

Improving the way nationally significant infrastructure projects are dealt with

2

The challenge we face

- 2.1** In Chapter 1 we set out the long term challenges facing the planning system. Ensuring our communities remain vibrant and sustainable places where people can afford to live will mean building more houses. Continuing to enjoy sustained rises in our standard of living will mean further improving our economic competitiveness and securing our energy supplies. At the same time, we must further reduce our greenhouse gas emissions and develop not only places, but also a way of life, that are more environmentally sustainable.
- 2.2** Improving our nation's infrastructure is central to meeting these objectives. Planning for and enabling greater use of renewable and low carbon sources of electricity can help us both meet our emissions targets and provide energy security in a context of rising demand and increased dependence on energy imports. Improving our major transport networks, while at the same time encouraging wider use of sustainable forms of travel including walking, cycling and public transport, is critical to ensuring that people and goods continue to move around efficiently, so that we have the jobs and investment necessary to underpin our prosperity and quality of life. Building new water, waste disposal and recycling facilities, and constructing new housing developments to higher environmental standards, can also contribute to a more sustainable future while meeting the demand for new homes.
- 2.3** Delivering this infrastructure will involve challenges. The benefits of infrastructure are often widely dispersed and enjoyed by society as a whole, while the impacts of these projects tend to be concentrated in the immediate vicinity of the installation. So, while we all reap the rewards of new and improved infrastructure, the impacts tend to fall disproportionately on a few of us. For instance, society as a whole gains from improved transport networks or wind farms that produce low carbon energy with reduced emissions, but a relatively small number of people live next to the roads, rail lines and wind farms that deliver these benefits.

2.4 If we are to continue to develop sustainably as a nation, we have to take the decisions that will enable us to develop the key projects needed to support our communities, economy and society in a way that is efficient, open and provides certainty. If we do not, we are likely to face a range of problems – such as energy shortages, mounting congestion, and increased pollution – that will drive jobs and investment overseas, undermine the vitality of our communities, damage our environment, and threaten individuals’ health and well being. But we recognise that we also have to take account of the interests of those most directly affected by these major projects. That is why we are determined to ensure that decisions are taken in a way that is accountable, transparent, and enables the public to participate effectively in them.

The case for reform

2.5 While airports are dealt with under the town and country planning system, there are special regimes for considering whether to grant development consent for power stations and electricity lines, some gas supply infrastructure, pipelines, ports where development extends beyond the shoreline, roads, and railways.¹

2.6 Applications under these regimes are made directly to the relevant Secretary of State rather than to local authorities. The procedure varies according to the regime but, particularly for the major projects, there are usually a number of stages. There might be a consultation on various scheme options, which allows a preferred scheme to be identified. An application is then made for the necessary statutory permissions and powers. Generally, this is followed by a public inquiry, usually headed by a planning inspector or inspectors, where there is detailed consideration of the proposal and any objections. Evidence is typically tested via the cross-examination of witnesses. The inspector then writes a detailed report including recommendations and submits this to ministers. Following the inquiry, the Secretary of State considers the inspector’s report and recommendations and decides whether the project should be granted the necessary consents and powers to proceed.

2.7 Despite its complexities, Rod Eddington noted that the system has delivered “sensible judgements ... that allow the UK to grow and develop, but only where the schemes do not impose unjustified costs on individuals, the environment or society” (Eddington, 2006, p56). However, Eddington and Kate Barker also identified a range of problems arising from the current systems for granting development consent for infrastructure:

¹ These regimes include the Transport and Works Act 1992, the Highways Act 1980, the Harbours Act 1964, the Gas Act 1965, the Electricity Act 1989, and the Pipelines Act 1962.

2

- The process can take too long to deliver decisions, impose substantial costs on all parties, and generate large amounts of uncertainty. This can extend planning blight, severely affecting the lives of individuals directly affected by proposals. It can delay delivery of key infrastructure, with harmful knock on effects for communities, business, the economy and the environment. And it can, in some cases, deter promoters from bringing forward projects in the first place, threatening our ability to deliver the infrastructure we need to continue to thrive as a nation.
- In part because of the length of time inquiries can take and the expense involved in participating in them, it can be difficult for local government, non-government organisations (NGO) and local people to participate effectively in the process and make their views heard. This means that those with the most resources, or the best knowledge of the system, can have the greatest say in decisions.

Box 2.1**Heathrow Terminal 5**

BAA's application to build Terminal 5 is an extreme example of the delays possible in the system. BAA eventually had to lodge 37 different applications across seven different pieces of legislation. The application was lodged in 1993, the public inquiry sat for a total of 46 months, the chairman of the inquiry (an eminent QC supported by planning inspectors) took a year and a half to write his report, and the Government took 11 months to consider the report before issuing a decision. In total, this meant that it took more than seven years from the date the application was made to the issuing of the final decision.

The delay meant that, in the time taken to consider and start constructing Terminal 5 at Heathrow, Schiphol airport in the Netherlands and Charles de Gaulle airport in Paris both increased their capacity with runway expansion and terminal capacity improvements. This delay means that UK airports may lose business to EU competitors, as well as risking imposing extra costs on UK businesses, as goods may have to be trans-shipped or direct connections from the UK may not be possible for air journeys, forcing longer, and often more expensive, journeys to be made.

The length and cost of the process also made it difficult for interested parties to properly engage with the evolution of the project. During the Terminal 5 inquiry, for example, the sheer length of the inquiry process and the costs of legal representation throughout the inquiry contributed to the London borough of Hillingdon having to pull out of the process, as its funds had been exhausted.

- 2.8** The planning process for Heathrow's Terminal 5 (see Box 2.1) illustrates many of the problems with the current system. A variety of underlying problems with the current regime were identified by Eddington and Barker:
- (a) Government policy, or the balance of different government policies, is sometimes unclear. The large scale and long timeframes of nationally

significant infrastructure projects mean that it is important that there is a clear, stable strategic framework for investment. The absence of a clear policy framework can discourage promoters from bringing proposals forward, or encourage them to bring forward proposals which are less than ideal but easier to get approved. This can also cause significant delays at the public inquiry stage because national policy has to be clarified, and the need for the infrastructure has to be established, through the inquiry process for each individual application.

- (b) Promoters do not always prepare their applications as well as they could. They also do not always engage early enough with key parties such as statutory environmental and heritage bodies, the Highways Agency and key non-governmental organisations (NGOs) – though in some instances this may be because those bodies are slow to respond to requests for engagement. And they sometimes do not consult widely or clearly enough on their proposals. This can result in members of the public sometimes feeling that they have been unable to influence the way a project has been developed. And it can mean that issues have to be resolved after an application has been made, sometimes during the inquiry itself. Once an application has been made, however, it can be difficult and costly to make changes to the original proposals.
- (c) There are too many different and overlapping development consent regimes. A single project can require multiple permissions under several different regimes, particularly projects involving linked developments – for instance, where a port expansion requires improved road or rail links. Most of these different statutory consent processes have their own procedural rules and, while there are similarities, there are also some important differences. This can significantly increase the costs of applications and can act as a real barrier to bringing forward proposals and to participating in the debate about them.
- (d) Although the procedural rules give some measure of flexibility, the current inquiry processes of examining applications can be slow and inefficient at times. Evidence is usually probed by means of the oral cross-examination of witnesses by opposing legal counsel, which can be time consuming and make it difficult to estimate how long an inquiry is likely to take, adding to uncertainty. And the legalistic and adversarial approach can make it intimidating and difficult for members of the public to engage effectively in the process.

2

Box 2.2**The North-Yorkshire grid upgrade**

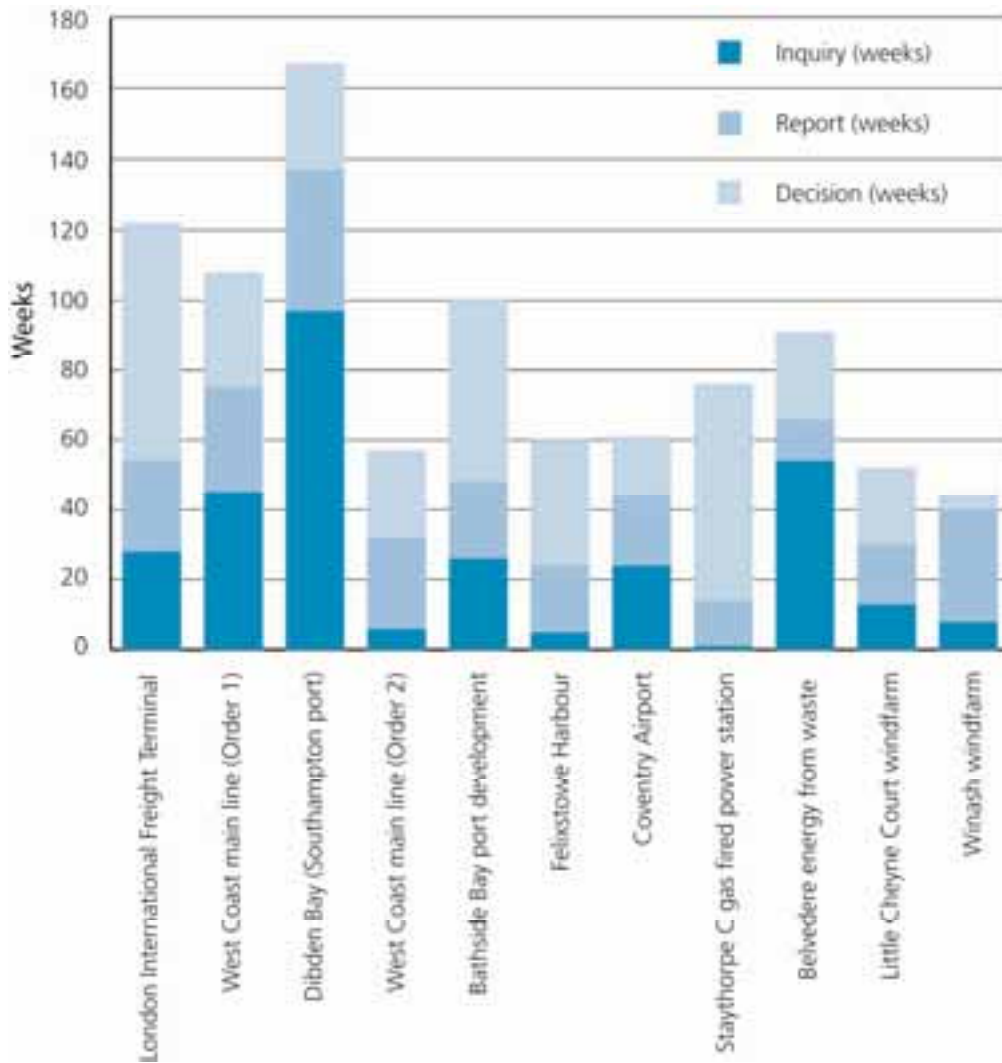
The North-Yorkshire grid upgrade was a major high-voltage transmission line upgrade essential for the integrity of the UK electricity system and security of energy supply. The line upgraded the backbone of the system that transfers electricity generated in one part of the country to where it is needed most to supply homes and businesses. Lines such as these are essential to the economy of the country.

In total, it took 77 months from the application to secure planning permission. The application for two route options for a North line and three route options for South line was made to the Department for Trade and Industry (DTI) in September 1991. The first public inquiry was held from May to November 1992 and inspectors reported in October 1993. In May 1994 the Secretary of State for Trade and Industry made a 'minded to' decision supporting the inspector's recommendations on routing and their recommendation to refuse two small sections (that therefore required new applications for diversions). At the same time the Secretary of State made clear the final decision had to await the outcome of proceedings to secure access to land rights for the line.

From March to April 1995 a second public inquiry was held on the proposed diversions. At this second inquiry the need for the lines had to be confirmed again. From November 1994 to April 1995 four batches of public hearings on compulsory wayleaves were held concurrently with the second Public Inquiry and a Public Inquiry into a Compulsory Purchase Order for a 'sealing and compound' site to facilitate the undergrounding of one section of the line. This long process drew to an end in March 1998 when the Secretary of State for Trade and Industry made a final decision.

- (e) The decision making process is complex. There are two separate stages: the inspector's recommendations to the minister, and the ministerial decision. The final decision can be subject to significant delay where new matters and evidence arise or issues need to be revisited for clarification as the North Yorkshire grid update shows (see Box 2.2). For major infrastructure projects with linked development, there can also be multiple decision makers – because of the different legislation and the different ministerial accountabilities, often more than one minister will be involved in making the final decision on a specific project.
- (f) The role of ministers in planning decisions on major infrastructure is also not well understood. For example, confusion can arise where ministers take decisions on schemes in which they or the Government has a specific policy interest, and it is sometimes thought that they are able to take into account wider political factors not directly related to the development. In reality, however, ministers perform a quasi-judicial role when deciding planning applications, basing decisions on the evidence presented and published policy and take great care to avoid any real or perceived conflict of interest.

Time from start of Inquiry to decision



Our proposals

2.9 The Government’s recent reforms have focused on the town and country planning system. These reforms have included changes aimed at improving the procedures for inquiries for major infrastructure projects determined under the town and country planning regime, such as introducing a streamlined inquiry process with concurrent sessions to deal with particular topics. But these reforms have not been extended in all cases to the other, multiple regimes governing development consents for key national infrastructure projects. Moreover, the analysis presented by Rod Eddington and Kate Barker suggests that the problems associated with planning for major infrastructure are deeper and cannot be fully addressed by changes to inquiry procedures alone. The Government agrees with this analysis and believes that, if we are to meet the long term challenge of delivering the infrastructure that we need, more radical and wider ranging reform is needed.

2

2.10 Eddington proposed a three stage process, in which:

- ministers would set strategic objectives for national infrastructure development up front, integrating economic, social and environmental goals in order to deliver sustainable development;
- promoters would then develop project proposals within a clear strategic framework, and subject to requirements to consult the public to ensure that promoters are adequately prepared for the issues likely to arise; and
- decisions on applications would be taken by an independent commission comprising well respected experts using more focused inquiry procedures that would provide more accessible opportunities for participation.

2.11 The Government supports this overall approach, which we consider has the potential to improve the delivery of nationally significant transport infrastructure such as major airport and port projects, and improvements to the Strategic Road Network; nationally significant energy infrastructure such as major new power generating facilities and facilities critical to energy security; and nationally significant water and waste infrastructure, such as major reservoirs and waste water plant works.

2.12 Our detailed proposals for reform therefore build on the recommendations made by Rod Eddington and Kate Barker, but are firmly rooted in the principles set out in Chapter 1 of this White Paper:

- planning should be responsive, particularly to long term challenges such as increasing globalisation and climate change, and properly integrate our economic, social and environmental objectives to deliver sustainable development;
- planning should be streamlined, efficient and predictable;
- there should be full and fair opportunities for public consultation and community engagement;
- planning should be transparent and accountable; and
- planning should be undertaken at the right level of government – national, regional or local.

2.13 To achieve this, we propose to:

- (a) **Produce national policy statements for key sectors to ensure that there is a clear policy framework for decisions on nationally significant infrastructure.**

The statements would integrate national economic, environmental and social goals to deliver sustainable development, and provide clear direction by setting out strategic objectives for infrastructure capacity and development. There would need to be thorough and effective consultation on national policy statements in order to provide an opportunity for the Government's proposals to be scrutinised and debated. Where a policy statement identified particular locations, the local authorities for those areas would have an important role in consultation, representing their communities. There would also need to be an opportunity for Parliamentary scrutiny before these statements were finally adopted by the Government as policy. Policy statements would then set the framework for subsequent decisions by an independent commission (discussed below). Our proposals in relation to national policy statements are set out in detail in Chapter 3.
- (b) **Help promoters of infrastructure projects to improve the way that they prepare applications by making better advice available to them, requiring them to consult the public and local communities effectively and requiring earlier engagement with key parties such as statutory environmental and heritage bodies and the Highways Agency.**

Effective scheme development on detailed projects is essential to ensuring quicker and better decisions on infrastructure development. This is primarily the responsibility of developers but a clear understanding of key requirements, rules and best practice can help. The proposed new infrastructure planning commission would, subject to appropriate rules to ensure propriety, provide advice to promoters and other interested parties to ensure that they understood the procedural requirements for their application and consultation with the public and local communities was effective. More detail on our proposals to improve scheme development is set out in Chapter 4.
- (c) **Clarify the decision making process and achieve a clear separation of policy and decision making by creating an independent infrastructure planning commission to take the decisions on nationally significant infrastructure cases.**

The commission would comprise well respected experts, drawn from a range of fields. These might include national and local government, community engagement, planning, law, engineering, economics, business, security, environment, heritage, and health, as well as, if necessary, specialist technical expertise related to the particular sector. It would take charge of the development consent process for nationally significant infrastructure projects, and take the final decision as to whether permission should be granted.

2

In taking the decision, it would operate within the framework of the relevant national policy statement, although this would not be the only consideration. The Commission would approve any application for development consent for a nationally significant infrastructure project which had main aims consistent with the relevant national policy statement, unless adverse local consequences outweighed the benefits, including national benefits identified in the national policy statement. Adverse local consequences, for these purposes, would be those incompatible with relevant EC and domestic law, including human rights legislation. Relevant domestic law for infrastructure sectors would be identified in the planning reform legislation. In some instances, this might lead the commission to reject an application, even where it was consistent with the national policy statement. Ministers would have no role in taking decisions on whether to approve individual applications for development consent for these national infrastructure projects. More detail on the proposed commission is set out in Chapter 5.

- (d) **Streamline the procedures for infrastructure projects of national significance by rationalising the different development consent regimes and improving the inquiry procedures for all of them.** This will harmonise requirements on developers and, as far as possible, create a single application process for all of the development authorisations needed for nationally significant infrastructure projects. We also intend to improve the speed, quality and accessibility of the procedure for examining applications by allowing the commission to gather the majority of evidence in writing, probe it by means of direct questioning rather than relying on cross-examination by opposing counsel, and imposing statutory time limits on the entire process. More details on these proposed reforms are set out in Chapter 5.
- (e) **Improve public participation across the entire process by providing better opportunities for public engagement at each stage of the development consent process.** There would be opportunities for public consultation and engagement at each of the three key stages of the new regime. First, there would be thorough and effective public consultation on each national policy statement. This would provide an important opportunity to scrutinise, consider and debate the Government's proposals for infrastructure development, including the need for infrastructure and how economic, environmental, and social goals can best be integrated. Second, promoters would be required to consult the public on the details of their particular proposals, taking account in particular of the need to ensure local communities were properly engaged in proposals which directly affected them. The commission would need to satisfy itself that such consultation had been properly carried out. Third, there would be improved processes to ensure that communities and individuals could

participate fairly in inquiries on specific projects. This would include setting out clear processes for inquiries including clear timetables, ensuring hearings were less adversarial, and providing opportunities, including through a specific open floor stage, for the public to participate in inquiries.

- (f) **Explore devolving decisions on smaller infrastructure projects, where appropriate, to local authorities.** At present many smaller infrastructure projects are decided nationally by the relevant Secretary of State. In some cases, these will need to continue to be taken nationally because smaller projects can still be nationally significant (for instance, projects necessary to the operational effectiveness and resilience of the electricity transmission and distribution network). In principle, however, we believe infrastructure projects which are primarily local in effect should be determined by local planning authorities, with the normal right of appeal and call-in procedures, if possible.

The benefits of the package as a whole

2.14 We believe that this system offers a better way of dealing with applications to build key national infrastructure. It will:

- Make the system more responsive to long term challenges by ensuring government policy is clearly set out and integrates our economic, social and environmental objectives.
- Make the system more streamlined, efficient and predictable by providing a settled strategic context in which to develop schemes, making the application process much more straightforward, and providing advice to ensure that applications are properly prepared. This should reduce the uncertainty that affected communities can sometimes suffer.
- Provide clearly defined opportunities for public consultation and engagement at each key stage in the process and enable local authorities to ensure that local views are reflected in debate. Consultation on national statements of policy will create an opportunity for people to express their views about the infrastructure that we need and how we should deliver it. Consultation on proposals for particular projects will make sure that local communities are able to express their views about the way this infrastructure is then delivered. And the changes to inquiries will not only make the entire system much more accessible, but also mean that members of the public can engage on a much more equal footing with the professional advocates who currently dominate the process.
- Improve the transparency and accountability of the system by ensuring that government policy is set out clearly and that ministers are clearly accountable

2

for this. Policy and decision making roles will be clearly separated – ministers will set policy, but decisions will be taken by an independent, expert commission on a transparent and objective basis. The commission will operate within a clear legislative framework set by Parliament and a policy framework set by ministers, and will have to give reasons for its decisions and account for its performance to Parliament. There will be rights of legal challenge to national policy statements and to final decisions of the commission.

- Ensure decisions are taken at the right level. Applications for projects which are nationally significant will be determined by a national body within a policy framework which clearly sets out the national interest. Applications for local infrastructure projects will be taken, as far as possible, by local authorities, in accordance with their wider responsibilities for place-shaping and developing sustainable communities.

2.15 Overall, we believe that this system offers a better way of dealing with applications to build key national infrastructure. It should reduce significantly the time to reach decisions on applications for development consent for nationally significant infrastructure projects. The time saving overall for projects will depend in part on how well the scheme development process is run by promoters, but we estimate that if these changes are implemented, the average time from an application being made to the commission to its decision should be around one year. Based on our initial estimate, the total cost savings to the application process could be over £1 billion over ten years.

2.16 Moreover these benefits can be delivered while at the same time maintaining the quality of decision making and clarifying and improving the opportunities for public consultation and engagement.

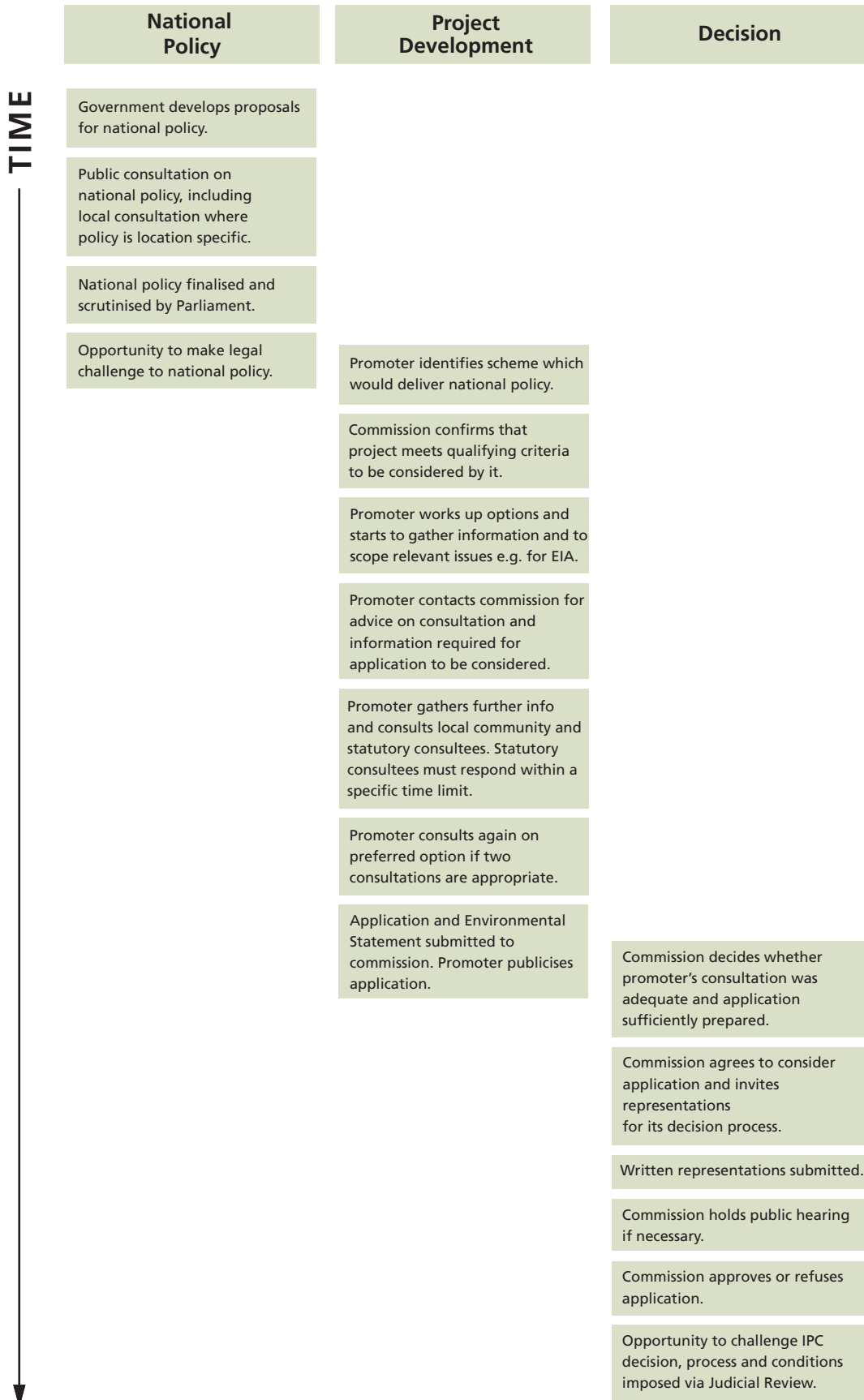
Consultation questions:

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

Do you agree, in principle, that the overall package of reforms proposed here will 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?

Proposed New Regime for Nationally Significant Infrastructure Projects



2

