



**Friends of
the Earth**

Friends of the Earth guide to responding to the Planning White Paper Consultation

In May 2007 the Government released the Planning White Paper (PWP), its proposals to dramatically reform the planning system in England and Wales. The Consultation closes on the 17th August 2007 so you have until then to register you comments on the PWP. There are a number of ways to do that, amongst which are:

- a) taking the e-action on our Press For Change website [here](#) – this will send an email to the Planning White Paper team setting out some of our concerns with the PWP, and is ideal if you don't have a lot of spare time for a more detailed response
- b) answering the questions posed by the PWP [Consultation](#). This provides some structure but you may feel that your comments are restricted by the questions that the PWP team are asking you. The document you are reading now is intended to provide some guidance for those wishing to respond to the PWP question by question. Unfortunately we do not have the resources to provide model answers for all the questions so have just selected a few. We hope these are useful.
- c) sending in your own “free-form” response to the PWP, structured as you find appropriate. Depending on how much you intend to write this could be the most laborious option but could also be the most valuable.

For options b) and c) you might find Friends of the Earth's official response useful. That and other consultation responses can be found [here](#).

You can follow links to the official PWP and PWP Consultation sites, as well as associated Friends of the Earth planning resources, by going to the [planning resources webpage](#). References you can find there that you might find useful include the Sustainable Development Strategy – PPS1, and the Eddington and Barker reviews of Transport and Land Use Planning respectively.

Friends of the Earth
England, Wales and Northern Ireland
National Office 26-28 Underwood Street London N1 7JQ
Telephone 020 7490 1555 Fax 020 7490 0881 Website www.foe.co.uk
Friends of the Earth Limited Registered in London No 1012357

Printed on paper made from 100% post-consumer waste

Planning White Paper Consultation – some questions and answers:

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

- We do not agree that there is a strong case for reforming the current system for planning for nationally significant infrastructure.
- The PWP authors primarily justify planning reform with the claim that the current planning system takes too long; Heathrow Terminal 5 is given as an example. Another argument for these reforms is that once an application is found to be faulty it must be resubmitted at the “beginning of the process”. In fact much of the delay over the Heathrow application was due to the submission of poorly thought through proposals in the first place, and then further delay of nearly a year whilst the application awaited approval from the secretary of state.
- The logical response to these delays would be to take steps to improve the quality of developer submission at the outset of the application process and reduce the amount of time spent awaiting ministerial approval at closure.
- It is not logical to propose reform of the planning system itself which has not by these examples been shown to be inherently at fault.
- Nor should delay itself be regarded as an unnecessary product of a faulty planning system. Most major infrastructure development that has been well planned for is approved in good time but where the application is complex, of high impact and of a controversial nature a thorough investigation of the merits and qualities of the application is justified. The current system is not failing in this regard and thus does not require reform.

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

These reforms do not achieve the objectives set out. In particular:

- it is unclear how, or even if, NPSs will be properly subjected to public consultation or even Parliamentary scrutiny
- there is a good argument for a single overarching strategy for nationally significant infrastructure but the PWP proposals for perhaps eight or more NPSs will most likely result in a “silo mentality” prevailing between different government departments with, for example, a national statement of policy that expands air transport capacity as per the Air Transport White Paper being at odds with aspirations in a climate policy statement or Act.
- It is difficult to conceive how a “clear separation of policy and decision making” could be achieved by removing to NPSs decisions on need, safety and in some cases location of individual major infrastructure projects. Clearly in these cases, whether they be nuclear waste facilities, power stations or other projects, investigation of the individual qualities of the application as regards safety and location will have to be bound up with the policy discussion as to their need thus failing to achieve the separation aspired to.
- Public participation will be curtailed by these proposals, contrary to the claimed objective. The public will no longer have the right to cross-examine witnesses at public inquiry, will no longer be

able to debate issues of need, safety and in some cases location of developments, and will not even have a right to speak at the IPC inquiries, that right replaced with an invitation to address the inquiry that is time-limited and entirely at the discretion of the planning inspector.

However we welcome the prospect of additional funding for Planning Aid.

1. 3) If not what changes to the proposed reforms or alternative reforms would you propose to better achieve these objectives?

- There is a strong case for a joined up national policy statement on development of nationally significant infrastructure but there ought to be one over-arching statement congruent with the three pillars of sustainable development – social, economic and environmental development –instead of the currently proposed eight or so separate statements.
- The blame for delays in the approval of complicated applications has been pinned on the planning system itself when in fact closer analysis reveals that the blame for such delays as really happen lies more properly with the quality of development applications and with the management of processes within the planning system.
- Thus, firstly, reform should concentrate on improving the quality of applications and , secondly, there should be managerial reform of the process of inquiries; this is more likely to be effective than any limitation of their scope that would inevitably result either in legal challenge or direct public protest or both.

National Policy Statements

Q.2 Introduction of national policy statements

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

- If the NPSs were statements of policy only then arguably they would provide some clarity of Government policy and possibly also provide a clearer strategic framework for sustainable development.
- However Planning Policy Statements currently already fill this niche. NPSs as here proposed are problematic for reasons outlined in the next question's answers and thus do not secure our agreement
- The current proposals for NPSs would only remove delay by removing site-specific investigations vital for reasons of democracy, legitimacy and the assessment of need and project safety.

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

- As above, improvements need to be made management of the planning process, not the system itself.
- Where a national policy statement is called for it is for one that is over-arching and coherent with respect to the principles of sustainable development and joined up government.

Q.3 Content of national policy statements

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

Are there any other criteria that should be included?

We do not agree that the NPSs should cover the core issues set out above for the following reasons:

- They prescribe need, safety and in some cases location of major infrastructure developments. In so doing they pre-ordain the details of developments such as power stations and by so doing remove both the public right and even ability to meaningfully participate in those decisions
- It is unclear how Parliament could provide such scrutiny to decisions on NPSs as it would have to in order to preserve even a vestige of democratic accountability in the planning process. Parliament would be hard pressed to say the least to find the time and resources to make the necessarily exhaustive inquiries into the need, safety and location of each major project.
- Scientific, social and market developments influencing need, safety and location move faster than NPSs that prescribe these three factors could develop under Parliamentary scrutiny, nor is it plausible to expect ministers and departments to continuously update NPSs to keep abreast of these changes. Thus decisions as to individual developments should be made on ad hoc bases at their respective public inquiries, as in the current system.

Q4 Status of national policy statements

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

NPS are being set out as extremely powerful documents with more weight than any other national or local policy document. We believe that:

- This is disproportionate.
- NPS should not carry more weight than the national sustainable development strategy.
- Instead NPS should be non-site-specific and have a similar weight to current development plans like the RSS.
- NPS can be helpful in general but should not preclude detailed debate on issues best dealt with at the local level.

Q5 Consultation on national policy statements

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

No, we do not agree.

- The PWP provides no details about how the public will be effectively engaged.

- We do not consider that the Cabinet Office guidelines provide a template for effective participation. We note that cabinet office are consulting on reducing the timescale for consultation from 12 to 6 weeks.
- We believe national policy must not be site specific but should restrict itself to general issues of need which would still provide much greater clarity to the process. These documents should be embedded through the RSS and LDF process and fully tested.
- If the Government is determined to prepare national statements which are site specific then the following minimum safeguards would need to be in place:
 - Issues and options stage where full consideration of alternatives takes place which satisfies SEA. This would require direct participative techniques applied to those communities affected as well as wider opportunities for public response through traditional and e-media.
 - Publication of draft statements.
 - Formal period of representations and objections (Anyone who makes a representation will have a right to be heard as with normal plan making)
 - Examination where representations can be heard and the evidence tested.
 - Publication of the final policy statement

Q6 Parliamentary scrutiny

Do you agree, in principle, with the intention to have Parliamentary scrutiny for proposed national policy statements?

What mechanisms might ensure appropriate Parliamentary scrutiny?

We agree that Parliament should have a role in the scrutiny of NPS. However:

- The PWP does not provide a clear recommendation for parliamentary process in this regard. Para 3.28 suggests that 'examination by the relevant select committee' might be one option.
- Given the potential for NPS to be site specific the parliamentary process would need to be extremely rigorous involving committees in the full examination of a wide range of evidence including a range of individuals whose rights were affected by the NPS.
- These would create a demanding and ongoing workload for Parliament.
- An external examination of NPS by the Planning Inspectorate may allow for a more manageable system. We would not however remove the need for a parliamentary debate and vote in order to secure the democratic accountability of the process.

Q7 Timescale of national policy statements

Do you agree, in principle, that 10-25 years is the right forward horizon for national policy statements?

If not, what timeframe do you consider to be appropriate?

- We agree that NPS should have long term time horizons.

- 25 years should not be a maximum however. Both climate change and nuclear waste disposal require much longer time horizons.
- Nuclear disposal requires time frames which relate to timescale in which nuclear waste can be considered safe.

Q8 Review of national policy statements

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

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

- Five years may be a reasonable bench mark for some policy statements but most NPS will require revision on more regular bases; the scientific evidence on issues such as climate change or energy supply technology are changing rapidly.
- The more specific NPS seek to be the faster they will become redundant and require replacement.
- The review of NPS should not be based on the sole discretion of ministers.
- An independent body such as the Planning Inspectorate should be asked to reach a judgement on the need for review and make recommendations to Ministers in order that all participants can feel confident in the process.
- An automatic review should be triggered when significant matters of fact have changed like those related to scientific data on safety or climate change.

Q9 Opportunities for legal challenge

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

If not, what alternative would you propose?

Legal challenge is an important part of redress. However JR is an exclusive system open only to those who can afford the very high costs involved in the process. The technical nature of JR, which focuses on procedural issues, also restricts the scope of redress. Strong emphasis needs to be placed on creating an open and fair route to redress. This might be achieved by a civil process in the form of third party right of appeal or by changes to legal procedure such as the much wider use of protective cost orders.

Q10 Transitional arrangements

Do you agree, in principle, that subject to meeting the core elements and standards for national policy statements Paper [sic], policy statements in existence on commencement of the new regime should capable [sic]of acquiring the status of national policy statements for the purposes of decision making by the commission?

If not, what alternative arrangements do you propose?

- We strongly disagree that existing policy documents should retrospectively be given the status of NPS.
- The extraordinary legal status envisaged for NPS should mean that they are developed through a rigorous process as outlined above and in addition subject to SEA, independent testing, and, if they are site-specific, to a right to be heard.
- The aviation White Paper is an example of policy which would require root and branch reconsideration to become NPS. In addition most existing policy would require significant updating in relation to climate change.

Preparing applications for nationally significant infrastructure projects

Q.11 The preparation of applications

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

YES

Q12 Consultation by promoters

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

Do you think this consultation should take a particular form?

- The PWP recommends that significant '***community consultation will be carried out by the developer***' (Paragraph 4.10). It is entirely unclear in the PWP what minimum standards will be required in this process.
- It is also unclear how best placed a development promoter could be, for example, in thoroughly examining alternative development options.
- While it is helpful to promote dialogue about new development it is important that the process of detailed consultation or participation remains credible in the eyes of the public.
- The private sector is not best placed to gather and process the responses of the public because private sector organisations are not impartial bodies. Effective and credible consultation must remain in the hands of a respected public body.

Q.13 Consulting local authorities

Do you agree, in principle, that relevant local authorities should have special status in any consultation?

Do you think the local authority role should take a particular form?

- Local authorities are key so long as they themselves are required to consult their electorate on applications.

Q14 Consulting other organisations

Do you agree, in principle, that this list of statutory consultees is appropriate at the project development stage?

Are there any bodies not included who should be?

No. This list does not represent the available expertise on issues such as climate, SD or biodiversity. The SD commission as well as large umbrella organisations such as the Wildlife and Countryside Link should be included.

Determining applications for nationally significant infrastructure projects

Q24 Rationalization of consent regimes

Do you agree, in principle, that the commission should be authorized to grant consents, confer powers including powers to compulsorily purchase land and amend legislation necessary to implement nationally significant infrastructure projects?

Are there any authorisations listed that it would be appropriate to deal with separately, and if so which body should approve them, or that are not included and should be?

No.

- The IPC has too much power with too little accountability. Paragraph 5.18 of the PWP sets out that the IPC will have a far-reaching and unprecedented range of powers, including legislative powers. While there are arguments for rationalising the present system there are likely to be a range of difficulties in holding the IPC to account for its decisions, given that it is an independent commission which is not directly overseen by Ministers.
- As such the IPC is one of, if not the, most powerful decision making bodies ever constituted in the UK context to make site specific decisions without direct parliamentary accountability. The power of the IPC is manifest in number of complex ways but principally we are concerned about three issues:
 - its power over legislation and CPO
 - its very wide discretionary power of how and who to involve in any examination of a proposal
 - the lack of direct accountability for individual decisions

Q25 The commission's mode of operation

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

No .

- We are concerned that the commission will not command the confidence of the public and that it will be hard to find those with sufficient expertise combined with sufficient independence to deliver credible decisions.

Q26 Preliminary stages

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

Are there any bodies not included who should be?

See qu 14

Q27 Examination

Do you agree in principle that the procedural reforms set out above would improve the speed, efficiency and predictability of the consideration of applications, while maintaining the quality of consideration and improving the opportunities for effective public participation?

Strongly disagree.

Regarding the quality of consideration:

- Public scrutiny will worsen rather than improve the quality of consideration of applications. Experience shows that detailed public scrutiny leads to both the avoidance of projects that are unsound and to the improvement of those that go ahead. A prime example of this was the Nirex RCF proposal. This proposal was challenged, in the face of the status quo, by a detailed scientific case drawn together by the objectors. Their case was accepted and the project did not go ahead. It is better for a project to be scrutinised in order that mistakes can be avoided, rather than a policy of undue haste be adopted simply to push projects through. Decision-making on major projects should proceed on the basis of the best available information and be subject to public scrutiny and debate. If these proposals increase the speed of consideration of applications it will only be at the expense of the quality of consideration, possibly with disastrous consequences.

Re public participation:

- The difference between the existing and proposed regimes is striking and the implications far reaching. Firstly a right – the right to be heard at public inquiry and in so doing to cross-examine witnesses – has been removed. That the commission could invite or conduct cross-examination of witnesses does not in any way constitute a right because that invitation remains entirely at the discretion of the commission. . The idea of a right to be heard in planning decisions is enshrined in section 19 of PCP Act of 2004 and is a long established idea in planning decision making. The rights based approach is the only option which commands the confidence of the public and has a number of advantages over the PWP system:
 - It avoids endless challenges to the exercise of discretion by the IPC based on who they will and will not hear evidence from

- It builds confidence in the public's mind that their voice cannot be simply ignored in the debate
- It secures compliance for those cases and individuals who may engage HRA article 6 (see below).
- Secondly, the "replacement", the open floor session, is no more than a repackaging of the existing discretion of the inspector to hold less formal roundtable sessions. So major losses of participative rights are *in no way* compensated for by any of the new measures. As a result it is simply factually incorrect to suggest that the new regime enhances public participation.
- A number of HRA Article 6 issues are raised by the proposals to limit the evidence heard in public inquiries. The PWP (Para 3.11) makes clear that the intention would be to create a presumption that there should not be detailed oral evidence at Inquiry on issues dealt with in national statements. Whilst not a prohibition it is nonetheless a very clear and directive obligation on members of the IPC. In practice if a lay person wishes to give evidence on need, safety or high-level environmental considerations it is difficult to see how this could be prevented. An inspector would have to refuse to hear such evidence and this directly impacts on the individual's rights to a fair hearing. Since it is practically impossible to separate out principle from detail, it follows that it is highly dubious to expect individuals to be silenced when they move away from the draconian limitations on the evidence implied by the recommendations of the PWP.
- There is an equally worrying implication that Inquiries might be invitation only. This would not satisfy the requirements of natural justice, property rights or the HRA. For reasons set out above the examination of RSS is only legally safe because it cannot make site specific allocations
- The Government should be aware that a consequence of undermining legitimacy will be much greater direct action as communities abandon a system which is regarded as stacked against them. This scenario was last seen in the 1980s roads programme, resulting in much greater delay and cost, also through the criminal justice system.

If not, what changes or other procedural reforms might help to achieve these objectives?

- Our concern is that accountability, participation and redress are, as a minimum, maintained at their current level and that taken together they can be seen to systematically provide safeguards to the new powers of the IPC. In practice we believe this would require:
 - A right to be heard at an IPC inquiry
 - A right to be heard into the preparation of site-specific NPS
 - Direct accountability of IPC decisions to ministers.
- Without these safeguards the system is likely to be both unworkable and illegitimate. In addition, positive measures to secure and promote sustainable development need to be introduced including a duty on the IPC to promote Sustainable Development.