the preliminary meeting. This takes place after acceptance and is held by the inspector and involves the developer and other interested parties. This is a procedural meeting with the primary purpose to discuss the timetable for the examination. Following the preliminary meeting, the inspector confirms the timetable for the examination and puts written questions to the parties.

Examination

The examination is primarily a written process, with inspectors considering both the application and written submissions from interested parties and issuing written questions to the developer and others in order to clarify the issues and the cases being put forward. Although it is a written process, inspectors may hold hearings to investigate specific issues further and there may also be an open floor hearing if requested by an interested party. The Inspector can ask the developer and other parties to jointly agree statements of common ground which may set out both areas where the parties are in agreement and those where they are in dispute and agreement cannot be reached. These statements help to focus the examination on the main issues.

What issues have been raised?

Partners have generally been positive about the examination process and have welcomed the statutory time limit and the certainty that it offers. They were also very clear that National Policy Statements, where they exist, have made examinations much more effective as they mean the examination does not have to focus on the issue of 'need' for the project.

Many of the partners said that the examination was a very intense period for them, as it required them to quickly respond to questions from inspectors. They accepted that this was a consequence of the need to complete the examination within 6 months but also

stressed the importance of ensuring that all documentation was loaded onto the National Infrastructure website as soon as it was available.

One of the issues most commonly raised was a desire for more certainty about how inspectors will run their examinations so that people know what to expect. In particular, applicants and interested parties would like an early indication of the matters to be covered at hearings and clear agendas so they can be sure that the right experts can be brought along and also to enable meaningful preparation.

Concerns about the format of individual examinations is partly a reflection of the fact that the system is still in its infancy and working practices are still being developed but also because each examination will be different as it needs to focus on the issues specific to that application. However, it is important that there is a consistency of approach and the Planning Inspectorate is continually reviewing its working practices to ensure that best practice is consistently adopted.

Concerns were also raised about the lack of flexibility to make changes to a Development Consent Order during the examination process, particularly where improvements to the project have been identified and agreed through consultation and engagement with communities, local authorities or statutory consultees.

It was also suggested that the publicity requirements regarding acceptance were unduly onerous and should be reviewed. Some partners expressed concerns that potential interested parties were being put off from engaging in the process because the registration form was too complex and said it should be simplified.

Delivering Improvements now – Planning Inspectorate review of working practices, website improvements and customer surveys

The Planning Inspectorate has recently undertaken a review of its working practices related to nationally significant infrastructure using the 'Vanguard' approach to systems thinking and business transformation which looks for ways to streamline and simplify processes. Using this approach, the Planning Inspectorate has identified a number of potential system improvements and is currently piloting them on individual cases. These will be rolled out to further cases if they prove successful.

The Planning Inspectorate is also redesigning its national infrastructure website to make it easier for all users – including those with limited knowledge about the process - to find the documents they are looking for easily, and to understand how these relate to specific deadlines or earlier submissions. The Planning Inspectorate will also be carrying out customer surveys from autumn 2013 to build a better understanding of the improvements that different users of the regime would like to see made to the examinations process with a view to developing practice accordingly.

Ideas put forward on possible changes:

More flexibility to make changes to an application if required after it has been accepted

A number of partners commented on the difficulty of introducing changes to an application once the application has been accepted. Although some changes can be accommodated

there is no statutory process for making changes and it was sometimes unclear what the appropriate process is. It was suggested that there may be a need to strengthen guidance in this area or, if necessary, make changes to the legislation.

Change the requirements for relevant representations and written representations

Some interviewees suggested that the current process around submitting 2 sets of representations – relevant representations at the registration stage and then written representations - made once the examination is underway - was unclear, encouraged duplication and could be streamlined. It was suggested that parties should be encouraged to submit full relevant representations and that this might reduce or eliminate the need for further written representations. It was also suggested that the forms for submitting relevant representations could be made more user friendly.

Faster publication of relevant representations/written submissions

Currently the Planning Inspectorate does not publish any of the relevant representations on their website until the deadline for making those representations has passed. Similarly it does not publish any of the written submissions until the deadline to which they relate has passed. It was suggested that the Planning Inspectorate should consider publishing these as soon as they are received. However, this needs to be balanced against the risk that this might discourage early submission of representations and also concerns around fairness as later respondents may be able to comment on points made by earlier respondents.

More flexibility on the number of Inspectors

Some interviewees thought there should be more flexibility around the number of inspectors and in particular that there should be scope to use 2 inspectors on some applications rather than 1 or 3, as currently set out in legislation which was then based on Inspectors and panels of inspectors making the decision rather than a recommendation to the Secretary of State.

Clearer guidance on early agreement of statements of common ground

A number of partners expressed frustration at the difficulties in agreeing statements of common ground. It was suggested that during the pre-examination phase, the Planning Inspectorate should set a clear expectation that statements of common ground should be agreed as early as possible, ideally before the examination starts. As set out above, a number of suggestions have been made around strengthening the pre-application phase, including a stronger focus on agreeing statements of common ground early on.

Inspectors to consider the timing of the open floor hearing (if one is requested): Some interviewees said that Inspectors should be encouraged to schedule the open floor hearing (if it is requested) at an early stage of the examination. In many cases, this hearing takes place once the examination has already progressed quite a long way and as a result some parties, particularly community groups, felt they were discouraged from raising issues that were important to them as Inspectors felt they had already been considered. However, the regime is predominantly based on written representations, hearings are just one element of overall representations with written representations forming the bulk of representations, and to date a number of examinations have not included any open floor hearing.

We would welcome your views on:

- would you support the suggestion that relevant representations should be published as soon as they are received by the Planning Inspectorate;
- whether there any issues relating to the examinations process other than those already identified in this section which you think need to be addressed;
- the issues that have been raised and the ideas that have been put forward as possible changes for the examination process and also any other ideas you have for improvement;
- whether there are any ways in which the information requirements which are placed on applicants at pre-examination and examination stages could be reduced;
- whether you think making changes to the examination process should be a priority for the review team and which changes you would most like to see.

2.3 Making changes to Development Consent Orders after consent is granted

What is the current position?

The ability to make changes to a Development Consent Order after it has been made is an important one. For example, in the energy sector, where there may be some time from the granting of consent to the start of energy generation, changes to a consent may allow a developer to incorporate more recent technology that could result in improved efficiency and/or a reduction in environmental impacts. In other cases, unforeseen circumstances during the detailed design or construction of a project may mean that changes to a development consent may be essential if a nationally significant infrastructure project is to proceed.

The Planning Act 2008 already allows changes to Development Consent Orders to be made after the initial consent has been granted. The Act allows the Secretary of State to correct errors in an order and, more importantly, to make non-material and other changes to an order, and to revoke an order. The detailed procedures for making changes are set out in regulations, but there is no statutory definition of what is a non-material or a material change.

For non-material changes, the regulations require an application to be made to the Secretary of State, followed by a requirement for the Secretary of State to publicise the application (for example, in local newspapers) with a duty to consult anyone who had been notified of the original application for consent unless the Secretary of State thinks that consultation is unnecessary.

Where a developer proposes material changes, then the procedures set out in regulations currently reflect those for a full application for development consent. This includes a full pre-application process of consultation and publicity, the opportunity for anyone to make formal representations on changes, and a full examination of the changes being made followed by a report and recommendation to the Secretary of State before a formal decision is made.

What issues have been raised?

A number of interviewees have indicated that although there is legislation in place to allow changes to orders, it is a potentially burdensome and time-consuming process. Many of the changes that might be needed to a development consent order that have only very limited local impact will be subject to the same procedures as if the change was an entirely new nationally significant infrastructure project. This is seen by some as disproportionate and excessively bureaucratic. The lack of flexibility in the current regulations means that the same procedures are applied for a small scale material change as would apply for a much larger change.

Ideas put forward on possible changes:

Non-material changes:

One suggestion put forward was that if a change was deemed by the Secretary of State to be non-material, there should be no need for a formal process of publicising and then consulting all the parties who had been notified of the original application for consent. This

could bring the process for non-material changes for nationally significant infrastructure projects more in-line with projects under the Town and Country Planning Act. General guidance on the sorts of changes that could be considered non-material might be provided to support this revised process.

Material changes:

Discussion with interviewees indicated that many users felt there was a need for a much simpler and more proportionate set of procedures for making material changes to development consent orders. The procedures recently introduced for changes to consents under the Electricity Act was cited as a model that might be adapted for changes to consents under the Planning Act 2008.

One suggestion was that a distinction could be drawn between what are fairly minor material changes and those that are more significant and then to simplify the procedures to reflect that distinction. The current 'material changes' definition could effectively be split into two more nuanced categories – minor and significant material changes. A more proportionate change procedure could then be used for minor changes that might include, for example, more limited consultation and publicity and discretion about whether to ask for further representations or hold a hearing.

More significant changes to a consent, e.g. those that might involve additional significant environmental effects would need to go through a more stringent process. But nonetheless, certain stages of the current process for making material changes could still be shortened (e.g. by having more limited consultation) and simplified so as to reduce the time that would be needed to get changes to a consent in place. Any examination would be focussed on the changes and avoid covering matters that do not relate to the change.

For both types of material changes, the simplified procedures could be supported by shorter statutory timescales for particular stages of the process compared to those for a full application (e.g. only 4 or 6 weeks for a decision by the Secretary of State rather than the current 3 months) to provide greater certainty for developers and a more efficient process when a change was required. Any new procedures would also need to comply with any relevant international obligations where applicable.

We would welcome your views on:

- whether you agree with the idea of streamlining the current consultation and notification arrangements in cases where non-material changes to Development Consent Orders are being made;
- whether you think a distinction between minor and more significant material changes would provide a model for simplifying the process for changes to Development Consent Orders;
- whether you think there are other ways to shorten or simplify or otherwise improve current processes for making changes to Development Consent Orders;
- whether this should be a priority area for the review.

2.4 Streamlining Consents

What is the current position?

The nationally significant infrastructure planning regime aims to provide a 'one stop shop' for obtaining consents, removing the need for developers to obtain multiple consents from multiple bodies. Developers can obtain a single Development Consent Order which automatically removes the need to obtain a range of non-planning consents. A Development Consent Order can also remove the need for a range of other legislative powers that are often required for major development, such as compulsory purchase powers and a range of highways-related orders, and a wide range of other consents can be included on a case by case basis.

In November 2012, the Department for Communities and Local Government consulted on options for further streamlining consenting arrangements for nationally significant infrastructure projects and in March 2013, the Government published the response to this consultation. This set out a package of measures that would be taken forward to further improve and expand the 'one stop shop', including streamlining regulations and establishing a new Consents Service Unit in the Planning Inspectorate.

The Consents Service Unit opened for business in April 2013. It offers a free bespoke service to developers with a dedicated contact to work with developers and relevant consenting bodies during the pre-application stage, to co-ordinate a systematic approach to the handling of a range of non planning consents which may be required in addition to the development consent. It works closely with the Major Infrastructure and Environmental Unit in the Department for Environment Food and Rural Affairs to ensure the service being provided to developers is as integrated and efficient as possible.

The Government has made clear through recently updated pre-application guidance that where an applicant would prefer to include non-planning consents within their Development Consent Order, the relevant consenting bodies should make every effort to facilitate this. They should only object to the inclusion of such non-planning consents with good reason, and after careful consideration of reasonable alternatives. Where developers request it, the Consents Service Unit can help facilitate such discussions and will help ensure that consenting bodies take a proactive and positive 'yes if' approach to including consents within a Development Consent Order.

There are currently 23 specific consents in England for which the agreement of the relevant consenting body (e.g. Environment Agency, Natural England) needs to be sought before the consent can be included in the Development Consent Order.

What issues have been raised?

A number of developers highlighted that they would be keen to see the removal of the requirement to seek the agreement of the relevant consenting body before including consents in a Development Consent Order. Developers have argued that this would reduce bureaucracy and improve the efficiency of the overall consenting process for nationally significant infrastructure projects.

Government has continued to review the position on section 150 consents and has identified further scope to expand the nationally significant infrastructure regime's 'one stop

shop' approach to consents, focusing on allowing for inclusion of those consents of the highest priority for developers in their development consent orders. Government will consult on detailed proposals in New Year as part of the review of the nationally significant infrastructure planning regime.

Government works closely with consenting bodies to ensure they are engaging positively on nationally significant infrastructure projects and will continue to monitor this position carefully. Government expects consenting bodies to make every effort to facilitate the inclusion of consents in a Development Consent Order, if the developer requests this. For example, the Environment Agency takes a 'Yes if' approach to consents being included in a Development Consent Order and if they refuse a request to include an environmental consent in the development consent order, they will work closely with the Consent Services Unit and the developer to agree a consents management plan and timetable

The Planning Inspectorate and the Department for Communities and Local Government and the Planning Inspectorate will keep the operation of the Consents Service Unit under review.

We would welcome your views on:

- whether Government has got the balance right on its approach to handling consents under the nationally significant infrastructure planning regime or whether further streamlining is required?

2.5 Improving engagement with local communities, local authorities and statutory consultees

What is the current position?

Local communities, local authorities and statutory consultees have a vital role to play in the major infrastructure planning regime, from the earliest stages of pre-application engagement and consultation through to examination. It is vital to the credibility of the regime that it takes into account a full range of views on any proposed development.

Local people and community groups are particularly well placed to contribute with their local knowledge. They are able to feed in their views and suggestions during the pre-application consultation phase, thereby helping to shape and influence developments from the earliest stage through to the examination.

Local authorities play a crucial role, including through their preparation of a Local Impact Report giving details of the likely impact of the proposed development on the authority's area. Local authorities also have an important role to play in representing their communities during the examination. They will also have a role in making sure that the requirements contained with a Development Consent Order are being complied with.

Likewise, developers will often need detailed technical input from expert bodies and statutory consultees, such as the Environment Agency, Natural England or the Marine Management Organisation for example, to assist with identifying and dealing with the impacts of projects. Early engagement with these statutory consultees by developers can help avoid unnecessary delays and the costs of having to make changes at later stages of the process. It is equally important that these bodies respond to requests for technical input in a timely manner.

Delivering Improvements now – Using videos to improving the understanding of the regime

The Planning Inspectorate is currently developing 3 video clips which will provide an overview of the regime and the roles of different parties within it. There will be 3 films in total – 1 aimed at developers, 1 aimed at local authorities and 1 aimed at the public. They will be available through the Planning Inspectorate website from the New Year.

Following the *Penfold Review of non-planning consents*¹ and the *Triennial Review of Environment Agency and Natural England*², statutory consultee bodies have put in place a range of measures to improve their performance. A number of developers said that the engagement they had with statutory consultee bodies had improved over the last couple of years, recognising that they were providing a far greater focus on customer service and timeliness of their responses.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31621/10-1027-penfold-review-final-report.pdf

² <https://www.gov.uk/government/publications/triennial-review-of-the-environment-agency-ea-and-natural-england-ne>

What issues have been raised?

The important role that community groups play in the major infrastructure planning regime was acknowledged and supported by the wide range of partners involved during the initial engagement on this review. Some partners felt that the written representations process put community groups at a disadvantage with developers submitting long and technical documents which community groups find difficult to interpret and challenge effectively, given the often limited time and resources that they had available. Some community groups also said that having certain materials, such as photomontages and maps, in hard copy was important and that any move to a paperless system would need to ensure that accessibility issues were taken into account.

For statutory consultees and local authorities, although there were many examples of very close and effective engagement with developers through the pre-application and examination process, some suggestions were made for ways in which engagement could be improved. From our initial discussions it is clear that developers, statutory consultees and local authorities all want and recognise the benefits of early engagement, they want to address issues as early as possible and do not want to wait for examination to resolve difficult issues. However, there was a sense from developers that statutory consultees could be more helpful and definitive with their advice earlier on, whilst statutory consultees were keen to see developers sharing clearer proposals with them at the earliest possible stage so they could comment effectively.

Some of the local authorities that have been involved in the infrastructure planning regime so far highlighted how resource intensive responding to a nationally significant infrastructure project can be, both during the pre-application and examination phase and once the development consent order has been made, when the local authority has a role to fulfil in relation to some of the requirements set out in the Development Consent Order.

What ideas for improvement have been suggested so far?

Further guidance on the importance of both developers and statutory consultees engaging early

It has been suggested that further guidance from the Department for Communities and Local Government could emphasise the importance of both the developers and the statutory consultees engaging early and that the Planning Inspectorate could take on a stronger role to facilitate and incentivise this during the pre-application phase, as part of the enhanced service outlined above. This could be helpful to improve communication from the start of the process, and to save time and resources. Government will also continue to work closely with statutory consultees at a national level to ensure that they are providing high quality and timely support to nationally significant infrastructure projects.

More peer support and sharing of lessons learned and examples of good documentation should be made available for local authorities dealing with nationally significant infrastructure projects.

A number of interviewees suggested that local authorities have struggled to get to grips with their role and that some additional guidance and support would be useful. This could be done by bringing together local authorities with experience of responding to a nationally significant infrastructure project in their area, to share their experiences, support learning and to provide resources, materials and contacts for those that may face their first such development in the future.

We would welcome your views on:

- whether you agree with the views expressed to date about the issues faced by local authorities, communities and statutory consultees in engaging in the nationally significant infrastructure planning regime;
- whether you support the possible ideas for improvement which have been suggested so far for strengthening engagement any other ideas and solutions which you think could improve engagement;
- whether you think this should be a priority area for the review.

Annex A - Template for letting us have your views on the issues raised in this discussion document

Please leave blank any sections where you do not wish to express a view

Please send completed forms to: Matt Prior, 2014 Review Team, Zone 1/H6, Eland House, Bressenden Place, London, SW1E 5DU

Or by email to: 2014review@communities.gsi.gov.uk

Personal Details	
Name	
Organisation	
Email Address	
Phone	
Improving the pre-application phase and ensuring consultation requirements are proportionate	
Do you agree with the explanation of the current issues that need to be addressed?	
Response:	
Do you agree with the possible ideas which have been put forward and are there other ideas you would like to be considered?	
Response:	
Do you agree that there are areas of the regime which could be streamlined and do you have any suggestions on how this could be achieved?	
Response:	
What steps do you think could be taken to further streamline the pre-application stage and reduce the amount of time this stage takes?	
Response:	
Would you support the proposal to make examples of documents available on the National Infrastructure website. If so, are there any types in particular?	
Response:	
Is this an area which the review should focus upon and are there any changes you would prioritise over others?	
Response:	
Improving pre-examination and examination phase	
Would you support the suggestion that relevant representations should be published as soon as they are received by the Planning Inspectorate;	
Response:	
Are there any other issues relating to the examinations process other than those already identified in this section which you think need to be addressed?	
Response:	
Your views on the issues that have been raised and the ideas that have been	

put forward as possible changes for the examination process and other suggestions for improvement?
Response:
Are there ways in which the information requirements which are placed on applicants at pre-examination and examination stages could be reduced?
Response:
Should making changes to the examinations process be a priority for this review and which change would you most like to see?
Response:
Changes to Development Consent Orders after consent is granted
Do you agree with the idea of streamlining the current consultation and notification arrangements in cases where non-material changes to development consent orders are being made?
Response:
Do you think a distinction between minor and more significant material changes would provide a model for simplifying the process for changes to development consent orders?
Response:
Are there other ways to shorten or simplify or otherwise improve current processes for making changes to development consent orders?
Response:
Should this be a priority area for the review?
Response:
Streamlining Consents
Has the government got the balance right in its approach to handling consents under the nationally significant infrastructure planning regime or is further streamlining required?
Response:
Improving engagement with local communities, local authorities and Statutory Consultees
Do you agree with the views expressed to date about the issues faced by local authorities, communities and statutory consultees in engaging in the nationally significant infrastructure planning regime?
Response:
Do you support the ideas for improvement which have been suggested so far for strengthening engagement are there any other ideas or solutions which you think should be considered?
Response:
Should this be a priority area for the review?
Response: