

Consultation on Streamlining the Planning Process for Nationally Significant Wastewater Transfer and Storage Infrastructure Projects

Making an Order under Section 14 of the Planning Act 2008

Summary of responses

January 2012

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Contents

Summary of Responses to the Consultation on Streamlining the Planning Process for Nationally Significant Wastewater Transfer and Storage Infrastructure Projects, held 13 July 2011 to 5 October 2011	1
Background	1
Summary of responses	2
<i>Question 1 - Is the draft Section 14 Order's 350,000 cubic-metre (m³) volume threshold for a proposed wastewater transfer and storage infrastructure set at an appropriate level, capturing only those projects which should be classed as NSIPs and so undergo the same streamlined planning process as other NSIPs?</i>	<i>2</i>
Government response	3
<i>Question 2 - If not, what threshold would be more appropriate and why?</i>	<i>3</i>
Government response	3
<i>Question 3 - Are the proposed supplemental provisions in the Section 14 Order appropriate?.....</i>	<i>4</i>
Government response	4
Other comments	4
Government response	6
Next Steps.....	7

Summary of Responses to the Consultation on Streamlining the Planning Process for Nationally Significant Wastewater Transfer and Storage Infrastructure Projects, held 13 July 2011 to 5 October 2011

Background

1. The purpose of the consultation was to give stakeholders the opportunity to comment on proposed secondary legislation known as a Section 14 Order, which would amend the Planning Act 2008 to include proposed major sewer projects in England above a storage capacity threshold of 350,000 cubic metres (m³) as Nationally Significant Infrastructure Projects (NSIPs), alongside certain other types of major schemes such as power stations and large sewage treatment works already specified in the Act.
2. The consultation ran for 12 weeks between 13 July and 5 October 2011, and was issued by email to over 900 contact addresses, including:
 - Local Planning Authorities in London and England;
 - Greater London Authority;
 - Mayor of London;
 - London MPs;
 - EFRA Committee MPs;
 - Local community groups established in response to the proposed Thames Tunnel;
 - Local Government Association;
 - Royal Town Planning Institute;
 - Town and Country Planning Association;
 - Water and Sewerage companies in England;
 - WaterUK;
 - Ofwat;
 - Consumer Council for Water.
3. The consultation documents were placed on the Defra consultation website, along with an accompanying Press Release, and advertised on the Twitter network. Two 'question and answer' sessions on the consultation were run at Defra offices on 2 August (9 people attended), and 7 September (11 people attended). An email reminder was sent out to all consultation contacts on 8 September, but a planned third question and answer session was cancelled due to a lack of further interest.
4. If the Planning Act 2008 is amended by the proposed Section 14 Order, then proposed major sewer projects would be able to go through the same planning application process as other NSIPs. Project sponsors would submit a single application to the Infrastructure Planning Commission (IPC), or the Planning Inspectorate (PINS) from April 2012, rather than submit potentially multiple applications to many local planning authorities.
5. Under the Localism Act 2011, the IPC will be replaced from April 2012 by a major infrastructure planning unit within PINS to consider any applications and make its recommendation to Ministers. The statutory timetable for decision-making will be no longer than the current regime i.e. 12 months from the start of examination of an application.

6. Ministers would make the final decision on whether to issue Development Consent for a proposed major sewer NSIP.

Summary of responses

7. Defra received 44 responses to the public consultation; the types of respondents break down as follows:

Responses to Public Consultation		
Organisation Type	Number of Respondents	%
Individuals	27	61
Local authorities and planning-related bodies (e.g. Mayor of London and Infrastructure Planning Commission)	10	23
Water & Sewerage companies and related bodies (e.g. Consumer Council for Water)	3	7
Public bodies (e.g. Environment Agency)	2	5
Non Governmental Organisations	1	2
Local community groups	1	2
<i>Total</i>	<i>44</i>	<i>100</i>

8. The public consultation asked specific questions on the draft Section 14 Order. A summary of the main points raised for each question and the Government's response is detailed below.

Question 1 - Is the draft Section 14 Order's 350,000 cubic-metre (m³) volume threshold for a proposed wastewater transfer and storage infrastructure set at an appropriate level, capturing only those projects which should be classed as NSIPs and so undergo the same streamlined planning process as other NSIPs?

The majority of replies to this question were broadly supportive; the summarised responses include:

- Yes
 - Makes sense to streamline the planning process for large infrastructure projects.
 - Appropriate threshold to capture only those projects which should be classified as NSIPs.
 - Threshold is high enough to capture major schemes while avoiding schemes of local significance.
 - Threshold may be satisfactory for the immediate future, but may need to be reviewed in the longer-term in response to pressures from climate change and population growth.
- No

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- The Thames Tunnel should not be classed as an NSIP, as it serves only the London area, and it should be for the Mayor of London to decide the planning application.
- Could result in some big projects but with only local significance being inappropriately classed as NSIPs.
- Wrong question being asked – question should be whether waste water transfer and storage infrastructure projects be classed as NSIPs, rather than what is an appropriate volume threshold at which they can be classed as NSIPs.
- Threshold may result in planning bias in favour of large long distance transfer schemes over more sustainable local solutions.

Government response

We agree that care is needed to ensure that only major sewer projects are brought within scope of the Planning Act 2008, leaving the overwhelming majority of schemes to continue being dealt with solely at the local level. Major infrastructure projects classed as NSIPs for the most part serve specific areas rather than the country as a whole, such as proposed major sewage treatment works, which are already specifically included in the Planning Act. The EFRA Parliamentary Committee also recognised this absence of major sewer projects from the Planning Act and considered in its April 2011 report on the draft Waste Water National Policy Statement that it should be rectified by also specifically including them within the Act. There is no intention to encourage large transfer and storage schemes over sustainable local solutions; quite the reverse, the intention is to ensure the former come forward only where there is a genuine need.

Question 2 - If not, what threshold would be more appropriate and why?

Most of the replies to this question concluded that another threshold was not appropriate, and included the following main points:

- Higher/lower volume
 - A range of thresholds should be considered to reflect varying local impacts within high density urban areas.
 - A lower threshold would allow more schemes outside major conurbations to be eligible, especially where complex local government structures are a characteristic of proposed development
- Different threshold type
 - Relate threshold to the size of catchment area being drained, as well as/instead of the volume of a particular length of sewer, to allow consideration of integrated drainage and waste water management systems.
- No threshold
 - Threshold is not the issue, as there are many other factors that should be taken into account.

Government response

The issue as to whether proposed major sewer projects should be classified as NSIPs and so undergo the existing streamlined planning application process is addressed in our response to the question above. We want to ensure that the threshold for classifying such developments as

NSIPs is not overly complex, to ensure clarity and transparency to all at an early stage as to which developments may be included. Given that the number of such developments being classed as NSIPs as a result of the Order would be small, i.e. within the last 10 years and the next 10 years only the current Lee Tunnel and the proposed Thames Tunnel would be NSIPs, virtually all other proposed projects will continue to be handled solely by local planning authorities.

Question 3 - Are the proposed supplemental provisions in the Section 14 Order appropriate?

Most respondents to this question agreed that the proposed supplemental provisions were appropriate. The main points made are summarised as follows:

- **Appropriate**
 - Consultations carried out before a project becomes an NSIP must remain appropriate and relevant to the decision making process, including if necessary provision of further updated information, e.g. on costs and benefits.
 - Reduces delays to and costs of large projects.
 - The provisions should also go further to ensure that sustainable development is adequately demonstrated within eligible projects.
 - Needs to be clear that the consultation under consideration is based on final project proposals.
- **Inappropriate**
 - Consultations conducted before designation of a project as an NSIP have not been considered in the proposed context as an NSIP.
 - The IPC/its successor should conduct independent consultations on NSIP applications to ensure impartiality and public views are fully considered.

Government response

Sponsors for proposed NSIP projects are expected to conduct public consultations to the required NSIP standards from the start. In line with current requirements, sponsors of a proposed development have to ensure that proper consultations have taken place with those affected by a proposed project and their views taken into account. This will be taken into account by the IPC/PINS and Secretary of State when examining the application for a Development Consent Order.

Other comments

In addition to the responses to the specific consultation questions, 43 respondents provided views on other issues related to the proposed Section 14 Order. These are summarised below:

- **Pre-application costs**
 - Local planning authorities should be able to charge applicants for pre-application work undertaken, even where the application will be decided by the IPC.
 - Pre-application costs to local planning authorities are not inconsiderable.
- **Costs to local planning authorities**
 - Costs on local planning authorities will not be negligible if a Section 14 Order is made.
- **Objections to the proposed Section 14 Order**

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- Control of the Development Consent Order would be removed from local planning authorities, contrary to the spirit of the Localism Bill promoting greater local-level decision-making and involvement in the planning process.
- Local planning authorities are best placed to determine the impact of proposals within their boroughs.
- Local planning authorities are best placed to assess whether Environmental Impact Assessments for major projects have addressed all issues relevant to the local area sufficiently.
- Local planning authorities are best placed to assess Strategic Environmental Assessments and how the cumulative impacts of proposals would affect their areas, and whether assessments of alternatives are appropriate and realistic.
- As a result of having Statements of Community Involvement, local planning authorities, rather than the IPC, have experience of working with local communities and can better respond to the needs of local residents, businesses, and other stakeholders most affected by proposed major projects in their areas.
- Major construction projects should require planning consent from each community that will be affected by associated building works.
- Planning laws should not be changed to bypass local objections to major projects.
- Infringes human rights.
- Taxpayers should not contribute to the cost of the proposed tunnel sewer.
- Conducting the Section 14 Order consultation only online means that many people will be unaware of it, and so not have the opportunity to comment.
- Green spaces, such as the King Edward Memorial Park, should not be destroyed by the construction of the Thames Tunnel, using a Section 14 Order to over-ride local planning concerns.
- No credible, substantiated estimate of costs of the tunnel project.
- Section 14 Order proposals should be postponed until the Localism Bill has been enacted.
- **Support for a Section 14 Order**
 - Support the principle of streamlining the planning process for major infrastructure projects.
 - Need to ensure local needs and impacts are adequately taken into account.
 - Support the inclusion of Nationally Significant Wastewater Transfer and Storage Infrastructure Projects under NSIP legislation, providing such schemes clearly demonstrate significant contribution towards sustainable development.
- **Support for the proposed Thames Tunnel, subject to specific points**
 - As much use of the River Thames should be made as possible during the construction of the Thames Tunnel.
 - Concerns about proposed re-development of the Earls Court site, and the impact some 8,000 additional housing units will have on the existing sewer system.
- **Historic environment protection**
 - Provisions for the protection of the historic environment contained within the Waste Water National Policy Statement should be applied in the case of projects granted NSIP status through a Section 14 Order.
- **Other non-Section 14 planning processes**
 - The Section 14 consultation letter and Impact Assessment do not accurately describe current arrangements for determining any Thames Tunnel proposal should the Section 14 Order not go ahead.
 - If the Section 14 Order goes ahead, the Government must also amend planning laws to take fuller account of, or require, green infrastructure initiatives such as rainwater recycling, green roofs, SuDS, etc.

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- Need to have an additional mechanism involving local level input to vary Development Consent Orders for long-duration construction projects once work is underway, to take account of changes in circumstances and opportunities to streamline operations and benefit local communities.
- Local planning authorities should have greater control over the surface elements of major sewerage construction schemes, especially at locally-sensitive sites, even if classed as NSIPs.
- Consider whether smaller local ancillary infrastructure developments below the NSIP threshold could be part of the streamlined planning process because they support an NSIP development.
- **Drafting suggestions**
 - Section 14 Order should refer to ‘...infrastructure for the transfer and storage of waste water’ rather than ‘....infrastructure for the transfer or storage of waste water.’
 - There should be a paragraph clarifying how the infrastructure volume is calculated to determine whether it meets the NSIP threshold.

Government response

We have noted the wide range of additional views and comments received from respondents outside the specific consultation questions. In particular the concerns raised that classifying a proposed major sewer project such as the Thames Tunnel as an NSIP would mean that local planning authorities would not make the final decision on a planning application.

However local people and local planning authorities are a key part of the existing NSIP planning application process. The IPC/PINS has to be satisfied that the sponsor of an NSIP has closely involved and consulted local communities and local planning authorities before accepting an application and making its final recommendation to Ministers on whether to issue a Development Consent Order. This process, from the start of examination of an application to final decision, takes up to a year. During the “pre-application” period, project sponsors/developers have to publicise the proposed application and consult with people living near the proposed project, local planning authorities and others affected by the proposal. Subsequent applications to the IPC/PINS must have regard to any relevant responses to that publicity and consultation. Once the IPC/PINS accepts an application, members of the public and local planning authorities can still continue to be involved in the infrastructure planning process and make representation to the IPC/PINS before it makes its final recommendation to Ministers. Ministers will ultimately take the decision on awarding Development Consent for a proposed project.

Development Consent Orders may include provisions whose detail will be finalised and approved at a later date, and once underway, Development Consent Orders may be amended by way of an application to the Secretary of State under the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (no. 2055), and Schedule 6 of the Planning Act 2008.

Given the need to find the best route for the Thames Tunnel in terms of impacts, and consider the relative merits of sites in different London boroughs, any application will need to be determined by either the Mayor or Ministers. We therefore consider that the proposed Section 14 Order will continue to enable local planning authorities and local communities to contribute views and opinions about major sewer developments.

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It is also important to note that a proposed major sewer project undergoing the streamlined NSIP planning application process does not imply it will be successful – it simply enables an application to be concluded in a much shorter timescale, so avoiding a long drawn-out decision making process which can add unnecessary extra time and corresponding costs to all involved and can result in local planning blight for local communities.

Comments regarding the proposed text of the draft Section 14 Order have been considered and not adopted, as the existing wording already encompasses a proposed sewer's function both to store and transfer its contents. Defining what is meant by "volume" is also considered unnecessary as the draft order describes a threshold in terms of the storage capacity of a structure, rather than its volume and so removes any ambiguity, for example, on whether the thickness of a structure's walls should be included in a proposal's "volume".

Next Steps

Following this public consultation, the proposed Section 14 Order will retain a 350,000m³ capacity threshold and will retain supplemental provisions to enable public consultations on a project that subsequently becomes an NSIP to be considered as part of an application for Development Consent.

The draft Section 14 Order is planned to be laid before Parliament for scrutiny and approval in early 2012 before it can come into effect. This process typically lasts eight weeks from the Order's introduction into Parliament, and so it could be anticipated as coming into effect in spring 2012.

List of respondents

London Borough of Southwark
London Borough of Hammersmith & Fulham
London Borough of Newham
London Borough of Tower Hamlets
London Borough of Wandsworth
Royal Borough of Kensington & Chelsea
City of London
Greater London Authority
Ellesmere Town Council
National Association of Local Councils
Institute of Civil Engineers
The Environment Agency
Severn Trent Water Ltd
Thames Water Utilities Ltd
Consumer Council for Water
Joint Committee of the National Amenity Societies
Save King's Stairs Gardens Action Group

27 individual citizens