

# Consultation report

## **Advice note fourteen:** Compiling the consultation report

### **The Planning Inspectorate and nationally significant infrastructure projects**

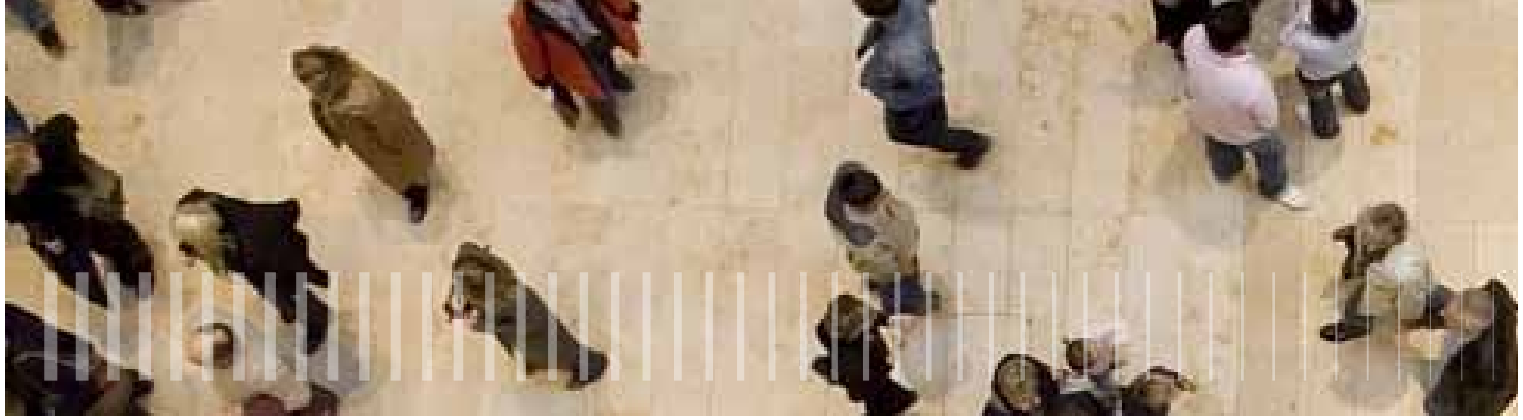
The planning process for dealing with proposals for nationally significant infrastructure projects or 'NSIPs' was established by the Planning Act 2008 ('the 2008 Act'). As amended by the Localism Act 2011, the 2008 Act process entails an examination of the benefits and impacts of major proposals relating to energy, transport, water, waste and waste-water, and includes opportunities for people to have their say before a decision is made by the relevant Secretary of State.

The Planning Inspectorate carries out certain functions related to national infrastructure planning on behalf of the Secretary of State.

### **Status of this Advice Note**

Experience to date has shown that developers and others welcome detailed advice on a number of aspects of the 2008 Act process. This Advice Note forms part of a suite of such advice provided by the Planning Inspectorate. It has no statutory status.

This version of this Advice Note supersedes all previous versions. It also contains advice that was previously in paragraphs 25 to 27 of the Infrastructure Planning Commission's Guidance Note 1.



## Introduction

This advice note is aimed primarily at developers and local authorities but is also relevant to any consultee who may be interested to know how the developer's pre-application consultation is reported. It seeks to provide advice about the format and content of the consultation report. We welcome feedback about the usefulness of this advice note and will seek to review and reissue this note as further lessons are learned through the operation of the development consent regime.

An application must be accompanied by the applicant's consultation report prepared under section 37 of the 2008 Act. That report should draw together:

- a. an account of the statutory consultation, publicity, deadlines set, and community consultation activities undertaken by the applicant at the pre-application stage under s42, s47 and s48
- b. A summary of the relevant responses to the separate strands of consultation; and
- c. The account taken of responses in developing the application from proposed to final form, as required by s49(2).

**Please note:** This advice note refers to an annex which can be viewed on the National Infrastructure Portal ([www.planningportal.gov.uk/infrastructure](http://www.planningportal.gov.uk/infrastructure))."

The consultation report represents the culmination of the three different strands of consultation and publicity set out in s37. The primary purpose of the report is to capture and reflect upon all of the responses received from these three distinct pre-application consultee groups and explain how the developer has met its duty (s49 of the Act) in the preparation of the application to have regard to the views expressed. The consultation itself should be carried out in a way that allows the submission of a robust and detailed report at application stage. The report can also capture non-statutory or 'informal' consultation that takes place outside the requirements of the Planning Act 2008 so that the Secretary of State has a comprehensive picture of all the consultation activity relevant to a particular project.

Where Department for Communities and Local Government guidance has not been followed in terms of the pre-application consultation, then the consultation report is usually the most appropriate place to explain this. It is vital that the Secretary of State understands the reasons for not following published guidance.

## Format and content of the report

The format and content of the consultation report will largely depend on the consultation methodology deployed by the developer, the scale of response received and the geographic extent of the proposal. Given the diversity of projects that fall within the 2008 Act regime it is not appropriate or possible for the Planning Inspectorate to issue prescriptive 'one size fits all' advice about the format and content of consultation reports. This advice should therefore not be regarded as either prescriptive or exhaustive; rather it seeks to



focus on particular aspects that have been identified as lessons learned from the first applications that have been submitted. The aim of any applicant should be to prepare a focused report which is as concise as possible. The following advice highlights some steps that applicants can take to assist the Secretary of State at the acceptance stage.

### **Explanatory text**

Explanatory text should set the scene and provide an overview and narrative of the whole pre-application stage as it relates to the particular project. It would assist if a quick reference guide in bullet point form, summarising all the consultation activity in chronological order, is included near the start of the report. This section should define the whole pre-application consultation and explain the relationship between any initial strategic options stage, any subsequent informal consultation that may have taken place, and the statutory consultation carried out under the 2008 Act.

In many cases, national infrastructure projects have evolved over an extended period of time, perhaps with previous incarnations not coming to fruition for one reason or another. In such cases, it may be useful to set out this wider historical context. A brief description of any historic consultation activity including any information available about the scale and nature of the response at that time would also be of interest. A detailed planning history of the site is not necessary in this report.

### **Consultation with the prescribed consultees (s42)**

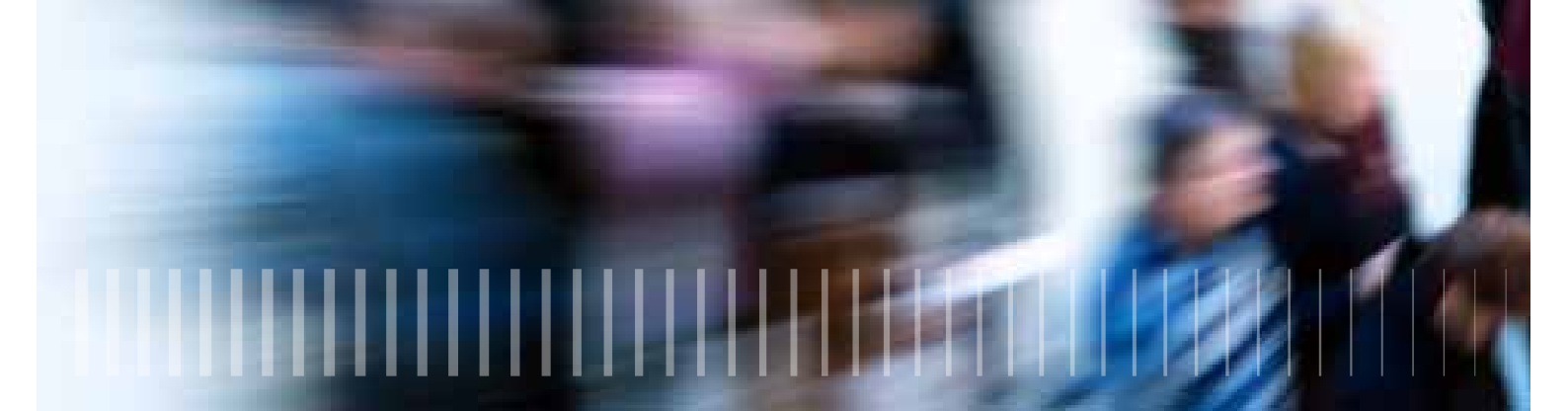
This includes prescribed statutory bodies, local authorities consulted under s43 of the Act and those with an interest in the land consulted under s44 of the Act. These separate strands of prescribed consultees should be clearly identified.

The applicant should include a full list of the prescribed consultees as part of the consultation report. If the prescribed consultees have been consulted on multiple occasions, perhaps at different phases of the consultation, then this should be explained. If the applicant's list of prescribed consultees varies in any way from the list of organisations set out in schedule 1 of the Applications: Prescribed Forms and Procedures Regulations 2009 (APFP) then this should be robustly justified.

The list of organisations set out in schedule 1 of the APFP should be followed in terms of the order in which the consultees are presented.

A short description of how s43 of the Act has been applied in order to identify the relevant local authorities should be included. This could be supported by a map showing the site and identifying the boundaries of the relevant local authorities.

It is important that those with an interest in the land consulted under s44 of the Act are identified as a distinct element of the wider s42 consultation. S44 consultees include those whose land would be subject to compulsory acquisition as part of the development consent order (DCO), those who may have a relevant claim and those whose land may be affected by the development.



Where compulsory acquisition forms part of the draft DCO the consultees who are also included in the book of reference for compulsory acquisition purposes should be highlighted in the consolidated list of prescribed consultees.

### **Statement of community consultation (SoCC) process (s47)**

It would be helpful to provide a summary of the rationale behind the SoCC methodology to assist the Secretary of State's understanding of the community consultation and provide a context for considering how the consultation was undertaken.

The Secretary of State needs to be satisfied that the applicant has complied with the SoCC preparation process. Evidence should be submitted as part of the consultation report which shows which local authorities were consulted about the content of the draft SoCC; what the local authorities' comments were; confirmation that they were given 28 days to provide their comments and a description about how the applicant had regard to the local authorities' comments. Copies of the published SoCC as it appeared in the local press should be provided along with confirmation of which local newspapers it was published in and when.

Where more than one SoCC was prepared for a project, for example where a SoCC was subject to one or more updates, the updated SoCC(s) should be included together with a narrative about why the SoCC was reviewed and updated.

Where there were any inconsistencies with the SoCC, for example where additional activities took place that were not included in the SoCC(s), then this should be clearly explained and justified. It would be useful to set out the relevant local authorities' views

about any changes made to the consultation methodology that were not dealt with by way of a review of the SoCC. The SoCC process is usually best dealt with as a discrete section within the consultation report.

### **Statutory publicity (s48)**

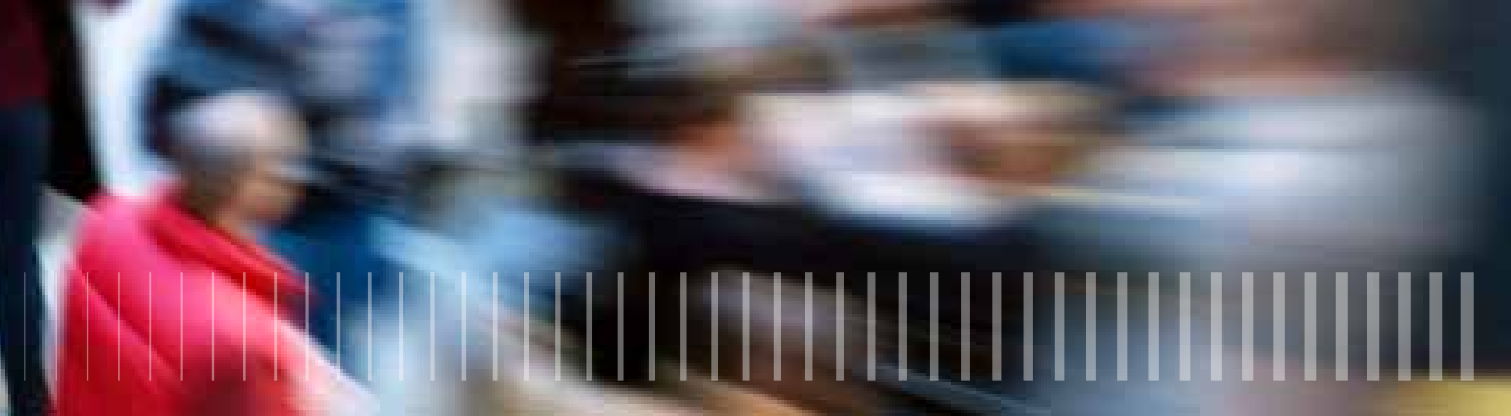
A copy of the s48 notice as it appeared in the local and national newspapers, together with a description of where the notice was published and confirmation of the time period given for responses should be included in the report. Applicants should also provide confirmation that the s48 notice was sent to the prescribed consultees at the same time as the notice was published. A description of the consultation material used and how the prescribed consultees were able to access it would also be useful.

The s48 publicity is best dealt with as a separate section within the report.

### **Non-statutory 'informal' consultation**

Applicants may have been engaged in non-statutory consultation, for example, high level consultation with statutory bodies may have been undertaken when identifying options and in advance of formal consultation under the provisions of the Act. Any consultation not carried out under the provisions of the Act should be clearly indicated and identified separately in the report from the statutory consultation. This does not necessarily mean that informal consultation has less weight than consultation carried out under the Act, but identifying statutory and non-statutory consultation separately will assist when it comes to determining compliance with statutory requirements.





## **EIA Regulations consultation**

Consultation undertaken as part of the EIA regime is separate to that required under the Planning Act 2008. Applicants may wish to draw attention to consultation responses received under the EIA process, but any reference to this consultation should be kept separate from the statutory consultation carried out under the provisions of the Planning Act 2008.

## **Dealing with statutory consultation responses**

### **Issues led approach**

If the level of response was significant it may be appropriate to group responses under headline issues. Care must be taken to ensure that in doing this the responses are not presented in a misleading way or out of context from the original views of the consultee. Where this approach has been adopted it should be clearly identified and explained in the main body of the report, including any safeguards and cross checking that took place to ensure that the responses were grouped appropriately.

### **Summary of responses**

A list of the individual responses received should be provided and categorised in an appropriate way.

The summary of responses, if done well, can save a significant amount of explanatory text. We advise that applicants group responses under the three strands of consultation as follows:

- S42 prescribed consultees (including s43 and s44)
- S47 community consultees
- S48 responses to statutory publicity.

The list should also make a further distinction

within those categories by sorting responses according to whether they contain comments which have led to changes to matters such as siting, route, design, form or scale of the scheme itself, or to mitigation or compensatory measures proposed, or have led to no change.

A summary of responses by appropriate category together with a clear explanation of the reason why responses have led to no change should also be included, including where responses have been received after deadlines set by the applicant.

While it is advisable for applicants to seek to resolve as many areas of disagreement and concern with consultees as possible, it is recognised that this is not always possible. It is important that where a resolution has not been reached, the reasons why are set out clearly in the summary.

The schedule in [Annex A](#) is indicative, but sets out an approach which the Planning inspectorate would find helpful.

### **Phased approach**

Where a phased approach to consultation was undertaken then this can be reflected in the structure of the report and in the summary of responses. For example, it may be advisable to have a separate commentary and summary schedule of responses sheet for each phase of consultation carried out.



### **Local authority responsibilities**

Relevant local authorities will be requested by the Planning Inspectorate to provide an adequacy of consultation statement upon the submission of the application. Given the short 28 day timescale allowed for the acceptance stage it is particularly useful if applicants provide local authorities with early sight of the consultation report to inform their views. The Planning Inspectorate will usually set a 14 day deadline to receive the requested adequacy statements.

For its part the Planning Inspectorate will seek to provide advice to local authorities about preparing for the submission of the application and will encourage applicants to share drafts of the consultation report with local authorities as early as possible. The Planning Inspectorate will make the submitted consultation report available to local authorities as soon as possible after submission by way of a web link.

The local authority role is to provide a statement about whether or not the applicant has complied with section 42, 47 and 48 of the Act. The adequacy statement is not the place to debate the merits of the scheme and local authorities and others will have ample opportunity to raise these matters in their local impact report and / or any written representations that are made if the application is accepted to go forward to examination.

### **Request for responses**

Given the statutory timescale for the Secretary of State to issue a decision at the acceptance stage (28 days), it is important that the consultation report is clear and that the Secretary of State can quickly identify whether applicants have met all the statutory requirements. If there is any uncertainty about this, the applicant may be asked to provide a copy of all of the consultation responses that have been received at the pre-application stage. Applicants would be wise to prepare for this eventuality in any event in view of the tight timescale at the acceptance stage. The acceptance stage cannot be suspended or extended pending the submission of the consultation responses.

### **Data protection**

If the application is accepted by the Secretary of State it will be published on the National Infrastructure portal ([www.planningportal.gov.uk/infrastructure](http://www.planningportal.gov.uk/infrastructure)) and deposit copies will be made available to the public. Applicants should ensure that the consultation report complies with the Data Protection Act 1998 and that the addresses and other contact information of private individuals are treated appropriately within the context of this statutory process. Applicants should ensure that the consultation report has been fully redacted and is fit for public consumption before submitting it.

### **Further information**

The Planning Inspectorate, National Infrastructure Directorate, Temple Quay House, Temple Quay, Bristol BS1 6PN

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This advice note was republished in March 2012 with changes to reflect the IPC being abolished and the work of the IPC transferring to the Planning Inspectorate under the Localism Act 2011.