

<b>Title:</b> <b>Nationally Significant Infrastructure Projects and Housing</b>  <b>IA No: RPC-3241(1)-CLG</b>  <b>Lead department or agency:</b> <b>Department for Communities and Local Government</b>	<b>Impact Assessment (IA)</b>				
	<b>Date: 10 December 2015</b>				
	<b>Stage: Validation</b>				
	<b>Source of intervention:</b> Domestic				
	<b>Type of measure:</b> Primary legislation				
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<b>Summary: Intervention and Options</b>	<b>RPC Opinion: GREEN</b>
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**Cost of Preferred (or more likely) Option**

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)		In scope of One-In, Two-Out?	Measure qualifies as
		£0m	£0m		
£0m	£0m	£0m	£0m	£0m	£0m

**What is the problem under consideration? Why is government intervention necessary?**

This measure aims to remove regulatory barriers by allowing a developer of a nationally significant infrastructure project to seek consent for housing as part of their application for consent for an infrastructure project. This will prevent the need to seek a separate application for the housing element under a different regulatory regime. It will also offer new opportunities to develop housing and may result in new collaborations and partnerships between infrastructure developers and housing developers. Developers have expressed support for the measure that can only be implemented through a change to primary legislation.

**What are the policy objectives and the intended effects?**

The objective is to offer choice to developers, who may find it more cost effective to obtain consent for their infrastructure project and an element of housing through a single application for a Development Consent Order under the Planning Act 2008 rather than having to make a separate application under the Town and Country Planning Act for the housing element. The intended effect is to allow housing to be consented that is needed as part of the construction or operation of the infrastructure project or housing that is in geographic proximity to the infrastructure.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Two options have been considered: a “do nothing” option and an option comprising changing primary legislation (option 1). Policy Option 1 comprises amending the Planning Act 2008 to remove the restrictions on housing being consented through the nationally significant infrastructure planning regime. The changes will be the minimum necessary to fulfil the 2015 Productivity Plan commitment to legislate to bring an element of housing into the nationally significant infrastructure planning regime. There will be no secondary legislation, but these changes will be supported by guidance setting out details such as the maximum amount of housing that may be consented. The “do nothing” option would mean that existing procedures under the Planning Act 2008 would continue. Maintaining existing legislation will not deliver the policy.

**Will the policy be reviewed?** It will not be reviewed. **If applicable, set review date:** Month/Year

Does implementation go beyond minimum EU requirements?				N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro Yes</b>	<b>&lt; 20 Yes</b>	<b>Small Yes</b>	<b>Medium Yes</b>	<b>Large Yes</b>
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)				<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible:

..... Date: 10/12/15

A handwritten signature in black ink, appearing to read "I Brand". The signature is stylized with a large, looped initial "I" and a long horizontal stroke extending to the right.

# Summary: Analysis & Evidence

# Policy Option 1

Description:

## FULL ECONOMIC ASSESSMENT

Price Base Year 0	PV Base Year0	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate	0		0	0

### Description and scale of key monetised costs by 'main affected groups'

None. The inclusion of housing in an application for a nationally significant infrastructure project, rather than applying for permission through the Town and Country Planning Act will be optional. The fee charged for nationally significant infrastructure projects is determined by the number of inspectors required to examine the project and is dependent on the scale and complexity of the project. In the highly unlikely situation where the inclusion of a limited amount of housing as part of an application for a nationally significant infrastructure project would result in an increase in fees payable for an application under Planning Act 2008 (eg because an additional inspector is needed for the panel examining the project) the developer would still be free to submit an application for planning permission to the local authority under the Town and Country Planning Act.

### Other key non-monetised costs by 'main affected groups'

None.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate	0		0	0

### Description and scale of key monetised benefits by 'main affected groups'

There will be benefits arising from not having to pay fees for a separate application for housing under the Town and Country Planning Act 1990. This is because the applicant will be able to seek consent for the infrastructure project and the housing through a single application under the Planning Act 2008. Applications under the Town and Country Planning Act are subject to a separate fee. Applications for a single consent for infrastructure and a limited amount of housing under the 2008 Act are highly unlikely to result in higher fees payable under the 2008 Act than would be charged for the infrastructure project without the housing. There will therefore be net benefits from a saving in fees where a single application for consent under the Planning Act 2008 is made. However, none of the 45 nationally significant infrastructure projects that have sought consent so far have submitted a separate application for housing under the Town and Country Planning Act 1990.

### Other key non-monetised benefits by 'main affected groups'

There may be a small increase in housing completions if, in some instances, the option of using the nationally significant infrastructure planning route results in additional housing being brought forward.

### Key assumptions/sensitivities/risks

Discount rate (%)

We cannot predict the impact of this measure with any confidence at this stage. Although there are currently 12-15 nationally significant planning projects each year, we do not know what these projects might be or whether they are likely to want to include an element of housing as part of their application (not all projects e.g. a hazardous waste site may be appropriate for the inclusion of housing in close proximity).

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	Yes	OUT

# Impact Assessment: Nationally Significant Infrastructure Projects and Housing

## Executive Summary

1. There is a separate planning regime for nationally significant infrastructure projects under the Planning Act 2008. This does not currently allow consent to be granted for housing. A developer of a nationally significant infrastructure project who wants to include any housing as part of an infrastructure project will therefore need to seek a separate consent for housing under the Town and Country Planning Act 1990.
2. The proposed measure will amend primary legislation so that developers are able to seek consent for housing related to an infrastructure project when they make an application for consent under the Planning Act 2008. The housing will need to be related to an infrastructure project (either functionally or geographically) for which an application is being made under the Planning Act 2008. Pure housing or housing led projects will not be covered by this measure.
3. The measure is de-regulatory because it saves a developer from the need to make a separate application for planning permission for any housing that they wish to include alongside their infrastructure project.
4. The measure requires amendments to primary legislation only. These are being taken forward through the Housing and Planning Bill, which contains a range of measures designed to improve the planning process for developers and thereby support an increase in housing supply. Secondary legislation is not required to implement the measure. Details such as the amount of housing that can be consented in a particular case, and the circumstances when it can be granted consent, will be set out in guidance. Given there will be no further secondary legislation, the figures set out in this impact assessment should be treated as final.
5. The use of this measure is optional for developers. It will be for the developer of an infrastructure project to choose whether to use this new route for obtaining consent for housing, or whether to use the existing consenting mechanism by submitting a planning application to a local authority under the Town and Country Planning Act.
6. None of the 45 infrastructure projects that have sought consent under the Planning Act 2008 to date have submitted a separate application for housing. However, the Government believes that one outcome of this measure will be the potential for new partnerships between developers of nationally significant infrastructure projects and housing developers.

7. At present, there are some 12-15 infrastructure projects each year which come forward into the nationally significant infrastructure regime. The Planning Inspectorate have indicated that it is difficult to predict what projects will come forward – particularly over a medium to long term period. They believe that there are a number of reasons for this including changes in national policy. It is therefore impossible to predict with sufficient certainty how many projects will come forward in future years, and of these, how many will seek consent for housing and how much housing will be sought.
8. However, we do not expect there to be a significant increase in the number of nationally significant infrastructure projects as a result of this measure as the nationally significant infrastructure is likely to remain the driver for projects coming forward rather than the inclusion of an element of housing. Two theoretical examples of circumstances where housing might be included as part of an infrastructure project are set out at Annex B.
9. There are unlikely to be any benefits in terms of time savings that will accrue from making a single application for consent for both infrastructure and housing. An application for consent for housing will need to contain the same level of detail and information whether the application is made under the Town and Country Planning Act or as part of a single consent under the Planning Act 2008. If a developer did decide to submit a separate application for housing, then they could do so in parallel to their application for consent for the infrastructure, so there is unlikely to be any time saved in getting consent.
10. The main benefits to developers of this proposal will be from the savings made from not having to pay fees to a local planning authority for a separate planning application. The level of savings from fees obtained from this measure will depend on unknown factors such as the number of projects coming forward, and the amount of housing being sought. A range of possible savings are set out in the supporting evidence. If a maximum of 8 projects sought consent under the new measure, and each of these were for the maximum of 500 houses, the saving in fees per year would equate to just over £560,000 per annum.
11. There are unlikely to be any additional costs involved if developers choose to seek consent for housing as part of a single application as the application requirements will be the same. Although fees are charged for making an application under the Planning Act, these are based on the number of planning inspectors that are likely to be required to examine the project. Projects applying for consent under the nationally significant infrastructure planning regime are large and complex. Therefore the Government thinks it unlikely that the addition of housing to an application will lead to an increased number of inspectors being required in a particular case, and so no additional costs are likely to fall on developers. A developer would still have the option of making a separate application under the Town and Country Planning Act if the inclusion of the housing element were to increase the fees that would be paid under the Planning Act 2008. A separate fee would be charged for any application under the Town and Country Planning Act 1990.

12. The National Infrastructure Planning Association (NIPA) representing the sector developers and promoters of major infrastructure have expressed support for this measure in their written evidence to the Housing and Planning Bill Committee. The British Property Federation (BPF) also expressed support when the measure was announced as part of the Government's Productivity Plan. Details are at Annex C.

## **Evidence Base**

### Background

13. The Planning Act 2008 is separate regime from that provided for other types of development under the Town and Country Planning Act 1990. It is specifically designed to provide the legislative basis for granting consent for nationally significant infrastructure projects in the five fields of energy, transport, water supply, waste water and waste. More details of the regime and how it grants consent are set out in Annex A.
14. A key element of the 2008 Act is the ability to provide a single consenting process for large infrastructure projects which provides planning consent for the project but may also incorporate other consents and include authorisation for the compulsory acquisition of land. However, the 2008 Act does not allow housing to be consented. The consequence of this is that if an infrastructure developer wants to include any housing in their project, they have to make two applications for consent – an application to the Secretary of State for development consent under the 2008 Act for the infrastructure and a separate application to the local planning authority under the Town and Country Planning Act 1990 for planning permission for any housing.

### Problem under consideration

15. The Planning Act 2008 does not currently permit any housing to be consented because:
  - housing does not fall within any category of infrastructure for which development consent is required under the 2008 Act
  - the regulations that prescribe the descriptions of business and commercial projects are precluded from including the construction of one or more dwellings; and
  - associated development as defined in the 2008 Act is development which “is not the construction or extension of one or more dwellings”.

16. This means the only accommodation that development consent can be obtained for is temporary accommodation (e.g. for construction workers). Such accommodation must normally be removed or demolished once construction of an infrastructure project is completed. Developers of nationally significant infrastructure projects who wish to include even the smallest element of permanent housing in their proposals are therefore forced to seek planning permission from the local planning authority through a separate application under the Town and Country Planning Act 1990. This has cost implications for developers because of the separate fee paid to handle the Town and Country Planning Act 1990

### Rationale for intervention

17. Government policy is to increase housing supply to better meet needs however, as the provision of housing is currently excluded from the nationally significant infrastructure planning regime, housing supply is affected in two ways.
18. Firstly, where housing is required for workers involved in the construction and operation of the infrastructure, the application for consent for such housing must be made separately through the Town and Country Planning Act system. This can be inefficient for developers of major infrastructure projects as they may need to use two entirely separate planning procedures and will incur additional fees for making the separate application.
19. Secondly, it means that major infrastructure developers cannot include within their applications housing that is not needed for construction or operation of the infrastructure but which nonetheless could be developed alongside the infrastructure project itself. For example, developing a nationally significant infrastructure project may have the effect of enabling sites that were previously not considered suitable for housing to become available. The current exclusion of housing from the Planning Act 2008 consenting regime means that such opportunities for new housing may be foregone. Although it is always possible for a developer to apply for housing separately (or later) under the Town and Country Planning Act system, experience suggests that once an infrastructure project is consented and built, this is unlikely to happen.
20. To address this problem, in the 2015 Productivity Plan, the Government published its commitment to legislate to bring an element of housing into the nationally significant infrastructure planning regime. This change will allow developers to obtain consent for a limited amount of housing as part of a Development Consent Order for a nationally significant infrastructure project under the 2008 Act. In particular, developers will be able to seek development consent for housing in cases where:
  - there is a **functional need** for the housing in terms of the construction or operation of a project. For example where housing (rather than temporary accommodation) is needed for construction workers, or to support a 24 hour presence on the site for key workers;

- the housing is not functionally linked to the infrastructure project but is in **geographical proximity** to the project: for example, housing which is within the boundary of an infrastructure project such as a business and commercial project that includes housing, or housing that is adjacent to or in close proximity of a nationally significant project (e.g. a rail station on a railway line).

### Policy objective

21. The intended effect is to:

- offer choice to developers who may find it more cost effective to obtain permission to provide housing necessary for the construction and operation of their project through a Development Consent Order rather than through the Town and Country Planning Act route;
- allow an element of housing for general use to be consented as part of a Development Consent Order.

22. It is important to note two features of the scheme when outlining intended effects:

- First, it will be for developers to determine if they wish to include an element of housing within a Development Consent Order; there is no expectation on the part of Government that they should do so.
- Secondly, developers might prefer to use the Town and Country Planning Act regime, as is currently possible. This measure simply gives them a choice as to which planning process to use for the housing element.

### Description of options considered

23. Two options have been considered a “**Do nothing**” option and **Option 1** comprising changing primary legislation.

#### Do nothing

24. The “Do nothing” option would mean that existing procedures under the Planning Act 2008 would continue. Maintaining existing legislation will not deliver the Government’s policy objectives so this option has been discounted without further consideration.

#### Option 1

25. Policy Option 1 comprises amending the Planning Act 2008 to remove the restrictions on housing being consented. It will not change the existing process for seeking consent for nationally significant infrastructure projects under the 2008 Act.

26. The Government proposes to amend section 115(1) of the 2008 Act so that “related housing development” can be granted development consent. Related housing development is defined in the proposed new legislation (new section 115(4B)) as follows:
- “Related Housing development means development which –
- (a) consists of, or includes the construction of one or more dwellings,
  - (b) is on the same site as, or is next to or close to, any part of the development within subsection (1)(a) or is otherwise associated with that development (or any part of it),
  - (c) is to be carried out wholly in England, and
  - (d) meets the condition in subsection (4C)<sup>1</sup>.”
27. The amendment therefore permits housing to be consented as part of a Development Consent Order where:
- (i) the housing is in geographical proximity to a nationally significant infrastructure project (“development which...is on the same site as, or is next to or close to any part of the development”); and/or
  - (ii) the housing is required to meet a functional need (“development which...is otherwise associated with that development (or any part of it)”).
28. The proposed amendment to section 115 of the 2008 Act will only apply to nationally significant infrastructure projects that are physically located:
- (i) entirely within England, or
  - (ii) in waters adjacent to England up to the seaward limits of the territorial sea.
29. Any related housing development will also have to be located wholly within England. Although the 2008 Act does apply in Wales, the power for the Secretary of State to grant development consent for housing will not apply to any project in Wales.
30. The amendment being made to legislation will also not allow projects that only comprise housing to be granted development consent. Housing will only be capable of being consented if it is linked (either by a functional need or by geographical proximity) to an infrastructure project that itself requires development consent.
31. The changes to legislation will be supported by guidance setting out details such as the maximum amount of housing that may be consented as part of any application. This will be set at 500 dwellings but a lower amount, or no housing at all, is likely to be consented in those areas where development is specifically restricted by policies in the National Planning Policy Framework. This will provide a good balance between flexibility and choice to developers and support for the Town and Country Planning Act regime and local plan-making.

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<sup>1</sup> Subsection 4C restricts the infrastructure projects which may seek related housing development to those located in England

32. The amendment proposed to section 115 of the 2008 Act requires the Secretary of State to take account of any matters set out in guidance when taking decisions on applications for development consent that include housing. The Department has produced a briefing note and draft guidance – see <https://www.gov.uk/government/publications/nationally-significant-infrastructure-projects-and-housing-briefing-note>
33. These changes will be the minimum necessary to fulfil the 2015 productivity Plan commitment to legislate to bring an element of housing into the nationally significant infrastructure planning regime. They are supported by key developer interests such as the British Property Federation who particularly welcomed the inclusion of mixed use developments and said:
- “...this will be a real boon to creating places where people can work, live and play. This is something that we have been talking to government about for a long time, and we are absolutely delighted that it has recognised that this change will make a really positive difference in driving forward sustainable growth.”*
34. More supportive quotes from business organisations are at Annex C.

## **Monetised and non-monetised costs and benefits of option 1**

### **Introduction**

35. Option 1 changes legislation to allow developers a choice of whether to include an element of housing as part of their Planning Act 2008 application for consent for a nationally significant infrastructure project, or to make a separate application for planning permission to the local planning authority for the housing element under the Town and Country Planning Act 1990.
36. The potential costs that will be incurred by developers in preparing consent applications for housing will be the same irrespective of whether the developer chooses to seek development consent for the housing under the Planning Act 2008 or planning permission under the Town and Country Planning Act 1990. An application for consent for housing will need to contain the same level of detail and information whether the application is made under the Town and Country Planning Act or as part of a single consent under the Planning Act. If an Environmental Impact Assessment is required for the housing development, then the work necessary to meet the requirements for this will be the same irrespective of the consenting route taken.
37. The consideration of applications is a different process under the Planning Act regime from that under the Town and Country Planning Act. Should a developer decide to submit a separate application for housing, then they could do so in parallel to their application for consent for the infrastructure. However, given that the infrastructure planning process is likely to take a minimum of 16 months for a decision from submission of the application, there is unlikely to be any time saved in getting consent for the housing element of the project through

a single application is made under the Planning Act. The main benefit of choosing to use the Planning Act regime will be the certainty provided to developer from the statutory timetable in the stages leading to a decision. A comparison of the process and timescale for the two regimes is set out below:

Stage	Making an application for housing through the TCPA regime	Making an application for a Nationally significant Infrastructure project with an element of housing
Pre-application	<p>Developer seeks advice from planning officers (optional). There may be a charge for this depending on the local planning authority.</p> <p>Developer engages with local planning authority, statutory and non-statutory consultees and local people.</p>	<p>Developer seeks free advice from the planning inspectorate (optional).</p> <p>Developer informs the planning inspectorate that they intend to submit an application in the future.</p> <p>Developer carries out extensive consultation on a proposal for an infrastructure project involving an element of housing. Time taken to prepare and consult on the project varies depending upon its scale and complexity.</p>
Application	<p>Developer submits their application for the housing element of their project to the local planning authority. There is a fee for this – <b>see table below</b>. On receipt of application, the local planning authority validates it to ensure that it's complete.</p> <p>Most minor and small-scale applications will be validated within 3 to 5 working days from the date of receipt. Major applications will be validated within 10 working days. The local planning authority will then publicise the application and consult on it. Anyone can comment on proposals.</p> <p>The local planning authority then starts the determination process, the developer is notified in writing and the application is placed on the planning register.</p>	<p>Developer submits a formal application for development consent for an infrastructure project including an element of housing to the planning inspectorate.</p> <p>There follows a period of up to 28 days for the planning inspectorate, on behalf of the Secretary of State, to decide whether or not the application meets the standards required to be formally accepted for examination.</p> <p>Once accepted there is a pre-examination period (usually about 3 months) where the public will be able to register with the planning inspectorate and provide a summary of their views of the application in writing.</p>
Decision	<p><b>Most planning applications are decided within 8 weeks from receipt of application, unless they are defined as major applications - in which case the time limit is extended to 13 weeks.</b> A major application in the context of an application for housing will be one involving 10 or more dwellings.</p> <p>On large cases a planning committee will make the decision. On smaller cases planning officers will make the decisions.</p>	<p>The Planning Inspectorate has 6 months to carry out the examination. During this stage, people who have registered to have their say are invited to provide more details of their views in writing. Careful consideration is given by the Examining Authority to all the important and relevant matters, including the representations of all interested parties, any evidence submitted and answers provided to questions set out in writing and explained at hearings.</p> <p>The Planning Inspectorate must prepare a report on the application to the relevant Secretary of State, including a recommendation within 3 months of the 6 month examination period. The Secretary of State then has a further 3 months to make the decision on whether to grant or refuse development consent.</p> <p><b>Total time from application being made to decision will be around 16 months.</b></p>

## Benefits

38. We anticipate that developers will only choose the Planning Act 2008 route to consent housing when it offers a more efficient outcome and cost savings. Given that the costs of preparing an application for housing will be the same irrespective of which legislative route is chosen, the benefit that arises from seeking consent under the 2008 Act is simply from not having to pay the fees for a separate application under the Town and Country Planning Act. These fees will vary according to the amount of housing that is being proposed:

### **Town and Country Planning Act fees<sup>2</sup> for a range of housing**

<b>60 houses</b>	<b>250 houses</b>	<b>500 houses</b>
50 houses = £19,049 Excess 10 x £115 = £1,150	50 houses = £19,049 Excess 200 x £115= 23,000	50 houses = £19,049 Excess 450 x £115= 51,750
<b>£20,199</b>	<b>£42,049</b>	<b>£70,799</b>

39. The following table sets out potential savings in terms of fees that would have been payable if separate applications were submitted under the Town and Country Planning Act:

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<sup>2</sup> Source: A Guide to the Fees for Planning Applications in England. These fees apply from 15 April 2015.

**Potential projects with housing coming through nationally significant infrastructure planning regime each year**

<b>Estimated number of projects per year</b>	<b>Number of houses per project</b>	<b>Savings for developers</b>
<b>2 projects a year</b>	Project 1 – 60 houses	£20,199
	Project 2 – 500 Houses	£70,799
	<b>Overall savings</b>	<b>£90,998</b>
<b>5 projects a year</b>	Project 1 – 60 houses	£20,199
	Project 2 – 500 Houses	£70,799
	Project 3 – 250 houses	£42,049
	Project 4 – 250 houses	£42,049
	Project 5 – 60 houses	£20,199
	<b>Overall savings</b>	<b>£195,295</b>
<b>8 projects per year</b>	Project 1 – 60 houses	£20,199
	Project 2 – 500 Houses	£70,799
	Project 3 – 250 houses	£42,049
	Project 4 – 250 houses	£42,049
	Project 5 – 60 houses	£20,199
	Project 6 – 60 houses	£20,199
	Project 7 – 500 Houses	£70,799
	Project 8 – 500 Houses	£70,799
	<b>Overall savings</b>	<b>£357,092</b>
<b>8 projects per year</b>	All 8 projects with 500 houses	<b>8x £70,799</b>
	<b>Overall savings</b>	<b>£566,392</b>

40. The examples given above are for illustration purposes only. As mentioned above, none of the 45 infrastructure projects that have sought consent under the Planning Act 2008 to date have submitted a separate application for housing. So, based on past experience alone, we would expect the overall benefit from fee savings to be zero.

41. However, the Government believes that one outcome of this measure will be the potential for new partnerships between developers of nationally significant infrastructure projects and housing developers.

42. It is not possible to predict the number of projects that will come through the Planning Act 2008 route or the numbers (if any) that will want to seek consent for housing. Whilst there are currently 12-15 projects coming forward each year, there is no certainty that this will continue. Overall numbers of applications could rise (e.g. if a significant number of new projects come forward in response to the changes we are making), or could fall. It is also not possible to estimate the number of houses that each developer will seek consent for. The maximum is 500 and there is no minimum.
43. We have therefore made assumptions to illustrate the possible savings from planning application fees in three scenarios – a low (2), medium (5) and high (8) number of projects that might include housing. We have also tried to illustrate the number of houses that developers could seek consent for using a range of numbers low (60), medium (250) and high (maximum 500). In all of these scenarios, the overall savings per year are low, with a saving of approximately £600k per year under the most optimistic scenario.

### Costs

44. We estimate that there are no net additional costs to developers from this reform and are confident that this change will either deliver a small saving to business, or in the worst case be neutral.
45. The reform simply offers developers an additional route through which they can bring forward housing as part of their nationally significant infrastructure project – should they choose to. They are not obligated to use this approach and can instead go through the Town and Country Planning Act system - as now. Those who choose to use the nationally significant infrastructure route would most likely do so because they would have determined that there could be cost savings from seeking permission in this way (i.e. by not having to make a separate application for the housing).
46. Developers will be able to seek advice on the likely costs of making an application from the Planning Inspectorate who provide a free pre-application service to those who are preparing a nationally significant infrastructure planning application. The cost of making such an application will be influenced by its scale and complexity and how many Examining Inspectors will be required.
47. However, we consider that it is highly unlikely that the inclusion of a housing element would increase the fees payable to the Planning Inspectorate for considering an application for a nationally significant infrastructure planning project. The fee tariff is based largely on the estimated amount of inspector time that will be required, and in particular whether one, three, four or five inspectors are needed to examine the application within the available time. Nationally significant infrastructure projects are large complex, projects and it is unlikely that the inclusion of a housing element would add so much to the workload as to shift an application from needing, say, three inspectors to four.

48. In any instances where the fees do increase as the result of including housing within the nationally significant infrastructure planning regime, it would only apply to developers who have chosen, with prior knowledge of the likely fees, to pursue the option of using the nationally significant infrastructure planning regime rather than the Town and Country Planning Act option.
49. Local authorities have different roles in the nationally significant infrastructure planning regime and Town and Country Planning Act system, with a common feature being that both regimes require local authorities to participate and this involves the expenditure of officer time. Under the Town and Country Planning Act regime they can recover costs through fees. This is not the case with an application for a nationally significant infrastructure project, where fees are paid to the Planning Inspectorate and not to the local authority.
50. However, the addition of an element of housing to a limited number of applications for consent for nationally significant infrastructure projects does not seem likely to place an additional burden on local authorities. The role of a local authority in the nationally significant planning process is set out in the Planning Act 2008 and will be no different for applications that involve an element of housing from those that do not.
51. A local authority hosting a nationally significant infrastructure project can also seek to negotiate a Planning Performance Agreement with developers as a contribution towards costs it incurs in undertaking work on a nationally significant infrastructure project. The addition of an element of housing as part of an application for a nationally significant infrastructure project would not change this.

### Familiarisation costs

52. We do not expect businesses to incur any familiarisation costs. In the main, nationally significant infrastructure project applicants are relatively large companies, notably in regulated or semi-regulated sectors of energy and transport. Such large companies typically employ in-house planning and sometimes legal expertise who are familiar with both the nationally significant infrastructure and the Town and Country Planning regimes.
53. For a nationally significant infrastructure project, developers already typically employ the services of specialist planning consultancies and legal practices, who draft documentation needed for an application and advise on and support the applicant in the process.
54. Such specialist planning and legal practices can be expected to possess relevant expertise on both the nationally significant infrastructure planning and Town and Country Planning Act regimes, and a good appreciation of the differences between the two systems and which would be more suitable for the project they are taking forward. Since this is already the scenario under which the majority of nationally significant infrastructure planning applications take place, it is highly unlikely that this change would impose any additional familiarisation burden on developers.

55. Developers will already need to understand the nationally significant infrastructure planning regime in order to go through the application and consenting process. The addition of an element of housing as part of that application will not change that or place additional requirements on developers.
56. Local authorities have defined roles within the nationally significant infrastructure planning regime and guidance is available, together with support from the Planning Inspectorate, to help them fulfil those roles. Because nationally significant infrastructure projects are still relatively rare (only 45 have been consented since inception in 2010) the aggregate impacts across some 350 plus local authorities will be minor. The additional element of housing will not, of itself, make a significant addition to the familiarisation costs of such local authorities in dealing with a nationally significant infrastructure project for the first time.

## **Rationale and evidence that justify the level of analysis used in the Impact Assessment (proportionality approach)**

57. It is impossible to predict the number of projects that will come through the nationally significant infrastructure planning route, and of those, which ones will include an element of housing. Whilst we are aware of how many projects have made applications for consent under the nationally significant regime to date, we have no evidence to indicate that any of these would have included housing as part of their application if they could have done so. We are also not aware of any projects subsequently bringing forward housing through an application under the Town and Country Planning Act.
58. Our discussions with developers have however shown that there is a strong interest in the possibility of bringing forward applications in the future, and that this may include an increase in business and commercial projects once housing can be consented as part of such projects. They also believe that there may be new models of joint working between infrastructure developers and housing developers that will result in new projects coming forward. But at this stage they do not consider it feasible to make judgements about the take-up of the new opportunities that the change to allow housing under the nationally significant infrastructure planning regime will bring.
59. Calculations on the number of projects likely to come through the regime in the future, and the number likely to want to include housing in their application, would require a substantial number of assumptions to be made, and would require a disproportionate amount of work at this stage with the results probably being unreliable.
60. It is also not feasible without undertaking a disproportionate amount of work to estimate the number of houses that each developer will want to seek consent for when they apply for consent for an infrastructure project. One may choose to build one or two houses for key workers, for example, while another could choose the maximum number of 500 for the general market.

61. The illustrative examples suggest that the annual saving would be relatively small. Even in the two most optimistic example with 8 nationally significant infrastructure projects per year that include housing, where 5 of which contain 250 dwellings or more, the estimated annual saving to business is only £360,000 per year. If all 8 projects included the maximum allowable 500 houses, the estimated total annual saving to business would only be £560,000.
62. Given the fact that the likely scale of the benefits will be small or zero; the level of uncertainty around the likely impacts; and the level of effort that would be required to estimate the benefits, we have not included the annual saving to businesses as a result of this deregulatory measure. We regard this as consistent with the guidance in section 2.2. of the Better Regulation Framework Guidance. It is also consistent with the approach we took for the VIA on section 26: bringing business and commercial projects within Planning Act 2008 regime, which was rated green by RPC (ref. RPC12-FT-CLG-1600(3)).

## **Risks and assumptions**

63. We cannot predict the impact of this measure with any confidence at this stage. At present, there are some 12-15 infrastructure projects each year which come forward into the nationally significant infrastructure regime. However, the Planning Inspectorate have indicated that it is difficult to predict what other projects will come forward – particularly over a medium to long term period for a number of reasons, including changes in national policy. It is therefore impossible to predict with sufficient certainty how many projects will come forward in future years, and of these, how many will seek consent for housing and how much housing will be sought. We will observe how developers and local areas react to this opportunity but we don't expect any significant increase in the numbers of NSIP applications because of this measure.

## **Summary and preferred option with description of implementation plan**

64. Option 1 is the preferred option. It will amend the Planning Act 2008 and remove the restrictions on housing being consented as part of nationally significant infrastructure planning regime. This will deliver the Government's 2015 Productivity Plan commitment to legislate to bring an element of housing into the regime. We will monitor applications and decisions to establish take-up of the option of including housing in applications for nationally significant infrastructure projects. This, in turn will allow us to assess any wider contribution being made to housing delivery.

## **Annex A: The Nationally Significant Infrastructure Planning Regime**

The Planning Act 2008 provides the legislative basis for granting consent for nationally significant infrastructure projects in the five fields of energy, transport, water supply, waste water and waste. Specific types of nationally significant infrastructure projects in these fields are set out in the 2008 Act, along with thresholds or criteria which determine which projects require consent under the Act. These project types can be added to or varied through an Order made by the Secretary of State. The Secretary of State can also direct that projects which do not fall within the thresholds set out in the 2008 Act but fall within the five fields are to be treated as projects that require development consent under the 2008 Act.

The Growth and Infrastructure Act 2013 extended the 2008 Act so that the Secretary of State can also direct that certain types of business and commercial projects require development consent through the 2008 Act. The definition of what constitutes a business and commercial project is set out in secondary legislation. In issuing a Direction, the Secretary of State must be satisfied that a project falls within the prescribed descriptions of such projects and that it is nationally significant.

The process for obtaining consent for a nationally significant infrastructure project is front loaded and the developer consults extensively on a proposed project before submitting an application. Amongst others, the developer must consult local authorities, the local community and statutory consultees before any application is made for consent. Once an application is submitted, the Secretary of State is required to reach a decision on whether to accept the application for examination.

After an application is accepted, it will be examined by a single inspector or a panel of inspectors from the Planning Inspectorate known as the Examining Authority. Following completion of the examination, the Examining Authority will provide a report and recommendation to the Secretary of State who then takes the decision on whether to grant consent for the project. Where consent is granted, this will be in the form of a Development Consent Order. This not only provides development consent for the nationally significant infrastructure project but can also incorporate other consents and include authorisation for the compulsory acquisition of land.

## **Annex B:**

### **Theoretical examples of possible projects:**

- (i) A nationally significant infrastructure project, once operational, needs to ensure the immediate availability of key staff in case of an emergency on site. It therefore wants to provide housing for staff in the immediate vicinity of the infrastructure. This change to legislation will allow the planning consent required for the housing to be included within the development consent granted for the infrastructure project. A separate application for the housing will therefore not be needed.
  
- (ii) There is a proposal to re-open a disused rail line that would improve commuter links from a local town to a nearby city. The infrastructure project will need to seek development consent from the Secretary of State under the Planning Act 2008. Creation of the rail link will also provide suitable new opportunities to develop land for housing adjacent to the proposed station in the town. The change proposed to the Planning Act 2008 will mean that consent may be sought for up to 500 dwellings as part of the application for development consent for the rail line.

## **Annex C:**

# **Supporting evidence from business organisations**

**British Property Federation** (in response to publication of the Government's Productivity Plan on 10 July 2015)

“Given that government actively encourages mixed-use developments, it is bizarre that schemes that include housing were not included within the NSIP regime... We expect to see this change following today's announcement, and that this will be a real boon to creating places where people can work, live and play. This is something that we have been talking to government about for a long time, and we are absolutely delighted that it has recognised that this change will make a really positive difference in driving forward sustainable growth.”

**National Infrastructure Planning Association (NIPA)** (published written evidence provided to the Housing and Planning Bill Public Bill Committee)

“NIPA welcomes the specification of these limits in guidance rather than on the face of the Bill, as this will allow the limits to be changed or removed more easily in the light of their operation and effect on the provision of housing.

NIPA understands the benefits for promoters (and local authorities) of a fixed maximum number of houses, namely that they will have certainty of up to the limit set in guidance being able to be included in an application. NSIPs vary considerably in scale, however, and it may be appropriate and proportionate to include a larger number of houses in a larger application. A larger number of houses may also be desired by the local planning authority. “

**National Grid** (published written evidence provided to the Housing and Planning Bill Public Bill Committee)

“National Grid also supports the provisions in clause 107 of the Bill which allows nationally significant infrastructure projects under the Planning Act 2008 to involve an element of housing.”