



Planning for a Sustainable Future:

Transport 2000 Response to Consultation White Paper, August 2007

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Introduction

Transport 2000 is an independent campaign and research group that works for sustainable transport policies. We bring together a wide range of different organisations including voluntary organisations, environmental groups, trade unions, local authorities and transport operators.

Summary

Transport 2000 supports the need for modest evolutionary reform to planning for major infrastructure. In our view, the Planning White Paper does not make a convincing case for radical change, but in our response we suggest some modifications to the PWP proposals should the Government decide to proceed.

Better preparation of project proposals and stakeholder engagement on projects at pre-application stage are some of the modest changes which would produce better quality and speedier outcomes. Many delays to projects result from poor scheme preparation and difficulties over funding implementation, rather than delays at public inquiry and decision-making stages.

We do however advocate a fundamental reform of planning for motorways and trunk roads on grounds that the current system is contrary to natural justice, should the PWP proposals for major infrastructure projects not proceed.

We support the preparation of national policy guidance for major infrastructure. However, we are concerned that powerful location-specific National Policy Statements

would create a presumption in favour of environmentally-damaging development. We would prefer to see:

- Policy statements on infrastructure which sit beneath the suite of Planning Policy Statements;
- Major infrastructure projects treated as a solution of last resort after all other options, starting with demand management have been explored;
- Ability to test any projected capacity and demand forecasts of need that are produced through a formal scrutiny process;
- All National Policy Statements for nationally significant infrastructure projects to be subject to Strategic Environmental Assessment and backed up by a statutory sustainable development duty on decision makers.

We recognise the case for a single consent regime for transport infrastructure projects of national importance, provided that the current range of tests are retained and fully considered and legal criteria are met. In the absence of an independent commission, unified consents could be legislated for and handled by the Secretary of State for Communities and Local Government, with input from the relevant Secretaries of State.

Should the Government decide to proceed with the creation of an Infrastructure Planning Commission for handling simplified consents, it is important that the role of the new body is not seen simply as a “rubber stamping” exercise. Its role would need to be set in the context of the Planning Policy Statements produced by the Government and subject to consultation as well as other national policy on infrastructure evolved through a robust process

We consider that the role would best be conducted by the commission based on a strengthening of the role of the Planning Inspectorate, who would appoint and manage appropriately skilled people to undertake these roles.

We have concerns over the power of the Commission to grant consents, confer powers and amend legislation. We would prefer such matters to remain with democratically accountable Ministers.

Essential to the smooth running of the entire process is a robust policy framework based on clear evidence developed through consultation, options evaluation, appraisal and assessment. Any new planning regime can only work if all options are considered on an even playing field basis, statements are kept up to date, a more strategic and inclusive approach to engagement is adopted and the independent commission takes an even handed approach. This will require significant resources, more transparency and new processes.

Q1 Do you agree that there is a strong case for reforming the current system for planning for nationally significant infrastructure?

We believe the current planning system for most types of major infrastructure (apart from planning for motorways and trunk roads) broadly works, but that some modest changes are desirable for the benefit of all interests. Planning for major infrastructure is by its nature a complex and time consuming process. Attempts to simplify and speed up the planning system will not necessarily produce a better or faster outcome. Measures to achieve greater certainty and speed for individual projects should not be at the expense of quality nor act as a substitute for long-term strategic planning.

In our view, the case for radical reform has not been made by the Planning White Paper (PWP). Kate Barker and Sir Rod Eddington identify the main causes of delay to major infrastructure as the lack of a national policy framework for some types of infrastructure, complex consent regimes and procedural arrangements governing certain types of schemes and Ministerial delay in reaching a decision. Their reports have shown to be false a common 'business' perception that local communities are the main cause of delay.

Closer examination of transport schemes cited for illustrationⁱ indicates that a moderate level of delay can be ascribed to these causes (notably, lack of a national policy framework), but that other factors are at work:

- Competence of the promoter
- Advancement of schemes which are environmentally unsustainable or ill-conceived
- Ambiguous government policy.

In two of the cases shown (Bathside Bay and Felixstowe), it is unlikely that the PWP would have shortened the timescale from start to finish.

Barker and Eddington highlight the two lengthy inquiries into Dibden Bay and Heathrow Terminal 5 as justification for reforming the system. However, these schemes are atypical and do not constitute grounds for wholesale reform.

Scrutiny of some recent transport infrastructure projectsⁱⁱ that have been subject to delay show that poor preparation by promoters is a major factor.

No hard evidence is provided by Barker and Eddington to support their claim that the planning system is harming economic interests or their assertion that promoters are being deterred from bringing forward projects. Indeed, Eddington concludes that overall the planning system for major projects is reasonable and results in sensible judgments without imposing unjustified environmental and social costs

Eddington highlights three key challenges under the current system: length of time; uncertainty; expense and cost-escalation. At a meeting with Transport 2000 (11 April 2007), Sir Rod acknowledged that planning reforms were unlikely to improve speed, but he pinpointed certainty as the main purpose behind his recommendations.

However, certainty doesn't guarantee delivery. The motorway and trunk road planning system has certainty built into it and yet the road programme is behind schedule and over-budget. The Nichols studyⁱⁱⁱ examined the factors behind serious cost escalations of individual Highways Agency schemes and identified as a main factor the loss of strategic

delivery focus and capability as result of a change in Government policy in Managing Our Roads (2003). This transformed the Highways Agency from an organisation focused on managing assets into an operator focused on the customer, resulting in changes to delivering the road programme.

The business community doesn't appear to fully understand how the planning system works and as a result blames it for any delays.

An illustration is the campaign, 'Get Britain Moving', launched by the British Chambers of Commerce on 13 August 2007, in support of its claim that the planning system had slowed down the approval process for 16 road projects.

Examination of the projects show the reasons given for the delays have little to do with the planning system and everything to do with other factors such as funding or the fact that the schemes are at an early stage of preparation or even that they are business aspirations and not in the planning system. One-third of the schemes are local and fall outside the PWP threshold. The schemes featured on the website and the real reasons for their delay are as follows:

Scheme at very early stages of preparation:

- M6 widening between 11A and J19, A27 Chichester, A5 to M1 link road

Schemes pushed back/not prioritised in the Regional Funding Allocations:

- A46 widening between Newark and Widerpool, A11 Fiveways to Thetford

Highways Agency imposition of capacity restrictions to stop local developments congesting strategic route:

- A1 Western Bypass, M65 (built as D2 but BCC wants D3), Towcester Bypass (local authority road scheme)

No plans for a road scheme

- A27 Arundel – The Secretary of State rejected Arundel Bypass following the South Coast Multi-Modal Study; link road from M18 to Finningley Airport.

Schemes that fall outside Planning White Paper remit/threshold

Scotland - Improvements to A96 linking Aberdeen and Inverness;

Local authority - Port of Heysham Link Road, Corby Link Road, Isham Bypass, Towcester Bypass.

Examples of current bad practice

The forms of development which cause real difficulties (and major objections) tend to be where

- A Minister can promote and decide on his own proposal (Motorways; from 1945 until c1970, New Towns)
- Government is pushing a promoter to deliver infrastructure (reservoirs, major electricity transmission lines, power stations)
- Government money is promised or allocated while procedures are being undertaken

Some good practice

- Former British Rail bill procedure (Annual BR bill to authorise a range of local works across the network)

- Channel Tunnel Rail Link (hybrid bill)
- Well-heralded applications with extensive public participation at early stage
- Call-ins of planning applications for decision by a 'Planning Minister' with no link to promoter.

The planning system is only one part of the implementation process for major projects. Besides project preparation, governance and competence issues, funding of infrastructure is an even more critical element.^{iv} There are many cases where delays or withholding of funds has stalled many major transport infrastructure projects which have wide public support (eg Crossrail, Thameslink 2000, light rapid transit schemes in Manchester, Liverpool, Portsmouth-Gosport and Leeds). While in London procedural problems did arise, in the Provincial cities named there were few objections to the proposed tramways and gaining approvals and consents was relatively simple; indeed powers in some cases expired while funding was still being sought.

Advocacy of Radical Reform of Motorway and Trunk Roads Planning

We believe there is a compelling case for radically reforming the highly undemocratic planning system for motorways and trunk roads.

Under the Highways Act 1980, the Secretary of State for Transport promotes Orders. Jointly with the Secretary of State for Communities and Local Government, he makes decisions on his/her own proposal. This promoter-decision maker structure dates from the original 1936 Trunk Roads Act, and has been widely criticised.

If the works proposed do not require a new alignment, only a Compulsory Purchase Order and sometimes a Side Roads Order is required. If no land is required, the 'General Powers of Improvement' (Part V of the 1980 Act) allow the Secretary of State to do such works as he desires to a trunk road (lighting, traffic signals, widening within highway boundary, roundabouts where no new land is needed or its can be acquired by agreement).

As a general principle, a promoter should not be able to make a decision on (grant approval to) his own proposal. This is contrary to the rule of natural justice that no one should be judge in their own cause. The Highways Act powers held by the Secretary of State conflict with this principle.

Schemes entering the Targeted Programme of Improvements (now termed the Highways Agency Major Schemes Programme) are seen as government policy. Those affected are at a severe disadvantage in challenging the principle of or the need for a scheme at public inquiry (a principle promoted by the PWP) or the traffic forecasts underpinning them. As a result, the motorway and trunk road planning system has been the source of many battles and is not fit for the 21st century

In the event of the Government not proceeding with the creation of an Infrastructure Planning Commission (IPC), we strongly urge the Government to implement radical reform of motorway and trunk roads planning to include separation of the powers of promotion and decision-making. One option would be to make the Highways Agency a statutory free-standing board, similar to the former British Railways Board, in which land ownership and statutory functions and powers are vested, with application to the Secretaries of State for approval of major schemes and to local planning authorities for planning permission for minor schemes.

1b Do you agree, in principle, that the overall package of reforms proposed here achieves the objectives that we have set out?

We do **not** agree that the overall package of reforms achieves stated objectives.

The PWP responds to a perception shared by business and HMG Treasury that planning is a constraint on economic activity. In 2002 Parliament rejected Government proposals to give MPs a role in deciding major infrastructure. Instead, the Government is promoting the “more radical approach” of “an independent body” previously floated as an option in the 1999 Modernising Planning Consultation Paper¹ and then dropped. Thereafter, the Treasury commissioned the Barker review and Eddington study, making economic development the focus. The PWP takes forward their recommendations, the main purpose of which is to create certainty for promoters of major infrastructure.

The PWP assumes that building major infrastructure is the way forward for a range of challenges facing the UK. The Government has yet to lead a public debate on which route to take – major infrastructure aimed at meeting demand or sustainable development solutions aimed at managing demand. Transport 2000 considers the UK should work within environmental limits in line with the UK Strategy, Securing the Future (2005).

Government transport policy is inconsistent; in some areas, the emphasis is on managing demand (for example, roads and traffic, although policy is ambiguous); in other areas (eg airports and ports) the approach is one of predict and provide. This lack of clarity is reflected in the PWP. On the one hand, a case is made for infrastructure to facilitate mobility,

“People....expect to be able to travel reliably including by road, rail and air” 1.14

On the other hand, there is recognition of the need for demand management for transport in general:

“National Policy Statements (NPSs) for the transport sector would need to consider what increases in capacity were needed to support growth and increasing demand in the context of other relevant policies such as managing demand for transport and reducing carbon emissions” (3.5)

Unless transport NPS are unambiguous and up-to-date, debate at an examination over government policy and merits of applications will continue. Equally, where NPS contain location-specific infrastructure, coverage of issues and options must be detailed and comprehensive if they are to be fit for purpose.

In terms of whether the reforms achieve the objectives, examining each in turn:

- **Planning must be responsive, particularly to long term challenges such as increasing globalisation and climate change and properly integrate our**

¹ Modernising Planning: Streamlining the processing of major projects through the planning system: Consultation paper, DETR, 1999

economic, social and environmental objectives to deliver sustainable development;

We agree planning must be responsive, especially in view of rapid climate change, but believe the PWP will produce the opposite effect. Front-loading the policy-making stage will be a complex, lengthy and hard fought process. We fear the outcome could be rigid, inflexible NPS that quickly become outdated.

The idea that building major transport infrastructure - motorways, airports and ports - can reduce climate change stretches credulity.

All the evidence shows that transport emissions are continuing to rise due to reliance on fossil fuel, longer trips and cheaper car and air travel. Expanding roads, ports and airports will encourage more travel and outweigh any benefits from technological advances in vehicle and fuel efficiency, measures which are being shown to have a “rebound” effect² by generating more car travel and emissions. Allowing transport emissions to increase at predicted rates will put more pressure on other sectors and threaten the Government’s overarching targets.

The PWP could lock the UK into large and expensive programmes of infrastructure when we should be looking to address the drivers behind travel demand and forecast growth and developing lower impact solutions based on making best use of existing infrastructure and reducing the need to travel.

We are concerned about the PWP’s inadequate approach to climate change. The document refers to “the potential impact of infrastructure on carbon dioxide emissions” (box 3.2), but only in the context of minimising the impact rather than avoiding emissions. National Policy Statements would be expected “to address the impact of construction and operation of the infrastructure itself as distinct from its use” and “to reflect the need for resilience”. If individual projects are later shown to increase greenhouse gases, a commission would be unable to reject an application on climate change grounds since the main aims of projects have only to be consistent with the relevant NPS. We believe there must be a duty on the IPC to consider the carbon implications of a project with the ability to reject any applications on climate change grounds.

Although the PWP expresses warm sentiments on sustainable development, sustainability has been retrofitted onto a package that has economic development at its heart. It appears the Government has made up its mind by stating as an overall aim that NPS “would set out the case for national infrastructure development” (3.21).

The PWP should be made subject to a range of sustainability and environmental tools. Strategic Environmental Assessment should be applied to **all** NPSs and not selectively. Ministers must consider alternative options for meeting objectives where adverse effects are shown. National Policy Statements should consider the total and cumulative impacts of a range or programme of projects and not just the impacts of individual projects.

Sustainability Appraisal should also be applied to determine whether the proposals also satisfy the social and economic criteria for sustainable development. Socially excluded communities must not be seen as opportunities for dumping damaging infrastructure.

² Synthesis of Climate Change Policy Appraisals, Defra, 2007

An Appropriate Assessment under the Habitats Regulations (1994) is required where policies and proposals are likely to have a significant effect on Natura 2000 and Ramsar sites. Where adverse effects are indicated, the Government would need to show that no alternative solutions exist before proceeding. An AA must be undertaken during NPS preparation so that alternatives can be fully explored and not relegated to the decision-making stage.

Local impacts may not be known until the Environmental Impact Assessment stage. However, the PWP states the Commission must approve an application where the main aims are consistent with the relevant NPS unless adverse local impacts are incompatible with relevant EC and domestic law. In such circumstances, the IPC would be unable to consider an alternative location or option, but could only consider mitigation measures. This could lead to a poor outcome on an infrastructure project which would be widely seen as defective, caused by the constraints placed on the decision-maker and potentially open to legal challenge.

- **The planning system should be streamlined, efficient and predictable**

The above objectives must not be at the expense of more desirable objectives such as thoroughness, quality and public participation. We support predictability in the sense of timing, but not in the sense of pre-determining the outcome.

In 2005, the ODPM published new procedures for streamlining major projects in Planning Inquiries into Major Infrastructure Projects and resolved to monitor their implementation for five years. There have been no major planning applications to date and as a consequence it is unknown whether the reforms will be effective.

Meanwhile, the Government has been slow in producing statements of national policy first discussed in 1999³. We support the preparation of guidance on infrastructure, but not prescriptive location-specific. Drawing up unambiguous, robust NPS upon which the whole system hangs and keeping them up-to-date will present a huge challenge.

The starting date of April 2009 for the commission is unrealistic. NPS are unlikely to be approved by then. As a result the commission will need to allow testing of merits at an examination.

Statements must be accompanied by public funding commitments where relevant since funding implementation is one of the main reasons for project delay.

We support the requirement for promoters to consult stakeholders and local communities at the pre-application stage. The length of time between application and decision stages will be shortened if promoters produce a thorough, well-conceived, well-researched, high quality project and fully engage with stakeholders. Well-prepared applications would overcome the delays currently created by poor schemes and avoid the need for an elaborate new structure.

We recognise the case for a single consent regime for transport infrastructure projects of national importance, provided that the current range of tests are retained and fully considered and legal criteria are met, eg the exchange of Common land. In the absence

³ Ibid

of an IPC, unified consents could be legislated for and handled by the Secretary of State for Communities and Local Government, with input from the relevant Secretaries of State.

- **There must be full and fair opportunities for public consultation and community engagement**

We welcome public consultation on NPS. Achieving a faster decision making process will only be possible if the NPS stage involves a wide, inclusive and open debate. The new planning process can work but only if all options are considered on an even playing field basis and a more strategic and inclusive approach to engagement is adopted. This will require significant resources, more transparency and new processes.

We would also like to see stakeholder consultation on capacity and demand forecasts, backed by an independent inquiry.

Overall, we believe the PWP will strongly disadvantage local communities to the benefit of economic interests. We are strongly opposed to reforms which water down the right to be heard at any stage.

The NPS stage is likely to become the **only** opportunity when the public will be able to challenge the need for a project.

Government should recognise the difficulties of local communities and individuals to engage at a high policy level. It is not until publication of an Environmental Statement that the detailed local impacts are known. Once a NPS has been approved, stakeholders will be unable to test the merits of the proposal in relation to its location. For example, a person moving into a house near Heathrow after the relevant NPS has been approved would be unable to object to noise impacts predicted to arise from a 3rd runway proposal at an examination.

The threshold for rejecting projects at a public inquiry would be raised dramatically, heavily weighting the outcomes against local communities. Unless adverse local impacts are shown to be incompatible with relevant EC and domestic law, the Commission must approve the application where its main aims are consistent with the relevant NPS.

In relation to proposed arrangements for examinations, we are concerned about:

- the loss of the right to challenge merits in relation to location;
- reliance on written statements;
- removal of right to cross-examine the promoter's witnesses⁴
- replacement of the right to speak and cross examine by an "Open Floor" session which is programmed after the main examination stage.

Public participation in planning is a force for good and demonstrably improves the quality of outcome. It was introduced by the 'Skeffington' principles in the late 1960s, which aimed to improve decision-making by involving the public, in the context originally of the

- ⁴ in 2001, the Secretary of State "ruled out proposals to abolish the right to cross-examine at public inquiries" and it is unclear why the Government position has changed (New Parliamentary procedures for processing major infrastructure projects, Announcement by the Secretary of State for Transport, Local Government and the Regions, (July 2001).

new development plan system which the 1968 Town & Country Planning Act brought in. This came at a time of growing public interest in the environment. If community participation is weakened, history shows that people will find ways of expressing their disquiet, such as legal and other forms of civil action which are likely to result in greater delays.

- **The planning system should be transparent and accountable**

We strongly agree, but there are many question marks over the achievement of these objectives.

For example, it is unclear how options will be identified at NPS stage. We are concerned that options may be determined on the basis of opaque projected capacity and demand forecasts. Experts and organisations must be involved (not “may” be involved) in considering such assessments, with a requirement for the commission to hold an independent inquiry.

The PWP reforms would hand considerable responsibility and power to unelected commissioners. Hence, it is essential that their work is guided inter alia by robust, evidence-based policy that has been subject to consultation and scrutiny.

- **Planning should be undertaken at the right level of government – national, regional and local.**

We are concerned that over-arching NPS would undermine the plan-led approach. If NPS are made spatially specific, question marks arise over lower tier plans relating to status, purpose and accountability. The process between national policy, Regional Spatial Strategies and Local Development Frameworks must be iterative.

We have concerns over the Government’s concerns over the current and possible future planning arrangements for transport schemes **below the proposed thresholds**. The PWP indicates the Government’s intention of examining the scope for further devolution of decision making to local authorities, but provides no detail beyond an aspiration to streamline the planning application process and reduce the number of call-in applications.

We are opposed to a reduction in call-ins of planning applications for transport schemes, though would accept that call-ins would be used more strategically. We are concerned about the current powers of local highway authorities to grant themselves deemed planning consent for roads they wish to build with minimal public involvement and scrutiny. We believe that planning applications by local authorities for roads on new alignments should normally be called-in and a public inquiry held. The Council proposing the road has the power to grant itself permission to develop other people’s land without their having the right to a hearing before an independent decision-maker; only by calling in the application by the Council can this independent hearing take place. This change would also result in the strengthening of the currently weak public scrutiny of local authority road proposals. At present the scrutiny by Government is largely one of financial control.

It has been suggested that local authorities might be given their own powers to confirm their own CPOs, Side Road Orders, and Transport & Works Act Orders.

That would introduce at local authority level what Ministers are intending to phase out in the trunk road context. It would be contrary to the rules of natural justice, because the promoting body would become judge in its own cause and able to decide to take land and property owned by others without their having the right to a hearing before an independent body. Ministerial confirmation of local authority CPOs and SROs **must** remain.

Devolving to local planning authorities the decision-making currently done through the Transport & Works Act would cause further problems. Schemes that cross local authority boundaries, which many TWA schemes do, would move from a single consent regime, which the Government is supporting on major projects, to a regime with multiple consents. It raises the possibility of a light rail or guided bus scheme getting planning permission from some of the relevant authorities but having it refused by others. Our earlier points about the real causes of delays in schemes apply here too: it has been Government funding rather than the planning system which has held up such schemes, not the planning system through the Transport and Works Act. We recommend that such schemes stay within the Transport & Works Act and should be decided as now rather than devolved locally.

1c If not, what changes to the proposed reforms or alternative reforms would you propose to better achieve these objectives?

Our preferred approach involves modest changes that include:

- Five year monitoring of the current (2005) MIPs procedures.
- Legally defined high standards of public engagement throughout all stages.
- Preparation of national policy statements on Infrastructure for informing applications and public inquiries and public consultation on these;
 - NPS to sit beneath Planning Policy Statements (PPS);
 - Government to adopt a hierarchy of options, starting with avoidance of infrastructure;
 - stakeholder consultation/independent inquiry into growth forecasts;
 - application of a range of sustainability and environmental tools – Sustainability Appraisal, Strategic Environmental Assessment, Appropriate Assessment;
 - adoption of a statutory sustainable development duty.
- Promoters to engage with local communities and stakeholders at pre-application stage and to fully prepare their case and application.
- Some simplification of types of consents, with power vested in the Secretary of State for Communities and Local Government to take decisions in conjunction other relevant Secretaries of State.
- Strengthened role for the Planning Inspectorate.

- Reforms to public inquiries – reduced domination by lawyers, timetables set for Ministers to make decisions, other minor changes such as proofs of evidence to be taken as read.
- Fundamental reform of the current undemocratic system of planning for motorways and trunk roads. Separation of powers for promotion and decision-making contained in the Highways Act 1980, with the power for promoting schemes passing to an arm's length body.

In our responses to Q2 – 10, we outline our preferred approach to NPS.

Should the Government proceed with an independent commission, the work of the commission will need to be tightly drawn

Firstly, the work of the commission needs to be set in the context of the Planning Policy Statements produced by the Government and subject to consultation as well as other national policy on infrastructure evolved through a robust process. The Commission's work should fall in to several parts.

- a) scrutinising planning policy statements following consultation and prior to their adoption as national policy
- b) developing criteria for determining whether or not any individual project is of national significance and therefore should be dealt with by the Commission
- c) setting out the procedures for dealing with such applications including consultation, evidence and assessment of options
- d) determining the applications for such development proposals but more on the lines of an examination in public and therefore investigative rather than an planning inquiry

We consider that this role would best be done by the Commission being based on a strengthening of the role of the Planning Inspectorate, who would appoint and manage appropriately skilled people to undertake these roles. They have the skills and knowledge of this process from the RSS and LDF machinery. We would also want to see opportunities to include other experts within the panels.

Secondly, a number of safeguards are required to ensure the independence and transparency of the Commission. These are outlined in our response to 16 – 32.

Question 2: National Policy Statements

Do you agree, in principle, with the introduction of national policy statements for key infrastructure sectors in order to help clarify government policy, provide a clearer strategic framework for sustainable development and remove a source of delay from inquiries?

- We consider the preparation and adoption of NPS would be beneficial, subject to concerns raised in response to Q1.
- We are also concerned that NPS should not be seen in isolation from each other, as appears to be proposed with separate ones for transport, energy and other matters. There needs to be an integration of these statements in terms of the subject areas, across time and spatially.
- There will be a need for a common structure across departments in preparing NPS.
- The provision of infrastructure should not be separated from other matters which have economic, environmental and social impacts and spatial implications.
- They must also relate to the relevant Planning Policy Statements, Regional Spatial Strategies (RSSs) and Local Development Frameworks (LDFs). The process must be iterative between current RSSs informing the NPSs and vice versa: this must be clear in the arrangements and legislation set down.
- The development of NPS should mirror that of the production of RSSs and LDFs. There should be a robust evidence base, development of issues and options, consultation on options and a process of scrutiny.

Drawing Up Transport National Policy Statements

There are a number of ways in which NPSs could be drawn up. Up to now, they have been done modally and there are now or will be shortly strategies for aviation, ports and rail. However, the Eddington Report implies a move towards “mode neutrality” and the Department for Transport, reflecting this, now looks at transport cross-modally in terms of “city-regions”, “national networks” and “international gateways”. There is therefore the option of developing NPSs along these lines, in which statements are developed covering, for example, airports and ports together as international gateways, and road and rail as national networks.

We do not however favour going this far. Airports are primarily used by passengers, ports by freight, raising very different issues. There may be more of a case with road and rail networks, but even here there are fundamental differences. We would however support some cross-modal NPSs – for example, incorporating links to ports by road and rail in any ports strategy. There might in fact be a case for a NPS on freight as a whole, encompassing ports, airports, rail and road. This might for example look at the broad criteria for freight terminals as a context for considering applications for intermodal depots.

The PWP at present ties NPSs to the work of an independent commission. We think this is an error. NPSs could be valuable in guiding transport below the threshold of Nationally Significant Infrastructure Project (NSIP) applications and hence give help to promoters, local authorities and Planning Inspectors. For example a “city-regions” NPS might be helpful in spelling out, for example, the Government’s views on light rail as a context for local proposals.

The PWP rejects the idea of involving rail at present, but a NPS on passenger rail (and one on rail freight too if a broader freight NPS is not developed) would be helpful in this broader context too. In this way, NPSs could act on transport in the way Planning Policy Statements do in planning, setting out guidance and strategies and their implications for the planning system.

Question 3: Content of national policy statements

Do you agree that national policy statements should cover the core issues set out above? Are there any other criteria that should be included?

- We welcome the proposal to undertake Strategic Environment Assessment (SEA) of the statements. All NPSs should be subject to SEA and not in cases “where appropriate”.
- In addition all NPSs should demonstrate consistency with targets set out in the Draft Climate Change Bill.
- A Sustainability Appraisal should also be undertaken to consider the social and economic impacts.
- An Appropriate Assessment under the Habitats Regulations (1994) would be required at NPS stage where policies and proposals are likely to have a significant effect on Natura 2000 and Ramsar sites.
- Before identifying the need for major new infrastructure there must be an approach which seeks to manage demand, provide locally based facilities where this is the most appropriate solution and only invest in major infrastructure where this can be clearly demonstrated to be the most appropriate, and sustainable solution. Major infrastructure should be at the bottom of the hierarchy of provision after a range of alternatives have been thoroughly tried, tested and rejected for sound reasons.
- There is a danger that individual NPSs will be produced dealing with each sector which will then not relate to other issues in terms of content, or timeframe. Measures will need to ensure that these effects are minimised.

Question 4: Status of national policy statements

Do you agree, in principle, that national policy statements should be the primary consideration for the infrastructure planning commission in determining individual applications? If not, what alternative status would you propose?

- We propose that national policy statements on infrastructure should sit beneath PPS and provide guidance to the IPC rather than form the statement of primary consideration.
- When considering applications for particular proposals the IPC should not only consider national and international policy. In our view other material considerations will have considerable weight within the decision making process, especially other elements of national policy and the development plan – Planning Policy Statements, Regional Spatial Strategies and Local Development Frameworks. It will be important for the Commission also to look at the relationship between different NPSs as they affect the proposal.
- It will be particularly important for the Commission to consider the adverse local consequences of major infrastructure projects. If it is determined that the national

benefits of a scheme outweigh local harm it is still vital to ensure that local impacts are mitigated as far as possible and some of the benefits of projects and schemes also accrue to the locality. The sustainability appraisal of the both the NPS and the actual scheme will be relevant here as will the assessments undertaken as part of the development plan.

Question 5 Consultation on national policy statements

Do you agree, in principle, that these proposals would ensure effective public engagement in the production of national policy statements, including with local communities that might be affected? Are there any additional measures that would improve public and community engagement in their production?

- The process of preparing NPS will only achieve credibility if there is genuine engagement rather than top down consultation. In particular there is a need to ensure that all strategies are considered including substituting building new infrastructure for policies to produce behavioural change.
- There should be no automatic assumption that economic development automatically requires new infrastructure. This would undermine any consultation process by 'fixing the goalposts' before the debate begins.
- Related to this is the need to revise current methods of assessment, for example, the NATA process which is weighted towards business travel and road building. In addition the recent moves to attribute monetary values to qualitative aspects of development cannot be left to experts but should include weightings based on public assessment.
- The White Paper does not provide any details of the proposed consultation arrangements. Our view is that if the wider and more open process advocated is to take place there must also be new and smarter approaches to the public and stakeholder engagement which emphasise civic decision making rather than individual self interest. This implies new techniques which enable differing views to be expressed and debated in the context of the need to reach acceptable decisions.
- The current guidelines⁵ and practices on consultation (although good in parts) are sometimes contradictory and unsuitable for this purpose and need a complete rethink.

This is not the place to expand on details of the new approach required⁶ but it should be characterized by:

- a wider and more proactive strategy to ensure representative participation;
- better resources to ensure that financial muscle does not confer an advantage on some participants;

⁵ Code of Practice on Consultation (<http://www.cabinetoffice.gov.uk/regulation/consultation/code/index.asp>) and also other documents such as the principles set out in the "Community Involvement in Planning: the Government's Objectives" document (<http://www.communities.gov.uk/pub/472>), or those quoted by the Better Regulation Executive (<http://www.cabinetoffice.gov.uk/regulation/consultation/code/criteria.asp>)

⁶ The Highways Agency Guidance "Involving the Public" is indicative of the more strategic approach required.

- new techniques for engagement which emphasis civic rather than individual decision making;
- use of wider media channels and formats (viz recent Government Report “Information);
- a commitment to feedback; and above all
- a system which is seen to be unbiased – this implies an arms length delivery process including the provision of base line data and wide dissemination at the draft stage – not just the usual statutory bodies and commercial interests. In addition membership of the proposed Infrastructure Planning Commission must ensure public confidence by recruiting a spread of experts from a wide range of disciplines as well as people representative of broader lay opinion and demographic structure.

Question 6 Parliamentary scrutiny

Do you agree, in principle, with the intention to have Parliamentary scrutiny for proposed national policy statements? What mechanisms might ensure appropriate Parliamentary scrutiny?

- Our proposal to make NPS equivalent in status to PPS would not require the involvement of Parliament.
- If the Government proceeds with PWP, we recommend a combination of Parliamentary scrutiny/approval measures:
 - i) establish a dedicated properly resourced Select Committee (possibly a joint Committee of both Houses) to examine infrastructure and to probe the Draft NPS and the case for and against particular projects. The committee should have the ability to recommend rejection of measures to Parliament.
 - ii) both Houses of Parliament must approve each NPS through a vote on floor on each occasions that an NPS is adopted or updated. It would be unsatisfactory for the Secretary of State to solely approve a NPS.
 - iii) the relevant Secretary of State to produce an annual monitoring and evaluation report.
- Parliamentary scrutiny needs to be underpinned by a robust lower level process as indicated above with the Commission taking a key role and ensuring that the evidence base, options evaluation, consultation and sustainability appraisal are effectively undertaken. This nature of work given its technical and professional aspects is not suited solely to a parliamentary process. This is evidenced by the problems the parliamentary process has now with major complex infrastructure matters e.g. Crossrail.

Question 7 Timescale of national policy statements

Do you agree, in principle, that 10 – 25 years is the right forward horizon for national policy statements? If not, what timeframe do you consider to be appropriate?

- A 10-25 year timescale for NPSs seems a sensible approach. However, it should not be over prescriptive. We note that DfT found this difficult with its recent rail strategy, where a large number of uncertainties, for example over energy futures

and alternative fuels and over road pricing, meant that the strategy could not give a clear lead on longer term issues, such as new lines to solve future capacity constraints and electrification or other routes to lower-carbon rail operations. Government will need to provide a much clearer lead on longer term issues than this if the NPSs are going to be helpful.

- There will need to be a process of regular review and the updating of national policy in the light of new information and impact. This could follow the RSS and LDF model.
- If there is an urgent need for something within a shorter timescale nothing should preclude development of policy for that period.
- There may be other investment where longer timescales are also appropriate – for example airport provision may require a 30-50 year consideration, bridges will be expected to last for 100 years or more.

Question 8 Review of national policy statements

Do you agree that five years is an appropriate period for the Government to consider whether national policy statements remain up to date or require review?

- Review periods should be at least every 5 years, but sufficient flexibility should be built into the system to allow more frequent updating of policy – say every three years.
- International legislation could trigger the need for a review but it is suggested that there should be a review regularly without a trigger to assess the effectiveness and impact of the policy in the same way there is the 3 year comprehensive spending review and reviews for RSSs.
- There may also be situations where something has occurred at regional level which generates the need for the review (e.g. – winning Olympics) very rapidly outside the normal pattern.
- Triggers for a review could involve:
 - i) a recommendation from the Planning Inspectorate and (if established) the Infrastructure Planning Commission where they feel that an inquiry has exposed limitations or out-datedness in a relevant NPS.
 - ii) there could be a parliamentary process whereby a select committee or other body could ask for a review.
 - iii) if Government decides on a new policy (for example, a decision to adopt widespread road user charging) which changes assumptions underpinning a NPS, there should be a review and Government should (perhaps in Regulatory Impact Assessments of policies or measures) identify effects on relevant NPSs.

Question 9 Opportunities for legal challenge

Do you agree, in principle, that this opportunity for legal challenge would provide sufficient and robust safeguards to ensure that a national policy statement is sound and that people have confidence in it? If not, what alternative would you propose?

- There must be provision for legal challenge; this is essential in the case of location-specific NPS. The grounds outlined are standard under town and country planning and exclude challenge on merits grounds.

- The ability to test the merits of a project must be permitted at the examination stage. Otherwise, the only opportunity will come at the NPS stage before the detailed impacts of an individual project are known.
- If the processes suggested above i.e. an EiP process via the Commission prior to parliamentary debate with all the stages suggested then it would be hoped that the major issues of concern had been fully debated within a robust evidence based process.
- If NPS does not follow a rigorous process, the Public will lack confidence in the whole process.

Question 10 Transitional arrangements

Do you agree, in principle, that subject to meeting the core elements and standards for national policy statements Paper, policy statements in existence on commencement of the new regime should be capable of acquiring the status of national policy statements for the purposes of decision making by the commissions? If not, what alternative arrangements do you propose?

There are no transport policy statements in existence which meet the NPS criteria or else are capable of modification. We would be strongly opposed to designating the Air Transport White Paper (2003) as a NPS or using the document as a future model for NPS. The ATWP has not been subject to SEA; it pre-dates the Stern findings; the projected growth forecasts have not been subject to independent scrutiny; no local inquiries have taken place into specific site proposals; Parliament has not approved the document.

Question 11 The preparation of applications

Do you agree, in principle, that promoters should have to prepare applications to a defined standard before the infrastructure planning commission agrees to consider them?

- Good quality applications will be essential to the determination process.
- There may be a case for a staged approach – somewhat parallel to the outline and detailed stages that can be undertaken with applications determined by a local planning authority.
- In the case where the need for a piece of infrastructure is agreed national policy but the specific location has not been identified it may be appropriate to first investigate more detailed options.
- The final stage might then involve a fully worked up scheme incorporating mitigation measures.
- If a staged approach is to be adopted clear standards and requirements for each should be identified. A staged approach should avoid the need to produce a lot of detail on schemes that ultimately do not proceed.

Q.12 Consultation by promoters

Do you agree in principle that promoters should be required to consult the public before submitting an application to the infrastructure commission? Do you think this consultation should take a particular form?

The degree of location specific proposals will vary – an NPS will be “locationally specific as appropriate”. This implies that some NPSs might specify actual sites or routes and in these cases the public should have opportunities to influence the outcomes of such applications at the NPS stage before developers submit an application. At the later pre-application stage clearly there will be a need to engage with those particularly affected by a proposed development. However, if the early NPS engagement process has been carried out effectively, this stage will have a different perspective and focus on local impact and mitigation issues and thus require different techniques of engagement. However, as with NPS development, this consultation should not be managed by the promoters themselves but by a neutral consultation body.

Q.13 Consulting local authorities

Do you agree, in principle, that relevant local authorities should have special status in any consultation? Do you think the local authority role should take a particular form?

Clearly local authorities will need to be involved – not individually but via their representative bodies during the development of the NPS. In addition, if a locationally specific steer is included in an NPS, then the relevant regional and local authorities should be consulted. At the second application stage promoters of nationally infrastructure projects and local authorities will inevitably be involved with each other for the application to be feasible in the first place. In addition the points made in response

to Q12 above will be relevant especially that the process should be managed by a neutral consultation body.

Q.14 Consulting other organisations

Do you agree, in principle, that this list of statutory consultees is appropriate at the project development stage? Are there any bodies not included who should be?

Our view here is that the list does not include a wide enough range of interests. Our view is that it at the project development stage that real engagement can take place rather than at the detailed later stage. Therefore interests groups of all views should be involved plus representative groups of the general public.

Q15 Statutory consultees' responsibilities

Do you agree in principle that the Government should set out, in legislation, an upper limit on the time that statutory consultees have to respond to a promoter's consultation? If so, what time limit would be appropriate?

The statutory agencies are best placed to take a view here. In complex cases, they may require extra time for negotiations. The guiding principle must be to allow sufficient time to enable the agencies to provide high quality advice.

Question 16 The infrastructure planning commission's guidance role

Do you agree in principle that the commission should issue guidance for developers on the application process, preparing applications and consultation?

- Guidance will be essential on the whole process. If the Commission is to issue the written guidance then there must be a separate part of the Commission that does so depending on the form and content of the guidance. In our view it would not be appropriate for this guidance to be issued by the same people who are then determining the individual applications. It should be set out as part of the wider remit of the Commission and the whole process of dealing with NSIPs as happens now for RSSs' Examinations in Public.

Question 17 The infrastructure planning commission's advisory role

Do you agree in principle that the commission should advise promoters and other parties on whether the proposed project falls within its remit to determine, the application process, procedural requirements and consultation?

- If part of the Commission's role is to determine what schemes fall into their remit for determination it should be done as a series of criteria. In our view these should be set down in the NPS and the criteria subject to scrutiny as part of the process of adoption. In this context then the Commission should be able to advise promoters at pre-application stage.
- The Commission should be able to undertake pre-application discussions to facilitate the smooth running of the process ensuring that the policy issues are clear and the necessary information is submitted.

Question 18 Rules governing propriety

What rules do you consider would be appropriate to ensure the propriety of the commission's interactions with promoters and other parties?

- It is essential that the commission's role is seen as completely independent of all parties – either promoting or opposing the proposals. This is a further reason for recommending that this role should be led by the Planning Inspectorate who have a reputation for being independent and are respected by the public as performing that role. The rules that apply to Inspectors in terms of probity could then be applied to the Commissioners and all experts engaged in the process.

Question 19 The commission's role at the point of application

Do you agree, in principle, that the commission should have the powers described above? Are there any other issues the commission should address before or at the point of application?

- These questions reinforce the need for the work of the Commissioners to be effectively and properly overseen. There should be a separation between those deciding whether an application fell to be determined by the commission, and that it had followed the correct procedures for so doing, and those selected to undertake the determination. It is appropriate that then the Commissioners body undertake this role.

Question 20 (e), (f) and (g) Scope of infrastructure planning commission

Do you agree, in principle, that these thresholds are appropriate? If not, what alternative thresholds would you propose?

There is a need for a set of agreed criteria for determining whether or not a particular project is one that should be determined through this national process. This will depend on its scale, impact, and role in the particular infrastructure network or as part of the wider infrastructure provision.

- e) Schemes on, or adding to, the Strategic Road Network requiring land outside of the existing highway boundary

- The definition of road schemes to be considered by the commission which includes those on the strategic road network requiring land outside existing highway boundaries is in our view unsound.
- The important criteria should be about the scale, impact and significance of such schemes. The current definition could avoid scrutiny of motorway widening within existing boundaries but include minor road safety schemes that involved land acquisition. This is unacceptable.
- A series of more robust criteria is required such as scale (eg a new trunk road more than 2 km long, and widening or lighting of a motorway more than 4 km long), additional links, additional carriageway, junction improvements designed to provide significant increases in capacity etc. as part of the national network.
- Smaller trunk road schemes are of local not national significance. They should no longer be authorised by the Secretary of State for Transport but be required to be submitted as planning applications to the local planning authority (LPA). The 2004 Planning Act removed the immunity from planning control of ‘crown development’. Trunk road schemes requiring new land or sections of new alignment (which would include flyovers or underpasses proposed to be added to existing roads, as these usually include links and ‘loops’ of new road) would, if below the ‘threshold,’ require planning permission to be applied for, by the Highways Agency, to the local planning authority. A refusal by the LPA would mean that an Appeal could be lodged which would be determined by the Secretary of State for Communities and Local Government without Department for Transport involvement. Compulsory Purchase Orders present a problem under this type of arrangement. They still have to be confirmed by a Minister so the promoter-decider role would not be wholly eliminated.

f) A new tarmac runway or infrastructure that increases an airport’s capacity by over 5m passengers per year

There would be difficulties in interpreting the meaning of “infrastructure”. It would be simpler to define the threshold as “a new tarmac runway that increases an airport’s capacity by over 5m passengers per year”.

g) Ports

No comment.

Heavy Rail

- Rail schemes of significance should also be included – Thameslink, Crossrail, national freight lines, major improvements such as new high-speed lines and links to the network etc.
- Modernisation plans for whole routes, such as the West Coast Main Line or Felixstowe – Nuneaton for freight, where planning applications are needed for several projects in connection with the scheme, might also be considered. The recent rail strategy proposes a “Strategic Freight Network”, and it might be appropriate to consider schemes connected with this as Nationally Significant Infrastructure Projects.

Question 21 Electricity system

Question 22 Gas infrastructure

Question 23 Other routes to the infrastructure planning commission

Do you agree, in principle, that it is appropriate for ministers to specify projects for consideration by the commission via the national policy statements or ministerial direction to the commission?

- We agree that any scheme which does not meet the normal thresholds for consideration, but is considered significant because of its inclusion in a national policy statement is appropriate for determination by the commission.
- For others to be considered, in a way that is parallel to the “call-in” procedure it is important to have a clear set of criteria to avoid schemes being subjected to over “politicisation”
- It would be preferable to have such criteria set out in the national policy and debated as part of the examination on the statement prior to its adoption

Question 24 Rationalisation of consent regimes

Do you agree, in principle, that the commission should be authorised to grant consents, confer powers including powers to compulsorily purchase land and amend legislation necessary to implement nationally significant infrastructure projects? Are there any authorisations listed that it would be appropriate to deal with separately and if so which body should approve them, or that are not included and should be?

- We recognise the benefits of streamlining the consent processes for nationally important projects. However, we would ask the government to consider similar rationalisations for schemes of regional significance as well. Without such a rationalisation it could end up being more difficult to progress regionally important projects than either local or national ones.
- Furthermore, it is important to demonstrate as part of the justification for national schemes that this is the preferred approach over and above a series of lesser, regional and locally based proposals and actions.
- It is important not to create perverse incentives which mean that it is easier for promoters to secure consents on national schemes rather than ones that are of a smaller scale even where the more locally based schemes would be nationally better in the context of e.g. sustainability.
- We have no objections to the grant consent schemes listed as long as the process followed is as set out above.
- We do not support giving the Commission authorisation to amend legislation to implement NSIPs as we believe that role must reside with Parliament.

Question 25 The commission’s mode of operation

Do you agree, in principle, that the proposed arrangements for the commission to deal with cases is an appropriate way to ensure that consideration is proportionate and that an appropriate range of specialist expertise is brought to bear on the final decisions? If not, what changes or alternative mode of operation would you propose?

- We consider that the Commission should be based on the planning inspectorate with a core of highly trained, experienced and competent inspectors dealing with the scrutiny of policy, the development of procedures, and the determination of applications.
- It is vital that the lead is taken by those professionally able to manage the process of deliberating over an examination, or equivalent, in a way that commands the total respect of the public. Being an expert in a particular field, or associated with a particular sector, will be insufficient to provide this level of confidence.
- We would question the criteria for selection of the projects if they turn out to be sufficiently straight forward and uncontroversial as to be capable of being handled by one commissioner. We consider the benefit of the process is the introduction of the panel and we would prefer to see a minimum of three.
- As long as the lead commissioner is qualified in handling the decision making process, in addition to be competent in other ways relevant to the specific project, we would prefer to see other commissioners being from a pool of experts.
- We do not think that the number of commissioners should be limited to a small number. We believe that outside the core group a significant number of commissioners should be appointed on a “retained” basis, and trained so as to be available for being part of the decision making process. This would avoid the criticisms of cronyism and a narrow elite, and would provide the opportunity to engage and include a wide range of disciplines and interests within the panel membership to reflect the range of possible proposals.
- It will be important that all those on the panel are charged with looking at the proposal in “the round” taking into account its relationship to national and local policy not only in the field under consideration but other related aspects, the evidence base, consultation, options assessment and sustainability appraisals.

Question 26 Preliminary stages

Do you agree in principle that the list of statutory consultees set out above is appropriate as the determination stage? Are there any bodies not included who should be?

- This list should be expanded to include bodies that represent industry and commerce and those representing the protection of various interests and which have national constitutions. Examples of these could include:
 - The CPRE
 - National Trust
 - Friends of the Earth
 - Transport 2000
 - RSPB
 - Appropriate bodies representing those with disabilities
 - English Partnerships
 - The CBI
 - TCPA

Question 27 Examination

Do you agree in principle that the procedural reforms set out above would improve the speed, efficiency and predictability of the consideration of applications, while maintaining the quality of consideration and improving the opportunities for effective public participation? If not, what changes or other procedural reforms might help to achieve these objectives?

- The examination process should mirror that now in place for the consideration and examination of RSSs and LDFs. Evidence should be provided in writing beforehand. The evidence base should be robust and the panel should have the opportunity to test the evidence through appropriate questioning and discussion on the lines indicated.
- Evidence that is of a highly technical nature must also be produced in a manner that can be more easily understood by lay people wishing to participate in the debate about the merits of a particular proposal.
- There must be opportunity for parties to test the evidence through questioning, although formal processes involving opposing counsel would return the process to an adversarial one which would be counter to the spirit of the proposed changes.
- We do not support relegation of an open floor stage to the end after the key examination session has taken place. Having a person leading the panel who is able to manage this process with confidence is vital for credibility. The agenda for this session will be crucial also and needs to cover the key issues of debate.
- Those involved in such a process who are not the “paid professionals” should be offered support and advice to help present their case in the best possible way and should be encouraged to work together to avoid unnecessary repetition of issues and evidence.
- The Commissioners should be able to determine the key lines of inquiry from their assessment before the hearing opens on the basis of the evidence and views expressed.
- We would oppose putting absolute deadlines within the legislation or formal procedures. We would recommend that the timetable for presentations and discussions should be part of a process agreed at the outset. This should be done once it is clear who will be appearing before the panel and there is a broad understanding of the content of debate.
- Once a timetable has been agreed it should only be varied in exceptional circumstances and by mutual agreement of the panel and participants. The panel must retain the right to curtail contributions on the basis that nothing new is being added to the debate.

Q.28 Hard to reach groups

What measures do you think would better enable hard to reach groups to make their views heard in the process for nationally significant infrastructure projects? How might local authorities and other bodies, such as Planning Aid, be expected to assist in engaging local communities in the process?

- Our view is that the phrase “hard to reach groups” is patronising and masks poor techniques of public engagement and the assumption that non response is agreement. There is expertise available to show how a more inclusive process can be achieved including within the groups themselves and professional organisations can help. However, the obstacle is more often lack of resources within the groups

themselves. Not everyone has access to computers, base line information does not use plain English, time off work to attend meetings costs money and invitations do not highlight relevance.

- A well developed strategy for public engagement which included resources (albeit it modest) for the groups themselves would both encourage participation and give confidence in the outcomes.
- Alternatively allowing groups to 'commission' their own external facilitator would give more confidence in the process and build internal capacity.
- Another consideration is to avoid consultation fatigue. Many local authorities now run citizens panels and the market research industry has a wide range of both general and group specific feedback panels and surveys. These offer opportunities for cost effective ways of inclusive involvement by piggybacking or extending existing processes.

Question 29 Decision

Do you agree that the commission should decide applications in line with the framework set out above?

- The way in which this is phrased could imply a rubber stamping exercise.
- The role of the commission is to take a fresh look at all the evidence in an independent manner and consider all the benefits and adverse impacts of a scheme and weigh these in the balance.
- We would prefer the Commission to make recommendations to the Minister and not decide the application in order to retain Ministerial accountability.
- When a scheme is approved, clear reasons for concluding that the local adverse effects were outweighed by the national benefits of the proposal must be explained and any permission must identify and secure appropriate mitigation measures.

Question 30 Conditions

Do you agree in principle that the commission should be able to specify conditions in this way, subject to the limitations identified and for local authorities to then enforce them?

If not, what alternative approach would you propose?

- It is our view that the commission should have much stronger powers than conditions to secure mitigation measures.
- It should be able to secure legal agreements between promoters and the appropriate owners, local authorities and other statutory agencies (e.g. the Highways Agency and the Environment Agency) and other key parties to secure long term, enforceable measures that are considered essential to make the development acceptable and compliant with legislation. This may also mean dealing with issues of compensation.

Question 31 Rights of challenge

Do you agree, in principle, that this opportunity for legal challenge to a decision by the infrastructure planning commission provides a robust safeguard that will ensure decisions are taken fairly and that people have confidence in them?

- The grounds for legal challenge are standard to planning. In our view, they do not provide a robust safeguard. We have major concerns that the PWP will narrow the scope for the commission to reject an application and will infringe people's rights such as the right to challenge the merits of a project in a particular location in relation to compulsory purchase.

Question 32 Commission's skill set

What experience and skills do you think the commission would need?

- The commissioners' skill set have been considered in some detail in our response to question 25.
- We support the list of areas of expertise set out in the question but consider that it must also include the ability to manage formal public facing events in a dignified and robust manner.
- All commissioners, regardless of the eminence or expertise in any particular field must undergo training that is appropriate for this particular role.
- All commissioners must have a duty to act with high levels of integrity and probity – however, we do not think that this precludes them from undertaking other professional activities.
- We would support a wider field and larger number of commissioners who can work on a part time basis, rather than a very small number.
- A diversity of commissioners should be appointed to ensure that they represent the society that they seek to serve and should therefore include women, ethnic minorities, those with disabilities and people from different age groups.

ⁱ Planning White Paper, Planning for a Sustainable Future, graph on p32, Time from start of Inquiry to decision, featuring the following transport projects:

London International Freight Terminal: refusal by local planning authority on grounds of location in the green belt and local impact of lorry movements upheld on appeal. Lack of an over-arching national policy on rail freight created a lack of clarity over which national policy objective should have priority – green belt protection or encouragement of modal shift from road to rail.

West Coast Main Line (Orders 1 and 2): the structure and competence of the rail industry and cost escalation were responsible for delays. The public inquiry stages were a tiny part of the whole project.

Dibden Container Terminal: in his decision letter (20 July 2005), the Secretary of State accepted the Inspector's conclusion that the proposal would have an adverse impact upon the integrity of internationally and nationally designated sites which could not be mitigated. This was an ill-conceived project from the outset. Refusal has since led the port authority to find ways of intensifying activities within its existing landholding at Southampton.

Bathside Bay port development (Harwich): application was submitted in April 2003, Inspector's report recommending approval was submitted in March 2005, the Secretary of State published a "minded to approve" letter in December 2005 subject to conditions and approval was granted in February 2006. It was accepted the proposal would have an adverse effect on a proposed Special Protection Area but the findings ruled there was no alternative to the site and should proceed in the public interest. The applicant was

responsible for some delay in not having addressing HGV movements at an earlier stage. It is unlikely that the project would have been progressed more quickly under PWP reforms.

Felixstowe Harbour: planning application was submitted on 28 Nov 2003 and a decision letter issued on 1 Feb 2006. Faster processing would have been unlikely under the PWP.

Coventry Airport – passenger terminal and car parking. The Secretary of State rejected the application (decision letter of 14 June 2007) on grounds that harmful impacts and conflict with planning policies at regional and local levels outweighed the socio-economic benefits. The scheme was ill-conceived given that the application did not accord with the development plan and Birmingham Airport provides passenger services with good public transport access a short distance away.

Heathrow T5 - Transport 2000 acknowledges one of the reasons for delay to T5 as the lack of national policy on airports and we support the preparation of national statements. Other reasons for the lengthy inquiry included numerous changes by the applicant, a refusal to meet community concerns half-way through better mitigation and the length of time taken by the Secretary of State to announce a decision.

ii A303 Stonehenge Improvement – following the Inspector's report in early 2005 recommending approval, the Minister published five review options for consultation in January 2006 as a result of a rise in construction costs from £192 to £470 million (then to £510m). The cost escalation can be partly attributed to inadequate survey work by the Highways Agency prior to the inquiry. New ground investigations post-inquiry revealed extensive quantities of soft weak chalk, pushing up the tunnel costs. The eventual outcome may be no major scheme at all, resulting from re-thinking by Ministers as well as a lack of funds.

A628 Mottram-Tintwhistle Bypass – inquiry adjourned on 28 June 2007 until September. The Highways Agency bears sole responsibility for the delay, acknowledging at the inquiry its failure to meet the statutory tests in making vital information available.

London Gateway (container port, business park, logistics centre at Shellhaven) : the Inspector's report was submitted in Feb 2004. Two "minded to allow" letters were issued one year apart on 20 July 2005 and 8 August 2006, on account of delays in agreeing transport conditions.

Thames Gateway Bridge – the scheme was cited by the Secretary of State in 2001 under its previous title of the East London River Crossing as an example of a scheme delayed by the planning system. However, in its recent history as the TGB, now a local scheme, the promoter, Transport for London, is entirely responsible for delays. The inquiry was adjourned to enable TfL to produce further traffic evidence. Although the Inspector recommended refusal on grounds that the case for regeneration had not been made, the Secretary of State is prolonging the blight by directing the re-opening of the inquiry.

iii Review of Highways Agency's Major Roads Programme, Mike Nichols, Report to Secretary of State for Transport, 2007

iv (Loosening the Leash: How Local Government Can Deliver Infrastructure With Private Sector Money, All Party Urban Development Group, 2007).