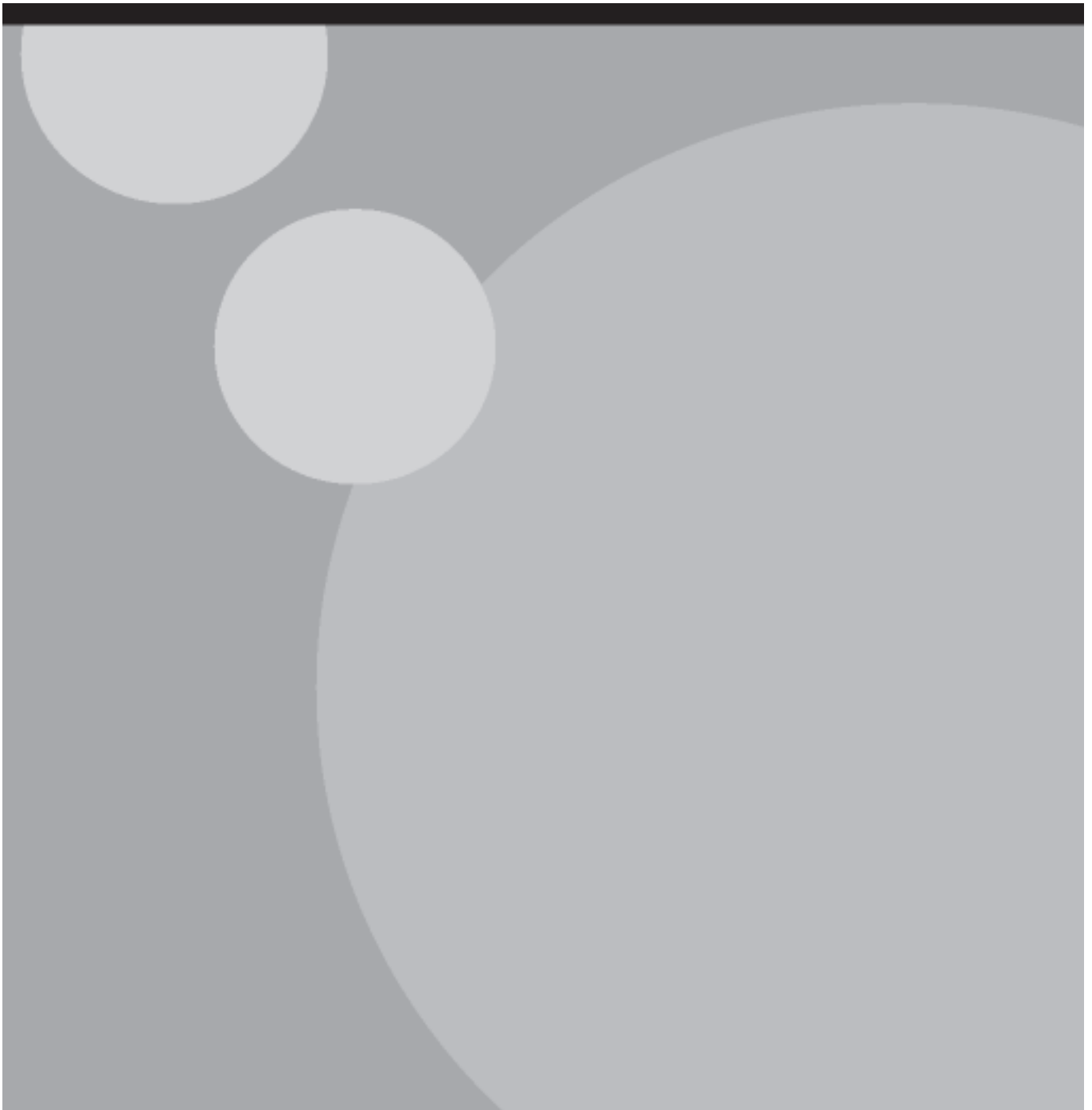




Planning Act 2008

Guidance on the pre-application process:
Consultation





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Introduction

1. The 2008 Planning Act (“the Planning Act”) created a new development consent regime for nationally significant infrastructure projects in the fields of energy, transport, water, waste water, and waste. These projects are commonly referred to as major infrastructure projects and will be throughout this document. Through the Localism Act 2011 (“the Localism Act”) the Government made significant changes to the regime by abolishing the Infrastructure Planning Commission and transferring responsibility for decision making to the Secretary of State¹.
2. Though the Secretary of State bears legal responsibility for it, the Government has made the decision to delegate responsibility for accepting and examining applications to the Planning Inspectorate (“the Inspectorate”) which will allocate appointed persons to act as the Examining Authority for individual applications. Where this guidance refers to the Secretary of State users should bear in mind that, in practice, the Inspectorate will carry out all functions on the Secretary of State’s behalf, except for decision-making and it is to the Inspectorate that all communication should be directed in the first instance. The relevant provisions of the Localism Act were commenced on 1 April 2012 and where this guidance refers to the Planning Act, unless otherwise stated, it should be read as the Planning Act as amended by the Localism Act.
3. This guidance is part of the package of statutory instruments and guidance for the Planning Act and the major infrastructure sections of the Localism Act. This guidance relates to both section 37 (applications) and 50 (pre-application process) of the Planning Act.
4. Under section 50(3) of the Planning Act, applicants must have regard to this guidance and any which the Inspectorate publishes in this regard when complying with the provisions of the Planning Act in relation to the pre-application procedure for major infrastructure applications.
5. Part 5 of the Planning Act sets out statutory requirements for applicants to engage in pre-application consultation with local communities, local authorities, and those who would be directly affected by the proposals. The front-loaded emphasis of the major infrastructure planning regime can be daunting for first time users of the regime but it is designed to ensure a more transparent and efficient examination process.
6. Nothing in this guidance should be taken as indicating that any requirement of Planning law or any other law may be overridden (including the obligations placed on the authorities under human rights legislation).The guidance does not in any way replace the statutory provisions of the Planning Act or the Localism Act nor does it add to their scope. Only the courts can give an authoritative interpretation of these Acts. The Planning Inspectorate and others using the guidance must take their own professional and legal advice about its implementation.

¹ ‘Secretary of State’ in this document should be read as ‘the Secretary of State with responsibility for the relevant policy area’. Applications relating to energy projects will be decided by the Secretary of State for Energy and Climate Change; those relating to transport by the Secretary of State for Transport, hazardous waste by the Secretary of State for Communities and those for waste water and water supply will be a joint decision by the Secretary of State for Communities and the Secretary of State for the Environment.

What is this guidance about?

7. The major infrastructure planning process established by the Planning Act standardises practice across the different infrastructure types, including for the pre-application process, and particularly for the pre-application consultation requirements. For many, these requirements are unfamiliar processes and this guidance aims, therefore, to:
 - advise users of the regime on the processes involved in the pre-application stage
 - guide applicants of major infrastructure projects as to how the pre-application requirements of the Planning Act should be fulfilled and to advise them on best pre application practice
 - inform other users of the regime, including the Inspectorate and consultees of their respective roles in the pre application process and to inform them of what is expected of applicants at this stage
 - help ensure that the system is transparent and accessible to all
8. This document will cover the main pre-application processes leading up to the submission of the application pack to the Secretary of State. This document also provides advice on the drafting of the draft Development Consent Order, as this may be shaped by the pre-application consultation process and is a fundamental part of the overall application pack. It should be noted however, that when the application is submitted to the Secretary of State, he or she will only base his or her decision on whether to accept the application for examination on the provisions set out in sections 37 and 55 of the Planning Act, not on the merits of the draft Development Consent Order. This guidance is, along with Guidance Note 1, issued by the Planning Inspectorate, the main statutory guidance relating to the Planning Act. Applicants are advised, however, to read it conjunction with the non-statutory major infrastructure planning regime suite of guidance².

Who is this guidance aimed at and why?

9. This guidance is mainly aimed at applicants, to assist them in discharging the pre-application requirements placed on them by the Planning Act. It is also intended that this guidance serve as the first reference point for all users of the regime, so that all parties know what is expected from them during the pre-application stage of the process, thereby helping the regime work to its full potential.

² Planning Act 2008: Nationally significant infrastructure projects Application Form guidance; Planning Act 2008: Nationally significant infrastructure projects Fees guidance; Planning Act 2008: Nationally significant infrastructure projects Examinations guidance; Planning Act 2008: Nationally significant infrastructure projects Compulsory Acquisitions guidance and Planning Act 2008: Nationally significant infrastructure projects Associated Development guidance

The pre-application consultation process

10. Pre-application consultation is a key requirement for applications for Development Consent Orders for major infrastructure projects and a significant part of this document is dedicated to this process as a result. Effective pre-application consultation will lead to applications which are better developed and better understood by the public, and in which the important issues have been articulated and considered as far as possible in advance of submission to the Secretary of State. This in turn will allow for shorter and more efficient examinations.
11. The pre-application consultation process is crucial to the effectiveness of the major infrastructure regime. Without adequate consultation, which can also include informal consultation, the subsequent application will not be accepted when it is submitted. If the Secretary of State determines that the consultation report is inadequate, he or she can recommend that the applicant carries out more consultation activity before the application can be accepted.
12. Compliance with this guidance alone will not guarantee that the Secretary of State will conclude that the applicant has complied with the pre-application consultation requirements introduced by the Planning Act. However, where an applicant has complied with all statutory requirements³ and applicable guidance and where the applicant is satisfied that they have consulted as widely as is appropriate for the scale of the project, an applicant can reasonably expect that an application will not be rejected on the grounds of inadequate consultation. Where an applicant has not been able to comply with this guidance for some reason, or where the local authority is not content with the consultation approach taken, applicants should consider providing an explanatory note explaining to the Secretary of State the approach which has been taken, to aid the decision on whether to accept the application..
13. In brief, during the pre-application stage applicants are required to:
 - notify the Secretary of State of the proposed application and either, where they have determined that the project requires an environmental impact assessment, that they will be submitting an environmental statement along with the application, or that they will be seeking a screening opinion ahead of submitting the application
 - produce a Statement of Community Consultation, in consultation with the relevant local authority or authorities and with regard to their comments, which describes how the applicant proposes to consult the local community about their proposals and then carry out consultation in accordance with that Statement

³ See in particular: Part 5, Chapter 2 of the Planning Act and The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009; The Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 and The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010.

- make the Statement of Community Consultation available for inspection by the public in a way that is reasonably convenient for people living in the vicinity of the land, as set out in section 47, and as required by secondary legislation⁴, identify and consult statutory consultees in accordance with section 42 of the Planning Act
 - set a deadline of a minimum of 28 days by which responses to consultation must be received
 - have regard to relevant responses to publicity and consultation
 - publicise the proposed application in accordance with regulations
 - prepare a consultation report and submit it to the Secretary of State.
14. The requirements of the Planning Act form the basic framework for the pre-application consultation process. The Government recognises, however, that major infrastructure projects and the communities and environment in which they are located will vary considerably. A 'one-size-fits-all' approach is not, therefore, appropriate. Instead, applicants, who are best placed to understand the detail of their specific project proposals, and the relevant local authorities, who have a unique knowledge of their local communities, should as far as possible work together to develop plans for consultation.
15. The Planning Act also permits relevant local authorities to make representations to the Secretary of State about the adequacy of consultation, to which he or she must have regard but which will not be the sole consideration for determining whether an application should be accepted for examination.
16. The Government recognises that whilst consultation should be thorough and effective, there will be a variety of possible approaches to discharging the requirements, and that consultation will need to be proportionate. Applicants will have their own approaches to consultation and already have a wealth of good practice on which to draw. For example, larger, more complex applications will usually need to go beyond the statutory minimum timescales laid down in the Planning Act to provide enough time for consultees to understand a proposal and formulate a response. Many proposals will require detailed technical input, especially regarding impacts, so sufficient time will need to be allowed for this. Consultation should also be sufficiently flexible to respond to the needs and requirements of consultees, for example where a consultee has indicated that they would prefer to be consulted via email only, this should be accommodated as far as possible.
17. This guidance therefore outlines what the Government's expectations are for pre-application consultation and suggests a range of approaches as a 'toolkit' for applicants to use where relevant and helpful, but does not specify a particular approach.

⁴ Includes: The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009; The Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 and The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010.

Who should be consulted?

18. The Planning Act requires certain bodies and groups of people to be consulted at the pre-application stage, but allows for flexibility in the precise forms that consultation may take depending on local circumstances and the needs of the project itself. Sections 42-44 of the Planning Act require applicants to consult affected local communities, local authorities, the Marine Management Organisation (where applicable), people with an interest in the land or who may be significantly affected by the proposal, and bodies prescribed in secondary legislation⁵ This section outlines the principles and processes that should be applied by applicants when consulting these various categories.

Statutory bodies and other relevant external partners

19. Sections 42 and 44 of the Planning Act and The Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009, set out the statutory consultees and prescribed people who must be consulted during the pre-application process. For each sector there are a range of bodies in addition to those specified either on the face of the Planning Act or in secondary legislation that may also be able to make an important contribution. These will include national and regional partners. Applicants are therefore encouraged to consult widely on proposals.
20. From time to time a body may cease to exist but for legislative timetabling reasons, may still be listed as a statutory consultee. In such situations the Secretary of State will not expect strict compliance. Applicants should identify any successor body and consult with them in the same manner as they would have with the original body. Where there is no obvious successor, applicants should seek the advice of the Inspectorate, who may be able to identify an appropriate alternative consultee. Whether or not an alternative is identified, the consultation report should briefly note any cases where compliance with statutory requirements was impossible.
21. Applicants will, in most cases, need detailed technical input from expert bodies, to assist with identifying and mitigating the social, environmental and economic impacts of proposals, and other important matters. Technical expert input will often be needed in advance of formal compliance with the pre-application requirements.
22. Applicants will also need to identify and consult people who own, occupy or have another interest in the land in question, or who could be affected by proposals in such a way that they may be able to make a claim for compensation. This will give such parties early notice of the proposals, and an opportunity to express their views regarding them.

Local Authorities

23. The Planning Act recognises the key role that local authorities play as bodies with both expert knowledge of the local community and with responsibility for place shaping in the local area. This is why there is a two-fold requirement on

⁵ See: The Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009

applicants for consulting local authorities: 1) for advice on how best to consult affected local communities and 2) on the project, generally, in the local authority's role as a statutory consultee in its own right.

Consultation with Local Authorities on the Statement of Community Consultation

24. Local authorities have considerable expertise in consulting local people. Local authorities will be able to draw on this expertise to provide advice to applicants on the makeup of the community and on how consultation might best be undertaken. In addition, many authorities will already have a register of local groups, and will be easily able to provide applicants with an appropriate list.
25. The applicant has a duty under section 47 of the Planning Act to prepare a Statement of Community Consultation, and then to conduct its consultation in line with that statement. Before doing so, the applicant must consult on their Statement of Community Consultation with each local authority in whose area the proposed development is situated (as defined in section 43 of the Planning Act). This may require consultation with a number of different local authorities, particularly for long, linear projects. In this situation, the local authorities in question should (so far as is practicable) consider how best to co-ordinate their responses to the applicant, in order to design a consultation exercise which is coherent and effective.
26. Even where it is intended that a development would take place within a single local authority area, it is possible that its impacts could be significantly wider than just that local authority's area. In some cases, therefore, an applicant may need to consult people living a considerable distance away from the proposed site. The wider effects of the project could include, for example, visual, noise, transport infrastructure, environmental and air quality impacts.
27. At this stage, the local authority is not expected to provide a view on the project itself, but to focus on how the applicant should consult people in its area. The Planning Act requires local authorities to respond to the applicant's consultation on their proposed Statement of Community Consultation within 28 days of receipt of the request. In most cases, as they seek to resolve any disagreements about the public consultation design, applicants are likely to need to engage in discussions with local authorities over a longer period than the minimum requirements set out in the Act.
28. The role of the local authority in such discussions should be to impart to the applicant its expertise about the make-up of its area, and the appropriateness of suggested consultation techniques and methods. The local authority should act in such discussions to ensure that the people living in the vicinity of the affects of the development can take part in a thorough, accessible and effective consultation exercise about the proposals.
29. Topics which could be considered at such pre-consultation discussions could include:
 - the size and coverage of a proposed consultation exercise (including, where appropriate, consultation exercises which go wider than one local authority area)

- the appropriateness of various consultation techniques, including electronic-based ones
 - the design and format of consultation materials
 - issues which could be covered in consultation materials
 - suggestions for places/timings of public events as part of the consultation exercise
 - local bodies and representative groups which should be consulted
 - timescales for consultation.
30. It is also recommended that applicants request information from the local authority about the social and economic character of the area, including whether people in the area might have particular needs or requirements, whether the authority has identified any groups as difficult to reach and what techniques might be appropriate to overcome barriers to communication.
31. It is expected that in most cases applicants and local authorities will be able to work closely together and agree on the local consultation process. Where significant differences of opinion persist between the applicant and local authority (or authorities) on how the consultation should take place, the Inspectorate may be able to offer further advice or guidance to either party. However, the Inspectorate will not be able to prejudice any later decision on whether to accept or reject an application for examination.
32. Where an applicant and a local authority have been unable to agree or where a local authority has not responded in time, it is for the applicant to satisfy themselves that their consultation plan allows for as full public involvement as is appropriate for their project and, once satisfied, to proceed with the consultation. Applicants are advised to explain their course of action to the Secretary of State when they submit their application.

Local authorities as statutory consultees

33. Local authorities are also themselves statutory consultees for any proposed major infrastructure project which is either in or adjacent to their area (sections 42 and 43 of the Planning Act) and applicants should engage with them as early as possible to ensure that the impacts of the development on the local area are understood and considered prior to the application being submitted to the Secretary of State. Local authorities will be able to provide an informed opinion on a wide number of matters, including how the proposals relate to local development plans and the scope of the environmental impact assessment. Local authorities may also make suggestions for requirements to be included in the draft consent order, such as the later approval (i.e. subsequent to the granting of a Development Consent Order) by the local authority of detailed project designs or schemes to mitigate adverse impacts
34. Local authorities whose lands either contain or border the proposed development will, once the application has been accepted for examination, be invited by the Secretary of State to submit a local impact report, detailing their views on the

likely effect of the development on the local area and community. Local impact reports are explained in greater detail in the Planning Act 2008: guidance for the examination of applications for development consent for nationally significant infrastructure projects.

Local communities

35. Local people have a vital role to play at the pre application stage. People should have as much influence and ownership as is realistic and possible over the decisions and forces which shape their lives and communities, and it is therefore critical that they are engaged with the development proposals at an early stage. Because they live, work and socialise in the affected area, local people are particularly well placed to comment on what the impact of proposals on their local community might be; what mitigating measures might be appropriate, or what other opportunities might exist for meeting the project's objectives.
36. As part of the section 47 consultation process, applicants will have sought the advice of local authorities on their community consultation plans. Applicants should, however, also consider those areas and communities not covered by section 47 but which may also be affected by the project, for example visually, environmentally or through increased traffic flow. Applicants are encouraged to take a broad perspective on who to consult and should aim to capture the views of those who work in or otherwise use the area, as well as those who live there. It may be that more people will be affected in a neighbouring area than in the host area. For the avoidance of doubt, it should be underlined that all of the consultation activity is expected to take place in the local area – it is not intended applicants must undertake consultation activity outside the identified vicinity.
37. An inclusive approach is needed to ensure that different groups have the opportunity to participate and are not disadvantaged in the process. Applicants should use a range of methods and techniques to ensure that they access all sections of the community in question. The applicant's principal point of reference in this regard will be the relevant local authority, which will best understand the local community and be experienced in carrying out consultation in the area
38. It must be clear what is being consulted on. Applicants must be careful to make clear what is settled and why, and what remains to be decided, so that the expectations of consultees are properly managed. A short document should be prepared by applicants specifically for local communities, summarising the proposals, outlining the matters on which the view of the local community is sought. It should also describe the key aims and objectives of the proposal, and explain what the potential impacts of the proposals might be. The document should be written in clear, accessible, and non-technical language.
39. Applicants should be ready to make it available in formats appropriate to the needs of people with disabilities if requested. Note in particular that any proposal that impacts on the strategic road network should include information about any highways and/or accesses to be provided, altered or stepped up, and any drainage proposals including effects on flood plains.
40. The document should act as a framework for the community consultation generally, stating where and when events will be taking place. It should state where a full set of the consultation documents may be examined locally, and the date by which responses to the consultation must be received. It should be made

available online, at any workshops or other events held by the applicants and should also be placed at appropriate local deposit points (e.g. libraries, council offices etc.), and sent to local community groups as appropriate.

41. Applicants are required to publicise their proposed application under section 48 of the Planning Act. Regulation 4(2) of the Infrastructure Planning (Applications: Prescribed Forms & Procedure) Regulations 2009 sets out the detail of what this publicity must entail. This publicity is an integral part of the local community consultation process, and where possible, the first of the two required advertisements should approximately coincide with the beginning of the consultation with communities under section 47. However, the government recognises that, given the detailed information required for the publicity in secondary legislation, aligning publicity with the section 47 consultation may not always be possible, especially where a multi-stage consultation is intended.
42. There is no requirement on a local authority to respond to any section 47(2) Statement of Community Consultation requests. Whilst it is hoped that local authorities and applicants will work together on consultation plans, it is possible, for example, that due to the geographical location of a project, a local authority may decide that it is not affected by the project to an extent that it wishes to respond to any consultation request. In these situations, it is for the applicant to make reasonable efforts to ensure that all affected communities are consulted. It may be that the applicant is able to get further advice from other statutory consultees. If the applicant is unsure how to proceed, they are encouraged to talk through their concerns with the Inspectorate. Providing the applicant can satisfy themselves that they have consulted as widely as possible, it would be unlikely that their application would be rejected on grounds of inadequate public consultation.
43. The specific issues which might be faced by applicants for offshore projects are covered in the next section.

Offshore Developments

44. It is recognised that there will be different impacts and issues for applicants to consider for offshore developments, in comparison to land-based projects. Although the consultation requirements are the same, the geographical proximity of a proposed development to land is likely to dictate the level of engagement by local authorities and their communities. Project applicants have a statutory duty to consult any local authority in whose land a project is sited. Where an offshore development also features land-based development, the applicant should treat the affected local authority or authorities as the main consultees for the Statement of Community Consultation. The applicant is advised to also consider seeking views on the Statement of Community Consultation from local authorities whose communities may be affected visually, or by construction traffic for example, even if the project is in fact some distance from the area in question. In addition, applicants may find it beneficial to discuss their Statement of Community Consultation with any local authorities in the vicinity with busy harbour facilities. These consultations will help applicants determine who to consult and the process for doing so.
45. For developments which do not feature any terrestrial development, applicants do not have any statutory requirements to consult specific local authorities and equally, as for land-based developments, local authorities are not required to

respond to any consultation requests, regardless of whether they relate to the proposed statement of community consultation or to the project itself. Applicants are encouraged to take a pragmatic and proactive approach to consultation with local authorities and their communities and local authorities are expected to respond to consultation requests where relevant. Applicants should consider the impacts on communities which are in the vicinity of the proposed development. These are unlikely to affect all communities to the same degree but could include, and are not limited to, the potential visual, environmental, economic and social impacts.

46. Where the geographical location of a proposed offshore development is such that the impacts on communities are likely to be very small or negligible, applicants are still expected to inform relevant coastal authorities and communities of the proposed project and to give them a chance to take part in a consultation on the development. When deciding who to consult in these situations, applicants are encouraged to think laterally, by, for example, identifying nearby local authorities with busy harbours, active fishing communities or influential environmental groups. Where there are no obvious impacts on local communities, applicants should consult the local communities closest to the proposed development. It may be that there are impacts which are not immediately obvious but which a consultation can identify. Equally, local communities may have concerns about environmental impacts, for example, and open engagement with the applicant allows them the chance to air their concerns and to understand how these concerns are being addressed. The level of interest shown by local authorities and communities will dictate the degree and depth of consultation required and it may be that for these types of offshore development, the consultation process with local communities is fairly high level and is kept to the minimum statutory timescales required by the Planning Act.
47. Applicants for offshore developments should take a pragmatic approach, consulting in proportion to the impacts on communities and the size of the project whilst ensuring that relevant local communities are kept informed of proposals and offered the chance to participate in shaping them. Applicants should use this as a guiding principle for consultation, together with the statutory requirements as set out in the Planning Act. Provided that they do this and that they fully explain their approach in the consultation report which accompanies their application then it is not expected that their application would be rejected on the grounds of insufficient public consultation.
48. In addition to relevant local authorities and their communities, it is required that applicants engage with the Marine Management Organisation, who will be able to advise on what, and with whom, additional consultation might be appropriate.

When should consultation take place and how much is enough?

49. To realise the benefits of early consultation, consultation must happen at a sufficiently early stage to allow consultees a real opportunity to influence the proposals. In particular, applicants will often require detailed technical advice from consultees and it is likely that their input will be of the greatest value if they are consulted when proposals are fluid, followed up by confirmation of the

approach as proposals become firmer. In principle, therefore, applicants should consult initially as soon as there is sufficient detail to allow consultees to understand the nature of the proposal properly.

50. To manage this tension between consulting early, but nonetheless where proposals are firm enough to enable consultees to comment applicants are encouraged to consider an iterative, phased consultation consisting of two (or more) stages, especially for large projects with long development periods. For example, applicants might wish to consider undertaking an early consultation at a stage where options are still being considered, followed by a further, possibly shorter consultation on a preferred option to inform the public and to gather views on that option.
51. Where an iterative consultation is intended (bearing in mind the requirement under section 44 of the Planning Act to consult those who would be directly affected by proposals), it may be advisable for applicants to carry out the final stage of consultation only once they have worked up their preferred option in sufficient detail to identify affected land interests.
52. The timing and duration of consultation will be likely to vary from project to project, depending on size and complexity, and the range and scale of the impacts. The Planning Act provides for a minimum 28 day period for consultation, though it is expected that, while this may be sufficient for projects which are straightforward and uncontroversial in nature, many projects – particularly larger or more controversial projects – may require considerably longer periods than this. It is important that consultees respond in good time to applicants but where responses are not received by the deadline the applicant is not obliged to take those responses into account
53. Applicants are not expected to repeat consultation rounds planned for in their Statement of Community Consultation unless the proposals have changed to such a degree that the proposals being taken forward are fundamentally different from what was consulted on. This may be necessary from time to time, for example because new information arises which renders all previous options unworkable or invalid for some reason. When considering the need for an additional consultation round as a result, applicants should use the degree of change, the effect on the local community and the level of public interest as guiding factors.
54. Where a proposed application changes to such a large degree that the proposals could be considered a new application and therefore the legitimacy of the consultation already carried out may be in question, applicants should undertake a full reconsultation on the new options. In such circumstances applicants should supply consultees with sufficient information to enable them to fully understand the nature of the change (but not necessarily the full suite of consultation documents), and allow at least 28 days for consultees to respond. If the application only changes to a small degree or if the change only affects a part of the development, then it is not necessary for an applicant to undertake a full reconsultation. Instead, the applicant should consult as widely as is necessary to ensure that all affected statutory consultees and local communities are informed of the changes and that they have an opportunity to comment on them.

55. Consultation should, however, also be fair and reasonable for applicants as well as communities. To ensure that consultation is fair to all parties, applicants should be able to demonstrate that the consultation process is proportionate to the impacts of the project in the area that it affects, takes account of the anticipated level of local interest, and takes account of the views of the relevant local authority/ies.

The consultation report and providing feedback to consultees

56. Applicants are required under section 37 of the Planning Act to produce a consultation report to form part of the application pack, detailing how they have complied with the consultation requirements of sections 42, 47 and 48 of the Planning Act.

57. The Secretary of State will consider this report when deciding whether or not the applicant has complied with the pre-application consultation requirements, and ultimately, whether or not an application can be accepted.

58. The consultation report should, therefore:

- provide a general description of the consultation process undertaken
- set out specifically what the applicant has done in compliance with the requirements of the Planning Act, relevant secondary legislation, this guidance, and any relevant guidance published by the Inspectorate
- set out how the applicant has taken account of any response to consultation with local authorities on what should be in the applicant's statement of community consultation (section 47(2))
- set out a summary of relevant responses to consultation (but not a complete list of responses)
- provide a description of how the application was influenced by those responses, outlining any changes made as a result and showing how significant relevant responses will be addressed
- provide an explanation as to why any significant relevant responses were not followed, including advice from statutory consultee on impacts

59. where the applicant has not followed the advice of the local authority or not complied with this guidance or any relevant guidance published by the Inspectorate, provide an explanation for the action taken.

60. The consultation report should be expressed in terms sufficient to enable the Secretary of State to fully understand how the consultation process has been undertaken and significant effects addressed, but it need not include full technical explanations of these matters.

61. It is important that those who have contributed to the consultation are informed of the results of the consultation exercise, how the information received by applicants has been used to shape and influence the proposals and how any outstanding issues will be addressed.
62. As with the consultation itself, it is likely that different audiences will require different levels of information. The local community may be particularly interested in what the collective view of the community is and how that has been taken into account, whilst consultees with technical information will require more detailed information on what impacts and risks have been identified, and how they are to be managed.
63. It is expected that the consultation report should capture these concerns, and it is recommended that applicants make this document available to consultees to ensure that the entire process is open and transparent. However, the consultation report may not be the most appropriate format in which to provide feedback to the various consultee groups and bodies. Applicants should therefore consider producing a summary report aimed at the local community setting out headline findings and how they have been addressed, together with a link to the full consultation report for those interested. This could, if helpful, be supplemented by workshops, seminars or other events in the local area.
64. Feedback to consultees with technical information will likely need to focus on the specific impacts for which the body has expertise. The applicant should make a judgement as to whether the consultation report provides sufficient detail on the relevant impacts, or whether targeted feedback would be more appropriate. The applicant is also likely to have identified a number of key additional bodies and should therefore be prepared to continue to engage with such bodies on an individual basis.

The 'Adequacy of Consultation' representation

65. Before a decision can be made on whether to accept an application for examination, under section 55 of the Planning Act local authorities may make representations to the Secretary of State concerning the adequacy of the applicant's consultation, which the Secretary of State must regard. Any such representation must be limited to how the applicant has carried out the consultation and may not be about how the applicant has had regard to responses to the consultation itself. Such representations should instead be placed in the local authority's Local Impact Report, which is discussed further in Planning Act 2008: guidance for the examination of applications for development consent for nationally significant infrastructure projects.
66. Local authorities will already have been consulted on the content of the applicant's Statement of Community Consultation. Therefore, any 'adequacy of consultation' representation should be linked to that document. It will be for the local authority concerned to decide what it includes in any such representation, but it may wish to cover:
 - agreement with the content of the Statement of Community Consultation, and the applicant then consulting in accordance with that statement; or

- lack of agreement with the content of the Statement of Community Consultation, and the applicant then consulting in accordance with the disputed statement; or
 - agreement on the content of the Statement of Community Consultation, but the applicant subsequently not consulting in accordance with that statement.
67. It is important to stress that pre-application consultation is a statutory duty for applicants, and it should, as this guidance makes clear, be carried out to a certain standard. Where someone feels that consultation was inadequately carried out, they should approach the applicant in the first instance. If they remain unsatisfied, they should make a complaint to the relevant local authority (who can consider this complaint as part of their representation to the Secretary of State on the adequacy of consultation), the Secretary of State, or both. Any complaint should be made promptly following the close of consultation, to ensure that it is received not later than the point at which an application is submitted to the Secretary of State. In all cases, the final decision as to whether pre-application consultation was adequately carried out rests with the Secretary of State.
68. Separately, where someone believes they have identified an issue which has not been adequately addressed by the applicant following consultation, they may wish to make a written representation about the matter to the Secretary of State to ensure that the issue is considered during the examination stage.

Environmental Impact Assessment

69. Most proposals will fall within the scope of the Environmental Impact Assessment Directive, and will require an Environmental Statement to be prepared and submitted as part of the application pack. At an early stage the applicant needs to either inform the Secretary of State that it intends to submit an Environmental Statement along with its application or, where it is unsure whether an Environmental Statement is needed, that it intends to seek a screening opinion. A screening opinion should be sought at as early a stage as is possible for the environmental affects of the proposed development to be properly considered. The Secretary of State can also, through a scoping opinion, advise applicants on the content of any required Environmental Statement. The scoping opinion will be based on advice received from statutory consultees and other relevant organisations.
70. Under the Planning Act, the Environmental Impact Assessment process is governed by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. These regulations ensure that the pre-application publicity and consultation requirements for the Environmental Impact Assessment process are consistent with those of the Planning Act:
- regulation 10 requires that the applicant's Statement of Community Consultation must state whether the proposals fall within the scope of the Directive, and if they do, how the applicant intends to publicise and consult on the preliminary environmental information
 - regulation 11 requires that publicity of proposals under section 48 of the Planning Act must also encompass the requirements of the Environmental Impact Assessment process

71. The pre-application consultation process for major infrastructure projects requires applicants to give consultees as much information as possible on the proposals for the planned development, in order that the consultation is meaningful. It is likely, however, that applicants will not be in a position to share their environmental statements during the consultation process. Nor is it likely that this would be the most appropriate way to present the potential environmental impacts and mitigation steps to all consultees. Thus, for the consultation process, applicants are advised to include as much preliminary environmental information as is available to reasonably enable consultees to take an informed decision on the proposals.
72. The information required will be different for different types and sizes of developments and it may differ depending on the audience of a particular consultation. The Preliminary Environmental Information is not expected to replicate or to be a draft of the environmental statement and it can be presented in any way which the applicant feels would provide the most clarity. Applicants should be careful not to assume however that non-specialist consultees would not be interested in any technical environmental information and it is advisable to ensure access to such information is provided during all consultations.

Drafting the Development Consent Order

73. Applicants are responsible for ensuring they submit a well written Development Consent Order as part of their application pack and whilst the content of a specific Development Consent Order will depend on the project, the general considerations should be similar. When drafting a Development Consent Order, applicants should make every attempt to fully consider every phase of the project and to seek the views of relevant local authorities and other statutory consultees.
74. Applicants may find it helpful to undertake early informal discussion with a range of parties on the content of the draft Development Consent Order. Where felt necessary, local authorities may suggest appropriate requirements to be included in the draft. These may be akin to conditions attached to a grant of planning permission, and might include the later approval (i.e. subsequent to the granting of a Development Consent Order) by the local authority of detailed project designs or schemes to mitigate adverse impacts. However, the Planning Act provides a wide scope for requirements to be included as the applicant thinks necessary and they need not be limited to conditions which could have been imposed under pre-existing regimes. Other statutory consultees, such as other licensing bodies, may also wish to include licensing and discharging provisions, for example. The Secretary of State is able to offer without prejudice advice on the draft Development Consent Order, in advance of formal submission of the application. In all cases, however, full responsibility for ensuring the Development Consent Order is suitable and meets the necessary requirements rests with applicants.
75. Further detail can be found in section 120 of the Planning Act. Applicants are free to set out their Development Consent Order in a manner of their choosing, subject to the conditions of the Planning Act, but they may wish to draw upon

previous applications as a point of reference and other relevant guidance and advice⁶. Applicants may also wish to submit an explanatory memorandum as part of the application pack, setting out the reasons behind the drafting of specific provisions in their Development Consent Order.

76. A draft Development Consent Order may include, but need not be limited to:
- A full description of the proposed development
 - Any associated development, where allowed for under the Planning Act
 - Terms to apply, modify or exclude a relevant statutory provision
 - The period of validity for the Development Consent Order
 - Details of timings for any phased aspects of the development
 - Conditions stipulated by other licensing bodies
 - Details of any impact mitigation activities
 - Provision to compulsorily acquire land
 - The authorisations necessary to implement the development as well as provisions removing the need to obtain particular additional authorisations post consent (subject to the approval of the licensing body)
 - Consistencies with the environmental statement
 - Any necessary discharging requirements, along with the mechanisms for doing so, including the responsible authority and any appeal mechanisms
 - Any transfers of liabilities and benefits and any specific provisions of the Development Consent Order.
77. Applicants with developments which will take a considerable amount of time to be completed are likely to want to allow for some degree of flexibility in the Development Consent Order to allow them to take advantage of future, as yet unknown, technological developments, the requirements of occupiers (for example of strategic rail freight interchanges), and capacity considerations. This, of course, poses specific challenges, as the draft Development Consent Order needs to be detailed enough to allow the Secretary of State to make an informed and balanced decision on the impacts of the project versus the benefits.
78. Where applicants identify aspects of their proposed project where this may apply, they may wish to include provisions in the Development Consent Order

⁶ Applicants may find it helpful to refer to Advice Note 6, preparation and submission of application documents as published by the Planning Inspectorate and Advice Note 13, preparation of a draft order granting development consent and explanatory memorandum

concerning the discharging of particular finalised aspects of the project, including the nomination of a specific discharging authority. Applicants should ensure that they have consulted fully with the proposed discharging authority about the proposals and they should include a rationale for their approach along with the application. It may be more appropriate for particular types of projects to adopt the Rochdale Envelope approach, which is discussed further at paragraph 81.

79. In exceptional circumstances it may be that, despite extensive consultation, the applicant is unable to determine a preferred option for a particular aspect of a development, for example where consultees are split to an equal degree in support of one or the other of two options and there is no other overriding factor for determining between the two. In such cases, providing that both options have been fully consulted on and that the environmental impacts for both have been fully considered, it is permissible to include both options in the draft Development Consent Order and to allow the issue to be explored as part of the examination of the application. Applicants must ensure that they have included a rationale as to why it has not been possible to finalise the option prior to submission of the application. This mechanism may not be used to determine between two options which effectively constitute different projects nor as a substitute for proper options appraisal.

A Development Consent Order as a Statutory Instrument

80. For the purposes of the project, applicants may find it necessary to apply, modify or exclude a statutory provision as part of their draft Development Consent Order, to be made under s 120(5) of the Planning Act. If this is the case, the draft Development Consent Order has to be made as a statutory instrument. The Secretary of State will need to confirm that the legislative provisions in the Development Consent Order do not contravene Community law or any of the Convention rights. He or she may find it necessary to amend the draft Development Consent Order to ensure that no contraventions arise.

Using the Rochdale Envelope approach and cumulative impacts

81. Although it is expected that submitted draft Development Consent Orders will closely reflect the actual final development, there may be times when it is not possible to submit a fully finalised plan and where a degree of flexibility is required, over and above the situation described in paragraph 74. The Overarching National Policy Statement for Energy identifies the use of the Rochdale Envelope approach as a suitable way forward in these circumstances. The principles of the Rochdale Envelope are that where there are clear reasons why it would not be possible to define a project fully in the short term, thereby delaying significantly the submission of an application, then applicants should be afforded a degree of flexibility, within clearly defined and reasonable parameters. These parameters should be no greater than the minimum range required to deliver the project effectively and applicants will have to justify these parameters to the Secretary of State when they submit their application. Care should be taken to ensure that the proposed parameters are not so great that they effectively constitute a separate project.
82. The use of the Rochdale Envelope approach does not remove the onus on applicants to submit as detailed a proposal as possible. In particular, care should be taken to ensure that the likely environmental effects, within the defined parameters, are assessed and, where possible, mitigated against. It is accepted that it may not always be possible to assess every impact and so it may be

appropriate to consider a 'worse-case' scenario which can serve as an overarching reference point for mitigating actions.

83. Applicants should satisfy themselves that they have provided enough information and in the clearest manner possible for the Secretary of State to make a full assessment of the impacts of the proposed development. To aid this, it may be practical to set out the proposal in terms of minimums and maximums, to better illustrate the scale of the parameters and the likely effects for different scenarios.
84. Regardless of whether an applicant finds it necessary to use a Rochdale Envelope or not, the potential cumulative impacts on an area as a result of increasing development in the proposed area need to be considered. Applicants should reflect on not only the major development already in the area but also those which are in the process of being built or which are due or planned to be built in the foreseeable future. It is recognised that it is not always easy for applicants to fully assess potential impacts, due to lack of available information, and applicants should take a pragmatic approach when determining what is feasible and reasonable, whilst satisfying themselves that they have made every effort to identify the main impacts and to include mitigation measures in the draft development plan. As with the parameters for the Rochdale Envelope, applicants should fully explain their choices to the Secretary of State as part of the application pack.

The Secretary of State's acceptance of applications

85. Before an application can be accepted, section 55 of the Planning Act requires that the Secretary of State must be satisfied that the applicant's pre-application consultation has complied with Chapter 2 of Part 5 (the Pre Application process). The Secretary of State's judgement in this regard will be based on:
 - whether the procedure set out in the Planning Act has been complied with
 - the extent to which the applicant has had regard to this guidance
 - any statutory guidance the Inspectorate might publish
 - the applicant's consultation report
 - any representation from the relevant local authority as to whether the applicant has complied with sections 42, 47 and 48 of the Planning Act (the adequacy of consultation report).
86. In particular, applicants should be able to demonstrate that they have acted reasonably in fulfilling the requirements of section 49 of the Planning Act, to take account of responses to consultation and publicity. The Government understands that applicants and consultees will not always agree about whether or how particular impacts should be mitigated. Therefore, providing the Secretary of State is able to conclude that the applicant has acted reasonably, he or she is unlikely to conclude that the pre-application consultation was inadequate on the basis that particular impacts had not been mitigated to an appropriate degree.

87. The Planning Act specifies that the Secretary of State must decide whether or not he or she will accept an application within 28 days of receipt.
88. Ultimately it is in the applicant's interest to ensure that the application is as well prepared as possible in advance of submission to the Secretary of State, to ensure that examination of the application is as straightforward as possible. Under-prepared applications are likely to lead to longer and more complex examinations; and therefore higher costs for applicants⁷.

⁷ See Planning Act 2008: Nationally significant infrastructure projects Fees guidance

Annex A

Commentary on the relevant provisions of the Planning Act

Section 41 – defines some of the terms used in the chapter.

Section 42 – places a duty on the applicant to consult about a proposed application:

- The Marine Management Organisation, where relevant
- parties specified in secondary legislation (as set out in the Infrastructure Planning (Applications: Prescribed Forms & Procedure) Regulations 2009)
- relevant local authorities (defined in section 43)
- the Greater London Authority if the land is in Greater London
- people within the categories set out in section 44.

This list does not mean that other parties should not be consulted; it merely identifies certain parties that an applicant is legally obliged to consult before they submit an application.

Section 43 – defines what a local authority is for the purposes of section 42 i.e. any local authority in whose area proposed development would be sited and neighbouring authorities sharing a boundary. The definition includes National Park authorities and the Broads Authority.

Section 44 – provides a list of categories of people who should be consulted under s.42(d), including owners, tenants, lessees or occupiers of the land, people with an interest in the land or with the power to sell, convey or release the land, or people who could have a claim for compensation as a result of the development going ahead.

Section 45 – sets out a timetable for consultation under section 42, consisting of a 28 day minimum period within which responses to the consultation must be received.

Section 46 – requires the applicant to send to the Secretary of State the same information the applicant would need to send to consultees under section 42, before section 42 consultation begins.

Section 47 – requires the applicant to consult the local community. The applicant must draw up a statement explaining how it intends to carry out consultation with the people who live in the vicinity of the land it wants to develop. Before drawing up the statement, the applicant must

consult the relevant local authority (or authorities if the land needed for the project crosses local authority boundaries) about what the statement should say. The local authority then has 28 days to reply to the applicant.

The applicant must:

- have regard to any responses from the local authorities about the statement when preparing it
- having prepared the statement, then publish the statement in a newspaper circulating within the area of the land he wants to develop, and in such other manner as may be prescribed
- carry out the consultation as laid out in its statement.

Section 48 – requires the applicant to publicise the proposed application in accordance with secondary legislation (see the relevant provisions of the Infrastructure Planning (Applications: Prescribed Forms & Procedure) Regulations 2009), and include a deadline for receipt of responses to publicity.

Section 49 – requires the applicant to have regard to relevant responses to all consultation and publicity undertaken under sections 42, 47 and 48. |