



## **Consultation on the Pre-Application Consultation and Application Procedures for Nationally Significant Infrastructure Projects- March 2009**

### **A response from the Planning Officers' Society**

The Planning Officers' Society represents the most senior professionals and managers of planning functions in the English local authorities. We set out to:

- Act as an advocate and promoter of Local Government planning;
- Assist and advise the Government and the Local Government Association on planning matters and related issues;
- Act as a centre of excellence, undertake research and promote best practice in planning matters;
- Promote all aspects of the built and green environment by working closely with other organisations and professions.

The Society's aim is to ensure that planning makes a major contribution to achieving sustainable developments, from national to local level, in ways which are fair and equitable and achieve the social, economic and environmental aspirations of all sectors of the community.

This response on behalf of the Planning Officer's Society (POS) relates to the Consultation on the Pre-Application Consultation and Application Procedures for Nationally Significant Infrastructure Projects- March 2009

#### ***Regulations on applications and procedure***

##### **Consultation question 1:**

**Do you agree with the list of statutory consultees? Are there any others which you feel should be included?**

*In POS view the list of statutory consultees is very extensive. POS would express some concern based on experience that a no of these organisations ranging from Fire Authorities, Health Authorities to the LGA, are not currently equipped in terms of staffing and expertise to handle responses to a significant no of applications, and the associated pre-application negotiations, in the required timescale. This can be a significant cause of delay. In POS view it would be better to have a smaller list of core statutory consultees integral to the planning process and a supplementary list setting out additional bodies the applicant may wish to consult depending on the nature of the project and whether the relevant authority expresses a wish to be consulted.*

### **Consultation question 2:**

**Do you agree with the set of information we are requiring within the notices to publicise proposed applications and applications that have been accepted by the Commission, and notify prescribed persons of accepted applications? Should anything else be included? Or should anything be omitted, for example on the grounds of being too burdensome?**

*The requirement to publish in at least two newspapers circulating in the locality could cause some difficulty and confusion. In some areas there is only one daily or weekly local paper (- and will a freesheet count as one of the two papers?) A requirement to publish notices in ‘those local and/or regional newspapers with a significant circulation in the locality’ would be better –since in the case of a pipeline or pylon line application it might pass through more than 2 newspaper circulation areas. Equally an airport flight path might effect more than 2 such areas. Agreement on the papers to be use could form part of the arrangements for community consultation to be submitted to the LPA. A requirement for a minimum type size/advert size would be useful since ,with similar requirements e.g. under the Licencing Acts ,the intention of the law can be abused by making the adverts too small to be readily readable.*

### **Consultation question 3:**

**Is the information required to be stated on the application form appropriate? If not, what omissions or additions would you make? Are the descriptions in the form’s guidance note clear and sufficient?**

*Yes. It is desirable that the forms should follow the national standard planning application forms as closely as possible.*

*Under Q 11 of the form (Flood Risk Assessment) should not the applicant be invited to supply a letter in evidence from the Environment Agency agreeing that one is not required?*

*Under Q17 a modification to the wording to refer to ‘Stopping up or diversion to a highway’ (reflecting the wording in the 1990 Act) would seem sensible. It does seem rather odd to include ‘rights of navigation’ in this question when the rest of it is dealing with pedestrian and vehicular access matters. Possibly this should be split out into a separate question dealing with marine/coastal zone matters eg ‘Does the proposal involve development in, adjacent waterways or affecting; navigable rivers or areas subject to Harbour Authority control or Areas covered by*

*Coastal Zone Management Plans or Marine Conservation Areas? If so has the impact on these interests been assessed?*

*Yes/No/Not applicable*

*Document Reference-----'*

*In the POS view it should be a statutory requirement to lodge one copy of the complete application at the offices of the Local Planning Authority (in two tier areas the District Council) for public inspection contemporaneously with its submission to the Commission and to supply the LPA with sufficient additional copies (possibly with a maximum of 6 copies) to allow it to consider and prepare its response to the commission*

#### **Consultation question 4:**

**Are there any other plans, documents or information which should be required to accompany the application, including for specific types of infrastructure? Should anything be omitted, for example on the grounds of being too burdensome? Should anything in the existing lists be described in a different way?**

*See above*

*A 'tick box' to indicate that a Traffic/Transportation Impact Assessment and Green Transport Plan has been submitted should also be included.*

#### **Consultation question 5:**

**How feasible and appropriate is it for application documents to be made available for consultation, and submitted to the Commission, in electronic formats, in addition to paper copies?**

*POS would support and encourage application documents being circulated and made available electronically since document handling and bulk is a significant issue with Major applications. If there is to be a limit on the no of copies of applications to be supplied to LPAs either in paper or electronic form provision should be made for LPAs to be able to copy (but not alter) documents electronically so that the required internal consultation can take place speedily.*

#### **Consultation question 6:**

**Do you agree that applicants should not be required to re-submit information on the persons and organisations which have been notified of an accepted application?**

*This question is not entirely clear however POS considers that while this might not be required universally applicants should be required to copy the LPA at the same time as the Commission any details or schedules of changes to proposals and supporting documentation at every stage so that the LPA can 'track' the evolution of the proposal on behalf of the local community and to ensure that any documents on public deposit are kept up to date*

## ***Transitional issues***

### **Consultation question 7:**

**Do you agree that consultation exercises which were commenced prior to the entry into force of new standards should benefit from transitional provisions?**

*Yes –subject to the tests set out in the draft Regulations*

### **Consultation question 8:**

**Do you agree that transitional provisions should be made, that could, in the circumstances described, deem a consultation exercise commenced prior to October 2009 to have met the new requirements?**

*Yes*

### **Consultation question 9:**

**Do you agree with the proposed tests which the consultation exercise must meet before being deemed to meet the new requirements?**

*Yes*

### **Consultation question 10:**

**Is there anything else on which you would like to comment?**

*POS would suggest that there is a need for wider publicity, seminars etc including amongst the professional and technical press about the extent of the powers of the IPC since there is (a) a lack of understanding that their powers are limited to major Infrastructure projects in the sectors specified in the Act and (b) lots of rumour and disinformation that they will intervene more widely e.g. on Ecotown applications (despite there being no provision for this in the Act)*

## ***Guidance on pre-application consultation***

### **Consultation question 11:**

**Are the principles outlined in the guidance clear, if not please give your views as to how this can be improved?**

*The POS welcomes the role given to LPAs in giving advice on the extent, range and organisations to be consulted at pre-application stage in terms of community involvement. It should be noted however that for LPAs to respond within the specified timetable (28days) will require in many cases amendments to Local Authorities Schemes of Delegation- so that these responses can be authorised at officer and/or portfolio holder level. This should be drawn attention to Local Authority Chief Executives and solicitors in issuing the final guidance.*

### **Consultation question 12:**

**Has everything been covered that needs to be covered, if not please explain what other information you think should be included?**

*While as stated above POS welcomes the role given to Local Authorities in advising on pre-application community involvement and will be able to assist applicants in terms of community representatives and groups active in the community and planning system in the locality we are concerned as to whether we should be expected to identify and suggest for inclusion nationally and regionally active 'militant' and direct action groups who will clearly have strong views about some of these proposals but who may not see responses within the prescribed system as their preferred route. Arguably non inclusion of such groups in the pre-application community consultation might be seen as a basis of legal challenge. We do therefore consider that the Department and Commission needs to consider explicitly how and whether such groups should be involved and advise Local Authorities accordingly.*

### **Consultation question 13:**

**Do you have any other views about this guidance?**

*POS is concerned that while on the one hand an active role is envisaged for LPAs at*

- (a) Pre-application stage*
- (b) inevitably at application stage both in scrutinising the draft Order and possibly in participating at any Examination in Public*
- (c) at implementation stage both in terms of discharge of conditions and in terms of enforcement of conditions*
- (d)*

*-the effect of this legislation is that LPAs will loose fee income from such major applications –but still have a major role as set out above for which at the moment they will have no recompense.*

*POS does therefore call for further discussions between DCLG, the LGA and POS prior to the publication of the draft Order on fees for IPC applications with a view to determining an acceptable arrangement for either the fee to be split between the LPA and the IPC or for the IPC to recompense LPAs for any work done by them particularly with regard to the discharge of conditions and compliance/enforcement activity.*

### **Model provisions and the Planning Act**

#### **Consultation Question 14:**

**Do you agree that separate sets of model provisions should be made for each infrastructure type, in the final statutory instrument?**

*Yes- but while the Model provisions at the moment are commendably comprehensive they do not pass the test of brevity or clarity required of planning*

conditions. They will therefore be difficult to use in practice as 'development consents'

*The issue of time limits on commencement of development also needs further consideration and a clearer statement of government thinking since on the one hand the current Planning regime is focussing on 3 years while on the other hand Harbour Revision Orders can typically last for many years. This needs to be resolved. The issue of 'technical commencement' of the infrastructure development also needs to be addressed since one can see that having gone through the full procedure envisaged by the Act and emerging Orders applicants will be tempted to make a 'technical commencement' to keep the Development consent Order alive rather than allow it to lapse*

**Consultation question 15:**

**Do the draft model provisions capture all the types of provision which are needed for energy, highways and water projects? If not, what additional provisions may be needed?**

*As far as highways and marine projects are concerned they would seem to be commendably comprehensive*

**Consultation question 16:**

**Do you agree that specific model provisions are necessary for types of NSIP infrastructure other than railways and harbours?**

*Yes: this may well be the case- e.g. off shore energy projects*

**If the answer to the previous question is yes, what types of development, associated development or ancillary matters should be covered by model provisions?**

*Off shore energy projects; on shore sustainable energy projects e.g. wind farms; nuclear power stations*

**Consultation question 17:**

**What other comments do you have about the draft model provisions, and in particular what additions would need to be made in order to cover common types of development, associated development or ancillary matters needed for NSIPs?**

*Further advice/clarity is required about the role envisaged of Local Authorities relative to the Commission in ensuring compliance with the Development Order and ensuring approval of outstanding matters. In this regard please see POS answer to Q 13 above where we request further discussions between POS ,the LGA and DCLG before publication of the draft fees Order*

## **Regulations on Environmental Impact Assessment**

### **Consultation question 18:**

**These regulations transpose into secondary legislation the requirements of the Directive, consequently there are established principles to which we must adhere, however it would be helpful to have your views as to whether there appear to be any omissions?**

*Haven't spotted any!*

### **Consultation question 19:**

**Regulations 5 and 6 of the EIA Regulations provide for screening and scoping opinions respectively. These regulations also allow the Commission to ask for further information from the person requesting the opinion. The regulations do not specify a time limit within which the Commission's request must be complied. Do you think such a time limit should be provided and if so what should the time limit be?**

*In POS view the only way a time limit would work would be for the request for a screening or scoping opinion to 'expire' after a certain period and the applicant be required to start again. This is because inevitably with environmental information a request for further information might require extensive survey work .Hence a tight time limit e.g. 14 days- is not really reasonable in many cases*

### **Consultation question 20:**

**If the Commission grants a development consent order it may also include requirements within that order. The EIA regulations do not currently provide for the means of ensuring that where necessary those requirements are subject to an EIA. It will be necessary to provide for this and your views are invited as to how this can best be achieved.**

*There is a danger here that any time savings achieved by the IPC will be lost by going round in circles- however the problem is recognised and the only two options are a) for the IPC to do the EIA or (b) for the Commission to publish its draft consent order and invite the applicant to submit a supplementary EIA covering the requirement . The latter seems the only sensible option-although clearly publishing a draft decision has its dangers*

### **Consultation question 21:**

**Do you agree that the approach we propose to take with the two Schedules is the correct approach?**

Yes

**Consultation question 22:**

**Is there anything else on which you would like to comment?**

*No*

***Planning Act 2008 and the Habitats Directive (92/43/EEC)***

**Consultation question 23:**

**Do you agree with the scope of the draft proposed changes. If not, what changes should be made to its scope, and why?**

*Yes*

**Consultation question 24:**

**Is there anything else on which you would like to comment?**

*No*

***Guidance on associated development***

**Consultation question 25:**

**Are the principles outlined in the guidance clear, if not please give your views as to how this can be improved?**

*In POS view these provisions are reasonably clear and not dissimilar to the concept of 'ancillary development' in mainstream planning*

**Consultation question 26:**

**Has everything been covered that needs to be covered, if not please explain what other information you think should be included?**

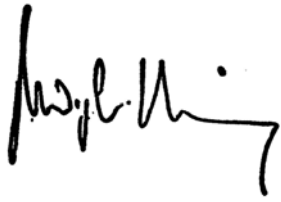
*No*

**Consultation question 27:**

**Do you have any other views about this guidance?**

*No*

I hope this is of assistance.

A handwritten signature in black ink, appearing to read 'Phil Kirby', with a stylized flourish at the end.

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