Annex A

Planning Act 2008

Consultation on the Pre-Application Consultation and Application Procedures for Nationally Significant Infrastructure Projects

UKBCSE and Energy Industry Associations' Response to the Consultation Questions

Regulations on applications and procedure

Q1. Do you agree with the list of statutory consultees? Are there any others which you feel should be included?

As discussed during the stakeholder workshops and separately with DCLG colleagues, industry colleagues welcome the scope there is for effective consultation with bodies specifically concerned with local interests, such as local authorities or the branches of significant national NGOs and so on.

It is however, our understanding that organisations such as the Local Government Association do not themselves feel they would have the capacity to be a meaningful statutory consultees on local schemes. This is a concern we would support, and would extend to other bodies such as:

- **National Bodies (in respect of all developments)** – here there needs to be some sort of test as to 'where relevant', as it would not seem reasonable to expect bodies such as the HSE, the Commission for Architecture and the Built Environment, the Equality and Human Rights Commission, and the Commission for Sustainable Development to consider all the development that would be affected by this provision.

- **National Bodies (if appropriate)** – GEMA and Health Protection Agency.

- **Regional Bodies** – regional planning bodies / assemblies, RDAs and strategic health authorities and so all have a vital role to play in shaping the environment in which planning decisions take place. However, on the grounds of practicality, it would seem sensible to qualify the requirement to consult regional bodies such that is largely done when a development is of sufficient size and / or has a potential impact across a wide area.

Q2. Do you agree with the set of information we are requiring within the notices to publicise proposed applications and applications that have been accepted by the Commission, and notify prescribed persons of accepted applications? Should anything else be included? Or should anything be omitted, for example on the grounds of being too burdensome?

The industry believes that the proposed information requirements for notices to publicise proposed applications, applications that have been accepted by the IPC and notification of prescribed persons of accepted applications, strikes the right balance between the burden of providing the information and the needs of those receiving it. However, the Regulations and Guidance should actively promote the use of electronic means to notify responders in order to minimise the administrative burden on developers. The use of web-based solutions (for smaller less complex projects), the use of GIS layered maps and provision of information by CD / DVD are all options which are appropriate, and should be encouraged in the 21st century.

Additionally, it would be helpful to include Guidance on what stage in the process developers need to submit the various notices under Sections 42, 47 and 48.

Q3. Is the information required to be stated on the application form appropriate? If not what omissions or additions would you make? Are the descriptions in the form's guidance note clear and sufficient?

The industry believes that the information required on the application form is appropriate and the descriptions in the form's Guidance Note are clear and sufficient.

Q4. Are there any other plans, documents or information which should be required to accompany the application, including for specific types of infrastructure? Should anything be omitted, for example on the grounds of being too burdensome? Should anything in the existing lists be described in a different way?

We have no additions to suggest for accompanying information, however, as confirmed by DCLG verbally, we believe it should be made clear that accompanying plans can be combined provided they are appropriately referenced and clearly marked as to which plans are covered.

Additionally, as drafted, it is proposed that all responses to a development's pre-application consultation must now be submitted, with a consent application, as part of the accompanying documentation. This is a change from the initial proposals. We welcome the verbal assurances provided, that if a large number of identical letters are submitted then developers need only submit a sample copy accompanied by a list of all who have responded. However, we urge Government to confirm this in the final Regulations / Guidance, and apply the same principle where a developer receives a number of letters making similar points but using different language / written in differing styles. A sample letter accompanied by a table of similar responses received, including a summary of key points, would ensure transparency whilst avoiding the onerous administrative burden of potentially submitting (in triplicate) copies of many thousands of letters making essentially the same points.

Equally, whilst the principle of transparency is enshrined within the planning system, statutory consultees have made the point that certain environmentally sensitive information should not always be made public (e.g. location of rare and protected birds / flora / fauna etc.) to avoid potential damage, either deliberate or inadvertent. Also, in a few cases, developers may need to submit commercially or market-sensitive information to the IPC in support of a development, and again there may be circumstances where such information should not be made generally available. We therefore believe that in those circumstances alone, there may be a case for such information to be marked 'confidential' and that if the IPC believes that it is in the public interest to make such information public they should discuss it with the relevant provider of that information / the applicant.

For a myriad of reasons, finalising the precise detailed design of a proposed development prior to IPC submission will not always be possible, and therefore there is a need to build in recognition of the need for limited tolerance. This especially applies to linear projects, but could also apply to site-specific projects, where details of the final design change as a result of discovery of key archaeological or environmental features not uncovered during detailed surveys. Equally, despite every effort being made to secure voluntary agreements and then undertake any necessary detailed studies to finalise details, some landowners will not engage with developers until the completion of the compulsory acquisition process.

Finally, with regard to Regulation 6 'Applications for specific projects' we do not feel it is practical to require an applicant seeking consent for an offshore generating station to include "details of the route and method of installation for any cable". This is because detailed information may not be finalised at this stage and the application for the consequent offshore and onshore connection infrastructure may well be made by a different company. However, developers should be required to identify the need for a connection, and highlight in general terms what this would entail i.e. offshore cable to coast, an extension to an existing substation or new substation and possible onshore overhead line / reinforcement of the grid (the details of which would be determined at a later date).

Q5. How feasible and appropriate is it for application documents to be made available for consultation, and submitted to the Commission, in electronic formats, in addition to paper copies?

The industry believes that for both administrative burden and environmental reasons maximum use of submission in electronic formats should be made. These could include web-based solutions (for smaller less complex schemes) or CDs / DVDs to accommodate the large amount of information required for the bigger more complex projects. The Government's proposals for publicity requirements and the need for information to be made available in hard-copy at a readily accessible location in the vicinity of the development will ensure that those without access to a computer can be aware of and participate in the pre-application consultation / application process. Active promotion of the use of electronic communication should be included in the Regulations and Guidance.

Q6. Do you agree that applicants should not be required to re-submit information on the persons and organisations which have been notified of an accepted application?

The industry agrees that there is a need to identify to the IPC all those persons and organisations that have responded to the pre-application consultation. However, developers should be allowed to merely confirm to the IPC that they have informed all parties previously notified as having an interest in a development / who have responded to the pre-application consultation, rather than needing to resubmit all the information again. Should any newly interested parties have been identified they could be notified to the IPC in the statement confirming all other parties have been informed.

Transitional issues

Q7. Do you agree that consultation exercises which were commenced prior to the entry into force of new standards should benefit from transitional provisions?

The industry supports the proposed transitional arrangements which ensure that those developments commenced under the existing planning regime can continue, rather than starting from scratch, provided they meet certain conditions and the application is submitted within the prescribed timescales. The arrangements recognise the length of time many developments take from initial identification, through community consultation up to submission of an application. However, by providing specific requirements for consultation and publicity and limiting the timescales (including October 2007 before which consultations will not be allowable, and October 2011 after which applications under the old regime will not be accepted) this provides the necessary safeguards, and ensures a sensible timescale for moving to the new regime.

Q8. Do you agree that transitional provisions should be made, that could, in the circumstances described, deem a consultation exercise commenced prior to October 2009 to have met the new requirements?

Yes – as above – the transitional provisions allow a sensible transfer, within prescribed timescales and provided certain conditions are met. This is important for projects, some of which take several years to get to the stage where they are ready to submit a consent application.

Q9. Do you agree with the proposed tests which the consultation exercise must meet before being deemed to meet the new requirements?

Yes – the proposed tests reflect much of what the energy industry already adopts in terms of best practice in respect of consultation and publicity – and balance the need to ensure effective community engagement whilst providing some flexibility for those developers who are already consulting on projects under the existing regime.

Q10. Is there anything else on which you would like to comment?

It would be helpful to have further clarity on the interim arrangements for EIA screening and scoping, particularly for projects who require opinions before the IPC

is fulfilling this role, but given the long timescales will be ultimately submitting their application to the IPC post October 2011.

We would welcome confirmation that where developers have requested and received a formal screening or scoping opinion under the existing regime, there should not be a requirement to make another request to the IPC, whether or not the application is submitted during the transitional arrangements period or beyond.

Guidance on pre-application consultation

Q11. Are the principles outlined in the guidance clear, if not please give your views as to how this can be improved?

The Guidance on pre-application consultation is clear. However, whilst the industry understands that should a developer's proposals change dramatically as a result of information received, then they would need to re-consult, it is important that any new information that might impact on a proposal is a) legitimate and verified as true and b) not deliberately withheld so as to scupper or delay a development's progress.

We believe the Guidance would benefit from a flow-chart outlining all of the pre-application processes. It is important that the processes are clearly defined so the proponents can be sure that they have complied fully and so all stakeholders can be made aware of all the opportunities they have to be involved in the processes. We welcome comments that this is being drawn up.

We would also suggest amendments to the following specific areas:

- **136**. 'Listen and adapt their own idea': This needs to add, 'as far as is reasonable and practical'.
- **143.** 28 day deadline: Our assumption is that this requirement follows a substantial period of informal consultation with key consultees and that they will therefore be in a position to respond within a reasonable timescale. We understand that there may be an expectation that applicants would need to seek to elicit a response from consultees. We would like confirmation that developers are not expected to go to unreasonable lengths to secure responses from consultees who do not respond, particularly those who may have only a limited interest in the project. The Guidance should also set out what is required from consultees and their duty to act reasonably and responsibly.
- **147**. 'Realistic': This is subjective and open to interpretation. Industry colleagues would welcome some clarification on what this means.
- **149/150.** Planning aid: It is good to have an objective third party. This is very useful and should be promoted further.

Following comments from statutory consultees at recent stakeholder workshops, we agree that in order for statutory consultees to be able to adequately respond within the timescales laid down in the Bill, they need to have received at the start of the minimum 28 day consultation period, the full suite of information laid out in the Regulations and Guidance i.e. developers should not be allowed to just inform statutory consultees that an application has been submitted and then not provide them with all the necessary information until some time afterwards.

We therefore suggest further clarification is given in the Regulations and Guidance highlighting both the requirement for consultation to be a minimum of 28 days and the need for developers to provide the full suite of the required information at the beginning of the 28 (or longer) day consultation period.

Q12. Has everything been covered that needs to be covered, if not please explain what other information you think should be included?

The inclusion of standard templates for publicity, site notices and notices to prescribed / interested persons, provided as examples rather than a mandatory requirement, would aid developers, statutory consultees and affected communities by encouraging a consistent approach / format / style, easily recognisable by all.

Given the provisions of the Data Protection Act 1998, developers will need to include in their publicity calling for consultation responses, a statement that all responses will be made publicly available. The wording will be dependent on the exact requirements of the Data Protection Act 1998, and will also need to allow for non-disclosure in exceptional circumstances such as sensitive environmental and commercial information (as raised previously).

Therefore, standard templates which include suggested wording to ensure compliance with the Data Protection Act 1998 will be a valuable addition.

Q13. Do you have any other views about the guidance?

Yes – There is a need for adequate resourcing of local planning authorities and statutory consultees who have vital and important roles with new statutory timescales to which they need to adhere. Additionally, on the assumption that appropriate resourcing is funded, the performance in terms of responding within the pre-agreed timescales should be measured as a national indicator.

Model provisions and the Planning Act

Q14. Do you agree that separate sets of model provisions should be made for each infrastructure type, in the final statutory instrument?

Yes – this will ensure that they are relevant to each type of infrastructure and provide assistance to developers in the efficient development of their draft Order, now necessary as part of their consent application.

Q15. Do the draft model provisions capture all the types of provisions, which are needed for energy, highways and water projects? If not, what additional provisions may be needed?

No – the most prominent omissions are offshore wind, marine tidal and wave energy.

Q16. Do you agree that specific model provisions are necessary for types of NSIP infrastructure other than railways and harbours?
If the answer to the previous question is yes, what types of development, associated development of ancillary matters should be covered by model provisions?

Model provisions for all types of energy infrastructure will be beneficial in assisting energy developers in preparing their draft Orders.

Q17. What other comments do you have about the draft model provisions, and in particular what additions would need to be made in order to cover common types of development, associated development or ancillary matters needed for NSIPs?

We have no further comments.

Regulations on Environmental Impact Assessment

Q18. These regulations transpose into secondary legislation the requirements of the Directive, consequently there are established principles to which we must adhere, however it would be helpful to have your views as to whether there appear to be any omissions?

There does not appear to be any major omissions in the transposition of the EIA Directive, however as discussed at the recent technical stakeholder workshop, industry is concerned that two separate sets of Regulations are to apply – the Application and Procedure Regulations and those to implement the EIA Directive. Given that one of the primary objectives of the planning reforms is to provide a simplified process, we are concerned that having two sets of separate Regulations, will be unnecessarily complex for developers, statutory consultees and in particular affected communities who will potentially have to respond to two separate consultations (even if they are undertaken simultaneously).

Equally, there is unnecessary duplication and potential conflicts e.g. publicity arrangements, which should be combined into a single process.

Q19. Regulations 5 and 6 of the EIA Regulations provide for screening and scoping opinions respectively. These regulations also allow the Commission to ask for further information from the person requesting the opinion. The regulations do not specify a time limit within which the Commission's request must be complied. Do you think such a time limit should be provided and if so what should the time limit be?

The requests for further information from the IPC to the person requesting the opinion could vary significantly, and could in extremes, require additional surveys / analysis to be undertaken. Therefore, the time it might take to provide the relevant information may therefore also vary considerably. In the majority of cases it is in the developer's interest to provide information as quickly as possible in order to progress their development, therefore the industry does not believe that a time limit is necessary or appropriate.

Q20. If the Commission grants a development consent order it may also include requirements within that order. The EIA regulations do not currently provide for the means of ensuring that where necessary those requirements are subject to an EIA. It will be necessary to provide for this, and your views are invited as to how this can best be achieved.

It is clear from Schedule 4 to the draft Order that any requirements imposed by the Commission when granting a development consent order will be in the nature of conditions, which would otherwise have been imposed on the grant of any planning permission or other consent. In the context of EIA, such conditions are likely to have been identified as necessary to secure mitigation that has been identified in the Environmental Statement. In those circumstances, any likely significant environmental effects of the proposed mitigation will already have been assessed in the Environmental Statement. Where such matters have not been considered in the Environmental Statement, it is open to the Commission to exercise its powers under draft Regulation 13, prior to the making of the development consent order. However, in those cases where conditions are imposed that require satisfaction before the development commences, if those requirements are likely to give rise to significant effects which have not been assessed in the environmental statement, further environmental information would need to be submitted to the relevant planning authority. As this will give rise to a multi-stage consents process, the EIA Regulations will require provisions to facilitate the provision of further information at this stage of the consent process.

Q21. Do you agree that the approach we propose to take with the two Schedules is the correct approach?

Yes – we agree.

Q22. Is there anything else on which you would like to comment?

No.

Planning Act 2008 and the Habitats Directive (92/42/EEC)

Q23. Do you agree with the scope of the draft proposed changes? If not, what changes should be made to its scope, and why?

Although it may be appropriate for consultation on the preparation on the EIS, we do not believe it is appropriate to hold a separate consultation on the Draft Environment Statement itself. This process is likely to cause confusion and there is no explanation in the draft Guidance as to how this might be properly coordinated with the other consultation requirements associated with the application for development consent.

As raised at the recent stakeholder workshops, given the number of changes to the Habitats Regulations over the last few years, to aid clarity it would be helpful to have a composite version of the Regulations.

Q24. Is there anything else on which you would like to comment?

No.

Guidance on associated development

Q25. Are the principles outlined in the guidance clear, if not please give your views as to how this can be improved?

The industry welcomes confirmation that it is for developers to decide the scope of their application, and whether or not to include associated development in their consent application. However, we note that it is the responsibility of the IPC to decide whether development is associated development but that they must have regard to any Guidance issued by the Secretary of State.

We understand the principle of defining associated development in a high-level way, however we believe that provision of a more detailed indicative list of types of associated development that developers may include in their applications would aid the IPC, developers and affected communities. We are in the process of finalising a suggested indicative list which we will submit to DCLG / DECC under separate cover, and which could usefully be included in the Guidance issued by the Secretary of State to the IPC.

Q26. Has everything been covered that needs to be covered, if not please explain what other information you think should be included?

As above, we believe a more detailed indicative list defining potential associated development would aid clarity for the IPC, developers and the affected community and their representatives.

Q27. Do you have any other views about this guidance?

No.

The views expressed in this paper cannot be taken to represent the views of all parts of all the companies in the UKBCSE. However, they do reflect a general consensus.