

## **COMPULSORY PURCHASE - COMPENSATION REFORMS:**

### **CONSULTATION ON AMENDING THE COMPENSATION PROVISIONS FOR ASSESSING PROSPECTIVE PLANNING PERMISSION WHERE LAND IS COMPULSORILY ACQUIRED**

#### **NIPA's response to the consultation**

##### **Introduction**

The National Infrastructure Planning Association ("NIPA") was established in November 2010 with the aim of bringing together individuals and organisations involved in the planning and authorisation of major infrastructure projects. Our principal focus is the planning and authorisation regime for nationally significant infrastructure projects ("NSIPs") introduced by the Planning Act 2008. We provide a forum for those with an interest in the planning and authorisation of national infrastructure projects in the UK, particularly those brought forward within the framework of the Planning Act 2008.

In summary, we:

- advocate and promote an effective, accountable, efficient, fair and inclusive system for the planning and authorisation of national infrastructure projects and act as a single voice for those involved in national infrastructure planning and authorisation;
- participate in debate on the practice and the future of national infrastructure planning and act as a consultee on proposed changes to national infrastructure planning and authorisation regimes, and other relevant consultations; and
- develop, share and champion best practice, and improve knowledge, skills, understanding and engagement by providing opportunities for learning and debate about national infrastructure planning.

NIPA is pleased to respond to the Department for Levelling Up, Housing and Communities consultation published on 06 June 2022 seeking views on amending the compensation provisions in relation to the assessment of prospective planning permission where land is subject to compulsory purchase.

##### **Questions on further reform**

**Question 3:** *Do you agree that there are schemes where capping or removing the payment of hope value will increase the viability of certain schemes and/or increase the public benefits delivered through the schemes? Please provide details and where possible examples of schemes.*

NIPA has had a chance to review a draft of the intended response of the Compulsory Purchase Association and agrees with its response to this question.

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**Question 4:** *Please provide any comments you may have as to the proportionality of capping or removing the payment of hope value balanced against the delivery of public benefits. Please provide any examples you have where you believe the public benefits would be such that it would be proportionate to impose such a cap or removal of hope value to a scheme.*

NIPA has had a chance to review a draft of the intended response of the Compulsory Purchase Association and agrees with its response to this question.

**Question 5:** *Do you have evidence of the extent to which hope value is currently claimed/paid generally in compulsory purchase situations? Please provide details and where possible any evidence that you have as to whether hope value is more likely to be paid on particular types of schemes, for example from urban regeneration schemes to greenfield schemes or from housing schemes to transport schemes.*

NIPA has had a chance to review a draft of the intended response of the Compulsory Purchase Association and agrees with its response to this question.

**Question 6:** *Do you think the public benefits of capping or removing hope value is more likely to arise in particular types of scheme? Do you think any solution to this issue should be limited to particular types of scheme or apply across all types of compulsory purchase situations? Please provide details in support of your answers.*

NIPA has had a chance to review a draft of the intended response of the Compulsory Purchase Association and agrees with its response to this question.

### **Questions on consultation proposal**

**Question 7:** *Do you agree with the proposal to address this through the issue of directions for specific schemes as set out in this consultation?*

Please see the response to question 14, below.

The suggestion that directions be applied in advance of a DCO being applied for is particularly troublesome. The purpose of the Planning Act 2008 was, in large part, to provide for a single, rationalised and relatively swift consenting regime for major infrastructure projects: see, e.g., paras. 29-33 of the Explanatory Notes to the Planning Act 2008 and paras. 5.13-5.19 of the White Paper *Planning for a Sustainable Future* (CM 7120, May 2007). The introduction of an additional step, prior to any development being applied for, does not fit with this.

**Question 8:** *Do you agree with the proposal that the directions could cap the payment of compensation at existing use value or at a percentage above existing use value (excluding the payment of compensation under other heads of claim)?*

NIPA has had a chance to review a draft of the intended response of the Compulsory Purchase Association and agrees with its response to this question.

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**Question 9:** *Please provide any comments you may have as to: (1) whether it will be possible to identify certain, deliverable public benefits in applying for directions; (2) how it will be possible to link those public benefits to value captured.*

NIPA has had a chance to review a draft of the intended response of the Compulsory Purchase Association and agrees with its response to this question.

**Question 10:** *Do you think that an acquiring authority should have to consult with affected landowners before seeking a direction from the Secretary of State?*

NIPA has had a chance to review a draft of the intended response of the Compulsory Purchase Association and agrees with its response to this question.

**Question 11:** *Do you agree that issuing directions should only be to schemes where the acquiring authority is also a public sector entity?*

NIPA has had a chance to review a draft of the intended response of the Compulsory Purchase Association and agrees with its response to this question.

In particular, NIPA notes that a large number of DCOs are promoted by private parties rather than public bodies. Accordingly, any proposal which limits the changes to purely public sector entities may lead to a divergence in approaches to compensation between DCO projects, which could give rise to inequitable outcomes or confusion.

**Question 12:** *It might be possible for landowners to seek a planning permission so that development value applies under section 14(2)(a) LCA 1961 circumventing any cap applied under a direction. Do you think it should be possible for the directions to cap development value for any planning permission which falls under section 14(2)(a) where that planning permission is made after the “launch date” of the scheme or after the date the directions are issued if later? The launch date is defined by section 14(6) LCA 1961.*

NIPA has had a chance to review a draft of the intended response of the Compulsory Purchase Association and agrees with its response to this question.

**Question 13:** *Do you have any further comments as to how the process of seeking and issuing directions might work?*

NIPA has had a chance to review a draft of the intended response of the Compulsory Purchase Association and agrees with its response to this question.

### **Question on alternative proposal**

**Question 14:** *Do you think the proposals should go further and automatically limit the payment of hope value in compulsory purchase more generally or in relation to specific types of schemes? Please provide details and justification as to why you think it would be in the public interest to go further and what public benefits could be delivered if hope value was limited. Examples of types of schemes, for example regeneration, you think any further general application should apply to would also be helpful.*

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NIPA has had a chance to review a draft of the intended response of the Compulsory Purchase Association and agrees with its response to this question.

That said, should the Government progress with the reforms, seeking directions on a scheme by scheme basis would be a recipe for complexity, litigation and delay for the bodies (public or private) promoting DCOs. On that basis, if these reforms are to progress it would be preferable for there to be an automatic limitation in relation to specific types of scheme, such as regeneration schemes and functionally-related NSIPs and s35 projects of national significance (which typically will be transport projects).

### **Question on the Equality Impact Assessment**

**Question 15:** *Do you have any comments on the initial equality analysis? If yes, please provide your views on the equality impacts arising from this proposal and any suggestions for how those impacts could be mitigated (please include any evidence you may have in support your views).*

For the reasons covered more fully above and by the Compulsory Purchase Association, NIPA does not consider it likely that either proposal will increase “the beneficial effects of a scheme on persons with protected characteristics”. So, while the downside of detriment to persons with protected characteristics does exist (as acknowledged in para. 39 of the Consultation Document), the benefit does not.

**19 July 2022**