

Preparing a Flexibility Toolkit

Project A:

Consultation and Engagement in the DCO process

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1. The context

The Planning Act 2008 introduced a new consent regime for Nationally Significant Infrastructure Projects (NSIPs). Before this there had been several attempts to streamline the planning consent process for major projects through amendments to planning legislation and regulations. However, the length of the Planning Inquiry for Terminal 5 at Heathrow led to the Eddington Review and its recommendation that there should be a stand-alone and more unified consent process for projects of national importance. Nationally Significant Infrastructure Projects are now consented through the Development Consent Order (DCO) process.

Given the scale and nature of NSIPs, many consented projects are only now coming to the construction phase, where there are a number of concerns about the relationship between consent and deliverability, particularly in the balance between detail and flexibility in the process. Last year, the National Infrastructure Planning Association (NIPA) commissioned research by the authors to investigate these issues. Our report, *Infrastructure Delivery: the DCO process in context*, was published in June 2017¹ and made a number of recommendations.

The report highlighted concerns raised by promoters and contractors related to enabling flexibility to support the delivery of the consented projects. The report stated that in order to achieve this flexibility, there needed to be consideration of the engagement of, and relationship with, stakeholders and communities. Further, the report noted that this engagement needed to be meaningful and deliberative engagement throughout the lifetime of a project, from initial preparation of a DCO application to operational delivery and decommissioning. In particular, the report noted that the need for initial detail might be offset by the use of more meaningful consultation in the construction phase, particularly when the detailed design is being governed through the requirements and codes included within the DCO. We noted the importance of transparency in such engagement which can improve trust and confidence amongst all stakeholders including the community.

Communities and stakeholders are heavily involved in the DCO process, which is concerned to give consent to nationally needed infrastructure whilst managing and mitigating impacts on local communities and environments. The Planning Act places obligations on promoters to consult a range of specified stakeholders, including local authorities, landowners, and the local community. The applicant has duties to take account of responses to consultation and publicity. A consultation report must be submitted as part of an application for an order granting development consent, and local authorities can make representations about the adequacy of consultation as well as preparing their own local impact

¹ <https://www.nipa-uk.org/news/NIPA-Insights-Research-REPORTS-LAUNCHED>

reports. These documents are considered carefully by the Planning Inspectorate (PINS) as part of the decision as to whether to accept a scheme for examination.

The system is designed to heavily frontload consultation. Indeed, the Consultation Report is submitted as a requirement prior to the examination to summarise the pre-application engagement and is not a living document subject to later update. There may be further engagement with a range of stakeholders through the examination phase and post-consent through the construction phase and often into the operation phase of the new infrastructure project. However, the level, scale and type of consultation following the acceptance of the DCO for examination by PINS will be a matter for the scheme's promoter unless it has been specifically set out in the DCO or one of its constituent documents.

Following the publication of the first research in 2017, NIPA has now commissioned further work to prepare a 'flexibility toolkit' to address these issues in practice. This involves work across five workstreams, one of which is engagement, that is the subject of this report. The scope for this workstream notes that 'NIPA Insights I highlighted the need for improved engagement for stakeholders of all kinds² to be able to understand the need for, and to give support to, greater project flexibility. Concerns have been raised about 'engagement' only occurring at the pre-application consultation stage, rather than in a more active on-going basis post-application and post-consent. It is considered that commitments to engage post consent may help engender more support for flexibility'.

² These are generally grouped as parties with an interest in land (PIL) including landowners, statutory consultees including statutory undertakers, non-statutory consultees, local authorities, and the community.

2. Our approach

The authors were commissioned to 'review DCO consultation reports' to identify evidence to date of any active commitments to engage beyond the DCO to support flexibility. In order to do this, we have looked through the Consultation Reports published on the PINS website for all 65 DCOs granted when we started the research. We have not included any DCOs which were withdrawn or not granted, or any currently under consideration.

This review involved reading through these 65 reports to:

- identify who the key stakeholders for the project were;
- identify any record within the report of how flexibility has been considered / explained / proposed through the pre-application process;
- identify any commitments record to further consultation beyond the DCO decision recorded in the report; and
- assess – where possible - any correlation in proposed engagement beyond the DCO as the need to secure support for greater flexibility.

We reviewed all 65 Consultation Reports, although given the length of these documents it should be noted that this involved a scan read process rather than a detailed line-by-line consideration of each. The method used for the review involved the use of word searches on each of the reports for different stakeholder types as identified below and then the use of the term flexibility in the reports. However, in the later reports since 2015, there was a detailed read of all the tables reporting promoter responses to specific consultation matters as these were generally grouped by themes and did not generate the responses being reviewed through word search methods.

We also reviewed the requirements section of each granted DCO to see if there were any specific commitments made for further consultation / public engagement in relation to a requirement or its discharge. In order to understand these requirements better, we also looked through the Examining Authority recommendation reports for all 65 consented DCOs, in relation to stakeholders, the community and the framing of the requirements. In a number of cases, this highlighted commitments that were made to further engagement in the Environmental Statement, Code of Construction Practice (CoCP) or Construction Environmental Management Plan (CEMP) associated with the project. We conducted a headline review of these documents, where available, in relation to engagement issues only.

This report summarises our findings from these reviews.

3. Consultation reports

In the review of NSIP consultation reports, our main objective was to find where there had been promoter commitments to stakeholders and whether any of these reflected flexibility for the future delivery of the project.

This review was undertaken chronologically, in part as a means to assess whether there had been any developmental or practice trends in the approach to consultation taken in each NSIP and also to give some indication of if there had been any cumulative learning between the NSIPs processes over time. This was a point that had been frequently mentioned during the NIPA I research project. There was some evidence of this in the use of themes and groupings of stakeholder comments and responses.

Another trend over time was the use of increasing complexity in the format of the consultation reports with their sub-division between volumes on publication and the use of multiple appendices. Some main reports were over 1,000 pages whereas some were below 100 pages in length. Many were procedural and identified in detail the process of consultation rather than its outcome and the promoters' responses.

Overview of findings

In this review of consultation reports, there was an attempt to identify the issues where promoters had given any commitments to return to any of the stakeholders with any form of discussion about how to resolve issues raised at the implementation phase of the project. The main findings are as follows:

1. In the consultation reports for the earlier NSIPs considered in this review, there was generally a clear separation of the issues raised by each stakeholder by type and responses to each of them. These were primarily set out in the main consultation report. However, over time, the reports have changed in their style and approach and issues are now more likely to be reported under themes that may relate to all stages in the consultation process.
2. There has been a marked tendency over time to group all stakeholder views together making it difficult to identify where the specific stakeholder source for specific comment types. In some cases, it is a very convoluted process to identify which stakeholder made which comment as these can be contained in appendices or sub parts of the report published separately. In one case all stakeholders were given a number and in another, the process was entirely circular between a range of documents and even by

following this, it was very difficult to determine which comments had been made by which party.

3. In some more recent cases the reporting of the grouped comments by stakeholders are so generalised in the main consultation report that it is difficult to understand the specific points being made. This is in stark contrast to the detailed approach in the early main consultation reports.
4. Consultation reports are often subdivided into numerous parts in separate documents with appendices that can run into many further documents making it difficult to obtain a clear narrative of the points raised and the responses given
5. Where stakeholder comments have been mentioned individually this has been undertaken in a silo approach. Where there were multiple stakeholders concerned with the same issue, there was often little explanation as to how their potentially competing objectives were to be resolved through the project's delivery. The reports reflected a silo approach with each type of consultee being considered separately.
6. There are also several detailed comments on the form and usability of the consultation documents that are set out in the box below. These were not part of the project brief but are included to provide further insights into the issues involved in the way these reports can be used by all parties at a later stage in the process. They may be useful to consider as part of the toolkit preparation.
7. What is clear from this review, is that many promoters do make specific commitments to stakeholders to undertake some future dialogue with them to resolve specific issues. In total, these commitments to some sort of further engagement appeared in 20 Consultation Reports. Some examples are given below by stakeholder type.
8. Where these commitments were made, most frequently these were set out in the promoters' response column as requiring or leading to no changes in the delivery of the project, even where this commitment seemed to suggest that this was at least an open issue for future resolution.
9. As NSIPs have developed, there has been an increasing tendency to state that many of these outstanding matters will be resolved through specific processes – particularly the Code of Construction Practice (CoCP) or the Construction Environmental Management Plan (CEMP). However, even where these were used not all commitments made by the promoter to the stakeholders were included within them. Other codes and plans were also mentioned as a means of future resolution including traffic management plans (under a variety of names) and the management of mitigation during construction.
10. In none of these consultation reports was there any table, list or summary of these ongoing commitments made by the promoter to the stakeholders. This absence of such a list or table does not suggest that these matters are lost subsequently. However, in terms of achieving promoter trust and confidence with stakeholders, such tables may communicate and underline

the commitments made to all stakeholders. It could also provide a useful 'bring forward' action list at the later stages of implementation. Further, such a list would easily identify who is involved where these commitments cannot be met subsequently and can invoke a change management process that can be recorded as part of the project's delivery.

11. When considering the use of CoCP and CEMPs from the perspective of the review of Consultation Reports, this has now become a more standard practice in many NSIPs, although not all. Further, these generally appear to be either/or processes. There is also great variation in the way that these approaches are used within the whole of the NSIP process including when they are prepared, who prepares them and whether they are available as part of suite of documents available for consultation at the outset. Some promoters state clearly that the CoCP or CEMP is provided for information and not comment while others state these they will be prepared later in the process by the appointed constructors.
12. Increasingly local authorities are stating their views of what should be included in the CoCP or CEMP overall or in relation to specific matters. Latterly, there is also a slight indication that stakeholders are becoming wary that CoCP and CEMP are being used as an immediate means to manage stakeholder issues raised at the consultation stage but have less faith in their role in delivering the solution suggested to be included within them. There are also variations in practice about what is contained within the CEMP or CoCP, and this is reflected in how they are presented in Consultation Reports. While these variations can reflect the bespoke nature of each CoCP or CEMP, we found a range of views about whether specific major elements should be included or established separately including codes on construction traffic and air quality.
13. Those projects that mentioned the use of the CoCP in their Consultation Report covered a range of project types including the A14, East Anglia Three Offshore windfarm, North London Heat and Power, Silvertown Tunnel and Thames Tideway.
14. Those projects that mentioned the use of a CEMP in their Consultation Report also ranged across different types including Brechfa Forest, Ferrybridge, M4 Junction 3-4 smart motorway, Meaford Energy Centre, Richborough and River Humber gas pipeline.
15. In some cases, issues are said to be resolved in a future Section 106 (s106) agreement but these commitments tend to float without any reference as to how they will be negotiated or what role they have overall.
16. About a third of promoters have given commitments to on-going relationships with the community into construction and operation.
17. When considering the role of flexibility in the approach to the project that is used in the consultation, this is mentioned rarely but is seen in a few applications including Glyn Rhonwy, Meaford Energy Centre, Rampion and port Talbot Steelworks.
18. On the promoters' part, the use of flexibility has sometimes been indicative of a need to finalise a site boundary or consider design issues

later on, as seen in the Consultation Reports for both the North London Heat and Power and Rookery South projects.

19. The role of flexibility to support later operational technology has usually been mentioned by stakeholders rather than promoters. The flexibility in relation to siting of facilities or specific linear routes appears to be primarily determined by issues in relation to land owner discussions and this is not surprising. Other determinants are related to existing underground pipelines and connections and must be resolved with statutory undertakers before final decisions are taken on siting.

Engagement of stakeholders: Statutory consultees

Mention of responses from statutory consultees and statutory undertakers is variable in the consultation reports. Over time there is a clear separation between statutory consultees and statutory undertakers interests and issues raised for resolution.

In maritime locations, the level of statutory consultee involvement is at its maximum and each consultee appears most frequently to be dealt with individually in the process. This may be appropriate given that their interests may not overlap but in some cases, there appears to be potential for differences in resolution on issues raised by statutory consultees and the reports do not deal with this conjunction of issues.

Engagement of stakeholders: Local authorities

The involvement of local authorities is variable and is primarily made by individual services e.g. highways, environmental health or heritage rather than as an authority wide response. This approach does not seem to have affected the type of response provided by the promoter. While local authorities are engaged in the Statement of Community Consultation (SoCC) and how consultation is to be undertaken, it is clear that there have been some criticisms of the consultation undertaken within these approved approaches. In these cases, promoters have dealt with this criticism on a case by case basis.

As practice has developed, some cases local authorities have combined to make their responses to the promoter as part of the consultation and in some cases promoters have answered in detail to one local authority and required all other local authorities making the same point to refer to the comment made. In many cases, the promoter has made the same replies to every local authority consultee making the same point, repeating the same wording multiple times throughout the consultation report.

In some cases the local authority is the scheme promoter and where this is the case, other local authority departments and services make their consultation responses as if to a third party as required as part of the process. Some local authorities are landowners and again are treated in the same way as other landowners.

The role of the local authorities in signing off completion of agreed actions in CoCP, CEMP, through s106 agreements or other methods has rarely if ever been mentioned in consultation reports. This might be an area which could be added to a table of commitments made in the consultation reports i.e. where will

responsibility lie for approving delivery of the commitments made by the promoter. This table can be carried forward to be included in a schedule of all commitments made during different stages of the NSIP process.

The use of s106 agreements between the promoter and the local authority are very poorly explained in consultation reports and they are used as individual mechanisms for the resolution of specific issues. It is not clear who will negotiate the s106, to what document it will be attached and who will assess compliance to its commitments. As s106 appears to be used frequently, its role in resolving stakeholder comments could be better explained.

Consultation reports are undertaken by the promoters and before the preparation of Local Impact Reports (LIR) by local authorities where there might have been used as a means of raising issues and giving more weight to the points made by local authorities in stakeholder consultation. It is curious that these LIRs appear to have no life in this consultation process because of the relative timings of each in the pre-acceptance process. It might be expected that they could include local authority issues that promoters could raise in consultation. Instead, local authorities perform the role of consultees as well as approving the overall consultation process.

Engagement with local authority councillors is mentioned sporadically throughout the consultation reports. This contact appears to be primarily through the consultation exhibitions and public events rather than any presentations made to local authorities as part of the pre-acceptance process. As the local authority has no role in the approval of the project, then issues of pre-determination should not be a concern in holding these meetings. This does not mean that these meetings do not take place only that they may not be perceived to be part of the consultation process.

Most of the local authority meetings on the project reported in the consultation reports are with officers and are primarily related to specific technical issues including environment, traffic, environmental, health, public health, socio-economic issues and heritage.

Engagement of stakeholders: Local communities

The ways in which local communities were engaged in consultation varied in each project although there was generally a common core of activity that was designed to meet SoCC requirements for local authority approval. While about a third of the promoters made some commitment to continue their relationships with the community, the majority of these related to information provision, particularly during construction. However, even in these cases, there was little clarity of what this would entail in practice. We found little suggestion that these future community relationships would have any role in supporting flexibility either in the project's construction or future operation.

Engagement of stakeholders: Landowners

The consultation with landowners and parties with an interest in land (PIL) will depend on the type of scheme. Where schemes are linear, there is some evidence that precise routes are being determined through the consultation process.

For many landowners, including those who are not directly involved in the scheme through their landholding or interest, the issues raised are in relation to the construction phase of the project. These include access to properties and the mitigation of associated construction effects including dust, lighting, hours of working, traffic management and environmental quality.

Consultation and flexibility

In early NSIP projects, the consultation reports refer to flexibility in consultation methods rather than in relation to the project directly. Over time the references to flexibility appear more frequently and these arise from stakeholders concerned about the longer term best use of technology for the delivery of the project's outcome in operational practice. Very few promoters identified the need for flexibility in the project apart from the role and use of the Rochdale envelope.

Although not acknowledged in the consultation reports, in effect flexibility was being achieved in a variety of practical ways. Firstly, the role of the consultation with landowners in determining the siting of the project was frequently the main perceived and practical use of the consultation process for the promoter. This is not surprising as promoters may not wish to determine the specific route or site before consultation in order to manage costs and deliverability.

The second way in which flexibility is managed through consultation is the increasing use of codes and plans (which will be governed through the DCO requirements) which allow the promoters to determine issues later on in the process of delivery with the stakeholders. While the use of these codes and plans had the immediate effect of closing down discussion in the consultation process and deferring resolution to later point, in effect this is a process of providing promoter flexibility in a responsive mode. There was little evidence of promoters using codes and plans as a means of achieving flexibility later as a positive method from the outset and with a proactive consideration of ongoing engagement.

Issues of design and appearance rarely appear in consultation reports and there appears to be little pressure for more detail on the matters as part of the consultation process from any group of stakeholders.

Commitments to further engagement

The use of CoCP, CEMP, s106 and other codes and plans governed through the DCO requirements appears to be presented in the consultation reports primarily to resolve and then close issues raised in pre-application engagement. There is little, if any, evidence that these are used to generate the potential for ongoing relationships with stakeholders to allow for more flexibility in the delivery of the project at a later stage. There is also evidence that the role of community views is being lost within wider issue grouping and it is hard to identify what these issues may be in practice. The issues raised by landowners are clearly the most salient at the consultation stage and there is evidence to suggest that the consultation process is regarded as a flexible means to resolve siting and routing issues. This is not surprising.

The consultation stage could be used by the promoter to identify which issues will need to be resolved at the delivery phase including design, technology, construction management issues and operational handover. These could all be identified at this stage and processes suggested for stakeholder involvement as these come forward for determination. As this is not occurring now, many issues are being raised and then 'resolved' by reference to a future process. These commitments are not set out in the consultation report although this might provide a reasonable narrative conclusion as to what stakeholders can expect next.

This rise on the reliance of the use of codes and plans governed through the DCO requirements is now attracting more attention from local authorities and other consultees and there are increasing indications that the contents and operation of codes and plans are forming part of the assessment of the project as a whole and the adequacy of the consultation. In this, the stakeholders appear in some sense to have more focus on delivery than the promoters.

Specific commitments to further community consultation or the establishment of community liaison groups post-consent did appear in a number of projects, as already noted. Examples of consultation reports specifically highlighting such commitments include:

- A556 Knutsford
- Daventry Rail International Freight interchange
- East Northants Resources Facility
- Glyn Rhonwy
- Hornsea offshore Wind
- Ipswich Chord
- Knottingley power Station
- Luton M1 Junction 10a
- M4 junction 3-4 smart motorway
- Hinkley Connector
- North London Heat and Power project (community forum as part of CoCP and dedicated phonenumber and email for residents during construction)
- Port Blyth
- Rampion Offshore wind (Fishing Liaison officer, Commercial Fishing working group, sea users group and project liaison groups with the community and businesses and community issues for decommissioning)
- River Humber Gas Pipeline (Community liaison officer appointed through the CEMP)
- Tritton Knoll (mention of communication plan as part of CoCP)
- Rookery South (through to operation)

In many cases, however, these commitments were around ongoing community liaison, for example to ensure information flow around construction and/or operation rather than for full consultation to further shape the project.

Suggested approaches to consider for the toolkit

If there are choices to be made about what to include in the main report and appendices of the consultation report, then the process of consultation could be put in appendices unless the form of consultation was a specific issue that was raised as it was in some projects. Otherwise, main consultation reports might be more useful if they contained:

- a narrative form of what was raised by whom
- the promoters' responses to these issues
- how these responses changed the project
- a list of all commitments made by the promoter to the stakeholders in this issue resolution
- how the commitments made by promoters to stakeholders will be implemented
- how compliance to these commitments is to be applied and by whom
- it might also include an indication of who will be the main contact point on the resolution of these commitments³

The consultation reports themselves varied in accessibility and usability. The Heysham to M6 project report was one of the easier to read documents. Having looked at all 65 reports, we would make the following observations on the usability of NSIP Consultation Reports for toolkit consideration:

- Despite a generally accepted view that the consultation reports are very similar for each application, this is not the case in practice
- They vary in their usability as a number are not searchable and do not allow any cut and paste of documents
- Many reports have no table of contents for single documents or the whole suite of documents provided to support the consultation stage
- Many documents have no consecutive pagination and may be grouped documents published as single documents with no overall contents page
- Some reports have no pagination at all
- Most reports do not put headings on tables as they appear on consecutive pages
- Most reports do not carry over the name of the stakeholder in tables from page to page
- Many reports use the same numbering system for paragraphs, tables and figures in the same report making it confusing to use
- Reports that switch between landscape and portrait formats within them make them very difficult to use online
- There is a great variation on the way in which consultation comments are recorded
- In earlier reports the issues raised by communities have a greater place, whereas these comments are frequently lost in later reports
- In some cases, it is hard to see where the community has been consulted at all as their views are not reported in the consultation reports
- Some consultation reports mention comments made by PINS and responses to them but most do not
- Some consultation reports cross-reference other documents without easy to follow or specific references ('see Environmental Statement' as opposed to 'see Section x.x of the Environmental Statement'), which makes it harder to follow
- While there was a perception that most consultation processes and reports written were undertaken by consultation specialists, it is difficult to determine whether this is the case. Few consultation reports indicate the organisation that has been responsible for their preparation – as a contractor or in-house although those that did have an affiliation were more likely to be planning and environmental consultants than

³ In the French system, this would be an independent person

consultation specialist companies.

4. Requirements and codes

To supplement our understanding from considering Consultation Reports, we also looked at the Requirements of all 65 consented DCOs in relation to any obvious commitments to further consultation with communities. All schedules of requirements include provisions for the engagement of stakeholders directly named as being consulted in, or responsible for, the discharge of requirements. These will very commonly include the local planning authority, highways authority and statutory consultees such as the Environment Agency and Natural England, but the list can be quite extensive (including, in the case of the Thorpe Marsh pipeline, a gliding club).

Named provision specifically to further consult communities, in the sense of seeking their views so as to further shape the project on things like detailed design and scheme implementation, is much less common in DCO requirements. We could only find an explicit commitment to this in two of the 65 DCOs consented when we started our research, the A14 Improvement Project and the M20 Junction 10a Project.

In the case of the A14 project, there are clear commitments to further consultation over the detailed design secured in the requirements. The relevant parts of requirement 3 are:

Preparation of detailed design, etc.

3.—

(3) No part of the authorised development is to commence until options for the detailed design of that part of the authorised development have been submitted to the Design Council's Design Review panel and the undertaker has received and considered the advice of the Design Council's Design Review panel in respect of the detailed design of that part of the authorised development.

(4) The undertaker must, in the course of developing the detailed design of the authorised development, consult with the relevant planning authorities, the Parish Forums, the Community Forums, the Landowner Forums and the Environment Forum in accordance with the provisions of the code of construction practice.

For the M20 Junction 10a project, details of the consultation must be submitted to the Secretary of State, who is discharging requirements:

4.—(1) With respect to any requirement which requires details to be submitted to the Secretary of State for approval under this Schedule, the details submitted must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted and the undertaker's response to that consultation.

- (2) At the time of submission to the Secretary of State for approval, the undertaker must provide a copy of the summary report referred to under sub-paragraph (1) to the relevant consultees referred to in the requirement in relation to which approval is being sought from the Secretary of State.
- (3) The undertaker must ensure that any consultation responses are reflected in the details submitted to the Secretary of State for approval under this Schedule, but only where it is appropriate, reasonable and feasible to do so, taking into account considerations including, but not limited to, cost and engineering practicality.
- (4) Where the consultation responses are not reflected in the details submitted to the Secretary of State for approval, the undertaker must state in the summary report referred to under subparagraph (1) the reasons why the consultation responses have not been reflected in the submitted details.

There are similarly worded provisions for the A14 project as well.

During the period of undertaking this research, the Silvertown Tunnel project became the 66th DCO to gain consent and we noted that the schedule of requirements here also included specified commitments to further consultation over the detailed design of the project:

Design principles and design review panel

3.—

(2) TfL must consult with — (a) the Silvertown Tunnel Design Review Panel; and (b) the Silvertown Tunnel Stakeholder Design Consultation Group, during the detailed design of the authorised development and in the manner provided for by the design principles and have regard to the responses received

Although requirements specifying consultation to explicitly shape the detailed design were rare (there were plenty of projects with detailed design clearly going on post-consent which did not make the same explicit commitments as those just mentioned), it was more common to have requirements ensuring some sort of community liaison (usually to ensure the flow of information about project construction or operation or complaints). These commitments could be found as standalone requirements in the case of ten DCOs out of 65. There is no particular obvious pattern in these, as they include schemes from various different sectors and of various scales. It may be that these projects have been more locally contentious, or where local communities or authorities have been able to sway promoters or Examining Authorities as to the desirability of including one. They often seem to have been added during Examination, perhaps as part of the negotiating strategy and process.

In the case of the Brecha Forest wind farm project, it is requirement 37 about 'Community Liaison':

Community liaison

37.

—(1) No authorised development shall commence until a community liaison scheme has been submitted to and approved by the relevant planning authority.

(2) The community liaison scheme shall include—

(a) details of how the undertaker will liaise with the local community to ensure residents are informed of how the construction, operation and decommissioning of the authorised development are progressing;

- (b) a mechanism for dealing with complaints from the local community during the construction, operation and decommissioning of the development; and
 - (c) a nominated representative of the undertaker who will have the lead role in liaising with local residents and the relevant planning authority.
- (3) The undertaker shall comply with the approved community liaison scheme throughout the construction, operation and decommissioning of the authorised development.

For the Hinkley Point Nuclear Power Station project, it is requirement 2 about Residential amenity: information dissemination and complaints handling’:

- Residential amenity: information dissemination and complaints handling
- (1) The authorised project shall not commence until a system for the provision of information to local residents and occupiers about the works and for the handling of complaints has, following consultation with Somerset County Council, been submitted to and approved by the relevant planning authority. The information to be disseminated shall include general provision of information in relation to the phasing and carrying out of construction works for the authorised project and specifically in relation to activities on-site that may lead to nuisance.
 - (2) The approved information dissemination and complaints handling systems shall be implemented as approved throughout the construction of the authorised project, unless otherwise approved by the relevant planning authority.

Requirement 31 of the separate Hinkley Point Connection project is very similarly worded.

In the case of the Burbo Bank offshore windfarm project, requirement 13 is about ‘community liaison’

- Community liaison
- 13.
- (1) No installation of piled foundations shall commence until a community liaison scheme has been submitted to and approved by Wirral Metropolitan Borough Council.
 - (2) The community liaison scheme shall include—
 - (a) details of how the undertaker will liaise with the local community to ensure residents are informed of how the installation of the piled foundations is progressing;
 - (b) a mechanism for dealing with complaints from the local community; and
 - (c) a nominated representative of the undertaker who will have the lead role in liaising with local residents and Wirral Metropolitan Borough Council.
 - (3) The undertaker shall comply with the approved community liaison scheme throughout the period during which piling is being undertaken.

For South Hook Combined Heat and Power, requirement 15 is about ‘a local liaison committee’:

- Requirement for a local Liaison Committee
- 15.—(1) No authorised development shall commence until the undertaker has established a committee to liaise with local residents and organisations about matters relating to the authorised development (a “local liaison committee”) which may, at the discretion of the undertaker, be combined with the functions and activities of the existing community liaison committee that is in operation for the activities of the South Hook LNG Terminal that is co-located at or near the site. The

local liaison committee must be made up of representatives of the undertaker and main contractors for the authorised development. The undertaker must invite the relevant planning authorities, Natural Resources Wales, local councils and other relevant interest groups, as may be agreed with the relevant planning authority, to nominate representatives to join the local liaison committee. The undertaker must provide a full secretariat service and supply an appropriate venue. The local liaison committee must meet at least once every 3 months during the construction of the authorised development and at least once a year during the operation of the authorised development, unless otherwise agreed in writing by the majority of the members of the local liaison committee.

For the Knottingley Power Project, requirement 35 is about a local liaison committee:

Local liaison committee

35. The authorised development may not commence until the undertaker has established a committee to liaise with local residents and organisations about matters relating to the authorised development (a “local liaison committee”). The local liaison committee must include representatives of the undertaker. The undertaker must invite Wakefield Metropolitan District Council, Selby District Council, North Yorkshire County Council, the Environment Agency, West Yorkshire Police and other relevant interest groups, as may be agreed with Wakefield Metropolitan District Council, to nominate representatives to join the local liaison committee. The undertaker must provide a full secretariat service and supply an appropriate venue. The local liaison committee must meet every other month, starting in the month prior to commencement of the authorised development, until the completion of construction, testing and commissioning works unless otherwise agreed in writing by the majority of the members of the local liaison committee. During the operational phase of the authorised development, the local liaison committee must meet once a year unless otherwise agreed in writing by the majority of the members of the local liaison committee.

For Whitemoss landfill, requirement 35 is about a community liaison committee:

35.—(1) The undertaker must:

- (a) submit terms of reference for a community liaison committee to the county planning authority no later than eight weeks prior to the first community liaison committee meeting taking place;
 - (b) convene the first meeting of the community liaison committee so as to take place on a date which is no earlier than six weeks and no later than four weeks prior to implementation of the development;
 - (c) after the first meeting of the community liaison committee has taken place to convene meetings of the community liaison committee once every 12 months, unless otherwise agreed between the undertaker and the members of the community liaison committee, throughout the operation of the authorised development;
 - (d) provide all practical administrative and secretarial facilities which may be necessary to enable the community liaison committee to function effectively including the provision of a suitable local venue for every meeting and the production and keeping of minutes for every meeting (which shall be available to the public);
 - (e) appoint and ensure the regular attendance at the community liaison committee of an appropriate representative who shall participate fully in the activities of the community liaison committee.
- (2) The county planning authority will notify the undertaker of its approval to the terms of reference, or provide its comments on those terms of reference within 14 days of receiving them. If no

response is provided within 14 days then it will be deemed that the county planning authority has approved the terms of reference as submitted.

(3) This requirement shall be of no effect during any period in which the Order shall be subject to any legal challenge.

In this case, the examining authority report included specific discussion about the need for ongoing engagement due to apparent feelings of mistrust related to the longer planning history of the site, and a feeling the planning process 'has not protected it'. The community liaison committee is noted in the report as the promoter's response to such concerns.

For the Ferrybridge multifuel project, requirement 47 relates specifically to a local liaison committee:

47.—(1) The authorised development must not commence until the undertaker has established a committee to liaise with local residents, businesses and organisations in relation to the construction and operation of the authorised development.

A very specific liaison forum related to the control of radio emissions is included as requirement 24 for the Keuper gas storage DCO:

Requirement 24 on control of radio emissions includes commitment to liaison group:

(3) The control of radio emissions plan shall also include the following— (a) a scheme to establish and operate a liaison forum between the undertaker, the relevant planning authority and the University of Manchester, to meet at least annually to discuss and to seek, without prejudice to any enforcement powers held by the planning authority, the resolution of any issues raised by any party relating to the effect of radio emissions from the authorised development;

Finally, in terms of local community liaison, for the East Northants Resource Facility, no obvious commitment to further community liaison was present on our initial examination of the requirements, however reading the Examining Authority report, we noted that as a result of an Examining Authority recommendation, requirement 4 of the DCO had been altered to require that the development was carried out in accordance with 'sections 4, 6 and 10 of the environmental document'.

The Examining Authority report noted this was in relation to continuing engagement with the local community, with a comment on page 54 that: 'Local confidence in the safe operation of the site can be enhanced if a requirement for continued engagement with the local community is incorporated into the DCO rather than being left as a volunteered commitment. Not only would that give it more substance in the eyes of local residents, it would also ensure that the commitment would continue if Augean ceased to be the owner of the site'.⁴

Section 10 of the Environmental Statement states that 'Augean has proposed to continue its engagement with the local community through the following actions in order to provide further reassurance to members of the public:

⁴ <https://infrastructure.planninginspectorate.gov.uk/document/WS010001-000695>

- Members of the community have been and will continue to be invited to the site during engineering works to see how the engineering of the site is undertaken.
- Augean will hold annual site open days to show how they operate the facility.
- Augean will make available through media such as the company website monitoring data in simplified form.
- Augean will make public data from passive dosimeters worn by site workers at the site to reassure the local community that radiation on site is within permitted levels.
- Augean will maintain its open door policy so that members of the public can see how the site is operated and monitored.
- Augean will continue to advise the community of its long term intentions as and when decisions are made.
- Augean will continue to consult with the community on new proposals at its sites.
- Augean will continue to support and take an active part in the site liaison group.
- Augean will commit to periodic reviews of the waste input rates so that if it is predicted that the site will not be full by the end of 2026 the design can be altered to reduce the void capacity so that the completion date can be met.⁵

This prompted us to briefly examine Environmental Statements in relation to commitments to further community consultation. We found these in 17 of the 65 Environmental Statements, usually not as detailed as that for East Northants, and often having more of the feel of almost of throwaway comment. An example of less detailed commitment is in the Environmental Statement for the Port Blyth New Biomass Project, which states that '1.7.5 NBEL will continue to consult with stakeholders throughout the Development Consent Order process, to address any queries, and to assist in the on-going detailed design of the Project'.

Returning to the schedules of requirements for consented DCOs, we also found 15 out of 65 projects has an explicit statement that the CoCP or the CEMP must include some sort of community liaison or communications. Examples here are the East Anglia One project, where the CoCP under requirement 20 must include 'a project community and public relations procedure' and Progress Power, where the CEMP under requirement 11 must include 'complaints procedures' and 'provision for setting up a Community Liaison Group'.

This prompted us to look at CoCP and CEMP documents to try and chart any commitments to further community engagement in them. This provided some difficulties. The PINS website only includes documents up to the scheme's consent, and although draft CoCPs and/or CEMPs are sometimes submitted, often these are drawn-up post consent. Sometimes these documents are available on a developer website but not often. Where we could find them, we found 20 different DCOs had commitments around further community engagement in these.

⁵ <https://infrastructure.planninginspectorate.gov.uk/document/WS010001-000695>

Indeed, this is sometimes commented upon specifically in the Examining Authority reports, for example for the Galloper Offshore windfarm, where it is noted that the CoCP 'allows for the set up of reporting and liaison lines of communication which seeks to address direct criticism arising from the locally reported experience of the GGOWF development construction'.⁶ Similarly the Rampion offshore windfarm Examining Authority report notes that the CEMP, which is required, will include details of 'local community liaison responsibilities including communications plan.'⁷

Examples of the ways this is presented in these codes include the draft CoCP for the Able Marine Park which comments:

“2.2.10 Good public relations are vitally important to the Project. Able will be responsible for communication with members of the public and their representatives. The public will be kept informed of developments on the Project on a regular basis, particularly where there are likely to be impacts that could affect their normal activities.

2.2.11 The Contractors will ensure that occupiers of nearby properties are informed in advance of significant works taking place, including the estimated duration.

2.2.12 A telephone “Hot Line” will be set up by Able for queries and reports. The telephone line number will be prominently displayed on-site notice boards. All calls received via the Hot Line will be logged by Able and passed to the relevant Contractor...

2.2.15 The Contractors will develop a Community Relations Strategy”⁸

Interestingly, we note that the recently consented Silvertown Tunnel DCO requirements do explicitly address this issue about the public availability of information relating to the CoCP, where requirement 5 'Code of construction practice and related plans and strategies' has the following explicitly stated provision:

(6) TfL must make the plans and strategies prepared or approved under sub-paragraphs (2) and (3) available in an electronic form suitable for inspection by members of the public until the authorised development has been opened for public use

It is worth noting that public information regarding the actual process of discharging of requirements is explicitly mentioned in three highways DCOs, related perhaps to the role of the Secretary of State for Transport in discharging requirements instead of local planning authorities. This is secured through a 'public register of requirements', as specified in the A14 DCO:

⁶ https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010003/EN010003-000013-Galloper%20Offshore%20Wind%20Farm_Examining%20Authority's%20Recommendation%20Report.pdf (Page 132)

⁷ <https://infrastructure.planninginspectorate.gov.uk/document/EN010032-001704> (Page 103)

⁸ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR030001/TR030001-000358-4.2%20-%20Draft%20Code%20of%20Construction%20Practice.pdf> (Pages 10-11)

Register of requirements

22.—(1) The undertaker must, as soon as practicable following the making of this Order, establish and maintain in an electronic form suitable for inspection by members of the public a register of those requirements contained in Part 1 of this Schedule that provide for further approvals to be given by the Secretary of State.

Similarly worded provisions are made for the M4 Junctions 3 to 12 Smart Motorway and M20 Junction 10a projects.

During the course of our scan read of Examining Authority reports, we would occasionally find mention of other commitments to ongoing engagement by DCO promoters. For example, there is extensive discussion of the 'agricultural liaison officer' in the North Wales Windfarm connection report and the many issues post-consent which they would apparently deal with. Similarly the Triton Knoll Electrical System examiner report notes that there would be an Agricultural Liaison Officer, and this was in the Environmental Statement and had been agreed in a Statement of Common Ground with the County Council. The Glyn Rhonwy Pumped Storage Examining Authority report makes note of an Environmental Liaison Officer (to be linked to the CoCP) whilst the Richborough Connection report notes an Agricultural Liaison Officer 'secured in the CEMP' and that 'the Construction Traffic Management Plan (CTMP) secures appointment of a Transport Co-ordination Officer who would resolve issues and problems through the liaison with relevant stakeholders'.⁹

Notably, we saw mention of Section 106 agreements securing further community engagement in the Examining Authority reports for three different DCOs. For Keuper Gas Storage, the report notes a Section 106 agreement includes provision for 'The setting up of a local liaison group the details of which are to be agreed with CWAC and CEC [the local authorities] ...'. These provisions ensure that there is a channel for communication with the local community as the development progresses and ensure that the HGV traffic generated by the development keeps to the routes that have been the subject of assessment in the ES'.¹⁰ For Preesall Gas Storage, a Section 106 agreement includes provision for 'continuation of a community liaison panel during between Halite, WBC, LCC [local authorities], parish councils and residents'.¹¹ The Thames Tideway Examining Authority report notes, amongst several commitments to community liaison working groups, that a Section 106 agreement between the promoter and the London Borough of Lewisham provides that 'whereby the Council would establish a steering group, involving local community groups, to develop a landscaping masterplan for Crossfield Amenity Green and the adjoining public

⁹ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010072/EN010072-001396-Glyn%20Rhonwy%20Pumped%20Storage%20Recommendation%20Report.pdf> (Page 127)

¹⁰ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN030002/EN030002-001272-Keuper%20Gas%20Storage%20ExA%20Recommendation%20Report.pdf> (Page 78)

¹¹ https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN030001/EN030001-004099-130121_EN030001_Preesall_Report.pdf (Page 139)

realm. The Agreement would provide funding for the preparation and implementation of the masterplan'.¹²

Finally, although we have not systematically considered them, we note that a significant number of DCOs incorporate a Deemed Marine Licence. These have their own schedules of conditions, which can themselves include further commitments to ongoing engagement. These are particularly around fisheries issues, for example the Dogger windfarm Creyke where the conditions for the Marine Licence include condition 9(d) relating to the project environmental management and monitoring plan which must include details of:

- (iv) the fisheries liaison officer appointed by the undertaker (to be notified to the District Marine Officer for the MMO's Northern District). Evidence of liaison must be collated so that signatures of attendance at meetings, agenda and minutes of meetings with the fishing industry can be provided to the MMO if requested; and
- (v) a fisheries liaison plan in accordance with the draft fisheries liaison plan to include information on liaison with the fishing industry (including by the fisheries liaison officer referred to in sub-paragraph (iv)) and a co-existence plan;

As we have seen in this section, explicit commitments in the requirements of DCOs to meaningful consultation to shape the detailed design of project post-consent are rare but do exist. In so clearly setting out further consultation over the detailed design of the project post-consent, the requirements of the A14 may be considered good practice here in our view. This is because we think that for flexibility to improve deliverability there needs to more consideration of issues post-consent. If this is to be successful, there needs to be local community and stakeholder confidence and clear commitments to further engagement are vital for that. We therefore think this may be useful for the toolkit preparation, however we appreciate this project is still under implementation and there may be some use in further investigation as to how well this requirement actually works in practice.

Slightly more common in the requirements are commitments to community liaison, particularly over construction impacts but sometimes over the operational phase of projects. Such commitments to further engagement can also occur separately in a range of documents associated with the DCO and its consent, some of which are not immediately accessible to the public. In making an explicit commitment to making the CoCP and its related documents and strategies publicly available post-consent, we believe the requirements of the recently made Silvertown Tunnel DCO are good practice. It will be worth noting this for the toolkit preparation. More generally, promoters clearly need to consider the transparency of various commitments to ongoing consultation and engagement and how easy it is for the public and other stakeholders to keep track of these and their fulfilment.

¹² https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/WW010001/WW010001-005183-140612_WW010001_TTT_ExA_Report_to_SoS_including_errata.pdf (page 93)

5. Conclusions

There is clearly a great deal of work which goes into consulting communities and stakeholders as part of the process of consenting a Nationally Significant Infrastructure Project, particularly in the pre-application stages. Many promoters are keen to maintain good relations with local communities and other stakeholders through construction to the operation of their project. Nevertheless, it was apparent to us that there is scope to improve practice in this area across the sector. This is particularly important if trust is to be built and maintained in order to support flexibility and this deliverability of projects.

We looked at all 66 consultation reports for consented DCOs (including the Silvertown Tunnel, consented whilst this research was underway). We found that:

- There was clear evidence of the way consultation (particularly with landowners and other parties with interests in land) was shaping projects, which had often clearly had some flexibility in the pre-application stage;
- Codes and plans governed under the requirements and separate Section 106 agreements are increasingly being used to respond to issues raised in consultation and are in effect providing some flexibility in delivery. However, nowhere in the consultation reports is there usually an explicit explanation of their role nor any proactive engagement on the part of promoters to explain the way they are being used to achieve flexibility on the part of promoters;
- There is little commitment apparent in the consultation reports themselves to ongoing community involvement in construction and delivery;
- Rarely is an explicit link made between flexibility and ongoing consultation
- It is difficult to track consultation issues and promoter commitments through the increasing use of themed and grouped approaches;
- In no reports was there an overarching list or table of commitments made to stakeholders for onward engagement because of promoter commitments in the consultation process;
- The documents themselves were becoming more complex over time, but it was unclear that the underlying processes themselves were significantly changing; and
- The documents themselves were often hard to navigate as a lay person.

We also looked at the requirements sections of the DCOs for all 66 consented projects, scan read the Examining Authority recommendation reports with a particular focus on ongoing stakeholder and community engagement, and looked at a sample of Environmental Statements, Codes of Construction Practice and Construction Environmental Management Plans in relation to community engagement only. We found that:

- There was lots of further engagement with statutory consultees guaranteed in requirements, not least because they have usually been

named as specifically being involved in the discharge of those requirements;

- Commitments to meaningful community consultation in the requirements so as to shape the project post-consent are very rare (e.g. over the detailed design if this is being done post-consent);
- There are a number of DCOs which have requirements mentioning some sort of community liaison, for example over construction information sharing; and
- Commitments to further community engagement can occur in lots of places – made as assurances during examination and noted in the examiner report, in Section 106s agreed separately with local planning authorities either before or during examination, in CoCPs and in CEMPs. These are apparently usually more about liaison than full consultation but this is not always clear. Further, this variety makes it very hard to keep track of such commitments.

We believe it is important to build trust and good relations with local communities, who must often live with the considerable impacts of construction and/or operation of NSIPs. It is only with such trust that communities and other stakeholders will have the confidence to support flexibility, with certain issues being determined post-consent. At present, communities and stakeholders can see the consenting stage as their only opportunity to truly influence projects, leading to greater pressure for detail and thus some of the deliverability issues we discussed in our *NIPA Insights I* report last year.

This trust is not just about providing opportunities for meaningful consultation, but also for transparency around that. Many promoters already do a lot of work to engage communities and stakeholders, but it can be hard for people on the outside of project teams to understand quite what is being done.

We would recommend that:

- Care be taken to ensure consultation reports themselves are accessible. There may be concerns to meet legal requirements leading to length and complexity, but perhaps a non-technical summary should then be considered;
- If codes and similar plans and strategies governed under requirements are to be used to support flexibility, this should be more proactively and positively explained during consultation and explained in the consultation reports. At present their use is almost presented in a defensive way;
- Greater transparency around such codes finalised post-consent is needed. The PINS website is a wealth of information submitted up to determination but it is then often hard to find documents such as CoCPs and CEMPs agreed post-consent in the public domain. Promoters need to produce better websites to manage post-consent transparency;
- Stakeholders such as statutory consultees are often explicitly named in DCO requirements as being involved in their discharge whereas it is rarer to make explicit commitments to further consultation of the local community. Promoters may fear reopening issues decided at examination but the legal force and transparency associated with naming a commitment explicitly in the requirements carries a great deal of weight. Care can be given to thinking how to manage any post-consent

- consultation but where detailed design is happening post-consent, there should be a clear commitment to further consultation in the requirements;
- Promoters might consider how best to utilise existing forums (such as Parish Councils) for post-consent liaison rather than inventing new forums, as often appears the case at present; and
 - Given the variety of places that commitments to further community and stakeholder engagement are being made, a single table to summarise them would greatly assist transparency and public confidence. Such a public register of commitments should also be updated as these are fulfilled. This might also assist promoters in fulfilling their obligations, which can be numerous post-consent. We understand that there is often a table of environmental mitigation measures agreed, and perhaps a similar approach would help for stakeholder and community engagement commitments. There should also be transparency as to who the community can complain to if they are concerned with the way these commitments are being fulfilled.

As many projects enter their delivery stage, it is clear that more can be done to support their implementation. With deliverability a key golden thread running throughout projects and all their documents, a careful and transparent approach to considering community and stakeholder engagement throughout the lifetime of these large projects is vital.

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