APPENDIX 1

CONSULTATION QUESTIONS AND SUGGESTED RESPONSES

Q1. Do you agree that LPA performance should be assessed on the basis of the speed and quality of decisions on planning applications?

Suggested Response: *In principle, speed and quality of decisions are considered reasonable indicators with which to assess LPA performance. It is considered wholly reasonable for the speed of decisions to be a valid measure, but this needs to be approached with some caution, particularly when used in respect of complex applications, such as certain minerals and waste developments. The Government's aim for applications such as these to be determined in no more than a year - including any appeal - appears highly ambitious in many cases. Whilst it is important that unnecessary delays in the planning system are eradicated, care must be taken to ensure that targets of speed are not met at the expense of sound decision-making. Difficulty arises in how quality is measured - an elusive beast to capture in relation to planning decisions - and it is important for any measure of quality to be meaningful without being onerous to record. The quality of decisions on planning applications is rightly identified as a key measure and greater weight should be afforded to it as the principal indictor. Ultimately what is important is making the right decision for the right development in the right location – the impact of planning decisions, good and bad, are felt in communities long after recording whether or not the decision was made within prescribed determination period.*

Q2. Do you agree that speed should be assessed on the extent to which applications for major development are determined within the statutory time limits, over a two year period?

Suggested Response: *Government's recognition that the number of applications for major development received by LPAs can fluctuate widely is welcomed. Accordingly the proposal to assess the speed of decisions over a two year period would appear a more reasonable means of ironing out such variances. Caution is however urged. Applications for major development will invariably be matters reported to Planning Committees and, therefore, the ability of LPAs to meet statutory time limits will be influenced by Committee 'lead-in' periods, summer recesses, and, in the case of 'departures', through referral to the National Planning Casework Unit. Applications for major developments are also more likely to involve the completion of legal agreements. All of these examples will extend the time before a planning decision can be issued and are integral elements of the planning application process. It would be wrong for planning authorities to be judged so strictly against determination periods when the above factors lie largely outside of their control. Whilst LPAs will continue to ensure that submitted applications accord with their Validation Checklists, it is often not until consultation responses are received from technical specialists weeks into the process that the need for additional information is identified, invariably necessitating further publicity and consultation and adding to the determination period. There is a risk that LPAs may be tempted to recommend refusal in such instances on grounds of insufficient information so as to avoid risk of becoming a designated authority, notwithstanding that a satisfactory solution could be negotiated.*

Q3. Do you agree that extensions to timescales, made with the written consent of the applicant following submission, should be treated as a form of planning performance agreement (and therefore excluded from the data on which performance will be assessed)?

Suggested Response: *Given it is the Government's proposed intention to assess performance by singling out very poorly performing LPAs, it would appear logical for those applications where written confirmation between the LPA and the applicant has been agreed for an extension of time beyond the statutory time period to be excluded from the collected data as a form of planning performance agreement.*

Q4. Do you agree that there is scope for a more proportionate approach to the form and content of planning performance agreements?

Suggested Response: *In instances where a LPA considers it expedient to enter into a planning performance agreement, it would appear sensible for a proportionate approach to be adopted in terms of its form and content appropriate to the case in question.*

Q5. Do you agree that quality should be assessed on the proportion of major decisions that are overturned at appeal, over a two year period?

Suggested Response: *Whilst this may have some merit at district level, where the volume of planning applications dealt with are significantly greater, at County level the number of appeals even over a two year period are generally small. For this particular Authority only one planning appeal was heard over a two year period which can result in meaningless figures. Measuring quality in planning decisions has long been considered difficult to capture, particularly in ways whereby additional burdens are not placed upon LPAs already struggling with reduced resources. Whilst the proportion of major decisions overturned at appeal may be a useful indicator, concerns are raised given the potential for significant swings arising from the low number of appeals dealt with at County level even over the suggested two year period. It is also considered rather simplistic since the assumption is that where LPA decisions are overturned at appeal, the quality of the original LPA decision must have been poor. The consultation paper rightly recognises that appeal decisions can turn on small differences of view, interpretation of key polices or the weight afforded to material considerations. Notwithstanding low numbers involved (at least at County level), no recognition appears to be given to instances where decisions overturned at appeal may be quashed on legal challenge. Furthermore, examples do exist of somewhat bizarre appeal decisions which, whilst highly challengeable, the LPA may not have the resources to pursue further.*

Q6. Do you agree with the proposed approach to ensuring that sufficient information is available to implement the policy?

Suggested Response: *Clearly if assessment of performance is to be undertaken in line with the proposals, it will necessitate regular supply of accurate data. It would appear reasonable to penalise those authorities which fail to submit data notwithstanding the detailed concerns identified in response to earlier questions.*

Q7. Do you agree that the threshold for designations should be set initially at 30% or fewer major decisions made on time or more than 20% of major decisions overturned at appeal?

Suggested Response: *It is considered that the threshold for the percentage of decisions on major developments made on time should be aspirational yet achievable. Subject to the issues highlighted in response to speed made in response to earlier questions, the proposed benchmark appear reasonable. However, given the impact of these proposals is likely to result in a rise in the number of planning performance agreements, coupled with the Government's intention to have regard to data supplied prior to the introduction of such proposals, it is suggested that it may be fairer to LPAs to provide for a phasing approach working up to the proposed threshold. The threshold of 20% of major decisions overturned at appeal appears in principle to be broadly reasonable although concern is reiterated in that Counties tend to deal with a limited number of appeals and consequently are at risk of high percentage swings even when assessed over a two year period.*

Q8. Do you agree that the threshold for designation on the basis of processing speeds should be raised over time? And, if so, by how much should they increase after the first year?

Suggested Response: *The threshold for designation on the basis of processing speeds should be raised over time (reflecting the increased use of planning performance agreements anticipated by Government) but it is considered that it should move progressively up to the suggested initial threshold to allow for the fact that account will be taken for existing live applications which LPAs are likely to have approached differently in light of these proposals. Incremental increases from 20% to 25% to the proposed 30% is considered reasonable. This would also allow a sufficient period to review the working of the system and further increases could be considered accordingly.*

Q9. Do you agree that designations should be made once a year, solely on the basis of the published statistics, as a way to ensure fairness and transparency?

Suggested Response: *Whilst making annual designations solely on the basis of the published statistics would be transparent, attention is drawn to the concerns highlighted in response to earlier questions such as matters affecting determination periods which lie outside the control of the planning authority and the significant percentage swings arising from the low numbers of appeals generally entertained at the County tier. It is suggested that care needs to be taken in how designated authorities may be branded. For example if a County is involved in just two appeals over the two year accounting period one of which results in an overturn of its decision (seemingly regardless of the merits of that appeal ruling), it will become a designated authority given a 50% overturn of appeals which appear somewhat farcical. Furthermore, this scenario may arise despite that authority having very good performance in dealing with other applications not assessed for the performance purposes. Concern is raised that this is likely to have a damaging impact on the reputation of an authority.*

Q10. Do you agree that the option to apply directly to the Secretary of State should be limited to applications for major development?

Suggested Response: *Providing the option for applicants to apply to the Secretary of State directly conflicts with the aims of Localism and removes local accountability from the decision making process. Whilst the aim of providing applicants with an alternative, more efficient route where the planning performance of an authority is demonstrably and consistently very poor (as opposed to the example cited in response to Q9), may be noble, it is difficult to see how the planning process is simplified by this in practice. It is considered far more preferable for direct support to be instead be provided to those authorities where performance is demonstrably and consistently very poor. Extending the option to apply to the Secretary of State for other non-major applications appears an even less efficient practice and further removes the ability for development proposals to be locally determined.*

Q11. Do you agree with the proposed approaches to pre-application engagement and the determination of applications submitted directly to the Secretary of State?

Suggested Response: *The benefit of seeking pre-application advice is rightly highlighted. Concern is, however, raised regarding the proposed arrangements for seeking pre-application advice in respect of schemes to be submitted to the Secretary of State. The proposals would allow developers to seek pre-application from either the designated authority, the Planning Inspectorate or both. Staff at the Planning Inspectorate will not possess local knowledge of sites, history and issues. This runs the risk of matters not being addressed within subsequent applications. In cases where a developer seeks pre-application advice from both the authority and the Planning Inspectorate, there is a risk of conflicting advice and a question over which should take precedent. Regarding fees, it is proposed that they would be payable to the Planning Inspectorate, yet the designated authority would be expected to undertake significant elements of the process (site notices, neighbour notification, consideration of cumulative impact, s106 negotiations). This would be done at cost to the designated authorities and direct scarce resources away from precisely those authorities in most need of such resources to improve. It is also ironic to note that, not long ago, the Government was expressing its view that planning fees did not cover the costs of processing applications - it now appears to be suggesting that very poor performing authorities can undertake significant elements of the planning process without any fee income for certain types of applications. The proposed determination process appears overly complicated potentially necessitating 'an abbreviated form of hearing or inquiry'. It is difficult to see how this approach would contribute to the Government's aim of simplifying the planning process. Even where applications could be determined by written representations, an additional period of time would presumably need to be built in at the end of the process to enable all parties the opportunity to cover all relevant issues arising from the consultation exercise. It is difficult to see how such a system would deliver speedier decisions, leaving aside concerns that decisions affecting local communities were being taken remotely. Finally, there would be an inherent problem of a designated authority being responsible for discharging conditions imposed by another body acting on behalf of the Secretary of State as it may not be clear as to why a particular condition has been imposed.*

Q12. Do you agree with the proposed approach to supporting and assessing improvement in designated authorities? Are there specific criteria or thresholds that you would propose?

Suggested Response: *Access to a range of support for very poor performing authorities would be beneficial and, it is felt that extending such support should be the approach rather than providing the option to apply to the Secretary of State. If such an option is to proceed, however, it is right to recognise that designated authorities may not deal with many applications for major development and there is considered to be merit in assessing improvement against other factors. Nevertheless, it is questioned whether there is value in some of the proposed factors. For example, a very poor performing authority may efficiently carry out its administrative tasks associated with applications submitted directly to the Secretary of State, but does this demonstrate improved ability such that the designation can be removed?*

Q13. Do you agree with the proposed scope of the planning guarantee?

Suggested Response: *The Government's aim of tackling unnecessary delay is supported. Generally there should be scope for applications for major development to be determined within the year as proposed by the planning guarantee. However, experience suggests that, despite best intentions, this will not be possible in all cases. As an example, consider an application submitted in May giving rise to objections from statutory ecological bodies over the adequacy of information. Whilst the backstop date would be May the following year, the applicant may be prevented from being able to undertake further survey work until that time and the authority would still need to undertake appropriate consultation in respect of the further information. It is not unusual for applications for major development to be subject of multiple revisions during the determination process. There needs to be recognition of factors such as these within the planning guarantee. This authority, when handling major applications for opencast coal sites, has, in response to public demand, allowed extended periods for public consultation. This accords with the Government's agenda for greater engagement in the planning process. Even where this is resisted, it may still be appropriate to allow some extra time where the publicity timeframe falls over say the Christmas period. The effect of the proposals is that, in future, such flexibility to affected communities may not be so forthcoming and require members of the public to grapple with extensive technical documentation within the statutory consultation period. As a County Council dealing with applications for major minerals and waste proposals, it is evident that such operators generally recognise and accept that proposals for quarry extensions or major waste facilities are unlikely to be determined within the statutory period and accordingly that is an established feature in their business planning when developing replacement sites. Such operators do not tend, therefore, to object to such extensions of time recognising the benefits of community engagement. It is considered that the planning guarantee also needs to recognise this, particularly in relation to contentious minerals and waste proposals. Any belief that such cases will take no longer than a year to determine - including any appeal - appear misguided as any review of such appealed decisions will surely testify.*

Q14. Do you agree that the planning application fee should be refunded if no decision has been made within 26 weeks?

Suggested Response: *No. The response provided to Question 13 gives an example of when an application may not be determined within 26 weeks through no fault of the planning authority. It would be unfair for the fee to be refunded in such circumstances. The alternative is that authorities may be tempted to issue refusals just prior to the 26 week date and, whilst that may not be the Government's intention, it could become the*

reality to avoid the loss of revenue. It is difficult to see how that would be in the interests of the developer, particularly if amendments to a scheme are capable of making it acceptable. Authorities have already been hit hard by reductions in resources and services would be further impacted by loss of revenue. In the recent past Government has expressed its view that fees did not cover the costs of processing applications. It now appears content for applications to be processed at total cost to the tax payer and free to those who stand to most benefit from any permission granted. The consultation paper recognises the risks that applicants may delay determination to secure a refund or that, authorities may refuse applications to avoid the penalty. It suggests that such behaviour would be taken into account by Inspectors in considering whether to award costs in any subsequent appeal. This scenario would have no bearing, however, in instances where an authority wishes to grant permission for an application, but is delayed from doing so by an applicant protracting over the submission of some additional required detail. In such cases, these delaying tactics would not come before an Inspector.