

WIRRAL COUNCIL

CABINET 16th AUGUST 2007

REPORT OF THE DEPUTY CHIEF EXECUTIVE/DIRECTOR OF
CORPORATE SERVICES

**DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT -
PLANNING FOR A SUSTAINABLE FUTURE – PLANNING WHITE PAPER
– WIRRAL RESPONSE**

1. Executive Summary

- 1.1 The Government has published a White Paper 'Planning for a Sustainable Future', setting out its views on the future role of the planning system. This embodies the Government's approach to climate change, economic development (including the recommendations of the Barker Review and housing growth). The White Paper may be viewed at: <http://www.communities.gov.uk/index.asp?id=1510503>
- 1.2 The White Paper proposes a streamlining of the planning system, including relaxing controls on some forms of development and speeding up decisions on major infrastructure projects.
- 1.3 Responses are required by 17th August 2007. It is recommended that the responses set out in this report to the Government's consultation on the Planning White Paper be submitted as this Council's formal response.

2. Background

- 2.1 The Planning White Paper sets out the Government's core principles for the planning system:
 - i. Planning must be responsive, particularly to the challenges of globalisation and climate change, integrating economic, social and environmental objectives to deliver sustainable development;
 - ii. The planning system should be streamlined, efficient and predictable;
 - iii. There must be full and fair opportunities for public consultation and community engagement;
 - iv. The planning system should be transparent and accountable;
 - v. Planning should be undertaken at the appropriate level of Government
- 2.2 The White Paper addresses these principles in relation to two areas of work, major infrastructure projects and the town and country planning system.

Major Infrastructure Proposals

- 2.3 Major infrastructure projects are small in number but planning their delivery takes up a great deal of time and resources. For example, the 5th Terminal at Heathrow Airport took seven years from submission of the first planning application to decision, including a 46 month long Public Inquiry, followed by 18 months of writing up by the Inspector and 11 months for the Government to issue the final decision.
- 2.4 There is a lack of a clear national policy framework for the planning of major, national infrastructure such as airports, ports, improvements to the Strategic Road Network, power stations (including wind farms), major reservoirs and waste water treatment works.
- 2.5 The Government therefore propose to prepare national policy statements, subject to public consultation and Parliamentary scrutiny for nationally significant infrastructure which integrates environmental, economic and social objectives to deliver sustainable development.
- 2.6 Promoters of major infrastructure projects should be required to consult widely and engage with local stakeholders, including local authorities, statutory bodies and relevant highway authorities. At the planning approval process there should be fuller opportunities for public engagement.
- 2.7 Procedures for major infrastructure projects should be streamlined, including rationalising consent regimes and improved inquiry procedures. A clear separation of policy and decision making should be achieved by a new independent commission, taking decisions within the relevant national policy framework.

Town and Country Planning System

- 2.8 The Government proposes that the plethora of recent planning policy advice should be better focused, strategic and clearer, with Planning Policy Statement 1 – Delivering Sustainable Development (PPS1) at its heart. A new Planning Policy Statement – Planning for Economic Development should be published to reinforce the Government commitment, set out in PPS1 to promote a strong, stable and productive economy, with access for all to jobs, regeneration and improved employment prospects.
- 2.9 Town centre planning policy should be made more effective by replacing the need and impact tests with a new test with a strong focus on the town centre first policy, promoting competition and improving consumer choice, avoiding the unintended effects of the current need test.
- 2.10 The draft Planning Policy Statement (PPS) on Climate Change (reported to Executive Board 8th February 2007, Minute 274 refers) should be

issued as a final PPS, followed by legislation to set out the role of local planning authorities in tackling energy efficiency and climate change.

- 2.11 The Government propose to work with industry to set in place a timetable and action plan to deliver sustainable reductions in carbon emissions from new commercial buildings within the next 10 years.
- 2.12 Permitted development rights for microgeneration should be reviewed and where possible extended to cover non-residential types of land use including commercial and agricultural development.
- 2.13 Planning should be at the heart of local government by aligning the Sustainable Community Strategy and the Local Development Framework Core Strategy. The Government will work with stakeholders and the Local Government Association to build capacity, promote culture change in planning and issue 'place shaping guidance'.
- 2.14 Changes will be introduced to Local Development Frameworks to ensure a more streamlined and tailored process, with more flexibility about the number and type of plans, how they are produced and a more meaningful, engaged level of community involvement.
- 2.15 The Government will introduce Planning Performance Agreements, to help streamline the processing of major applications and support a properly resourced planning service, with changes to planning fees and consult on devolving the setting of planning fees to local authorities.
- 2.16 A new impact approach to householder development will reduce the number of minor applications, whilst protecting the interests of neighbours, the wider community and the environment. This approach could then be extended to other types of development.
- 2.17 The Government proposes to streamline the planning application process, reducing the number of applications called in by ministers and introducing a range of measures to substantially improve the appeals process.

Barker Review, Stern and Eddington

- 2.18 Many of the White Paper's recommendations have been derived from the reviews carried out into the planning system by Kate Barker for the Treasury ('Review of Land Use Planning', December 2006, HMSO). Annex B to the White Paper sets out the Government's response to Kate Barker in more detail. The White Paper includes the challenge of the need to increase housing supply, so that people's aspirations for good quality, affordable housing can be met.
- 2.19 The challenge of Climate Change has been highlighted by the Stern Review which makes it clear that ignoring Climate Change will eventually damage economic growth, people's health and the natural environment.

On 13th March 2007, the Government published the Climate Change Bill which introduces a clear, credible, long-term framework for the UK to achieve its goals of reducing carbon dioxide emissions and adapt to the impacts of climate change.

- 2.20 Climate Change is of course linked to the need to improve the supply of renewable energy and the production of energy from non-fossil fuel sources. The White Paper recognises the need to modernise infrastructure through the construction of new liquefied natural gas terminals to replace supply sources in the North and Irish Sea. The Government has also issued an Energy White Paper and a consultation on the Future of Nuclear Power, which together consider the future of energy supply.
- 2.21 Rod Eddington reported to the Government (The Eddington Transport Study', December 2006, HMSO) on how transport infrastructure should be improved, in order to support economic productivity, growth and stability, within the context of the Government's commitment to sustainable development. Eddington recommended that Ministers should set out national policy statements for major infrastructure development. Consent regimes should be rationalised and there should be a presumption in favour of major infrastructure developments, so long as they were consistent with national policy statements and compatible with EU law and the European Convention on Human Rights.

3. Response to Consultation Questions

- 3.1 Consultation responses on the Planning White Paper are framed through a series of questions. It is recommended that the following responses be made:

Question 1. The proposed package of reforms

Do you agree that there is a strong case for reforming the current system for planning for nationally significant infrastructure?

- 3.2 There is a current deficit in the planning of nationally significant infrastructure and improved co-ordination would ensure that the benefits of growth in infrastructure such as ports and airports could be shared across the country.

Do you agree, in principle, that the overall package of reforms proposed here achieve the objectives that we have set out?

If not, what changes to the proposed reforms or alternative reforms would you propose to better achieve these objectives?

- 3.3 National policy statements for infrastructure would be of benefit but should not merely repeat the current focus on development in the South

East. They should also integrate differing Government Departments' objectives, for example for transport, for water supply and for energy.

- 3.4 The proposed Infrastructure Planning Commission will provide a welcome and valuable separation of policy and decision-making. However, the Commission must be democratically accountable, probably to Parliament. Commissioners should be independent but highly skilled in their fields.
- 3.5 National policy statements should be set within a national planning framework or spatial strategy as exists in Wales. This would provide the context for individual Regional Spatial Strategies. However, there is little information within the White Paper about how such a national spatial strategy could be subject to public consultation.
- 3.6 A national spatial strategy would also have to be subject to sustainability appraisal and Habitats Regulations Assessment (Appropriate Assessment). The White Paper commits the Government to undertake proper sustainability appraisal of the national policy statements, although the White Paper appears to neglect the need to conduct a Habitats Regulation Assessment, where a statement would have significant effects on nature conservation sites covered by the European Habitats Directive.
- 3.7 Without a national spatial strategy it is possible that the ad hoc issue of national policy statements could result in RSS and Local Development Frameworks becoming out of date and/or superseded.

Question 2 Introduction of national policy statements

Do you agree, in principle, with the introduction of national policy statements for key infrastructure sectors in order to help clarify government policy, provide a clearer strategic framework for sustainable development, and remove a source of delay from inquiries?

- 3.8 The production of national policy statements is a welcome means of providing clear guidance on the need for infrastructure, although they should be integrated, both at Government level and able to provide for appropriate levels of advice through RSS and to individual local authorities LDFs.

If not, do you have any alternative suggestions for helping to achieve these objectives?

- 3.9 No comment.

Question 3 Content of national policy statements

Do you agree that national policy statements should cover the core issues set out above?

- 3.10 Agree with the core issues set out in the consultation, although a full Sustainability Appraisal should be considered and not a Strategic Environmental Assessment, in order to ensure that environmental, economic and social issues are fully balanced.

Are there any other criteria that should be included?

- 3.11 The Mayor of London has introduced policies to protect strategic wharf facilities and bus depots to ensure that they are not redeveloped for other uses and lost as key infrastructure assets. The national infrastructure plan/national policy statements should include a safeguarding policy to protect strategic facilities such as disused rail lines, rail freight terminals, wharf facilities, ferry terminals and ship repair facilities.
- 3.12 National policy statements should also ensure that the surface access implications associated with major infrastructure developments, particularly ports and airports are adequately addressed. It is essential that the need for appropriate upgrades and capacity improvements on the rail network is recognised in the national policy statements, with an expectation as to whether the improvements will be funded publicly or privately.

Question 4 Status of national policy statements

Do you agree, in principle, that national policy statements should be the primary consideration for the infrastructure planning commission in determining individual applications?

If not, what alternative status would you propose?

- 3.13 If the Government is to introduce national policy statements, their status under the Planning and Compulsory Purchase Act 2004 will have to be clarified. The 2004 Act sets out the primacy of the development plan (RSS and the LDF), whilst national policy is a material consideration.
- 3.14 Under this principle, a nationally important infrastructure project could be contrary to the development plan but supported by national policy. This raises both issues of local democratic accountability and difficulties of enforcement for a local planning authority which may not have consented the proposal.

Question 5 Consultation on national policy statements

Do you agree, in principle, that these proposals would ensure effective public engagement in the production of national policy statements, including with local communities that might be affected?

Are there any additional measures that would improve public and community engagement in their production?

- 3.15 In principle, the White Paper proposals appear to provide for effective public consultation, although conflicts between individual District Councils' Statements of Community Involvement have not been considered by the Government. This is because a major infrastructure project may affect people over a wide area (possibly even internationally).

Question 6 Parliamentary scrutiny

Do you agree, in principle, with the intention to have Parliamentary scrutiny for proposed national policy statements?

What mechanisms might ensure appropriate Parliamentary scrutiny?

- 3.16 It is essential that national policy statements are subject to democratic scrutiny. One model might be the establishment of a dedicated Parliamentary Select Committee, whose brief relates to the whole process of major infrastructure provision, including the production of national policy statements and the oversight of the Commission.

Question 7 Timescale of national policy statements

Do you agree, in principle, that 10-25 years is the right forward horizon for national policy statements?

If not, what timeframe do you consider to be appropriate?

- 3.17 Regional Spatial Strategy has to have a 21-year time horizon, whilst the Core Strategy of a Local Development Framework has to cover 15 years as a minimum (housing policy within PPS3). A time period of 25 years for national policy statements would be consistent with these time horizons and provide certainty to project promoters and local planning authorities.

Question 8 Review of national policy statements

Do you agree that five years is an appropriate period for the Government to consider whether national policy statements remain up to date or require review?

- 3.18 Whilst five years is an appropriate timescale for review, synchronisation should be achieved with RSS reviews.

What sort of evidence or circumstances do you think might otherwise justify and trigger a review of national policy statements?

3.19 If the principles of Plan, Monitor and Manage are followed, then evidence would be gathered to provide for the monitoring of development and trigger review. This would be especially pertinent if the national policy statements were set in the context of a national spatial strategy.

3.20 The White Paper is silent on the responsibility for such reviews. What is the role of statutory consultees, including local planning authorities?

Question 9 Opportunities for legal challenge

Do you agree, in principle, that this opportunity for legal challenge would provide sufficient and robust safeguards to ensure that a national policy statement is sound and that people have confidence in it?

3.21 The White Paper is not clear on the grounds for challenge, particularly by using the term 'irrationality'. It is essential that there is the opportunity for legal challenge but it is not clear who would qualify as being affected by a policy.

If not, what alternative would you propose?

3.22 In addition to the policy statement itself being open to challenge, the evidence underpinning the statement should also be open to challenge. Six weeks is not an adequate time period in which to mount a challenge and 12 weeks might be more appropriate.

Question 10 Transitional arrangements

Do you agree, in principle, that subject to meeting the core elements and standards for national policy statements set out in this White Paper, policy statements in existence on commencement of the new regime should be capable of acquiring the status of national policy statements for the purposes of decision making by the commission?

3.23 Whilst this might be acceptable as a means of constructing a framework of national policy statements, some may not have been subject to Sustainability Appraisal and Habitats Regulation Assessment and could therefore be open to legal challenge. Little weight could be attached to the older statements, which were contrary to SA and HRA principles.

If not, what alternative arrangements do you propose?

3.24 Where extant policy statements have not been prepared in accordance with all statutory requirements, then they should be reissued as national policy statements following these procedures.

Question 11 The preparation of applications

Do you agree, in principle, that promoters should have to prepare applications to a defined standard before the infrastructure planning commission agrees to consider them?

- 3.25 Yes but it is not clear how preparation (and determination) is to be influenced by the relevant local planning authorities, particularly where a proposal is of significance to more than one local planning authority.

Question 12 Consultation by promoters

Do you agree, in principle, that promoters should be required to consult the public before submitting an application to the infrastructure planning commission?

- 3.26 It is now a principle of public consultation on planning applications that a project promoter should consult residents and stakeholders early in the process.

Do you think this consultation should take a particular form?

- 3.27 This should be in accordance with the Statement of Community Involvement of the relevant local planning authority, which should also be consulted.

Question 13 Consulting local authorities

Do you agree, in principle, that relevant local authorities should have special status in any consultation?

- 3.28 Local planning authorities are essential to consultation on major infrastructure project proposals, representing residents at the local authority level.

Do you think the local authority role should take a particular form?

- 3.29 Local planning authorities should be consulted early in the process, so that they can better inform residents.
- 3.30 There is no reference to the amount of fees likely to be payable by the promoters of major infrastructure projects, nor if the local planning authorities directly affected will retain any element of such a fee. There is no guidance on which body would monitor the implementation of a major infrastructure project, including monitoring any planning conditions that might be applied.

Question 14 Consulting other organisations

Do you agree, in principle, that this list of statutory consultees is appropriate at the project development stage?

3.31 Subject to clarification of the inclusion of landowners within the list, it appears appropriate.

Are there any other bodies not included who should be?

3.32 Passenger Transport Authorities and Executives should be included. It is not clear if the Ministry of Defence is included in the list of consultees, particularly where proposed infrastructure may impact on defence capability. Some major infrastructure projects (eg nuclear power stations, ports and offshore windfarms) may have international implications.

Question 15 Statutory consultees' responsibilities

Do you agree, in principle, that the Government should set out, in legislation, an upper limit on the time that statutory consultees have to respond to a promoter's consultation?

If so, what time limit would be appropriate?

3.33 Due to the scale of many major infrastructure proposals and the need to ensure adequate time for consultation and (in local authorities) decision, a time limit of 18 weeks may be appropriate.

Question 16 The infrastructure planning commission's guidance role

Do you agree, in principle, that the commission should issue guidance for developers on the application process, preparing applications, and consultation?

3.34 The Commission should not issue guidance, which should be issued by Government Regulations, following legislation.

Are there any other issues on which it might be appropriate for the commission to issue guidance?

3.35 The Commission might provide advice on the level of evidence required in support of an application.

Question 17 The infrastructure planning commission's advisory role

Do you agree, in principle, that the commission should advise promoters and other parties on whether the proposed project falls within its remit to determine, the application process, procedural requirements, and consultation?

3.36 Such considerations should be set out in legislation or the national policy statements via clear, measurable thresholds. Decisions should not be made on an ad hoc basis, as this could prove wasteful to promoters and local planning authorities in pre-application preparation.

Are there any other advisory roles which the commission could perform?

3.37 The Commission could have a role in advising on the review of national policy statements.

Question 18 Rules governing propriety

What rules do you consider would be appropriate to ensure the propriety of the commission's interactions with promoters and other parties?

3.38 Clear thresholds set out in legislation or national policy statements would assist in limiting the scope of the Commission. Overview by a Parliamentary Select Committee would assist in maintaining probity, particularly if its role allowed for scrutiny of decisions. Embedding the opportunity for legal challenge within the process would also ensure propriety.

Question 19 The commission's role at the point of application

Do you agree, in principle, that the commission should have the powers described above?

3.39 Subject to clarification of the applications able to be considered by the Commission, through legislation or national policy statements, the Commission should be able to advise applicants on the adequacy of the evidence in support of an application.

Are there any other issues the commission should address before or at the point of application?

3.40 No

Question 20 Scope of infrastructure planning commission

Do you agree, in principle, that these thresholds are appropriate?

3.41 There are anomalies in relation to transport projects.

If not, what alternative thresholds would you propose?

3.42 Rail infrastructure should be included, as essential for economic, social and increasingly environmental reasons. To some extent this matter is being addressed through the Rail White Paper but national commentators have already noted that the Rail White Paper does not provide for a comprehensive national strategy.

3.43 Some elements of the Strategic Road Network could not be described as key national infrastructure. The introduction of Regional Funding Allocations has seen the Trunk Road Network split into two for major

scheme considerations: strategic national and regional, the former comprising mainly motorways. This split requires clarification as it is not clear from the White Paper whether the Strategic Road Network is the entire Trunk Road Network or only those routes categorised as being of strategic national importance. If it is the former, there could be perverse outcomes with relatively small trunk road improvements being remitted to the Commission but not relatively large local authority transport proposals (road and public transport schemes).

3.44 The discrepancy between the treatment of road and rail schemes should be clarified, as there appears to be no reference to assimilation between the Planning White Paper and the Rail White Paper within the latter document. The Government appears to rely on the Office of Rail Regulation and the Railways Act 2005.

3.45 The White Paper proposes a threshold for airports whereby an application for runways or infrastructure which increases capacity by 5 million passengers per annum would be dealt with by the Commission. This increase in throughput could mean a different scale of increase for different airports, depending on current throughput. This threshold should be expressed as a percentage increase on current throughput.

3.46 For all transport infrastructure proposals, there should be stronger links between the planning and funding processes, as it is often the funding process that is critical in holding up delivery of infrastructure.

Question 21 Electricity system

Do you agree, in principle that all projects necessary to the operational effectiveness, reliability and resilience of the electricity transmission and distribution network should be taken by the commission?

If not, which transmission and distribution network projects do you think could be determined locally?

3.47 The planning process for offshore windfarms has been criticised in Wirral for the lack of involvement by residents and the local planning authority. The proposals within the White Paper and within the recent consultation on the Marine Bill (Cabinet 7th June 2007, Minute 71 refers) should better engage local authorities such as Wirral on such issues. Thresholds should be developed at an appropriate level, dependent upon the categorisation of electricity projects. Better engagement on the off-shore generation projects should prevent the consideration of onshore transmission facilities becoming a fait accompli, where these might be contentious.

Question 22 Gas infrastructure

Do you agree, in principle that the consenting regime for major gas infrastructure should be simplified and updated, rationalising the regime to bring nationally significant decision making under the commission?

3.48 No comment.

Question 23 Other routes to the infrastructure planning commission

Do you agree, in principle, that it is appropriate for ministers to specify projects for consideration by the commission via national policy statements or ministerial directions to the commission?

3.49 Ministerial decisions in this regard should be used only sparingly. Where such decisions are made, they should be the subject of scrutiny by Parliament in order to ensure propriety.

If not, how would you propose changing technology or sectoral circumstances should be accommodated?

3.50 Given that it is proposed that national policy statements would be reviewed every 5 years and that they have a timescale of 15-25 years, it would be surprising if such changes emerge so quickly as not to be able to be accommodated by this process of review.

Question 24 Rationalisation of consent regimes

Do you agree, in principle, that the commission should be authorised to grant consents, confer powers including powers to compulsorily purchase land and amend legislation necessary to implement nationally significant infrastructure projects?

3.51 Whilst the rationalisation of consent regimes could speed up the delivery of infrastructure, the proposed powers to be vested in the Commission are extensive and must be subject to full scrutiny and accountability. They are also very varied powers, eg. Planning and compulsory purchase powers can have quite different tests and requirements. Human Rights legislation would have to be fully taken into account in meeting CPO requirements. The White Paper does not set out whether the Government is proposing new legislation to integrate these disparate requirements.

3.52 Although it is to be welcomed that the White Paper proposes that sub-regional or local decisions (eg Transport and Works Act Orders for guided bus and Light Rapid Transit systems) should be taken at the appropriate sub-national level, there is still uncertainty about the exact democratic mechanism for co-ordinating such decisions. This is clearly an issue for the emerging proposals for the reform of Passenger Transport Authorities and potential models for city-region governance.

- 3.53 Unified planning consent mechanisms for schemes of regional and sub-regional significance should be explored by DCLG as part of this process, eg unified planning, highways, CPO and Listed Building Consent, to reduce the multiple consent system that often adds delay, cost and confusion in the promotion of local schemes.

Are there any authorisations listed that it would be inappropriate to deal with separately, and if so which body should approve them, or that are not included and should be?

- 3.54 No comment.

Question 25 The commission's mode of operation

Do you agree, in principle, that the proposed arrangements for the commission to deal with cases is an appropriate way to ensure that consideration is proportionate and that an appropriate range of specialist expertise is brought to bear on the final decision?

- 3.55 As long as the Commission's decision and decision-making process was subject of full scrutiny and accountability, the proposed mode of operation would be appropriate. There is concern however, over the primacy of a decision made by an unelected Commission potentially overruling the provisions of a development plan prepared by an elected local authority.

If not, what changes or alternative mode of operation would you propose?

- 3.56 A mechanism could be established so that the Infrastructure Planning Commission can in some way report to Parliament as this would at least give it some democratic accountability or at least be held accountable by a democratic institution. This would be consistent with The Prime Minister, Rt Hon Gordon Brown's recent announcement about proposed constitutional reforms to give more powers to Parliament.

Question 26 Preliminary stages

Do you agree, in principle that the list of statutory consultees set out above is appropriate at the determination stage?

- 3.57 Whilst the list of statutory consultees appears appropriate, clarification is required as to the process of consulting relevant Government Departments such as the MOD and DEFRA. Would such consultations be publicly available?

Are there any bodies not included who should be?

- 3.58 No.

Question 27 Examination

Do you agree, in principle that the procedural reforms set out above would improve the speed, efficiency and predictability of the consideration of applications, while maintaining the quality of consideration and improving the opportunities for effective public participation?

- 3.59 The proposed procedural reforms appear to be quicker than the current system of public inquiries. However, there does not seem to be a mechanism for debating the merits or otherwise of compulsorily acquiring land and buildings. CPO inquiries are complex for good reason, as the taking of land and buildings has to be fully justified and compensation paid. The White Paper proposals appear to underestimate the impact of Human Rights legislation and the prospect of legal challenge which would slow the process.

If not, what changes or other procedural reforms might help to achieve these objectives?

- 3.60 No comment.

Question 28 Hard to reach groups

What measures do you think would better enable hard to reach groups to make their views heard in the process for nationally significant infrastructure projects?

- 3.61 Information should be easily and readily available, and communicated to groups in a variety of media and tone. Formal responses should not be expected from all groups and every effort should be made to be flexible in the way the Commission considers information submitted.

How might local authorities and other bodies, such as Planning Aid, be expected to assist in engaging local communities in the process?

- 3.62 Local planning authorities and Planning Aid can be given advance notice of a project (in accordance with the principles of pre-application consultation) and either makes their database of community contacts available (subject to Data Protection Act) or act as agents for the promoters in the consultation process (subject to reasonable charges). Local authorities could also develop their existing partnerships, particularly Local Strategic Partnerships.

Question 29 Decision

Do you agree that the commission should decide applications in line with the framework set out above?

If not, what changes should be made or what other alternative considerations should it use?

- 3.63 The framework appears to set out a logical process, in that the Commission would make its decision independently, with regard to legislation, national policy statements and the detail of the development proposal.
- 3.64 The Government needs to clarify the position and weight to be attached to the statutory development plan. It appears from the White Paper that the national policy statement would have precedence. This represents a major change in legislation and raises issues of local democratic accountability in the planning process.

Question 30 Conditions

Do you agree in principle that the commission should be able to specify conditions in this way, subject to the limitations identified, and for local authorities to then enforce them?

If not what alternative approach would you propose?

- 3.65 It is important that in granting planning permission for development, the Commission should be able to impose conditions which are required to enable the development to proceed. Who is to monitor and enforce those conditions is a matter to be clarified. If it is to be local planning authorities then adequate resources must be identified, along with a recognition of the role to be played by the local planning authority in a decision over which they had little or no control.

Question 31 Rights of challenge

Do you agree, in principle, that this opportunity for legal challenge to a decision by the infrastructure planning commission provides a robust safeguard that will ensure decisions are taken fairly and that people have confidence in them?

If not, what alternative would you propose?

- 3.66 It is important that decisions can be challenged, although the proposal that this can be done by any member of the public or organisation 'likely to be affected by the proposal' is curious and extremely difficult to define for a major infrastructure project. The grounds for challenge should be clearly set out.
- 3.67 Preparation of a National Spatial Strategy could reduce the opportunity for legal challenge, as it would provide a coherent strategy, already subject to public consultation.

Question 32 Commission's skill set

What experience and skills do you think the commission would need?

- 3.68 There will need to be a wide range of knowledge and experience represented on the Commission, including at the least planning, transportation (land, sea and air), environmental sustainability and law. It may also be necessary to engage particular skills for specific projects.

Question 33 Delivering more renewable energy

What types of non-residential land and property do you think might have the greatest potential for micro-generation and which should we examine first?

- 3.69 It may be beneficial to examine public buildings such as leisure centres, schools, hospitals and Government offices before other potential sites. Industrial areas and buildings would probably be likely to receive the least objection from local communities.

Question 34 Joined up community engagement

We think it is important to enable a more joined up approach to community engagement locally. We propose to use the new duty to involve to ensure high standards but remove the requirement for the independent examination of the separate planning Statements of Community Involvement. Do you agree?

- 3.70 Providing the public with clear expectations of process and timetable from the outset (provided that these expectations are subsequently met) is considered a positive feature of the new system. The proposed new statutory best value duty to appropriately involve, as well as inform and consult, would embed community involvement into all the local authority's functions, including planning. I would therefore support removing the requirement for examination of the separate planning Statement of Community Involvement through the Planning Inspectorate. Although as a contribution towards streamlining the system, it is considered that the benefits of this change will be very limited, as most authorities have already adopted their SCIs.

Question 35 More flexible response to a successful legal challenge

Do you agree that the High Court should be able to direct a plan (both at local and regional level) to be returned to an earlier stage in its preparation process, rather than just the very start?

- 3.71 I agree that the High Court should be able to return a plan to an earlier stage rather than the very beginning. I feel that it would be beneficial if the Planning Inspectorate could also return a plan to an earlier stage as an alternative to finding a submitted plan unsound and requiring the local planning authority effectively to start again from scratch.

Question 36 Removing the requirement to list Supplementary Planning Documents in Local Development Schemes

Do you agree, in principle, that there should not be a requirement for supplementary planning documents to be listed in the local development scheme?

- 3.72 A fundamental function of the Local Development Scheme is to set out the Council's programme for the preparation of the Local Development Framework. Whilst for the sake of speed it is desirable that SPDs not be referred to central government, we are concerned that if the SPDs are not listed in the Local Development Scheme members of the public will be less aware of their existence. Whilst the White Paper proposes that local authorities would still be expected to publicise their plan making programmes, including SPDs, I am concerned that this could be confusing to the public.

Question 37 Sustainability appraisal and Supplementary Planning Documents

Do you agree, in principle that there should not be a blanket requirement for supplementary planning documents to have a sustainability appraisal, unless there are impacts that have not been covered in the appraisal of the parent DPD or an assessment is required by the SEA directive?

- 3.73 I agree that there should not be a blanket requirement for SPDs to have a Sustainability Appraisal (SA). Experience to date with the issue based SPDs produced in Wirral is that the SA process results in little or no changes to the SPD as originally drafted. SAs for SPDs often involve duplicate work and do not add anything to the plan making process.
- 3.74 I consider that the procedure for Sustainability Appraisal, Strategic Environmental Assessment and Habitats Regulations Assessment is over elaborate and onerous. While the Government has focused on SAs, the most onerous regulatory requirements result from SEA. There remains a lack of clarity and uncertainty over the applicability of the SEA regulations to SPD level plans. The on going delay in the finalisation of the Habitats Regulations Assessment Guidance is a cause for concern. I feel that this is undermining the original objectives of the 2004 review, of simplicity, speed and predictability. I believe that it would be more beneficial to have one set of revised regulations.

Question 38 Permitted development for non domestic land and buildings

Which types of non residential development offer the greatest potential for change to permitted development rights? What limitations might be appropriate for particular sorts of development and local circumstances?

3.75 No comment

Question 39 Neighbour agreements

What is your view on the general principle of introducing a streamlined process for approval of minor development which does not have permitted development rights and where the neighbours to the proposed development are in agreement?

3.76 I share concern about development being conditional on neighbour agreement. Regulation through planning applications is the most appropriate method to ensure the impact on neighbours' amenity and the character of an area is properly assessed.

Question 40 Minor amendments of planning permission

*Do you agree that it should be possible to allow minor amendments to be made to a planning permission?
Do you agree with the approach?*

3.77 Yes, where these have no material impact.

4. Directors Comments and Conclusions

4.1 The 2004 review of the planning system started out with admirable objectives: simplicity, speed and predictability, community engagement and customer focus. I am pleased that there is a facility to update parts of the LDF separately and theoretically that this will allow the LDF to be responsive. However, I consider that the new system has been hamstrung with over elaborate procedures that fatally undermine the achievement of those objectives.

4.2 It is unclear as to what a final LDF will look like and what constitutes a 'sound' plan. It is difficult for the public to comprehend its role in the process; it is equally difficult for the profession to keep up to date with the volume of policy, guidance and best practice that has been issued by the Government and its various agencies in the last few years. One of the objectives of the new system was to slim down and sharpen up Government Guidance on policy and practice, but the reverse seems to have been happening.

4.3 The proposed 28 month and 12 – 13 month timescales for the production of a Development Plan Document set out in the White Paper are unrealistic. The process that is involved in the preparation of a Development Plan Document is time consuming. This is due to a number of factors including:-

- The expectation of the level of detail to be contained in the evidence base requires considerable research and data collection;

- The time that it takes to carry out a Sustainability Appraisal, Strategic Environmental Assessment and Appropriate Assessment;
 - The amount of consultation; and,
 - The report writing and 'in-house' approval processes.
- 4.4 Most members of the public, including the business community, find it harder to relate to the more abstract strategic levels of planning. Whilst Regional Strategies may relate better to key issues with shared characteristics, they are not always well understood by the general public and can present other problems such as difficulty in data collection. The use of jargon and acronyms make it difficult for members of the public to participate in the process
- 4.5 The absence of any directly elected body to be accountable for the Regional Spatial Strategy has also led to accusations of a democratic deficit, undermining its credibility with the public. Both of the above factors mean that disaffected interests are more likely to look for means (ranging from litigation to direct action) outside the planning process to challenge its outcomes. Given the public's rejection of elected regional government, this democratic deficit is a shortcoming that will not be readily resolved.
- 4.6 I support strengthening the policy of 'town centre first', as this supports both environmental sustainability and social equity.
- 4.7 Although measures to simplify the process and number of development proposals requiring planning permission are welcome, there may be conflicts between neighbours without a satisfactory means of resolution and local planning authorities may find themselves having to expend more resources on enforcement, thus negating any benefits from the reduction in planning applications.
- 4.8 Clarification is also required on financial implications for local planning authorities of the White Paper's proposals to simplify planning permission processes. What will be the impact on local planning authorities' income of reducing the number of householder and minor development applications?
- 4.9 Recognition that the time scale for dealing with planning applications for particular major projects should be greater than 13 weeks is welcome. Further thought should, however, be given to how the mechanism would work, for example the timetable for similar developments for different developers could differ under the notion of Planning Performance Agreements, which in turn could lead to an inequitable system as well as giving an impression of favouritism.

5. Financial and Staffing Implications

- 5.1 There are no direct financial or staffing implications arising from this report. However, if there is a relaxation in planning control for some forms of development that currently require planning permission, this will have a negative impact on the income derived from planning application fees, which is at present not quantifiable. Further reports will be brought to Members on the financial and staffing implications if these proposals become law.

6. Equal Opportunity Implications

- 6.1 There are no equal opportunity implications arising directly from this report.

7. Human Rights Implications

- 7.1 There are no human rights implications arising directly from this report.

8. Community Safety Implications

- 8.1 There are no direct Community Safety Implications arising from this report.

9. Local Agenda 21 Implications

- 9.1 There are no direct Local Agenda 21 Implications arising from this report.

10. Planning Implications

- 10.1 The relaxation of planning control over some forms of development that currently require planning permission will reduce the level of control that can be exercised over such forms of development. This may have a negative impact on the built environment.

11. Anti-poverty Implications

- 11.1 There are no specific anti-poverty implications arising out of this report.

12. Social Inclusion Implications

- 12.1 There are no specific social inclusion implications arising from this report.

13. Local Member Support Implications

- 13.1 There are no specific member support implications arising from this report.

14. Background Papers

- 14.1 The following background paper has been used in the preparation of this report:

- (i) 'Planning for a Sustainable Future – White Paper', Department for Communities and Local Government, May 2007

http://www.communities.gov.uk/pub/669/PlanningforaSustainableFutureWhitePaper_id1510669.pdf

- (ii) 'Delivering a Sustainable Railway – White Paper', Department for Transport, July 2007

<http://www.dft.gov.uk/about/strategy/whitepapers/whitepapercm7176/whitepapersummarybooklet>

15. Recommendation

That the responses set out in this report to the Government's consultation on the Planning White Paper be submitted as this Council's formal response.

J Wilkie

Deputy Chief Executive/Director of Corporate Services

This report has been prepared by Richard Lewis of the Forward Planning Section, who can be contacted on 691 8222.