

## About NIPA

The **National Infrastructure Planning Association (NIPA)** was formed in 2010 to develop and promote best practice in infrastructure planning, particularly in relation to the Planning Act 2008 Regime (the Regime). Best practice means the well engaged, efficient and successful promotion and implementation of well designed and appropriately mitigated nationally significant infrastructure projects (NSIPs), whose benefits outweigh their adverse impacts.

NIPA now has around **500 members** who are drawn from a wide range of those involved in and working with the Regime, whether for project promoters or their advisers or for third parties including interest groups.

## Key Themes:

- The Regime generally works well – seen as a planning success that delivers
- But some targeted changes could deliver more, making the Regime greener, better and faster, and helping the Government achieve its aim of some projects being consented in half the time by September 2023:
  - **Policy** – great to see the review of National Policy Statements underway but there is more to do both in the short term, and to establish a more sustainable and reliable regular review process so that NPSs *remain* up to date and fit for purpose
  - **Proportionality and purposefulness** of the Regime – review and focus on the necessary and effective, and ensure single consenting not just in name but in practice
  - **Participation** in the Regime – through better informed, resourced and required effective participation

### The Regime generally works and delivers well

There is an industry and built environment professions **consensus that the Planning Act 2008 brought a step-change in improvement to infrastructure planning**, which had previously been subject to significant uncertainty, delay and inconsistency, and that **wholesale change** now would be both **unnecessary and undesirable**.

However, nearly 13 years since the Planning Act 2008 was passed, there are **changes** that could be made that would make the Regime **greener, better and faster** and help the **Government achieve its aim of some projects being consented in half the time by September 2023**.

**NIPA supports the principle of Project Speed and what the National Infrastructure Strategy (NIS) says on the Regime and where improvements to it should be focussed.** To that end NIPA has been pleased to have been able to input to government on a range of issues relating to changes to the Regime since March 2020. NIPA has also carried out a detailed **survey** and the **Appendix** provides a snapshot of survey outcomes relating to the issues covered in this paper; 25% of those responding were not NIPA members. Other survey responses related to design, application of digital methods to documents and processes, and practical suggestions around timescales in particular.

In the light of that survey and the discussion at **NIPA's Annual Conference**, and drawing from ongoing member engagement, this Paper suggests changes to the Regime in three respects. These build on the NIS and would **deliver tangible outcomes**, including helping some projects to be consented in half the time by September 2023 and supporting **nationally significant infrastructure that can contribute to the levelling-up agenda**.

## Changes needed

### 1. Policy

Recent government commitments and work on the **review of the Energy NPSs is welcomed**, but there is **much more to do** in the **short term** and it is vital this is done. There is also the need to **improve the NPS review process** in the **medium term**, in terms of its **efficiency, sustainability and reliability**.

- The Regime was built on the foundations of **government-led National Policy Statements (NPSs)**. NPSs have a particular role and legal significance, unlike the National Planning Policy Framework (NPPF), and are **crucial to maintaining industry confidence (and funding) in the Regime and its reliability and predictability**, as well as providing a **clear framework for examination and decision-making**.
- But NPSs have worked less well in recent years as they have steadily become **out of date** with technology, markets and policies (e.g. environmental and climate change). This has led to a dramatic **increase in the judicial review** of determinations by ministers of Development Consent Order (DCO) applications.
- NPSs are very burdensome on government to put in place and then to review regularly. The consequence is that they are still **not universally in place** and are **not regularly reviewed every 5 years** and so kept up to date, as was the **original intention**.
- There is an **urgent need** to continue and follow through on the **ongoing review of NPSs**, and to **put in place the remaining NPSs** such as for Water Resources Infrastructure. Particular issues are:
  - Climate change and net zero
  - Biodiversity net gain
  - New technologies
  - Parts of NPSs causing difficulty in Examination and Determination (e.g. options/alternatives).
- In the **medium term** NIPA would like to **explore with government a more efficient, effective and reliable/dependable approach to NPSs** which could be aligned with the 5 yearly NIS, which itself responds to the 5 yearly National Infrastructure Assessment prepared by the National Infrastructure Commission. This would not only provide a structured way for regular reviews but also overarching NPS policies would then be more consistent across different infrastructure sectors, where they can be, removing duplication and inconsistency between sectors.
- This more structured and more efficient approach to setting and reviewing government infrastructure planning policy would benefit all: government, investors, developers, stakeholders and interest groups.

### 2. Proportionality and purposefulness

- The Regime is **relatively expensive** to participate in and would benefit from some modernisation in terms of processes and procedures.
- In particular it **needs to be more proportionate**. We suggest a focus on the following:
  - A **review of the DCO application documents** required, to make them **fit for purpose**. The suite of around 25 compulsory documents was provided in legislation in 2009 before any applications were made and has not been changed since. Now that **over 130 applications have been made** it is **overdue to review the list** for which ones are (a) **required** but never used; (b) **not required** but are usually provided; and (c) required and used but with further information typically having to be supplied.
  - A **combined assessment process** covering in one 'hit' the currently separate **Environmental Impact Assessment, Habitats Regulations Assessment (both marine and terrestrial), Equalities Impact Assessment and Water Framework Directive Assessment** requirements, providing a **quicker, simpler and easier** to understand framework.
  - A review of the **flexibility** and greater use of **outline powers** that it should be possible, with safeguards, to accommodate in DCOs to **reduce upfront costs** (e.g. detailed design) and to **facilitate earlier and more efficient project delivery**.
- The Regime has also **lost some of its purposefulness** and this should also be rectified:
  - It should be possible to **include** in a DCO **all construction-related consents** if a developer wants to and can justify that, without those bodies who would otherwise issue those consents having to agree to this as a legal requirement. This was the **original intention of the 'single consenting regime'**, but it was never given full effect. Also, those consents that can only be included in a DCO with the

agreement of the relevant body are increasingly not included and therefore the **principle and purpose of single consenting** has been further **eroded**.

- There should be an **easier way to allow changes** to be made to proposed DCOs whilst they are going through the process; and also once DCOs have been made. **Guidance is unclear** on how to apply the current rules; **practice is inconsistent** about changes once an application has been accepted and while a DCO application is being examined; and the **process is clumsy and onerous for making changes to DCOs once they have been made**.
- The **restrictions** on the ability to include in DCOs some types of **social or economic infrastructure** that is nationally significant, such as **major new and expanded settlements and large logistics sites, should be removed**, and how 'business and commercial' nationally significant infrastructure development is dealt with improved, so that the Regime truly covers all national infrastructure; at the moment many types of infrastructure are not included in the Regime or are difficult to bring in and use.

### 3. Participation

- There are **few requirements or incentives on third parties**, particularly **statutory bodies and utilities**, to **fully and proactively engage** in the process when invited to by a developer pre-application, and current general legal obligations are insufficiently focussed so not effective.
- The current lack of, and in many cases less than is required, engagement **causes real delays and additional expense**, as well as **unresolved matters in examination** and even at the **decision stage**.
- So NIPA considers that a '**legal duty to engage**' - to participate in and to facilitate the process - **should be imposed** on all third parties having relevant statutory functions; and developers should be required to engage meaningfully too with both these bodies and affected communities.
- In addition, **resourcing** in both **informed capacity** and **focussed funding**, particularly for those with statutory functions including local authorities, is very important, as is an **independent resource for communities locally affected** to draw upon. There is a real **need for investment in training** and coordinated delivery that builds expert teams and resources and **better informed engagement**.

#### So how could these changes be achieved?

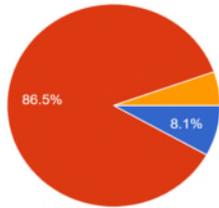
- Mainly through **change to guidance and direction from government**.
- Some **minor (primary and secondary)** focussed **legislative simplification and change**.
- **Improved capacity and training – collaborative working (the NIPRB itself being a good example of this within government), learning and application:**
  - a central government co-ordinated, cross-departmental expert team;
  - local government expert resource (Planning Advisory Service);
  - Planning Inspectorate case team and examiners; and
  - better political understanding and independent facilitated resource to support meaningful and informed community participation.
- Learning from **research** and **reflecting** this in policy **guidance and practice** – e.g. NIPA's *Project Hindsight* further to NIPA's *Insights I and II*.

## How can we help support and deliver change?

**NIPA is working to support government** with the ongoing review through:

- Response to the current consultation and continuing dialogue with officials and The Inspectorate, building on the considerable pre Conference and pre Review dialogue from March 2020 onwards.
- Post conference focussed workshops, jointly with other bodies where appropriate (e.g. RTPi, ICE)
- Dissemination of Survey results.
- Pre-consultation input to NPS reviews (e.g. with BEIS on the Energy NPSs).
- Research, e.g. implementation of DCOs ('*Project Hindsight*').
- Defining standards and training, e.g. re 'the intelligent client'.
- Input to the Government Project Academy, to raise the profile of planning in a Project Speed world alongside project procurement, funding and contracting.

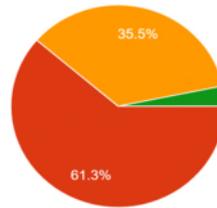
My overall impression of the whole Planning Act 2008 regime (covering NPSs and DCOs) is:  
37 responses



- It works very well
- It works fairly well but could be improved
- It does not work well but could be made to work well
- It does not work well and should be replaced altogether

### Section B: National Policy Statements

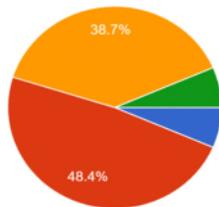
i) Do you think this area is working satisfactorily?  
31 responses



- Very well
- Quite well
- Not very well
- Poorly

### Section E: Statutory Consultation

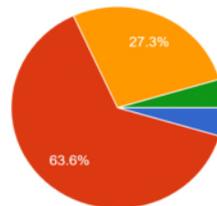
i) Do you think this area is working satisfactorily?  
31 responses



- Very well
- Quite well
- Not very well
- Poorly

### Section N: Material and non-material changes during Examination

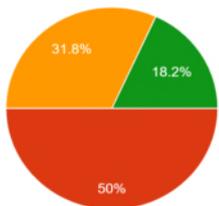
i) Do you think this area is working satisfactorily?  
22 responses



- Very well
- Quite well
- Not very well
- Poorly

### Section Q: Changes to DCOs

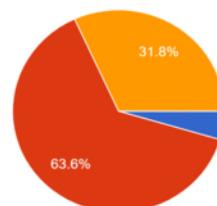
i) Do you think this area is working satisfactorily?  
22 responses



- Very well
- Quite well
- Not very well
- Poorly

### Section R: Project implementation

i) Do you think this area is working satisfactorily?  
22 responses



- Very well
- Quite well
- Not very well
- Poorly