**MHCLG Consultation on Streamlining Infrastructure Planning**

**Response from:**

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1. **Would the package of measures being proposed in this paper support a more streamlined and modernised process? Are there any risks with this package taken as a whole or further legislative measures the Government should consider?**

*Whilst there are some important proposals in the working paper that we support, that are intended to increase certainty and speed up delivery, there is a danger that in seeking streamlining and modernisation this may result in the unintended outcomes of added complexity and lack of oversight. We detail these below.*

1. **Are the proposed changes to NPSs the right approach and will this support greater policy certainty?**

*Policy certainty is the cornerstone of the effective operation of the NSIP regime.*

*We therefore fully support proposals requiring NPSs to be updated every five years and for a more streamlined process for making changes to NPSs to be introduced. However, it is critical that any streamlined process has regard to the need for sufficient parliamentary scrutiny of proposed changes. This is critical for the effective functioning of the regime in relation to democratic accountability of decision making. We are, therefore, concerned about the proposed ‘reflective amendments’. The working paper states “as the legislation and policy underpinning a reflective amendment will have been scrutinised by the public and Parliament on its own terms, we are proposing to disapply those elements of the parliamentary scrutiny requirements as set out under section 9 of the Planning Act 2008” (para 20).*

*In establishing the need case for development - National Policy Statements have an unusually decisive role as compared to other parts of the planning system. As a result, decision making on individual projects rests on management and mitigation and not the principle – need case - of development. For this reason, we consider it critical that full parliamentary scrutiny is applied to NPS amendments. We would question whether – for example - changes to government policy including on spatial planning – as detailed as potentially triggering a change to an NPS, will have been scrutinised by the public and parliament to the extent that they should form a change to an NPS without full parliamentary scrutiny.*

*Furthermore, we note reference to the Strategic Spatial Energy Plan and need for NPSs to reflect wider Government Strategies – again potentially triggering the need for NPS review / amendment.*

*Government needs to be absolutely clear about the relationship between National Policy Statements and the Strategic Spatial Energy Plan, and other emerging proposals for greater spatial specificity in other individual sectors plans. There is a potential for significant confusion about the status of these sector specific plans and the inter-relationship between them and NPSs for the purposes of decision making.*

*We are strongly of the view that NPSs as currently drafted lack sufficient spatial specificity. The effective operation of the regime – for both promoters and communities - would be enhanced by a greater focus on locations. Additionally, there is a need for greater co-ordination of NPSs and sector specific plans, via a national spatial framework.*

1. **Do you think the proposals on consultation strike the right balance between a proportionate process and appropriate engagement with communities?**

*We understand the need for proportionate approach to engagement with communities, especially considering the evidence of the significant increase in consultation carried out by promoters to – at least in theory - de-risk projects.*

*It is critical, however, that consultation with communities is seen as a meaningful and impactful exercise both for communities and promoters. This is particularly important in the context of the design of the regime – with decision making focussing on management and mitigation and not on the principle of development (as noted above).*

*There is a danger that in focussing on proportion, insufficient attention is given as to how best to engage and support local communities in participating in projects. Substantially more learning is needed in this area.*

*We suggest that any proposals around consultation are considered against the wider backdrop of Lord Banner’s review of judicial review. Both Lord Banner’s review, and the Government’s response, were sensible but could be characterised as only ‘tinkering at the edges’ and failing to address one of fundamental reasons why JR has been on the increase: increased legibility of these projects to those with an interest in climate justice and those with high localised impacts. The result has been a propensity towards the use of JR as a basis to oppose and delay projects. Whilst some of the proposed changes to JR – alongside improved policy certainty via NPS reviews – should reduce the rate of JR, parallel attention needs to be given to how to better manage projects in the national interest with high localised impacts. Effective and meaningful community engagement needs to be understood as a key part of ameliorating a future risk of JR.*

*We are intending to progress work with the National Infrastructure Planning Association around community benefits and community legacy. This has the potential to significantly support this area of work, and we would welcome further discussion with MHCLG on this.*

1. **Do you agree with the proposal to create a new duty to narrow down areas of disagreement before applications are submitted? How should this duty be designed so as to align the incentives of different actors without delaying the process?**

*No comment here.*

1. **Do you support the changes proposed to Category 3 persons?**

*No comment here.*

1. **With respect to improvements post-consent, have we identified the right areas to speed up delivery of infrastructure after planning consent is granted?**

*We would like to refer you to our work in 2023 for the National Infrastructure Planning Association on practitioner’s perspectives on DCO implementation which focussed specifically on the post-consent stage, and improvements needed to support delivery. The detail contained within both the main report and the detailed case studies may be of use in considering different elements of the post-consent stage.*

<https://nipa-uk.org/wp-content/uploads/2023/08/NIPA_Hindsights_Final_Report.05.07.2023.pdf>

<https://nipa-uk.org/wp-content/uploads/2023/08/NIPA_Insights_III_Supplementary_Report_Case_Studies_05.07.23.pdf>

*In particular, we are very supportive of your proposals around the post-consent change process. This has had a significant impact on the ability of promoters to be able to implement important changes in the wider public and environmental interest, as well as practical changes to ease the process of construction.*

*We note no mention in the working paper to the process of discharge of requirements (DoR). Whilst this is not an area of practice requiring legislative or policy reform, we emphasise that this is a significant part of the post-consent stage, and one which receives little attention in discussions about how to speed up delivery. Here, significant regard is needed to the resources of both LPAs and other statutory bodies that have a role in DoR. For those local authorities with little experience and knowledge of NSIPs, the DoR process is a significant challenge in relation to both resources and experience.*

1. **What are the best ways to improve take-up of section 150 of the Planning Act? Do you think the approach of section 149A has the potential to be applied to other licences and consents more generally?**

*Yes, further work, is needed in this area as outlined on page 13 of the working paper. Indeed, we specifically called for a review of licenses and permits in our work for NIPA [linked above] to consider how these could be brought into the one-stop shop approach. Many promoters do not consider the one-stop shop as initially envisaged by the 2008 Act to be the reality of the NSIP regime as currently operating.*

1. **With respect to providing for additional flexibility, do you support the introduction of a power to enable Secretaries of State to direct projects out of the NSIP regime? Are there broader consequences for the planning system or safeguards we should consider?**

*We are supportive – in principle – to the proposed opt out. Paragraph 42 of the working paper is convincing in this regard. The paper states that “the Secretary of State would prepare and publish criteria for making these decisions”. This is critical. Without transparency of criteria, there is a significant danger that any opt out arrangements create significant confusion for stakeholders – including for local communities.*

1. **Do you believe there is a need for the consenting process to be modified or adapted to reflect the characteristics of a particular project or projects? Have we identified the main issues with existing projects and those likely to come forward in the near future? Can we address these challenges appropriately through secondary legislation and guidance; or is there a case for a broad power to enable variations in general? What scope should such a power have and what safeguards should accompany it? If a general process modification power is not necessary, what further targeted changes to the current regime would help ensure it can adequately deal with the complexity and volume of projects expected over the coming years?**

*We note several mentions within the working paper to the need for certainty for both promoters and communities. Here, we wish to briefly highlight the longstanding dilemma in planning between measures that increase certainty for promoters (in relation to speed and outcome of decision making) with the desire for increased flexibility, in particular to support the delivery phase. In practice, the holy grail that achieves both is difficult to achieve. However, it is important to note that significant improvements can be achieved to the operation of the regime without major systems reform, that focus instead of culture and practice, including (but not limited to) for example, greater project-based learning and sharing, improved early contractor engagement, closer working between the engineering and wider built environment and legal professions.*

*To note:*

*We have recently had accepted for publication an academic journal paper on balancing flexibility and certainty in national infrastructure planning. This provides a wider set of reflections on issues of flexibility as well as a literature review that highlights relevant contributions from the fields of planning, engineering, and project management.*

*We are sharing this with the MHCLG ahead of publication so would be grateful if this is not circulated widely.*