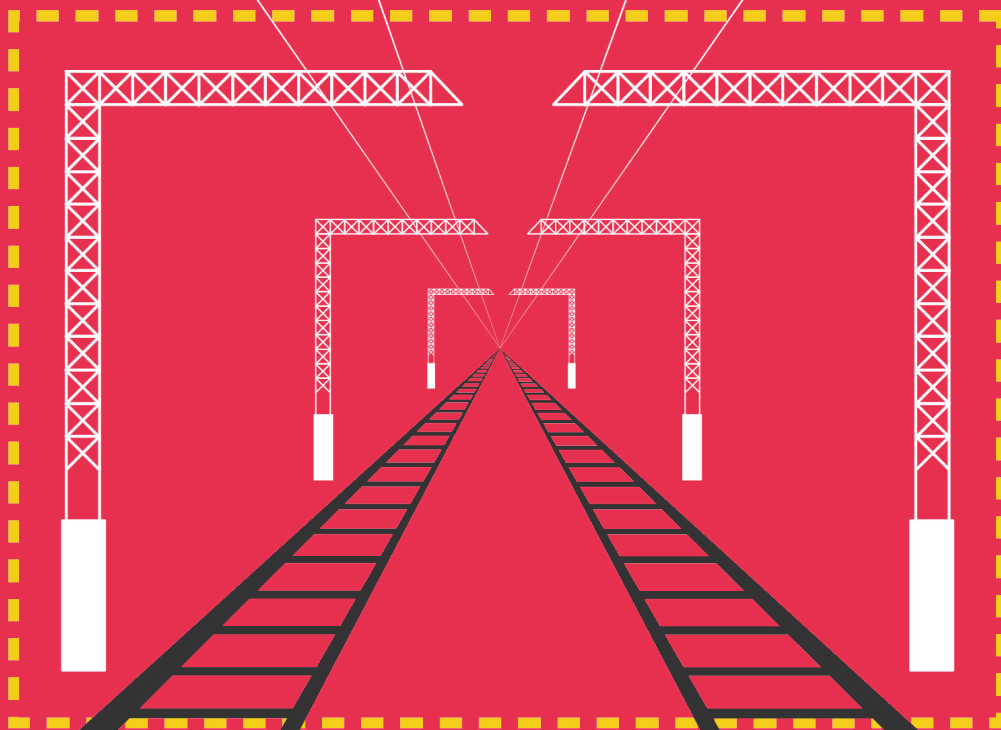




NIPA Insights II

# Towards a Flexibility Toolkit

Supporting the delivery of better  
National Infrastructure Projects



A report on the findings of research into potential ways of securing flexibility in the planning, authorisation, design and delivery of Nationally Significant Infrastructure Projects for the benefit of promoters, stakeholders, affected communities and environments.

Prepared by the NIPA Insights  
Project Board on behalf of

**National Infrastructure Planning Association**

**May 2019**

NIPA published its first Insights Report entitled 'Balancing detail and flexibility - through planning to delivery', in 2017. This report explained that the 2008 Planning Act regime for Nationally Significant Infrastructure Projects (NSIPs) was delivering against its primary objective, enabling planning decisions to be taken more quickly and with greater certainty than under old regimes.

The report also sought to address emerging concerns that the process was suffering from too much detail during planning, limiting flexibility during delivery, and that this was having an impact on a promoter's ability to deliver infrastructure in the most efficient way by hindering design development and innovation. There were also concerns that detailed scheme prescription was not necessarily in the interests of local communities and environments.

NIPA Insights I reported on the results of detailed research undertaken by the Bartlett School of Planning, University College London. Based on 35 interviews, 2 case studies and a wide range of inputs from NIPA and its key stakeholders, this research concluded that the majority of participants thought that too much detail, too early in the process, was a significant issue affecting project delivery, as well as community and environmental interests.

NIPA Insights I made 17 recommendations aimed at addressing these issues, and establishing a more enlightened and informed approach to NSIP promotion and implementation. The recommendations recognised that there was no silver bullet solution, and that progress would only be made by addressing these issues at each part of the policy, planning, design and delivery process.

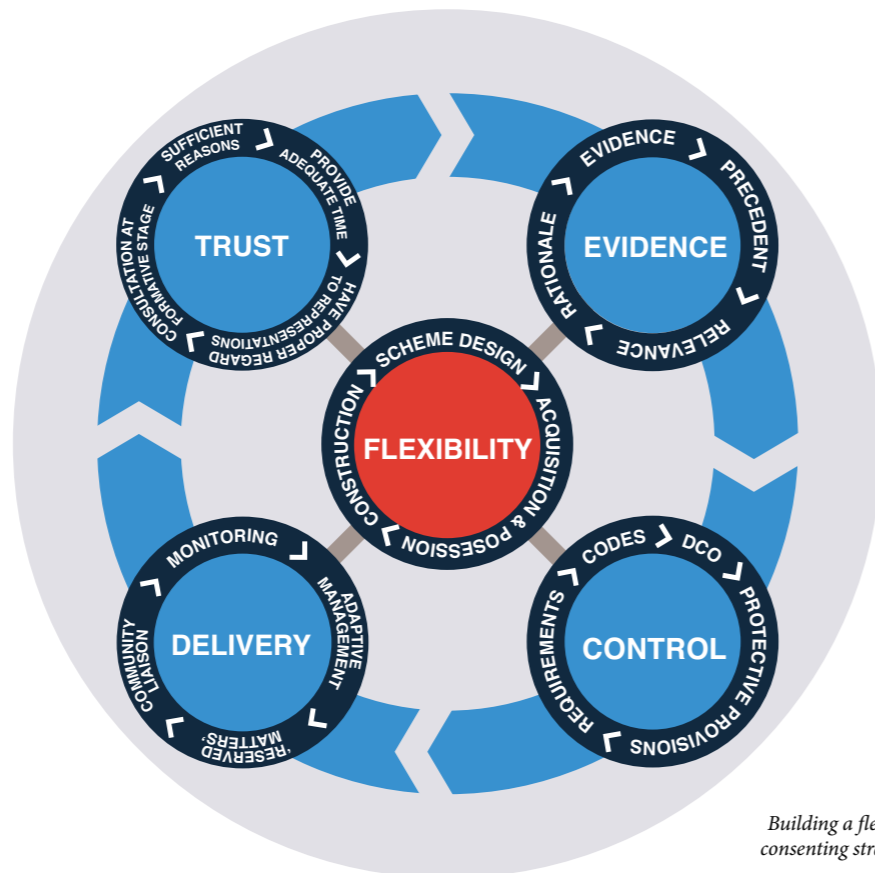
NIPA Insights II was instigated to review progress against the Insights I recommendations, and to make further proposals about how the Planning Act process could incrementally address the issue of balance between detail and flexibility through each stage of the project lifecycle.

NIPA Insights II is based on 2 major new research projects by the Bartlett School of Planning, UCL – focussed on reviewing experience of engagement on DCO projects, and looking for mechanisms that have been, or could be used to support greater flexibility through planning, better project outcomes, and appropriate safeguards for communities, stakeholders and environments<sup>1</sup>.

NIPA Insights II considers these issues under the headings of

- Building Trust;
- Providing Evidence;
- Appropriate Controls; and
- Adaptive Delivery.

It also reviews the Insights I recommendations and proposes the creation of a Flexibility Toolkit which will support the adoption and dissemination of good practice.



Building a flexible consenting strategy

Building Trust

**Recommendation T1:** Promoters should develop a comprehensive project 'Consenting Strategy', with which the entire project team should be familiar. The strategy should consider how project goals relating to the programme, risk and cost associated with alternative consenting approaches or scheme variants may be addressed. This would be informed by the scheme options under consideration and any related flexibility requirements, as might be set out in an accompanying Scheme Options Report. This should provide the basis for informing the community consultation, preliminary environmental assessment requirements, as well as underpinning a future Scheme Implementation Report and Control Strategy. In any event:

- Community Consultation should include reference to the range of scheme options under consideration, the drivers of flexibility for the project and how flexibility will be refined through further engagement.
- The Preliminary Environmental Information report should include environmental information necessary to allow assessment of the scheme options at the appropriate level.

**Recommendation T2:** Further consideration should be given by promoters as to how Consultation Reports can be made more user-friendly and instructive on outstanding issues; and set out in a 'Commitments Register' how the post-consent approval process will be handled.

**Recommendation T3:** Promoters should provide for an appropriate level of community engagement, in the detailed design stage of the project where opportunities exist to further address community concerns and tailor the scheme to the locality.

Providing Evidence

**Recommendation E1:** Promoters should prepare a new application document, a 'Scheme Implementation Report', which sets out the rationale and justification for flexibility, how it will be refined through the design process, and how stakeholders will be involved or engaged in final decision making.

**Recommendation E2:** Promoters should ensure that the Environmental Assessment process takes account of all appropriate scenarios, to define an appropriate environmental envelope for the scheme, and ensure that the scenarios and sensitivity analysis is clearly set out in a way that can guide and inform subsequent assessment of likely scheme changes.

Appropriate Controls

**Recommendation C1:** Promoters should develop a 'Control Strategy'. This should be informed by the mechanisms proposed in the consenting strategy. It should avoid duplication between different control processes and ensure issues are assigned to the right control mechanism with an appropriate degree of flexibility embedded.

**Recommendation C2:** The NIPA Legislation and Guidance working group should consider further the drafting of DCOs having regard to the respective roles of articles, requirements and schedules, including protective provisions in providing flexibility and identify examples of good practice/helpful precedent by sector.

**Recommendation C3:** Promoters should make early decisions about a clear, logical structure of Codes of Practice, set this out in a map of codes, and make this available together with the latest versions of relevant documentation.

Adaptive Delivery

**Recommendation D1:** Promoters should develop a systematic approach to recording project changes, and an appropriate level, transparent delivery phase 'Compliance Assessment' with reference to the DCO limits.

**Recommendation D2:** NIPA will undertake future longitudinal research to develop information about techniques and benefits of post project monitoring and evaluation. Requirements for post project monitoring and review processes should be aligned with the EIA process.

NIPA Insights 1 Update

**Recommendation A1:** NIPA will continue to make representations to MHCLG to support the inclusion of a strategic approach to flexibility within National Policy Statements; and to secure the introduction of statutory time limits for non-material amendments to DCOs.

**Recommendation M1:** NIPA will engage with relevant professional associations to ensure that the Integrator Role includes a requirement to ensure that a project's planning considerations and discharge requirements are fully understood by the project delivery team(s).

**Recommendation L1:** NIPA will work with members and stakeholders to develop a Flexibility Toolkit: aimed at supporting the objective of delivering better major infrastructure projects through planning.

<sup>1</sup>NIPA Insights II programme. Research Project. Preparing a Flexibility Toolkit. Project A: Consultation and engagement in the DCO process. Dr Ben Clifford and Professor Janice Morphet. September 2018. Project A: Continuation project: consultation and engagement in the DCO process. Dr Ben Clifford and Professor Janice Morphet. March 2019. Project B: Mechanisms to support flexibility: requirements and codes. Dr Ben Clifford and Professor Janice Morphet. October 2018. Available to view at nipa.org.uk

# Balancing detail and flexibility through planning to delivery

## What was it about?

The first NIPA Insights report was published in 2017, at a time when the first Nationally Significant Infrastructure Projects (NSIPs) were finding their way through the 2008 Planning Act process, into construction. Experience of moving from planning into implementation was showing that there were some areas of the process that could be improved. Concerns were being raised that the level of detail required by statutory consultees and decision makers at the application stage was constraining flexibility during implementation. This was perceived as adding time and money into the promotion and delivery processes.

The first NIPA Insights report asked the following question:

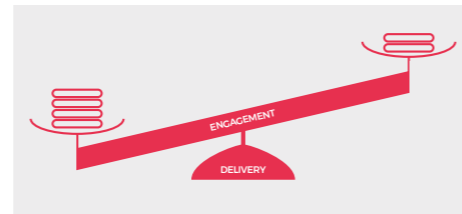
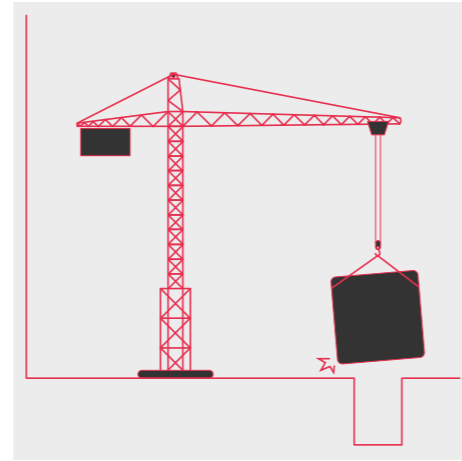
*“Does the Planning Act process deliver the certainty and flexibility necessary to attract investment, permit innovation during the design and construction process, and support cost effective infrastructure delivery – whilst providing appropriate protection for affected land owners and communities?”*

## What did it say?

The report presented a number of recommendations for achieving a better balance between detail and flexibility. Critically, it was suggested that there was not a need for fundamental reform of the NSIP regime, but neither was there a silver bullet for achieving appropriate flexibility. Instead, it was suggested that there was a need for a more ‘enlightened and informed approach to NSIP promotion and implementation’ which focussed on delivering benefit to the delivery of infrastructure through the ‘aggregation of marginal gains’, from inception to delivery.

The recommendations proposed action across a range of areas:

- **National Planning Policy, Legislation and Guidance**, specifically the need for National Policy Statements to address deliverability, for guidance and advice to be prepared, and for there to be statutory timetable for non-material amendments;
- **Project Management and Early Contractor Involvement**, identifying the need for a project management approach to be taken throughout major projects to ensure that the intention of requirements and obligations (better informed through early contractor involvement) are carried through to the construction stages;
- **Engagement with stakeholders and communities**, encouraging meaningful engagement at the early stages of projects through to the delivery stages, ensuring that the need for and justification of flexibility is explained clearly, and the use of Planning Performance Agreements;
- **Pre-application assessment and application documents**, recommending that flexibility is clearly explained, and options fully assessed in the application documents;
- **The Development Consent Order**; specifically advice relating to the drafting of DCOs and discharge of requirements, to create confidence in mechanisms used to provide consent for deferred decision making;
- **The Examination**; encouraging flexibility and deliverability to be given particular consideration during examinations, have a specific deliverability hearing if necessary, avoiding the need for last minute negotiation – fixing of unnecessary and sometime conflicting detail, thus impacting delivery; and
- **Continuous Learning and dissemination**, encouraging a review of processes used for discharge of requirements, as well as better post project evaluation, dissemination and training.



# Supporting the efficient delivery of better national infrastructure projects

The National Infrastructure Assessment (NIA) was published by the National Infrastructure Commission in July 2018. This made ambitious recommendations about the need to deliver new and upgraded infrastructure in the UK. These recommendations will enable the UK to have a thriving digital economy, a low cost, low carbon energy and waste network, clean air, successful cities, and resilience to extreme weather. Major infrastructure projects need to be planned and designed to deliver against these strategic objectives.

This provides a challenge for the world of infrastructure planning, design and construction – the need to ensure we are identifying the right priorities, consenting projects fairly and efficiently, designing projects to provide good value for money outcomes, and meeting sustainable development objectives. The NIA identifies the importance of good decision making, ‘For government and relevant industries to take decisive action on their infrastructure projects, they need to have confidence that their decision making is as good as possible’ (NIC, 2018).

NIPA Insights I was undertaken at a time when 20 of the then 50 approved projects were either under construction or fully completed, and there had begun to be some experience of the delivery issues associated with NSIPs. This provided the basis for concluding that achieving a better balance between detail and flexibility in NSIPs could support the aim of delivering major infrastructure projects more effectively and efficiently.

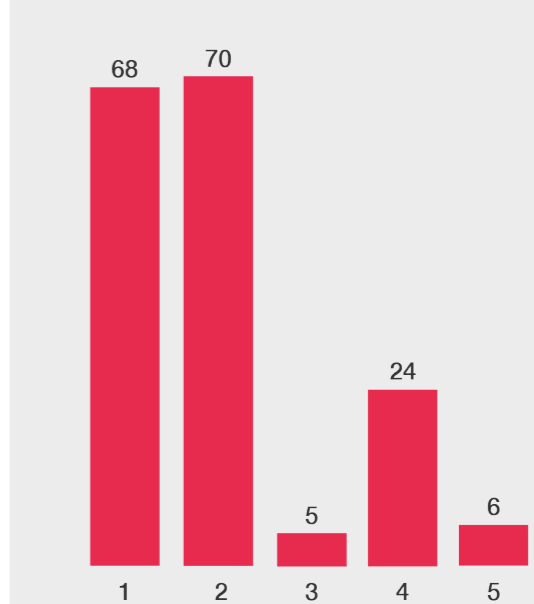
Now that the number of projects either under construction or fully completed has increased to 42 out of a total of 105 DCO applications (April 2019), there has been an opportunity to undertake more detailed research into the planning, assessment, design and implementation stages of projects.

NIPA Insights II has taken forward some of the NIPA Insights I recommendations to learn about techniques for effective delivery from projects completed or under construction. This has involved two new research projects, and extensive engagement with promoters, local authorities and other statutory consultees, community representatives, and the consultants and contractors involved in delivering the projects.

**This work has focused on the role of ongoing engagement in providing greater assurances over the scope of flexibility sought at the DCO stage, and therefore increased confidence in the controls on that flexibility in implementation.**

**Insights II reports on the conclusions of this work.**

Applications in preparation or submitted (April 2019)



1 = Formal pre-application  
 2 = Total orders made  
 3 = Total orders refused  
 4 = Currently being considered  
 5 = Withdrawn post-application

42 projects have been completed or are currently under construction

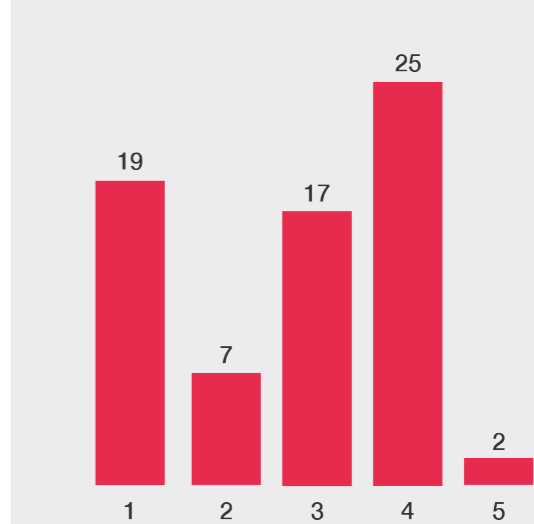
All of those projects not yet started are energy projects, some with DCOs dating back to 2013.

Those projects currently under construction are a mix of energy and transport projects, plus Thames Tideway.

Of those with planned start dates, all are energy projects – bar one which is transport.

Both of the cancelled projects are energy projects.

Of the 70 DCOs made:



1 = Not started yet  
 2 = Planned start dates  
 3 = Under construction  
 4 = Fully constructed  
 5 = Definitely cancelled



## An evidence based and inclusive approach to research

NIPA's approach to Insights II has been to work with the Bartlett School of Planning, UCL, on carefully targeted research aimed at illuminating and informing key issues for debate and discussion with NIPA members and stakeholders.

A Project Board was established, with four workstreams covering Engagement, Assessment Documents, Requirements and Codes, and Land Acquisition & Possession.

Two research projects were initially undertaken:

- *Project A:* Consultation & Engagement in the DCO Process
- *Project B:* Mechanisms to support flexibility in the DCO Process.

These reports were reviewed by working groups, and with the wider membership through roundtable discussions. It was agreed that it would be valuable to instruct additional case studies focusing on post-consent engagement as a continuation of Project A.

The Project Board then prepared draft recommendations for wider consultation with NIPA members and stakeholders, and this work has provided the underpinning information for this report.



## Towards a Flexibility Toolkit: managing the DCO balancing act

The first NIPA Insights report call for a better balance between detail and flexibility in the preparation of DCO applications, continues to dominate much of the debate. There is little dispute that a degree of flexibility can be beneficial all round, but the extent of flexibility will be scheme and context dependent.

**Scheme Promoters/ Contractors** may be keen to reduce the amount of detail which is defined at an early stage, to allow greater flexibility during the detailed design and implementation process, allowing for technological development and innovation, to reduce cost, programme or legal risk arising from the scheme being too tightly specified. On the other hand, they might be tempted to provide too much detail as a perceived easier path to consent.

Promoters'/contractors' views are also driven by concern about the perceived time needed, complexity of process, and lack of certainty associated with making changes to a DCO, once consent has been given.

**Local Authorities, Statutory Consultees and Local Communities** may be keen to secure certainty about the outcomes of the project, in terms of its physical or associated environmental, social or economic impacts if too little detail is known at the consenting stage.

The views of consultees and other stakeholders are often underpinned by a perception that the DCO process is complex and opaque,

and driven by promoters who are unwilling to take local views into account. This leads to a feeling that the examination is the only time when influence might be brought to bear on a promoter, rather than through early engagement and ongoing collaboration.

**Consenting Strategy:** Every project should properly weigh up the risks and rewards of flexibility in its consenting strategy. The case for flexibility can require more information which may make it harder to communicate to stakeholders and raise concerns about the scale of potential impact. There are also cost and time implications.

These issues should be considered for each stage of the process, for example:

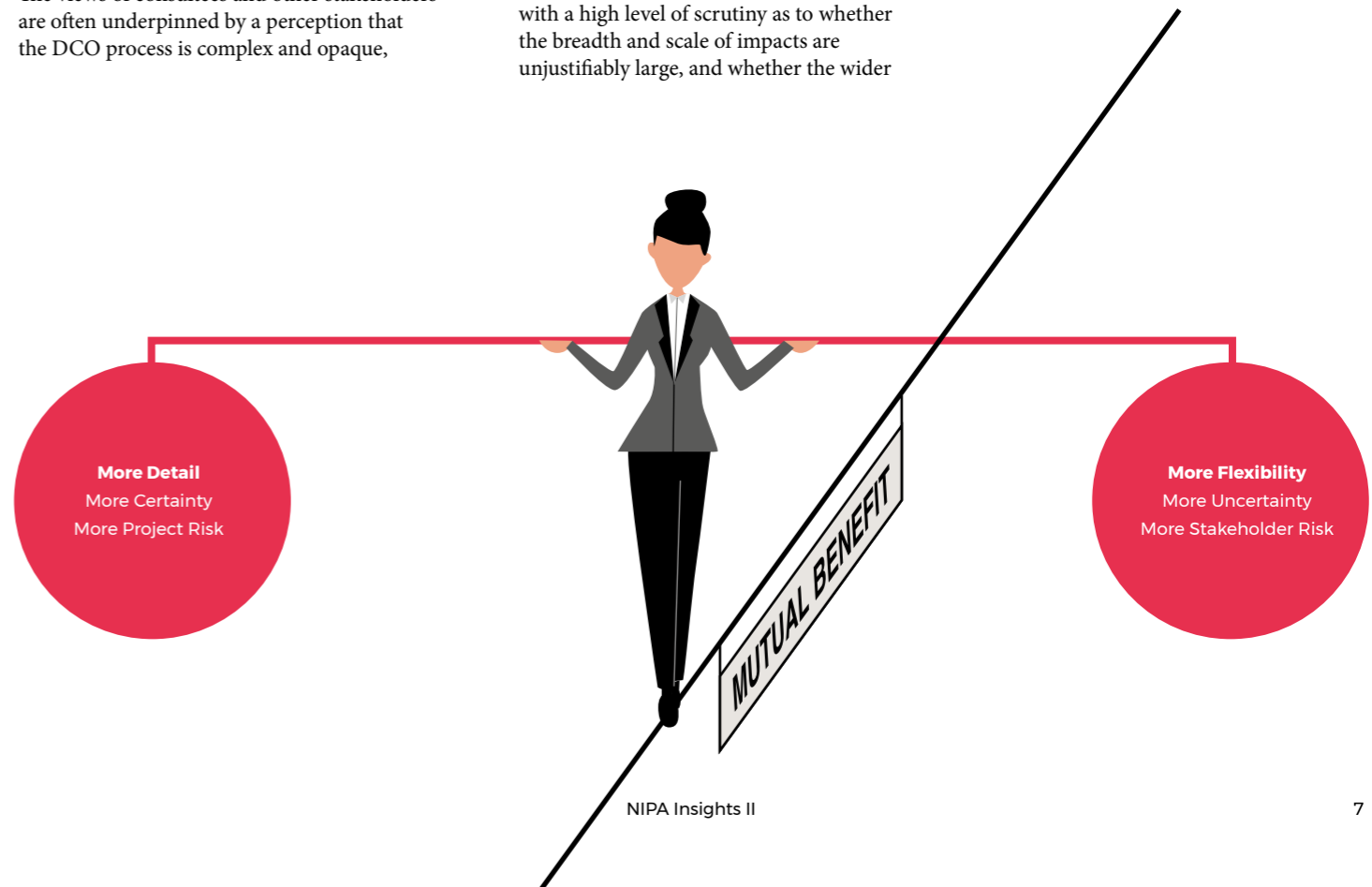
- **Consultation:** the challenge of engaging consultees on a large, complicated project which has become even more difficult to understand, and potentially of even greater concern because of the large number of alternatives being pursued within a flexible application;
- **Assessment:** the complication of explaining what has been assessed, of making assessments comprehensible, and of developing workable mitigation measures for all permutations for which development consent is being sought;
- **Examination:** the workload associated with a high level of scrutiny as to whether the breadth and scale of impacts are unjustifiably large, and whether the wider

scope of compulsory acquisition which may be sought is legitimate; and

- **Delivery:** the practicalities of affording control to discharging authorities who may be uncomfortable in making decisions on controversial projects, with consequential implications for the efficient delivery of the scheme.

On the other hand, while consultees will face similar burdens in understanding and responding to unrefined projects, the inclusion of flexibility in the design of projects can provide future opportunities to influence their refinement by allowing more of the detail to be 'up for grabs', thus enabling major infrastructure projects to be tailored to meet local requirements and circumstances.

**Building confidence in flexibility as a route to better project and community outcomes:** The NIPA Insights Project Board has therefore been keen to identify a way in which greater confidence in the DCO process can be established, so that all parties can work together to deliver better project and community outcomes.



# Building a flexible consenting strategy

NIPA Insights II proposes **four key principles** for developing a flexible consenting strategy to maintain the confidence of stakeholders. These principles are supported by a number of practice recommendations that follow.

- 1. Build trust through early engagement:** Early, ongoing, constructive and transparent engagement with stakeholders is recommended. Engagement should include a meaningful dialogue about project goals, a clear explanation about how the strategy for flexibility is designed to deliver these goals, and what safeguards would be put in place to control and manage outcomes through the delivery process.

We make recommendations about **project delivery engagement** and **Consultation Reports**.

- 2. Provide evidence to justify the flexibility required:** There needs to be a clear narrative in any DCO application which explains the degree of flexibility sought and why, explaining:
  - how flexibility requirements are reasonably related to where there is the greatest uncertainty;
  - where the consequences of that uncertainty are greatest; and
  - what the benefits might be of deferring some considerations until later.

The DCO should also explain where greater specificity has been desirable and possible. Documents should show how these considerations have formed part of the consultation process and how the relevant options have been assessed, including the technical, cost, programme, property, social and environmental implications of those options, and how these considerations have influenced the proposed scheme order limits and associated environmental envelope.

We make recommendations about **Environmental Assessment** considerations and about a new application document we have called a **Scheme Implementation Report**.

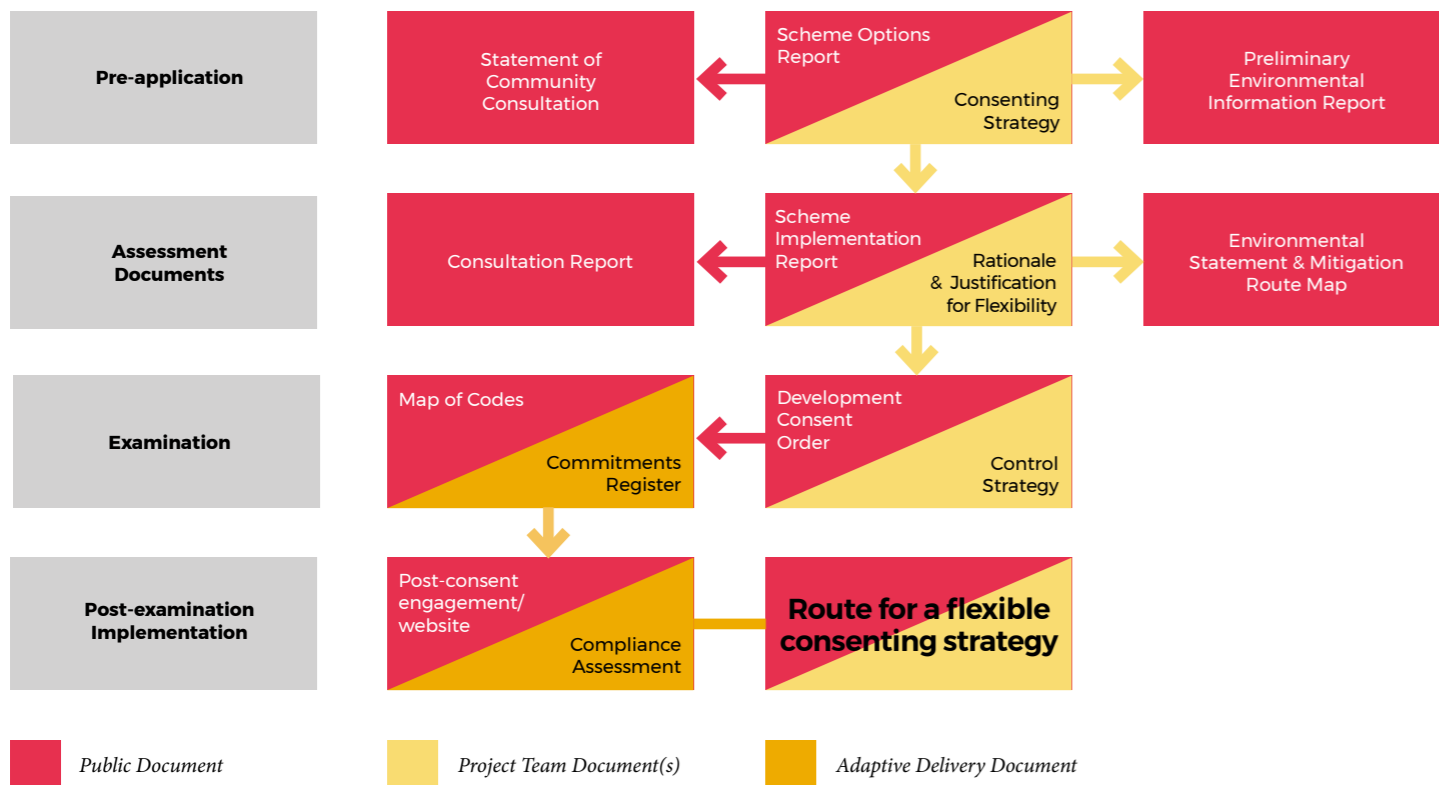
- 3. Specify transparent and effective control mechanisms to provide assurance:** With flexibility comes a requirement for a transparent process for agreeing the final scheme to be built and a reliable process of control, monitoring and review. Reaching agreement about retaining flexibility during project implementation can be made easier if project governance is clear, and stakeholders and local communities have confidence in proposed control mechanisms, understand their role in future decision making, and can see examples of how these mechanisms have worked to deliver mutual benefit on other projects. Proposed control mechanisms should therefore deliver a means of control over future decision making that provides appropriate safeguards and visibility for affected communities and other receptors, and gives confidence that the mitigation to address the assessed likely significant environmental, social and / or economic effects will be delivered as the project moves through construction to operation.

We make recommendations about the **drafting of DCOs and other commitments**, as well as the principles to be applied to the **Codes of Practice** that are designed to govern future delivery.

- 4. Adaptive delivery to respond to changing circumstances:** There is a wide range of emerging processes designed to support the monitoring, review and adaptive delivery of major infrastructure projects. With consent for flexibility comes a requirement for a transparent and reliable process of monitoring and review of the construction (and if necessary – the operation) of the scheme, and an approach to governance that provides safeguards against materially different environmental effects, and comfort that future decision making will take account of all relevant views.

We make recommendations about the **discharge of requirements**, as well as methods that can be used to **monitor project changes** and provide confidence that decisions are being taken which respect the parameters of the environmental assessment for the project.

## Route for a flexible consenting strategy



# Pre-Application Engagement

The promotion and delivery of a national infrastructure project is a long, complex and expensive business. NSIPs can have, by definition, significant consequences for a wide range of stakeholders, many with conflicting interests. There is a shared interest in ensuring that the process of promotion and delivery of NSIPs is undertaken in a way that optimises attainment of the scheme objectives, whilst balancing stakeholder interests, including environmental impacts and the concerns of affected communities. Effective engagement is at the heart of achieving this.

Engagement was therefore the subject of the first of two research project undertaken for

Insights II by the Bartlett School of Planning, University College, London. This research examined 66 DCO submissions to identify the key stakeholders, how flexibility has been considered/ explained/ proposed through the pre-application process, and any commitments made to further consultation beyond the DCO decision.

A key aim was to assess how proposed engagement beyond the DCO would be an important mechanism for securing greater flexibility. This work concluded that there is scope to improve practice in this regard, and this was viewed as being particularly important if trust is to be built and maintained so as to

support flexibility in the planning, consenting and delivery of NSIPs.

Building Trust was an underlying theme to much of this work, not as an aspirational concept, but one which results from a promoter's rigorous processes, attention to detail, meaningful engagement and assurance about how deferred decision making will work. Good intentions need to be backed up with commitment to collaborative working and good governance during the delivery process.

As flexibility becomes an increasingly central consideration to the consenting of NSIPs, this must manifest itself in all strands of project development, including consultation. Research carried out by the Bartlett School of Planning, UCL, found that discussion of "flexibility" was limited in the Consultation Reports for the 66 projects reviewed. It appears that flexibility only later becomes a justification for, or defence of, the parameters of an application for development consent once made.

While it is undoubtedly the case that the majority of the projects make use of the Rochdale Envelope and the counterbalance of control documents secured by the DCO, there appears to be a lack of communication about the necessity of, assessment for, and refinement of flexibility and the expectations of stakeholders at each stage of the process and particularly explanation of how the limits of flexibility have been set at the right level.

It is critical for project promoters in developing relationships and gaining the confidence of stakeholders, to explain the scheme options considered and any flexibility requirements arising. Flexibility may be necessary due to, for example, project procurement (commercial reasons); innovation (technical reasons); programme (timing reasons) or others. However, while there are very sound reasons for such a strategy it cannot be an excuse to exclude later engagement on the very detail that stakeholders are interested in when it comes to discharging requirements (considered later in the report).

Transparency and clarity over the level of detail that will be secured in the DCO (and associated documents) and how stakeholders will be engaged on the journey of that development consent being interpreted in to an operational scheme will therefore be key to building confidence of stakeholders of all types.

There is a need for clear information about construction impacts to be presented in applications, which is fairly representative of the predicted impacts. Consideration should therefore be given as to how construction impacts can be clearly presented to inform better considered feedback and thus avoid confrontation once those impacts do prevail during the construction period - when it may be more difficult to address further feedback.

A consistent and sustained presence throughout the consultation process and into the delivery stages will ensure promises or commitments made in pre-application discussions are recorded and carried through to the delivery stage to maintain trust in relationships between promoter and stakeholders. In many cases the consenting team will be replaced by a delivery team and understanding, continuity, commitments and relationships can be lost, and this can cause frustration.

If trust can be built with stakeholders there is likely to be less pressure to prescribe relationships and engagement through the DCO, which can add to flexibility.

**Recommendation T1:** Promoters should develop a comprehensive project 'Consenting Strategy', with which the entire project team should be familiar. The strategy should consider how project goals relating to the programme, risk and cost associated with alternative consenting approaches or scheme variants may be addressed. This would be informed by the scheme options under consideration and any related flexibility requirements, as might be set out in an accompanying Scheme Options Report. This should provide the basis for informing the community consultation, preliminary environmental assessment requirements, as well as underpinning a future Scheme Implementation Report and Control Strategy. In any event:

- Community Consultation should include reference to the range of scheme options under consideration, the drivers of flexibility for the project and how flexibility will be refined through further engagement.
- The Preliminary Environmental Information report should include environmental information necessary to allow assessment of the scheme options at the appropriate level.





# Consultation Reports and Commitments Registers

The Bartlett School of Planning's research reports that there is significant variability in the presentation, ease of navigation and legibility of Consultation Reports. While variability in such reports is inevitable given the varying nature of projects (and therefore not inherently problematic), there are some central premises that need to be applied, particularly with regard to building confidence of those who have responded to the pre-application consultation on the project.

In particular, there needs to be an accessible means of tracing a particular issue through to completion. As an example, a comment on construction noise may be signposted to the Environmental Statement, a draft Code of Construction Practice, the DCO, or even to a future consenting process such as the Control of Pollution Act 1974, but this would not explain how the issue will be resolved. We need to create a way in which the applicant can show how such issues have been resolved, the justification for that and provide a public record.

Furthermore, there is a misplaced incentive for optimism to colour Consultation Reports, meaning a motivation to convey resolution of issues through a web of complexity, when the stakeholder's perspective may be the opposite. Consultation Reports should be honest about the extent to which issues are resolved and not seek to obscure the extent of disagreement with consultees, as this will contribute to distrust with such parties who will simply draw the matter to the attention of Examining Authorities during application examination.

Consultation Reports have a propensity to make 'commitments' (this was evident in approximately one third of documents) for example in relation to future liaison or consultation, but these were frequently not obviously translated in to secured documents in the consent.

The Consultation Report is an enormous undertaking of great significance to the acceptance of the project. However, it can be impenetrable and post Acceptance of the project is generally ignored. Consideration should therefore be given to:

- improving navigability of the Report;
- clearly setting out which matters remain unresolved with stakeholders;
- identifying, through a supplementary Commitments Register, showing both how commitments made will be secured and how unresolved matters will be subject to further consideration (which may require further design work post-consent); and therefore how those concerned with the issue may be further engaged in the resolution.

**Recommendation T2:** Further consideration should be given by promoters as to how Consultation Reports can be made more user-friendly and instructive on outstanding issues; and set out in a 'Commitments Register' how the post-consent approval process will be handled.

## What is a Commitments Register?

The purpose of a Commitments Register is to act as a signposting document to how and where issues raised during consultation, which require ongoing consideration or control, will be resolved. It should be a public facing document, aimed at supporting post-consent stakeholder engagement, by providing one place where interested parties can readily chart through matters of interest to them through to their conclusion with a clear indication of

future opportunities for engagement.

There is also an opportunity to create a 'shadow' version managed by the promoter in a database form which more specifically tracks individual representations. This approach is being developed by Highways England in order to actively manage their interactions with customers and local communities, to build trust about its approach to engagement and taking account of responses from stakeholders.

## Case Study:

### Highways England – supporting stakeholder engagement: a commitments module



Highways England are developing a commitments "module" as part of the wider Customer Relationships Management system they are rolling out for their DCO projects. The 'commitments module' relates to items to be discharged after the DCO application, and would support a forward looking, post-consent 'Commitments Register'.

For design changes that were requested/ identified as a result of pre-application consultation / engagement, there is a separate design change module that supports the Consultation Report drafting.

The logic for both is similar. The basic building block is a stakeholder record associated with a particular scheme. From this point, a commitment record can be created with the following information:

- Stakeholder details;
- Commitment details (source, type, request date, date made, etc);
- Programme/ phasing requirements for decision making;
- Confirmation of decisions taken;
- Register which provides reference to relevant documents to promote engagement with appropriate control documents.

Highways England believe that having this central commitments module will:

- Support rationalisation of the Consultation Report into an application compliance document;

- Help to integrate environmental and community commitments into a report of commitments still relevant at handover into operations (a Commitments Register);
- Improve relationships with individual stakeholders and reduce the challenge of engaging with the Consultation Report and other lengthy documents by allowing more filtered views / reporting,

- and more iterative updating, i.e. in-between Consultation Report and implementation;
- Aid consistency of reporting at various levels, (eg scheme/ stakeholder/ topic/ location); and
- Support Post-Opening Project Evaluation work.





Much of the detail of a project is reserved to the discharge of requirements, typically undertaken by the local planning authority. The Planning Inspectorate's Advice Note 15 provides a structure to the discharge procedure, setting out provisions in relation to timescales, further information, fees and appeals. It does not make explicit mention of consultation.

DCO requirements are often structured to require consultation with statutory bodies in one of two ways, either that the promoter must consult a given body before submitting details for the discharge of a requirement, or that responsibility instead falls to the discharging authority. Local Planning Authorities are unlikely to consult on the discharge of requirements beyond what the DCO prescribes, therefore it becomes incumbent upon the promoter to fulfil this role prior to submitting details for the discharge of requirement.

The Bartlett School of Planning's research reports that there is often a lacuna for the local community in the discharge of the requirements. While DCOs often prescribe forms of 'community liaison', this typically encompasses complaints procedures and project updates, very few identify a role for non-statutory bodies in the refinement of what is usually a reference design to the final product. There are, however, exceptions to

this rule, for example the A14 Cambridge to Huntingdon Improvement Scheme, Silvertown Tunnel and the M20 Junction 10a Project.

The research reports that accessibility of project documentation post-consent is variable; there are often hundreds of documents on the Planning Inspectorate website, and this can be compounded by having to locate the relevant local planning authority's website, and then identify the materials submitted for the discharge of requirements. This can be further complicated where projects cross local authority boundaries, or where approvals are sought from other bodies. This creates confusion for non-statutory bodies or local communities looking to engage in downstream. To counter this, Highways England place consent and post consent documentation on its roads projects portal, including requirements discharge registers across multiple local authority areas.

Clearly, promoters will be apprehensive for programme reasons to embed further stages of consultation post-consent where interested parties seek to revisit old ground. If promoters seek to defer consideration of pre-consent representations (because they relate to matters of detail) to post-consent, the corollary of having flexibility is having responsibility to re-engage at the relevant time. In practice

some promoters do this. For example, the promoter of Progress Power has actively engaged with the local community on the detailed design of the project. Care should, however, be given to ensure it is proportionate in nature and scale and to avoid creating a bureaucracy of process and duplication of structures, where existing avenues of engagement may already be sufficient, for example parish councils, community groups, area forums.

**Recommendation T3:** Promoters should provide for an appropriate level of community engagement, in the detailed design stage of the project where opportunities exist to further address community concerns and tailor the scheme to the locality.

**UCL Case Studies: Post Consent Engagement**

UCL undertook detailed case study research into three projects, two in construction, and one in the pre-construction, but post-discharge of requirements stage; A14 Cambridge to Huntingdon Improvement Scheme (highways), Progress Power Station (energy) and Thames Tideway Tunnel.

The research sought to look in detail at engagement in the post-consent period, both in generality (i.e. in a community liaison sense), but also where it was specifically required by the DCO for certain matters. The Case Studies, which are documented in full in an accompanying report, are based upon desktop research and in-depth interviews with the relevant promoters and their key stakeholders, in particular the host local authorities and affected local communities.

A number of recommendations emerged from that work, which are particularly relevant to the post-consent period and proportionate consideration should be given by promoters to embedding the principles below in application documentation.

- **A public register of commitments** – Transparency on, and accessibility to, a comprehensive list of commitments and undertakings will provide clarity on how,

and to what standards, the project is being delivered.

- **Liaison by promoters** – liaison officers empowered to build local relationships and effect change. They should have a collaborative problem-solving approach to working with community liaison groups rather than information-giving. This should be complemented by:
  - **Effective construction complaints handling** – critical to have a responsive resource accessible during all hours of construction;
  - **Consistency of relations with stakeholders** – a structured approach is required, although one that can flex according to prevailing requirements and interest and scale and nature of project and location; and
  - **A comprehensive website** and other channels of communication to consolidate or at least signpost the relevant information. This should be regularly updated and with obvious means of making contact. Social media can also be effective, though complementary mediums are needed to cover all interested parties.

- **Community input in to detailed design** – providing an opportunity for capturing local knowledge and preference will engender greater buy-in to a project and tailoring to that locality.
- **Local Authorities playing a central role** – as a central focal point for the local community, and given their enforcement role in relation to NSIPs, it is inevitable that LAs are drawn in to having a key role post-consent, and not only in relation to procedural matters. It is important therefore, that they are well informed. Their approach will be strongly influenced by the effectiveness of a promoter's communications strategy in managing community concerns, particularly those arising from the construction of the project, for example road closures, traffic routing, tree removal etc. It is also quite possible that in addition to dealing with the discharge of requirements, LAs may well also have to deal with complementary TCPA applications. As such LAs need to be 'fully in the picture' and seen as a partner in delivery- and appropriately resourced to fulfil that role.

**Case Study**  
**Progress Power Station**

Progress Power Station is a gas-fired power station and accompanying substation in Suffolk which received development consent in 2015. While construction is yet to commence, requirements have been discharged. Though a relatively small NSIP in scale, it generated a great deal of local controversy, particularly in relation to the design of the associated substation which is proposed in a rural, countryside setting.

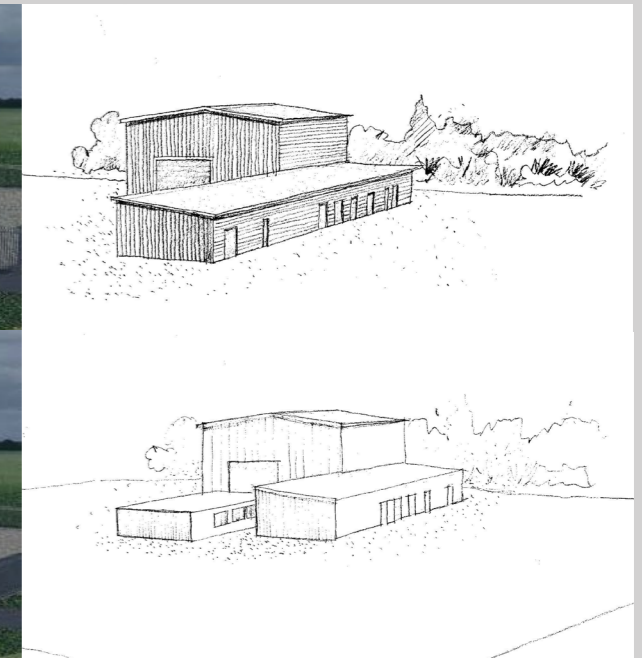
The DCO required the final Construction and Environmental Management Plan (CEMP)

to address complaints procedures and set up a Community Liaison Group. Additionally, Requirement 3 of the DCO provided for the detailed design of the scheme, including the sub-station, to be in accordance with a series of design principles, the first of which was to engage with parish councils, local residents and the local authorities on the detailed design and landscaping, and set out how workshops would be used to this end, involving the contractor once appointed.

UCL report feedback from the promoter that

the workshops went well and added vital transparency to the detailed design process, while the Local Authorities considered they were effective and paved the way for an easier implementation by rebuilding confidence in the local community and trying to seek a consensus on the appearance of the substation. UCL report that "allowing the community the chance to influence the substation design seems to have gone a long way to improving relations and addressing key concerns".

*Progress Power: Yaxley Substation. National Grid Design Workshop, January 2018.*





# From Consenting Strategy to Scheme Implementation

NIPA Insights II has highlighted that there is both an opportunity for greater consistency, and the scope to co-ordinate and articulate the case for flexibility more effectively. NIPA Insights I, Recommendation D1 suggested a repurposing of the Preliminary Environmental Information Report (PEIR) to deal with these issues. However, on the basis of further work, a Scheme Implementation Report (SIR) is proposed as a new voluntary document that could be prepared in support of the DCO application with the aim of achieving flexibility more effectively.

Its purpose would be to provide a clear narrative to explain the approach adopted in the Consenting Strategy, what flexibility is being applied for, why this matters for the implementation of the project and attainment of its goals, what benefits this has for communities, and how this will be refined and when. It would be prepared with the objective of making it easier for the Examining Authority and any interested parties to understand and engage with discussions on flexibility in the interests of better applications and more effective examination, consenting and delivery.

A single document setting out the approach to flexibility in a DCO would facilitate better co-ordination of a wide number of workstreams and disciplines and enable members of the public, stakeholders, the Examining Authority and Secretary of State to understand the implementation of the scheme and the rationale and justification for any flexibility sought.

It is understood that there may be some reluctance about the need to prepare an additional document though NIPA suggests that the SIR is simply an evolution of the project consenting strategy - a project management document that every project team should prepare in any event. Additionally, the benefits of having a consistent description of the approach to flexibility, limitations of the reference design and the process for further details and decisions being made outweigh the potential disadvantages. The SIR would be able to articulate the case for flexibility in the context of National Policy Statements and any other relevant and important considerations and present the case as part of the overall planning balance.

The SIR would set out either directly or by comprehensive cross referencing to other parts of the Application:

- **How:** the project has been developed, including any early contractor involvement, and assessment of future implementation, proposed monitoring processes and mechanisms for change;
- **What:** scenarios and options that have been considered, and the rationale for the design options, what has influenced those options and how options are linked to the DCO, supporting plans and documents;
- **Why:** including justification of the rationale for flexibility in the context of the NPS, or environmental considerations, stakeholder engagement outcomes, procurement, funding and construction considerations;

and anticipated benefits (e.g. innovation or local benefits);

- **When:** an estimated forward programme for appointment of contractor and construction process, key milestones for pre- construction, implementation, operation, maintenance and any necessary long-term monitoring;
- **Who:** covering project governance and assurance and including the roles and responsibilities of promoter, contractor, local authority, and mechanisms to be used for subsequent approvals, or decision making, when and with whom, and the processes that would be put in place to protect stakeholders from materially worse environmental effects; and
- **Appendices / Schedules:** including environmental commitments, risk assessments, post consent consultation and engagement processes, and a list of documents to be provided pursuant to requirements and deemed marine licence conditions.

**Recommendation E1:** Promoters should prepare a new application document, a 'Scheme Implementation Report', which sets out the rationale and justification for flexibility, how it will be refined through the design process, and how stakeholders will be involved or engaged in final decision making.

# Environmental Assessment

NIPA Insights II has undertaken work further to highlight best practice in environmental assessment for NSIPs.

The impacts of major infrastructure projects, often prepared several years ahead of construction start, are generally based on the likely significant effects and on assumptions about design and construction practices. It is almost inevitable that, as projects are taken forward to detailed design, construction and operation there will be some changes to predicted impacts and assumed working practices and design.

To comply with the EIA regulations, promoters must assess a realistic worst case for all relevant environmental aspects and identify mitigation for that scenario, for the construction of the project, for the project in its final form and for its operation and decommissioning. However, it is also important, when building in flexibility to ensure that a range of possibilities for how a project may be delivered have been considered. This requires more information rather than less.

Best practice for NSIP EIAs that build in flexibility may require the assessment of a multitude of different scenarios to cover different construction phasing, methodology, different technology, and different operational scenarios. Scenarios should be drawn up with engineering, planning and environmental teams working together. These scenarios should reflect both the delivery scenarios that are predictable (based on current understanding

of project phasing, technology and commercial considerations) and scenarios that are not yet known but could foreseeably happen. Each scenario will need to be tested to consider:

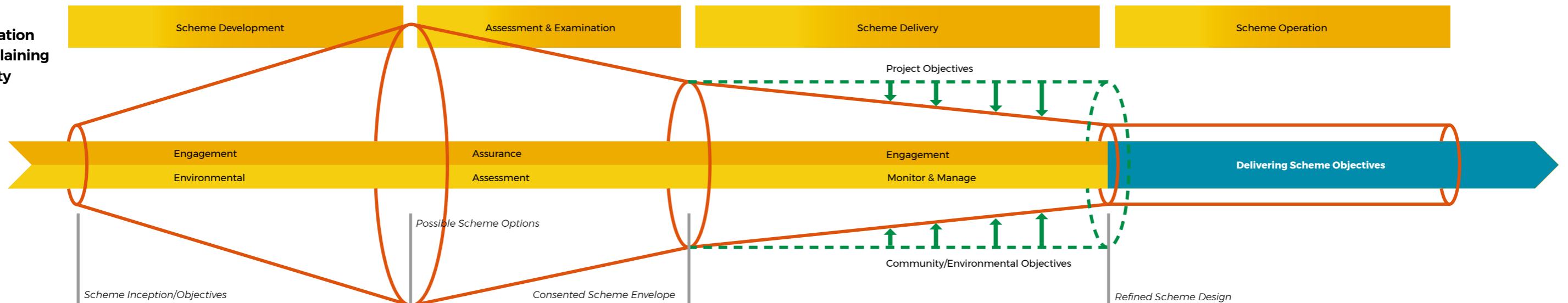
- Whether the realistic worst-case scenario is as robust as possible;
- The range of environmental impacts under each scenario; and
- The implications for the delivery of the project.

Competent experts and legal professionals should take care to ensure that in transferring assumptions made in the ES into the draft DCO parameters that the Rochdale Envelope is not defined too narrowly. Environmental consultants should carry out adequate sensitivity testing of assumptions to ensure that the environmental envelope is not drawn too narrowly.

It is very important that EIA practice recognises that it is not just about identifying mitigation, it is part of an ongoing process that continues post DCO grant, through the ES to support subsequent applications. A clear explanation of the scenarios considered and the sensitivity of those scenarios to change that may result in a change in environmental impacts will be beneficial in managing change post grant of DCO, particularly in making subsequent applications (to discharge Requirements, for non material amendments, for material amendments, and for applications under the Town & Country Planning Act).

**Recommendation E2:** Promoters should ensure that the Environmental Assessment process takes account of all appropriate scenarios, to define an appropriate environmental envelope for the scheme, and ensure that the scenarios and sensitivity analysis is clearly set out in a way that can guide and inform subsequent assessment of likely scheme changes.

## Scheme Implementation Report: Explaining the flexibility narrative



## Appropriate Controls

# Preparing a Control Strategy

It is incumbent upon the Promoter to recognise the different options available to it in seeking to reach agreement with various stakeholders. The respective roles of articles, requirements (and the various documents/codes they provide for), schedules (such as protective provisions (“PPs”) (including in association with dis-applications), side agreements and Section 106 Agreements, and indeed other consenting regimes all need to be considered. Which issues to assign to which mechanism will, to some extent, be a matter of consenting strategy.

The principal consideration as to how commitments and safeguards are assigned is, in the first instance, to minimise the risks associated with consent being given by:

- Focusing on outcomes/objectives, rather than mechanisms (e.g. to allow an issue or scenario to be addressed by alternative mitigation measures);
- Minimising unnecessary constraints as far as possible, particularly where change is difficult, i.e. minimising and specifying control in the DCO;
- Minimising overlap as far as possible in documentation, for example by distinguishing between marine (DML) and terrestrial (CoCP) controls;
- Minimising duplication in consents for example through avoiding replication between the CoCP and matters covered by a section 61 consent (CoPA 1974);
- Avoiding unnecessary constraints in the DCO which are bespoke to a particular party (i.e. use Side Agreements alongside Protective Provisions or other measures); and
- Securing ‘wider benefits’ incidental to the project, for example economic or skills initiatives, via a Section 106 development consent obligation which may be considered by the decision maker and subject to compliance with the Act.

**Recommendation C1:** Promoters should develop a ‘Control Strategy’. This should be informed by the mechanisms proposed in the ‘Consenting Strategy’. It should avoid duplication between different control processes and ensure issues are assigned to the right control mechanism with an appropriate degree of flexibility embedded.

## Drafting the DCO: demystifying requirements?

Requirements and other commitments are tools for implementation, but are little understood outside of the legal or planning teams. They are too often drafted by committee in examination to be ‘all things to all people’. Having regard to the fact that the requirements in particular are the practical tools for implementation there seems to be a case for developing a format or structure that is more accessible for non-lawyers/non-planners, communities, consultees, and contractors. Three areas have been identified for further consideration:

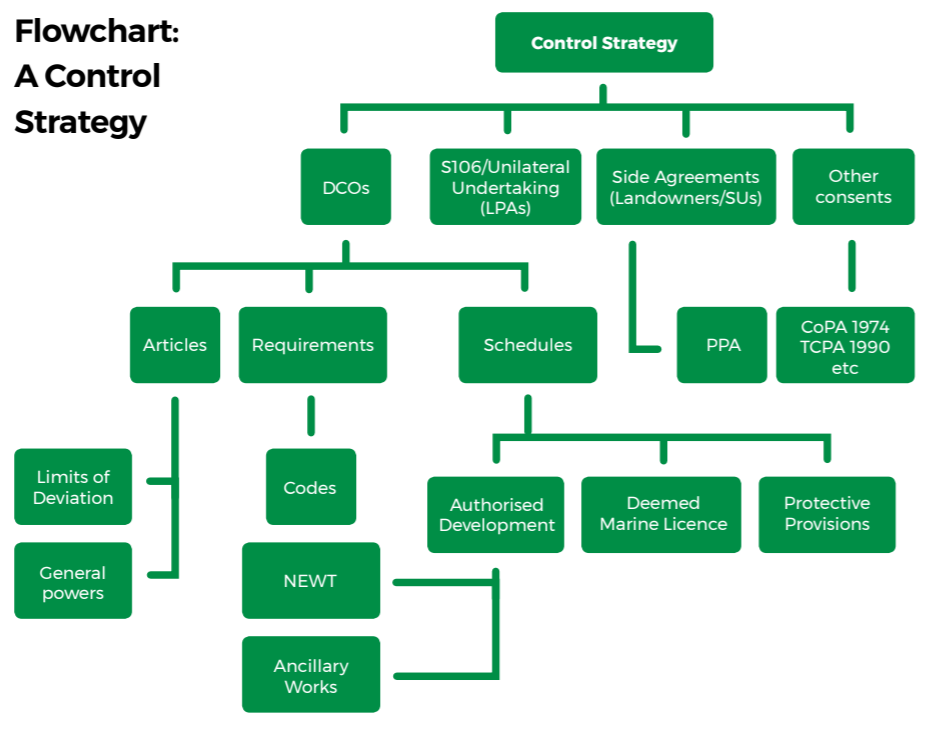
- Creation of a library of well crafted Control Strategies, Requirements, Articles, Schedules and other commitments with relevant explanatory commentary;
- Development of a tabular format which links the requirement to the desired outcome or benefit, and to the destinations in other documents (CEMP, OEMP, etc.) so that the actual controls can be readily tracked, making it simpler for consultees and discharging authorities; and
- Development of a standard approach to drafting (allowing for the bespoke circumstances of each application) which allows the final design to be reserved under a requirement and providing that the details within assessed parameters are approved or provided later. It is noted that

tailpieces are a valuable tool for flexibility and drafted properly can be lawful - a model tailpiece might assist in establishing a more widely accepted approach

The addition of a ‘tailpiece’ (wording such as “unless otherwise approved in writing”) to DCO provisions securing compliance with certain details (e.g. plans) may be acceptable where it would not permit subsequent variation that would allow a development to be implemented beyond the parameters of that applied for (and therefore assessed). This reflects the approach taken in the Town and Country Planning regime, and in the Planning Inspectorate’s “Advice Note 15: Drafting Development Consent Orders”, which states that tailpieces that have this effect would circumvent the statutory authorisation process, and therefore be unacceptable.

**Recommendation C2:** The NIPA Legislation and Guidance working group should consider further the drafting of DCOs having regard to the respective roles of articles, requirements and schedules, including protective provisions in providing flexibility and identify examples of good practice/helpful precedent by sector.

### Flowchart: A Control Strategy



## Devising a structure for Codes of Practice

For those stakeholders and local communities wanting information about project implementation, Codes of Practice are regularly used to define the construction and delivery process and provide the governance for deferred decision making about detailed project and mitigation implementation issues. There is, however, no one way of doing this.

These widely differing approaches seem very complicated, often overlapping, and frequently confusing to the future consenting and construction teams who are unclear what is actually required. They are also confusing to professional and community stakeholders alike, reducing hard earned trust in deferred decision making because of a perceived lack of transparency.

The seemingly infinite project specific requirements that determine the approach adopted poses a challenge to the standardisation of codes of practice. Nevertheless, some considerations for the structuring of codes of practice which can be more generally applied across different projects and project types to encourage clarity

of approach and improve comprehension by construction teams, stakeholders and decision makers, are outlined below:

- Make early decisions about the structure of Codes of Practice, plans and strategies as part of the project Control Strategy, and stick to it. If this is left too late, there is often unintended overlap and conflict built into the structure, making it hard to understand;
- Avoid over complexity of stakeholder and community engagement, and approval processes for deferred decision making – are there opportunities to make use of existing stakeholder/ community groups?;
- Ensure consistency between the Codes of Practice, plans and strategies with the Commitments Register and Scheme Implementation Report, including design development, construction method and management, environmental mitigation and management, operation and maintenance, stakeholder and community engagement;

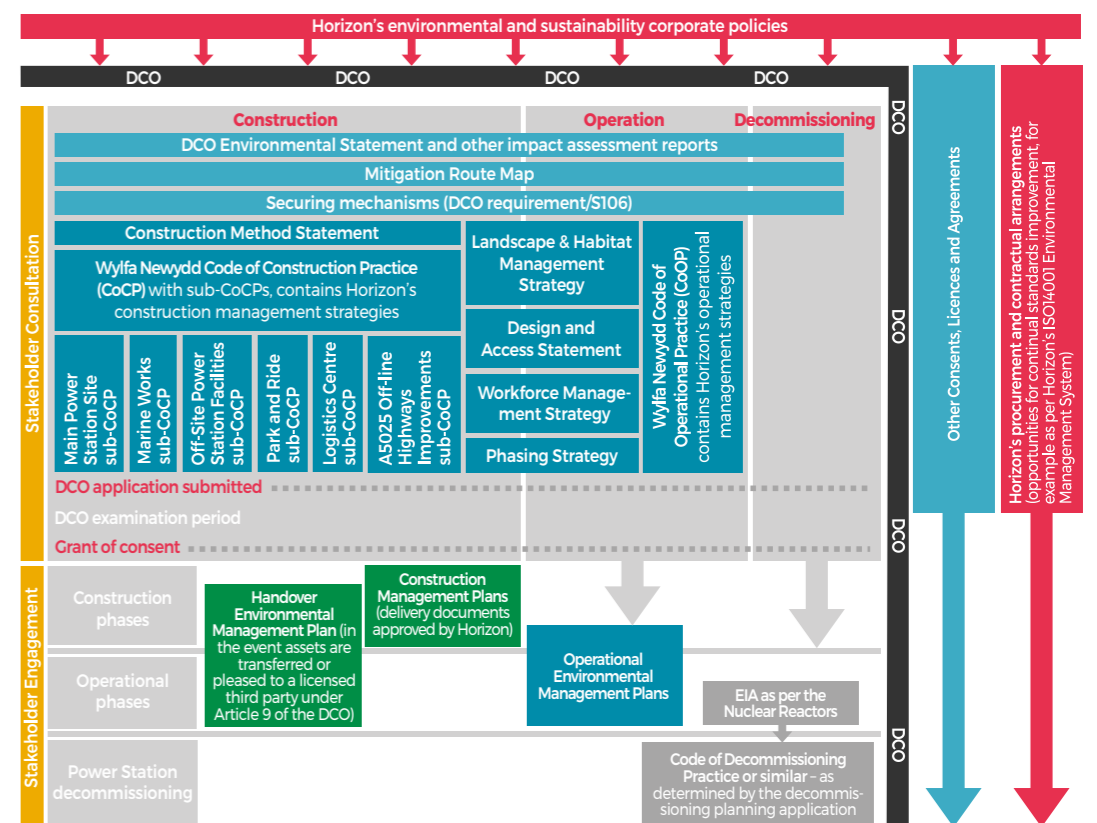
- Make sure that there is a clear relationship between Codes of Practice, plans and strategies, Project Governance, Construction Contracts and Contractors - avoiding overlap;
- Prepare a map of codes, contracts and governance to provide a guide to future project implementation and decision making. If you can’t draw it – it’s too complicated!; and
- Provide a central store for all the latest versions of Codes of Practice, plans and strategies, together with relevant minutes and decisions.

**Recommendation C3:** Promoters should make early decisions about a clear, logical structure of Codes of Practice, set this out in a map of codes, and make this available together with the latest versions of relevant documentation.

### Case Study

## Wylfa Newydd: Map of Codes and Control Mechanisms

Wylfa Newydd is a proposed nuclear power station with associated development across a number of sites including a marine offloading facility, park and ride scheme, and logistics centre. A number of management plans have been prepared to control environmental impacts on the main construction site and five other locations. A map of all these management plans is contained in the overarching Code of Operational Practice for the project. This provides a useful signposting to documents where environmental controls are set out, explains the hierarchy of corporate policies, the Environmental Statement, and how this feeds into the mitigation and in turn the DCO requirements.





## Management of Change: Control of Environmental Impacts

It is common practice that DCO Requirements allow for some amendments or deviation from approved plans, where the planning authority is satisfied that the changes are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement. Often this commitment is offered alongside other control mechanisms such as DCO parameters or Limits of Deviation, or management plans.

Scheme changes consented through routes other than the discharge of DCO Requirements, such as through an application for a non material or material change made to the relevant Secretary of State, or an application to the local planning

authority under the Town and Country Planning Act may need to be accompanied by further information or an updated environmental statement appropriate to the process to enable determination.

To manage these changes and to ensure that promoters are not able to change the design and working practices without appropriate control, many have committed to manage change within their internal change management processes and some have taken an open book approach with local planning authorities sharing the implication of changes that have potential to impact on communities and the environment. This approach addresses the risk of challenge on the grounds

of non-compliance with the provisions of the EIA Regulations and that opportunities to access environmental information and public participation in decision making is transparent (and builds confidence in the process of deferred decision making).

**Recommendation D1:** Promoters should develop a systematic approach to recording project changes, and an appropriate level, transparent delivery phase ‘Compliance Assessment’ with reference to the DCO limits.

### Case Study

#### Richborough Connection – post-consent changes managed through compliance assessment

The Richborough Connection, now consented and implemented, is a 20km 400kV overhead line electricity connection between Richborough and Canterbury. It will connect the interconnector between Brussels and the UK to the high voltage electricity network.

The Development Consent Order allows for approval of the discharge of Requirements and changes to design drawings where changes are ‘minor or immaterial’ and where it has been demonstrated that the approval would not give rise to ‘any materially new or materially different environmental effects’ from those assessed in the Environmental Statement. Flexibility is also included in the

Order to undertake some of the construction works including working site storage areas and demolition works within Order limits which do not give rise to any different environmental effects from those assessed in the Environmental Statement.

As is common with linear infrastructure projects, one of the challenges the project faced in moving between consent and delivery is the ability to accommodate change in construction arrangements, particularly the location of works compounds and access arrangements, within defined limits of deviation.

Changes to the project have been subject to

a tabular change management process which assesses any proposed changes against DCO commitments (in approved plans, management plans, s106 agreement, and Statements of Common Ground), land acquisition, and environmental assessment. It culminates in a consideration of whether the change would give rise to a non-material or material change to the DCO, whether additional approvals or planning consents are required. The assessment of changes to the DCO is captured in a simple form. Where change may give rise to the need for additional approvals or consents, National Grid have shared this assessment form with the local planning authority.

### Case Study

#### Post consent compliance assessment tools

A tabular pro-forma type of standardised compliance assessment tool has proven popular with many of the larger NSIP (and other) projects within recent years. They:

- Describe** the changes under assessment. It is important to provide references to the relevant aspects of the ES and other certified/specified documents that the changes are assessed against;
- Review** compliance with each of the certified/specified documents which are tied to the DCO – including relevant plans and drawings, design principles (where they exist), secured mitigation (e.g. secured via a CoCP or CEMP) etc

- Mirror** each of the Screening, Scoping, Detailed Assessment stages of the EIA process, as follows:
  - Screening** – to allow for very minor changes to be confidently identified as having no material likelihood of triggering materially new or different environmental effects against the ES significance criteria (without the need for additional mitigation to be applied). These can be screened out of requiring any further assessment.
  - Scoping** – should screening identify a material potential for additional or different effects to arise as a result of the change, the scoping stage will

identify which aspects of potential non-compliance require more detailed assessment (be they environmental topic areas, or non-compliance of other aspects of the DCO constraints).

- Detailed Assessment** – Those aspects identified (if any) as part of the scoping stage as requiring detailed assessment would then be subject to assessment by competent EIA experts. Where an assessment is made against the ES, such an exercise must as far as is practicable utilise the same logic, assessment methodology and significance criteria as that utilised for the project’s Environmental Impact Assessment.

## Post consent monitoring and adaptive management

There are some examples of NSIP projects that have built in adaptive management approaches to project delivery where the environmental impacts have been difficult to predict at the time of determining the DCO application.

For example, the Hinkley Point C DCO was made subject to a Requirement not to transport construction material via a temporary jetty on the Severn estuary until a Shelduck and non-breeding birds monitoring and mitigation scheme had been approved in consultation with Natural England and the Marine Management Organisation. This has enabled the project to proceed with a series of checks and actions should it become apparent that the Shelduck population is disturbed by the transport of material by water.

The Swansea Tidal Lagoon DCO was also made subject to an Adaptive Environmental Management Plan to monitor and manage the uncertainties that remained following assessment including impacts on water quality, coastal processes, fish and birds, allowing consent to be granted alongside an adaptive management plan to protect biodiversity and environmental standards. There are similar requirements relating to the

Galopper offshore wind farm project and its off-site works to improve bird-species, predation and habitats.

There are understandable concerns that such processes should not become used as a route to consenting otherwise unacceptable proposals. Adaptive management processes should therefore be based on a robust assessment of the range of potential outcomes, taking account of the possible need for the consequential or corrective mitigation of those options, and how these would be delivered if required. The compliance assessment process should be designed to monitor and manage the outcomes of this dynamic process of project implementation in consultation with the relevant stakeholders and local communities.

There has been little research\* on the results of effectiveness of the environmental monitoring and management during the construction of NSIPs. Without this evidence it is difficult for Examining Authorities to make informed judgements about the adequacy or otherwise of this approach. The sharing of the findings of the monitoring could improve decision making,

could provide reassurance to communities for whom the anticipation of impact can be more daunting than the reality, and enable developers to improve environmental management practices.

**Recommendation D2:** NIPA will undertake future longitudinal research to develop information about techniques and benefits of post project monitoring and evaluation. Requirements for post project monitoring and review processes should be aligned with the EIA process.

*\*Oxford Brookes University’s Impact Assessment Unit has been appointed to monitor the environmental and socio-economic impacts of constructing the nuclear power plant, Hinkley Point C. Awarded by the Local Government Association’s New Nuclear Local Authorities Group, the study aims to understand the real impacts of nuclear new builds and compare it with the predicted impacts outlined in the environmental impact assessment.*

### Case Study

#### Thames Tideway River Transport Strategy

National Policy and The London Plan provided a powerful policy framework for the movement of construction and excavated materials from Thames Tideway Tunnel by river, in preference to by road. The project was also keen to encourage this, despite the potential cost and convenience disadvantages, because of the acute safety and environmental concerns about heavy goods vehicle in London. The location of work-sites by the river underpinned this goal as part of the initial scheme design.

A River Transport Study was then prepared to examine alternative options for moving different materials by river. This formed the basis for early engagement with Local Authorities, GLA, TfL and PLA about the options, and for future decision making, taking the broad range of transport, environmental, economic and commercial factors into account, including some areas at significant risk of change.

The River Transport Strategy set out how the preferred balance between freight by road and river would be achieved, making allowance for the potential for reasonable deviation from the proposed strategy. Techniques used to secure variation of the strategy included:

- Specific additional assessments targeted at particular areas of construction uncertainty - one being a review of river freight facilities at Greenwich and another being the movement of excavated shaft material at Kirtling Street; and
- A process of derogations designed to allow for rapid decision making with the RTS Relevant Authority in the event of foreseen or unforeseen events, and make decisions about the need for specified materials to be moved by road.

The arrangements for deferred decision making were set out in detail. Arrangements were

made to allow the project to make decisions about derogations quickly under certain circumstances, within an overall framework of engagement, monitoring and review by the ‘Relevant Authority’, made up from the relevant Local Authorities, the GLA, TfL and PLA. Oversight is provided by an Independent Panel, with the ultimate power of remedial action plans being required in the event of disagreement about the appropriate course of action.

The original target for the movement of construction and excavated materials by river was 53%. The project is now working towards approximately 65%. This is an example of flexibility provisions within a clear governance framework creating an environment in which better outcomes are ultimately being delivered.

Winner of the Mission Possible: Mobility Award at the Sustainability Leaders Awards, 2019.

## Reviewing NIPA Insights I recommendations

Many of the NIPA Insights I recommendations have been followed up and progressed through the NIPA Insights II work, as follows:

- Recommendations C1 and C3 are updated in 'Building Trust'
- Recommendation D1 is updated in 'Providing Evidence'
- Recommendations E1, E2, F1, F2, and G1 are updated in 'Appropriate Controls'
- Recommendation C2 and C4 are updated in 'Adaptive Delivery'

The remaining recommendations have been updated and replaced as follows:

## National Planning Policy, Legislation and Guidance

Recommendation A2 proposed the preparation of guidance on how NSIPs can embrace appropriate flexibility in support of more efficient project delivery. NIPA has not been successful in gaining agreement to this from MHCLG, and has therefore developed the NIPA Insights II proposals to provide guidance about the processes and techniques that can be used in pursuit of appropriate flexibility.

Recommendations A1 and A3 referred to NIPA's support for changes to national policy and legislation. NIPA has engaged with MHCLG and the Planning Inspectorate about its recommendations on these matters, and has continued to raise these issues through relevant consultation responses. However, there is as yet no progress to report. NIPA will therefore continue to pursue these changes:

**Recommendation A1:** NIPA will continue to make representations to MHCLG to support the inclusion of a strategic approach to flexibility within National Policy Statements; and to secure the introduction of statutory time limits for non-material amendments to DCOs.

## Project Management and Early Contractor Involvement

Recommendations B1 and B2 were made about the importance of Early Contractor Involvement and an end-to-end approach to Project Management. Since that time, there has been much industry debate about 'Project 13' and the use of 'enterprise solutions' in the planning, design and delivery of major projects. Effective adoption of enterprise solutions, with a team focussed on integrating the planning, design and delivery process, alongside flexible engagement, consenting and control strategies would go a long way towards carrying these recommendations forward, and creating long term value for owners, investors and communities.

**Recommendation M1:** NIPA will engage with relevant professional associations to ensure that the Integrator Role includes a requirement to ensure that a project's planning considerations and discharge requirements are fully understood by the project delivery team(s).

## Continuous Learning and Dissemination

NIPA Insights I recommendations G2 and G3 made recommendations about further learning, dissemination and training.

NIPA's core objectives relate to continuous learning and dissemination. The Insights research programme has been focused on delivering against this objective, and shining a light on some of the ways in which the planning, design and consenting of DCOs can be improved to the benefit of future scheme implementation and operation – and the people/ communities whose lives are affected by them.

There are many avenues still to be explored, but the obvious next step is to build the resources necessary to share and disseminate some of the rich research that has thus far been undertaken, and to provide a place to communicate the outcomes for future work.

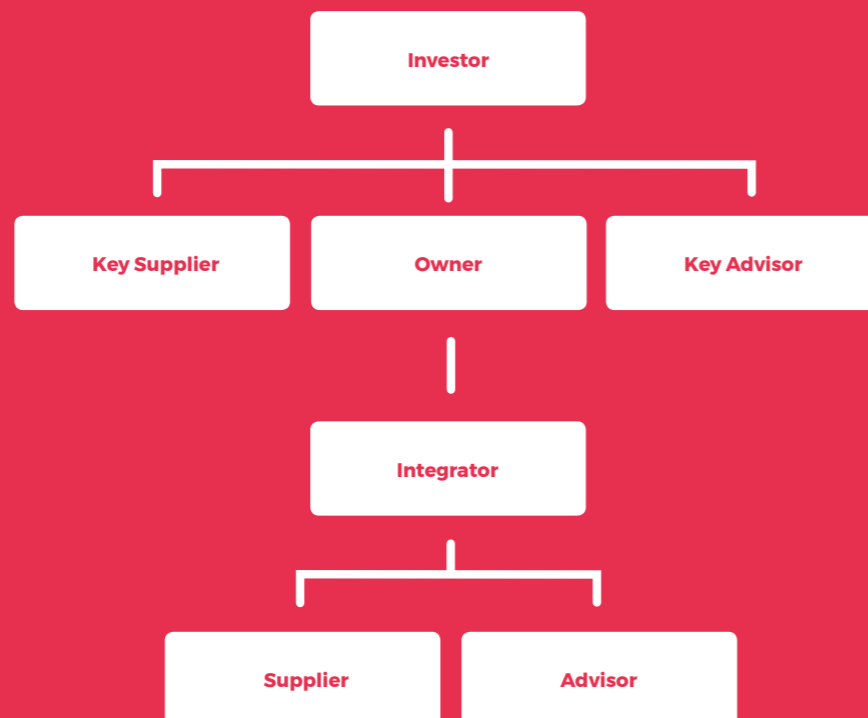
It is therefore proposed to build a NIPA Insights Flexibility Toolkit – a digital resource which will showcase existing and future work. This will take time to deliver as well as to source and incorporate contributions from across the NIPA membership, but we now have a body of research and proposals which provide us with a good starting point. This is the next task for 2019/20. This will be as inclusive a process as possible.

**Recommendation L1:** NIPA will work with members and stakeholders to develop a Flexibility Toolkit: aimed at supporting the objective of delivering better major infrastructure projects through planning.

## Project 13: Enterprise Structure

"An enterprise can be defined as an integrated organisation, aligned and commercially incentivised to deliver better outcomes for customers from infrastructure investment. Such organisations are characterised by sophisticated, maturing and typically longer term relationships between owners, investors, integrators, advisors and suppliers. The roles, capabilities and behaviours of an enterprise differ from those in much of the construction industry today, and success will be underpinned by developing organisations with increasingly diverse backgrounds and skill sets."

- The Owner is central and leads the enterprise, defining long term value
- The Integrator will integrate services (including planning), engineering, production and manufacturing to deliver the agreed long term value
- The Supplier will work within an integrated, collaborative delivery team, and ensure compliance with regulation and specification



## The NIPA Insights Flexibility Toolkit: Proposed Contents

### Building Trust

- Case studies of pre-application and post consent stakeholder and community engagement
- Commitments Register proposals
- Good practice examples of Statements of Community Consultation (SOCC), Preliminary Environmental Information Reports (PEIR), and of websites providing access to project documentation.

### Providing Evidence

- Good practice examples of dealing with flexibility in Environmental Impact Assessments and mitigation route maps.
- Scheme Implementation Report proposals

### Appropriate Controls

- Case studies – Codes of Practice Maps and post consent decision making
- Library of good practice examples of Control Strategies, Articles, Requirements, Protective Provisions, and other control mechanisms

### Adaptive Delivery

- Monitoring and Management techniques, such as Compliance Assessments, dealing with Not Environmentally Worse Than requirements through the delivery process

### NIPA Insights I and II research reports

- NIPA Insights I made the case for greater flexibility in the consenting of NSIPs, and made recommendations aimed at providing a framework in which this could be achieved.
- NIPA Insights II now makes recommendations about the processes through which projects can embrace flexibility to create the conditions for more efficient project delivery.
- NIPA will work with stakeholders to learn from project experience and continue to develop the Flexibility Toolkit to support good practice

### Training Modules at different levels for different audiences

- Basic DCO processes for communities and newcomers to the process
- Advanced for promoters and contractors
- Advanced for statutory consultees, local authorities, local community representatives

### Project 13 Blueprint. Institution of Civil Engineers, May 2018.

- Add further information about the application of the integrator role to the specific circumstances of the DCO



## Acknowledgements

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