

Planning for a Sustainable Future

Response by The Royal Academy of Engineering to the Department of Communities
and Local Government

Q.1 The proposed package of reforms

We propose to replace the multiple existing consent regimes for key national infrastructure with a new system that will enable us to take decisions on infrastructure in way that is timely, efficient and predictable, and which will improve the accountability of the system, the transparency of decisions, and the ability of the public and communities to participate effectively in them.

In particular, we propose to:

- produce, following thorough and effective public consultation and Parliamentary scrutiny, national policy statements to ensure that there is a clear policy framework for nationally significant infrastructure which integrates environmental, economic and social objectives to deliver sustainable development;
- provide greater certainty for promoters of infrastructure projects and help them to improve the way that they prepare applications by making better advice available to them; by requiring them to consult publicly on proposals for development; and by requiring early and effective engagement with key parties such as local authorities, statutory bodies, and relevant highway authorities;
- streamline the procedures for infrastructure projects of national significance by rationalising the different consent regimes and improving the inquiry procedures for all of them;
- clarify the decision making process, and achieve a clear separation of policy and decision making, by creating an independent commission to take the decisions on nationally significant infrastructure cases within the framework of the relevant national policy statement;
- improve public participation across the entire process by providing better opportunities for public consultation and engagement at each stage of the development consent process; improving the ability of the public to participate in inquiries by introducing a specific “open floor” stage; and, alongside the introduction of the new regime, providing additional funding to bodies such as Planning Aid.

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

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

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

1. Question 1

There is a strong case for reform of the current process. Subject to caveats set out in response to subsequent questions, The Royal Academy of Engineering agrees that the overall package of reforms should achieve the objectives of clarifying the decision making process, streamlining the procedures, improving public participation and most importantly will provide greater certainty for promoters and hence investors in major infrastructure projects. These projects will

be essential for the delivery of other Government objectives and targets contained in associated documents such as the Energy White Paper and the Draft Climate Change Bill.

Q.2 Introduction of national policy statements

We propose that government would, where it deems appropriate and subject to public consultation and Parliamentary scrutiny, produce national policy statements for key infrastructure sectors to clarify government policy, provide a clearer strategic framework for sustainable development, and remove a source of delay from inquiries.

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?

If not, do you have any alternative suggestions for helping to achieve these objectives?

2. Question 2

The production of national policy statements should enable strategic decisions to be taken at a national (Parliament) level, thus avoiding the reopening of generic questions at local inquiry level which has often been the source of delay, particularly in recent history. The examples of good and bad experience cited in the White Paper are good descriptors.

Q.3 Content of national policy statements

The content of national policy statements should include certain core elements. They would:

- set out the Government's objectives for the development of nationally significant infrastructure in a particular sector and how this could be achieved in a way which integrated economic, environmental and social objectives to deliver sustainable development. Strategic Environmental Assessment (SEA) is a procedure for assessing the effects of certain plans and programmes on the environment and will be an important tool in some cases for ensuring the impacts of development on the environment are fully understood and taken into account in national policy statements. National policy statements would be subject to an appraisal of their sustainability to ensure that the potential impacts of the policies they contain have been properly considered. Wherever appropriate we would expect this to be in the form of an SEA;
- indicate how the Government's objectives for development in a particular infrastructure sector had been integrated with other specific government policies, including other national policy statements, national planning policy, and any relevant domestic and international policy commitments;
- show how actual and projected capacity and demand are to be taken into account in setting the overall policy for infrastructure development. This would not necessarily take the same form in all national policy statements as the drivers of need for infrastructure vary and may be more complex and uncertain for some sectors than for others.

- consider relevant issues in relation to safety or technology, and how these were to be taken into account in infrastructure development;
- indicate any circumstances where it was particularly important to address adverse impacts of development;
- be as locationally specific as appropriate, in order to provide a clear framework for investment and planning decisions. Some national policy statements might, according to circumstances, be locationally specific, while for others where it would not be appropriate, or sensible, for the Government to direct where investment should take place, they might specify certain factors affecting location; and
- include any other particular policies or circumstances that ministers consider should be taken into account in decisions on infrastructure development.

Do you agree that national policy statement should cover the core issues set out above?

Are there any other criteria that should be included?

3. Question 3

The Royal Academy of Engineering is broadly supportive of the proposed content of national policy statements but wishes to record its concern that there is an onerous workload ahead for those charged with their formulation.

- 4. In the energy sector, section 3.9 of the White Paper makes particular reference to the need to factor in security of supply as a key consideration. This is strongly supported as it mirrors the inputs we have made in response to the Energy Review and will make to the nuclear consultation currently in progress.**

- 5. The White Paper states that the nature of the infrastructure is determined to a large extent by the market but we are unconvinced that this is either sustainable or will meet security of energy supply objectives. We strongly recommend that more is done when assessing capacity and demand projections, particularly in the energy sector, to reflect practical engineering reality and therefore the ability to deliver the infrastructure required. Government should set challenging but not impossible targets and issue policy statements which will provide developers with the clarity necessary to enable them to justify their case.**

Q.4 Status of national policy statements

We propose that national policy statements would be the primary consideration for the infrastructure planning commission in determining applications for development consent for nationally significant infrastructure projects. The commission would approve any application for development consent for a nationally significant infrastructure project which had main aims consistent with the relevant national policy statement, unless adverse local consequences outweighed the benefits, including national benefits identified in the national policy statement. Adverse local consequences, for these purposes, would be those incompatible with relevant EC

and domestic law, including human rights legislation. Relevant domestic law for infrastructure sectors would be identified in the planning reform legislation.

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?

6. Question 4

Yes, The Royal Academy of Engineering agrees that national policy statements should be the primary consideration for the infrastructure planning commission in determining individual applications. We note and support the fact that there will be opportunities to include consideration of adverse local consequences and other factors such as European and domestic law, including human rights legislation, in weighing the balance of national benefit.

7. There will be considerable benefit in determining the *prima facie* case for nationally important infrastructure at the Parliamentary level and to avoid subsequent revisiting of the case on individual applications as indicated in our response to question 2 of this response. It will mean that the policy statements will have to have been rigorously researched and examined prior to publication to avoid lengthy challenge to implementation.

Q.5 Consultation on national policy statements

We propose that there should be thorough and effective public consultation on national policy statements. The precise means of consultation would depend on the proposed content of national policy statements. However to ensure consultation is to a high standard, certain principles would need to apply:

- before publishing national policy statements in draft, there should be thorough consideration of evidence, which may include informally consulting relevant experts or organisations;
- once published in draft, there should be thorough and effective public consultation, in line with best practice, on the Government's proposals for national infrastructure needs and policy;
- local, regional and national bodies and statutory agencies with a particular interest should be consulted;
- where proposals might have a particular bearing on local communities, there would need to be effective engagement to ensure that such communities understood the effect of and could express views on the government's proposals, in line with best practice on community involvement with planning;
- the Government would need to take the consultation responses into account and explain how they had influenced policy.

We propose that key requirements for consultation would be set out in legislation, so they have full statutory underpinning.

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?

8. Question 5

The proposals should enable thorough and effective public consultation. We recommend that the Government, in developing its evidence, consults appropriately with relevant learned and expert bodies such as The Royal Academy of Engineering given that development of technological arguments and overcoming engineering challenges will be fundamental to the successful delivery of many of the projects. The Academy also strongly supports the concept of engagement with the wider public and suggests adherence to the Government's own developed best practice. The proposals outlined are rightly potentially onerous and the Government must ensure adequate resources are allocated to service them effectively.

Q.6 Parliamentary scrutiny

We propose that, as ministers would no longer be taking decisions on individual applications, draft national policy statements should be subject to 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?

9. Question 6

We support in principle the intention for Parliamentary scrutiny. This should facilitate cross party accountability for, and engagement in, projects likely to transcend Parliamentary (and certainly Ministerial) responsibility. The concept of a "Select Committee" type approach has merit. We commend the approach taken to the Draft Climate Change Bill with a joint committee from both Houses of Parliament.

Q.7 Timescale of national policy statements

We propose that national policy statements should, in principle, have a timeframe of 10-25 years, depending on the sector.

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?

10. Question 7

Given the duration of large infrastructure projects, a 10-25 year timescale may indeed be the right forward horizon for national policy statements. We would however recommend that provision is made for more regular scrutiny and review. This is particularly so in the energy

sector where the implications of the targets set in the Draft Climate Change Bill will need to be taken into account.

Q.8 Review of national policy statements

The Government would consider whether national policy statements remain up to date, or require review, at least every five years. It should consider significant new evidence and any changes in circumstances where they arise and review national policy statements where there is a clear case for doing so.

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?

What sort of evidence or circumstances do you think might otherwise justify and trigger a review of national policy statements?

11. Question 8

Given the above, we support the concept of review at least every 5 years. Reviews should be triggered by major new events (e.g. flooding or energy shortage) on either domestic or international fronts or on the availability of new information or evidence which would bring the existent policy into question.

Q.9 Opportunities for legal challenge

We propose that there would be opportunity to challenge a national policy statement, or the process of developing it, when it had been published and that this opportunity would be set out in legislation. The opportunity to challenge would be open to any member of the public or organisation likely to be affected by the policy. The grounds for challenge would be illegality, procedural impropriety or irrationality. Any challenge would have to be brought within six weeks of publication.

Do you agree, in principle, that this opportunity for legal challenge would provide sufficient and robust safeguards to ensure that a national policy statements is sound and that people have confidence in it?

If not, what alternative would you propose?

12. Question 9

We support the arrangements proposed to allow legal challenge and the restricted timetable for such a challenge.

Q.10 Transitional arrangements

Where relevant policy statements already exist we propose that these should acquire the status of national policy statements for the purposes of decision making by the commission. However, in order for this to be possible, they will need to meet the core elements and standards for national policy statements with regard to both content and consultation.

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 commission?

If not, what alternative arrangements do you propose?

13. Question 10

From The Royal Academy of Engineering's perspective this is one of the two most important questions posed by the consultation (the second being the role and competence of the Commissioners). It may well be that statements in place from other White Papers could be seen as sufficient to acquire the status of national policy statements for the purposes of this White Paper, but the Academy believes this is very sector and project specific. For instance we would be concerned if the policy statements associated with energy supply and infrastructure embodied in the relevant White Papers earlier this year were thought to be adequate as implied in section 3.36. We think there are significant deficiencies, particularly in the Energy White Paper, in recognising the scale of the engineering challenge to deliver the assets for a robust yet diverse UK energy infrastructure for the 21st century. Much more needs to be done to model and plan the infrastructure options taking engineering reality into account so that the necessary decisions on investment can be made.

- 14. It is likely that projects in the energy sector will have to be considered in the context of a total roadmap, encompassing all technologies rather than on a one by one basis. That such a roadmap does not exist points to either significant work to generate one to deliver a national policy framework for the proposed Commission to work within or very significant work for the Commission itself. Given the timetable to allow the proper appointment processes and in view of the urgency of the issues, especially in the energy sector, the Academy strongly recommends that steps be taken now by the responsible Government Departments (principally DBERR, DEFRA and DfT) to develop the necessary roadmap. The Academy and the major engineering institutions would be pleased to assist in the development of such a roadmap and have already made proposals to Government to that effect.**

Q.11 The preparation of applications

To avoid delays during the decision making process, we propose that promoters of nationally significant infrastructure projects would be required to prepare applications to a defined standard before the infrastructure planning commission would agree to consider them.

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?

15. Question 11

In principle we support the idea that promoters of nationally significant infrastructure projects should be required to prepare applications to a defined standard before the infrastructure planning commission considers them. However this will require guidelines to be developed as to content and detail. We would suggest that the applications should also describe exactly how they fit in with the relevant national policy statement.

Q.12 Consultation by promoters

We propose that promoters of nationally significant infrastructure projects should be required to consult the public and, in particular, affected landowners and local communities, on their proposals before submitting an application to the commission.

Do you agree, in principle, that promoters should be required to consult the public before submitting an application to the infrastructure planning commission?

Do you think this consultation should take a particular form?

16. Question 12

We agree that promoters should be required to consult the public before submitting an application to the infrastructure planning commission but it would be useful to define the subjects on which these local consultations should be held. Care must be taken to ensure that any consultation is representative of a cross-section of the public rather than skewed to a possibly vociferous minority who would seek to oppose or to promote for idealistic reasons, devoid of practical considerations, or for simple commercial gain, rather than accommodate adjustments to the project on the basis of local or regional input. Citizens' juries or panels may well be a possibility here. Lessons should be taken from work which led to the Government's own guidelines on stakeholder and public consultation.

Q.13 Consulting local authorities

We propose that promoters of nationally significant infrastructure projects would be required to engage with affected local authorities on their proposals from early in the project development process.

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?

17. Question 13

We agree that local authorities should have special status in any consultation, given their role in developing the vision for their community and in creating partnerships with industry for investment, but note that Local Authorities are subject to pressures arising from performance targets imposed by central government.

Q.14 Consulting other organisations

We propose that promoters of nationally significant infrastructure projects would, depending on the nature of their project, also be required to consult other public bodies, such as statutory environmental bodies, on their proposals before submitting an application. For instance:

- Health and Safety Executive
- Relevant directors of public health
- Relevant highway authorities

- Civil Aviation Authority
- Coal Authority
- Environment Agency
- English Heritage
- Natural England
- Waste Regulation Authority
- British Waterways Board
- Internal Drainage Boards
- Regional and Local Resilience Fora
- Commission for Architecture and the Built Environment
- HM Railway Inspectorate
- Office of Rail Regulation
- National Parks Authorities
- Mayor of London
- Devolved Administrations
- Regional Development Agencies
- Regional Assemblies

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?

18. Question 14

The list of organisations to be consulted, depending on relevance, seems to be comprehensive, but because of the widespread involvement of technologies it is of paramount importance that the opinions of professional engineers are sought as to the feasibility and technical implications of proposals at all stages.

Q.15 Statutory consultees' responsibilities

We propose that legislation should impose an upper limit on the time that statutory consultees have to respond to a promoter's consultation.

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?

19. Question 15

Whilst the principle to put an upper limit on the time statutory consultees have to respond to a promoter's consultation is sound, there are likely to be issues for certain of the consultees, especially the Health and Safety Executive and the Environment Agency, depending on the nature of the project and the detail required to have been assessed prior to consideration by the Commission. As a general rule, 6 months could be assigned as a reasonable time to respond prior to the Commission beginning its process but with the opportunity for the consultees to respond further during the Commission's deliberations. Certain of the consultees have obligations under existing legislation.

Q.16 The infrastructure planning commission's guidance role

We propose that the commission would issue written guidance on the application process, the procedural requirements and consultation.

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

Are there any other issues on which it might be appropriate for the commission to issue guidance?

20. Question 16

We strongly support the concept of the Commission issuing guidance on the process and the procedural requirements. This should reduce delay and ensure an adequate standard of application is developed prior to submission. We note that the Government might initially have to provide this guidance and urge that such preparatory work commence as soon as possible. We also recommend that the Government give some consideration as to whether it is best placed to initiate the collection of some of the information required to underpin an Environmental Impact Assessment given the requirement in some cases for many years worth of data (e.g. in offshore renewables).

Q.17 The infrastructure planning commission's advisory role

The secretariat of the commission would advise promoters and other interested parties at the pre-application stage on whether the proposed project fell within its remit, on the application process, procedural requirements, and consultation.

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?

Are there any other advisory roles which the commission could perform?

21. Question 17

The principle of the Commission (actually the Commission secretariat) advising on optimisation of relevant submissions and consultations seems sensible, provided it does not unduly influence or prejudice the overall process from a procedural standpoint.

Q.18 Rules governing propriety

The Government proposes that there should be propriety rules to govern the commission's interactions with promoters and other parties and ensure that the commission did not engage with any party in a way which could be seen to prejudice its decision on an application.

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

22. Question 18

The normal rules on Standards of Behaviour and Propriety in public life should apply. The process should be transparent, all evidence made visible and the decision making process and rationale for

judgment clear and unambiguous. Openness and transparency should be a priority rather than absence of engagement with interested and knowledgeable parties.

Q.19 The commission's role at the point of application

We propose that, before agreeing to consider an application, the commission would need to satisfy itself that:

- (a) the application fell within the commission's remit to determine;
- (b) the application had been properly prepared; and
- (c) appropriate consultation had been carried out.

In the event that an application had not been properly prepared or consulted on, the commission would direct the promoter to do further work before resubmitting their application. In the event that an application was not appropriate for the commission to determine, the commission would refuse to consider it. This would ensure that the commission only took cases that were appropriate for it to consider, and that it did not begin consideration of cases without adequate preparation or consultation having been carried out.

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?

23. Question 19

Subject to the caveats in questions 12-14 regarding the extent of consultation and the case of certain statutory consultees' ability to respond, the Commission should have the powers described at the point of application.

24. We also think that consideration should be given to the Commission's role in recognising the need for a "compact" between the nation and the affected communities for nationally significant infrastructure projects which may be significantly disruptive for said communities with little or no local gain.

Q.20 Scope of infrastructure planning commission

We propose that the commission would deal with development consent applications for nationally significant transport, water, wastewater and waste infrastructure in England, and energy infrastructure in England and Wales, which exceeded statutory thresholds. Chapter 5 of the White Paper sets out some indicative thresholds:

Energy

- (a) Power stations generating more than 50 megawatts onshore – the existing Electricity Act 1989 threshold – and 100 megawatts offshore.
- (b) Projects necessary to the operational effectiveness, reliability and resilience of the electricity transmission and distribution network. This would be subject to further definition in the relevant national policy statement.
- (c) Major gas infrastructure projects (Liquefied Natural Gas terminals, above ground installations, and underground gas storage facilities). This would be subject to further definition in the relevant national policy statement.

- (d) Commercial pipelines above the existing Pipelines Act 1962 threshold of 16.093 kilometres/10 miles in length and licensed gas transporter pipelines necessary to the operational effectiveness, reliability and resilience of the gas transmission and distribution network.

Transport

- (e) Schemes on, or adding to, the Strategic Road Network requiring land outside of the existing highway boundary. This would be subject to further definition in the relevant national policy statement.
- (f) A new tarmac runway or infrastructure that increases an airport's capacity by over 5m passengers per year.
- (g) Ports – a container facility with a capacity of 0.5 million teu or greater; or a ro-ro (including trailers and trade-cars) facility for 250,000 units or greater; or any bulk or general cargo facility with a capacity for five million tonnes or greater.

Water and waste

- (h) Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.
- (i) Works for the transfer of water resources, other than piped drinking water, between river basins or water undertakers' supply areas, where the volume transferred exceeds 100 million cubic metres per year.
- (j) Waste water treatment plants where the capacity exceeds 150,000 population equivalent, and wastewater collection infrastructure that is associated with such works.
- (k) Energy from waste plants producing more than 50 megawatts – the existing Electricity Act 1989 threshold.
- (l) Plant whose main purpose is the final disposal or recovery of hazardous waste, with a permitted hazardous waste throughput capacity in excess of 30,000 tonnes per annum, or in the case of hazardous waste landfill or deep storage facility for hazardous waste, a permitted hazardous waste throughput or acceptance capacity at or in excess of 100,000 tons per annum.

Do you agree, in principle, that these thresholds are appropriate?

If not, what alternative thresholds would you propose?

25. Question 20

In terms of the scope of the Commission's remit, the thresholds arising from existing legislation form a good starting point. However, we recommend review of the thresholds for the capacity of power stations. The system needs to be considered in totality with the Commission having full visibility of the overall road map. Also in some cases, such as onshore or offshore wind, substantial land or sea area is involved in the introduction of relatively modest (below existing threshold) capacity.

- 26. In the area of waste we assume that the Commission would be involved in determining the site of the proposed geological repository for nuclear waste in which case the throughput capacities defined in Box 5.1 (l) are too large. This project may need to be specified as falling within the Commission's remit.**

Q.21 Electricity system

The inclusion of projects necessary to the operational effectiveness and resilience of the electricity transmission and distribution network is a particular issue. Each link of the network is critical to the effectiveness and resilience of the network as a whole, and thus to ensuring that we can sustainably and cheaply transport power from generating stations to customers. In the circumstances, there is no obvious way to draw a line between national and local projects, although we would be interested in views on where such a line could be drawn.

Do you agree in principle that all projects necessary to the operational effectiveness, reliability and resilience of the electricity transmission and distribution network should be taken by the commission?

If not, which transmission and distribution network projects do you think could be determined locally?

27. Question 21

With respect to the operational effectiveness, reliability and resilience of the electricity transmission and distribution network it may not be necessary for all projects to be considered by the Commission. Certainly major capital investments that are needed to transport power from a number of generators or to significant demand sites should be taken by the Commission but it may well be that local schemes for microgeneration and small scale renewables can fit within the local planning permission remit. In view of the recent disruption caused by flooding, however, it may be necessary to include flood prevention measures to protect relatively small as well as large substations.

Q.22 Gas infrastructure

Gas supply infrastructure (eg Liquefied Natural Gas terminals, above ground installations, underground gas storage facilities and pipelines) is covered by a number of consenting regimes with decisions confusingly split between central and local government. As the UK's indigenous gas supplies decline and we move towards increasing import dependence on gas, this infrastructure is becoming more important to the national need for secure energy supplies. Whereas, for some other energy infrastructure, there are set thresholds for responsibility for decision making, this is not currently the case for gas supply infrastructure as their importance is not necessarily determined by size. We therefore propose that nationally significant gas supply infrastructure, as clarified in the relevant national policy statement, should be considered by the infrastructure planning commission.

Do you agree in principle that the consenting regime for major gas infrastructure should be simplified and updated, rationalising the regime to bring nationally significant decision making under the commission?

28. Question 22

The proposal to bring the consenting regime for major gas infrastructure projects under the Commission's remit and to simplify and update it is one we strongly support.

Q.23 Other routes to the infrastructure planning commission

We propose that, in addition to the projects which exceed the proposed statutory thresholds, the commission would deal with any applications for projects which:

- were specifically identified as being of national importance in the national policy statements
- ministers directed should be treated as nationally significant infrastructure projects. The ministerial power of direction would be exercised on the basis of clear criteria set out in a ministerial statement, or possibly in the national statement of policy itself.

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

If not, how would you propose changing technology or sectoral circumstances should be accommodated?

29. Question 23

We agree that the proposal for a "catch all" should be included in the set up legislation to implement this White Paper. We would also expect that the regular formal reviews would alert the Commission to significant changes in the framework for their decision making.

Q.24 Rationalization of consent regimes

In order to simplify and streamline the statutory process for nationally significant infrastructure projects, and ensure that the infrastructure planning commission is able to grant the authorisations necessary to construct these projects, we propose to:

- rationalise the different development consent regimes and create, as far as possible, a unified, single consent regime with a harmonised set of requirements and procedures; and
- authorise the infrastructure planning commission, under this revised regime, to grant consents, confer powers and amend legislation, necessary to implement nationally significant infrastructure projects.
- these authorisations could include:
 - permission to carry out works needed to construct infrastructure projects;
 - deemed planning permission;
 - compulsory purchase of land;
 - powers to amend, apply or disapply local and public legislation governing infrastructure such as railways or ports;
 - powers to stop up or divert highways or other rights of way or navigating rights, both temporarily and permanently;
 - permission to construct associated infrastructure and access land in order to do this (eg bridges, pipelines, overhead power lines and wayleaves);
 - Listed Building Consent, Conservation Area Consent, and Scheduled Monument Consent;¹
 - hazardous substances consent;
 - creation of new rights over land, including rights of way, navigating rights and easements;
 - powers to lop or fell trees; and
 - powers to authorise any other matters ancillary to the construction and operation of works which can presently be authorised by ministerial orders.

Do you agree, in principle, that the commission should be authorized 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?

30. Question 24

We applaud the intent to rationalise the different development consent regimes and urge that this be completed prior to the Commission's inception. Thereafter we support the proposed authorisation of the Commission to grant the necessary consents. The list in the White Paper may require enhancement.

Q.25 The commission's mode of operation

We propose that the board of the commission would appoint a panel of members (usually three to five) to examine and determine the major applications but that, where it did not feel that a full panel would be required, the Board of the commission should have discretion to delegate the examination of smaller and less complex cases to a single commissioner with the commission's secretariat.

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 decision?

If not, what changes or alternative mode of operation would you propose?

31. Question 25

This question, as flagged earlier, is one where we feel care needs to be taken. For smaller or less complex projects it may well be appropriate to assign the determination to a single commissioner. For major applications we feel strongly that the proposed 3-5 Commissioners may not be adequate, depending on the extent of their combined professional knowledge. (See our further comments in response to question 32 on the Commission's skill set).

Q.26 Preliminary stages

Once an application was accepted, the commission would secure notification of and consultation with affected individuals, the public, relevant local authorities and, depending on the nature of the application, other public bodies such as:

- Health and Safety Executive
- Relevant directors of public health
- Relevant highway authorities
- Civil Aviation Authority
- Coal Authority
- Environment Agency
- English Heritage
- Natural England
- Waste regulation authority

- British Waterways Board
- Internal Drainage Boards
- Regional and Local Resilience Fora
- Commission for Architecture and the Built Environment
- HM Railway Inspectorate
- Office of Rail Regulation
- National Parks Authorities
- Mayor of London
- Devolved Administrations
- Regional Development Agencies
- Regional Assemblies

Do you agree in principle that the list of statutory consultees set out above is appropriate at the determination stage?

Are there any bodies not included who should be?

32. Question 26

No comments are offered on the list of statutory consultees.

Q.27 Examination

We propose that

- the majority of evidence, given its likely technical nature, should be given in writing, although the commission would have discretion to call witnesses to give oral evidence where it felt that it would help it to understand the issues, or asking a witness to give evidence in writing might disadvantage them.
- the commission would test this evidence itself by means of direct questions, rather than relying on opposing counsel to test it via a process of cross-examination – though it would have discretion to conduct or invite cross-examination of witnesses, if it felt that this would better test the evidence.
- the commission would organise an “open floor” stage where interested parties could have their say about the application, within a defined period of time, where there was demand for it.
- the examination and determination process should be subject to a statutory time limit of no longer than nine months (six months for the examination and three for the decision), but that for particularly difficult cases, the commission might decide that it needed longer to probe the evidence before they could reach a decision.

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?

33. Question 27

The Royal Academy of Engineering supports the procedural reforms proposed to improve the efficacy of the process. We do however recommend that further consideration be given to a "Select Committee" or Royal Commission style of interrogation. This would

enable written evidence to be further tested orally but in a less adversarial style than a traditional Parliamentary Inquiry.

34. We applaud the intent to determine a predictable timetable of 9 months.

Q.28 Hard to reach groups

We recognise that some communities can find it hard to engage with formal inquiry processes and may not readily come forward, even though they may be affected by proposals. We are determined to ensure that affected groups and communities can participate effectively and make their views heard in the process. We propose to build upon the long and impressive tradition in planning of people who have found ways to reach out locally, to engage communities and give voice to people who are not usually heard. We propose that, alongside the introduction of the new infrastructure planning system, we will increase grant funding for bodies such as Planning Aid by up to £1.5 million a year so that they can extend their activities and help such groups get involved on site-specific proposals in national policy statements and in the planning inquiries on major infrastructure projects.

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?

35. Question 28

With respect to "hard to reach groups" the concept of proactive selection to citizen's juries or panels could be considered.

Q.29 Decision

We propose that the commission would approve any application for development consent for a nationally significant infrastructure project which had main aims consistent with the relevant national policy statement, unless adverse local consequences outweighed the benefits, including national benefits identified in the national policy statement. Adverse local consequences, for these purposes, would be those incompatible with relevant EC and domestic law, including human rights legislation. Relevant domestic law for infrastructure sectors would be identified in the planning reform legislation.

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

If not, what changes should be made or what alternative considerations should it use?

36. Question 29

We strongly support the proposal that the Commission should decide within the framework of the relevant national policy as set out in the White Paper.

Q.30 Conditions

We propose that the commission would, where it approved an application, specify any conditions, such as mitigation measures, that the promoter would have to comply with. Any conditions would need to be imposed for a purpose directly related to the project and not for any other purpose; would have to be fair and reasonably relate to the development permitted; would have to be precise and enforceable; and could not be so unreasonable that no reasonable authority could have imposed them. The commission would also be obliged to assess the costs, impacts and benefits of proposed mitigation options and satisfy itself that the required measures are a proportionate and efficient solution.

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?

37. Question 30

Subject to proportionality and reasonableness, we also support the Commission having powers to specify mitigation measures or other conditions to be complied with in taking projects forward.

Q.31 Rights of challenge

We propose that there would be opportunity to challenge a decision by the infrastructure planning commission or the process of reaching it, when the commission's decision had been published and that this opportunity would be set out in legislation. The opportunity to challenge would be open to any member of the public or organisation likely to be affected by the decision. The grounds for challenge would be illegality, procedural impropriety or irrationality (including proportionality). Any challenge would have to be brought within six weeks of publication.

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?

If not what alternative would you propose?

38. Question 31

We agree with the proposals dealing with legal challenge.

Q.32 Commission's skill set

We propose that commissioners would be appointed for their expertise in fields such as national and local government, community engagement, planning, law, engineering, economics, business, security, environment, heritage, and health, as well as, if necessary, specialist technical expertise related to the particular sector.

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

39. Question 32

This question is linked to the Commission's competence and role. We strongly agree with the requirement for the Commission to have the breadth and diversity of talent listed in the consultation. We doubt

however that it will be possible for the Commissioners to have the breadth of technical and engineering expertise to cover the range of national infrastructure projects foreseen. We strongly recommend therefore that the Commission is able to formally access the expert advice it will need to assist its determinations. It must therefore have the power to co-opt as it sees fit such additional resources. Here the Royal Academy of Engineering would be pleased to assist in the identification of knowledgeable, nationally recognised engineering expertise both as potential Commissioners and as additional resource for the Commission once appointed.

40. The White Paper does not indicate the size of the secretariat or the budget available to the Commission. We believe these will be significant.

41. Questions 33-40

We have no major comments on these other questions associated with improvements to the town and country planning system other than to offer broad support for their implementation.

Submitted by:
Mr P Greenish CBE
Chief Executive
The Royal Academy of Engineering
29 Great Peter Street
Westminster
London SW1P 3LW

Prepared by:
Dr Alan Walker
Policy Advisor
The Royal Academy of Engineering