PLANNING WHITE PAPER CONSULTATION

NIPA'S RESPONSE TO THE PLANNING WHITE PAPER

Introduction

1. This is a response to the consultation launched on 6 August 2020 by the Ministry of Housing, Communities and Local Government Department on the reforms of the planning system proposed in the White Paper *Planning for the Future*.

2. The National Infrastructure Planning Association ('NIPA') is an organisation of approximately 500 members created to bring together all those involved in the planning and authorisation of Nationally Significant Infrastructure Projects (NSIPs) in the UK and to promote best practice. NIPA's members are drawn from a wide variety of organisations including project promoters, local authorities, lawyers, environmental and engineering consultants, planning consultants and surveyors.

3. As NIPA's remit only covers infrastructure planning, this submission focuses on the three questions related to that area: 7(b), 9(c) and 22(a), although in answer to question 5 NIPA would wish to see an acknowledgement and appropriate provision made that nationally significant infrastructure may be necessary in protected areas.

7(b). How could strategic, cross-boundary issues be best planned for in the absence of a formal Duty to Cooperate?

4. NSIPs (and large projects that may be below the NSIP threshold) by their nature raise strategic, cross-boundary issues. Although the formal duty to cooperate did not have a particular impact on NSIPs, larger than local infrastructure projects would benefit from larger than local governance. Sub-national transport bodies such as Transport for the North have been effective in developing strategies for transport improvements across their area, and this could be extended to other areas, both geographical and sectoral.

5. A good example is the Oxford to Cambridge Arc, which is intended to involve a number of new or significantly expanded settlements, linked by a new road and railway and served by other new infrastructure. Without any identified spatial planning and delivery vehicle, body or person, these are not progressing at speed in response to the identified need particularly in the case of the settlements, and are not being planned on an integrated basis particularly in the case of the road and railway. The route of the road and railway should be informed by the locations of the settlements, but because the road and railway are more advanced, it is likely to happen the other way around (and they are being developed largely independently of each other, when they should also be coordinated and have regard to integration with existing development and services and green and blue infrastructure capacity and resilience).

9(c). Do you think there is a case for allowing new settlements to be brought forward under the Nationally Significant Infrastructure Projects regime?

6. In NIPA's view, yes, there is a good case for this as an option to opt in to the regime through a section 35 direction, so on a discretionary rather than a 'compulsory above threshold' basis. The NSIPs regime lends itself to large projects that are of more than local importance, and with suitable minor changes to the regime we believe that it could accommodate such projects well.

7. For example, the NSIPs regime provides a significant opportunity for local participation in the examination of applications. The contrast with involvement in a planning application, which would extend to a written objection and a very short appearance

before a planning committee, or involvement in a new town development corporation, is marked.

8. The addition of new settlements to the NSIPs regime raises a number of questions, which are answered below.

What changes should be made to the regime?

9. There would need to be legislative change in the Planning Act 2008 to enable a Nationally Significant Infrastructure Project to consist of, or be led by, the construction or extension of one or more dwellings (currently excluded by s115). This change would need to extend to the NPS aspects of the Act in Part 2 (see below).

10. At present there is a list of statutory bodies that must be consulted when developers of NSIPs carry out statutory consultation (set out at Schedule 1 to the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009), either every time or if relevant to the nature of the NSIP. This should be reviewed so that organisations relevant to new settlement development, such as Homes England, are added to the list and must be consulted on such projects.

11. There is a list of required application documents in regulations 5 and 6 of the 2009 regulations; this should be reviewed to include any new settlement-specific documents in regulation 6, for example an energy statement and a design and access statement.

12. These are just examples, but we would suggest that a full audit of the changes required to primary and secondary legislation is conducted and consideration given to how new settlements are defined as Nationally Significant Infrastructure Projects and how Business or Commercial projects of national significance are also aligned and made consistent with such changes. For example the introduction of a s14A that identified new settlements and business or commercial projects as potential Nationally Significant Infrastructure Projects that can by s.35 direction be brought into the consenting regime and be recognised as 'fields' of infrastructure.

13. This should also then be matched with consequential refresh and update of guidance on, for example, likely scale and nature and an enhanced role for local authorities, and examples of what could properly be considered to be 'associated development'. NIPA would be glad to assist in identifying where law and guidance may need to be changed.

Should there be a National Policy Statement?

14. NIPA believes that one or more National Policy Statements for new settlements (and business or commercial) NSIPs would be of significant benefit, as they could deal with strategic issues and also set energy efficiency, environmental and design standards for applications. They could include considerations such as integration with and enhancement of public and private transport infrastructure and new or expanded social infrastructure, including schools and hospitals, and facilitate delivery and stewardship vehicles being created which provide roles for the public, private and community sectors. This would also help to address concerns that developers would be bypassing the spatial planning and development management roles that local authorities would normally have and exert.

15. NPSs can also declare sites as suitable for NSIPs, as the nuclear power, waste water and airports NPSs do. This could equally be done in a new settlements NPS, such as specifically identifying the need for new or expanded settlements in the Oxford to Cambridge Arc. The process for consultation and approval for a new settlements NPS may need to be reviewed so that it is fit for such a purpose in much the same way as the DCO process would need a review.

Should there be a size threshold above which projects can use the regime and below which they cannot?

16. In NIPA's view there should not be a number stated in legislation, as that would necessarily be an arbitrary cut-off; the test should merely be one of national significance. There could, however, be associated guidance with a suggested figure, say in the order of 10,000 units, as there currently is for projects with 'an element of related housing' which is set at 500. Projects lower than the scale indicated in guidance could still use the regime if they could through the s35 direction process demonstrate national significance because of particular factors such as location or integration with other NSIPs.

Should use of the regime be compulsory for projects above the threshold?

17. In NIPA's view, the regime should not be compulsory for projects above a threshold as it is for traditional economic infrastructure projects (and it could not be if there was only a test of national significance). The regime should merely be one of a variety of ways open to those promoting and seeking to deliver new settlements of national significance to use, appropriate to the circumstances.

18. NIPA notes that since business and commercial projects were added to the regime as an option in December 2013, no applications have been made, so it has been something of a failure (and only two projects have successfully requested to use the regime, in 2014 and 2015 respectively, but applications for them are still outstanding). Similarly, since an element of related housing was permitted in a DCO application in April 2017, no applications have been made that include any. If new settlements were also to be voluntary users of the regime, would they suffer the same fate? One way to help avoid this would be by creating a new settlements NPS, which would give encouragement and certainty that there is planning policy support for new settlement proposals of national significance. The impetus and incentives for new settlements are ever greater and so there may be more appetite for this delivery vehicle for such projects.

19. One of the possible reasons for the lack of applications to date may be a lack of experience of the NSIPs regime in the housing sector, and thus a reluctance to use an unknown regime. This could be addressed in part by training and capacity-building, and NIPA would be willing to assist with this. Another may be the lack of a National Policy Statement, adding to the arguments in favour of having one.

22(a). Should the Government replace the Community Infrastructure Levy and Section 106 planning obligations with a new consolidated Infrastructure Levy, which is charged as a fixed proportion of development value above a set threshold?

20. In NIPA's view, not entirely - applications under the Planning Act 2008 regime must still have a mechanism for offsetting the impacts of a project through payments for specific mitigation works.

21. This is because the main exception to those applications being granted development consent if they are in accordance with the relevant NPS is if their adverse impacts outweigh their benefits. In order to reduce their adverse impacts, therefore, it is common for project promoters to enter into s106 agreements to commit them to making payments to local authorities for particular purposes that will reduce the impacts of the project concerned. For example, the promoters of the Manston Airport DCO entered into a s106 development consent obligation to Thanet District Council to pay for the introduction of a controlled parking zone in the area, since airports tend to cause fly parking. By doing so, that reduced the potential adverse impact to residents' amenity caused by fly parking. If instead the project merely paid a fixed amount to a general fund, there is no guarantee that it would offset any particular adverse impact it might cause.

22. Furthermore, if a tariff is based on the sales value of floorspace, as is likely, it is difficult to calculate for many types of infrastructure - what is the sales value or floorspace of a power line, for example? Therefore, in the same way that CIL rarely applies to NSIPs, the proposed national infrastructure levy would be unlikely to apply or be appropriate to the delivery of NSIPs development (critical infrastructure in itself).

23. For these reasons NIPA requests that in designing the proposed national infrastructure levy (a) provision is made for NSIPs to be exempt from it; and (b) the mechanism for s106A development consent obligations is preserved for NSIPs (or a direct replacement provided for). This is partly contemplated by footnote 18 in the White Paper, although it says 'value would be captured through the Infrastructure Levy', which appears not to address the concerns expressed above.

24. There is an exception from CIL for buildings to which the public do not normally go, in regulation 6 of the CIL Regulations 2010; any successor provision could be extended to cover all NSIPs, which are the projects that CIL is intended to facilitate after all. Several development consent orders made under the 2008 Planning Act specifically exempt the project concerned from CIL but this would be better addressed as part of the detailed architecture of any national infrastructure levy.

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