**Ministry of Housing, Communities and Local Government**

***NIPA Comments on Guidance Proposed to Accompany Changes to Consultation Requirements introduced through the Planning and Infrastructure Bill***

**Introduction**

On 23 April 2025, Matthew Pennycook MP made a Written Ministerial Statement (WMS) proposing changes to the Planning and Infrastructure Bill to remove the legal duties requiring developers to consult in a prescribed manner with communities, landowners, local authorities and key stakeholders before submission of a Development Consent Order (DCO) application. The WMS states that the current statutory requirements for consultation have *'become a tick box exercise that encourages risk aversion and gold plating'*.

The WMS went on to confirm that: *'we still expect high-quality early, meaningful and constructive engagement and consultation to take place with those affected as part of that process, thereby enabling positive changes to be made to proposals without causing undue delays.'*

The WMS also confirmed that the Government intends to publish statutory guidance setting out strong expectations that developers undertake consultation and engagement prior to submitting an application. It states that *'We will work with stakeholders to design this guidance, launching a public consultation in the summer, so that it encourages best practice without recreating the flaws of the current system.'*

The National Infrastructure Planning Association (NIPA) is providing this letter to provide initial thoughts from the NIPA leadership team on this proposed guidance in advance of consultation planned by MHCLG for Summer 2025. This letter is informed by input from the leadership team and views expressed at a *NIPA Matters* event attended virtually by 118 of our members and invited government attendees on 12 May 2025.

NIPA is diverse in its membership and this letter will not reflect the views of every member. NIPA is currently engaging its full membership to identify best practice in engagement and consultation and to support all our members in responding to the consultation in the summer. NIPA will provide a full response to that consultation when available.

**Overarching view of proposed changes**

NIPA welcomes the ambitious and committed approach that the Government is taking to reforming the planning process for Nationally Significant Infrastructure Projects (NSIPs). NIPA recognises that the proposed removal of statutory requirements from the

Planning Act 2008 (PA 2008) is not about removing the expectation that applicants should consult meaningfully on an application before it is submitted to the Secretary of State. NIPA understands that the changes are instead about removing the prescriptive requirements that surround how this consultation is carried out to enable consultation to be more flexible, proportionate and meaningful for all parties.

NIPA recognises that the same statutory consultation requirements of the PA 2008 are not present in such prescribed legislative terms in other regimes such as the Town and Country Planning Act 1990 (TCPA) but there are nevertheless examples of excellence in consultation delivered by developers of major projects consented under those regimes.

NIPA strongly supports the need and benefits of high quality, early and meaningful consultation and ongoing engagement to deliver the urgent infrastructure we desperately need, whilst ensuring the right outcomes for the environment and local communities. In our view, early, proportionate consultation with local planning authorities, statutory and non-statutory consultees, landowners and communities will remain important to the delivery of infrastructure projects and we welcome the Government's position that this will remain the expectation.

There is currently significant variability in the quality of consultation, engagement and communication carried out for NSIPs, with NIPA members citing both examples of best practice and examples where consultation has been less effective or more 'tick box'. The prescriptive requirements of the PA 2008 on consultation are therefore not delivering consistently good outcomes.

Some members have noted that excellence in consultation is often associated with rounds of non-statutory consultation carried out voluntarily in advance of the statutory consultation required by the PA 2008. Other members have noted the value in consulting non-statutory consultees such as The National Trust, who are not required to be consulted under the PA 2008. Therefore, where developers are delivering excellence in consultation, it may be despite or alongside the requirements of the PA 2008 rather than because of it. We would also agree with the WMS that the current approach can deliver perverse outcomes. For example, in some cases the current legislation can discourage applicants from making changes requested by consultees, communities and landowners due to the potential programme and cost implications of consultation required if changes are made. This is clearly counter-productive for all parties.

Consultation is not beneficial for consultations sake and we would therefore encourage the Government to focus on considering what will encourage meaningful, open and proportionate consultation that results in good infrastructure projects and better outcomes for communities and the environment. A focus on good outcomes rather than process may help in the development of guidance that avoids replicating the issues of the previous system.

Guidance should not replicate process requirements that were previously enshrined in the PA2008 as this would not deliver the envisaged benefits. However, the current requirements give certainty around what is required. We would urge the Government to ensure that the system is truly flexible without increasing ambiguity. A higher level of ambiguity in what is expected could perversely increase the risk averse behaviours exhibited by developers who need to ensure applications will be accepted, and ready for examination, whilst avoiding the risk of later Judicial Review.

When developing guidance to accompany the changes made by the Planning and Infrastructure Bill we would encourage MHCLG to consider whether the guidance can:

1. Assist developers in delivering meaningful, open and proportionate consultation that delivers good outcomes.
2. Set out how the adequacy of consultation will be tested following submission of an application.
3. Provide guidance on environmental information to be consulted upon prior to submission of an application.
4. Provide guidance to consultees on their role in the consultation process and engaging meaningfully at the pre-application stage.
5. Providing clarity to all parties on where consultation will still be mandatory due to provisions in other legislation and on the nature of consultation required in the case of landowners.

We would also encourage MHCLG to clarify two key points when consulting in the summer, namely:

6. Providing information on any planned updates to other documents and processes; and
7. Publishing information on transitional arrangements.

Each of the points above is explored further below.

**NIPA thoughts on the content of guidance**

1. **Providing guidance that can assist developers in delivering meaningful, open and proportionate consultation that delivers good outcomes**

The consultation requirements in the PA 2008 have driven risk-averse behaviours in practitioners and promoters throughout the process. The amendments to the PA 2008 contained in the Planning and Infrastructure Bill and proposed guidance are an opportunity for government to reset practice to drive better outcomes for all parties. If the guidance is to encourage cultural change and deliver more proportional and effective processes, it will be as important to be clear about what is not required, as it is about what is required. Clarity on expectations could give applicants the confidence to really change and innovate.

In our view, the guidance should be clear that applicants are expected to carry out consultation prior to submission of an application. This consultation should be:

- **Meaningful:** in particular, consultation should be appropriately timed at points in the project where consultees and communities can genuinely influence the project. The success of good consultation should be judged not on the amount of consultation or process, but on the extent to which it results in a project with good outcomes.
- **Proportionate:** consultation should be proportionate in terms of who is consulted, the types of consultation activities, the timescales allowed for responses and the number of consultation rounds. Major infrastructure projects are diverse and what is appropriate for one project may not be for another.
- **Open and transparent:** developers should be open about the stage of design development, transparent about what elements of the project are being consulted upon and clear about next steps. Being open about areas of uncertainty and reasons for decision-making can also help build trust.

It may also be useful to detail examples of best practice in consultation, with examples from both within and outside the NSIPs regime. These examples should be those that achieve the stated aims above. We note that a focus on best practice can encourage a focus on applicants who have 'gold plated' activities, which may be best practice from a consultee perspective, but not from the perspective of a country looking to urgently and affordably deliver projects. We would therefore encourage the Government to explicitly consider whether best practice examples cited in guidance meet the 'proportionality' aim, as well as the other aims above.

There will be differing views on what 'best practice' looks like. Therefore, NIPA would encourage the Government to invite suggestions on best practice project examples from all parties to gather these diverse perspectives. NIPA is keen to work with Government to enable best practice to inform and be shared alongside guidance.

**NIPA recommends that guidance aims to encourage consultation that is meaningful, proportionate, open and transparent. Best practice examples are useful, but should be selected carefully to ensure they demonstrate proportionality.**

2. **Set out how the adequacy of consultation will be tested following submission of an application**

The WMS states that: *'The Planning Inspectorate, on behalf of the Secretary of State, will continue to assess whether applications are suitable to proceed to examination. We expect guidance to emphasise that without adequate engagement and consultation, applications are unlikely to be able to proceed to examination.'*

This paragraph confirms that there remains an intention for the adequacy of consultation to be assessed during the 28-day acceptance period for NSIPs. Given the removal of the prescriptive requirements on consultation from the PA 2008, the guidance will need to be very clear how this is to be assessed.

The Bill amends section 55 (Acceptance of applications) of PA 2008 to state that when determining whether an application will be accepted for Examination, the Secretary of State must take into account:

> *'(a) the extent to which the application complies with section 37(3) (form and contents of application),*
>
> *(b) the extent to which any applicable guidance under section 37(4) has been followed in relation to the application,*
>
> *(c) the extent to which the application complies with any standards set under section 37(5) (standards for documents etc accompanying application),*
>
> *(d) the applicant's approach to satisfying section 48 (duty to publicise), and*
>
> *(e) the extent to which the applicant has had regard to any advice given under section 51 in connection with the application (or the proposed application that has become the application).'*

The changes to section 55 reflect the fact that sections 42, 43, 44, 45 and 47 are proposed to be repealed. The guidance should clearly set out for all parties that the Secretary of State will assess whether consultation has been adequate *only* through consideration of the revised tests in section 55.

At present the Planning Inspectorate, on behalf of the Secretary of State, assesses whether an Applicant has developed the application in accordance with the statutory consultation requirements in the PA 2008 through use of the section 55 checklist. In relation to consultation, the Secretary of State particularly takes into consideration:

- the applicant's consultation report detailing the pre-application consultation and publicity of the application, consultation responses received, and the account taken of any relevant consultation responses; and
- any representation from the relevant local authority or authorities as to whether the applicant has complied with sections 42, 47 and 48 of the PA 2008 (the "adequacy of consultation" representation).

Applicants generally submit a 'draft' section 55 checklist to help the Planning Inspectorate locate the right documents in the submitted application. This process means that the Applicant can have a reasonable amount of certainty on whether their consultation is adequate and the task can be undertaken by the Planning Inspectorate swiftly and within the case and support teams.

The acceptance period is currently 28 days and includes a 14 day period for local authorities to comment on the adequacy of consultation. One of the real successes of the current regime is that all applications submitted have had an acceptance decision within this 28 day statutory period unless they have been withdrawn. This is an incredible achievement given the number and complexity of documents submitted as part of a Development Consent Order application and the success of the Planning Inspectorate, on behalf of the Secretary of State, in meeting this timescale should be recognised and celebrated. The changes to the process must not compromise this successful process by increasing the uncertainty or complexity associated with assessing whether consultation has been 'adequate'.

The changes remove the need for applicants to provide a consultation report and for local authorities to comment on the adequacy of consultation during acceptance, amending key tests in section 55 of the PA 2008. Given the removal of the requirement for adequacy of consultation submissions from local authorities, the changes provide a potential opportunity for acceptance decisions to be accelerated. However, for this to be achieved, guidance should clearly set out how applicants should evidence alignment with the revised section 55 requirements.

We would encourage the Government to be precise with the wording in the guidance to ensure that no text could be misinterpreted as re-introducing acceptance tests related to adequacy of consultation beyond those in section 55. Any ambiguity here could encourage a return to the risk averse applicant behaviours we see at present or increase the risk of challenge to the process.

**NIPA recommends that the guidance clearly sets out how applicants should comply with the requirements of the revised section 55, and how the Planning Inspectorate (on behalf of the Secretary of State) should assess this compliance during the acceptance period. The guidance should make it clear to all parties that the test will be limited to compliance with section 55 given the time-bound nature of the acceptance period.**

3. **Provide guidance on any expectations around the environmental information to be consulted upon prior to submission of an application**

The WMS states that the changes would include removing the requirement for developers to consult on preliminary environmental information. This change is welcomed because the way environmental information is being presented in Preliminary Environmental Information Reports (PEIR) is often not proportionate or accessible.

The information provided in a PEIR has evolved over time and approaches vary between applications. However, applicants and consultees have often been developing PEIRs to be close to draft Environmental Statements, both in detail and content. This does not

always strike a proportionate balance between the perceived scale of information a statutory body would expect (and may have also seen via an Evidence Plan and parallel technical engagement) and that being useful and relevant to a local community that is hosting the NSIP.

A key drawback of an extensive PEIR is that it means that statutory consultation is carried out late in the process because it cannot be produced until designs are mature (but not fixed) and the environmental assessment of those designs has been undertaken. The availability of seasonal data can also be a contributory factor to the preparation of a PEIR and obtaining this data can delay statutory consultation.

The requirement for PEIR can therefore either mean consultation comes too late in the process for consultees to truly influence designs, or its timing leads to delays in major infrastructure projects as applicants make changes following consultation responses. Commonly developers have then addressed this issue by introducing earlier rounds of consultation to 'de-risk' the statutory consultation process. On larger projects these multiple rounds of consultation may be appropriate but on smaller, simpler and lower impact projects they may not be.

There may be some benefit in applicants introducing Evidence Plans and focused technical engagement during the pre-application process, but in parallel to statutory consultation and the review of the PEIR, this has led to consultation fatigue in statutory and non-statutory bodies. Having extensive PEIRs therefore also compounds the required resources needed to engage with Applicants in addition to reviewing and responding to PEIRs and other environmental information which may be the subject of ongoing technical engagement.

In light of the intention to implement Environmental Outcome Reports, having the opportunity to consult local communities on the proposed "outcomes" of a project rather than methodology of assessment and likely significant effects, could result in development of consultation materials that are more concise, more accessible and more proportionate.

It should be noted that there has been nothing in legislation or guidance that defines what preliminary environmental information is or that requires a PEIR to be produced like a draft Environmental Statement; it is a risk averse approach that has evolved over time in order to focus agreements on technical matters in advance of examination and derisk this stage of the DCO process. Therefore, to encourage a more proportional approach to the provision of environmental information at consultation, NIPA would encourage the Government not to re-introduce a general requirement to consult on 'environmental information' or encourage consultation on 'likely significant effects' in guidance. Guidance could usefully clarify that reporting on likely significant effects will be contained in the Environmental Statement submitted with an application and that

developers are not required to consult upon a draft Environmental Statement in advance of application submission (although sharing drafts of specific chapters with local authorities or statutory bodies can be beneficial if time allows). It should be noted that a recent update to Planning Inspectorate Advice Note 7 details the option of providing a draft Environmental Statement as preliminary environmental information. This reference is an example of where guidance should be amended to reflect changes to legislation and the forthcoming guidance.

Whilst we would encourage flexibility and proportionality in the provision of technical environmental information before submission of an application, clearly communicating the nature of the project and inviting views on measures to reduce and mitigate impacts and deliver enhancements can deliver better project outcomes. It may therefore be beneficial to encourage consultation on mitigation and enhancement, and to provide examples of when it has been done well.

**NIPA would recommend that care is taken not to reintroduce the requirement for a PEIR in guidance by requiring reporting on likely significant effects or consulting on preliminary environmental information. Instead, NIPA would encourage a focus on positive environmental outcomes and consultation on measures that would reduce or mitigate environmental or social outcomes, and deliver proportionate enhancements where appropriate.**

4. **Provide guidance to consultees on their role in the consultation process and engaging meaningfully at the pre-application stage**

It is important that the guidance acknowledges that for consultation to be effective, consultees must engage with the project in an early and meaningful way. The current statutory consultation process provides a structured way for developers to gain input particularly from prescribed consultees and local authorities. The guidance should be clear that whilst the statutory requirements have been removed from the PA 2008, consultees have a duty to proactively engage and meaningfully respond to developer consultations. It may be beneficial to require that Interested Parties set out in their Relevant Representation how that have engaged meaningfully with the developer pre submission of the application.

Guidance on the expectations of parties to be consulted would be beneficial. For example, it could be clarified that it is not acceptable for a body not to respond to repeated attempts at consultation from a developer and then object to an application after submission on grounds that could and should have been raised at an earlier point in the process. This is particularly the case given that there are now charging structures in place for engagement with key consultees. Guidance stating that consultees should engage meaningfully, proportionately and in an open and transparent manner would also be welcomed. Additional requests for information can have cost and programme

implications for major infrastructure projects and consultees should be encouraged to be mindful of this when providing comments.

**NIPA recommends that the guidance clearly sets out the expectations on consultees as well as developers, including considering a requirement for consultees to set out in Relevant Representations how they have sought to resolve their issues with the developer in the pre-application period.**

5. **Providing clarity to all parties on when consultation will still be mandatory due to provisions in other legislation and on the nature of consultation required for landowners**

Due to the number of consents that can be 'wrapped up' in a DCO and the complexity of the system, the removal of the relevant sections of the PA 2008 dealing with consultation will not remove all mandatory consultation on NSIPs. Whilst this will be well understood by the experienced applicants, local authorities and prescribed consultees, it may not be by applicants new to the process, less experienced consultees, communities and landowners.

It is therefore recommended that the guidance clarifies and maps the main situations where consultation remains mandatory. For example, where consultation may be required for applicants to discharge its obligations under the Conservation of Habitat and Species Regulations 2017. The guidance could also helpfully provide advice on how compliance with the Aarhus Convention and the *Gunning* principles can still be achieved to minimise the risk of Judicial Review on this topic.

It would also be useful to highlight where consultation may not be explicitly be required, but where some form of engagement or consultation is likely to be beneficial to meet other tests. In particular, to obtain compulsory acquisition powers applicants need to be able to demonstrate that land acquisition is necessary and to do this, applicants will need to be able to demonstrate that efforts have been made to obtain land through negotiation. This will, of course, be challenging to demonstrate if applicants have not made efforts to identify and consult landowners before submission of an application.

There will always be cases where it has not been possible to make contact with landowners prior to submission of an application because they have been identified late in the process or changes have been made that bring in new landowners shortly before or after submission of an application. The guidance could helpfully clarify that whilst applicants seeking powers to acquire land compulsorily well need generally to consult landowners, where landowners are identified late in the process this consultation can be carried out in parallel with submission of an application and the Pre-Examination period rather than being required prior to submission.

Clarifying the process and timing for consultation with landowners in the forthcoming guidance provides an opportunity to bring guidance on compulsory acquisition through the PA 2008 in line with guidance on the compulsory purchase in other regimes. In particular, the *Guidance on the Compulsory Purchase Process* (MHCLG, January 2025) states at paragraph 2.8 that:

*'Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. However, an acquiring authority does not need to wait for negotiations with affected parties to break down or for the affected parties to begin to engage with them before starting the compulsory purchase process in parallel with negotiations. Delaying the start of the compulsory purchase process can result in valuable time in progressing a project being lost. Therefore, depending on when the land and/or rights are required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:*

- *plan a compulsory purchase timetable as a contingency measure*
- *initiate formal procedures'*

Similar wording could be included in the proposed guidance on consultation on NSIPs, to bring consistency and clarity of approaches across different regimes.

**NIPA recommends that the guidance includes information for all parties on mandatory requirements for consultation outside the PA 2008. This guidance could also clarify consultation requirements for landowners affected by proposed compulsory acquisition, emphasising that consultation with landowners can be carried out in parallel with submission and examination of an application where parties are identified late in the process.**

**Other Information to Accompany Consultation in Summer 2025**

6. **Providing information on any updates to other documents and processes**

We recognise that MHCLG is progressing at pace and that follow-on changes will be required to other guidance and legislation to support the final approach. For example, we would recommend considering:

- updating PINS' Pre-application Prospectus to align with changes, particularly to remove the adequacy of consultation milestone;
- advice notes and other guidance, for example Advice Note 7 that discusses the PEIR;
- the process in relation to further environmental information under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017;
- requirements to consult on changes to applications after submission; and
- any revisions that should be made to the section 56 process.

**NIPA recommends that all guidance, advice and legislation is considered holistically and a programme set out for updates to ensure all documents are consistent.**

### 7. Publishing information on transitional arrangements

The changes being proposed to consultation are significant and the uncertainty is affecting the ability of developers to progress project programmes. Whilst some developers will be content to proceed under the current requirements and adjust their approaches when the guidance is published, others will be considering whether to pause projects either because they are concerned their current process may not meet future requirements or because they are unwilling to commit expenditure to activities that may not be required when the changes are brought into effect.

We would therefore strongly encourage the Government to provide clarity on transitional arrangements alongside consultation relating to the proposed guidance in the summer. Reassurance could usefully be provided to developers that if a project has reached statutory consultation, their consultation will be considered adequate if assessed as such under the current requirements of the PA 2008. We would encourage the Government to retain a level of developer decision-making in this process because of the variety of ways in which projects evolve and are brought forward. It should be noted that, for example, some projects may have changes after a round of statutory consultation that under the current regime would require a new round of statutory consultation. It would be a missed opportunity if that project would still need another round of statutory consultation, despite the regime change, because it had already undertaken statutory consultation.

**NIPA recommends that transitional arrangements are set out alongside the consultation planned for summer 2025.**

Thank you for providing NIPA with the opportunity to provide this early contribution to what the guidance should address. NIPA remains committed to working with Government to provide the insights of our diverse practitioner membership, and in bringing people together to find common practical solutions to the issues identified in the WMS. We look forward to continuing that work with you and please do not hesitate to contact me if you have any questions.

National Infrastructure Planning Association