Department for Communities and Local Government

Planning Act 2008:
Guidance on the pre-application process

March 2015
Department for Communities and Local Government

This document/publication is also available on our website at www.gov.uk/dclg

If you have any enquiries regarding this document/publication, complete the form at http://forms.communities.gov.uk/ or write to us at:

Department for Communities and Local Government
Fry Building
2 Marsham Street
London
SW1P 4DF
Telephone: 030 3444 0000

For all our latest news and updates follow us on Twitter: https://twitter.com/CommunitiesUK

March 2015

ISBN: 978-1-4098-4589-8

Contents

Introduction	2
What is this guidance for?	4
Who is this guidance aimed at?	4
The pre-application consultation process	5
Who should be consulted?	8
When should consultation take place and how much is enough?	18
The consultation report and responding to consultees	20
Environmental Impact Assessment	23
Preliminary Environmental Information	24
Habitats Regulations Assessment	24
Drafting the Development Consent Order	25
The Secretary of State's acceptance of applications	30

Introduction

1. The Planning Act 2008 ("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. They are large scale developments, both onshore and offshore, such as new harbours, power stations (including wind farms), and electricity transmission lines. The Planning Act sets out the thresholds above which certain types of infrastructure development are considered to be nationally significant and require development consent.

2. Through the Localism Act 2011, the Government made significant changes to the regime by abolishing the Infrastructure Planning Commission and transferring responsibility for decision making to the Secretary of State[1]. The relevant provisions of the Localism Act were commenced on 1 April 2012 with further amendments made by the Growth and Infrastructure Act 2013 and the Infrastructure Act 2015.

3. The Secretary of State is legally responsible for accepting applications for development consent and for appointing Examining Authorities who examine these applications and make recommendations to the Secretary of State who ultimately takes the decision about whether to grant development consent. In England, Examining Authorities examine applications for development consent from energy, transport, waste, waste water and water sectors and business and commercial schemes as may be directed into the regime. In Wales, they examine applications for energy and harbour development, subject to detailed provisions in the Planning Act. Where this guidance refers to the Secretary of State, users should bear in mind that, in practice, the Inspectorate will carry out functions on the Secretary of State's behalf (with the exception of decision-making). All communications should be directed to the Inspectorate in the first instance.

4. This guidance relates to both Chapter 1 (applications) and Chapter 2 (pre-application procedure) of Part 5 of the Planning Act. Under section 50(3) of the Planning Act, applicants must have regard to this and any

[1] 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, those relating to hazardous waste and business and commercial projects by the Secretary of State for Communities and Local Government and those for waste water and water supply will be a joint decision by the Secretary of State for Communities and Local Government and the Secretary of State for the Environment.

other guidance published which covers the pre-application procedure for major infrastructure applications.

5. The Secretary of State must have regard to the extent to which this guidance has been considered and followed as appropriate, in deciding whether to accept an application for examination (sections 55(5A)(b) and 55(4)(c)).

6. 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 project. The front-loaded emphasis of consultation in the major infrastructure planning regime is designed to ensure a more transparent and efficient examination process.

7. The Planning Inspectorate publish Advice Notes that applicants and others may find helpful, providing more detailed advice and information on the application process. These Advice Notes are referred to in this guidance document. However, as Advice Notes are periodically updated and replaced, readers should check the Planning Inspectorate website to ensure they are using the latest and most complete set of Advice Notes and other relevant documentation.

8. The Planning Inspectorate also has a role to provide case-specific pre-application advice to the public, applicants and other users of the regime. As part of this role, the Inspectorate offers a pre-application service to applicants which is set out in a Pre-Application Prospectus. The Pre-Application Prospectus explains how the Inspectorate can advise applicants on the preparation of their application documents, and also their duties during the pre-application stage.

9. The National Infrastructure pages of the Planning Inspectorate website contain examples of good practice documentation and there are links to videos that outline the pre-application process.

10. Nothing in this guidance should be taken as indicating that any requirement of planning law or any other law may be overridden. Only the courts can give an authoritative interpretation of these laws. Users of this guidance must take their own professional and legal advice about its implementation. If required, the Planning Inspectorate can provide impartial advice on specific planning and procedural matters, without prejudice to any decision on whether a project will be accepted for examination or not.

11. This guidance is periodically refreshed to better reflect knowledge of good practice, changing circumstances and feedback from users on its clarity and helpfulness. The latest (March 2015) changes are intended to be minor and clarificatory in nature and are not intended to make, and should not be construed as making any significant additional or changed requirements or expectations. In particular, applicants who have already commenced their statutory pre-application consultation would not be

expected to re-visit what they have already done at the time of the publication of this version on the basis of changes in this version if they have reached a stage where they would be unable to take them into account. However, if applicants are relying on any parts of the previous version of this guidance they should state this clearly in their application.

What is this guidance for?

12. This guidance sets out the requirements and procedures for the pre-application process and consultation where an application is to be made for consent for a major infrastructure project. This guidance therefore aims to:

- advise users of the regime on the processes involved in the pre-application stage;
- guide applicants as to how the pre-application requirements of the Planning Act should be fulfilled and provide some advice on best practice;
- inform other users of the regime, including consultees, of their roles in the pre-application process and to let them know what is expected of applicants at this stage; and
- help ensure that the regime is transparent and accessible to all.

13. This guidance covers the main pre-application processes leading up to the submission of the application and associated documents to the Secretary of State. It also provides advice on producing a draft Development Consent Order, as this may be shaped by the pre-application consultation process. Applicants are advised to read this guidance in conjunction with the other relevant guidance and advice.

Who is this guidance aimed at?

14. This guidance is mainly aimed at applicants, to assist them in undertaking the pre-application requirements placed on them by the Planning Act. It is also intended to be helpful to other users of the regime, including local authorities and other statutory consultees, so that all parties know what is expected from them during the pre-application stage of the process.

The pre-application consultation process

15. Pre-application consultation is a key requirement for applications for Development Consent Orders for major infrastructure projects. 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 of the application to the Secretary of State.[2] This in turn will allow for shorter and more efficient examinations[3]

16. The Planning Act regime provides the ability to anyone interested in or affected by a major infrastructure proposal to both object in-principle to a proposed scheme and at the same time suggest amendments to design-out unwelcome features of a proposal. Engaging in a developer's pre-application consultation including for example offering constructive mitigations to reduce a scheme's impact on the local community, does not per se undermine any submission on the principle of whether or not development consent should be granted.

17. When circulating consultation documents, developers should be clear about their status, for example ensuring it is clear to the public if a document is purely for purposes of consultation.

18. Early involvement of local communities, local authorities and statutory consultees can bring about significant benefits for all parties, by:

- helping the applicant identify and resolve issues at the earliest stage, which can reduce the overall risk to the project further down the line as it becomes more difficult to make changes once an application has been submitted;
- enabling members of the public to influence proposed projects, feedback on potential options, and encouraging the community to help shape the proposal to maximise local benefits and minimise any downsides;
- helping local people understand the potential nature and local impact of the proposed project, with the potential to dispel misapprehensions at an early stage;
- enabling applicants to obtain important information about the economic, social and environmental impacts of a scheme from consultees, which can help rule out unsuitable options;

---

[2] Applicants may wish to refer to the annexe to Advice Note 6 published by the Planning Inspectorate, which contains an application checklist: http://infrastructure.planningportal.gov.uk/legislation-and-advice/advice-notes/.

[3] See the Planning Inspectorate's Advice Notes 8.1 and 8.2 on how the process works and responding to the developer's pre-application consultation respectively. http://infrastructure.planningportal.gov.uk/legislation-and-advice/advice-notes/.

- enabling potential mitigating measures to be considered and, if appropriate, built into the project before an application is submitted; and
- identifying ways in which the project could, without significant costs to promoters, support wider strategic or local objectives.

19. The pre-application consultation process is crucial to the effectiveness of the major infrastructure consenting regime. A thorough process can give the Secretary of State confidence that issues that will arise during the six months examination period have been identified, considered, and – as far as possible – that applicants have sought to reach agreement on those issues. Without adequate consultation, the subsequent application will not be accepted when it is submitted. If the Secretary of State determines that the consultation is inadequate, he or she can recommend that the applicant carries out further consultation activity before the application can be accepted.

20. Experience suggests that, to be of most value, consultation should be:

- based on accurate information that gives consultees a clear view of what is proposed including any options;
- shared at an early enough stage so that the proposal can still be influenced, while being sufficiently developed to provide some detail on what is being proposed; and
- engaging and accessible in style, encouraging consultees to react and offer their views.

21. 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. Applicants should satisfy themselves that they have complied with all statutory requirements[4] and applicable guidance (including this guidance) so they can reasonably expect that their application will not be rejected on the grounds of inadequate consultation. Where an applicant has not been able to follow this guidance, they should provide comments setting out why this is the case, in the consultation report.

22. The Planning Act enables 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. Where local authorities are not content with the consultation approach undertaken by the applicant, their views should

[4] 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.

be set out in any "adequacy of consultation" representation they make. This will inform the decision on whether to accept the application.

23. In brief, during the pre-application stage applicants are required to:

- notify the Secretary of State of the proposed application;[5]
- identify whether the project requires an environmental impact assessment; where it does, confirm 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;[6]
- produce a Statement of Community Consultation, in consultation with the relevant local authority or authorities, which describes how the applicant proposes to consult the local community about their project and then carry out consultation in accordance with that Statement;
- 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 where the development is proposed, as required by section 47 of the Planning Act and Regulations[7];
- identify and consult statutory consultees as required by section 42 of the Planning Act and Regulations;
- publicise the proposed application in accordance with Regulations[8];
- set a deadline for consultation responses of not less than 28 days from the day after receipt/last publication;
- have regard to relevant responses to publicity and consultation[9]; and
- prepare a consultation report and submit it to the Secretary of State.[10]

24. The requirements of the Planning Act and associated Regulations form the framework for the pre-application consultation process. The

---

5 See Section 46 of the Planning Act.

6 See Regulation 6 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

7 Including: 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.

8 See regulation 4 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

9 See Section 49 of the Planning Act.

10 See Section 37 of the Planning Act.

Government recognises 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, 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. The aim should be to ensure that consultation is appropriate to the scale and nature of the project and where its impacts will be experienced.

25. Consultation should be thorough, effective and proportionate. Some applicants may have their own distinct approaches to consultation, perhaps drawing on their own or relevant sector experience, for example if there are industry protocols that can be adapted. Larger, more complex applications are likely to need to go beyond the statutory minimum timescales laid down in the Planning Act to ensure enough time for consultees to understand project proposals 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.

Who should be consulted?

26. 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 form that consultation may take depending on local circumstances and the needs of the project itself. Sections 42 – 44 of the Planning Act and Regulations[11] set out details of who should be consulted, including local authorities, the Marine Management Organisation (where appropriate), other statutory bodies, and persons having an interest in the land to be developed.[12] Section 47 in the Planning Act sets out the applicant's statutory duty to consult local communities. In addition, applicants may also wish to strengthen their case by seeking the views of other people who are not statutory consultees, but who may be significantly affected by the project.

[11] The Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009.

[12] See the Planning Inspectorate's Advice Note 3: http://infrastructure.planningportal.gov.uk/legislation-and-advice/advice-notes/.

Statutory bodies and other relevant groups

27. The Planning Act and Regulations set out the statutory consultees and prescribed people who must be consulted during the pre-application process. Many statutory consultees are responsible for consent regimes where, under Section 120 of the Planning Act, decisions on those consents can be included within the decision on a Development Consent Order. Where an applicant proposes to include non-planning consents within their Development Consent Order, the bodies that would normally be responsible for granting these consents 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. It is therefore important that such bodies are consulted at an early stage. In addition, there will be a range of national and other interest groups who could make an important contribution during consultation. Applicants are therefore encouraged to consult widely on project proposals.

28. 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 with the statutory requirements. 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 and the reasons why.

29. Applicants will often need detailed technical input from expert bodies to assist with identifying and mitigating the social, environmental, design and economic impacts of projects, and other important matters. Technical expert input will often be needed in advance of formal compliance with the pre-application requirements. Early engagement with these bodies can help avoid unnecessary delays and the costs of having to make changes at later stages of the process. It is equally important that statutory consultees respond to a request for technical input in a timely manner. Applicants are therefore advised to discuss and agree a timetable with consultees for the provision of such inputs

Local Authorities

30. The Planning Act recognises the role that local authorities play as bodies with expert knowledge of the local community, business and other interests as well as their responsibility for development of the local area.

31. The Planning Inspectorate has published an Advice Note on the role of local authorities in the Development Consent process[13].

32. The Planning Inspectorate can put local authorities in touch with other local authorities who have experience of the regime. This is particularly useful for local authorities engaging for the first time in a nationally significant infrastructure project. For example, a local authority can learn from another authority how it went about planning, resourcing and engaging with the process.

33. Local authorities have an important role to play in the pre-application process, specifically in relation to:

- the Statement of Community Consultation, which sets out how an applicant will consult with the local communities likely to be affected by their proposed development (see paragraphs 34 – 42);
- in their role as a statutory consultees for any proposed projects in or adjacent to their area which they must be consulted on by the applicant (see paragraphs 43 – 44);
- the local impact report, where local authorities will set out their views on the likely impact of the proposed development on their local area and communities (see paragraph 45 – 46); and
- the statement of common ground where areas of agreement between applicant and local authorities can be recorded, although it's worth noting that this is not a statutory requirement (see paragraph 47 – 48).

Consultation with Local Authorities on the Statement of Community Consultation

34. Local authorities have considerable expertise in consulting local people. They 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 interest groups, and should be able to readily provide applicants with an appropriate list of such groups for the purposes of consultation.

35. 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. 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, as far as practicable, co-ordinate their responses to

[13] http://infrastructure.planningportal.gov.uk/legislation-and-advice/advice-notes/.

the applicant. This will ensure that the consultation proposals set out in the Statement are coherent, effective, and work across local authority boundaries.

36. 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 - for example if the development was located close to a neighbouring authority. Where an applicant decides to consult people living in a wider area who could be affected by the project (e.g. through visual or environmental impacts, or through increased traffic flow), that intention should be reflected in the Statement of Community Consultation.

37. In its role as a consultee on the Statement of Community Consultation, the local authority should focus on how the applicant should consult people in its area. The comments that a local authority provides on the Statement of Community Consultation are separate from any views that authority may have on the merits of the proposals. They are also distinct from 'adequacy of consultation' responses. 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. However, prior to submitting their draft Statement of Community Consultation applicants may wish to seek to resolve any disagreements or clarifications about the public consultation design. An applicant is therefore likely to need to engage in discussions with local authorities over a longer period than the minimum requirements set out in the Act.

38. The role of the local authority in such discussions should be to provide expertise about the make-up of its 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. The local authority should also provide advice on the appropriateness of the applicant's suggested consultation techniques and methods. The local authority's aim in such discussions should be to ensure that the people affected by the development can take part in a thorough, accessible and effective consultation exercise about the proposed project.

39. Topics for consideration at such pre-consultation discussions might include:

- the size and coverage of the proposed consultation exercise (including, where appropriate, consultation which goes 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;
- local bodies and representative groups who should be consulted; and
- timescales for consultation.

40. 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, such advice will be without prejudice to any later decision on whether to accept or reject an application for examination.

41. Where a local authority raises an issue or concern on the Statement of Community Consultation which the applicant feels unable to address, the applicant is advised to explain in their consultation report their course of action to the Secretary of State when they submit their application.

42. Where a local authority decides that it does not wish to respond to a consultation request on the Statement of Community Consultation, the applicant should make reasonable efforts to ensure that all affected communities are consulted. If the applicant is unsure how to proceed, they are encouraged to seek advice from the Inspectorate. However, 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. Provided that applicants can satisfy themselves that they have made reasonable endeavours to consult with all those who might have a legitimate interest or might be affected by a proposed development, it would be unlikely that their application would be rejected on grounds of inadequate public consultation.

Local authorities as statutory consultees

43. Local authorities are also themselves statutory consultees for any proposed major infrastructure project which is in or adjacent to their area. 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.

44. Local authorities will be able to provide an informed opinion on a wide number of matters, including how the project relates to Local Plans. Local authorities may also make suggestions for requirements to be included in the draft Development Consent Order. These may include the later approval by the local authority (after the granting of a Development Consent Order) of detailed project designs or schemes to mitigate adverse impacts. It will be important that any concerns local authorities

have on the practicality of enforcing a proposed Development Consent Order are raised at the earliest opportunity.

Local Impact Report

45. The local authority in whose area a proposed project is located (or an authority adjoining the host authority) will be invited by the Secretary of State to submit a local impact report once the application has been accepted for examination. The local impact report[14] will allow local authorities to set out details of their views on the likely effect of the development on the local area and community. Local authorities are likely to have developed a range of sources of useful information as part of their Local Plan preparation and more generally across their functions and responsibilities. Where these sources are up-to-date and relevant to the proposals, local authorities should tap into this resource to inform the preparation of the local impact report. If the application is accepted for examination, the Examining Authority must have regard to the local impact report. As such, early consideration of its content and its preparation, including any formal approval processes, is recommended. More information about local impact reports can be found in the Planning Inspectorate's Advice Note 1.

46. Through the pre-application phase, in dialogue with the applicant and also with communities and other interests, local authorities can usefully start acquiring an evidence base for the local impact report. Even during the early stages of pre-application they may usefully consider how they can use and reuse the same information in later stages of the development consent process.

Statements of Common Ground

47. A statement of common ground is a written statement prepared jointly by the applicant and another party or parties, setting out any matters on which they agree. A statement of common ground is useful to ensure that the evidence at the examination focuses on the material differences between the main parties.

48. Local authorities are encouraged to discuss and work through issues raised by the proposed development with applicants well before an application is submitted. Agreements reached between an applicant and relevant local authorities can be documented in a statement of common ground. This will contain agreed factual information about the application and can accompany the application. The statement of common ground can also set out matters where agreement has not been reached. This can then be looked at during examination. More information about this is

[14] Advice on local impact reports can be found at: http://infrastructure.planningportal.gov.uk/legislation-and-advice/advice-notes/.

in the Planning Inspectorate Advice Note 2 concerning the role of local authorities.

Persons with an interest in land

49. 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 a project in such a way that they may be able to make a claim for compensation. This will give such parties early notice of projects, and an opportunity to express their views regarding them.

50. It is the applicant's responsibility to demonstrate at submission of the application that due diligence has been undertaken in identifying all land interests and applicants should make every reasonable effort to ensure that the Book of Reference (which records and categorises those land interests) is up to date at the time of submission.

51. However, it is understood that land interests change over time and that new or additional interests may emerge after an applicant has concluded statutory consultation but just before an application is submitted. In such a situation, the applicant should provide a proportionate opportunity to any new person identified with a land interest to make their views known on the application. Where new interests in land are identified very shortly before the intended submission of an application, despite diligent efforts earlier in the process it may be difficult at that stage for applicants to consult and take account of any responses from those new interests before submitting their application as intended. If this situation arises applicants should be proactive and helpful in ensuring that the person understands how they can, if they so wish, engage with the process if the application is accepted for examination.

52. Applicants should explain in the consultation report how they have dealt with any new interests in land emerging after conclusion of their statutory consultation having regard to their duties to consult and take account of any responses.

Local communities

53. Local people have a vital role to play at the pre application stage. People should have as much influence as is realistic and possible over decisions which shape their lives and communities. It is therefore critical that they are engaged with project 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; or what mitigating measures might be appropriate; or what other opportunities might exist for meeting the project's objectives.

54. In consulting on project proposals, 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. Local authorities will be able to provide advice on what works best in terms of consulting their local communities given their experience of carrying out consultations in their area.

55. Applicants must set out clearly what is being consulted on. They must be careful to make it clear to local communities what is settled and why, and what remains to be decided, so that expectations of local communities are properly managed. Applicants could prepare a short document specifically for local communities, summarising the project proposals and outlining the matters on which the view of the local community is sought. This can describe core elements of the project and explain what the potential benefits and impacts may be. Such documents should be written in clear, accessible, and non-technical language. Applicants should consider making it available in formats appropriate to the needs of people with disabilities if requested. There may be cases where documents may need to be bilingual (for example, Welsh and English in some areas), but it is not the policy of the Government to encourage documents to be translated into non-native languages.

56. Applicants are required to set out in their Statement of Community Consultation how they propose to consult those living in the vicinity of the land. They are encouraged to consider consulting beyond this where they think doing so may provide more information on the impacts of their proposals (e.g. through visual impacts or increased traffic flow).

57. The Statement of Community Consultation should act as a framework for the community consultation generally, for example, setting out where details and dates of any events will be published. The Statement of Community Consultation should be made available online, at any exhibitions or other events held by applicants. It should be placed at appropriate local deposit points (e.g. libraries, council offices) and sent to local community groups as appropriate.

58. Applicants are required to publicise their proposed application under section 48 of the Planning Act and the Regulations[15] and set out the detail of what this publicity must entail. This publicity is an integral part of the public consultation process. Where possible, the first of the two required local newspaper advertisements should coincide approximately with the beginning of the consultation with communities. However, given the detailed information required for the publicity in the Regulations, aligning publicity with consultation may not always be possible, especially where a multi-stage consultation is intended.

[15] See Regulation 4(2) of the Infrastructure Planning (Applications: Prescribed Forms & Procedure) Regulations 2009.

59. ‘Guidance on Community Engagement for Onshore Wind Developments’[16] provides useful non statutory guidance on approaches to assist developers and local communities in considering how best to engage with one another. This guidance should be read alongside ‘Guidance on Community Benefits for Onshore Wind’[17] which promotes good practice and sets out principles and expectations for developers, local authorities and communities. Both sets of guidance may be of benefit to pre-application consultation for other types of developments.

Offshore Projects

60. Different impacts and issues will need to be considered by applicants for offshore projects in comparison to those which are land-based. In the context of this guidance, "offshore" refers to an area that is outside the seaward boundary of a local authority's area.

61. Applicants have a statutory duty to consult any local authority in whose land a project is sited. So, where an offshore project also features land-based development, the applicant should treat the local authority where the land-based development is located as the main consultee for the Statement of Community Consultation. The applicant is also advised to consider seeking views on the Statement of Community Consultation from local authorities whose communities may be affected by the project, for example visually or through construction traffic, 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 where there could be an effect on harbour facilities.

62. For projects which do not feature any terrestrial development, there are no statutory requirements to consult specific local authorities. Local authorities are therefore 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. Nonetheless, where they are consulted, local authorities are expected to respond where they consider offshore projects may impact on their communities.

63. Applicants should ensure they consider all the potential impacts on communities which are in the vicinity of the proposed project. These are unlikely to affect all communities to the same degree but might include potential visual, environmental, economic and social impacts.

---

[16] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/364244/FINAL_-_Community_engagement_guidance_-06-10-14.pdf.

[17] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/363405/FINAL_-_Community_Benefits_Guidance.pdf.

64. Where the location of a proposed offshore project 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 give them a chance to take part in any consultation. 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 or sailing / water-sports communities or key local environmental groups.

65. Where there are no obvious impacts on local communities, applicants should consult the local communities closest to the proposed project. It may be that there are impacts which are not immediately obvious but which a consultation can identify. Equally, local communities may have concerns, for example, about environmental impacts, and open engagement with the applicant will allow them the chance to express 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. It may be that for certain offshore projects, the consultation process with local communities can be undertaken in a focused and proportionate way, and therefore completed within the minimum statutory timescales required by the Planning Act.

66. Ultimately, applicants for offshore projects 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 about the 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 they do this, and fully explain their approach in the consultation report which accompanies their application, the expectation is that their application will not be rejected on the grounds of insufficient public consultation.

67. In addition to relevant local authorities and their communities, prospective applicants for development consent for certain types of projects are required to consult and engage with the Marine Management Organisation[18]. They will also be able to advise on what, and with whom, additional consultation might be appropriate. Additional guidance is available from the Inspectorate on transboundary consultations[19].

[18] See the Planning Inspectorate's Advice Note 11, Annex B: http://infrastructure.planningportal.gov.uk/legislation-and-advice/advice-notes/.

[19] Transboundary consultations are those which involve another country. For advice, see the Planning Inspectorate's Advice Note 12: http://infrastructure.planningportal.gov.uk/legislation-and-advice/advice-notes/.

When should consultation take place and how much is enough?

68. To realise the benefits of consultation on a project, it must take place at a sufficiently early stage to allow consultees a real opportunity to influence the proposals. At the same time, consultees will need sufficient information on a project to be able to recognise and understand the impacts.

69. Applicants will often also require detailed technical advice from consultees and it is likely that their input will be of the greatest value if they are consulted when project proposals are fluid, followed up by confirmation of the approach as proposals become firmer. In principle, therefore, applicants should undertake initial consultation as soon as there is sufficient detail to allow consultees to understand the nature of the project properly.

70. To manage the tension between consulting early, but also having project proposals that 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 non-statutory early consultation at a stage where options are still being considered. This will be helpful in informing proposals and assisting the applicant in establishing a preferred option on which to undertake statutory consultation.

71. Where an iterative consultation is intended, it may be advisable for applicants to carry out the final stage of consultation with persons who have an interest in the land[20] once they have worked up their project proposals in sufficient detail to identify affected land interests.

72. 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 requires a consultation period of a minimum of 28 days from the day after receipt of the consultation documents. It is expected that this may be sufficient for projects which are straightforward and uncontroversial in nature. But many projects, particularly larger or more controversial ones, may require longer consultation periods than this. Applicants should therefore set consultation deadlines that are realistic and proportionate to the proposed project. It is also important that consultees do not withhold information that might affect a project, and that they respond in good time to

[20] As set out in section 44 of the Planning Act 2008.

applicants. Where responses are not received by the deadline, the applicant is not obliged to take those responses into account.

73. Applicants are not expected to repeat consultation rounds set out in their Statement of Community Consultation unless the project proposals have changed very substantially. However, where proposals change to such a large degree that what is being taken forward is fundamentally different from what was consulted on, further consultation may well be needed. This may be necessary if, for example, new information arises which renders all previous options unworkable or invalid for some reason. When considering the need for additional consultation, applicants should use the degree of change, the effect on the local community and the level of public interest as guiding factors.

74. Where a proposed application changes to such a large degree that the proposals could be considered a new application, the legitimacy of the consultation already carried out could be questioned. In such cases, applicants should undertake further re-consultation on the new proposals, and should supply consultees with sufficient information to enable them to understand the nature of the change and any likely significant impacts (but not necessarily the full suite of consultation documents), and allow at least 28 days for consultees to respond.

75. If the application only changes to a small degree, or if the change only affects part of the development, then it is not necessary for an applicant to undertake a full re-consultation. Where a proposed application is amended in light of consultation responses then, unless those amendments materially change the application or materially changes its impacts, the amendments themselves should not trigger a need for further consultation. Instead, the applicant should ensure that all affected statutory consultees and local communities are informed of the changes.

76. In circumstances where a particular issue has arisen during the pre-application consultation, or where it is localised in nature, it may be appropriate to hold a non-statutory, targeted consultation. A developer's Statement of Community Consultation should be drafted so that it does not preclude this approach. A more bespoke approach can be adopted, which may allow developers to respond with more agility to the issue at hand. If adopting this approach, the emphasis should be on ensuring that relevant individuals and organisations are included.

77. Consultation should 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 authorities.

The consultation report and responding to consultees

78. Applicants are required under section 37 of the Planning Act to produce a consultation report alongside their application, which details how they have complied with the consultation requirements set out in the Act.

79. 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.

80. Therefore, the consultation report should:

- provide a general description of the consultation process undertaken, which can helpfully include a timeline;
- 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 policies, guidance or advice published by Government or 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;
- set out a summary of relevant responses to consultation (but not a complete list of responses);
- provide a description of how the application was informed and 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 responses advising on major changes to a project were not followed, including advice from statutory consultees on impacts;
- where the applicant has not followed the advice of the local authority or not complied with this guidance or any relevant Advice Note published by the Inspectorate, provide an explanation for the action taken or not taken; and
- be expressed in terms sufficient to enable the Secretary of State to understand fully how the consultation process has been undertaken and significant effects addressed. However, it need not include full technical explanations of these matters[21].

[21] Applicants should also refer to Advice Note 14, Compiling the Consultation Report as published by the Planning Inspectorate and Advice Note 6, preparation and submission of

81. It is good practice 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 project; and how any outstanding issues will be addressed before an application is submitted to the Inspectorate.

82. 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 this has been taken into account. Consultees with highly technical interests may seek more detailed information on what impacts and risks have been identified, and how they are proposed to be mitigated or managed.

83. The consultation report may not be the most appropriate format in which to respond to the points raised by various consultee groups and bodies. Applicants should therefore consider producing a summary note in plain English for 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. If helpful, this could be supplemented by events in the local area.

84. A response to points raised by consultees with technical information is likely to 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 a targeted response would be more appropriate. Applicants are also likely to have identified a number of key additional bodies for consultation and may need to continue engagement with these bodies on an individual basis.

The 'adequacy of consultation' representation

85. Before a decision can be made on whether to accept an application for examination, local authorities may make representations to the Secretary of State concerning the adequacy of the applicant's consultation. The Inspectorate will write to relevant local authorities when an application has been received to ask for their comments on the adequacy of the applicant's consultation. The Secretary of State must have regard to these representations. Any representation must be limited to how the applicant has carried out the consultation.

86. 'Adequacy of consultation' representations will normally be required within 14 days of the invitation to submit from the Planning Inspectorate,

---

application documents, http://infrastructure.planningportal.gov.uk/legislation-and-advice/advice-notes/.

in order to meet the acceptance decision deadline. Local authorities should ensure that they have suitable arrangements in place to respond to this request.

87. It will be for the local authority concerned to decide what it includes in any such representation, which can relate to sections 42, 47 and/or 48 of the Planning Act and may address matters such as:

- agreement with the content of the Statement of Community Consultation, and that the applicant then consulted in accordance with that statement; or
- disagreement with the content of the Statement of Community Consultation, and the applicant then consulted in accordance with the disputed statement;
- agreement on the content of the Statement of Community Consultation, but the applicant did not subsequently consult in accordance with that statement; and
- compliance with the duties under sections 42, 47 and 48 of the Planning Act.

88. 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. Issues about the adequacy of consultation should be considered prior to the Inspectorate (on behalf of the Secretary of State) accepting an application for examination. Where any interested party feels that consultation was inadequately carried out, they should approach the applicant in the first instance. If consultees remain unsatisfied, they can complain 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), or the Secretary of State (through the Inspectorate). Any concerns should be raised promptly during or immediately following the consultation, to enable the applicant to address the issues if appropriate. In all cases, the final decision as to whether pre-application consultation was adequately carried out rests with the Secretary of State.

89. Separately, where someone believes they have identified an issue which has not been adequately addressed by the applicant, despite raising it with them as part of their consultation exercise, they may wish to make a relevant representation about the issue if the application has been accepted. This will ensure this issue is considered during the examination. It is important to note, however, that the acceptance decision cannot be re-opened during the examination.

Environmental Impact Assessment

90. Most major infrastructure projects 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[22]. At an early stage the applicant needs to either inform the Secretary of State of their intention to submit an environmental statement along with its application, or where the developer is unsure whether an environmental statement is needed, that they intend to seek a screening opinion. A screening opinion should be sought as early as is possible for the environmental effects 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.

91. For major infrastructure projects, the environmental impact assessment process is governed by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. These Regulations make the pre-application publicity and consultation requirements for the environmental impact assessment process consistent with those of the Planning Act:

- Regulation 10 requires that the applicant's Statement of Community Consultation must state whether the project falls within the scope of the Directive, and, if it does, how the applicant intends to publicise and consult on the preliminary environmental information (see paragraphs 93 and 94) for requirements in relation to preliminary environmental information); and
- Regulation 11 requires that publicity of project proposals under section 48 of the Planning Act must also encompass the requirements of the environmental impact assessment process and at the time of publishing the proposed application, applicants must notify all environmental consultation bodies.

92. To ensure consultation is meaningful, the pre-application consultation process for major infrastructure projects encourages applicants to give consultees as much information as possible on the characteristics of the proposed project. However, it may not be possible for applicants to share their environmental statements during the consultation process. It may also not be the most appropriate way to present the potential environmental impacts and mitigation steps.

[22] Additional advice on the preparation of the environmental statement can be found in the Planning Inspectorate's Advice Notes 3 and 7: http://infrastructure.planningportal.gov.uk/legislation-and-advice/advice-notes/.

Preliminary Environmental Information

93. For the pre-application consultation process, applicants are advised to include sufficient preliminary environmental information to enable consultees to develop an informed view of the project. The information required may be different for different types and sizes of projects. It may also vary depending on the audience of a particular consultation. The preliminary environmental information is not expected to replicate or be a draft of the environmental statement. However, if the applicant considers this to be appropriate (and more cost-effective), it can be presented in this way. The key issue is that the information presented must provide clarity to all consultees. Applicants should be careful not to assume that non-specialist consultees would not be interested in any technical environmental information. It is therefore advisable to ensure access to such information is provided during all consultations. The applicant's Statement of Community Consultation must include a statement about how the applicant intends to consult on preliminary environmental information.

94. The Planning Inspectorate is unable to review draft preliminary environmental information documents, but encourages applicants to discuss their approach to preparing preliminary environmental information with them as part of their free pre-application service. Further relevant information can be found in Advice Note 7 'Preliminary Information, Screening and Scoping' and in the Planning Inspectorate's Pre-Application Prospectus[23].

Habitats Regulations Assessment

95. When considering whether a project has the potential to significantly affect the integrity of certain European protected wildlife sites[24], the applicant must provide a report which should include the site(s) that may be affected, together with sufficient information to enable the Secretary of State, as decision maker, to conclude whether an appropriate assessment is required, and, if so, to undertake such an assessment.

96. It is the applicant's responsibility to consult with the relevant statutory bodies and, if they consider it necessary, with any relevant non-statutory nature conservation bodies, in order to gather evidence for such a report

[23] http://infrastructure.planningportal.gov.uk/application-process/pre-application-service-for-applicants/.

[24] See the Habitats Directive (Council Directive 92/43/EEC), the Conservation of Habitats and Species Regulations 2010, Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 and the Wild Bird Directive (2009/147/EC).

(to support a Habitats Regulations Assessment). This consultation should take place as early as possible in the pre-application process. One way of doing this is for an applicant to agree an evidence plan.[25] The Planning Inspectorate can also comment on the applicant's draft report in advance of formal submission of the application if it is provided in good time. Further advice on Habitats Regulations Assessments for major infrastructure projects is available from the Inspectorate's Advice Note 10.[26]

Drafting the Development Consent Order

97. Applicants are responsible for ensuring they submit a well written draft Development Consent Order ("Order") as part of their application. Whilst the content of a specific Order will depend on the project, the general considerations should be similar. When drafting an Order, applicants should ensure they consider every phase of the project and seek the views of relevant local authorities and other statutory consultees. Given that many Orders will be made as Statutory Instruments, applicants should be satisfied that they have arrangements in place for appropriate specialist advice when drafting the Order.

98. Applicants may find it helpful to undertake early discussion with a range of parties on the content of the draft Order. Where felt necessary, local authorities may suggest appropriate requirements to be included in the draft Order. These may be similar to conditions attached to a grant of planning permission. They could include the later approval (after the granting of an Order) by the local authority of detailed project designs or schemes to mitigate adverse impacts.

99. 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 Inspectorate is able to offer without prejudice advice to applicants on the draft Order, in advance of formal submission of the application. In all cases, it is the applicant alone who is responsible for ensuring the Order is suitable and meets their own requirements. Further detail on what may be included in an Order can be found in section 120 of the Planning Act.

---

[25] http://www.defra.gov.uk/publications/2012/09/28/habitats-evidence-plans/ See also Planning Inspectorate's Advice Note 10: http://infrastructure.planningportal.gov.uk/legislation-and-advice/advice-notes/.

[26] http://infrastructure.planningportal.gov.uk/legislation-and-advice/advice-notes/.

100. Applicants are free to draft their Order in a manner of their choosing, subject to the conditions of the Planning Act. They may wish to draw upon previous and ongoing applications as a point of reference and other relevant guidance and advice[27]. Applicants are required to submit an explanatory memorandum as part of the application pack, setting out the reasons behind the drafting of specific provisions in their Order.

101. A draft Order must include a full description of the proposed development, and should also include but need not be limited to:

- 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 Order;
- details of timings for any phased aspects of the development;
- conditions stipulated by other licensing bodies;
- details of any impact mitigation activities;
- provisions 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 where required). Applicants are encouraged to include these, where possible, to take advantage of the benefits of aligning other consents within the Order. Those responsible for non-planning authorisations and consents should support such an approach wherever possible;
- any necessary requirements, along with the mechanisms for discharging these, including the responsible authority and any appeal mechanisms; and
- provisions dealing with any transfers of liabilities and benefits of the Order or any specific provisions of the Order.

102. The Schedule to the Order which sets out the authorised development and further works should describe in part 1 ('authorised development') as fully as possible the elements of the proposed project (including any associated development). It should include all development for the purposes of section 32 of the Planning Act, for which development consent is sought. Part 2 ('ancillary works') should describe as fully as possible the ancillary works for which consent is sought and which are not development within the meaning of section 32 of the Planning Act.

[27] Applicants should also refer to Advice Note 15 Drafting Development Consent Orders as published by the Planning Inspectorate and Advice Note 13, preparation of a draft order granting development consent and explanatory memorandum: http://infrastructure.planningportal.gov.uk/legislation-and-advice/advice-notes/.

103. Applicants with projects that will take a considerable amount of time to be completed are likely to want to allow for some degree of flexibility in the Order. This could be to allow applicants to take advantage of future, as yet unknown, technological developments, the requirements of occupiers (for example, of rail freight interchanges), and capacity considerations. This poses specific challenges, as the draft Order needs to be detailed enough to allow the Secretary of State to make an informed and balanced decision on the benefits of the project and its impacts.

104. Where applicants identify aspects of their proposed project where they want this flexibility, they may wish to include provisions in the Order concerning the discharging of particular finalised aspects of the project and the nomination of a specific discharging authority. Applicants should ensure that they have consulted with the proposed authority about their proposals and they should include a rationale for their approach along with their application, for example in their consultation report or explanatory memorandum. It may be more appropriate for particular types of projects to adopt the Rochdale Envelope approach).

105. There may be circumstances where despite extensive consultation, the applicant is unable to determine a preferred option for a particular aspect of a development. This may happen, for example, where consultees differ in support of one or more options or there is no other overriding factor for determining between them. Equally, the best option in environmental assessment terms will not always equate with the option favoured by the local community. There will be benefits to all parties in being able to consider the balance of arguments for and against options in these circumstances. Therefore, it is permissible to include more than one option in the draft Order, and to allow the issue to be explored as part of the examination of the application, provided that:

- all options have been fully consulted on;
- that the environmental impacts for all such options have been fully considered and assessed and included within the environmental statement submitted with the application;
- where relevant, that the options are included in ‘land plans’ and the ‘book of reference’ for the purposes of compulsory acquisition;
- where relevant, that the options are included in the draft DCO, and shown on the ‘works plans’.
- applicants have ensured that they have included a rationale as to why it has not been possible to decide on one option prior to submission of the application;
- this mechanism is not used to include within an application options which effectively constitute different projects, or as a substitute for a proper options appraisal;
- the options are not so complicated that it would be difficult for consultees to grasp the various pros and cons, and

- The options are not so many and so complicated that they could jeopardise the prospects for full examination within six months.

A Development Consent Order as a Statutory Instrument

106. Applicants may find it necessary to apply, modify or exclude a statutory provision as part of their draft Order. If this is the case, the draft Order has to be made as a statutory instrument.

Considering cumulative impacts

107. Applicants should consider the potential cumulative impacts on an area as a result of increasing development in the proposed area, as well as those developments which are:

- in the process of being built;
- permitted application(s), but not yet implemented;
- submitted application(s) not yet determined;
- projects on the National Infrastructure's programme of projects;
- identified in the relevant Local Plan (and emerging Local Plans - with appropriate weight being given as they move closer to adoption) recognising that much information on any relevant proposals will be limited, and
- identified in other plans and programmes (as appropriate) which set the framework for future development consents/approvals, where such development is reasonably likely to come forward.

108. It may not always be easy for applicants to assess potential impacts fully due to lack of available information. In such circumstances, applicants should take a pragmatic approach when determining what is feasible and reasonable. They should satisfy themselves that they have made all reasonable efforts to identify the main impacts and to include mitigation measures in their draft Order. As with the parameters for the Rochdale Envelope, applicants should fully explain their options to the Secretary of State as part of their application. National Policy Statements[28] provide a useful overview of common impacts and ways of mitigating them.

[28] For more information, see: http://infrastructure.planningportal.gov.uk/legislation-and-advice/national-policy-statements/.

Flexibility on the detail of the proposal (the "Rochdale Envelope")

109. The term "Rochdale Envelope" refers to the additional flexibility given to certain applications under the Planning Act, particularly in those cases where there are good reasons why the details of the whole project are not available at the time of submitting the application.

110. It is expected that draft Orders submitted will generally closely reflect the actual final development. However, there may be times where a degree of flexibility is required, over and above the situation described above. For example, the Overarching National Policy Statement for Energy[29] identifies the use of the so called Rochdale Envelope approach as a suitable way forward in these circumstances.

111. 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 may give rise to a separate project.

112. The use of the Rochdale Envelope approach does not remove the onus on applicants to submit as detailed as possible project proposals in their application, and it should certainly not be an excuse for an unnecessary degree of flexibility. The Inspectorate and the Secretary of State will need to be satisfied that, given the nature of the project, they have full knowledge of the likely significant effects on the environment. 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 'worst-case' scenario which can serve as an overarching reference point for mitigating actions. In addition where it is considered that too much flexibility has been used, and therefore there is uncertainty as to the likely significant effects, then more detail can be required or consent can be refused[30].

---

[29] http://www.decc.gov.uk/assets/decc/11/meeting-energy-demand/consents-planning/nps2011/1938-overarching-nps-for-energy-en1.pdf.

[30] Applicants should also refer to Advice Note 9, Rochdale Envelope, as published by the Planning Inspectorate: http://infrastructure.planningportal.gov.uk/legislation-and-advice/advice-notes/.

113. 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 project. To aid this, it may be practical to set out the project proposals in terms of minima and maxima, to better illustrate the scale of the parameters and the likely effects for different scenarios.

The Secretary of State's acceptance of applications

114. Before an application can be accepted, the Planning Act requires that the Secretary of State must be satisfied that the applicant's pre-application consultation has complied with the provisions in the Act and that the application is of a satisfactory standard to be examined. The Secretary of State's judgement 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 other statutory guidance published by the Secretary of State;
- 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" representation); and
- the overall quality of the application in terms of the ability of the Examining Authority to be able to examine it within the maximum 6 month statutory time period.

115. In particular, applicants should be able to demonstrate that they have acted reasonably in fulfilling the requirements of the Planning Act, including in taking account of responses to consultation and publicity. The Government recognises that applicants and consultees will not always agree about whether or how particular impacts should be mitigated. The Secretary of State 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) if the applicant has acted reasonably.

116. Section 55(3)(f) of the Planning Act states that the application should be of a satisfactory standard. This means that meeting the consultation requirements alone will not guarantee that an application will be accepted for examination. Section 55 (5A) requires the Secretary of State in considering whether an application is of a satisfactory standard to have regard to the prescribed form and contents of applications and whether it

complies with applicable guidance. The level of detail and definition of the project and the resulting quality of the information contained in the application as a whole will therefore have a bearing on the Secretary of State's decision.

117. 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.

118. 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 applicants.

Publishing application documents

119. To help everyone become familiar with the detail of what is being proposed in an application, provided the applicant agrees, the Planning Inspectorate will make application documents available on the relevant project page of the National Infrastructure portal as soon as practicable upon submission.

120. This provision is solely for the purpose of allowing more time to all those who wish to become familiar with the detail of what is being proposed ahead of the relevant representation period without lengthening the overall time required for the application process. There will be no opportunity at this stage to make comments on the application. However, if the application is accepted anyone interested in the application will be able to register and express their views during the relevant representation stage and the subsequent examination.

121. The decision about whether or not to accept an application rests solely with the Secretary of State. The only adequacy of consultation representations the Secretary of State is required to have regard to are those from a relevant local authority.

122. Where the Secretary of State does not accept an application, the Planning Inspectorate will remove the application documents from the National Infrastructure website. The Secretary of State's reasoning for not accepting the application will be published on the Inspectorate's website.