

PLANNING FOR MAJOR INFRASTRUCTURE: MAKING THE NEW SYSTEM WORK

A planning white paper consultation response
from the Royal Town Planning Institute (RTPI)



RTPI

mediation of space · making of place

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1. Introduction

This 'daughter document' represents part of the RTPI planning white paper response, addressing the government's proposals on major infrastructure. It also addresses the balance of questions arising from the white paper that are not found in any of the other 'daughter documents'.

It forms part of a suite of responses to the planning white paper more broadly which are listed below:

- Planning for a Sustainable Future: a High Level Response;
- Permitted Development Rights for Householders;
- Improving the Appeal Process;
- Planning Fees; and
- Planning Performance Agreements.

Copies of all the white paper responses can be downloaded from:

- <http://www.rtpi.org.uk/item/606>

2. The Major Infrastructure Reform Package

Q.1 The proposed package of reforms

Do you agree that there is a strong case for reforming the current system for planning for nationally significant infrastructure?

The RTPI considers that there is a strong case for reform, as highlighted in submissions to government on a broad range of infrastructure topics.

The RTPI supports the planned introduction of an Independent Planning Commission (IPC) to take decisions within a framework of national policy statements.

Do you agree, in principle, that the overall package of reforms proposed here achieve the objectives that we have set out?

Yes in broad terms. However, the RTPI wishes the government to give further consideration to a number of critically important issues.

It will be important for government to clarify the boundary lines of the proposed major infrastructure system and the mechanisms whereby projects enter it.

It will be important for government to consider further the mechanisms for local involvement in individual project decisions. High profile campaigns have played a strong message that the purpose of the reforms is to 'lock the public out' of decision making. This is not and should not be the case, but hard and to some extent symbolic work is now required to reassure key stakeholders that the new system will be adequately accountable and transparent.

The RTPI retains a significant concern that part of the delay that has afflicted public or public partnership infrastructure programmes has been around funding for delivery. It will be important to ensure that funding processes are re-considered in tandem with planning processes.

If not, what changes to the proposed reforms or alternative reforms would you propose to better achieve these objectives?

In summary terms there must be:

- A clearly understood boundary to the new major infrastructure system that is not arbitrary and is capable of absorbing individual projects into the system, or delegating projects from the system, as necessary.
- Clear and understood means of public and stakeholder involvement in the formulation of national policy statements.
- An accountability for draft policy statements to a public examination process. Whilst this could be conducted by a Parliamentary Committee, it will require expert technical support and must test the soundness and environmental impact of draft policies.
- The status of policy statements vis a vis other sources of policy needs to be made clear. The Independent Planning Commission must be required to consider policy statements, but

must also be required to consider Planning Policy Statements and equivalent national policies and the content of the development plan. Town and Country Planning Act and other remaining approvals regime decision makers must also be required to consider national policy statements as relevant.

- National policy statements must as far as possible be integrated horizontally with other policies, to form a 'national planning policy framework'.
- Means of appointing members to the Independent Planning Commission must be devised, which ensure the operational independence of the Commission and the avoidance of conflicts of interest, but also enables the capacity of the Commission to adapt much more flexibly to varying workload than the model proposed by the government.
- The Independent Planning Commission must have an obligation to advise proponents and affected communities and quality control proposals before the formal decision making process commences.
- In fast moving areas of technology development or periods of rapid economic or environmental change, policies will not necessarily be able to address all relevant matters bearing on a decision. Whilst it will be important to enable policies to be reviewed to respond to change, the Independent Planning Commission must be entitled to have regard to issues and evidence arising beyond policy. Whilst the RTPI accepts that policy should normally be implemented unless weighty material considerations indicated otherwise, the reductive application of policy proposed in the white paper must be expanded, if the nation is to avoid major infrastructure planning by judicial review.
- The Independent Planning Commission must be able to meaningfully consider the views and evidence of third parties: an 'open floor' session is insufficient.
- Local planning authorities must have a right to respond to the proposal and to represent their policies and the views of the local community before the Commission.
- The Independent Planning Commission must be entitled to consider 'other material planning considerations' in addition to policy.
- There may be circumstances in which a combination of 'other material planning considerations' may indicate against a project that is superficially supported by policy: this must be acknowledged in the statutory framework for the operation of the Commission.
- The Independent Planning Commission must have a duty to consider and achieve the best reasonable mitigation of the adverse social, economic and environmental effects of proposals. This will be assisted by proponents being required to demonstrate options and option appraisals before the Commission.
- If in the Commission's view, reasonable mitigation is not proffered by the proponent, this should be capable of being a reason for refusal.
- Conditional consents should be capable of regulating complex ongoing actions such as Construction and Operational Environmental Management Plans (CEMPs/OEMPs).
- Regard must be had to the funding and management of the monitoring and enforcement of such conditions.
- The Independent Planning Commission must have a mechanism to negotiate and secure planning gain, over and above the normal scope of conditions, equivalent to agreements under section 106 of the Town and Country Planning Act.
- The members of the Independent Planning Commission must be able to act without immediate fear or favour and hence direct means of accountability to Ministers that could result in the perceived fear of the power of dismissal coming to influence individual matter outcomes must be avoided.
- The Commission should provide an annual report to Parliament, which must be examined by a committee. The report should break down decision durations, the relationship of decision outcomes to policies and comment on the value and quality of policies and

possible directions for change. There should be means of holding the Chief Commissioner to account for the aggregate poor performance of the Commission.

3. National Policy Statements

Q.2 Introduction of national policy statements

Do you agree, in principle, with the introduction of national policy statements for key infrastructure sectors in order to help clarify government policy, provide a clearer strategic framework for sustainable development, and remove a source of delay from inquiries?

Yes. However, such policies must be:

- spatial
- integrated
- cross-cutting
- programme related (ie be cognisant of funding and implementation considerations)
- closely related to existing policies such as Planning Policy Statements or their equivalent.

For nations other than England there is a clear need to clarify the relationships of policy to the national spatial frameworks and policies of devolved administrations.

Q.3 Content of national policy statements

Do you agree that national policy statement should cover the core issues set out in the consultation?

Broadly yes. Policies should express high level sustainability objectives that are to be achieved.

The RTPI considers that strategic rail proposals should be the subject of a statement.

The RTPI notes that there is still considerable uncertainty around the planning gain supplement and planning gain generally. However, expectations for and the provision of appropriate gain and mechanisms of funding from gain will be a valid component of policy.

Q.4 Status of national policy statements

Do you agree, in principle, that national policy statements should be the primary consideration for the infrastructure planning commission in determining individual applications?

National policy statements need to be a weighty statutory consideration. They should normally be implemented unless other weighty considerations indicate otherwise. However, policies are never complete across all the facts of a complex individual case. Evidence that forms policy can also change quite quickly. The Commission must be able to consider other material considerations, at risk of its determinations becoming perverse in appearance and ever more subject to judicial review.

Q.5 Consultation on national policy statements

Do you agree, in principle, that these proposals would ensure effective public engagement in the production of national policy statements, including with local communities that might be affected?

It is important that communities are provided with meaningful means of engagement that are precise, targeted to the issues and efficient in time and cost terms. The dilemmas that have arisen from historic consultations on national policy is that they have tended to be unguided, unsupported and undifferentiated in the nature and weight of their inputs to government. Time and resources are wasted as a result.

The use of express community engagement mechanisms such as can be provided by Planning Aid will assist.

The RTPI is happy to systematize practice in this field and to provide draft guidance to government, but would seek funding to undertake such as task.

Q.6 Parliamentary scrutiny

Do you agree, in principle, with the intention to have Parliamentary scrutiny for proposed national policy statements?

Yes. However...

What mechanisms might ensure appropriate Parliamentary scrutiny?

The RTPI considers that the main mechanism of scrutiny would need to be a committee hearing process. The committee would need to examine draft policies to ensure their soundness and to ensure that they had been properly subject to strategic environmental assessment (SEA) as necessary.

There should be oral committee hearings, at which third parties are heard and evidence is tested.

Hearings should be conducted in the manner of examinations in public, in the sense that not all third parties would have a right to be heard, thus ensuring that the committee would not be open to filibuster. However, where a party was subject to a proposal in a policy that would materially adversely affect their land or other significant interests, they should be heard.

To facilitate these processes happening in a timely and effective manner, the RTPI proposes that the scrutiny committee should have the services of officers with three broad functions:

- to marshal policy issues and evidence before the committee, to ensure that the committee is in a position to effectively examine and comment on the soundness and environmental impact of policy drafts;
- to assist the committee by briefing on, preparing questions to and questioning third parties with concerns about policy drafts; and

- to prepare a draft response and recommendations to the committee on the soundness of the policy and the changes (if any) that should be made to it prior to referral to Ministers for approval.

Q.7 Timescale of national policy statements

Do you agree, in principle, that 10-25 years is the right forward horizon for national policy statements?

There is a significant difficulty in obtaining a policy balance between the interests of medium to long term certainty in high level policy settings, for which the timescale proposed is probably appropriate, and in responding to significant technological, economic, social and environmental changes, that can have radical effects on policy issues and assumptions over much shorter timescales than those proposed.

If not, what timeframe do you consider to be appropriate?

On balance, a timescale of in the region of 15 years appears likely to be appropriate.

Q.8 Review of national policy statements

Do you agree that five years is an appropriate period for the Government to consider whether national policy statements remain up to date or require review?

Without compromising the certainty provided by high level principles in policy, which should not change regularly, there will be elements of policy that will need to be reviewed and revised at least every 5 years, or on an even shorter timescale again, if they are not themselves to become detached from evidence and even a barrier to necessary progress and innovation.

The RTP1 conceives of such documents having their primary life on the web and being capable of continuous improvement in respect of finder points of evidence and detail.

It should be possible to conceive of the documents as expressing the following distinct hierarchy:

- High level principles, which should normally withstand change over the fifteen year life of the policy
- Key statements of strategic and spatial direction, which will probably require to be reconsidered at each internal review; and.
- Supporting or explanatory statements, which will rely strongly on evidence and which should be as far as possible continuously improved.

What sort of evidence or circumstances do you think might otherwise justify and trigger a review of national policy statements?

Any significant change in the delivery technologies around the infrastructures covered by the statement will warrant a review. Such triggers should extend to significant changes in knowledge about the sustainability, environmental or health impacts of technologies or the economic viability thresholds of technologies.

It would for example be wrong for a policy to continue to support a particular energy process without mitigation, if it had been found to be the source of a significant and mitigable range of health effects. Similarly, if a new transport technology makes a mode of transport economically viable in a way that was not the case when a statement was drafted, it should be reviewed as a matter of course.

Q.9 Opportunities for legal challenge

Do you agree, in principle, that this opportunity for legal challenge would provide sufficient and robust safeguards to ensure that a national policy statements is sound and that people have confidence in it?

This opportunity would be sufficient, only in the context that substantive hearings on the soundness and impact of policies were held as part of a Parliamentary scrutiny phase, as set out in the answer to question 6 above, and that third parties were able to appear before the Commission and had a right to do so if they were materially adversely affected.

If not, what alternative would you propose?

If the proposed Parliamentary scrutiny phase is not adopted in a manner that addresses our comments above, then another form of independent examination of draft policies will be required, if third parties are not to have recourse to judicial review far more often and expensively than would be compatible with an efficient policy system.

Q.10 Transitional arrangements

Do you agree, in principle, that subject to meeting the core elements and standards for national policy statements Paper, policy statements in existence on commencement of the new regime should be capable of acquiring the status of national policy statements for the purposes of decision making by the commission?

Yes, but only if these have been subject to rigorous public exposure and what amounts to a test of soundness and Strategic Environmental Assessment.

If not, what alternative arrangements do you propose?

If such a process cannot be reasonably achieved, the Commission should proceed on the basis of the use of pre-existing policy as a basis for decision making, but it should admit evidence on strategic direction from others and should defer the final decision to Ministers, the appropriate final determiners of policy.

4. Preparing Applications for Nationally Significant Infrastructure Projects

Q.11 The preparation of applications

Do you agree, in principle, that promoters should have to prepare applications to a defined standard before the infrastructure planning commission agrees to consider them?

Yes. However, for this to occur, the Independent Planning Commission will need to have officers capable of advising proponents about its pre-application quality requirements. To a significant degree, such advice will amount to 'development management advice', as it will have the capacity to shape submissions to the Commission.

There is an argument that officers providing such advice should not then be in a position to discharge the decision making function of the Commission.

Q.12 Consultation by promoters

Do you agree, in principle, that promoters should be required to consult the public before submitting an application to the infrastructure planning commission?

Yes.

Do you think this consultation should take a particular form?

Promoters should be required to consult on the development of options, to ensure that the relative community impacts of options can be evaluated and movement made towards the adoption of the best reasonably achievable mitigations.

Q.13 Consulting local authorities

Do you agree, in principle, that relevant local authorities should have special status in any consultation?

Yes.

Do you think the local authority role should take a particular form?

The local authority should:

- inform the proponent of local policy and other material planning considerations that must be taken into account in preparing their proposal;
- provide its view on the in principle acceptability of the proposal in planning terms;
- advise on the range of options to be developed and their development;
- as a democratic representative body, provide its view of local community impacts;
- form a view on the degree to which these impacts can be mitigated; and
- advise on forms of mitigation that might be adopted.

Q.14 Consulting other organisations

Do you agree, in principle, that this list of statutory consultees is appropriate at the project development stage?

Not all projects should be required to undertake detailed consultations with all of the listed statutory consultees. Consultation should take place in a two stage process, whereby there is an initial 'notice of interest' following which a proponent would be entitled not to consult a consultee which had responded making clear that it had no ongoing interest in the project.

Q.15 Statutory consultees' responsibilities

Do you agree in principle that the Government should set out, in legislation, an upper limit on the time that statutory consultees have to respond to a promoter's consultation?

There should be an indicative time limit, beyond which the procedures of the Commission should not be delayed by a consultee's failure to respond. However, the consultee should be able to apply for special leave for a late response, which should be granted if, in the view of the Commission, there would be a significant risk of it failing to consider an otherwise weighty consideration under policy or law. However, there may be justification in providing the Commission with a capacity to award costs in such circumstances, if the delay has been procedurally unreasonable.

Q.16 The infrastructure planning commission's guidance role

Do you agree in principle that the commission should issue guidance for developers on the application process, preparing applications, and consultation?

Yes.

Are there any other issues on which it might be appropriate for the commission to issue guidance?

Guidance to developers should address the quality and option development expectations of the Commission.

Guidance should also be provided to third party participants in Commission processes, helping them to use Commission time effectively and also to access advice and community support, such as that available from Planning Aid.

Q.17 The infrastructure planning commission's advisory role

Do you agree in principle that the commission should advise promoters and other parties on whether the proposed project falls within its remit to determine, the application process, procedural requirements, and consultation?

Yes.

Are there any other advisory roles which the commission could perform?

Q.18 Rules governing propriety

What rules do you consider would be appropriate to ensure the propriety of the commission's interactions with promoters and other parties?

Commissioners must be subject to rules requiring their declaration of interests and their exclusion from matters where conflicts arise. Commissioners should be required to conduct any hearing process subject to the rules of natural justice and should avoid conduct that creates any reasonable apprehension of bias.

It will be important for the Commission to be able to hold conversations with both the proponent and third parties during the assessment process. Conversations should be expressed as 'without prejudice' to outcomes. Conversations should also be subject to some element of public validation, to provide surety to any party that the Commission is not structuring what might be perceived as private agreements with any other party. One way of providing such assurance might be to webstream Commission meetings and retain a video log file on the website. Other mechanisms might include enabling a representative of other party interests or a 'public guardian' reporting to other party interests to attend meetings.

Q.19 The commission's role at the point of application

Do you agree, in principle, that the commission should have the powers described above?

Yes.

Are there any other issues the commission should address before or at the point of application?

The test of adequacy should include a test that all relevant investigations and assessments (such as EIA requirements) have been met.

5. Operation of the Commission

Q.20 Scope of infrastructure planning commission

Do you agree, in principle, that these thresholds are appropriate?

Broadly, however the absence of strategic heavy and light rail projects appears to be a surprising omission.

The thresholds must not operate as arbitrary cut-offs. If they do, projects will be deliberately scaled and configured depending on whether the proponent perceives the involvement of the Commission to be beneficial or not. There must be discretion for the Commission to receive projects of significant impact below the criteria indicated and also to delegate matters that are large, but on balance not particularly complex or strategically significant.

Q.21 Electricity system

Do you agree in principle that all projects necessary to the operational effectiveness, reliability and resilience of the electricity transmission and distribution network should be taken by the commission?

There is need for a further systematic evaluation of the way the new system will operate with the Electricity sector. Electricity is in a phase of technical transition, during which the strategic importance of the distribution as distinct from the transmission network is rising significantly, as more distributed generation opportunities arise. For example, quite large terrestrial windfarms still connect to the distribution system and can generate demands for system augmentation over wide areas.

Without care, the IPC could become overburdened by a vast range of electricity system casework.

There may be an argument for having 'notifiable projects' for which the IPC could recover jurisdiction if needs be, but which were otherwise considered locally. Further there may be a range of local projects where the considerations set out in an electricity transmission and distribution national policy statement would need to be directly considered by local decision makers.

Finally, the portfolio of permitted development rights may need to be re-appraised.

Q.22 Gas infrastructure

Do you agree in principle that the consenting regime for major gas infrastructure should be simplified and updated, rationalising the regime to bring nationally significant decision making under the commission?

Yes.

Q.23 Other routes to the infrastructure planning commission

Do you agree, in principle, that it is appropriate for ministers to specify projects for consideration by the commission via national policy statements or ministerial directions to the commission?

This mechanism may be insufficiently flexible. Within broader criteria set out in policy statements, the commission could be enabled to consider whether to recover jurisdiction over boundary line cases. A 'notification direction' would be necessary, ensuring that the commission secretariat and ministers receive intelligence of a wider group of projects than may necessarily end up requiring to be assessed by the commission.

This suggests the need for a 'screening determination' phase for some projects, the effect of which would be to place the project within or without the remit of the commission. For a practical example of how this might work, reference should be made to the Commonwealth of Australia Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act), which exerts control over all matters of 'national environment significance' (NES matters)¹. NES matters are defined with reference to loose statutory criteria, and screening determinations are made to decide whether in the final analysis, the decision making requirements of the Act apply to an individual project.

Q.24 Rationalization of consent regimes

Do you agree, in principle, that the commission should be authorized to grant consents, confer powers including powers to compulsorily purchase land and amend legislation necessary to implement nationally significant infrastructure projects?

Yes in principle, although the precise crafting of the technical basis for such referrals and the consultations that will need to take place with local planning authorities (in the main) whose powers would be transferred, need to be the subject of a further consultation by government.

Q.25 The commission's mode of operation

*Do you agree, in principle, that the proposed arrangements for the commission to deal with cases is an appropriate way to ensure that consideration is proportionate and that an appropriate range of specialist expertise is brought to bear on the final decision?
If not, what changes or alternative mode of operation would you propose?*

This should be an operational matter for determination by the Chief Commissioner, within set criteria. The criteria should enable flexibility to appoint panels of between one and as many Commissioners as are necessary to do justice to the issues and the timescale for decision.

The RTPi considers that the organisation of the Commission will need to be flexible to ensure that it has access to the right portfolio of expertise, in a manner that does not form a constraint to the timeliness of its deliberations. The Commission should be constituted as a relatively small core body, able to call on the support and services of a wide range of Sessional Commissioners. There are operating models of such bodies in overseas jurisdictions to whom the RTPi can refer the government if needs be.

¹ <http://www.environment.gov.au/epbc/index.html>

Q.26 Preliminary stages

Do you agree in principle that the list of statutory consultees set out above is appropriate at the determination stage?

The final list should be conclusive as to the range of local authorities and government departments and agencies to be consulted.

Q.27 Examination

Do you agree in principle that the procedural reforms set out above would improve the speed, efficiency and predictability of the consideration of applications, while maintaining the quality of consideration and improving the opportunities for effective public participation?

The RTPI has two concerns.

- Oral submissions and evidence are being characterised in the white paper approach as a source of delay and hence limited. The critical issue is not the technique of information gathering, but its culture and management. In a well managed system, oral information gathering can be far swifter, more efficient and illuminating of cross cutting and spatial considerations than the consideration of documents authored by single parties.
- The proposed 'open floor' stage is likely to operate as a diversion and filibuster. Whilst superficially providing limited rights for anyone to say anything, participants are likely to feel excluded from the wider deliberations of the Commission and to use this process to delay it, rather than to bring substantive material to the table. A better alternative would be to provide well regulated rights of oral appearance to all parties who have been sufficiently motivated to make a written submission or who have evidence, subject and in proportion to the nature and proof of the relevance of the submission and the evidence.

Again, the RTPI can provide detailed case studies of such mechanisms in operation in overseas jurisdictions if needs be.

Q.28 Hard to reach groups

*What measures do you think would better enable hard to reach groups to make their views heard in the process for nationally significant infrastructure projects?
How might local authorities and other bodies, such as Planning Aid, be expected to assist in engaging local communities in the process?*

The RTPI strongly welcomes the proposed role for Planning Aid and notes that the operational implications for that body are the subject of a separate response to government.

Q.29 Decision

Do you agree that the commission should decide applications in line with the framework set out above?

No. The framework set out above is highly reductionist and leaves almost no scope for the Commission to decide to reject a project. The grounds of refusal outlined above would appear to amount to bases of unlawfulness, should the Commission purport to grant a consent in such circumstances: so in fact the Commission appears to have no power to reject a proposal which has main aims consistent with the relevant national policy statement, except where it would broadly be unlawful to grant consent for reasons outwith the body of planning legislation.

If not, what changes should be made or what alternative considerations should it use?

Experience with major project approvals suggests that there will be cases where, notwithstanding that the headline objectives of policy have been met, matters arising from new but relevant and weighty evidence, or failures of options development or mitigation will mean that the project should not proceed as advanced before the Commission.

The Commission should be entitled to refuse even a project supported by policy in circumstances where relevant new evidence demonstrates a significant issue or concern has not been responded to, and or the option development or mitigation response by the proponent has been inadequate.

Q.30 Conditions

Do you agree in principle that the commission should be able to specify conditions in this way, subject to the limitations identified, and for local authorities to then enforce them?

The Commission should be able to impose conditions in broadly the terms set out in the consultation paper, which mirror the purpose and limitations of conditions under the Town and Country Planning legislation. However, the proposals beg two questions:

- who will become the responsible authority for the purpose of administering and enforcing ongoing conditions, once the permitted use and development has commenced; and
- how will broader proposals for planning and community gain that a proponent may proffer and may be appropriate to be implemented be secured?

In relation to the obligations of the authority responsible for conditions, if the local planning authority are to become the responsible authority, the Commission must be required to seek submissions from it on the nature of the conditions and on its capacity to manage, implement and enforce these. In typical major infrastructure cases, conditions are likely to underpin performance against for example a Construction Environmental Management Plan (CEMP) or Operational Environmental Management Plan (OEMP), which may require the lodging and monitoring of complex environmental data. Matters pursuant to conditions such as acoustic monitoring for a large wind farm or turbidity monitoring for a major dredging project may well stretch the capacity of some local planning authorities. One solution would be to retain the responsibility for administering and enforcing conditions with the Commission. Another would be to enable the proponent to pay a commuted sum to cover the costs of the detailed and technical monitoring and enforcement of conditions by the local planning authority.

Q.31 Rights of challenge

Do you agree, in principle, that this opportunity for legal challenge to a decision by the infrastructure planning commission provides a robust safeguard that will ensure decisions are taken fairly and that people have confidence in them?

Assuming that there have been meaningful opportunities for public involvement in the formulation of policies and to appear before the Commission and assuming that the Commission has the right to reject matters broadly supported by policy where there is significant new evidence and/or insufficient attention to mitigation, then such an approach to review would still be difficult to justify. However, in the absence of these safeguards it is clearly insufficient.

There are insufficient public interest safeguards or accountabilities in the operation of the proposed system. The result would be that many matters would be sent to judicial review, where this could otherwise have been avoided.

One possible augmentation would be to include a 'notice for correction' stage for Commission reports. If reports were published as 'final drafts', a period of say 4 weeks could be provided for the Commission to be notified of any alleged errors of fact or law. The process team would consider any notices received alongside the Chief Commissioner, and correcting actions could be taken before the final version of the report was published. Such a mechanism recognises that errors do occur and would be much simpler and less adversarial than driving all such cases to judicial review.

Q.32 Commission's skill set

What experience and skills do you think the commission would need?

It is vital that high quality professional planning advice is provided to the Commission in the form of planner-commissioners. Each matter for determination should normally have a planner sitting as part of the panel.

Commissioners must also represent a wide range of built and natural environment, design and communications professionals. The RTPI recognises that these will come from diverse backgrounds. However, it considers that all should acknowledge the virtues of professionalism in the following terms:

- they should have a relevant and acknowledged standing in their field
- they should have a commitment to knowledge and evidence-based practice
- they should have a commitment to life long learning
- they should have a commitment to obtaining and enhancing the skills necessary to function as public facing decision-makers.

In respect of these issues, the RTPI makes two observations:

- Commissioners of whatever background and seniority will need to be initially trained and to undertake continuing professional development.
- The Planning Inspectorate already contains a corps of individuals who demonstrably have various of the necessary skills outlined above. There is very considerable scope for the

Planning Inspectorate to form a source of Commissioners for the early phase of the Commission's operation.

However, in the medium term, the Commission should develop its own specialised training routines.

6. Major Infrastructure

Conclusions and Recommendations

In terms of the major infrastructure proposals, the RTPI has reached the following positions.

- These proposals are seen as broadly supportable by the RTPI, subject to some reservations of detail.
- However, great care will be required to ensure that the new policy statements and the operation of the Independent Planning Commission are sufficiently transparent and publicly accountable and enjoy public confidence.
- If implemented poorly, there is scope for much needed reform to play out poorly with the public, to the detriment of public confidence in planning decision making as a whole.

However, the RTPI seeks clarification of the government's position as follows:

- the proposed national policy statements should benefit from a presumption in their favour, equivalent to the presumption in favour of the development plan;
- in hierarchy of plans terms, the national policy statements should normally prevail over other policies (including as necessary the development plan);
- they should not need to prevail over PPS or equivalent generic national policy, as they should have been formed taking the directions of such policy into account, or alternatively, their formation should also entail a review of that policy to deliver consistency;
- before the independent planning commission or indeed any other planning decision maker using national policy statements, PPSs and the development plan should also be legislated material planning considerations that must be taken into account and that should be implemented, unless overriding considerations of national need and interest indicate otherwise;
- local planning authorities and third parties should have standing to introduce submissions and evidence to the end that decisions should be taken contrary to national policy statements, where proposals in compliance with a policy otherwise harm interests of acknowledged importance and are unable to demonstrate reasonable and effective mitigation measures;
- the proponent should have a duty to mitigate their proposals, which should amount to advancing the least adversely impactful proposal not entailing excessive cost, a process that would be supported by an option development mechanism;
- it would be a ground for refusal that, in the mind of the independent planning commission, a proponent was unreasonably failing to implement the mitigations reasonably available for their proposal.

Appendix 1: Remaining Consultation Questions

This Appendix sets out responses to remaining consultation questions arising from the white paper that have not arisen in either the RTPI High Level Response or any of our other 'daughter documents'.

Q.33 – Delivering more renewable energy

There is also the need for a more proactive approach to inclusion of renewable energy solutions in all built development proposals. Renewable energy plans should form an obligatory requirement of new development projects. Developers should be required to include a minimum percentage of energy to the new development through renewable sources, including photovoltaic (PV) solar water heating, micro wind energy generation. This approach should be led by the LDF system via core planning policies and supplementary planning documents. In this regard, innovation by planning authorities through mechanisms akin to the Merton Rule must be encouraged, although it is accepted that it will be necessary for some local planning authorities to reinforce the technical advice they receive and the networking they undertake, to ensure their policies are sound. The RTPI has advocated the recruitment of technical 'sustainability champions' to the staff of local planning authorities.

The RTPI supports the extension of permitted development rights for a broad range of commercial uses, but where these are exceeded there should be a strong presumption in favour of renewable energy proposals.

Q.34 – Joined up community engagement

The RTPI considers that it is important to enable a more joined up approach to community engagement locally. Planning Aid is in a strong position to provide technical advice as required.

Q.36 – Removing the requirement to list Supplementary Planning Documents in Local Development Schemes

The RTPI agrees that there should not be a requirement for the timing of supplementary planning documents to be listed in the local development scheme. However, a broad indication in the scheme of the subject matters on which the local planning authority intends to provide guidance would still be valuable. Care is required to ensure that the capacity for guidance to provide a valuable home for detail that should not be in the development plan is retained.

Q.37 – Sustainability appraisal and Supplementary Planning Documents

Members have broadly supported the proposal to limit the application of sustainability appraisal to supplementary and community planning documents. There could however be a simple duty for the approver of any document to consider the effect of the policy document on the environment and the effect of the environment on any policies or proposals set out in the document.

Q.38 – Permitted development for non domestic land and buildings

The RTPI supports the principle of providing some classes of permitted development to non domestic land and buildings.

Q.39 – Neighbour Agreements

The neighbour agreement proposal is flawed, for reasons highlighted in our High Level Response document and should be abandoned.

