



Department for
Communities and
Local Government

Nationally significant infrastructure planning: extending the regime to business and commercial projects

Consultation

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Any enquiries regarding this document/publication should be sent to us at:

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 030 3444 0000

November, 2012

ISBN: 978-1-4098- 3712-1

The Consultation Process

Topic of this consultation:	Extending the planning regime set out in the Planning Act 2008 to new forms of business and commercial development.
Scope of this consultation:	The aim of this consultation is to seek views about the proposal to extend the nationally significant infrastructure regime and, in particular, about the types and forms of business and commercial projects to be prescribed in regulations.
Geographical scope:	England
Impact Assessment	The Impact Assessment for the Growth and Infrastructure Bill can be viewed at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/14682/growth_and_infrastructure_bill_-_impact_assessment.pdf

Basic Information

To:	This consultation is aimed primarily at: developers, local authorities, statutory agencies, residents' associations and key partners with an interest in development management.
Body/bodies responsible for the consultation:	This consultation is being run by the Infrastructure and Environment team within the Department for Communities and Local Government.
Duration:	This consultation will run for 6 weeks. It will begin on 26 November 2012 and end on Monday 7 January 2013 .
Enquiries:	majorinfrastructure@communities.gsi.gov.uk
How to respond:	We are seeking your views directly on the proposals. Responses should be sent by email to: majorinfrastructure@communities.gsi.gov.uk Or send your written responses to: Alison Cremin Business and Commercial Development Consultation Planning: Infrastructure and Environment Team Zone 1/J6, Eland House Department for Communities and Local Government Bressenden Place London, SW1E 5DU
Additional ways to become involved:	N/A

After the consultation:	<p>A summary of responses to the consultation will be published on the Department's website within three months of the closing date.</p> <p>Following full consideration of the consultation responses the Department intends to prepare regulations with a view to the regulations coming into force following Royal Assent of the Growth and Infrastructure Bill.</p>
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Introduction

The importance of the planning system for growth

1. Delivering economic growth is the over-riding priority for the Government, and improving the efficiency and speed of the planning process is a crucial part of creating the conditions for sustainable local growth. We have already made significant progress in this area – in particular through the publication of the new National Planning Policy Framework in March 2012. Government is committed to securing investment in new nationally significant infrastructure as part of its efforts to rebuild the economy and create new jobs. It also remains committed to the principles of ‘sustainable development’; delivering environmental outcomes is a product of the planning system and is as important as economic development.
2. The National Planning Policy Framework reiterated our commitment to sustainable development and is helping ensure that planning decisions reflect genuine national objectives – such as the need to safeguard the natural environment – whilst reinforcing Local Plans prepared by local councils and communities as the keystone of the planning system. We believe that development that is sustainable should go ahead without delay.
3. We want to ensure that any blockages in the planning system are addressed so that we can support local economic growth. Planning delays can create uncertainty both for local residents and local firms. This can mean that new development which could help get the economy moving is slow to get off the ground. Slow decision making can also deter investment in new developments altogether.
4. The Secretary of State for Communities and Local Government set out, in a Written Ministerial Statement to Parliament on 6 September 2012, a number of new measures now being taken forward in the Growth and Infrastructure Bill¹ to help create the conditions for local economic growth. This included a series of additional measures to drive the effective implementation of planning reforms and remove unnecessary bureaucracy that can hinder sustainable growth, including a commitment to extend the nationally significant planning regime to new forms of business and commercial development.

¹ The Growth and Growth and Infrastructure Bill can be viewed at:
http://www.publications.parliament.uk/pa/bills/cbill/2012-2013/0075/cbill_2012-20130075_en_1.htm

Purpose of this consultation document

5. The Growth and Infrastructure Bill introduced in Parliament on 18 October 2012, introduces a power to bring new business and commercial projects within the nationally significant infrastructure planning regime. This consultation document is seeking views on the secondary legislation which will support that power (if enacted) and, in particular, seeking views about the types and forms of business and commercial projects to be prescribed in regulations. In particular, we are seeking responses to the following questions:
 1. Do you agree that the proposed list of development types set out at Annex A should be prescribed in regulations in order to make them capable of a direction into the nationally significant infrastructure regime?
 2. Do you think that thresholds should apply and, if so, whether those in column 2 of the table at Annex A are appropriate? If not, how should these be changed?
 3. Do you agree with our assessment of the factors that the Secretary of State would need to take into account when considering whether a project is nationally significant?
 4. Do you agree that retail projects should not be a prescribed business or commercial project?
 5. Do you agree that Government should not prepare a National Policy Statement (or Statements) for the new category of business and commercial development?
 6. Do you have any other comments on the proposals that you would like to make?

Context

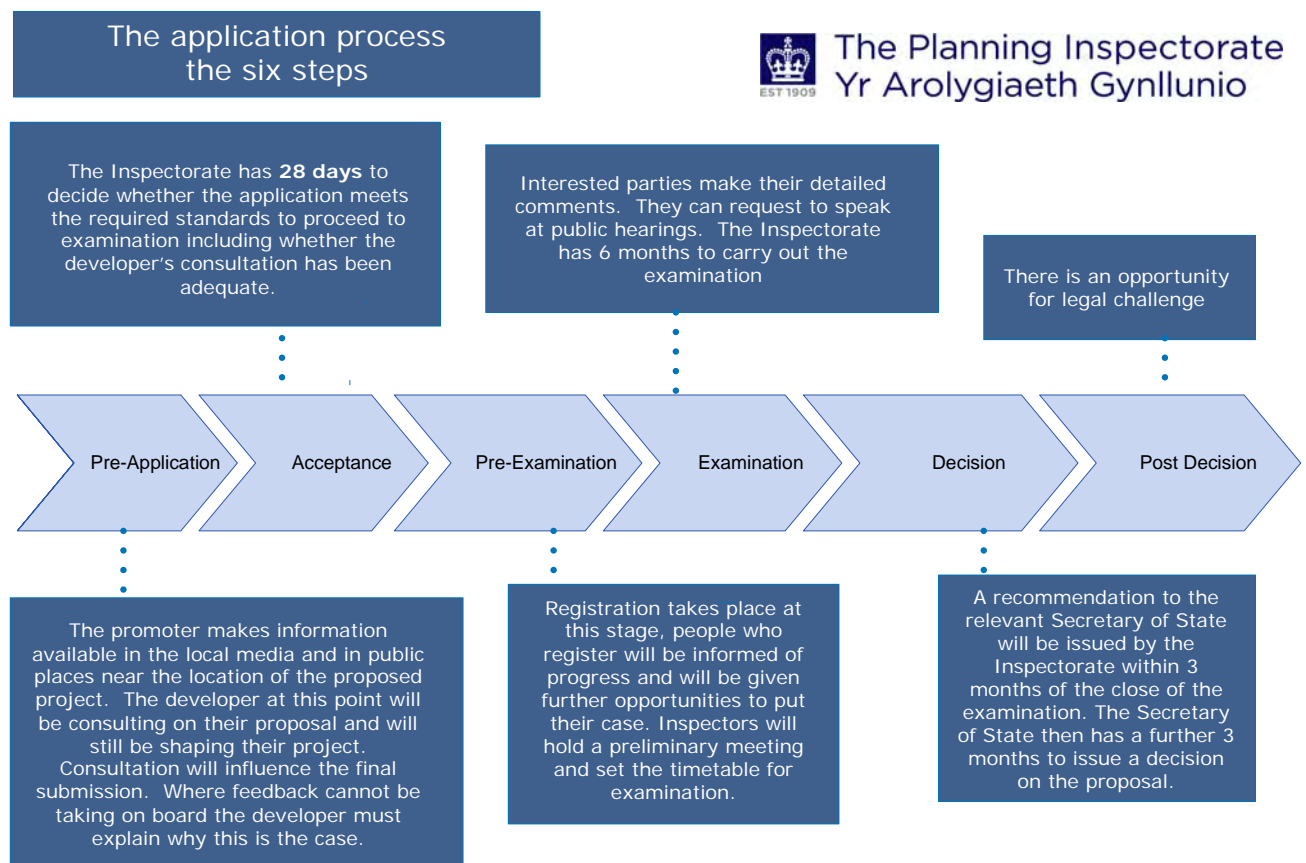
The Planning Act 2008

6. The Planning Act 2008 established a new planning consent regime for nationally significant energy, transport, water, waste and waste water infrastructure. Its introduction meant that where developers proposed new infrastructure above certain thresholds the applications would be made under a new unified consent regime.
7. Any developer wishing to construct a nationally significant infrastructure project, as defined by the Planning Act 2008, must first apply for development consent to do so. For such projects, an examining authority appointed by the Planning Inspectorate on behalf of the Secretary of State

examines the application. The examining authority then makes a recommendation to the Secretary of State, who makes the decision on whether to grant, or refuse, development consent.

8. The Localism Act 2011 made changes to the Planning Act 2008. It abolished the Infrastructure Planning Commission, moved some of its functions into the Planning Inspectorate and transferred the responsibility for making decisions on applications for development consent orders to the Secretary of State. However, the main principles of the regime, including statutory timetabling for various stages of the regime, are still in place.
9. The Planning Inspectorate has set out in one of its advice notes "*Nationally Significant Infrastructure: how to get involved in the planning process*"² further information on how the application process for a development consent works. We have also included below at figure 1 a snapshot of the application, examination and decision process.

Figure 1 - the application process



10. The Planning Inspectorate already handle applications or appeals on behalf of the Secretary of State, in addition to the schemes they administer

² <http://infrastructure.planningportal.gov.uk/wp-content/uploads/2012/04/Advice-note-8.1v4.pdf>

under the Planning Act regime. The effect of the reforms that are the subject of this consultation document is that, the Planning Inspectorate would be responsible for administering a new category of business and commercial development under the Planning Act regime. It is our intention to ensure that the focus of the infrastructure planning regime continues to be on schemes of national significance. We therefore expect that the numbers of projects transferred to the Planning Inspectorate for consideration by this route would be very small.

The policy proposal

11. To help speed up planning decisions for the most complex projects and to increase choice for developers, the Government proposes to extend the scope of the Planning Act 2008 so that a wider range of development can be brought within the nationally significant infrastructure planning regime. This will allow developers of nationally significant business or commercial projects to apply to the Secretary of State for the option of using the streamlined planning regime set out in the Planning Act.
12. Clause 21 of the Growth and Infrastructure Bill currently before Parliament therefore enables the Secretary of State to direct that certain development should be considered under the Planning Act's streamlined consent regime for nationally significant infrastructure, rather than under the Town and Country Planning Act 1990 and other existing consent regimes.
13. Councils have the responsibility for day-to-day planning control in their areas which includes determining applications for planning permission under the Town and Country Planning Act 1990. In 2011/12 local planning authorities determined some 320 large-scale commercial and industrial applications^[1], of which, about 13% (41) took over a year to determine. Over recent years the proportion of large-scale major applications for commercial and industrial development determined within 13 weeks has also fallen from 68% to 47%. There can be a number of reasons for the length of time taken including the scale and complexity of the development or the project as a whole.
14. A small number of large, complex projects which call for expertise in a particular area, can be a severe drain on a local authority's planning resources, which is difficult to plan for if the local authority is small and the projects are atypical. Even where Planning Performance Agreements are in place, large-scale major applications can be difficult for a planning authority to determine quickly because of the range and type of issues raised, the numbers of statutory consultees and non-statutory consultees with an interest and available resources. The Government already

^[1] Large scale development is one where the floor space to be built is 10,000 square metres or more, or where the site area is 2 hectares or more. Commercial and industrial development is a combination of two categories of development: Office/research and development/light industry and General industry/storage/warehouse. The 2011/12 figures relates to the 2011/12 financial year and are taken from DCLG statistics on the performance of district planning authorities by speed, performance, agreements and types of development.

recognises that, in these circumstances, a local authority might need additional support and funds the Planning Advisory Service who provides support to local authorities by sharing practice and through peer support.

15. However, because of the importance the Government places on supporting growth through an efficient and effective planning system, the Government wants to provide an alternative planning route for schemes of national significance, with streamlined processes and a clear statutory timetable.
16. An important principle of these proposals is that it will be for developers in the first instance to determine whether they would like their application or proposed scheme to be determined by the Secretary of State, using the regime established for nationally significant infrastructure. If they do, they will need to make a written request to the Secretary of State. Requests cannot be made to the Secretary of State until he has prescribed in regulations specific types of commercial and business projects. The Secretary of State will issue a direction if he agrees that the development is, or forms part of, a prescribed business or commercial project and the project is of national significance either by itself or when considered with another project.
17. A key aim of these proposals is to give developers and other parties involved in the planning process, including local communities, greater certainty about the decision-making timetable for nationally significant projects.
18. Local authorities and local communities will continue to be able to have their views taken into account for developments considered through this proposed new route. Any promoter of an application to be determined via this route will need to ensure that public consultation is properly carried out before the application is accepted for examination and local authorities and local people will also have the opportunity to be heard at a hearing.
19. Local authorities have a very important role in the nationally significant infrastructure planning process. The relevant local authority will be invited to submit a Local Impact Report giving details of the likely impact of the proposed development on the authority's area. They are encouraged to discuss and work through the issues raised by proposals with the prospective applicant well before the application is submitted and to engage with the applications in the preparation of statements of common ground. Local authorities will also be involved in commenting on the statement of community consultation, and on the adequacy of the applicant's consultation process, and making their own representations on the application. In coming to a decision on an application for a development consent order, the Secretary of State must have regard to any Local Impact Reports that are submitted by the deadline.

Decision-making responsibility

20. For the current categories of nationally significant infrastructure, the Secretary of State with responsibility for the sector acts as the decision maker. Thus the Secretary of State for Energy and Climate Change is responsible for determining applications for nationally significant energy projects and the Secretary of State for Transport for nationally significant transport projects. Different arrangements exist for water, waste and waste water projects where the Secretary of State for Communities and Local Government is either the decision-maker or the joint decision-maker with the Secretary of State for the Environment, Food and Rural Affairs.
21. It is proposed that the Secretary of State for Communities and Local Government will act as decision maker on projects within the business and commercial category. This is consistent with the Secretary of State's current role as decision maker for a broad range of town and country planning cases that come before him on call-in or appeal.

Geographical scope of the proposals

22. The proposals set out in this consultation document will apply to development in England or its adjacent waters. It will not apply to projects in Wales or in Scotland.
23. Requests to the Secretary of State to use the infrastructure planning route for prescribed forms of business or commercial projects in Greater London will only be considered with the Mayor of London's consent. This is because the Mayor has overall strategic responsibility for planning in London. The Mayor of London is consulted on planning applications made to individual London Borough councils where applications concern matters of potential strategic importance, and can take them over for his own determination. The Government therefore considers it is appropriate for the Mayor's consent to be given where significant business or commercial proposals are proposed to be considered under the infrastructure planning regime.

Types of Business and Commercial development

24. Clause 21 of the Growth and Infrastructure Bill provides that the types of business or commercial projects that could be the subject of a request for a direction, will be set out in regulations. The Secretary of State is seeking views through this consultation on the types of projects to be included in those regulations and on any thresholds.
25. Annex A includes a list of the types of business and commercial projects the Secretary of State considers could be brought forward under the new proposals. These include office development, including research and development sites, manufacturing, warehousing, conference and exhibition centres, tourism, leisure and sports and recreation proposals,

and major mixed use developments (where this includes one or more of the uses described above but does not include housing) and technically complex, nationally significant development such as certain types of mining operations.

26. We are seeking views on whether these are the types of projects that would benefit from inclusion in the nationally significant infrastructure regime or whether there are others not mentioned which should be included.
27. The types of development and thresholds set out at Annex A have been identified on the basis of our analysis of a range of policy and land-use development statistics, case studies of types of development and having regard to thresholds in Schedule 2 to the Environmental Impact Assessment Regulations³ and the descriptions of development in the Town and Country Planning (Use Classes) Order 1987 (as amended). Thresholds have been set at a level that is intended to ensure that only significant forms of development are captured.
28. The Growth and Infrastructure Bill's Impact Assessment sets out that our initial assessment of the number of new commercial and business cases likely to be dealt with under the Planning Act regime is between 10 and 20 per annum.
29. The Bill currently before Parliament sets out that the prescribed descriptions of business or commercial projects may not include the construction of one or more dwellings. This means that developments that include an element of permanent housing cannot be directed into the nationally significant infrastructure planning regime. The Planning Act 2008 already provides for the exclusion of dwellings as associated development.
30. The Government has carefully considered whether housing should be a prescribed form of development but is of the view that it is the responsibility of local councils to plan to meet housing need locally. As set out in the National Planning Policy Framework, local authorities should be planning to deliver a wide choice of high quality homes, wider opportunities for home ownership and creating sustainable, inclusive and mixed communities, including by planning for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community and identifying the size, type, tenure and range of housing that is required in particular location, reflecting local demand.

Question 1:

Do you agree that the proposed list of development types set out at

³ The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, (SI 1999/203)

Annex A should be prescribed in regulations in order to make them capable of a direction into the nationally significant infrastructure regime?

Question 2:

Do you think that thresholds should apply and, if so, whether those in column 2 of the table at Annex A are appropriate? If not, how should these be changed?

Establishing national significance

31. If the Secretary of State receives a request from a developer of a development that is or forms part of a prescribed business or commercial project, he then needs to consider whether the project is a project which is nationally significant whether by itself or together with another project. If the Secretary of State determines that a project is not of national significance and he determines not to issue a direction this does not fetter the Secretary of State's discretion to call-in the application at a later date should the application give rise to issues of more than local significance.
32. In the Secretary of State's view national significance can be determined when considering a relevant request (i.e. application for a development to be considered through this new route) in a number of ways including:
- The physical scale of the proposed development or the project;
 - The possible impacts of the proposed development or project; particularly if it has significant effects beyond their immediate locality;
 - The location of the proposed development or project and whether that gives rise to substantial cross-boundary or national controversy;
 - The potential economic impact where a proposed development may have significant impact on economic growth;
 - For proposed minerals extraction, the rarity and importance of the mineral; and
 - Whether issues of national security or which involve foreign Governments are involved.
33. The Secretary of State may request additional information from a developer if he is unable to reach a clear view on whether a project is, or is not, of national significance. As each project will be different, the Secretary of State will reach a decision on national significance on a case by case basis. However, we are seeking views generally on the factors that the Secretary of State might wish to take into account.

Question 3:

Do you agree with our assessment of the factors that the Secretary of State would need to take into account when considering whether a project is nationally significant?

Retail and associated development

34. The Secretary of State is minded to exclude retail projects from the list of types of project to be included in regulations.
35. The Government has clearly set out their town centre first policy in the National Planning Policy Framework – making clear that ‘local planning authorities should recognise town centres as the heart of their communities and pursue policies to support their viability and vitality’⁴. The Government has also set out in its response to the Portas Review that planning decisions on retail development are best taken by local planning authorities⁵.
36. The Secretary of State is seeking views on his proposal that retail development should not be a prescribed type of business or commercial project. The effect of this would be that responsibility for determining planning applications for retail proposals would remain with local planning authorities.
37. It should be noted that the Planning Act allows “associated development” to be brought forward alongside the main element of the development and it is not proposed to amend this. The Department has published guidance on associated development (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8367/2130062.pdf) which gives an indication of the type and scale of associated development that can come forward with infrastructure projects. The associated development provision means that projects of national significance which included an element of retail as associated development could be the subject of a direction into the infrastructure planning regime.

Question 4:

Do you agree that retail projects should not be a prescribed business or commercial project?

⁴ <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

⁵ <https://www.gov.uk/government/publications/high-streets-at-the-heart-of-our-communities-government-response-to-the-mary-portas-review>

National Policy Statements

38. The Planning Act 2008 includes provisions for National Policy Statements to be approved by Parliament before they are designated by the Secretary of State. Where a National Policy Statement is designated the relevant Secretary of State must take decisions on nationally significant infrastructure projects in accordance with it.
39. National Policy Statements provide the policy and decision-making framework for nationally significant infrastructure. They give certainty to developers by making clear the Government's policy on the different forms of infrastructure, help speed up the examination phase (for example, by addressing the question of 'need'), and guide the decision-maker on the approach that should be taken on the main issues. They are given democratic legitimacy by Parliamentary scrutiny and approval. There are currently eight National Policy Statements, detailing Government policy on different types of infrastructure development, including energy (Overarching National Policy Statement on Energy; Renewable Energy; Fossil Fuels; Oil and Gas Supply and Storage; Electricity Networks; and Nuclear Power); transport (Ports) and Waste Water. The National Policy Statement on Hazardous Waste is due to be finalised in Spring 2013. The Government has not yet brought forward National Policy Statements in the following areas covered by the Planning Act: airports; national networks (road and rail); and water supply.
40. Given the wide range of developments which could be included within the new commercial or business category, and the focus on providing this as an opt-in route for developers with the vast majority of business and commercial applications remaining with local authorities for decision, we do not think the case for one or more National Policy Statements is strong. The National Planning Policy Framework, together with other important and relevant considerations such as local plan policies, could provide a policy framework for decision making on business and commercial developments. The Government does not therefore intend to prepare National Policy Statements for the new category of business and commercial development.

Question 5:

Do you agree that Government should not prepare a National Policy Statement (or Statements) for the new category of business and commercial development?

Any other comments?

41. If you have any other comments you would like to make about the Government's proposal to bring new forms of development within the scope of the nationally significant infrastructure regime, or on this consultation document more generally please let us know.

Question 6:

Do you have any other comments on the proposals that you would like to make?

What will happen to your response?

42. After the consultation has concluded, we will consider very carefully all the responses that we have received.
43. The Department of Communities and Local Government will process your personal data in accordance with Data Protection Act and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Publication of responses – confidentiality and data protection

44. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).
45. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

Consultation response form

How to respond:

The closing date for responses is Monday 7 January 2013.

This response form is saved separately on the DCLG website.

Responses should be sent preferably by email:

Email response to **majorinfrastructure@communities.gsi.gov.uk**

Written response to:

Alison Cremin
Department for Communities and Local Government
Infrastructure and Environment Team
Zone 1/J6 Eland House
Bressenden Place
London SW1E 5DU

Telephone 0303 4441619

About you

i) Your details:

Name:	
Position:	
Name of organisation (if applicable):	
Address:	
Email:	
Telephone number:	

ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?

Organisational response

Personal views

iii) Please indicate which best describes you or your organisation:

District Council

Metropolitan district council

London borough council

Unitary authority/county council/county borough council

Parish council

Community council

Non-Departmental Public Body

Planner

Professional trade association

Land owner

Private developer/house builder

Developer association

Voluntary sector/charity

Residents' association

Other

(please comment):

iv) What is your main area of expertise or interest in this work?

Chief Executive

Planner

Developer

Residents' association

Surveyor

Member of professional or trade association

Councillor

Planning policy/implementation

Environmental protection

Other

(please comment):

v) Would you be happy for us to contact you again in relation to this questionnaire?

Yes /No

Consultation Questions

Please refer to the relevant parts of the consultation document for narrative relating to each question.

Question 1: Do you agree that the proposed list of development types set out at Annex A should be prescribed in regulations in order to make them capable of a direction into the nationally significant infrastructure regime?

Yes / No

Comments

Question 2: Do you think that thresholds should apply and, if so, whether those in column 2 of the table at Annex A are appropriate? If not, how should these be changed?

Yes / No

Comments

Question 3: Do you agree with our assessment of the factors that the Secretary of State would need to take into account when considering whether a project is nationally significant?

Yes / No

Comments

Question 4: Do you agree that retail projects should not be a prescribed business or commercial project?

Yes / No

Comments

Question 5: Do you agree that Government should not prepare a National Policy Statement (or Statements) for the new category of business and commercial development?

Yes / No

Comments

Question 6: Do you have any other comments on the proposals that you would like to make?

Yes / No

Comments

ANNEX A:

Proposed types of development and thresholds

Type of Development ⁶	Where the project meets the following threshold
Offices and research and development facilities	Over 40,000m2 gross internal floorspace
Manufacturing and processing proposals	Over 40,000m2 gross internal floorspace
Warehousing, storage and distribution	Over 40,000m2 gross internal floorspace
Conference and exhibition centres	Over 40,000m2 gross internal floorspace
Leisure, tourism and sports and recreation	Area – over 100 hectares Sports Stadia where the seating capacity is a minimum 40,000 seats
Extractive industries (mining and quarrying) Including proposals for: Deep mined coal Onshore oil and gas extraction Other mining and quarrying proposals	All proposals over 500 tonnes per day for petroleum and 500,000 cubic metres per day for gas over 100 hectares

⁶ We envisage that offices and research and development facilities would be broadly equivalent to use class B1; manufacturing and processing proposals to use classes B1(c) and B2; and warehousing, storage and distribution to use class B8.

<p>Mixed-use development including, for example, mixed-use business parks.</p> <p>(Mixed-use includes one or more of the above uses but does not include housing development or where retail is a main use.)</p>	<p>Over 100,000m2 floorspace</p>