



Historic England

Operational reforms to the Nationally Significant Infrastructure Project (NSIP) consenting process.

Historic England Consultation Response

Historic England is the Government's statutory adviser on all matters relating to the historic environment in England. We are a non-departmental public body established under the National Heritage Act 1983 and sponsored by the Department for Culture, Media and Sport (DCMS). We champion and protect England's historic places, providing expert advice to government departments, local planning authorities, developers, owners and communities to help ensure our historic environment is properly understood, enjoyed and cared for.

We welcome the opportunity to submit a response to operational reforms to the Nationally Significant Infrastructure Projects (NSIP) consenting process.

Detailed Response:

Section 2 Strengthening the role of pre-application and ensure consultation is effective and proportionate

Question 2a: Do you agree with the 3 levels of service offered?

The different levels of service offered by the Planning Inspectorate provides a useful basis to set applicants expectations on the approach to be taken when progressing through the development consent process. We welcome proposals for a proportionate approach based on the circumstances of the project.

As this is a new service, we would welcome the opportunity for this to be tested and reviewed with applicants and stakeholders including Historic England. It will be important to review what has worked well and where further refinements could be made. For example, recent experience of enhanced pre-application has shown this can be resource intensive and it is important statutory consultees are given early notification of these types of projects so that appropriate resources can be assigned.

Further clarity would be welcomed regarding how the different service levels will determine the extent of input and engagement required from Historic England, as a government expert body. For example, the basic level of service states that applicants will receive "*engagement from government expert bodies in line with those bodies' cost recovery frameworks.*" Whilst not explicit, the offer to applicants for the enhanced service level with a greater level of meetings including regular topic-led meetings, meetings at key milestones and establishment of multi-party forums implies a greater degree of engagement from statutory consultees including Historic England.

It is important that statutory consultees define and agree their own service offer with the applicant rather than being referenced in the Planning Inspectorate service description. The level of engagement from Historic England would be proportionate to the level of engagement required based on our understanding of the scheme and potential impacts on the historic environment. While intended to complement the service level provided by the Planning Inspectorate our engagement may differ in its extent. Alternatively, service level descriptions for the NSIP pre-application stage could reflect multi-party involvement, participation and agreement. In this instance we could participate in discussions alongside the Planning Inspectorate, the applicant and other expert bodies to agree the selected level of service on a multi-party basis.

Proposals are unclear whether the level of service is applicant driven or if the Planning Inspectorate has a final say based on early pre-application discussions. It is presumed the applicant will select a preferred service level with the Planning Inspectorate having the final view. The Planning Inspectorate confirming the service level, with input from the applicant, stakeholders and government expert bodies would give confidence that the service offer aligns with the complexity, scale and needs of the NSIP scheme.

Historic England, as a statutory consultee, would welcome the opportunity to input into guidance to accompany the criteria for suitability for the three levels of service. This could assist in defining the complexity of a project. It could also take account of experience, expertise and past relationships. For example, where an applicant considers a basic level of service is appropriate, this may be based on a scheme being less complex and the applicant / consultancy team having an established and positive relationship with key stakeholders including local planning authorities and statutory consultees. Equally, where an applicant has no former experience of the development consent process, it may be more appropriate to direct them to the standard service level offered by PINs. We anticipate that suitability criteria and associated guidance are refined as the Planning Inspectorate service is introduced and tested in practice.

The clear definition of expectations of applicants for all three service levels are welcomed. Historic England values the opportunity for early engagement which is proactive and responsive as this is a significant factor in de-risking projects from an historic environment perspective. What is unclear is what happens if applicants do not meet the expectations and whether there is any provision for the Planning Inspectorate to pause, review and re-start the pre-application stage with the potential to move the applicant's scheme to a different service level.

Question 3: Would having the flexibility to change subscriptions as a project progresses through pre-application be important to you?

As a statutory consultee, Historic England considers it important to ensure flexibility in the pre-application stage as there are many unknowns early in the development consent process and several iterations of discussions and information sharing may be needed before there is confidence in the right service level for the NSIP proposal. Furthermore, there may be external influences that change the course of a project and necessitate the move between service levels. Therefore, having the option for

flexibility would be beneficial and it may be useful to define triggers which can prompt change to subscriptions.

While the proposals to have a fixed service level for 12 months aids resource planning, the inclusion of an early gateway for the Planning Inspectorate to verify the correct pre-application service level would support certainty and confidence in arrangements. We understand there may need to be flexibility in the pre-application stage. Therefore, a change to service level may be possible within the 12-month period as long as sufficient notice (for example, a minimum of 1 month) is given to statutory consultees, such as Historic England, to increase or scale back and re-distribute resources as required.

Question 5: Do you have any specific comments on the proposals in the Table above?

For standard and enhanced pre-application service levels, we welcome the proposal for the Planning Inspectorate to “*assertively assess feasibility of applicant Programme Plans at the outset (with Arms Length Bodies’ agreement) and monitor progress.*” Early visibility of a Programme Plan assists in understanding an applicant’s resource needs from statutory consultees and supports forward scheduling of resources. It is important that an applicant’s Programme Plan is realistic and takes account of Historic England’s capacity and agreed level of engagement.

The Programme Plan is a key document which sets the framework for progression of the development consent application through the process. It aids our understanding of phases (such as multiple Preliminary Environmental Information Reports) that are run in parallel or intended to be accelerated within the development consent process. We would welcome regular updates on Programme Plans which are subject to monitoring, update and change.

Question 6: Do you agree with the proposed changes to the consolidated list of statutory consultees outline above?

We request that the name change is amended to The Historic Buildings and Monuments Commission for England (known as Historic England).

Question 8: Do you support the proposed introduction of an early ‘adequacy of consultation’ milestone?

The principle of an early ‘adequacy of consultation’ milestone is welcomed. Yet, there may need to be further guidance on which factors determine ‘adequacy’ and at what point in time the milestone can be considered to have been met. As stated in previous questions, the NSIP undergoes significant evolution as it progresses through the pre-application stage. This is achieved through informal and statutory engagement with stakeholders throughout pre-application. Therefore, an early milestone review is beneficial where it takes account of consultation plans, methods of engagement and intended outcomes as well as consultation which has already taken place.

From Historic England's perspective 'adequacy of consultation' is demonstrated where an applicant has sought to engage early in the process adopting a proactive position, has listened to our advice and been responsive in its application so that impacts on the historic environment are avoided where possible, or effectively minimised and mitigated. It is important that 'adequacy of consultation' takes account of applicant engagement with statutory consultees including Historic England and the Marine Management Organisation (where applicable).

Question 9: Are there any additional factors that you think the early 'adequacy of consultation' milestone should consider?

The 'adequacy of consultation' will also be dependent on the quality of materials being consulted on and the approach to consultation as this will influence its overall value. While the NSIP operational reforms focus on adequacy from a local authority, Planning Inspectorate and community perspective, it is also important to consider the effectiveness of engagement with statutory consultees, such as Historic England, particularly through the pre-application stage. The adequacy of consultation is particularly important as a criterion for fast-track consent.

Question 11: Are there any other measures you think that government could take to ensure consultation requirements are proportionate to the scale and likely impact of a project?

A flag system could be used to track consultation. This could be linked to in combination and cumulative impact assessments produced by other NSIPs in geographically relevant area(s) to reduce the risks of consultation fatigue. There may be cases where certain geographical areas are under pressure from multiple applications submitted at the same time or seeking to engage at a similar time. Careful consideration is required as to how applications may be staggered so there is an opportunity for appropriate and proportionate engagement.

Section 3 Operational reform to support faster and more proportionate examinations

Question 12: To what extent do you agree with the proposal to remove the prohibition on an Inspector who has given section 51 advice during the pre-application stage from then being appointed to examine the application, either as part of a panel or a single person?

Please provide your reasons

Inspector engagement in the full development consent process offers benefits of knowledge and application history gained through the pre-application stages. It also increases awareness of key issues so that the Inspector can focus on the principal matters raised through PADs rather than taking time getting up to speed when appointed at point of development consent application acceptance. There is also the benefit of having established relationships and formed channels of communication with parties that are likely to participate in examination.

It is important that clear expectations are set within guidance and by the Planning Inspectorate regarding the nature of engagement and advice which can be offered at the pre-application stage. It is essential that the Nolan Principles are followed so that there is not any appearance of bias or undue influence perceived between the Inspector and the applicant.

Question 13: To what extent do you agree that it would lead to an improvement in the process if more detail was required to be submitted at the relevant representation stage?

Please provide your reasons

The requirement for more detail to be submitted at the relevant representation stage is a change to existing process. While the benefits for the Planning Inspectorate are understood, the capacity of interested parties to complete relevant representations within specified timescales and the quality of relevant representations are dependent on the following:

- **The quality and effectiveness of pre-application engagement and responsiveness of applicants** in having regard to statutory consultee advice, recommendations and consultation responses. It would be beneficial if this is confirmed by the Planning Inspectorate as part of verification of the development consent order application.
- **Visibility of the draft development consent order and supporting information** for statutory consultees between the Preliminary Environmental Information Report stage and application submission / acceptance. This is essential for stakeholders to acknowledge where their input has been taken into account and where there are outstanding issues to be addressed at the Examination stage. Such issues derive from the nature of information provided at the pre-application stage; whether the information is the whole picture – for example, we might only get to see the draft historic environment chapter, and not the chapter on noise; geology; design, all of which can have a bearing on the historic environment indirectly; and whether there are substantial changes between the draft and final versions.
- **The introduction of signification changes and new material** as part of submission of the development consent order application. It takes time for interested parties, including Historic England, to review any changes and understand the implications of change / further information. Current arrangements mean the Written Representation stage can usefully address new information introduced during examination by the applicant.
- **The time available for interested parties to prepare a relevant representation.** The development consent order regime is an applicant led process. At the Pre-Application stage section 56(5) of the Planning Act 2008 states the applicant sets the time period for stakeholders to register as interested parties and submit relevant representations. This has to be a minimum of 28 days. Historic England would welcome an extension with a minimum period of 40 days given the volume of information to be assessed

and the time needed to prepare a considered response. Allowing time for preparation of a quality relevant representation is likely to save time overall, as there is greater clarity in the issues to be addressed through the examination stage.

- **The cumulative pressure from responding to multiple NSIPs within a similar timeframe.** Consideration must be given to the feasibility of preparing detailed relevant representations and the impact on capacity of statutory consultees if several NSIPs have applications accepted at the same time.

Without these other matters being addressed within a revised process, there is a risk of minimal or no improvement as a result of changes to the relevant representation stage.

Historic England would welcome clear guidance on the expectations for relevant representations, including sign-posting to good practice examples. We would also welcome the Planning Inspectorate providing feedback on the quality of our relevant representations as part of their regular engagement on operational matters.

Question 14: To what extent do you agree that providing the Examining Authority with the discretion to set shorter notification periods will enable the delivery of examinations that are proportionate to the complexity and nature of the project but maintain the same quality of written evidence during examination?

Please provide your reasons

The value of providing the Examination Authority with the discretion to set shorter notification periods proportionate to the complexity and nature of the NSIP proposal is understood. However, to maintain quality of written evidence we would welcome this provision being accompanied by guidance on minimal feasible periods for interested parties to respond to the request for written representations. This would set a clear expectation for both the Examining Authority and interested parties.

Notification periods should also take account of the nature of the information being requested. For example, where there is an update required on progress with a Statement of Common Ground this may be quicker to respond to compared to written representations responding to specific questions prior to an Issue Specific Hearing. Clarity over minimum realistic timeframes for submission of written representations at key stages will assist in maintaining quality responses while taking account of the proportionate nature of the request from the Examining Authority.

Where written representations are requested in response to applicant-led changes, providing updated documents clearly highlighting where changes have occurred is vital to support timely assessment. Including an accompanying summary on the nature of the change and rationale would help interested parties respond in an efficient way.

Question 15: To what extent do you agree that moving to digital handling of examination materials by default will improve the ability for all parties to be more efficient and responsive to examination deadlines?

The move to digital handling of examination materials is welcomed. It is important that digitisation is accompanied by clear guidelines on standardisation and use of templates to ensure digital data is accessible. This will also assist parties in their ability to source information and respond in an efficient way. The responsiveness of parties is fundamentally dependent on the volume and quality of data, and the timing of its availability. As acknowledged in the consultation document, consideration is needed about providing information to those that cannot access or otherwise use digital data.

Question 16: To what extent do you agree that the submission of 'planning data' will provide a valuable addition as a means of submitting information to the Planning Inspectorate?

Please provide your reasons

Historic England welcomes the addition of 'planning data' and views this as an opportunity to enrich existing data sets. It allows for baseline data to be established, updated, and used for other infrastructure projects. This is dependent on 'planning data' being verifiable and originating from trusted sources for all parties to have confidence in the data generated.

The handling of planning data also needs to be considered, with clarity offered in guidance. This could usefully include methods for accessing data so that it is accessible to all and the necessity of providing planning data in particular formats.

From an historic environment perspective, the provision of planning data from desk-based assessments should always be supplemented by data originating from site-based survey work. There may also be instances where planning data would benefit from supplementary printed outputs, for example when sharing Landscape and Visualisation Impact analysis.

Question 17: Are there any other areas in the application process which you consider would benefit from becoming 'digitalised'?

The availability of digital planning data during the pre-application stage of the NSIP is beneficial in supporting dynamic options and impact analysis. This assists with design development and refinement, as well as informing historic environment assessments for the Environmental Statement. For example, dynamic map-based data is useful in assessing cumulative impacts as it can consider other infrastructure proposals and associated impacts.

Historic England can signpost to extensive digital resources held by ourselves, local authorities and others in the historic environment sector. This includes the National Heritage List for England, archaeological mapping data and Historic Environment Records (HERs). We would like to request the historic environment data generated by NSIPs is made available to HERs in the appropriate format and following

approved data standards. It is important to have well-maintained and up-to-date HERs and prepare for HERs becoming a statutory obligation when the Levelling Up and Regeneration Bill becomes statute.

The value and use of data is dependent on guidelines around data type, consistency and accessibility as well as clarity in the compatibility of software used by different parties. It is also important to include data management measures to ensure information that is date sensitive is updated when required.

Using recognised data sets and formats assists statutory consultees when they are required to interpret the data at key engagement points through the development consent process. Provision of low cost or free software also increases accessibility and means different stakeholders can engage with the data. This is particularly useful for map-based data.

Historic England are open to discuss data formats and uses at different stages of the development consent process. We can share recent work on digitisation as well as work being done across the historic environment sector.

Section 4 Establishing a fast track route to consent

Question 18: To what extent do you agree that projects wishing to proceed through the fast track route to consent should be required to use the enhanced pre-application service, which is designed to support applicants to meet the fast track quality standard?

Please provide your reasons

The requirement for applicants seeking fast-track consent to use the enhanced pre-application service is welcomed. This sets clear parameters on the expectations of applicants and the services offered by PINs to address key issues and seek early resolution in advance of the Examination stage. This means that fast-track applications should be capable of entering the Examination with a clear agenda for examination and timely resolution of outstanding matters.

To facilitate a fast-track process, there is value in establishing robust gateways at the application validation and submission stages where the request for a fast-track consenting process can be verified by the Planning Inspectorate informed by input from relevant statutory consultees. This approach would also ensure fast-track applications do not compromise on quality and have a higher risk of challenge later in the process.

Where applicants are intending to pursue fast-track consent, Historic England would urge the need for early engagement to embed historic environment matters within the scheme and avoid significant risks to heritage assets. We would also welcome sharing of lessons learnt from in-practice experience of applicants currently pursuing a fast-track consenting process and / or testing new procedures under the Early Adopters Programme. It is important this learning is reflected in accompanying guidance for all stakeholders.

In realising the fast-track process it will be important to ensure timescales are realistic and able to incorporate legislative duties for comprehensive environmental assessment (either through EIA or EOR) and effective community engagement.

Historic England would welcome further participation and discussion to support government in its development of the framework and related guidance to govern how projects can apply a shorter examination time and define the quality standards used to determine a project is eligible for fast-track consent.

Question 19: To what extent do you consider the proposed fast track quality standard will be effective in identifying applications that are capable of being assessed in a shorter timescale?

Please provide your reasons

Key features of the fast-track quality standard are an effective programme management document with clearly planned engagement, a proactive applicant who is responsive to advice from statutory consultees - incorporating advice during the pre-application stage, and a principal areas of disagreement document with few outstanding issues. All these elements when considered by the Planning Inspectorate may confirm that an application is capable of being assessed in a shorter timescale.

It is noted that for an applicant to demonstrate that a project can be fast-tracked, a (confirmation) statement will be required from the appropriate statutory body or consultees.

Question 20: On each criteria within the fast track quality standard, please select from the options set out in the table below and give your reasoning and additional comments in the accompanying text boxes. Please also include any additional criteria that you would propose including within the fast track quality standard?

1 Principal areas of disagreement: Agree

Using PADs may assist in focusing the examination on the key areas of disagreement between the applicant and stakeholders. This ensures the key points are distilled and, depending on the nature of the issues, should help facilitate a faster examination.

Procedure: Strongly agree

The applicant has an essential role to play in ensuring the pre-application criteria are met before the NSIP proposal proceeds through the fast-track process. A programme management document which is monitored and updated will be critical to inform all stakeholders of approach and key milestones prior to examination. The use of the premium enhanced pre-app service also ensures the Planning Inspectorate are closely engaged at early stages and are well informed of the issues prior to the Examination stage.

2a Fast track programme document: Strongly agree

The elements listed in the fast-track programme document are important. Historic England would also welcome inclusion of the Environmental Statement (including Scoping and Preliminary Environmental Information Report elements) as this is where key information on the historic environment and NSIP design response to the historic environment is held.

2b(i) include fast track intention in consultation material: Agree

It is important stakeholders can plan to resource and engage in the enhanced pre-application stage, to allow the opportunity to influence the NSIP scheme prior to fast-track examination. Clear communication of intent from the applicant will assist with stakeholder planning.

2b(ii) formal agreement to use enhanced pre-application: Strongly agree

The Planning Inspectorate has an important role in determining whether an NSIP is suitable for fast-track consent. Establishing a mandatory enhanced pre-application service and giving the Planning Inspectorate the remit to agree its use for fast-tracking applications will ensure quality applications which have fully met requirements can proceed on this basis.

2b (iii) publicise fast track programme: Agree

A transparent programme clearly showing how the fast-track quality standard is met is essential. It also allows statutory consultees such as Historic England to have resources in place to support engagement at critical points in the programme.

2b (iv) provide evidence at submission of 2a - 2c: Strongly agree

Without evidence in place to demonstrate compliance, the Planning Inspectorate will be unable to fully determine if the NSIP is eligible for fast-track consent. It would be useful for the evidence to include confirmation from statutory consultees (via consultation or PADs) that in their view fast-track consent is feasible.

3 Regard to advice: Strongly agree

It is important that an applicant has regard to advice not only from the Planning Inspectorate, but also from government's expert bodies. Without such regard, applicants are unlikely to be responsive to advice. As a result, there are likely to be a greater range of outstanding issues to address in the Principal Areas of Disagreement meaning a 4-month Examination may not be possible.

Section 5 Reviewing the processes for making changes to Development Consent Order post consent.

Question 23: In addition, what topics should new guidance cover that would help to inform decisions on whether a proposed change should be considered as material or non-material?

Historic England would welcome guidance on thresholds for when the type of non-material changes would be deemed to have a cumulative material impact and therefore should be grouped and submitted as a material change application.

Section 7 Strengthening the performance of government expert bodies

Question 30: To what extent do you agree that defining key performance measures will help meet the policy objective of ensuring the delivery of credible cost-recoverable services?

Please provide your reasons. If do not agree, are there any other mechanisms you would like to see to ensure performance?

Performance measures sets the expectations for service definition. It also brings the approach for cost recovery in line with the TCPA process for Statutory Consultees. This brings a consistent approach to performance measures across both planning regimes. The extent performance measures meet policy objectives depends on the nature of the KPI. Broadly, well-formulated KPIs could help ensure the process is disciplined.

The consultation document sets out the performance principles and expectations for service standards. It is important that these principles are applicable to all levels of engagement by Historic England. This ranges from the light-touch engagement where proposals have few risks for the historic environment (the equivalent of PINs basic service); to extensive engagement where there are substantial risks of harm to the significance of heritage assets (the equivalent of PINs enhanced service).

All cost-recoverable services should be credible and proportionate to take account of an anticipated increase in workload from a growing NSIP pipeline. Performance measures are only one factor in achieving the objective for a credible service. The development consent regime is an applicant-led process and the performance of Statutory Consultees, such as Historic England, is inextricably tied to the quality and timing of information provided by the applicant. It is dependent on the applicant seeking early engagement and being responsive to Historic England's advice and recommendations.

Therefore, applicant involvement could be considered to provide context for performance measures. This could be in the form of a simple checklist supplemented with qualitative data to record whether the applicant meets Statutory Consultee requirements so that performance measures are not hindered, and an efficient and effective development consent process can be achieved.

We welcome clarity on the intention of performance measures and their application. For example, they could be used to measure the overall success of NSIP operational reforms. Alternatively, performance measures could be used to track performance of Statutory Consultees over time. Their intended use would assist in understanding whether a consistent set of performance measures would be appropriate or whether they would be better tailored to each organisation.

Question 31: Do you agree with the principles we expect to base performance monitoring arrangement on? Please select from the options set out in the table below and give your reasoning and additional comments in the accompanying text boxes:

Be outcome and not output focussed to ensure better planning outcomes: Agree

The focus on outcomes rather than outputs is understood and aligns with proposals introduced through Environmental Outcome Reports. Historic England is currently developing our thinking around outcomes and would welcome further discussions on potential metrics which are specific to the historic environment.

Performance outcomes are dependent on a broad range of factors, some of which are beyond the control of Historic England. The development consent regime is an applicant-led process so outcomes will be strongly influenced by the applicant.

Historic England would welcome the opportunity to develop ideas around possible performance outcomes, tailored to our engagement with, and input into, development consent order applications.

Consider quality of customer service provision: Strongly agree

Providing an excellent quality of service is of great importance to Historic England. Engagement in NSIP casework is centred around customer service and developing positive relationships with applicants at the earliest opportunity. Therefore, performance measures around customer service are something we would welcome.

Cover the provision of statutory and non-statutory advice provided by the specific prescribed bodies (outlined in section 7.2.2 through pre-application, pre-examination, Examination and Decision: Agree

As a statutory consultee and government expert body, we anticipate providing statutory and non-statutory advice throughout the development consent process where appropriate. However, one of our measures of success is for all matters to be addressed at the end of the pre-application stage. This negates the need for our involvement at pre-examination and examination stages. We may then participate again at the post-consent stage when provide advice on Written Schemes of Investigation and associated surveys / works required prior to scheme commencement.

It is important that any performance measure does not assume linear involvement through the end-to-end process but takes account of the variable nature of our advice and engagement that is dependent on the specifics of the NSIP proposal and relationship with the applicant / consultancy team.

Monitoring should be tailored to the context of each organisation: Neither agree or disagree

Performance based monitoring is dependent on the intended purpose of the performance measures and how the reporting outputs will be used. For example, reporting could be used to compare relative performance of Statutory Consultees, or it could be used to measure how an individual organisation is performing over time.

Monitoring of standardised data sets may be more beneficial in providing options for a broad range of analysis.

Any monitoring requirements will need to take account of the capability of Historic England's systems and resource capacity to ensure the set up and ongoing management of this is not too onerous. In this respect, aspects of monitoring may need to be tailored to the context of each organisation.

Reporting should be timely, transparent, simple to understand, easily accessible and evolved over time: Strongly agree

Performance based reporting should be transparent and easily accessible to all parties to maintain trust in the development consent regime. It is important to set clear expectations regarding reporting being available in a timely way, with reports produced in a format which is simple to understand. A wide range of technical and non-technical stakeholders will have an interest in the performance reports produced for NSIPs, therefore it is essential these are accessible and easily understood. Equally, reporting requirements should be able to evolve over time to provide a greater level of detail on specific areas.

Historic England would like to offer support to government in developing the reporting framework which accompanies the NSIP performance measures, and we would welcome participation in future discussions.

Question 32: We would like to monitor the quality of customer service provided, and the outcomes of that advice on applicant's progression through the system where practicable. Do you have any views on the most effective and efficient way to do this?

Historic England already has quantitative performance measures in place to monitor the responsiveness to customer queries. One option is to align the development consent regime with established customer service monitoring where appropriate. There is value in establishing a system that is proportionate, clear and that places limited demand on resources for any party involved. It is also important that monitoring takes account of the reasons poor customer service may occur including where it may be the result of poor consultation or quality of information.

An alternative way of considering customer service outcomes is to monitor progression and outcomes of Principle Areas of Disagreement and the Statement of Common Ground. These documents reflect outcomes of engagement between applicants and government expert bodies / statutory consultees. This approach could accompany customer service measures such as time taken to respond at statutory points within the development consent process.

Question 33: To what extent do you support the proposal to enable specific statutory consultees to charge for the planning services they provide to applicants across the Development Consent Order application process?

Please provide your reasons

As a government expert body, Historic England welcome being included on the consultation list as one of the specific statutory consultees to charge for statutory

and non-statutory development consent order planning services. As a government body we will follow the proposed policy and understand the principle of charging to aid cost recovery for the resources needed to support NSIPs. We already have cost-recovery arrangements in place with applicants for non-statutory advice and specialist technical input.

The introduction of charging for statutory advice is a new consideration and would align with charging arrangements under the Town and Country Planning Act. However, it is important the scope of services being charged is fully transparent with details accessible to all stakeholders, so it is clearly disassociated with decision making particularly through the Examination and Decision stages of the development consent process. While we see the potential benefits, we would also need to be confident that such charging arrangements do not have any unintended impacts on grant in aid and other funding sources. Historic England would welcome the opportunity to be an active part of further discussions and input into government guidance on the purpose and intent of charging for statutory advice so that it is clearly defined for all NSIPs.

Question 34: To what extent do you agree with the key principles of the proposed charging system? Please select from the options listed in the table below and give reasons in the 'comment' text box.

Initially limit to the ability to charge to the organisations listed in table 7.1: Agree
Historic England is listed as one of the government's expert bodies who are specific statutory consultees identified to introduce charging for non-statutory and statutory advice through the full process. As stated in question 33 we already have cost-recovery procedures in place for non-statutory advice and these can be extended to recover costs for statutory advice at all stages of the development consent process.

The proposal to limit charging to specific statutory consultees will enable cost-recovery and performance measures to be tested. It will also give other statutory consultees time to set up charging systems where these are not currently in place. Historic England would welcome continued engagement on charging proposals and can offer to share experience and lessons learnt with other stakeholders from our revised cost recovery arrangements.

The proposals are unclear on the expectations of the organisations who are not listed in table 7.1. Clarity would be welcomed on whether these stakeholders need to fulfil the proposed service arrangements prior to charging being in place.

Recover costs for non-statutory and statutory services provided throughout Pre-application, Pre-examination, Examination and Post-Decision: Neither Agree or Disagree.

Please see our response to question 33.

Setting charging schemes: Agree

Historic England follow HMT guidelines on Managing Public Money for setting rates for cost-recovery. It is fair that consultees set their own charging systems within rules set by HMG.

From an applicant perspective, Historic England will continue to offer transparency in charging arrangements with costs recovered under our Enhanced Advisory Service scheme.

The consultation states that the specific statutory consultees will be able to “*use either a standard charge specific to their own activity or to reach agreement with the project promoter to agree the level of service and associated costs (whether individually or jointly with other consultees) through a service level agreement, whether for part or the entirety of their engagement on a project.*”

Firstly, joint charging agreements with other consultees is new for Historic England and not something we have entered into for past NSIPs. Historic England would welcome further discussion with Government and other expert bodies on how this may work in practice, noting that bespoke systems may add further resource demands. Guidance would be welcomed on how joint charging arrangements can be set up and where they may be beneficial for both specific statutory consultees and applicants and meet the objective to accelerate decision making.

Secondly, the consultation proposes that the statutory consultee and the project promoter can agree the level of service and associated costs through a service level agreement (SLA). Historic England have used project-based SLAs for past NSIPs; however, such arrangements carry significant administrative overheads. Bespoke project-based agreements can carry commercial risk for statutory consultees and may delay rather than accelerate the NSIP process. We would also only seek arrangements for an SLA at the start of the process to cover our whole engagement, rather than for part of process as this could lead to confusion over use of multiple charging agreements.

Our objective for future NSIPs is to agree strategic SLAs with key infrastructure providers to offer consistency and certainty over service levels and resourcing for NSIPs delivered through their forward plans. Historic England will continue to agree charging arrangements for NSIPs on a project basis under our Enhanced Advisory Service scheme.

Question 35: Do you have any comments on the scope and intended effect of the principles of the charging system?

As noted, the proposed system should help statutory consultees to secure adequate resources. This is fundamental to their effective participation to improve outcomes. The simple approach of allowing charging for the whole process is essential to this. There may remain problems, due to the difficulty of matching staffing complement – a permanent cost – with fluctuating streams of work, but the proposal would greatly improve upon the present situation.

Further challenges may relate to the ability to recruit new resources to support an increase in engagement with development consent order applications. As noted in

our response to question 9, we face similar challenges to other organisations across the built environment sector in our recruitment of planners, conservation officers and others with essential skills for NSIPs.

A further point to consider is the ability for statutory consultees to charge applicants for non-statutory and statutory advice through the full development consent process including the Decision stage. Statutory consultee engagement with applicants tends to be ongoing through the process and there may be matters relating to post-consent activity that still need to be addressed as a parallel activity to the development consent application being determined by the Secretary of State. This is increasingly likely where NSIPs are planning an accelerated programme, finalising designs and ramping up construction preparation in anticipation of development consent.

It is important for statutory consultees to be able to recover costs at every stage of the process. If there is a stage of the development consent process where cost-recovery is not applicable, there are risks applicants will seek to push matters to the latter stage not covered by charging.

Finally, as stated in our previous response Historic England would welcome the flexibility to propose charging arrangements based on our service offer and following our understanding of NSIP risks and potential harm to the significance of the historic environment.

Section 9 Building the skills needed to support infrastructure delivery

Question 40: Are there any other specific sectors (as identified above) that currently face challenges in recruiting? If so, please state which ones and give reasons why

Historic England are aware of the challenges facing planning authorities in the recruitment and retention of planners. In line with strategic labour market challenges across the built environment sector, our anecdotal experience is that we also have difficulty recruiting planners, architects and surveyors and conservation professionals.

Section 10 Updates to the national infrastructure planning guidance

Question 42: To what extent do you agree that updated guidance on the matters outlined in this consultation will support the Nationally Significant Infrastructure Project reforms?

Please provide your reasons

In line with our responses to previous questions, updated and new guidance will be invaluable in supporting applicants and stakeholders through the revised development consent order process. It will support delivery of reforms in a consistent way.

Historic England would welcome the opportunity to continue to participate in discussions with Government on the guidance needed to support reforms. We can provide specialist knowledge and offer comment on early drafts.

Question 43: Do you support a move towards a format for guidance that has a similar format to the national planning practice guidance?

Please provide your reasons

The change in format and improved accessibility is welcomed. It will also allow for periodic reviews and updates to guidance as reforms are put into practice, reviewed and refined.

*Sarah Lewis / Luke Wormald
Historic England
19 September 2023*