

**Planning Act 2008
Consultation on the Pre-Application Consultation and
Application Procedures for Nationally Significant Infrastructure Projects**

**Response by Wildlife and Countryside Link
June 2009**

Wildlife and Countryside Link (Link) brings together voluntary organisations in the UK concerned with the conservation, enjoyment and protection of wildlife, countryside and the marine environment. Our members practice and advocate environmentally sensitive land management and food production practices and encourage respect for and enjoyment of natural landscapes and features, the historic environment and biodiversity. Taken together our members have the support of over 8.3 million people in the UK and manage over 690,000 hectares of land.

Link welcomes the opportunity to comment on this important consultation. Link members have been highly critical of some aspects of the reforms (notably the role of the Infrastructure Planning Commission (IPC) and the rights of the public to have a meaningful involvement in the examination process). However, our concern at this stage is to ensure that the processes set up deliver sustainable development, and do so in the most effective way, with proper public scrutiny.

Individual Link members have been engaged in some of the stakeholder workshops organised by the Department for Communities and Local Government (DCLG), and are intending to submit detailed responses to the consultation. Our collective response therefore focuses on the key issues raised by the consultation and is supported by the following 15 member organisations:

- Badger Trust
- Bat Conservation Trust
- Buglife – The Invertebrate Conservation Trust
- Butterfly Conservation
- Campaign for National Parks
- Campaign to Protect Rural England
- Council for British Archaeology
- The Grasslands Trust
- Herpetological Conservation Trust
- Open Spaces Society
- Royal Society for the Protection of Birds
- The Wildlife Trusts
- Woodland Trust
- WWF-UK
- Wildfowl & Wetlands Trust

1.0 Introduction

Link has been closely involved in the development of many of the current reforms affecting the planning system, from the Barker Review and the Planning White Paper to the current consultations on the implementation of the Planning Act 2008. Many of Link's members were also members of the Better Planning Coalition which campaigned on the Planning Bill. The Coalition's role in representing the views of environmental non-governmental organisations on what is now the Planning Act has been taken over by Link's Land Use Planning Working Group.

We have given particular attention to the draft regulations and guidance on pre-application consultation and on the transposition of the Environmental Impact Assessment and Habitats Directives.

2.0 Key issues

2.1 General

We consider that in drafting separate sets of regulations, each addressing different aspects of the new planning system for Nationally Significant Infrastructure Projects (NSIPs), DCLG has missed an opportunity. In our view, for clarity and ease of reference it would be more beneficial to provide one single, streamlined, fit for purpose set of regulations that implement the Planning Act 2008 and relevant European Directives.

2.2 Consultation

We broadly welcome the guidance on pre-application consultation. NGO experience of pre-application consultations carried out by developers to date has been variable and it is therefore important that future consultations are judged by a common standard.

The guidance should emphasise the importance and benefit of early engagement with statutory bodies and other key stakeholders.

Robust procedures must also be put in place for effective consultation by local planning authorities and the IPC at the stage that a full application for development consent is submitted.

The role of local planning authorities in the process, particularly with regard to representing the concerns of their communities and ensuring environmental impacts are properly addressed, should also be made explicit. The final guidance should make clear that there is a clear potential for conflict of interest within a local planning authority if it accepts funding from a developer to carry out a pre-application consultation for an NSIP on the developer's behalf.

The Committee on Climate Change and the Joint Nature Conservation Committee should be added to the list of statutory consultees.

2.3 Environmental Impact Assessment

The aim of *The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009* should be to ensure that the EIA process applied to NSIPs effectively protects the

environment by identifying and investigating likely significant environmental impacts and exploiting opportunities for effective mitigation and monitoring.

Given the nature and potential scale of NSIPs, it is difficult to envisage a proposal that would not be likely to produce significant environmental impacts. For this reason, it is our view that all NSIP applications should be subject to EIA.

We believe that the application of EIA to NSIPs should go beyond the 'do minimum' approach of simply applying the basic practice applied to all EIA. Rather, it should be 'fit-for-purpose' and based on best practice in EIA acquired over several decades of experience in the UK and internationally.

Link fully supports the Institute for Environmental Management and Appraisal's (IEMA) *Position Statement* and its key recommendations on the application of EIA to NSIPs, such as mandatory EIA and scoping, independent review and the use of environmental management plans.

2.4 *Habitats Directive*

We welcome the extension of the Habitats Regulations to National Policy Statements (NPSs). We welcome the recognition that, where necessary, NPSs will include text which encourages the management of the features of the landscape which are of major importance for wild flora and fauna, in accordance with Article 10 of the Habitats Directive.

However, we consider that the interplay between NPSs, the IPC, the Secretary of State and the European Commission is confused rather than clarified by merely amending the existing Habitats Regulations. In particular, the amendments create confusion in respect of the role of the IPC as the competent authority, how potential overlaps in assessment at the NPS and NSIP application stage are to be dealt with, and the ability of the Secretary of State to intervene if he does not agree with a decision of the IPC on the IROPI test.

We recommend publishing a separate, stand-alone set of Habitats Regulations for the NSIP regime, which clearly outlines the application of the Habitats Directive to NPSs and NSIPs and could be incorporated into the single set of regulations referred to above.

It must be made clear how the IPC, as the competent authority, can consider an argument of 'imperative reasons of overriding public interest' (IROPI), where an application follows a site-specific NPS.

There are also unresolved questions about the role of the Secretary of State (as required by the regulations) in obtaining the opinion of the European Commission where a priority habitat or species is affected and, where compensatory measures are required, how these will be secured¹.

**Wildlife and Countryside Link
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¹ For more detail on these points, please see the RSPB's response to this consultation.