

**RESPONSE TO NATIONAL INFRASTRUCTURE PLANNING
REFORM PROGRAMME: STAKEHOLDER SURVEY**

DEPARTMENT FOR LEVELLING UP, HOUSING AND COMMUNITIES

1. Please provide your name

Compulsory Purchase Association (CPA). More details about the CPA are provided in response to question 11.

2. Please provide your email address

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3. What could government, its arms-length bodies and other statutory bodies do to accelerate the speed at which NSIP applications can be prepared and more generally to enhance the quality of submissions?

The CPA believes that earlier and better quality engagement with directly affected parties would improve the speed at which applications are processed (by reducing the number or extent of representations), improve the quality of submissions (by having more targeted mitigation addressing identified impacts at the point the application is submitted) and improve the likelihood of applications being accepted for examination.

There are two key issues that need to be addressed to improve that engagement:

- Ensure that acquiring authorities are engaging with directly affected parties, not just on the acquisition of their land or rights, but on the impact and effect of the project and agreeing at an early stage appropriate mitigation for that. Whilst there is a requirement for a statutory consultation in relation to a proposed project, this does not replace targeted engagement with directly affected parties to fully understand a project's impact. To that end the CPA has previously proposed to DLUHC, amendments to DLUHC's "Guidance on Compulsory Purchase" (which addresses Compulsory Purchase Orders (CPOs)) that will encourage that better quality engagement. A copy of those proposals is attached to this response. Similar amendments could be made to the practice guide on compulsory purchase for Development Consent Orders (DCOs) to ensure that the

guidance for DCOs is consistent with amended CPO guidance. This should both reduce the level of objections, improve the quality of submissions (reducing the risk of rejection of an application) and improve relations between acquiring authorities and affected parties. Good relations at an early stage are crucial because once trust is lost it can be very hard to regain. These changes could be brought into effect without the need for legislation.

- Addressing the issue of resources and costs. This remains a perennial issue amongst all affected parties and it delays affected parties properly addressing their minds to the scheme or being able to receive advice that will allow them to effectively engage with the process to the benefit of both the acquiring authority and affected party. We address the issue of costs in more detail in response to question 9.

We have also received comments that people are concerned that DCO applications are coming forward that are not “policy” compliant and are ultimately refused. From an affected party’s perspective where this occurs, an affected party has either had to deal with the prospect of compulsory purchase and impact of the proposed project during that period (often having to use their own resource to do so) or in fact has agreed to sell or sold the relevant land or rights for the project.

Our members are therefore concerned that projects coming forward should be deemed policy compliant at an early stage of the process to avoid unnecessary uncertainty. This certainly means having up to date National Policy Statements and could potentially involve an early determination of policy compliance. Changes in or uncertainty over government policy during the progress of a project at any stage of a project also detrimentally impacts affected parties who ultimately bear the brunt of that uncertainty.

4. Following submission, are there any aspects of the examination and decision process which might be enhanced, and how might these be improved?

Given the nature of NSIPs and their scale, the CPA believes that the timescales set for examination and determination are the minimum required. In fact, deadlines come so frequently during a DCO

examination that affected parties often feel that acquiring authorities are spending an insufficient amount of time directly engaging with them to resolve issues and instead dedicating their time to preparing responses to deadlines. This often means no real progress is made to resolve issues between deadlines.

The CPA considers the greatest efficiencies can be made pre-application and post-decision where most of the time delivering a project is spent.

However, in terms of the examination and decision processes the CPA has the following comments:

- Increasingly change requests are being made during the examination. Sometimes this is to support agreements made but where this is the case it often shows a lack of early engagement and/or design work for points that could have been addressed on application had appropriate early engagement with affected parties been made pre-application. In general, large number of change requests are not helpful to affected parties already grappling with a complex process.
- The CPA supports the continuation of hybrid hearings where appropriate.
- Attendance at the whole of a hearing where a party only has a small part to play adds costs to affected parties whether public or private. Consideration should be given as to how time and costs for affected parties could be minimised. Members inform us that the ExA are increasing expecting a wide range of attendance at hearings and for the whole length of those hearings.
- Extensions of examination periods should be very limited as this increases the delay in affected parties having the certainty of an outcome and increases both the promoter's and objector's costs.
- Improvements could be made to the way the latest version of application documents are found on PINS website making it easier for the public to navigate.

- It would be helpful if affected parties could be directly informed that they have written questions to answer.
- The CPA are concerned at the number of decisions that are being delayed by the relevant Secretary of State. Based on the number of recent postponements of decisions, a delay to a decision is now the expected course of action rather than the anomaly and is undermining the NSIP process. Again, delays to decisions mean increased uncertainty to directly affected parties as well as of course to the promoter.

5. Where a development consent order has been made, what impediments are there to physically implementing a project which could be removed?

In terms of compulsory purchase:

- There are proposals for General Vesting Declarations to have a flexible vesting date. As long as this is carefully controlled and not liable to abuse by an acquiring authority there may be advantages to both parties in this.
- The CPA would advocate discussion between promoter and determining department as to the Order before it is published to remove errors. It is in no parties' interests to have unnecessary Correction Orders.
- Implementation of the changes to interest rates for compensation payments would encourage faster compensation payments by acquiring authorities particularly advance payments.
- Concerns have been raised by CPA members about the direct impact the method of procurement and use of contractors has on the process:
 - Pushing detailed design and the appointment of further contractors to do detailed design or construction post decision means more flexibility is sought in the powers and limits of deviation under the DCO. This can increase resistance from affected parties to the scope of the powers being sought under the DCO.

- Contractors sometimes become the main point of contact in projects post-decision. This can have the effect of eroding trust between the project and affected parties who, up to that point, have been liaising with the promoter.

6. How might digitalisation support the wider improvements to the regime, for example are there any specific aspects that you feel could benefit from digital enhancements?

The CPA consider that whilst some steps have been taken by the NSIP process to digitise the programme to a greater extent than other forms of compulsory purchase procedures, much more could be done within the constraints of the existing statutory and procedural systems set out.

In particular, the system could be more interactive, by ensuring documents are digitally treated before uploading on to the system, to allow more detailed interrogation and searching to be carried out to a more sophisticated level than currently. This would also enable objectors, claimants and third parties to access data relevant to their own position, without having to search through large quantities of data to find the areas relevant to them. We recognise that the protocols for the submission of documents/data by the promoter would need to be modified to achieve this.

It is recognised that not all affected parties have access to the internet and digital systems and no systems can therefore be provided at the cost of proper engagement with affected parties, and ensuring they have access to necessary information.

The CPA is currently reviewing the future potential use and effect of digital technology on all aspects of compulsory purchase and compensation claims and procedure. A paper summarising their recommendations is likely to be published in the spring of 2022.

The CPA are also aware of the work being undertaken by the Planning Inspectorate to upgrade the NSIP digital platform (Project Speed) and support and encourage this work.

7. What issues are affecting current NSIPs that would benefit from enhanced cross-government co-ordination including government departments and arms-length bodies?

Compulsory purchase affects all major consenting regimes. However, guidance is piecemeal and it would benefit from clarity and consistency across regimes.

The “Guidance on Compulsory Purchase Process and Cancellation Rules” states that it applies only to the CPO regime but its principles are widely cited across regimes despite the existence of the separate practice guide on compulsory purchase for DCOs. There would be benefit in clarifying which parts of the CPO guidance should apply to the NSIP regime, if any. For example, reference is sometimes made to use of compulsory purchase as “last resort” in the context of DCOs when that is not referred to in the DCO practice guide on compulsory purchase, but is referred to in the DLUHC CPO guidance.

There is a need to ensure there is consistent guidance relating to compulsory purchase across CPOs, TWAOs, DCOs and hybrid bills, and this requires cross-government coordination between DLUHC, DfT and the Houses of Parliament. In addition, this guidance needs to be clear on the expectations surrounding early engagement for directly affected parties over and above the statutory consultation which focuses on the wider public.

There are particular issues on early engagement and resources/costs where the CPA is advocating change to the existing compulsory purchase process guidance but which should also apply to the NSIP regime.

In addition, commencement of the temporary possession provisions in the Neighbourhood Planning Act 2017 should occur. This is to ensure there are consistent and clear temporary possession provisions across all consenting regimes. It would also allow the application of temporary possession to CPOs where currently this is not possible until the commencement of those provisions.

Commencement of the provisions relating to the payment of higher interest rates for compulsory purchase payments may also encourage quicker receipt of compensation and particularly advance payments to directly affected parties, and a smoother post-application and project delivery process.

8. Does the NSIP regime successfully interact with other consenting and regulatory processes and the wider context within which infrastructure projects operate?

The CPA's concern is with compulsory purchase and the effect of projects on affected parties. A central but not often considered aspect of NSIPs is the position of compulsory purchase and the processes required for that. The compulsory purchase regime affects a number of types of consenting routes and is wider than infrastructure projects. Therefore improvements to the NSIP regime in relation to compulsory purchase and engagement requires a broader consideration of compulsory purchase and engagement across the regimes in which it operates including CPOs, TWAOs, hybrid bills, and the industries it affects, not just infrastructure, but housing and regeneration as well.

It is important that the NSIP regime does not divert too much from key compulsory purchase and engagement principles across all of those regimes. This will only lead to confusion amongst professionals working across the regimes. An example is consideration of the digitisation of material for NSIPs. This needs to be considered across all consenting regimes to avoid inconsistency and ensure fairness to affected parties irrespective of the consenting regime being used.

We also note that the temporary possession provisions contained in the Neighbourhood Planning Act 2017 have not yet been commenced. This is another area where there is inconsistency across consenting regimes without the commencement of those provisions.

9. Are there areas where limits in the capacity or capability of NSIP applicants, interested parties and other participants are resulting in either delays or adversely affecting outcomes?

As indicated in response to question 3, the issue of resources and costs for affected parties can cause considerable delay in the overall process, causing unnecessary representations to be submitted at examination and failing to ensure good outcomes. The issue is twofold:

- The extent of appropriate costs.

- The reasonableness of costs. For example, what a reasonable hourly fee might be.

In the absence of clear guidance or regulation on the issue, there is also a wide variation in the way promoters approach it. Some promoters recognise that ensuring early engagement and a consideration of the issues means appropriate mitigation is put in place at an earlier stage which reduces the overall cost to the promoter. Other promoters view costs at this stage as an unnecessary expense. However, in the feedback we receive from CPA members, the latter approach generally increases the number of objections received and therefore the cost of the examination. It also increases the cost of the mitigation necessary for the scheme because mitigation has not been addressed at an early stage and a strategy adopted by the parties to minimise impact.

Where appropriate early costs of an affected party are not paid this can create delays in the ability of affected parties to engage with a scheme or understand the nature or impact of a scheme on them. Subsequently this means the development of a scheme to application that fails to address necessary issues that often only then materialise during the examination. This is not necessarily because of the promoter's efforts to try and engage (although in some cases it is also that), but the ability of the affected party to properly engage without early advice or sufficient resource to do so.

This applies equally to affected public and statutory authorities/undertakers as it does to private parties.

There is also the issue of the volume of material on schemes of this nature and the ability for the general public to know where to look for key information and how to interpret that key information. Digital improvements would assist, as would an indication of the latest forms of key application documents.

10. Is there anything else you think we should be investigating or considering as part of our end-to-end operational review of the NSIP process?

As indicated above, it is important that the review considers not just the mechanisms that sit within the Planning Act 2008 but also the mechanisms that sit outside of the Planning Act 2008 but which directly

impact the NSIP regime. The compulsory purchase process is a key part of that and improving the relationship between promoters of schemes and directly affected parties will mean a more efficient process.

11. Please confirm how you interact with the NSIP regime?

The CPA's objective is to work for the public benefit in relation to compulsory purchase and compensation in all its forms. The CPA has over 700 members practising in this field, including surveyors, lawyers, accountants, planners and officers of public authorities. This includes working within the NSIP regime as well as other consenting and compulsory purchase regimes.

The CPA's objectives include promoting the highest professional standards amongst practitioners at all levels and participating in debate as to matters of current interest in compulsory purchase and compensation including reform proposals.

This consultation response has been formulated following discussions within the National Committee of CPA. The CPA would welcome further discussion on the responses should that be of use.