RTPI response to Planning Reform Working Paper: Streamlining Infrastructure Planning

February 2025

About the RTPI

The Royal Town Planning Institute (RTPI) champions the power of planning in creating sustainable, prosperous places and vibrant communities. We have over 27,000 members in the private, public, academic, and voluntary sectors. Using our expertise and research we bring evidence and thought leadership to shape planning policies and thinking, putting the profession at the heart of society's big debates. We set the standards of planning education and professional behaviour that give our members, wherever they work in the world, a unique ability to meet complex economic, social environmental and cultural challenges.

(a) Would the package of measures being proposed in this paper support a more streamlined and modernised process? Are there any risks with this package taken as a whole or further legislative measures the Government should consider?

The RTPI has considered the Streamlining Infrastructure Planning Working Paper and set out some high-level responses to the questions raised.

The RTPI welcomes the paper and generally support the proposals contained in the working paper, particularly the legal requirement for NPSs to be reviewed and updated every five years and the provisions for projects to opt out of the NSIP regime. We are pleased to see these previous RTPI suggestions included in this working paper.

There are particular points in the working paper that we think can be further clarified or improved, including in relation to the NPS five-year update provision which we will further elaborate on in our response below. In this regard we would also suggest that anything that comes forward should not add additional process except where absolutely necessary or give rise to any unintended legal challenge opportunities.

(b) Are the proposed changes to NPSs the right approach and will this support greater policy certainty?

Yes.

The National Infrastructure Commission has repeatedly highlighted out-of-date NPSs as a cause of delay in the NSIP regime (NIC 2023, 2024). Therefore, the RTPI very much welcome the requirement proposed in the working paper for each NPS to be reviewed and updated as required at least every five years. In this regard it is the active review of the NPSs that is the critical activity and then updates made as necessary in accordance with those active reviews to ensure up to date policy which is a fundamental part of the

Planning Act 2008 and foundation of delivery. In bringing forward the five-year review cycle it is important to ensure that there is continuity of National Policy in place at all times so decision-making is clear in accordance with section 104 of the Planning Act 2008. Therefore, any new legislative provision should ensure that a NPS stays in place at all times and is the relevant policy until a revised or new NPS has effect as its replacement. This will avoid any unintended gaps and delays in delivery and unintended new legal challenge opportunities.

The Government should also consider the opportunity to move to an overarching NPS that covers common issues with sector-specific policy alongside this. This would streamline the work required by government departments and ensure consistency across infrastructure fields. This is an approach that has previously been called for by the National Infrastructure Commission and the National Infrastructure Planning Association.

We support the proposed use of a 'lighter touch' process for 'reflective amendments' to NPSs, where these include updates responding to legislative changes, policy updates and relevant court decisions, as long as the right checks and balances are in place and the process introduced is proportionate and relevant. The RTPI considers the proposal in the working paper reasonable subject to consultation and other process being necessary and proportionate to the scale and nature of the proposed change and timescales.

(c) Do you think the proposals on consultation strike the right balance between a proportionate process and appropriate engagement with communities?

The RTPI agrees that the requirement for consultation needs to be proportionate and clear. However, it is important to note that consultation is only one form of engagement. Broader resources need to be in place to enable genuine engagement with communities, based on informed understanding, can occur. In the RTPI's response to the 2023 consultation on NSIP reforms, we suggested the establishment of a new, independent national engagement body modelled on France's Commission Nationale du Débat Public. We believe support of this nature will give an independent informed view required for meaningful engagement that major projects require and improve the delivery of effective informed consultation processes and meaningful engagement to deliver better understanding and outcomes and ensure greater equality.

Therefore we agree with the principle of focussing on outcomes rather than process with respect to consultation and engagement. However, it is not clear to us from the paper what an outcomes-based approach in testing compliance with pre-application requirements means or how it would be applied, or how the Planning Act 2008 regime would be amended to achieve this. It may be that further guidance would assist Applicants undertaking consultation and also identify what will be acceptable for an application to be accepted, for example, to explain or give examples of where strict compliance with certain requirements may not be necessary where an alternate approach to engagement can instead be demonstrated which has achieved comparable or better outcomes.

In addition, the RTPI have long called for a spatial approach towards infrastructure planning. We believe this will improve certainty for both Applicants and communities. To this end, we welcome the development of the Strategic Spatial Energy Plan (SSEP) and the commitment to extend this strategic spatial approach to other infrastructure sectors. However, engagement with communities in the development of SSEP and other infrastructure spatial plans will be crucial to realising their full potential. Our members have reflected to us that the proposed SSEP methodology is overly reliant on modelling and there is not enough focus on community engagement.

While the government intends to develop sector-specific spatial plans, it will also be important that there is a mechanism to mediate between these plans. Confusion over the relationship between these plans can introduce further complexity and delay into the system. The overarching NPS suggested above can potentially serve this purpose.

(d) Do you agree with the proposal to create a new duty to narrow down areas of disagreement before applications are submitted? How should this duty be designed so as to align the incentives of different actors without delaying the process?

No.

The RTPI do not support the creation of a new legal duty as this will further complicate the process and potentially lead to more judicial reviews. We are also doubtful of the effectiveness of creating a new duty in delivering the collaboration and positive outcomes intended. Disagreements can sometimes concern fundamental matters and do not disappear just by way of a new duty and if parties are not willing whatever the active approach of others this could become an additional blocker. However, the process can be improved by setting clear, simple and specific timeframes and weight that will be given to meaningful early engagement and little or no weight that will be given to matters raised substantively for the first time late in the process. To this end, Guidance setting out a very clear expectation to meaningfully engage, rather than a duty to narrow down areas of disagreements, will be more suitable and likely to be more effective.

As mentioned in our response to (c), more broadly, capacity building that encourages transparent communication and forges mutual understanding will be important in the long run.

(e) Do you support the changes proposed to Category 3 persons?

Yes.

The current consultation requirement of Category 3 persons covers a large number of people across vast areas. It is not only leading to a large amount of work that can later prove unnecessary for Applicants, but also creates uncertainties among people who eventually may not be affected by the project. This leads to undue stress, harming the health and wellbeing of people.

(f) With respect to improvements post-consent, have we identified the right areas to speed up delivery of infrastructure after planning consent is granted?

The RTPI support proposals regarding DCO corrections and changes. But the more fundamental point is that DCOs should be flexible enough to allow improvements without it being a formal DCO change. They should be able to accommodate technological advancement that would lead to better outcomes. The current practice adopted with DCO drafting is overly restrictive and has at times made improvements difficult or even impossible.

This is supported by the NIPA Insights III report, which found significant disincentives in applying for DCO changes because of the delay, resources and uncertainty involved.

(g) What are the best ways to improve take-up of section 150 of the Planning Act? Do you think the approach of section 149A has the potential to be applied to other licences and consents more generally?

The RTPI support the government's ambition to deliver on the 'one-stop-shop' vision for the NSIP process. However, the proposal to improve take-up of section 150 seems to misunderstand the current scope of section 150 which is entirely reliant on the regulatory body agreeing to any inclusion. Therefore, it is not a matter of take up as this is not in the Applicant's control.

Put simply, consents currently prescribed for the purposes of section 150 can only be disapplied by a DCO subject to the consent of the relevant regulatory body.

There is a range of ways in which "other consents" are incorporated into a DCO, of which a deemed consent is but one, infrequently used, technique. The more commonly used approaches are for the requirement for the consent in question to be disapplied in its entirety on the basis that the matters of concern are appropriately addressed elsewhere in the DCO, usually either in the DCO's requirements and/or in a bespoke set of protective provisions individually negotiated with the consenting body concerned.

While the deeming of other consents may have a superficial appeal it does have complications and risks for the timely delivery of infrastructure. A deemed consent would be subject to the legislative machinery that would apply to that consent. Depending on that legislation, the deemed consent could be varied or revoked by the regulator, in effect allowing that regulator to vary an important output of the DCO process without reference to the Secretary of State that made the Order. This risks creating uncertainty, detracts from the DCO as a 'one-stop-shop' and further risks duplication and inconsistency of controls. For example, a DCO might include a requirement on its face to regulate the subject matter of the 'other consent' yet a subsequent regulatory decision to vary the 'deemed consent' could give rise to a conflict between what is written in the DCO and what appears in the subsequently varied deemed consent. This could cause Applicants to revisit the DCO through the change processes, which are generally considered to be time-consuming and onerous, in order to resolve the subsequent inconsistency that arises. Uncertainties could also arise in relation to enforcement of the deemed consent, i.e. would it be under the Planning Act's enforcement provisions or under the legislative framework applying to the deemed consent, or indeed under both?

With the breadth of the legislation as it stands there is no reason in principle why DCOs could not make provision for other consents to be deemed to have been granted (Schedule 5 is not an exhaustive list of what DCOs may contain / provide for) and it is telling that this is not the approach that many Applicants choose to follow.

Overall, we consider that the repeal of section 150 of the Planning Act 2008 would provide the flexibility needed and therefore the greatest opportunity for the streamlining of consents. The removal of the ability for consenting bodies to refuse consent without recourse to the determining Secretary of State will provide an incentive for those bodies to either engage with Applicants to appropriately streamline the consenting process, or to state their reasons why in the circumstances of a particular development, it would not be appropriate to do so. In the latter case the Secretary of State would then have the option to determine which approach is to be taken forward in the circumstances that apply to the individual application. In addition, if felt necessary Schedule 5 could be amended to refer to deemed consents more widely than at present, and then Guidance would be helpful to assist Applicants and consenting bodies to decide on what is the right approach to be taken in the DCO for each consent in question.

(h) With respect to providing for additional flexibility, do you support the introduction of a power to enable Secretaries of State to direct projects out of the NSIP regime? Are there broader consequences for the planning system or safeguards we should consider?

Yes.

As suggested in our response to the NPPF consultation last year, the RTPI support amendments in legislation so some projects can opt out of the Planning Act 2008 regime. However, the process (which should only be available to an Applicant to invoke) must be simple, with straight-forward requirements on reasoning and a clear timeframe for decision-making.

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(i) Do you believe there is a need for the consenting process to be modified or adapted to reflect the characteristics of a particular project or projects? Have we identified the main issues with existing projects and those likely to come forward in the near future? Can we address these challenges appropriately through secondary legislation and guidance; or is there a case for a broad power to enable variations in general? What scope should such a power have and what safeguards should accompany it? If a general process modification power is not necessary, what further targeted changes to the current regime would help ensure it can adequately deal with the complexity and volume of projects expected over the coming years?

The RTPI do not support the proposal of having different consenting processes for different types of projects as this would be a move back to the different consenting regimes that were intentionally brought together under the Planning Act 2008. This is likely to create complexity and runs the risk of these differing provisions going out of date as technology and complexity of integrated infrastructure projects advances. It is likely to lead to more uncertainty, process complexity and therefore harm confidence in investment and delivery. It is important that we have a consistent regime. Process modification directions given on a project-by-project basis, however, which are sought by the Applicant and demonstrated to be necessary (for example where compliance with a requirement would be impossible, unnecessary or impracticable) and proportionate, should be given effect in the Planning Act 2008 regime, drawing from experience gained since 1993 in the Transport and Works Act regime, where waiver directions are routinely given at the request of the applicant. .