



## **Consultation on Pre Application Consultation and Application Procedures for NSIP**

### **A response by the English National Park Authorities Association June 2009**

#### **Summary**

1. The English National Park Authorities Association (ENPAA) exists to provide a collective voice for the nine English National Park Authorities. It is governed by the Chairs of the nine Authorities, and our response represents the collective view of the Authorities. It has been prepared by officers, working within the policies established by the National Park Authorities (NPAs). Individual NPAs may submit separate comments, which will draw on the specific issues for their particular region.

2. As planning authorities with statutory National Park purposes we followed the passage of the Planning Bill carefully, and take a keen interest in its subsequent implementation. We welcome the consultation on Guidance and Regulations simultaneously and wish to raise a number of points. Specifically:

- The need to provide greater clarity in Guidance that those bodies listed in Section 42 B of the *Planning Act 2009* should be consulted in all cases, as well as those listed in the draft Regulations.
- Would draw to your attention to the requirement (under Section 11A(2) of the National Parks and Access to the Countryside Act 1949 as amended) on relevant authorities to have regard to National Park purposes in undertaking activities that affect a National Park. This duty applies to Government departments, their Agencies and Executive Bodies, Regulators, Statutory Undertakers, and to the Infrastructure Planning Commission and should be addressed in the Regulations and Guidance.
- Clarify in the wording of the Regulations and Guidance that the consultation and assessment of environmental impact on National Park purposes should be triggered where it may be 'affected' by the proposal, and not simply whether the development is located wholly inside the boundary of the designation. We make detailed recommendations for where this can be achieved.
- The Government indicates that consultation exercises commenced prior to the new regime coming into force should benefit from transitional arrangements (Question 7). It is not clear, however, how this will be tested to ensure the prior consultation was indeed of sufficient quality. We look to this to be clarified in Regulations and Guidance.

- We believe the general requirements for publicising the application for a NSIP (Regulation 4(1) of the Infrastructure Planning (Applications and Procedure Regulations 2009) should be strengthened. There is no requirement, for example, to ensure the notice in local newspapers is made in newspapers with high circulations within the area? Also we believe good practice would suggest the notice should be included in the weekly lists and website of the appropriate local planning authorities.
- The Guidance (paragraph 67) states that the IPC will be designated as the competent authority and will be responsible for determining whether a proposed development requires an Environmental Impact Assessment. ENPAA would like clarity that this means that the IPC will therefore provide screening and scoping advice to prospective applicants. Furthermore, the IPC will need to ensure that they have staff with the appropriate skills to provide this advice.

## **Consultation on Pre Application Consultation and Application Procedures for NSIP**

### **A response by the English National Park Authorities Association June 2009**

1. We welcome the opportunity to comment on the pre application consultation and application procedures for Nationally Significant Infrastructure Projects (NSIPs). We welcome the emphasis on pre-application procedures, and as planning authorities, National Park Authorities (NPAs) place particular emphasis on this early part of the process.

#### **Pre application consultation**

2. The Regulations set out those who should be consulted before applications are submitted to the Commission. Schedule 1 provides a list of consultees. It has become apparent, however, that there is some confusion regarding the extent of this consultation. We understand that Schedule 1 of the proposed Regulations relates to Section 42(a) of the *Planning Act 2008*. In addition, an applicant must consult (in all cases) those bodies listed under Section 42(b) local authorities. This includes National Park Authorities and the Broads Authority.

3. We believe there is considerable scope for confusion caused by these Regulations which only provide a partial list of who to consult. It would be a lot easier for the applicant, statutory consultees, and members of the public if the lists of those who should be consulted (ie. relating to the whole of Section 42) was listed in the Regulations. If the Government believes this would constitute an unnecessary duplication, then the accompanying Guidance should clarify that an applicant needs to consult those bodies listed in Section 42 (b)(c) and (d) as well as those listed in Schedule 1 of the Regulations. This might be achieved through a diagram.

#### Guidance on Pre-Application consultation

4. ENPAA welcomes the clarification given to the reader that National Park Authorities and the Broads Authority should be considered local authorities in this guidance (paragraph 119). We would, however, encourage the department to consider whether this might be supported by similar references elsewhere. Whilst recognising the benefit of brevity, Government guidance is frequently dipped into as issues arise, rather than read from cover to cover. Greater reinforcement of this message in guidance should hopefully avoid unnecessary delays caused by procedural problems where an applicant has not appreciated this wider definition of local authority. The most important opportunities to reinforce this definition would seem to be:

- as a footnote to the reference to 'local authority' in paragraph 143, 4<sup>th</sup> bullet
- in paragraphs 155- 156

#### **Methods of pre application consultation should demonstrate good practice**

5. We believe the general requirements for publicising the application for a NSIP (Regulation 4(1) of the Infrastructure Planning (Applications and Procedure Regulations 2009) should be strengthened. There is no requirement on the Applicant to ensure the notice in local newspapers is made in newspapers with the highest circulation figures within the area? And we would like assurances that in the case of

linear projects, communities living along the entire project (who might be affected) should be consulted.

6. We also believe the notice should be included in the weekly lists and website of the appropriate local planning authorities. These are already recognised processes by many local communities and it would be helpful to maximise these processes as a matter of good practice.

7. Where the guidance talks of disseminating information on the application (paragraph 195) it would be helpful if this could signal that this should be at no, or at the very least only reasonable cost to the recipient. The cost of documents can be an important impediment to active citizen participation, especially from amongst those on low incomes or where broadband is less accessible such as many rural areas.

### **Pre Application form**

8. We would like to draw your attention to the requirement (under Section 11A(2) of the National Parks and Access to the Countryside Act 1949 as amended) on relevant authorities to have regard to National Park purposes. More specifically, the duty is that in exercising or performing any functions in relation to, or so as to affect, land in these areas, relevant authorities shall have regard to national park purposes.

9. National Park purposes are:

- to conserve and enhance their natural beauty, wildlife and cultural heritage; and
- to promote opportunities for the understanding and enjoyment of their special qualities by the public.

10. Existing Guidance on this duty and that covering Areas of Outstanding Natural Beauty can be found on the [Defra website](#). This duty applies to Government departments, their Agencies and Executive Bodies, Regulators, Statutory Undertakers, and will apply to the Infrastructure Planning Commission. We believe it would be helpful to future applicants and to the Commission if the pre application procedures could provide an indication of what is required. In so doing, it should also make it clear that the duty relates to activities that affect land in a National Park. The requirement to have regard, therefore, extends beyond the boundary since, for example, water extraction projects outside of a National Park can still have an impact upon the hydrology within it. Airport or surface transport infrastructure similarly can affect people's ability to enjoy the special qualities (like quiet recreation) of National Parks.

11. ENPAA would be happy to meet with CLG and IPC officials to discuss how this duty and the major development test for National Parks might best be addressed under the new regime for NSIPs. As a minimum, we would recommend the following:

- Regulation 7 (1)(e)(vii) – should be amended to “which is within, or might affect”
- Regulation 7 (1)(e)(ix) – should be amended to “which is within, or might affect”

- Guidance, Box 21, Paragraph 112 – we would recommend adding “where a NSIP might affect a National Park, the Broads, or an Area of Outstanding Natural Beauty, the applicant will need to provide sufficient information to enable the Commission to make an informed assessment of the implications for the statutory purposes of these designations under the National Parks and Access to the Countryside Act 1949; Norfolk and Suffolk Broads Act 1988 and the Countryside and Rights of Way Act 2000.”
- Guidance, Paragraph 182 – add “Early discussion with National Park Authorities/ Broads Authority is strongly advised for projects that might affect National Parks given the Government’s policy that these must only happen in exceptional circumstances and after a thorough assessment of alternative options has been undertaken” (source: PPS7, paragraph 22).

#### Defining ‘environmental effects’ is important

12. A common discrepancy and cause of debate for major projects can hinge on the description of environmental effects. We believe the Regulations and Guidance should make it clear that these effects can be direct, indirect, secondary, cumulative, over a short, medium or long term; permanent or temporary; as well as being positive or negative. Furthermore, the Applicant should make it clear whether the effects being described are before or after full implementation of any proposed mitigation measures. It is important, to be able to have an appreciation of the effects of a project after mitigation measures have been accounted for. This applies to:

- Regulation 5 (1) (xiii)

#### **Transitional Issues**

13. The Government indicates that consultation exercises commenced prior to the new regime coming into force should benefit from transitional arrangements (Question 7). Although paragraph 47 of the consultation paper goes some way to explaining how this will be achieved - it remains unclear how the Government will be able to test whether the existing consultation requirements have been met to sufficient quality? This needs to be clarified in Regulations and Guidance.

#### **Infrastructure Planning Model Provisions Order**

Regulation 1 – Interpretation

14. We believe the definition given of ‘relevant planning authority’ should include National Park Authorities and the Broads Authority given that they are the spatial planning authority for these designated areas.

#### **Regulations on Environmental Impact Assessment**

15. The Guidance (paragraph 67) states that the IPC will be designated as the competent authority and will be responsible for determining whether a proposed development requires an Environmental Impact Assessment. ENPAA would like clarity that this means that the IPC will therefore provide screening and scoping advice to prospective applicants. Furthermore, the IPC will need to ensure that they have staff with the appropriate skills to provide this advice.

ENPAA  
June 2009