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Development Commission

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## Planning for a Sustainable Future: SDC Consultation Response

The Sustainable Development Commission (SDC) is grateful for the opportunity to respond to the consultation on Planning for a Sustainable Future (referred to as the Planning White Paper). We are encouraged by the government's recognition of the value of the planning system and the implied acknowledgement in the title of the White Paper of the importance of planning for a sustainable future. The firm framing of the need for reform within sustainable development principles is intrinsic to good planning, helping to deliver infrastructure provision, local devolution and promoting well being.

### A Sustainable Planning System

The SDC strongly believes that the objective of planning reform should be to improve the decision making process to deliver sustainable development (based on sustainable development principles). In making this assertion it is important to re-emphasise the relationship between the five principles as stated in the Government's 2005 Sustainable Development Strategy 'Securing the Future':

*We want to achieve our goals of living within environmental limits and a just society, and we will do it by means of a sustainable economy, good governance, and sound science.<sup>1</sup>*

A genuinely sustainable planning system is one that should **promote the highest quality development and most beneficial use of land**, in the most appropriate locations at the most appropriate time, and in the public interest. It should assess and provide for **needs rather than just meet demands**. Conversely, it should prevent inappropriate, poorly located, poor quality or unnecessary development. Sustainable planning should result in a **net improvement in places**.

Planning for sustainable development has the following general features, it:

- ✓ deals with development and land use change
- ✓ takes a **long term view** – setting a vision for future generations
- ✓ provides integrated, **joined-up development** decisions and land use solutions
- ✓ **promotes social progress** in the public interest, including through effective public involvement, participation and mediation
- ✓ achieves **the protection and enhancement of biodiversity and natural processes**, and
- ✓ promotes resource efficiency and reduced demand for consumption.

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<sup>1</sup> HM Government (2005), Securing the Future: delivering UK sustainable development strategy, p.17

It should **integrate** the five dimensions of sustainable development agreed by Government:

➤ **Living within environmental limits**

**Aim:** Land use decisions should ensure that natural systems, resources and the diversity upon which people depend are maintained and wherever and whenever possible enhanced for both our immediate benefit and for that of future generations

➤ **Ensuring a strong, healthy and just society**

**Aim:** Planning should result in a net improvement in places, meeting basic needs and improving the quality of life for local people and communities. It should support the development of a sense of 'place' and enhance the wellbeing of local residents through a range of diverse and affordable housing in well-designed communities that promote healthy living and are served with good local services, green space and accessible public transport links

➤ **Achieving a sustainable economy**

**Aim:** Sufficient suitable land is available at the right time and in the right places to support economic prosperity and innovation, economically viable and attractive towns and a wide range of jobs that meet the *needs* of current and future generations

➤ **Promoting good governance**

**Aim:** The need for strong, consistent and two way engagement with the public which instils confidence in the planning system

➤ **Using sound science responsibly**

**Aim:** Planning policies and decisions should be developed and implemented on the basis of strong evidence and taking account of uncertainty and public attitudes

Our comments on the White Paper start from this understanding and assess the proposals against it. These comments comprise:

1. Key responses on issues raised by the White Paper in the remainder of this letter
2. Specific responses to the consultation questions in Annex A
3. Principles for effective engagement are set out in Annex B

## 1. SDC's Key Responses

### The case for reform

The SDC would agree that there is a good case for reform of the planning system on the grounds that the current system does not have sustainable development, as framed within the 2005 UK Sustainable Development strategy '*Securing the Future*', as its desired outcome. We cannot meet the needs of the present and future generations unless the SD outcomes of living within environmental limits and achieving a strong, healthy and just society are at the heart of our planning policies.

We are pleased that the importance of achieving sustainable communities and delivery of SD objectives are acknowledged early on in Chapter 1 of the White Paper. The Paper rightly highlights the challenges we face in meeting environmental challenges like climate change, and addressing housing and social infrastructure needs.

We also support the need for an efficient and effective planning system, but we believe that the government needs to be very careful about how it judges the efficacy of the system. Simply speeding up the planning process is not a guarantee of better outcomes, and must not come at the expense of making the best – most socially, environmentally and economically sustainable – decisions in ways that instils public confidence in the process. Likewise, we assume that the test of improved effectiveness cannot just be an increase in the number of applications approved. With 86% of all planning applications already agreed under the present planning

system there is not a great deal of head-room to push rates of approval higher. A narrow focus on number of approvals risks jeopardising the quality of life for people as poor plans get through alongside the good.

Major infrastructure proposals often come to fruition over a significant period of time, during which they may be subject to adaptations and lapses in progress, due to changes in corporate and market conditions and developing technologies. Planning is only one of a number of uncertainties within this process and, in the current plan led system, we already have a presumption in favour of development unless there are other material considerations that rule against it.

So an efficient and effective planning system is one that considers applications comprehensively in terms of the full range of sustainable development outcomes. It should be able to discern and approve first-best solutions while sifting out sub-optimal proposals for revision or rejection. It should of course aim to do this with minimum delay, but always with the primary focus on the quality of outcomes and ensuring transparency and accountability of process.

### Consistency of proposals

The SDC is keen for the government to consider the Planning White Paper proposals as a coherent whole, and in relation to its other strategies and policies.

In terms of the Planning White Paper itself we are concerned that some of the proposals actually work against the very reasons Government gives for needing such reform. For example, the setting of unrealistic short timescales for consultation and the introduction of an Infrastructure Planning Commission (IPC) could further exacerbate the problems of 'individuals and communities finding it difficult to be heard' and 'decisions not always being taken at the right level'.

More broadly, the Planning White Paper proposals sit alongside other policy initiatives that affect the "place-shaping" agenda, and there are potential policy conflicts to be resolved here. For example, responses to the White Paper consultation questions need to be considered in light of the **Review of sub-national economic development and regeneration** (Sub National Review -SNR). This appears to change the whole focus of regional and local planning to one of delivering economic growth. Depending on the relationship between these two major policy initiatives, this could mean that many of the positive, or potentially positive, elements within the Planning White Paper may be overshadowed. The SDC is concerned that the SNR appears to have been completed without full consideration of the consultation on reforms to the planning system.

The development of a single regional strategy to "act as a focus for economic development within the region"<sup>2</sup>, 'balancing' social, environmental and economic outcomes rather than 'integrating' them does not bode well for delivery of genuinely sustainable places. Whilst the spatial planning aspects of the regional strategy will still be subject to examination in public, it is difficult see the single strategy as having anything other than a primary economic growth agenda, particularly as its production will be the responsibility of the Regional Development Agencies (RDA), which are business led and economic development focused organisations.

In changing the regional architecture, the SNR states that the RDA will become the Regional Planning Body & subject to the statutory requirements on sustainable development in the Planning and Compulsory Purchase Act (PCPA), whilst the White Paper proposes to amend The Planning System: General Principles, to make it consistent with Planning Policy Statement 1 (PPS 1). As both the PCPA and PPS 1 are based on the 1999 definition of sustainable development, the SDC wants all amendments to be done in light of the 2005 UK Government Sustainable Development Strategy, to encompass the 5 principles.

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<sup>2</sup> HMT (2007) Review of sub-national economic development and regeneration

There is a further impact resulting from the SNR concerning local engagement in the planning process and the link between the local and regional tiers of planning. The SNR focuses on using the upper tier of local authorities to engage with the development of the single regional strategy. However, in a 2 tier area, the upper tier has no planning function, apart from minerals, as this was removed with the introduction of Regional Spatial Strategies. As there is no hierarchical relationship between counties and districts the level of planning representation could be minimal and would not ensure compatibility between the single strategy and the Local Development Framework.

The SDC is not convinced that the totality of the Planning White Paper and other “place-shaping” reforms as currently framed meet the requirements of having sustainable development as the overall goal for government policy as outlined in the government’s own strategy.

### National Policy Statements

The SDC recognises the need for a national strategic approach to infrastructure projects which the proposed package of reforms is intended to address. For example, with regard to issues such as sewerage and water, the pressures and problems we are facing would benefit from a more strategic overview that a good independent Planning Commissioner could deliver.

One of the reasons for current delays in the delivery of infrastructure projects is an absence of ‘joined up’ government policy which creates uncertainty for developers. For this reason the concept of National Policy Statements (NPS) is welcome and in order to be taken forward in a meaningful way the NPSs will need to meet the following criteria:

- The topics covered need to be **integrated together** to achieve a consistent spatial approach. Effective horizontal integration of policy, based on sustainable development principles, is critical to overcome the potential of ‘silo’ delivery
- Their primary focus must be to deliver whole policy solutions, which would include both the **reduction of demand** and the supply of infrastructure for national needs
- They must **meet other EU and national policy objectives** such as those within the Water Framework Directive, Habitats Directive etc
- They must **address the national carbon reduction target** (currently set at 60% cuts by 2050, based on 1990 levels)
- They should be **subject to Strategic Environmental Assessment**, both individually and as an integrated whole to assess their cumulative impact, and unintended chain effects – to include a ‘climate proofing’ test.
- They must be subject to **full consultation, and genuine engagement and debate**, at all levels and with all stakeholders throughout the various stages of their development, in compliance with the Aarhus Convention.

### Infrastructure Planning Commission

The development of such a body seems to go against current thinking on decentralisation of decision making and accountability at the local level, and raises concerns about the transparency of decision making. Unless very carefully designed, the proposal risks opening up a democratic deficit which would leave the Government, and the planning process, open to legal challenge. National policies will directly affect local communities and so called ‘NIMBY’ reactions often have an underlying concern for the environment which cannot be ignored and are a necessary outcome of representative democracy. The high degree of autonomy and lack of accountability being proposed for the Infrastructure Planning Commission (IPC) will require a transparent auditing mechanism for their decision making if there is to be public confidence in the process.

However, the SDC does believe that certain areas could benefit from an independent and strategic decision making body, providing it is given a single overarching statutory sustainable development duty. Evidence suggests that where organisations are given a general sustainable development duty in addition to other duties (e.g. a duty to contribute to the achievement of sustainable development and to economic growth) they struggle to interpret the additional requirements of the sustainable development duty<sup>3</sup>.

The SDC recommends that the Infrastructure Planning Commission is given a single statutory sustainable development duty such as:

**“The IPC will promote and contribute to sustainable development in the exercise of its functions”**

The SDC believes it is important that this duty is not broken down into the SD elements, as has been the case with the Local Government power i.e. to promote economic, social and environmental wellbeing. These elements need to be integrated rather than progressed independently as interpretation of the Local Government duty allows.

### **Consultation and Community Engagement**

The White Paper has commendable aspirations relating to consultation, but it is difficult to see how community enthusiasm and genuine participation can be generated to engage with national issues which may seem somewhat removed from people’s day-to day lives and locality. It will take a much broader process than laid down in the Cabinet Office good practice Code on Consultation. There is a critical need for local voices to be heard and validated, and for accountability to be clear and relevant to local communities if public support and confidence in the reforms are to be gained. This will also mean an up front and explicit commitment to build the capability of civil society to engage with the process.

Any amendments to the system must enable **better** decision making, and government should use this opportunity to ensure that the subsequent process is informed by a full range of views. This means being clearer about how each stage of the new proposed planning processes will engage with stakeholders and the public, local and nationally, how this input will feed-in to the decision-making processes and what weight / value it will be given, e.g. the extent to which decisions can be challenged.

These ideas on participation are set out in the SDC’s position statement on engagement, which explains the principles we believe should underpin the approach, as attached at Annex B.

### **Skills Development**

The expectations raised by these proposals will require significant improvement in planning officers’ skills, with professional development to support their ability to address sustainable development and the delivery of sustainable communities. This is not a quick process and there is an absence of information on how this will be achieved. The SDC suggests that linkages are made with the Academy for Sustainable Communities and the work they are undertaking with professional institutions such as the RTPI around Continuing Professional Development.

The SDC recommends that the reforms are supported by a **resourced skills development plan**, subject to annual review, to train new staff coming into the profession and to develop the skills of existing staff within Local Planning Authorities (LPA).

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<sup>3</sup> IHPC (2006) Review of Statutory Sustainable Development Duties

## Proposals to Review the Town and Country Planning System

The SDC is concerned by the lack of consultation questions relating to numerous proposals to amend the town and country planning system, particularly in the context of giving the system a primary aim to “positively plan for sustainable economic development”, with the provision of a framework for encouraging economic growth and investment as a major driver.

If this second half of the PWP only requires secondary legislation i.e. would not form part of the Planning Bill, it will not be subject to the same level of parliamentary debate, a situation the SDC considers to be unacceptable.

As with the higher level reforms, the SDC believes that:

- The objective of reforming the town and country planning system must be to **improve the decision making process to deliver sustainable development** (based on the Government’s sustainable development principles)
- The proposals must be subject to **full consultation, and genuine engagement and debate**, at all levels and with all stakeholders throughout the various stages of their development

There are four particular areas of the review of the town and country planning system that the SDC wishes to draw particular attention to:

a. Paragraph 7.31 – use of previously developed land

The SDC fully supports the Government’s desire to use land efficiently and sustainably by using previously developed land first. Our supportive views on increased density have already been set out in our in-depth review of the Sustainable Communities Plan<sup>4</sup>. All over the country there are areas of post industrial and derelict land laying abandoned. These cast an economic and social blight on their communities which can be remediated through sustainable redevelopment. However, as house gardens are now classified as previously used land, developers are targeting them in preference to industrial brown field sites which are more expensive to build on. The added advantage for the developer is that garden sizes are usually such that, as a development plot, they fall below the threshold of dwellings that require a percentage of affordable housing. The consequence of this is a change to the built character of areas, and hence community sense of place, a loss of importance biodiversity resources, increased flood risk, reduced access to green space and no increase in affordable housing availability.

The SDC would like to see a much more rigorous determination of the use of previously developed land in allowing planning applications, which recognises the differing functionality of land and takes a systemic approach to land use decisions.

b. Paragraph 7.33 – “we should focus new development in suitable locations, making effective use of land and existing infrastructure such as road networks”

The SDC is concerned that this statement could be interpreted as allowing ribbon development, something we would strongly wish to discourage. Priority should be given to focusing housing development, with increased density, around existing urban settlements, with supporting social infrastructure and public transport hubs, and not around road networks.

c. Paragraph 7.38 – “to compete effectively... regulatory costs should be proportionate, to help keep business costs down”

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<sup>4</sup> SDC (2007) Building houses or creating communities?: A review of Government progress on Sustainable Communities

This section indicates an apparently over-riding premise of the White Paper as a whole that planning is the major constraint on and cost to business, and that it needs to operate faster. But planning, due to its function in longer term visioning, is not designed to be able to respond quickly to market conditions so making it the target for reform is not going to bring about the desired improvements. Policies intended to reduce business costs would be more effectively focussed on issues relating to business efficiency such as resource use, energy, water and waste and the social support provided by local employment.

d. Paragraph 7.55 - review of the town centre 'needs test'

The SDC strongly supports the principle of 'town centre first' in allocating the location of new build as a fundamental outcome of sustainable development. Any amendment to the 'needs test' must ensure this priority remains and is not superseded by market demands.

As a general point, the second half of the Planning White Paper fails to distinguish between unitary and two tier authorities. Whilst Chapter 8 deals with strengthening the role of local authorities in place shaping, the structures and processes referred to only deal with unitary authorities, with neither the text nor the diagram of relationships on page 142 applicable to Local Strategic Partnerships, Sustainable Community Strategies and Local Development Frameworks within two tier authorities.

The SDC recommends that the proposals clearly state how they will be operationally delivered in both unitary and two tier authorities.

**2. The Consultation Questions**

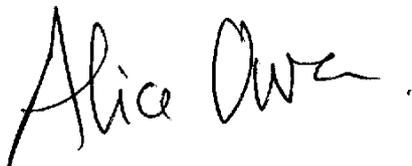
Please see Annex A for our specific responses to the consultation questions.

**3. Principles for Effective Engagement**

Please see Annex B for our principles for effective engagement that apply to the proposals as a whole.

My colleagues and I are of course happy to discuss any of the points raised in this response. And in our role as the Government's advisor on sustainable development, the SDC would be happy to be involved in the future development of the Planning White Paper proposals as they are taken forward.

Yours sincerely

A handwritten signature in black ink that reads "Alice Owen". The signature is written in a cursive, flowing style.

**Alice Owen**  
**Lead Commissioner, Local and Regional**  
**Sustainable Development Commission**

## SDC responses to the Planning White Paper consultation questions

### Introduction of National Policy Statements

The objectives of clarifying government policy for major infrastructure and providing a clearer strategic framework for sustainable development are welcomed. National Policy Statements (NPSs) need to be developed with full assessment against the 5 sustainable development principles, so they do not work against Governments overall sustainable development goals.

The overall objective of the Major Infrastructure Projects (MIPs) process must be sustainable development, based on the definition within the 2005 UK Sustainable Development Strategy. Full economic, environmental and social costs must be reflected in the decision making process.

It is concerning that there is no reference to co-ordinating the development, consultation or delivery of NPSs as a whole. Without this it will be impossible to ensure sustainable development principles are applied across the full range of strategic national infrastructure.

### Content of National Policy Statements

The SDC welcomes the strong support for sustainable development within the first core principle that underpins the proposals of the White Paper and the recognition of both mitigation and adaptation to climate change as a specific issue. However, this does not appear to carry through to the rationale for assessing the 'need' for new infrastructure. For example, the White Paper outlines the 'need' for investment in new electricity generation capacity over a certain period, but 'need' only exists in the context of:

- a. alternative options as to how to achieve the same objective, e.g. energy efficiency,
- b. constraints in supply, e.g. the capacity of the atmosphere to absorb emissions, and
- c. alternative options as to how to use, or conserve, that supply

If the NPSs are framed within the context of delivering what the UK 'needs' they will be starting with assumptions which ignore the basics of both economics, which gives 'supply' equal standing with 'demand', and sustainable development.

The primary focus of the NPSs must be to deliver whole policy solutions, which would include both the reduction of demand and the supply of infrastructure. The White Paper currently assumes that additional development will be required in every case, indicating that the model which will be used is one of 'predict and provide', contrary to sustainable development principles.

The SDC recommends that the list of 'core elements' for NPSs should be rewritten to underpin a sustainable development approach in place of a "predict and provide" one, with assessments of need fully considering the availability of 'supply' of resources and alternative 'demand' policies. The relationship between the NPS, Policy Planning Statements (PPS) and the regional and local planning systems also needs to be clearly defined, within both unitary and two tier authorities.

### Status of National Policy Statements

This is an area of critical concern to the SDC as the proposed status implies that NPSs will be above PPS 1 and will give any application the presumption in favour of development as long as it meets the NPS. As the NPS is intended to deliver sustainable development through the integration of the 3 pillars rather than the 5

sustainable development principles it would be seen as a backward step from current policy as outlined in the 2005 UK Sustainable Development Strategy.

There are profound implications inherent in stating that a planning application only has to be 'consistent with' the NPS i.e. not necessarily the most effective way of implementing it. This is compounded by the intention that all the likely effects of the development do not have to be consistent, merely its 'main aims', presumably as stated by the developers. The phrase 'main aims' is sufficiently unclear to present considerable legal challenges if used in legislation.

The SDC recommends that the proposed status of NPSs should be amended so that all the likely effects, rather than only the 'main aims', of a development are required to be consistent with sustainable development principles and delivered in a way that accord with the best available option as determined by the IPC.

### **Consultation on National Policy Statements**

The SDC welcomes the proposal for thorough and effective public consultation as local community engagement is key for democracy. Unfortunately the proposals do not, at the moment, give any reassurance that effective public engagement will occur. The complex and far reaching implications of the NPSs call for a more integrated and layered approach to engagement than a traditional, paper-based, twelve week consultation.

It is essential that the Government engages fully, with stakeholders and the public, in the development of the NPSs and ensures that all departments adhere to sound principles of effective engagement. The SDC's position statement (see Annex B) sets key principles for good engagement, i.e. a process that shows clarity, integration, independence, and a layered approach with follow through.

The SDC recommends that the Government establishes a set of guiding principles that determine how Departments must engage in developing NPSs generally, which include the requirement for Departments to create engagement plans for developing each NPS. The subsequent engagement / consultation processes need to be independently evaluated against these plans and principles.

Finally, a cross-government group, or parliamentary committee, could be established to co-ordinate efforts on the production of NPSs.

### **Parliamentary Scrutiny**

Parliamentary scrutiny, through examination by the relevant Select Committee, would be welcome, and Select Committees are influential, but they make recommendations, not decisions. Scrutiny is not the same as democratic decision-making, which would require, for example, a House of Commons vote on a proposed (and amendable) NPS.

The SDC therefore makes the recommendation that NPSs should follow the same procedure as bills. They should be subject to amendment and vote in both houses, and subject to the Select Committee process.

If the NPSs are to be based on sustainable development principles it will also be necessary for the cumulative impacts of the NPSs to be critically assessed. A parliamentary committee could be established with the responsibility of scrutinising the full package of NPSs.

### **Review of National Policy Statements**

In reviewing the NPSs the Government should not close off any options as to who should be consulted on the process, but make a commitment to a full and appropriate process of consultation in any review. What needs

to be clarified is whether another body, apart from the Government, can call for a review and if so, on what grounds?

### **Opportunities for Legal Challenge**

The SDC is disappointed in the proposals in this section as the grounds for challenge are simply the standard grounds for Judicial Review with which the Government has to comply, so the White Paper brings no additionality. It should be possible to challenge a statement on grounds of insufficient consultation, scrutiny, democratic decision-making, or failure to take adequate account of sustainable development considerations.

Setting a constraint of only six weeks goes against the spirit of encouraging engagement and should be extended to twelve weeks to bring it in line with other Judicial Review processes.

### **Transitional Arrangements**

Whilst the SDC understands the need for transitional arrangements the proposal seems to indicate a 're labelling' of existing policy, which runs counter to the aspirations that the new NPSs will be a departure from traditional practice due to their objectivity and substantial consultation. NPSs must be based on up to date scientific knowledge and existing policy does not take account of the increased awareness of climate change implications highlighted in the Stern Review and International Panel of Climate Change reports.

Related to this is the issue that previous / existing policy statements (even if they have been adequately or appropriately consulted) would have been done so for a different purpose. Therefore, it cannot be assumed that stakeholder and public opinion would have been the same, either supportive or unsupportive.

As a point of clarification the SDC recommends that the list of areas to be covered by NPSs should be set out in the Planning Bill, and cross checked against coverage of SD principles.

### **The Preparation of Applications**

The SDC recognises that the proposed requirements are comprehensive, the challenge will be in ensuring that project promoters adequately invest in all the elements and how the quality of that investment is assessed by the IPC. Although there is clear mention of the extensive engagement with local communities, local authorities and statutory agencies (which is very positive) there is no mention of NGOs having any right to be involved in local consultations in the preparation of applications. NGOs can have a vital role in linking hard to reach groups with mainstream society and government.

### **Consultation by Promoters**

Whilst the introduction of consultation at an early stage of project development is welcomed, projects may change considerably before final application and such amendments would then be hidden from public scrutiny. The language used in the White Paper is very open to interpretation as to how a local community would be defined and engaged. The Government needs to be clearer about how the public and stakeholders will be engaged / consulted at each stage of the proposed planning process.

It could be considered a valid cost for a development that the party submitting a planning application is required to fund an independently managed process of engagement with affected parties (i.e. not only the neighbours to the scheme) to evaluate both the effects of the proposal and how those effects might be improved. The reliance on Local Planning Authorities (LPAs) to represent their communities is naive without the provision of substantial resources and staff development.

The White Paper does not set out how the proposals are going to make decision-making better, rather than simply quicker. This could be clarified by establishing a framework outlining when, who and how to consult throughout the planning process. This would show what decisions were being made or issues being dealt with at each stage and outline the principles that would have to be adhered to in order to ensure good engagement, see Annex B.

### **Consulting Local Authorities**

The proposals appear to represent good practice, although it could be inappropriate to say that the Local Authority (LA) view should have more weight than any of its constituent communities, or that the LA will completely represent the views of those communities. As this relates to MIPs, it is anticipated that a range of LAs would need to be engaged so further guidance would be needed to manage the potentially differing views of LAs, particularly within two tier authorities and those of different political control, in order to make a strategic decision.

Where the proposals make a retrograde step is in the intention to replace the current system's approach to balance national and local considerations. Adverse local considerations that will result in a development being rejected are only those which existing legislation requires the Government to take into account at present i.e. those incompatible with relevant EC and domestic law, including human rights legislation.

The result is that national considerations will predominate unless the Government is compelled by international commitments to make an exception. Crucially, the decisions of local authorities and the various planning documents they have produced are not referred to as being an important consideration. The SDC recommends that there should be a requirement to have regard to local planning documents produced by the local authority where spatially appropriate.

### **Statutory Consultees' Responsibilities**

The SDC strongly rejects the proposal of imposing an upper time limit on responses. Whilst an open time scale could be a hostage to fortune since more time is always needed for more information, some of these projects will be extremely complicated and it is unreasonable to time constrain them formally.

In order to facilitate this process effectively the IPC should be required to set a time limit for each individual application based on their assessment of the complexity of the case. The IPC would then be acting as independent case managers for each application, using their knowledge and expertise.

### **The IPC Guidance Role**

The SDC agrees with the proposal to give the IPC a guidance role. The guidance will need to be fairly generic, and based on sustainable development principles, so that the IPC is not 'held hostage' by developers if subsequent examination finds they have not adequately complied. The guidance should recognise that standards will become ever more demanding as the need to respond to climate change impacts increases momentum. The guidance should also include the principles, and requirements, of how to engage effectively.

### **Rules Governing Propriety**

The SDC believes that correctly addressing the issue of propriety is crucial in gaining public confidence in the IPC. This would mean a rigorous initial selection process of Commissioners concerning former and current work associations.

It will also have implications for the way the Secretariat and the Commissioners themselves work together. If the Secretariat is to have regular contact with the developers in advising them, prior to the submission of an

application, it is important that there is no contact between the developers and the decision making Commissioners. Rules that disqualify job applicants for local authority posts, from canvassing information from Councillors could be transferred to the relationship between developers and Commissioners and lead to rejection of the application. These “conflicts of interest” considerations would then be brought into play as the Commissioners carry out their duties, via the proposed decision making ‘sub-commissions’.

### **The Commission’s Role at the Point of Application**

The SDC recommends that the IPC plays a more active role in the promotion of the receipt of an application. Whilst the requirement that the developer publicises the submission of an application, for instance through an advert in the local paper, is important, the receipt of a MIP proposal is a significant issue and should, ideally, be promoted nationally and regionally.

If the engagement process on the application preparation has been done appropriately, local communities, stakeholders and wider public will be aware of what is happening around the application. The extent / scale of engagement should be tailored to the planned proposal, e.g. more localised, small scale or a nationally significant MIPs, as advised by the IPC.

It is important that projects being considered by the IPC are of general knowledge and it would be appropriate for the IPC to take the lead role. For example, the IPC should publicly announce its receipt of a proposal and the planned process / timetable for the next stages of the application.

### **Electricity System**

The SDC believes that energy systems should be designed to be as efficient and carbon neutral as possible and relevant in scale to their customers requirements.

In dealing with major infrastructure it seems appropriate for the IPC to deal with issues concerning grid connection and access for remote renewables like tidal and offshore wind which need a central, strategic approach as the energy will be transmitted to sources of demand which may not be local. Other issues, such as undergrounding of transmission cables in areas of high landscape value, also need a strategic and inclusive approach and the SDC recommends that Ofgem is involved in this process as an additional statutory consultee.

However, issues such as heat networks, and related electricity networks for Combined Heat and Power, are very local in their application and decisions should be made at this level.

It is important that whilst the IPC would deal with major infrastructure, but by focusing on large scale solutions the Government should not allow this to restrict the development of smaller and more local energy solutions, particularly as regards decentralisation of supply and micro-generation.

### **Other routes to the infrastructure planning commission**

The White Paper is unclear as to the implications of this proposal but it seems to indicate that the IPC could determine smaller projects if directed by ministers, which adds an element of political involvement that the IPC is meant to remove. This would not be supported by the SDC.

### **Rationalization of consent regimes**

The SDC acknowledges that the current system is complex and confusing and welcomes the aim to develop a single unified regime. However, the proposal will give immense authority to the IPC, a body that is not democratically accountable. The SDC would need to see further details of how this would be realised and controlled before considering supporting the IPC wholeheartedly.

## **The Commission's mode of operation**

The SDC is concerned that the proposal for allowing such a small group as three Commissioners to determine a major application would not give the necessary breadth of expertise to carry out a full assessment. If the decision is to be based on sustainable development principles then a larger range of expertise will be needed, the SDC would recommend eight as the optimum number to ensure there is a balance of knowledge and interest. This group would have considerable influence and require proper consideration of the issues, without the vested interests that may be evident in a small number of Commissioners. For a smaller application the proposal may be more appropriate.

The SDC would also suggest that the process for every proposal that goes through the Commission is evaluated to ensure propriety and also ensure experiences and lessons are learnt to inform subsequent proposals. This is particularly important if the Commissioners themselves change or are time limited in their appointment.

## **Examination**

The SDC believes the reforms would certainly speed up the process but there are a number of questions regarding improving the opportunities for participation. If the majority of evidence is to be submitted in writing it will be important, in order to ensure openness and transparency, that access to all the papers is available – both original submissions and requests and responses for further technical clarification. The open access to all papers and negotiations could be provided via a dedicated website, this is not ideal but is better than nothing. Whatever form the publication of information takes, it should allow individuals to challenge assumptions made by participants.

It is not clear from the White Paper how public and local community interest will be addressed and balanced. One route would be that wider public views / opinion would be sought at the application preparation stage depending on the nature of the proposal.

The 'open floor' stage seems a positive move but further details are required as to how this would be facilitated and managed to ensure adequate representation. The proposals also need to be clearer about the purpose of the open floor stage; more clarity is needed than the current wording of "interested parties having their say about the application".

It will also be critical to build in a feedback mechanism to this process to explain how these interventions influence the final decision. This feedback mechanism needs to be in place throughout each stage of process – the new systems needs to clearly show how input, by all parties involved, is being used and what influence it has or does not have on the final decision and why?

Whilst the change from a cross examination process is welcomed, the setting of a statutory time limit of no longer than nine months seems too short for such potentially complex cases. Although the text allows for an extension, this requires the Chair to notify the Secretary of State and it is unclear why this would happen, unless it is to get approval, which indicates a level of Government involvement that the IPC is intended to remove.

The SDC recommends that the IPC makes its own assessment of how long each examination should take on a case by case basis, thereby establishing its expertise and independence.

## **Hard to Reach Groups**

The SDC acknowledges that this is a notoriously difficult area and welcomes the increase in funding to Planning Aid, a group doing valuable work. However, it is a very small organisation, which is not currently

operating in a pro-active way, i.e. they provide advice to people who seek them out and the eligibility criteria are quite strict. Legal advice is often the most important, most expensive and most difficult for small affected communities to access so it is crucial that free legal advice is available where people's livelihoods and properties are affected.

Local Authorities and developers should ensure that hard to reach groups have been participants in earlier stages of the project development, perhaps helping to engage with communities through structures such as the Council for Voluntary Service, etc. The role of Local Strategic Partnerships could also be utilised, providing they are resourced to complete this task.

The role of NGOs also has to be recognised as a means to link government (official structures / processes) with hard to reach groups, in the decision-making process. The 'open floor' stage may offer a way for the IPC to hear hard to reach groups, by providing a forum for those in the affected community to voice the views / opinions of that community, in the form of an 'expert citizen's panel'. This panel could consist of a range of local people who are identified in the preparation stage and supported and involved throughout the process, and therefore able to give 'expert' evidence to the IPC. The use of longitudinal expert citizen panels has been used effectively in other processes, for example, the development of the Health White Paper. If not mandatory, it could be an approach that the IPC could use depending on the nature of the proposal.

## **Decision**

The SDC is concerned that this proposal reads as a 'presumption in favour of development'. Whilst the IPC makes independent decisions, without reference to ministers, the approving of any application which had its main aims consistent with the relevant NPS will make it incredibly difficult for the IPC to reject a proposal, particularly when it has worked with the developer throughout the application process. This is compounded by the proposal that inconsistency would not necessarily lead to rejection if mitigating conditions could bring it to conformity, particularly when there are real capacity concerns about the ability of the LPA to enforce these conditions.

It appears that the only reason for the IPC to reject an application, when it is consistent with the NPS, is if its total local impacts are adverse and outweigh national interest which is an extremely hard test to meet.

Regardless of the decision made, it is critical that the IPC should be totally open and transparent about how the evidence gathered has been used, or not used, to inform the final decision and give a justification for that use, which includes the weighting given to national vs. local interest.

## **Conditions**

The SDC agrees that setting the conditions is an obvious role for the IPC as they are the body that has assessed the evidence. In assessing the costs, impacts and benefits of the proposed mitigation, it would be essential that this is based on a full assessment of the economic, environmental and social costs.

Where the SDC has real concerns regarding the passing of these conditions to the LPA for enforcement, this has substantial resource implications for LPAs that are struggling to enforce minor conditions from their own planning workload. Without considerable funding it is difficult to see how this would work effectively. There is also the need to establish protocols for how cross-border negotiations will be carried out in the allocating of enforcement responsibilities for large scale developments. The IPC needs to be clear that, in agreeing conditions, proper and full engagement around their implementation is a critical condition of every application. This will help address the political complication of an LPA having to enforce conditions it has not, itself, set nor may agree with during times of budget constraints.

## **Rights of Challenge**

As with the previous response to the legal challenge proposal, the SDC believes that six weeks is too short an opportunity for legal challenge and recommends that the timescale is extended to twelve weeks to bring it in line with the standard Judicial Review framework.

## **Commission's Skill Set**

The SDC believes that whilst the IPC skill set covers a fair range there is a need to expand it to provide a voice for a community representative and / or young people. The composition of individual specialisms means that the ability to consider the development holistically, thereby integrating those elements, may also be missing. Therefore, there is a need for additional skills covering a sustainable development approach, perhaps systems thinking, particularly if the IPC has to assess 'whole' costs. Without this element it is difficult to see how the IPC could develop a comprehensive picture and the requirement for this range of skills also strengthens the need to have decisions made by larger group of around eight Commissioners.

As ongoing advice from the IPC to the developers must be provided by the Secretariat, in order to ensure propriety, it is important that the Secretariat is also composed of the same skill set.

## **Joined Up Community Engagement**

The SDC supports the removal of the need to examine the Statement of Community Involvement as it is a fairly meaningless process in practice. However, the 'safeguard' of LPAs having to show how they have carried out community involvement needs robust supporting guidance or there may be a tendency for the LPA to do the minimum required due to resource pressures.

The new "duty to involve" is a positive move, but it needs to be backed-up by clear guidance on what effective 'involvement' means in practice (see Annex B). The SDC, along with CLG and Ministry of Justice, is co-funding an initiative People and Participation online, which provides guidance (including methodologies, examples, case studies) on how to develop bespoke, effective engagement processes which is applicable to central and local government.

It is easier to see how this duty would be applied for unitary authorities, but in two tier authorities there would need to be firm guidance drawn up as regards the relationship between counties and the districts, otherwise politics (both Party and local) would end up playing too great a role. The SDC would recommend that the regulations for plan preparation and public consultation are outlined in the Bill itself in order to generate confidence in the process.

## **Flexibility in the System**

The SDC supports the proposals that there should be more flexibility built into the planning system with regard to: responding to a successful legal challenge; not listing Supplementary Planning Documents in Local Development Schemes; and the use of discretionary powers by the LPA for minor amendments of a planning application.

## **Sustainability Appraisal and Supplementary Planning Documents**

The SDC acknowledges that a blanket requirement to submit all Supplementary Planning Documents (SPDs) to a sustainability appraisal (SA) may not be effective but rejects the assertion made in the White Paper that the appraisal process is necessarily an expensive and time consuming activity. An SA can be very succinct and effective, resulting in a vastly improved product if conducted early enough in project or policy development, and

a relatively minor SPD could be a better candidate for an SA due to its focused impact on a locality. The SDC recommends that the proposed guidance consults on criteria for the selection of relevant SPDs.

### **Permitted Development for Non Domestic Land and Buildings**

The SDC cautions against this proposal being introduced without proper consideration of the possible implications. At present, planning applications submitted to a local authority planning department are also considered by Environmental Health officials to assess nuisance implications, e.g. air, light and noise pollution. This assessment helps to set conditions on the proposed development, at the beginning of the planning process, and thereby reduces the likelihood of legal action for a resulting nuisance complaint at a later stage. Even a business operating in an area for many years may find its working practices curtailed if a resident in a new housing development objects. The move towards more mixed developments increases the risk of conflict between householder and business so it may be a retrograde step to try to make short term savings, in bypassing the planning system, and end up increasing the overall cost to the business and the local authority.

### **Neighbour Agreements**

The SDC sees no problem with this in principle, if all neighbours are in real agreement, however, such an approach would appear to be extremely difficult to apply in practice and could be seen as divisive in small communities where weaker voices may be manipulated.

## Principles for Effective Engagement

As more and more 'wicked issues' come to the top of the political agenda, there is a growing need for a new model of engagement between government, stakeholders and the public.

If we are to address 'whole systems' issues, to acknowledge scientific complexity, and to recognize the potential trade-offs between competing needs, we need to create a space for enlightened dialogue, debate and collective decision-making.

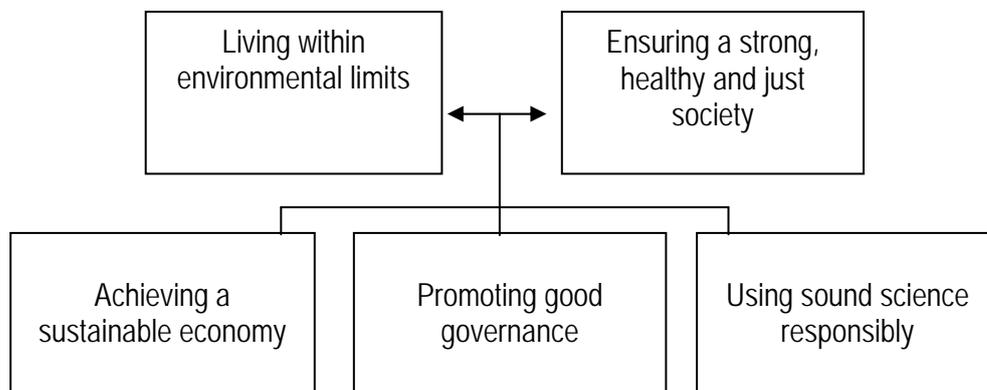
Engagement is more complex than consultation, but, done properly, it can be the means of developing solutions that are acceptable to a much broader public constituency. How do we broaden the scope of engagement, so that it is truly integrated within policy-making? How do we balance public and stakeholder expertise? And how do we scale up the many excellent examples of local engagement to meaningful nation-wide consultation?

As independent advisors, with a work programme dedicated to engagement and good governance, the Sustainable Development Commission would like to contribute its practical and theoretical experience into Government to help meet these challenges.

### Good governance and sustainable development

Alongside using sound science responsibly and achieving a sustainable economy, good governance is one of the principles underpinning the UK Sustainable Development Framework *One Future, Different Paths*, and the Sustainable Development Strategies for the four nations. The five principles form a basis for sustainable development policy in the UK, and help guide the work of the Sustainable Development Commission (SDC).

#### The principles of sustainable development



The SDC places great importance on promoting good governance. Our research, policy and practice point consistently to the need to shift from old style government to governance. In other words, we need to move from a model where experts decide (and then communicate their decision), to a model where responsibility and ownership is distributed beyond the Government.

At the heart of good governance is the need to engage the public and stakeholders systematically. A two-way engagement process deepens the understanding and commitment of both decision-maker and participant. In doing so stakeholders, citizens and consumers will not only be more prepared to make changes themselves, they will also be much more likely to permit, and not resist, the significant shifts in policy that sustainable development requires.

Some policy consultation exercises are based on a traditional model where a decision has largely been made within Government, announced, and then defended: traditional 'decide-announce-defend' (DAD). This sometimes results in unacceptable decisions that cause difficulties later. An engagement approach is more collaborative, and is an 'engage-deliberate-decide' (EDD) approach. This approach opens political space for decisions.

As more 'wicked' issues come to the top of the political agenda - climate change being an obvious and pressing example - having the tools to deal with complex debate and develop solutions that will be acceptable is going to be critical. The government cannot afford to rely on DAD approaches, or referenda, to engender the understanding and the commitment to action that we require.

### The benefits of public and stakeholder engagement

From the Government's perspective, public and stakeholder engagement offers the following direct benefits:

- a) **It informs** the public and key stakeholders, not only through direct/indirect provision of information but also by stimulating public **conversations** on key issues
- b) It ensures **acceptable consultation processes** which generate a full and usable understanding of the public's concerns and aspirations around key issues and decisions
- c) It allows the information gained through these processes to increase the **robustness** of the resulting policy, and the likelihood of its implementation.

In addition, an engagement programme would deliver the following strategic benefits in line with the Government's priorities on sustainable development and democratic renewal:

- d) Generate shared **ownership** and responsibility across society for addressing the difficult issues that we face. This will raise the likelihood of successful implementation of sustainable policies, rather than leaving Government in a defensive position searching for 'quick-fix' measures.
- e) Understand how to **engage the nation** in critical, long-term strategic decisions and change that involve significant complexity and uncertainty. Policy-makers will increasingly be presented with complex issues of strategic importance, which need to be dealt with as whole system rather than single issues, taking into account conflicting departmental objectives. A full 'public engagement' programme would enable significant shifts in policy and action.

### Delivering effective engagement programmes

To grasp the full range of benefits that engagement can bring, it should not be conceived as a single activity. It is about establishing new relationships in a range of ways throughout the decision-making process, from inception to implementation.

The most usual practice is one-way information exchange - consultation, communications, or both, at one specific point in the decision-making process. This is part of the old style government or DAD approach, and is more about defending than informing decision-making. Symptoms of the weaknesses of this approach are revealed when petitions and judicial reviews occur, and these will become increasingly common as a more demanding public recognise policies that do not deliver acceptable solutions.

### Principles for effective engagement

- **Clarity:** (1) ensure that the engagement starts with consideration of the problem to be addressed;—any buy-in to solutions can only follow buy-in to the problem; (2) Have absolute clarity over the aims and

the parameters of the engagement; what exactly are you trying to achieve, what level of support (and from whom) are you looking for, what can and can't be changed.

- **Integration:** (1) that the whole programme of relevant consultations, policies, and communication campaigns are joined up in such a way that Government can present a compelling story that makes sense to the public; (2) that the engagement process is a core part of the decision making process, not an add on
- **Independence:** (1) the process is overseen by a balanced and independent 'oversight group', which reviews both the process and content of the consultation; (2) the engagement is designed and delivered by professional independent process experts (3) there is a full independent evaluation of the process, established from the beginning.
- **Layered approach:** (1) The process should fit the needs of the audience. It is possible to layer different engagement activities, addressing different audiences and subjects. For example, technical discussions (such as reactor design or health and safety issues) can be conducted separately and in parallel to other public engagement processes. (2) Ensure clear links between the different layers and methods while ensuring sufficient people are engaged in appropriate ways. Methods include in depth deliberative methods, activities at different geographical scales, scaling up through communications campaigns in mass media and networks, testing findings through opinion polls, experiential exercises, self administered deliberative exercises, fact finding forums and investigations, on line conversations and consultation, building on any 'self started' engagement such as petitions. (3) Ensure engagement is done in phases throughout the decision-making process where possible, enabling each stage to be informed, rather than limiting to one specific point in time.
- **Follow through:** there should be a strong follow through to the engagement/consultation, enabling the nation to find out how the results were used and to take the opportunity to be part of the solution (e.g. making changes themselves).