

**NATIONAL INFRASTRUCTURE &
DEVELOPMENT PLANNING REVIEW:
CAN DEVELOPMENT CONSENT ORDERS HELP
MEET THE CHALLENGES OF OUR TIME?**



copper



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INTRODUCTION

Infrastructure. It underpins our society, and its delivery is critical. At the turn of the millennium, Heathrow Terminal 5 highlighted the challenge for decision makers handling projects of national significance. Public inquiries lasted years, with a substantial amount of information poured over to establish whether there was a need for such projects.

Following historical issues around the consenting and delivery of essential national infrastructure, the process was transformed by the Planning Act 2008. This legislation introduced 'nationally significant infrastructure projects' (NSIPs), and a new process - the Development Consent Order (DCO) process - for consenting them.

This report brings together the views and experiences of a wide range of infrastructure and development practitioners to look at whether the DCO process has been a success, ways to improve it, and whether the DCO process and whether it has a wider applicability for complex developments such as new settlements.

As a team of experienced planning, legal and communications experts practising in both infrastructure and development planning, we have engaged with people from across the spectrum to answer the above questions.

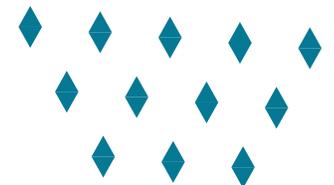
At the same time, the political, social, environmental and economic landscape has evolved quickly and dramatically since our research began and at the time of writing this report, there are significant concerns about how our economy and society will look in the future, as a result of Covid-19.

This, we believe, has given us a unique perspective as we have sought to understand the challenges for delivering infrastructure, jobs, and housing. The practical and political challenges that existed pre-Covid 19 remain relevant and include:

- Addressing climate change;
- Levelling up regional inequalities;
- The national housing challenge, providing affordable homes where people want to live.

Add to these the public health lessons we are learning, it's clear that infrastructure investment promised in the 2020 UK Spring Budget will be necessary and will need to have as wide an impact as possible.

On behalf of partners Barton Willmore, Copper Consultancy, Womble Bond Dickinson and Hannah Hickman, our independent planning researcher who supported us in an advisory capacity, we hope you find this report stimulating and insightful, and we look forward to engaging with you on its findings.



EXECUTIVE SUMMARY

As a team, Barton Willmore, Womble Bond Dickinson, Copper Consultancy and Hannah Hickman, have looked in depth at the national infrastructure planning process - known as the Development Consent Order (DCO) process, established by the Planning Act in 2008 with the aim of speeding up decision making for our most significant infrastructure projects.

We surveyed and spoke in depth to a broad range of experienced practitioners in the public and private sectors, all with different specialisms and interests. We asked them;

Q1 Has the DCO process successfully realised its intended benefits?

Q2 How could the DCO process be enhanced for the benefit of projects and communities?

Q3 Could the DCO process have a broader application to complex large-scale developments such as new settlements?

Our main findings with respect to its **successes** are that:

- It provides certainty in the process with clear timescales;
- The National Policy Statements provide certainty on national need, as long as they are regularly updated;
- It uses the pre-application stage effectively;
- There are benefits from the introduction of Compulsory Acquisition Powers.

Our headline findings on **challenges** show that improvements can be made by:

- Addressing issues around flexibility of consents;
- Providing greater resources to support engagement, especially to Local Authorities and statutory consultees;
- Accelerating the use of technology and artificial intelligence.

However, in respect of its main **weakness**, our research shows that the DCO process lacks a spatial dimension, i.e. that it is more focused on large scale, one-off projects, and that it does not integrate sufficiently with the development plan or other spatial planning processes.

This is a critical consideration for the scope to use the DCO process more widely, particularly for complex developments such as new settlements.

When asked about the scope for extending the DCO process, participants fell into three distinct camps:

1. Instinctively positive;
2. Instinctively open but circumspect;
3. Instinctively hostile.

We explored the reasons behind these opinions in depth and conclude that the DCO is not designed to handle the spatial complexities of major developments such as new settlements on its own. It almost certainly offers an effective delivery mechanism, but it would need to be integrated more effectively with wider spatial planning if it is to offer a robust approach.

We do however, believe that there is merit in exploring a DCO option for a wider range of complex developments as part of a suite of options. Participants were clear that there is a need for choice on the appropriate consenting route and a DCO approach would offer a strong alternative to the conventional Town Planning approach, with some significant potential benefits.

Above all, these choices need to be enabled as part of a coherent national framework that is a primary consideration for development plans and planning applications. We believe the NSIP regime signposts how to do this.

We therefore make the following recommendations:

RECOMMENDATION 1

To reinforce and enhance the certainty that the DCO process provides by:

- ◆ Legislating to review NPSs every five years to maintain an up-to-date, comprehensive national need case, and assessment criteria, that tie in with the National Infrastructure Assessment;
- ◆ Empowering Local Planning Authorities to participate fully and effectively through the pre-application, examination, and post-consent stages;
- ◆ Enhancing flexibility within the regime both during examination and for post consent changes;
- ◆ Accelerating the use of technology, to improve the efficiency and effectiveness of the process and the quality of projects.



RECOMMENDATION 2

Capitalise on the success of 'certainty' in the DCO process created by the Planning Act timescales, the National Policy Statements, pre-application engagement and Compulsory Acquisition (CA), by applying these principles to other consenting regimes to help de-risk and facilitate long term investment.





RECOMMENDATION 3

Explore the extension of the DCO process for new settlements and other complex developments by preparing a National Settlements Strategy (NSS) that:

- ◆ Identifies broad parts of the country suitable for new settlements / large scale developments (developed under DCO engagement principles with input from Local Authorities and devolved administrations);
- ◆ Enables different consenting and delivery models to be applied;
- ◆ Incorporates the DCO as a consenting model;
- ◆ Is drafted to provide the national needs case that gives certainty, to unlock significant financial investment from the UK and internationally; and,
- ◆ Is developed to give the NSS equivalence with the National Policy Statements.

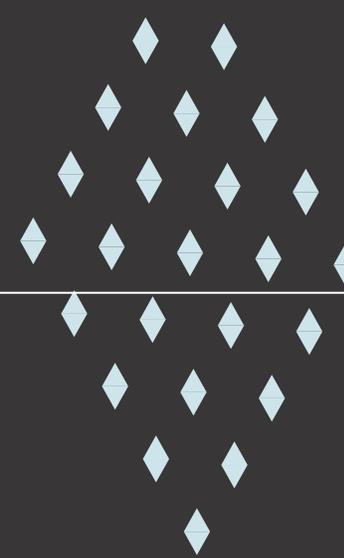
NEXT STEPS

It remains a challenge to integrate infrastructure, housing and jobs at different spatial scales, so that all can be delivered in the national, regional and local interest, in ways that also address the issues of our time, including climate change, regional inequalities and place making.

We invite you to take this challenge on and join us in exploring three follow-up questions. We will take your responses forward, along with our own thinking into a second phase of work on how to make our recommendations a practical reality.

- Q1 How can a national settlements strategy be prepared in a way that engages regions and local communities alongside national infrastructure providers to create long term stability?**
- Q2 Which planning processes can benefit from applying the certainty principles established by the DCO process?**
- Q3 What could a DCO option for delivering new settlements look like in practice?**

We hope our research sets a strong framework through which to explore these questions further and we wish to extend our thanks to all who have participated in our research, and to you for reading our report.



OUR RESEARCH APPROACH

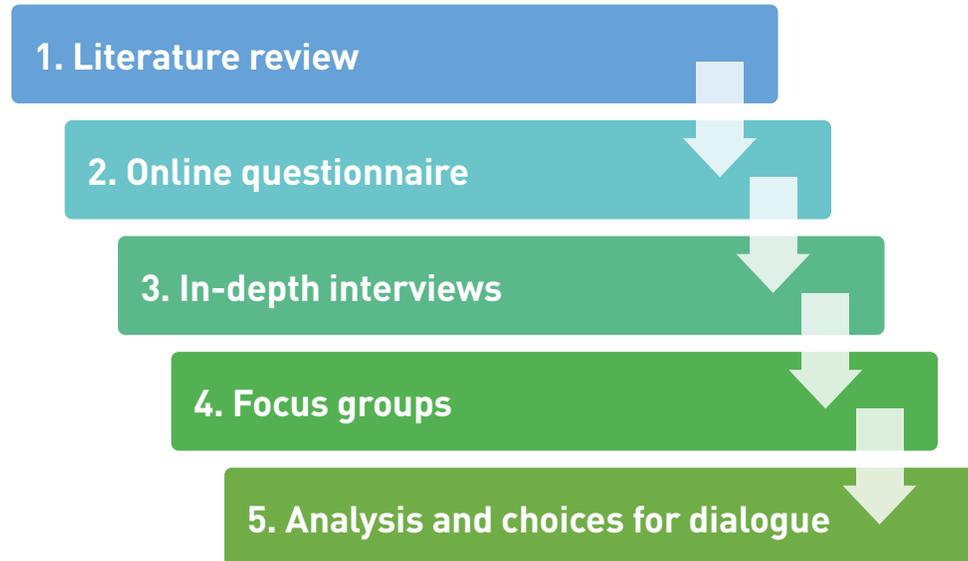


We set ourselves the challenge of reviewing the effectiveness of the DCO process from both the perspective of practitioners and those who are aware of, but not involved in it.

Today, DCOs can be utilised to support infrastructure related housing up to 500 units and there has been much debate on this being widened. The perception of those not involved in the DCO process is therefore particularly important, to understand. If this is negative, why? And what does this mean for broader application?

To reach this range of people and perspectives, we decided upon a mixed methods approach for data gathering (set out opposite), incorporating both quantitative and qualitative input. This has enabled us to challenge and triangulate opinion, across each of our core questions:

- Has the DCO process successfully realised its intended benefits?
- How could it be enhanced for the benefit of projects and communities?
- Could it have broader application, beyond the infrastructure sectors it was designed for?



The first stage was a review of relevant literature. This included analyses of previously conducted surveys and reviews, DCO decisions and accounts from those involved, the latest National Infrastructure Commission reports and other research conducted to date. Our review also took in previous work by project partners including Copper Consultancy's annual review of public attitudes to infrastructure, and Womble Bond Dickinson's previously published investigation of the challenges of housing delivery and infrastructure provision.

We found a modest amount of research had been conducted into the effectiveness of the DCO process and its wider applicability and have blended the themes into our report and analysis. A full list of references can be found in Appendix 1.

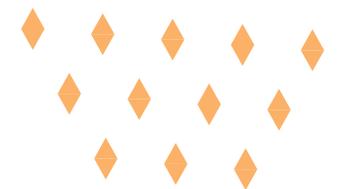
From this first stage we concluded that there remained a need to ask whether, after over a decade of operation, the DCO process has met its original intentions, and where it might need improving given dynamic economic, socio-political, and environmental contexts. We also concluded that housing need remains a national challenge and that our research could make a positive contribution to the debate on meeting this challenge.

The second stage comprised two online questionnaires. One was targeted at those with experience of the DCO process, while the other at those not currently engaged with the DCO process but with experience of planning and delivering major development through the Town Planning system elsewhere.

The survey questions sought to capture the participant's views on the regime's performance to date, challenges they felt needed to be addressed and their thoughts on the regime's potential wider application.

Our campaign to publicise these two surveys ran for over two months and was far-reaching, utilising a variety of channels including direct mail, press, the annual NIPA conference, word of mouth and social media, reaching over 4,000 active participants in the infrastructure and development industry, in both the public and private sector. By the end of this period we had secured 59 completions, from both DCO and non-DCO practitioners.

On the DCO side, we had 42 responses from local authorities, promoters, statutory consultees and consultants engaged in DCO work, as well as an investor and a decision maker. On the non-DCO side, the majority of the 17 responses were from developers.





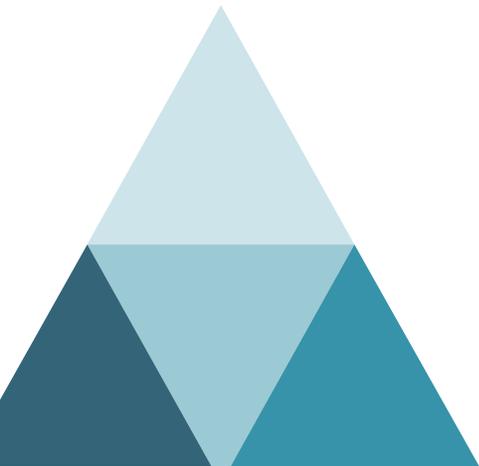
We believe the survey response rate we received reflects some interesting challenges facing the regime. Typically, the response rate to surveys is affected by a lack of knowledge of the survey subject within a given sample – people are less inclined to answer questions on a subject they know little about. Does this therefore suggest that those outside the process perceive the regime as ‘specialist’ and complex as well as separate from the conventional Town Planning approach?

Despite the challenge in securing engagement across a diverse sample, we believe there is huge value in bringing these different insights together across this and each of the following stages of research. Doing so may well unlock ways of addressing the national challenges not only around delivery but also interaction between sectors and development types.

The third stage comprised 11 in-depth interviews carried out with a range of experts in the fields of infrastructure and planning. We interviewed people in government (or their agencies) involved in the DCO process and in policy making, DCO practitioners, a promoter and a former DCO Inspector. We also interviewed people without DCO process experience, including those operating across new settlements, acting for professional bodies and planning practitioners.

The fourth stage convened two focused roundtable sessions with a range of participants representative of the sample to date, with 10 contributors in total. In these sessions, we again sought to validate the findings of the work but also probe specifically around our findings to establish whether there may be scope to extend the DCO process.

For reasons of anonymity, no views presented in this report are directly attributed to any one individual or organisation.



THE DCO PROCESS

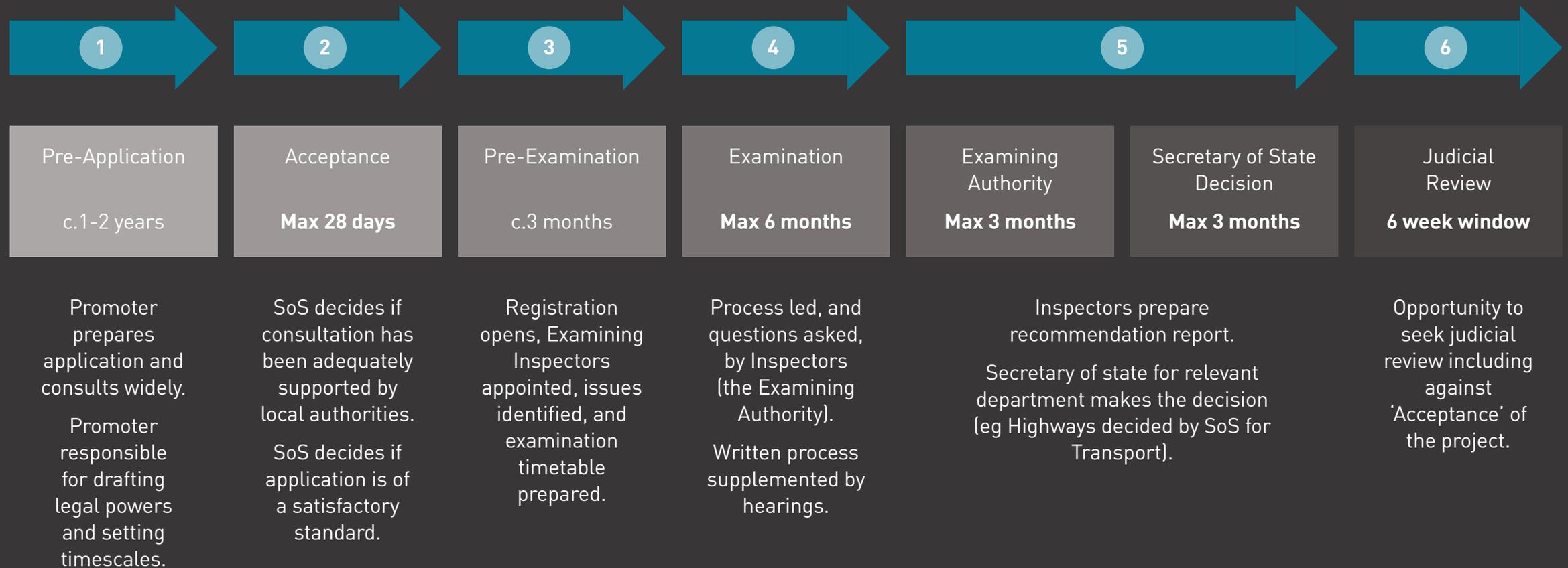
This section is for readers unfamiliar with the DCO process. It is a high-level summary of the key features contained within the Planning Act 2008. For more detailed information we recommend the following sources:

- Planning Inspectorate Advice Notes
- MHCLG Guidance
- National Infrastructure Planning Association Insights and Insights II research

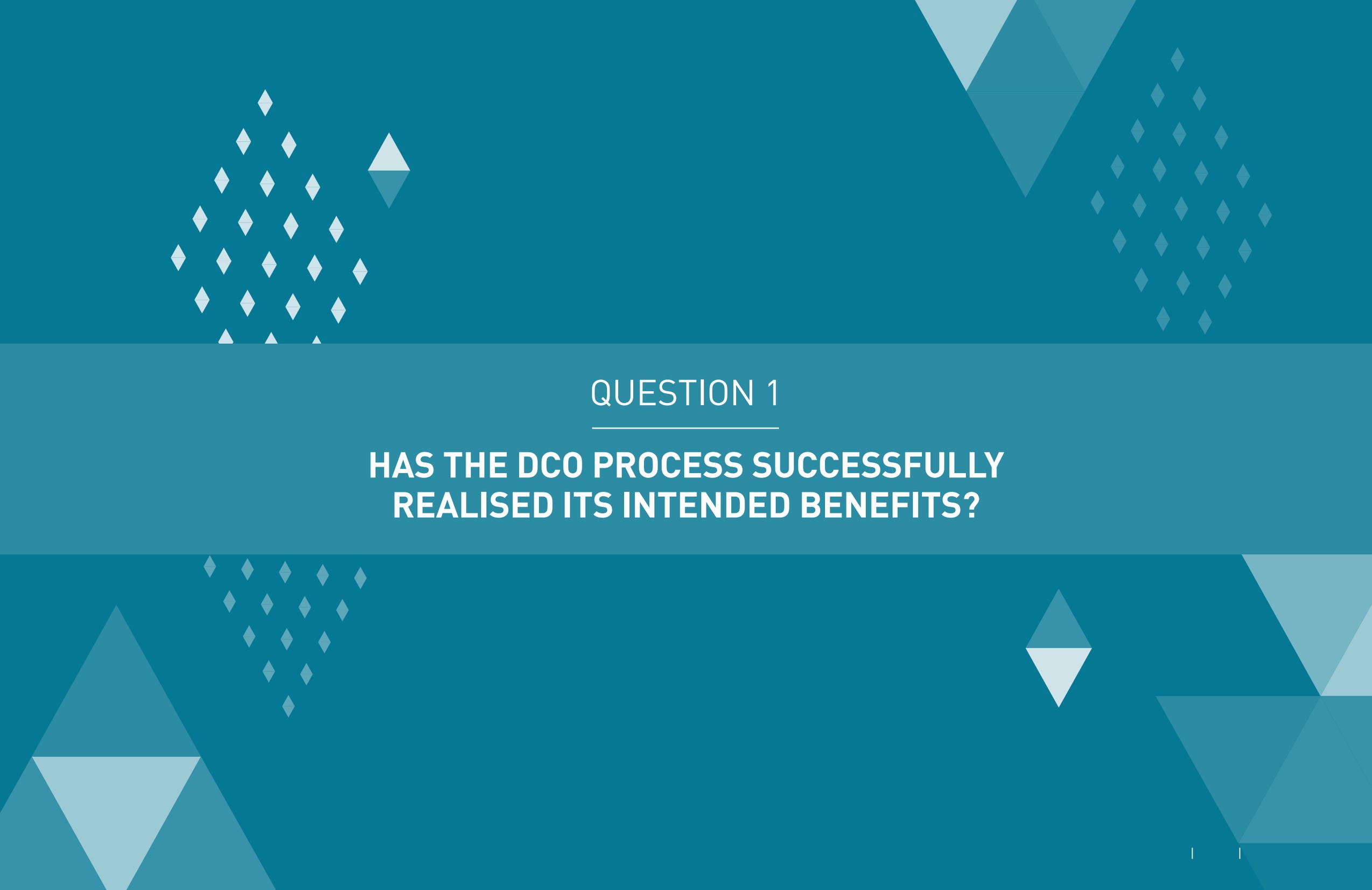
The DCO process was introduced by the Planning Act 2008 with the intention of providing the following benefits:

- **Primacy of national need:** through National Policy Statements, parliament would establish in-principle need for types of infrastructure projects, leaving the examination to focus on specific aspects of the project;
- **One-stop shop:** the inclusion of a range of powers including the Compulsory Acquisition of land by a private entity;
- **Statutory pre-application engagement and a duty to have regard to responses:** mechanisms to ensure there is full community and statutory consultee involvement early on;
- **Streamlined decision-making:** statutory timescales for examining and determining applications;
- **No unnecessary delays:** a structure to enable promoters to submit an application when they are ready to; and
- **Transparency and rigorous scrutiny:** publication of all advice and documents are published on the Planning Inspectorate website, Government appointed Inspectors then lead an inquisitorial process that any party can participate in as an Interested Party.

The Six Stages of the DCO process



*timescales in bold are statutory maxima



QUESTION 1

**HAS THE DCO PROCESS SUCCESSFULLY
REALISED ITS INTENDED BENEFITS?**

QUESTION 1:

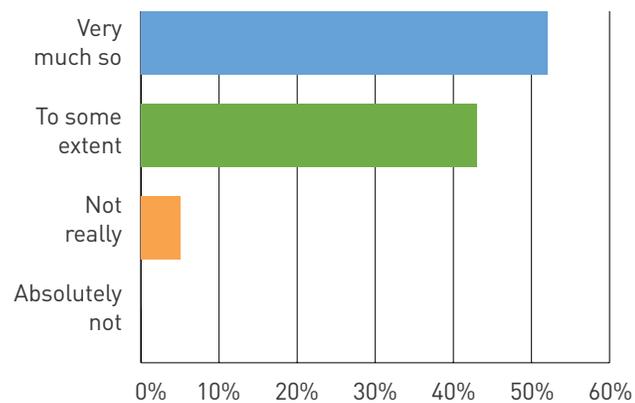
HAS THE DCO PROCESS SUCCESSFULLY REALISED ITS INTENDED BENEFITS?

We found that, yes, overall the DCO process has successfully realised its intended benefits, and has done so through four key aspects:

- Addressing national need through National Policy Statements;
- Providing certainty in the process with clear timescales;
- Effectively using the pre-application stage;
- Incorporating Compulsory Acquisition powers.

This overall conclusion is supported by our survey findings.

Has the DCO process successfully realised its intended benefits?:



95% felt the DCO process had to some extent or fully met its original intentions.

100% of examinations up to March 2020 were conducted within the six-month timeframe.



91% of Secretary of State decisions up to March 2020 were made within the three-month statutory timeframe.



of the **14** decisions that have taken longer than the statutory three months, seven occurred in the last 12 months to March 2020.

These percentages have fallen in the last three months to June 2020, due to the impact of Covid-19, but we haven't included this data as it is an unfair reflection on the DCO process.

In our interviews, ‘certainty’ was also linked to outcome (“...**you know when you are going to get your powers.**”) and the integrity of how the DCO process is run (“...**there is a stronger governance regime to work within**”).

Perhaps the clearest indicator of its success was captured by one interviewee who reflected:

 **Telling is that the regime has survived multiple governments of different persuasions when lots of other bits of the planning system have gone.**

This latter point was highlighted by a significant number of interviewees and reflected a collective view that the DCO process has cross-party consensus around its positive impact on consenting for large-scale infrastructure.

This is a particularly important point when considering the wider challenges the conventional Town Planning process faces in securing consistency in political support around major development proposals.

 **I think the earliest successes have been the willingness of CLG¹ and the Government to both support the system and to fine tune it.**

The process seems to have had a positive impact on practitioners too. In the words of one interviewee “...**as a process it is excellent,**” whilst one of our roundtable participants drew on their experience of working across conventional Town Planning and DCO projects, reflecting that “...**the DCO process was enlightening as it was more controlled and certain.**”

Given the scale and complexity of NSIPs, our reflection is that the structure of the DCO process has carved out a reputation for certainty that contrasts with the Local Plan and conventional Town Planning processes. Through the DCO process, it has been possible to propose, examine and consent some contested projects, working to a transparent programme and timescales. In this regard, we consider it to have achieved one of its main intended benefits.

¹ Ministry of Housing
Communities and Local
Government

National Policy Statements

Applications for DCOs are decided in accordance with government designated National Policy Statements (NPS). As such the drive for major infrastructure is scrutinised and debated heavily before an NPS is adopted.

In our surveys, respondents felt that the in-principle political support established for projects through the NPSs was a key benefit of the process. NPSs were also a key topic of discussion for our interviewees and were widely viewed as an integral part of the DCO system without which the whole approach to examination would differ substantially. It was observed that it is “...**important to have a strong NPS, that is timely and well done.**” They were considered the start and end of any decision by Examining Authority and Secretary of State, and that it was the Government’s responsibility to take a view on what is needed in the national interest, with one interviewee stating,

 ...the reason we have governments is so that they can make decisions. They can decide what’s needed.

The political aspect of this was also reinforced during our roundtable discussions, where it was commented that the strength of the NPS “...**makes a huge contribution towards driving certainty and consistency of approach across local authority boundaries and avoidance of interference from local politics.**”

Having identified the importance and significance of NPSs however, interviewees also identified some of the challenges they present. A need for many of the Statements to be refreshed was highlighted, while others flagged points of inconsistency across them, intimating that “...**some NPSs were better than others.**” The different character of Statements was also observed, with some seen as rather generic (questioning their legitimacy / validity as statements of need) and some seen as only supporting the bringing forward of specific sites.

The importance of NPSs, and particularly considering the Government’s climate change obligations, has recently been brought into sharp relief with the Court of Appeal decision on the Airports NPS. The court considered that the Transport Secretary “**acted unlawfully in failing to take into account the Paris Agreement on Climate Change when deciding to designate the Airports National Policy Statement in support of the expansion of Heathrow Airport**”. An appeal against the decision has been made to the Supreme Court and is scheduled to be heard in October 2020. Following the Airports NPS decision, a challenge has been lodged against the Energy NPSs and a challenge to the Transport Secretary’s decision to go ahead with Road Investment Strategy 2 (RIS2) is expected.

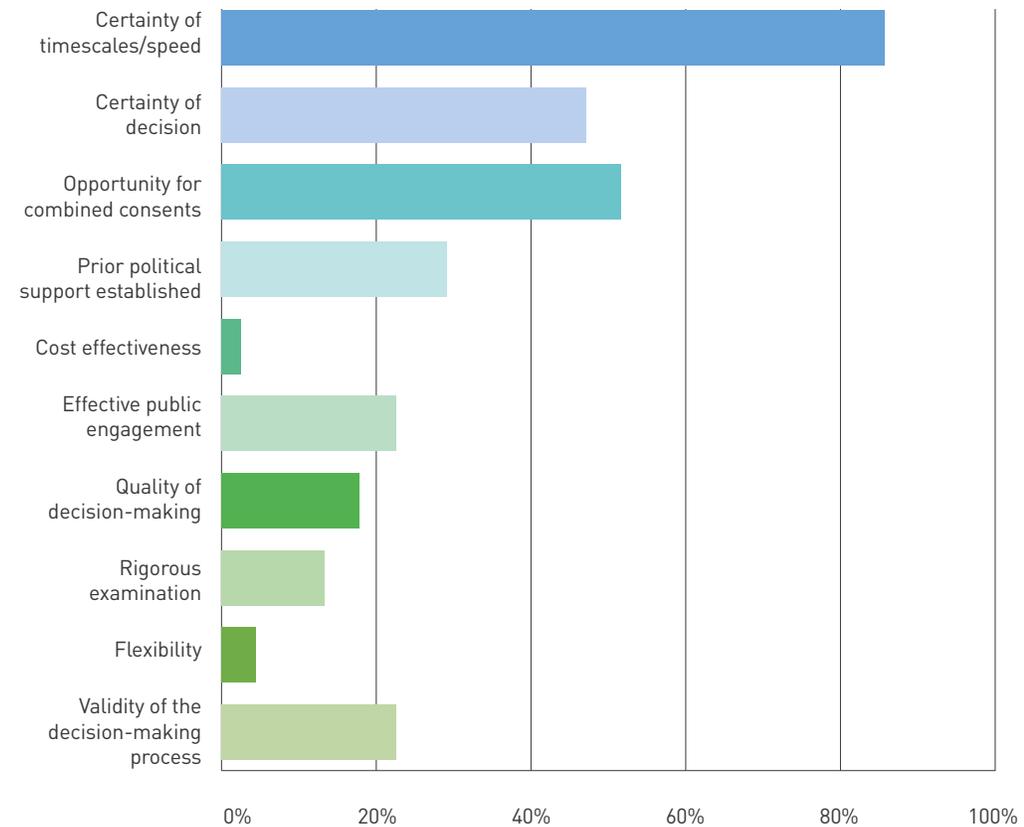
These cases exemplify how important designated NPSs are and how they should be both legally robust and up to date, to inform decisions on individual projects through the DCO process.

Benefits of the DCO regime

We consider the variability in quality and consistency between NPSs have meant that project promoters are increasingly required to demonstrate the acceptability of their projects. In that respect, the evolution of pre-application engagement has been one of the notable positives of the DCO process.

Despite the positive view on certainty and timescales, only 47% of survey respondents felt that certainty of a decision was the top benefit. This is not to say they saw this as a disbenefit nor something the process has not been able to achieve. Instead, we see this as a reflection of other benefits participants see in the process, including validity of the decision (24% of respondents) and effective public engagement (24% of respondents).

What do you believe are the key benefits of the DCO regime?:



Answered: 44 Skipped: 0

Note: respondents were asked to pick three options so responses do not add up to 100%

The message from the outset of the DCO process has been to ensure 'no shocks or surprises' for pre-application discussions to identify and where possible resolve potential issues. Research participants felt that the process had been a success in driving early engagement, more focussed discussions on scheme mitigation and the use of Planning Performance Agreements. Participants considered the latter as effective in enabling the development of shared objectives and visions for schemes across stakeholders.

One interviewee encapsulates this neatly, reflecting that

 **the DCO process drives the right behaviours around early engagement and being honest with people if we can't achieve what they want.**

The rigour prescribed around consultation, provides more balanced, representative feedback than projects that utilise the conventional Town Planning process. An example given by one attendee being that a spatial plan affecting three million people secured only 84 responses, which resulted in disproportionate weighting to this comparatively tiny sample of affected residents and stakeholders. By comparison, the DCO process drives a more transparent and consistent engagement process, which delivers better engagement responses.

Many respondents felt the DCO process, in contrast incentivises the involvement of statutory consultees at an earlier stage in the project and therefore perhaps drives a more collaborative approach, and less controversy / debate post application.

There was not, however, a universal view on the effectiveness of pre-application engagement. The workshops highlighted the limitations of a legalistic and procedural process in communicating with people potentially affected by a project.

As one workshop participant put it

 **people don't react to projects because of the planning process, but what they think is being done to them.**

If promoters put too much emphasis on the process instead of the project's societal benefits, the legalistic and procedural aspects of the DCO system can limit communications with members of the public and alienate them.

Compulsory Acquisition (CA)

One of the key features of the DCO process is the ability for a project promoter, often a private investor, to request the powers to compulsorily acquire land and / or rights over land. Previously, they had to seek this power through a Compulsory Purchase Order.

We asked survey participants what they saw as the key advantages of compulsory acquisition:

80% of respondents cited the 'one-stop shop' examination to make the case for Compulsory Acquisition powers,



50% of respondents saw the ability to apply for combined consents as a key advantage of the process.



The Planning Act sets out the tests for Examining Authorities and the Secretary of State to apply in respect of requests for CA powers. These include demonstrating that there is a compelling case in the public interest. In order to reach that view, our interviewees teased out just how legalistic the DCO process appears compared to another type of planning application.

One interview felt this to be unsurprising given that the core product is a Statutory Instrument. They felt it wasn't normal planning and in reality

“ it is a trade off because it comes with some sweeping powers. To counterbalance that power, you have to ensure it's fairly done.

This has perhaps been one of the more significant challenges for the DCO process. It is more than just a legal process, yet it gives significant powers to promoters. It is one which is required to balance national need and certainty of delivery with potential impacts on local communities and landowners. If the process is perceived as too procedural or legalistic, does that stifle the ability to overcome the inevitable challenges such projects create? Does it make the process less accessible and does a successful national outcome have to come at the expense of local impact?

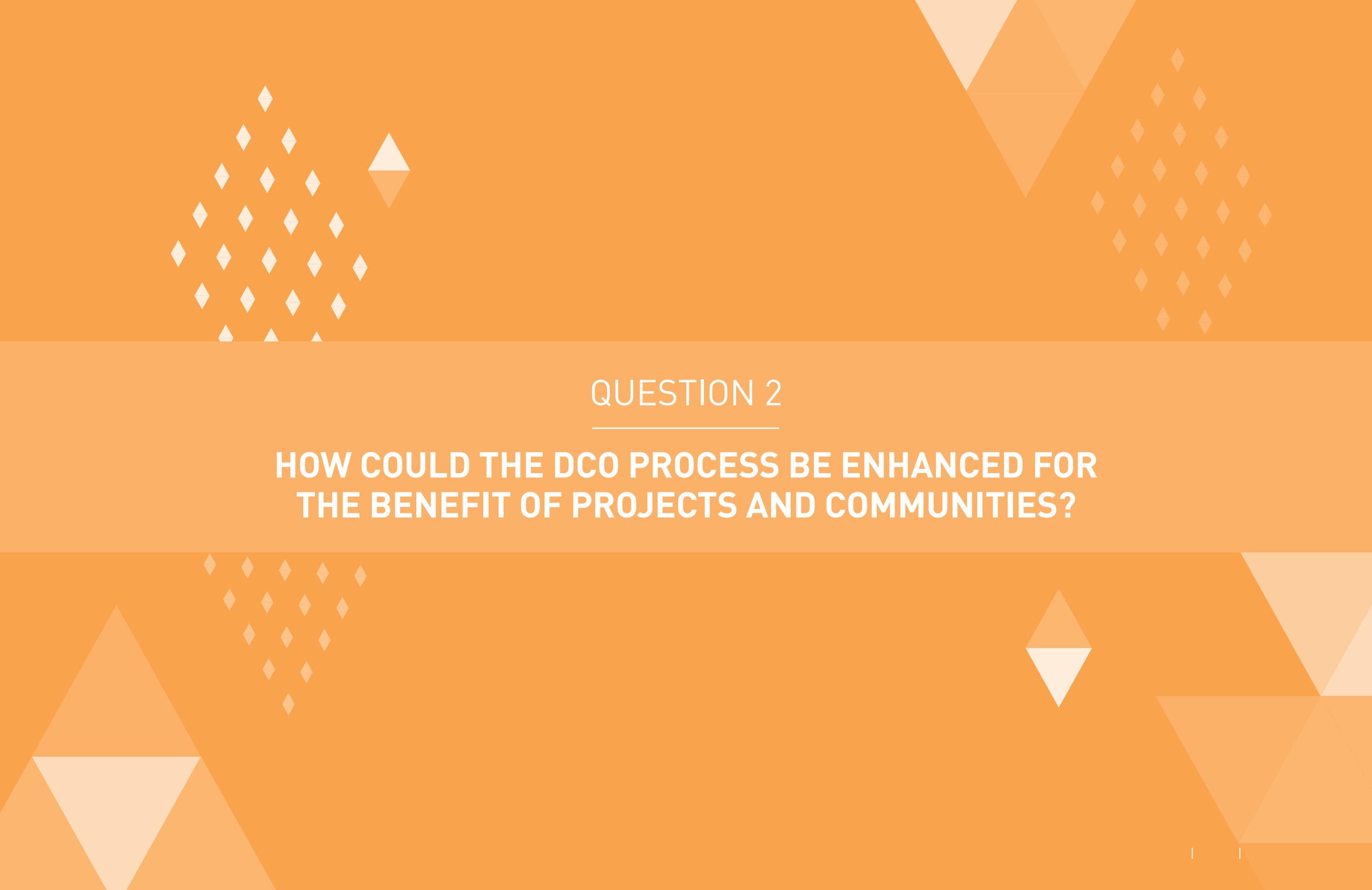
In our view, the pre-application engagement process has enabled these discussions to happen early enough to shape a project and ensure that the powers drafted, including CA powers, do go through a strong element of scrutiny. However, as we come on to in the next section in the report, there is room for improvement.



RECOMMENDATIONS

We have found that, in the view of practitioners, the DCO process has met its intended aims and can be considered successful. The reasons for this revolve around the certainty it creates not only in terms of timescale but also outcome. National Policy Statements, statutory timeframes, a strong emphasis on pre-application engagement and the ability to incorporate compulsory acquisition powers all contribute together.

Returning to some of the dynamics set out in the introduction around climate change and the need for an economic bounce-back, we therefore recommend that Government reinforces these elements that create certainty in the DCO process and specifically that they legislate to review NPSs every five years. This will ensure we maintain an up-to-date, comprehensive national need case, and assessment criteria, that tie in with the National Infrastructure Assessment (and the National Infrastructure Strategy, assuming it is published and takes a sufficiently long term view). Doing so will create a foundation on which resources can be directed efficiently on a project-by-project basis and more importantly give a foundation on which to address our further recommendations in the next two sections.



QUESTION 2

**HOW COULD THE DCO PROCESS BE ENHANCED FOR
THE BENEFIT OF PROJECTS AND COMMUNITIES?**

QUESTION 2:

HOW COULD THE DCO PROCESS BE ENHANCED FOR THE BENEFIT OF PROJECTS AND COMMUNITIES?

In this section we set out what our research found in terms of improving the DCO process.

Our headline findings are that improvements can be made in the following ways:

- Addressing issues around flexibility;
- Providing greater resources especially to Local Authorities and statutory consultees;
- Improving pre-application engagement;
- Considering the use of technology and artificial intelligence.

However, we also uncovered something more fundamental that goes to the heart of any planning system, which is the lack of spatial moorings for DCO projects.

By this, we mean that projects are often prepared and considered in isolation rather in the context of local plans, or because National Policy Statements lack a strong spatial element.

We therefore, also explore what our research reveals about the tensions between the DCO process and wider spatial planning, and future implications for both the conventional Town Planning and DCO process going forward.

Flexibility

The legalistic nature of the process was a common theme in both the workshop and interviews. Some interviewees recognised that this should be expected from a process that needs to produce a statutory instrument at the end, and that the challenge for the DCO process is to also manage cultural issues such as engagement and drafting issues, so that a consent can be implemented in practice.

62% of respondents seeking more flexibility for post-consent approvals.



57% wanted flexibility to make amendments during examination.



64% of respondents also sought a clear process for amendments with defined timescales.



Currently, there are no statutory timescales for the Secretary of State to decide on post-consent material and non-material change requests.

The high percentage of responses seeking greater post-consent approval flexibility is an interesting one. As we covered in the previous section, strong pre-application engagement underpins the DCO process. It raises the question of whether it is realistic to expect pre-application engagement to identify all the potential issues and resolve them through very specific drafting of a Development Consent Order.

One of the main themes from the interviews was that participants saw the DCO as far too detailed, to the extent that it can constrain delivery with one interviewee noting

...an awful lot of things get examined in minute detail. There is a feeling at examination that we've got to tie everything right down.

Might there therefore be value in exploring how up-front engagement, which can identify potential issues and post-consent mechanisms, can in turn help resolve issues that could work in tandem with the DCO examination by acting as the bridge to facilitate post-consent flexibility?

Countering this, there were some who saw up-front detail as a necessary means to give stakeholder confidence, and meaningful engagement with the process. More broadly, only 15% of survey respondents felt the rigorous examination of DCOs was one of the key benefits of the process. This may suggest that some participants feel there needs to be a better balance between flexibility and the robustness of recommendations and decisions made².

² The National Infrastructure Planning Association undertook detailed research into flexibility in the NSIP process and produced detailed recommendations. Our research highlights that this remains a key issue for the process.

Resources

Local Authorities have a very specific role to play in the process. They do not receive direct government funding, nor are they decision makers. Their representations are given importance by primary legislation but are not required for the process to proceed, as Examining Inspectors only make a recommendation based on evidence submitted. However, Local Authorities are often closely involved throughout pre-application and examination stages, and DCOs are drafted to give local authorities powers to review and determine post-consent submissions.

To a lesser extent, other statutory consultees and third parties are also encouraged or expected to be involved, and the Planning Inspectorate facilitates and oversees the whole process. Participants across our research questioned whether the resources required are provided to deliver effective third-party input, particularly from the Planning Inspectorate and Local Authorities.

42% of survey respondents identified a need for Central Government to fund Local Authorities so that they can engage in the process.



Given the diversity of our respondents' backgrounds, we think it is significant that the role of Local Authorities emerged as being key to its success. The DCO process is iterative and Local Authorities are encouraged and expected to engage with this process. Furthermore, they carry out several roles in relation to the DCO process. This includes representing their local communities and yet one interviewee noted how,



...an awful lot of things get examined in minute detail. There is a feeling at examination that we've got to tie everything right down...the public do not understand that [Local Authorities] have no control and influence. If [the promoters] choose not to deliver part or delay a piece of infrastructure – we have no teeth or ability to control or influence.

This research highlights that irrespective of public sector resource levels there is a perception that Local Authorities are poorly resourced. This also raises a question over the engagement levels of Local Authorities in, relative to their understanding of, the process. Would greater engagement occur if Local Authorities had a better understanding of the control and influence over project delivery that they can secure through the wording of a DCO?

We believe gathering more in-depth understanding of this situation is urgently needed, especially given our research findings around the importance of pre-application engagement with communities and the disconnect between national infrastructure and spatial planning that we discuss shortly.

Improving pre-application engagement

In our first question, we found that the emphasis on pre-application engagement was viewed as one of the success stories of the DCO process. It is worth pausing to reflect how much of a shift from standard planning practice this was when the Planning Act was introduced. Although developers that are more progressive recognised the benefit of pre-application consultation, to make it not only the promoter's responsibility to consult on proposals, but also to draft the powers in the DCO, was a step change.

Our interviews highlighted the challenge posed by the complex and legal nature of the process and the volume of information generated by a DCO. Interviewees also noted the cultural challenge of shaping a DCO through wide stakeholder engagement and producing what is ultimately a detailed legal document at the end.

The interviews picked up that local communities had to live with the consequences of an NSIP for the lifetime of the development and that the impacts were also multi-generational. The scale of some NSIPs mean this could disproportionately impact some communities in comparison with other types of development, especially if the benefits are not necessarily local. This raised questions about what kind of engagement and publicity is needed, and when, in order to support the delivery of nationally significant infrastructure within local communities.

Technology and Artificial Intelligence (AI)

Our roundtable discussions found technology to be a rich opportunity, offering potential solutions to two common challenges faced by DCO promoters. The first of these challenges is how to bring projects to life for stakeholders and the second challenge is how to manage the complexity of DCOs.

Participants talked through their experiences of using virtual reality in planning and consultation to bring projects to life and improve transparency and understanding, based on a more relatable idea of visual and audio impacts, both during construction and on project completion. The discussions explored where technology was heading. How can online simulations, fly-throughs and gaming technology be used to engage people and in the case of the last example, enable people to test design options and suggestions?

The use of AI was raised as a potential means through which the public and the stakeholders might easily access project information relevant to them. Existing interests and habits of specific stakeholders' interests can be tracked and fed into their narrative. Equally, AI's role in managing significant volumes of information was a huge opportunity that those in the room agreed needs careful consideration in terms of how it can support the process.

We recognise we are at a pivotal moment not only in planning but in wider society, where remote working and ways of congregating virtually are being tested and piloted under significant time pressure in response to the Covid-19 pandemic.

Our reflection is that the role of technology in the DCO process remains relatively untried, although the Covid-19 pandemic has required rapid innovation on this front, there is still work to do. The Planning Inspectorate has been evolving its digital capabilities in recent years within resource constraints, however technology remains on the periphery of what is a process designed for paper-based working (albeit with some of those processes happening digitally), and what is also a people-based experience. There is now significant industry attention on the use of technology and in our view, this is the moment to not only address the existing process but to re-evaluate how the process can evolve through technology.

We must continue the work that has been done during the Covid-19 lockdown and use this as a springboard to a more widespread use of technology in the DCO regime in the future.



RECOMMENDATIONS

There are some key areas that need addressing for the DCO process to be enhanced, most notably in terms of how it handles flexibility sought by consents, and the ability to change a DCO. The National Infrastructure Planning Association (NIPA) undertook detailed work in 2019 tackling these specific issues and how to address them (entitled 'Insights II') and if implemented we feel they could have a significant impact.

We also, however, found that the role of Local Authorities in the process is pivotal to successful progress of a project, while we also believe local authorities are key to addressing our later recommendations to connect national infrastructure with spatial planning.

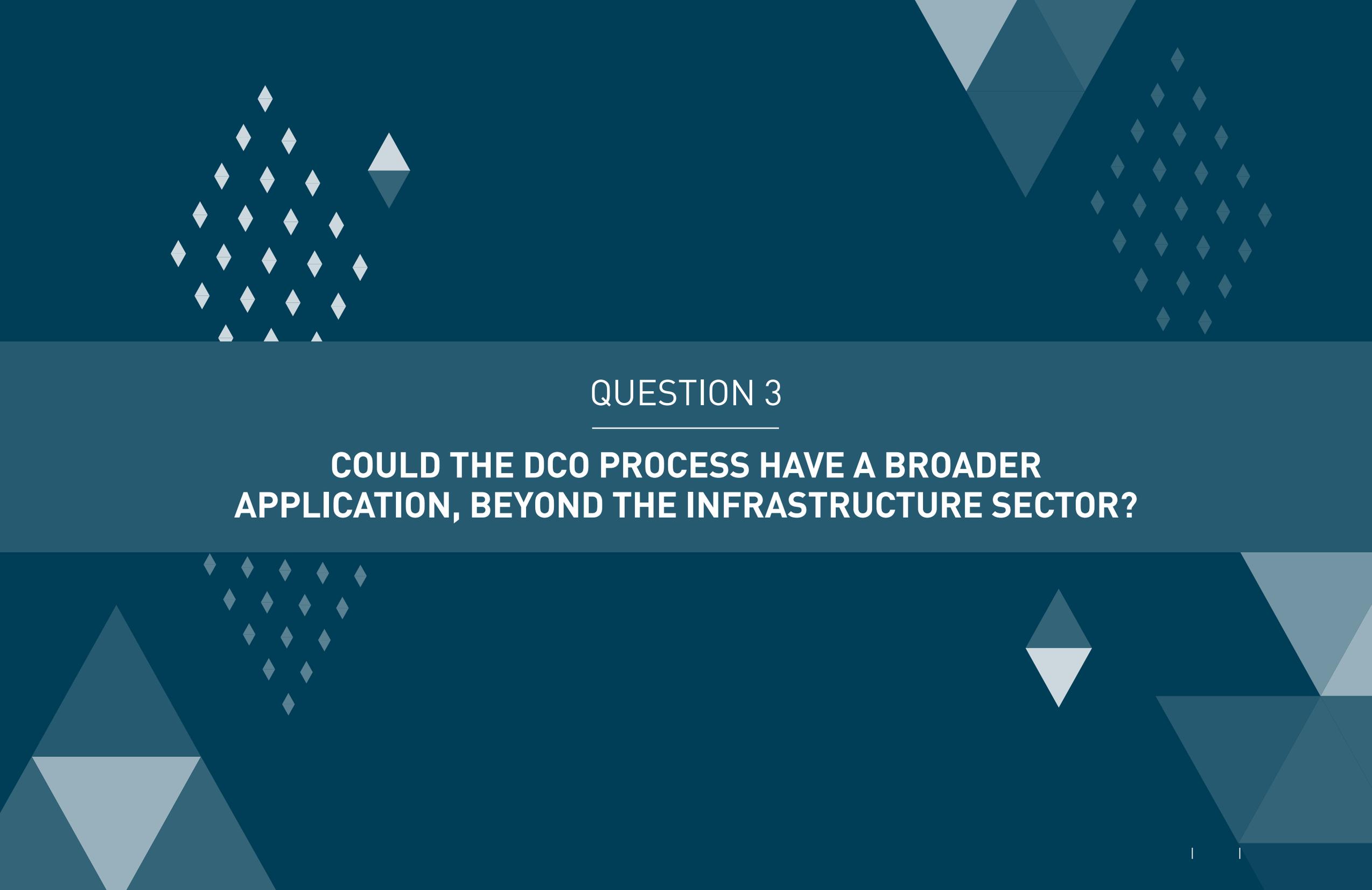
Finally, we found there to be significant scope to evolve the use of technology and artificial intelligence in principle, and the current circumstances of the Covid-19 pandemic only add urgency to this opportunity to ensure both fairness and the continued operation of the DCO process within public health parameters.



We therefore recommend that Government leads the way by:

- **Enhancing flexibility** within the regime both during examination and for post consent changes;
- **Empowering Local Planning Authorities** to participate fully and effectively through the pre-application, examination, and post-consent stages;
- **Accelerating the use of technology**, working with all DCO stakeholders to improve the efficiency and effectiveness of the process and the quality of projects.

Furthermore, we recommend that the Government capitalises on the success of 'certainty' in the DCO process created by the Planning Act timescales, the National Policy Statements, pre-application engagement and compulsory acquisition, by applying these principles to other consenting regimes to help de-risk and facilitate long term investment.



QUESTION 3

COULD THE DCO PROCESS HAVE A BROADER APPLICATION, BEYOND THE INFRASTRUCTURE SECTOR?

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As our findings show the DCO process is having a marked impact upon the way we deliver large-scale, complex projects. As such, is it a potential alternative route to consider for other similarly large scale, complicated schemes, such as major new settlements?

DCOs and Spatial Planning

“ A project is much bigger than just the DCO. The spatial implications are much bigger.

“ We are absolutely clear that a larger than local strategic approach is essential.

“ I'd prefer a national planning strategy.

DCO's are drafted with project delivery front of mind. The Order creates the powers and sets the specific parameters and mechanisms for delivery.

Where an NPS is in place, it establishes the national need for a type of project (rather than the project itself). Local Authorities, statutory consultees, local communities and people with land interests aid the identification of potential impacts of a project at pre-application stage, aiding the understanding of challenges inherent within a project/location and its likely acceptability. Theoretically, therefore, DCO submissions mark the completion of work to establish 'need' in principle, to design a project in the context of the surrounding site and to work through what all the impacts (beneficial and adverse) are.

Ultimately, the decision for investing in a specific location rests with the promoter.

The recurring theme in our interviews was not necessarily about how the spatial impacts of a project were considered when examining a DCO application; it was about whether there needs to be better co-ordination to guide where infrastructure investment should go, and if so, how that can be achieved.

This insight is fundamental to understanding the wider application of the DCO process to other types of development and brings us to the challenges Local Authorities face in producing Development Plans that balance competing interests over large geographical, market, political, and other spatial areas.

The DCO process leaves it to the promoter to determine where it wants to invest. It assumes that the promoter has undertaken evidence-based infrastructure planning and had regard to the NPPF and the NPSs, as material considerations.

In our experience, this puts infrastructure in the same territory as housing and employment, where the bases of dispute often lie in issues of unmet housing need, or when spatial market areas do not fit neatly within local authority boundaries.

Certainly, the disconnect between the DCO and conventional Town Planning processes, and challenges bringing them together, were themes in our interviews, particularly with respect to public understanding regarding how the two systems inter-connect.

The public doesn't understand why two regimes are separate – why would a normal person know?

The importance of this, in our view, is that if people are to engage with the challenge of balancing local, regional, and national need and opportunities for infrastructure and development, having disconnected processes makes that challenge harder. As we will come on to, this may also have a political impact.

So how is infrastructure considered across boundaries and at the larger than local scale? Often it is through a promoter's investment plans.

In the case of highways, rail and water projects, these are usually identified in respective business and management plans, such as Highways England's Road Investment Strategy or Water Company Management Plans, and Network Rail's Control Periods..

National Grid and District Network Operators (DNOs) must balance obligations to Ofgem and generators, among other things, to keep the national lights on. Other markets, such as offshore wind and solar are more open, competitive, and driven by private investment.

Some of the questions that have emerged from our discussions around whether DCOs are connected to spatial planning include:

- To what extent do these investment plans and wider infrastructure finance shape spatial planning in the UK?
- How successful have local plans been in taking account of National Policy Statements?
- Does the 'duty to co-operate' across local authority boundaries lead to better regional infrastructure planning and better DCOs?

On the latter question, we believe not. As one interviewee suggested, "...to achieve regional infrastructure objectives

“ One needs a much wider working group than one might expect. It isn't just about integrated transport [or] integrated infrastructure delivery, because of housing and business requirements for investment in the UK.

So, if national infrastructure and the DCO process is going to embrace spatial planning, what challenges lie ahead? This is central to understanding whether the DCO process has wider applicability and particularly in relation to new settlements and housing more generally.

Furthermore, there was one observation from the interviews that suggest this final question about the wider applicability of DCOs needs to be approached with care:

“ All the issues that people identify with the [Planning Act 2008] as being challenges, would be magnified by a factor of 10 for anything that had major housing...

DCOs to deliver homes

At the outset of our research, we wondered whether the breadth and depth of participant expertise across TCPA and DCO industries could lead to a new innovative consenting approach that brought together the best of different planning and consenting mechanisms, including the use of the DCO process for complex developments such as new settlements.

Our literature review highlighted some of the challenges around housing delivery and through our wider research we sought an understanding of current thinking around this. Our interviews confirmed that the experience of housing delivery is context dependent, and that for Local Authorities to deliver effectively they need teams in place with sufficient skills to engage with communities and politicians. A resource they often do not have.

 **...the level of complexity of the system is not supported by the level of resource available.**

Alongside that, the political challenges for large scale new settlements, particularly cross-boundary matters, led one interviewee to observe that “**...local leadership is absolutely essential...**” particularly when considering that timescales for new settlement developments can potentially span numerous political cycles.

Geographically, some are still feeling the impact of losing Regional Spatial Strategies, especially where two adjoining local authorities

 **...don't see eye to eye.**

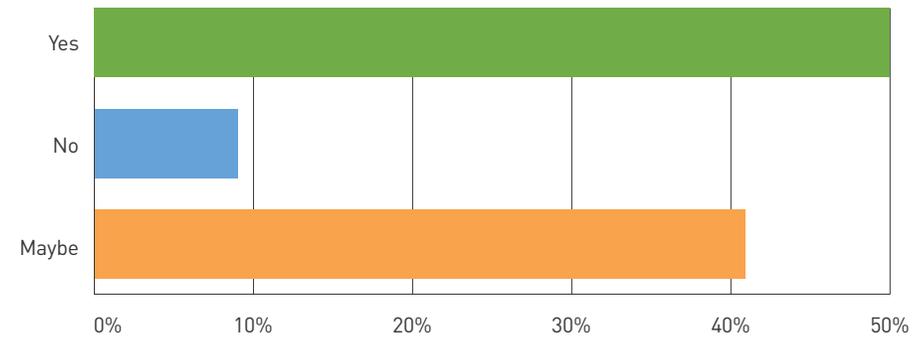
The need to secure multiple consents before development can commence, including assembling the land required at the scale of a new community, was also flagged as both challenging to arrange under current consenting options, yet necessary to enable delivery.

We discovered that the discussion around how to plan for and deliver such developments is healthy and diverse and that the DCO process does indeed bring something to the table. However, the way forward is not (and should not be) as simple as creating a new, improved DCO process to extend to new categories.

First, we need to address the relationship between the DCO process and spatial planning. Failure to do so could lead to poorly designed processes that do not appreciate the inherent political challenges in planning for this type of development. It could also mean we miss out on the significant economic, social and environmental benefits created by joined-up thinking around infrastructure, housing, jobs, and place.

Our research shows some uncertainty on the suitability of the DCO process for complex developments such as new settlements.

Do you believe the DCO regime could be appropriate for the consenting of large-scale mixed-use schemes?



Answered: 44 Skipped: 0

Our interviewees in particular, fell into one of three camps – **instinctively positive** about the prospect, **instinctively open** but circumspect and **instinctively negative**, with most interviewees falling in the ‘circumspect’ camp. Our observation from across the research methodologies applied is that there is limited understanding of DCOs beyond those working within the DCO industry. We have started to bridge that gap, allowing participants without direct DCO experience to provide their instinctive responses, but there remains much to do.

Three themes have however emerged from the research, which themselves provide a framework for looking at national infrastructure, housing, and employment delivery through both spatial and delivery lens:

1. You cannot take the politics out of housing and jobs;
2. The DCO process can help with delivery; and
3. One size may not fit all – and people want choice.

1. You cannot take the politics out of homes and jobs

Our interviews revealed that the DCO process has both its attractions and drawbacks to removing decision-making responsibilities from local authorities for complex developments such as new settlements: “...you could make things seriously happen if you took some sites away from local authority control.” Those more supportive of using DCOs to do this were largely from the development or legal sector however, and others recognised that “...taking powers away from local authorities will be controversial, even if it seems sensible.”

At the heart of this is democratic accountability. People with instinctively negative views on the use of DCOs for housing strongly perceived that the local plan process was a democratic and evidence-based way of delivering housing “...despite it being slow.”

Interviewees who were instinctively circumspect about the role of the DCO process for new settlements focused on political acceptability and integration with local plan processes. There was greater support for locations where the local authorities were supportive, but that the use of DCOs as a ‘hostile move’ to overcome delay or objections to development was not thought to be politically sensible or expedient.

We mentioned the importance of local leadership given the timeframes for complex developments, and a number of interviewees recognised the challenges of cross-boundary decision making, and saw the DCO process as a way to overcome that, especially if Local Authorities delegate work to one another in order to engage with the process effectively. Yet, as one interviewee observed,



I don't think it's so much an issue of which mechanism...one can design mechanisms.... the question much more is you are asking them to think nationally to take a hit for the team. The challenge is political – very few local authorities would be willing to take that hit for the team.

Our conclusion is that the systems must work with and integrate political realities. To leave the politics of homes and jobs to the national level and the delivery to the local level, would be counterproductive. As we illustrated in the previous sections, the DCO process is legalistic and complex to understand even for individual projects. Scaled up and applied to typically controversial issues such as the location of a new settlement, there is a significant risk that the process would lose legitimacy in trying to take an overly procedural approach to an inherently political issue.

2. The DCO process can help deliver new settlements

What could the DCO process offer in terms of consenting large-scale mixed-use developments? We put this question to our survey respondents to answer freely and their responses echoed our earlier report findings in three respects: handling complexity, certainty of timescale and the use of compulsory acquisition for site assembly. One survey respondent highlighted that the DCO regime “...**handled complexity better than any other regime.**” The issue of site assembly and multiple consents for new settlements meant that some survey respondents saw value in the way the DCO can grant compulsory acquisition powers and manage several consents together, again reducing the complexity.

Such complexity is only increasing given the urgency of climate change, regional inequalities, and now public health. These imperatives point to a faster implementation of low carbon developments, social and environmental infrastructure, and the scope for decentralisation of powers. It has also not gone unnoticed that a real sense of local identity has been reinvigorated by the onset of city and metro mayors. In our view, prominent politicians such as Andy Street in Birmingham and Andy Burnham in Manchester have been powerful advocates for their areas. We do not yet know the impact that Covid-19 related ‘lockdowns’ will have on people’s attachments to where they live and work.

Our experience is that to handle this complexity requires early engagement with a diverse range of stakeholders. We think that pre-application engagement methods and the clear structure of examinations are central to the ability to handle complexity in the DCO process, leading us to ask how these aspects can perhaps be scaled up, or applied differently to address the challenges and timescales involved with new settlements, in a way that is commensurate to the complexities involved.

For engagement, bringing DCO experience into the site allocation and masterplanning stages may bring benefits that complement the local plan process.

In terms of timescales, some advocated for the local plan process or other strategic framework to set the principles and for the DCO process to then take things forward. Some participants were reluctant to move away from spatial planning at the local authority level but saw the benefit of the DCO as a delivery vehicle. This reinforces our earlier findings that the ability of the DCO process to give that certainty is one of its key strengths.

The issue of site assembly and multiple consents for new settlements meant that some survey respondents saw value in the way the DCO can grant compulsory acquisition powers and manage several consents together. Related to that is the issue of land value capture and we note that this continues to be a live discussion in the wider compulsory purchase world, with some seeing the need to capture 'hope value' of future development to finance investments, and others seeing this as a disincentive for landowners to bring land forward.

The interviewees who were more instinctively positive about the DCO process for complex developments such as new settlements concurred with these themes but also indicated that

...having certainty helps to secure finance for large scale projects and enable acquisition of land in the right place at the right time.

The specific contribution the DCO process could make was perhaps best summarised by the following survey response:

“The majority of councils are under pressure to deliver increasing amounts of housing and many are turning to larger scale ‘garden communities’ or similar, to deliver that.

“ The DCO regime is ideally placed to manage the public engagement and potentially large amounts of public involvement within a defined and rigorous examination process, together with other issues such as compulsory purchase,

which will give both developers and councils some certainty in terms of decision making on large-scale mixed-use schemes.”

We have highlighted how the DCO process alone may not be enough, and that it needs to address how it connects with spatial planning. One of the most heartening aspects of our research was the way in which participants went on to explore potential ways forward, regardless of their position on the DCO process. It led many to ask the question of whether the existing conventional Town Planning approach and other consenting tools could be refined, and prompted by our questions, whether there should be a choice for planning complex large-scale developments, and we reflect on this in our recommendations below.

3. One size does not fit all

This is perhaps our most important theme, given that some NSIPs are required to apply for a DCO if they are above a certain threshold.

Tools exist to consent and deliver large scale complex developments, such as garden villages, master-developer arrangements, Development Corporations and the New Towns Act legislation.

Throughout our research a clear view emerged that having a choice around the best consenting and delivery route matters (something 88% of our survey respondents specified), and that a DCO-led approach alone would not work.

In the interviews, those who were instinctively positive about the role of the DCO process in delivering complex developments, saw it as an optional route to consider alongside others, while those who were more circumspect asked whether you could use it to enhance existing tools.

“The trouble is for any garden city to be successful it’s all about the infrastructure integration, will NSIPs give you that?”

In this instance the infrastructure focus was on transport. What this research does not explore in detail is our definition of infrastructure, and whether this extends to social infrastructure, green infrastructure and indeed housing and employment land allocations. One interviewee took this concept even further reflecting that **“new communities are unique as a form of infrastructure. They are vastly different from**

roads, railway lines and power stations. The NSIP regime is simply not set up to deal with the complex task of place making. There is insufficient democratic accountability and opportunity for public involvement in the process. It’s the wrong approach”

When you break down the way the DCO process is designed, our research has shown that it seeks to increase engagement, provide clarity on timescales, and provide powers to enable delivery. Where it stumbles is not necessarily in managing complexity, but managing politics (given it was designed, some might say, to side step politics), and with spatial interactions that have not already been considered.

It is here where we feel there is a national policy issue. Different mechanisms are likely to work for different circumstances, but we consider that there needs to be an overarching national framework that drives the identification of places for development at the scale of new settlements, where infrastructure is an integral part, and the mechanisms available for delivery.

Importantly, it needs to be clear what the national need is and, learning from the DCO process, the weight to be given to that assessment of national need.

In combination this should set expectations and direction for Local Authorities, Combined Authorities, Local Enterprise Partnerships and other stakeholders looking to bring together opportunities to deliver housing, jobs, and infrastructure.



RECOMMENDATIONS

Our research found a vibrant discussion around the pros and cons of applying the DCO process more widely to large scale complex developments including new settlements.

We found well-articulated and opposing views, nuances and insights that lead us to conclude that the DCO process is not designed to handle the spatial complexities of developments such as new settlements by itself. It may be an effective way of delivering a consent, but it functions in a “silo” and would need to be integrated with wider spatial planning. Crucially, promoters of complex developments under the conventional Town Planning process wish to have a choice on the appropriate consenting route.

We consider that, after the successful establishment of the DCO process, now is the time to ask ourselves what role infrastructure plays in place-making and the delivery of housing and jobs. Where do we need to invest to enhance places for the people that live and work there, to connect places together, to change their carbon footprint and become sustainable places to live financially, socially, and environmentally?





The DCO process offers one model for managing these challenges when nationally significant infrastructure projects come forward, provided it sits within a spatial planning framework that offers policy certainty. To address national housing need, there needs to be a national settlement strategy and this strategy needs to be tied to both the DCO and conventional Town Planning process, to facilitate choice in how we plan and deliver large scale complex developments such as new settlements at the regional and local levels.

We also think that there are benefits to be gained from applying DCO principles to existing planning mechanisms as well as developing a DCO option for delivery of new settlements.

We therefore believe the Government and industry should look to explore the extension of the DCO process for new settlements and other complex developments by preparing a National Settlements Strategy (NSS) that:

- Identifies broad parts of the country suitable for new settlements / large scale developments (developed under DCO (and NPS) engagement principles with input from Local Authorities and devolved administrations);
- Enables different consenting and delivery models to be applied;
- Incorporates the DCO as a consenting model;
- Is drafted to provide the national needs case that gives certainty, to unlock significant financial investment from the UK and internationally; and,
- Is equivalent to the National Policy Statements.

CONCLUSIONS



Our research has led to engagement with practitioners within and beyond the DCO process, across public and private sectors and with a range of different interests and backgrounds. We have unpicked what makes the DCO process a success for the projects it handles, and perhaps why in its current form it is not suited to handling complex large-scale developments such as new settlements.

Fundamentally, this process has led us to conclude that national infrastructure planning and spatial planning are disconnected from each other. Integrating infrastructure, housing and jobs at different spatial scales, so that all can be delivered in the national, regional and local interest, in ways that also address the issues of our time, including climate change, regional inequalities and place-making, is indisputably a huge challenge.

But there is significant scope for lessons to be shared and approaches to be adapted.

This requires leadership, and we consider the Ministry of Housing Communities and Local Government, working with their colleagues in the Department of Transport and others, is very well-placed to provide this, and bring together a wide range of stakeholders to facilitate stronger connections between national infrastructure and spatial planning.

In preparing a National Settlement Strategy we need to acknowledge up front that there will be some challenging issues, not least around managing engagement and Strategic Environmental Assessments. Equally, a DCO option for new settlements may look very different to a DCO for more established infrastructure projects. Therefore, we would welcome your views on some or all of the following questions, along with any wider reflections you have on this research:

- 1. How can a national settlements strategy be prepared in a way that engages regions and local communities alongside national infrastructure providers to create long term stability?**
- 2. Which planning processes can benefit from applying the certainty principles established by the DCO process and how?**
- 3. What could a DCO option for delivering new settlements look like in practice?**

We will take these responses forward, along with our own thinking, into a second phase of work on how to make our recommendations a practical reality.

We hope this research sets a strong framework in which to explore these questions further and we wish to extend our thanks to all who have participated in our research, and to you for reading our report.

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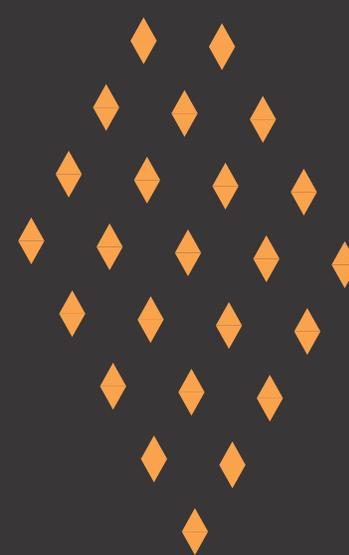
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