4.1 National decision making

What's needed from the national decision-making process

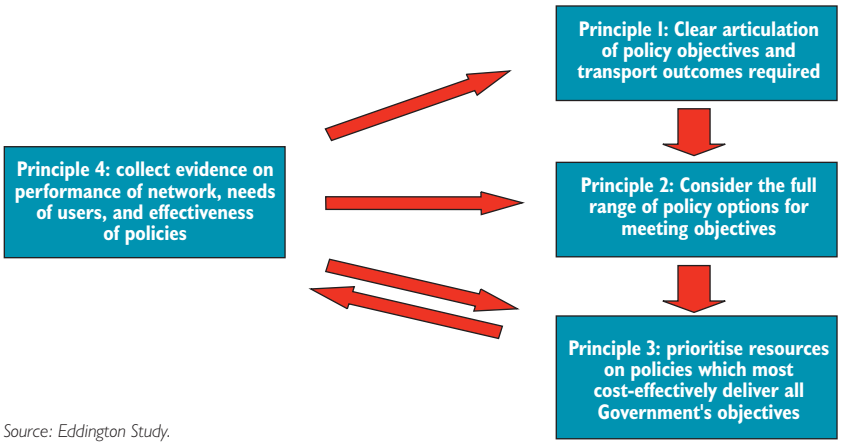
1.1 This chapter assesses how national decision making in England may need to develop in order to reflect the guiding principles that have been developed by this Study and concludes with recommendations as to how they should be implemented.

Principles for transport decision making

1.2 Chapter 1.4, Volume 1, considered what would be needed from the transport decision-making process to support productivity and growth, and set out four key principles that should form part of a transport strategy aimed at identifying and funding those policies which most cost-effectively deliver Government's objectives:

1. start with a clear articulation of the policy objectives, and the transport outcomes required to deliver these objectives, focusing where relevant on the 'whole journey' rather than particular stages or modes in a journey;
2. consider the full range of policy options for meeting the policy objectives, including different modal options, and policies for making more efficient use of existing capacity as well as small and larger scale capacity enhancements and packages of policy measures;
3. prioritise limited public resources on those policies that most cost-effectively deliver Government's objectives, taking account of the full social, environmental and economic costs and benefits of policy options; and
4. ensure the evidence base can support this process, providing information on the needs of users, current and anticipated use and performance of the network, supporting option generation through modelling and appraisal of options, and evaluating impacts to inform future decision making.

Figure 1.1: Principles to inform transport decision making: the decision making cycle



Source: Eddington Study.

Long term approach to decision making

1.3 It was also argued in Volume 1 that Government should develop a long-term framework for transport strategy, which identifies the pressures, opportunities and requirements from the transport system over a 20-30 year period, and which provides a measure of transparency about the Government's policy priorities and the way decisions about transport policies and funding will be made. There are a number of reasons why it is important to take a long term approach to transport strategy:

- the challenges facing transport policy are long term issues rather than short term problems;
- there are often long lead times involved in developing and delivering policies to addresses these long term challenges, and
- transport infrastructure lasts for many decades and it is important that long term requirements and risks are taken into consideration in the design of different policy options.

1.4 There will always be a balance to be struck between the need to provide certainty to businesses and other transport users about the schemes and policies that will be implemented, and the need to retain some flexibility to respond to changing pressures and opportunities and take account of emerging evidence on the effectiveness of different policies. On balance, transparency about the long term strategic framework and increased certainty about nearer term plans provide benefits to business and incentives for good decision making.

1.5 The rest of this chapter considers the extent to which the current system of decision making for transport links of national importance provides these dimensions of a long-term decision-making cycle. It then makes some proposals for future priorities, to further develop the national decision-making process to meet the challenges ahead.

1.6 This chapter focuses on decision making in relation to key inter-urban corridors and international passenger and freight gateways. The following chapter on sub-national decision making looks at how decisions are made in relation to the third strategic priority of growing and congested urban areas.

Principle 1: Start with a clear articulation of the policy objectives, and the transport outcomes required to deliver these objectives, focusing where relevant on the 'whole journey' rather than particular stages or modes in a journey.

Clear articulation of the policy objectives

1.7 The first step in the decision-making process should be to identify the policy goal or goals that Government, or other decision makers, are aiming to achieve. Government's overarching objectives are likely to include economic, environmental and social goals. Beneath these first order objectives, may sit more specific ones. This Study does not seek to specify what DfT's objectives should be, but it may help readers to provide illustrative examples of the types of statement that might be used. For, given economic goals, an objective of transport policy might be 'to support productivity and competitiveness through improving the performance of inter-urban corridors of strategic national importance, growing and congested urban areas, and key international gateways'. For given environmental objectives, another objective might be 'to reduce transport's impact on the environment through cost-effective measures to reduce carbon and air quality emissions'.

Current objectives and performance indicators

1.8 Government objectives are given expression in a number of ways, including in departmental Public Service Agreements, and the analytical frameworks used to guide decision making.

1.9 As part of its Public Service Agreement (PSA), the DfT has objectives to 'support the economy through the provision of efficient and reliable inter-regional transport systems' and to 'deliver improvements to accessibility, punctuality and reliability of local and regional public transport systems'.

1.10 These objectives are underpinned by targets to improve the performance of inter-urban road and rail networks (the latter covering all rail services and not just those of national strategic importance) and to address urban congestion. The Department also has a PSA objective to 'improve cost-effectiveness through sound financial management, robust cost control, and clear appraisal of transport investment choices across different modes and locations'. Figure 1.2 gives more details of the DfT's existing objectives and targets.

Figure 1.2 The Department for Transport's Public Service Agreement objectives and performance targets[a]

The DfT's Public Service Agreement includes the following objectives and targets aimed at supporting the economy, improving the performance and reliability of the transport network, and improving value for money from spending:

Objective I: Support the economy through the provision of efficient and reliable inter-regional transport systems by making better use of the existing road network; reforming rail services and industry structures to deliver significant performance improvements for users; and investing in additional capacity to meet growing demand.

- ***The Department is developing better measures of inter-urban congestion and will publish a new target by July 2005. The Department will also publish annual long term projections of congestion.***

Objective II: Deliver improvements to the accessibility, punctuality and reliability of local and regional transport systems through the approaches set out in Objective I and through increased use of public transport and other appropriate local solutions.

- ***The Department is developing better measures of urban congestion and will publish a new target by July 2005. The Department will also publish annual long term projections of congestion.***

Objective IV: Improve cost-effectiveness through sound financial management, robust cost control, and clear appraisal of transport investment choices across different modes and locations.

It also includes the following objectives and targets to reflect social and environmental objectives:

Objective III: Balance the need to travel with the need to improve quality of life by improving safety and respecting the environment.

- ***Reduce the number of people killed or seriously injured in Great Britain in road accidents by 40 per cent and the number of children killed or seriously injured by 50 per cent, by 2010 compared with the average for 1994-98, tackling the significantly higher incidence in disadvantaged communities.***
- ***Improve air quality by meeting the Air Quality Strategy targets for carbon monoxide, lead, nitrogen dioxide, particles, sulphur dioxide, benzene and 1,3 butadiene. Joint with the Department for Environment, Food and Rural Affairs.***
- ***Reduce greenhouse gas emissions to 12.5 per cent below 1990 levels in line with our Kyoto commitment and move towards a 20 per cent reduction in carbon dioxide emissions below 1990 levels by 2010, through measures including energy efficiency and renewables. Joint with the Department for Environment, Food and Rural Affairs and the Department of Trade and Industry.***

DfT's full PSA objectives are available at: www.dft.gov.uk/stellent/groups/dft_about/documents/page/dft_about_030577.hcsp

[a] These were set in the Government's 2004 Spending Review.

Objectives **I.11** Although these objectives and targets are not cross modal, they identify the need to improve the performance of links which correspond reasonably closely with two of the three strategic priority links and highlight a range of policy options from better use to additional capacity. Importantly, they also identify the Department's social and environmental objectives.

International gateways

1.12 The DfT sub-objectives do not include any reference to international passenger and freight gateways. Given that many of the levers for delivering improvements to performance and capacity of these links are held by the private sector, government cannot take sole responsibility for delivering these outcomes. However, as government has an important role in providing the policy framework for both ports and airports (eg through planning policy, environmental policies such as carbon pricing, the Air Transport White Paper), there would be benefits to recognising this.

1.13 Given that the challenges and issues involved in improving the performance of key international freight and passenger links are similar, there may be a case for a joint, cross-modal objective on these two links, to reflect the need for a coordinated approach to delivering international passenger and freight objectives.

1.14 There is also a question over whether the existing targets are sufficiently long term given the long lead times that can be involved in delivering sustained improvements to the performance of transport links. There may therefore be a case for adding longer-term indicators.

HMT productivity drivers

1.15 Transport is also acknowledged in the joint HM Treasury and Department of Trade and Industry's productivity framework, which identifies the drivers that contribute to long-term productivity in the UK. Transport contributes to the 'Investment' driver, but there is no specific transport indicator underlying the driver framework, and therefore transport does not directly feature in the assessment of how the conditions necessary to drive productivity are measured and assessed.

Developing objectives and indicators to reflect an improved understanding of transport's potential to contribute to productivity

Supporting productivity

1.16 Government's objectives should reflect the improved understanding of the contribution that transport can make to productivity provided by this Study and the associated evidence. As noted above, DfT already has an objective to support the economy, alongside its social and environmental objectives. This Study has examined new evidence on the mechanisms through which transport can contribute to productivity and growth, the parts of the transport network that are most important in supporting the economy, and on the outcomes that are required from these links and networks. It has also emphasised the importance of considering the 'whole journey', rather than the modal components or separate legs of a journey, and of looking across the full policy spectrum to identify the policies that make the most effective contribution to government's objectives.

1.17 Departments periodically review their objectives and performance indicators to ensure they remain fit for purpose and reflect the latest evidence. As part of this process, DfT may want to consider how best to embed the evidence and conclusions from this Study in its objectives and performance indicators. There are a number of options for doing this, some of which are explored below.

1.18 This Study has emphasised the importance of three strategic economic priorities in supporting growth:

1. the UK's congested and growing urban areas and their catchments;
2. the UK's key international gateways; and
3. key inter-urban corridors.

1.19 There would therefore be benefits from developing a set of indicators that monitored the performance of these links to underpin an overarching productivity objective. For example, the current inter-urban congestion indicator and rail reliability indicators could be developed to measure the performance of key inter-urban road and rail links. This can either be done through the reliability and usage of these strategic networks over time, or through indicators for the annual time lost through delay and unreliability on these corridors.

1.20 Another, complementary, indicator would be to measure and seek to improve the value for money that the Department expects to obtain from its spending in any one year, or over a certain spending period. This should take account of the full social, environmental and economic costs and benefits of the Department's policies and investments, based on appraisal information. Such an indicator would provide transparency about the value for money obtained from public spending, and an incentive for DfT and other delivery bodies to identify and prioritise the policies which make the most effective contribution to the Government's social, environmental and economic objectives.

1.21 There would be challenges in obtaining this information for all areas of the Department's spending, and for spending devolved to local authorities and other delivery bodies. It is also likely that the methodology for estimating the costs and benefits of policies will improve over time, meaning data series may not be compatible. These are not arguments against such an indicator, but are issues that would need to be considered when developing more detailed propositions.

The impact of transport on productivity

1.22 The analysis and conclusions from this Study will also have implications for HM Treasury and DTI's productivity agenda. This Study has presented significant new evidence assessing transport's very considerable potential to contribute to productivity and growth, and suggests that the departments should consider how to improve monitoring and assessment of transport's impact on productivity.

Option generation

Principle 2: Consider the full range of policy options for meeting the policy goal, including different modal options, and policies for making more efficient use of existing capacity as well as small and larger scale capacity enhancements.

Principle 3: Prioritise spending on those policies which offer the best value for money, taking account of the full social, environmental and economic costs and benefits of policy options.

Consider full range of policy options

1.23 After setting out a detailed analysis of the policy goals, and the challenges involved in meeting them, transport strategy should assess the full range of policy levers for meeting the policy goal. In many cases there will be a range of different options for solving a particular transport problem, and they will probably vary in terms of cost and the scale of benefits delivered. Volume 3 showed just how much transport returns vary across options, suggesting that it is important to assess a wide range of options to target policy action where it will make most difference. The evidence also suggested that higher returns tend to be associated with better use and pricing measures, and with relatively small-scale options focused on tackling bottlenecks. That is not to say that such options will always be sufficient, rather to suggest that the potential offered by small options should be assessed even in the face of apparently large transport challenges.

1.24 On the basis of this evidence, there is a strong argument that policy makers should examine all relevant options on a policy menu which spans policies for making more efficient use of existing capacity (including pricing options) as well as small and larger scale capacity enhancements, across the relevant modes. This will require evidence and analytical tools to drive option generation and allow comparison between different policy options. Such analysis will need to be proportionate to the problem being addressed, and multi-modal when there are significant cross-effects between modes. These analytical issues are discussed in more detail later in this chapter.

Prioritising spending

1.25 There are several dimensions to prioritisation of this kind.

Prioritise spending on value for money policies

1.26 First, after identifying the range of potential policies for meeting a particular objective, detailed, comparable analysis would be needed to estimate the full costs and benefits of the most promising policies, including social, environmental and economic impacts. Appraisal information of this kind can then be used to compare the returns available from alternative calls on funding, in order to guide spending choices towards those policies and projects which will provide the greatest benefits from available funds[1].

1.27 Second, it seems likely that this process of project development and appraisal would need to be informed by some guideline indication of the cost envelope within which options need to be developed, and/or the value for money thresholds which a project will need to meet in order to be a good candidate for funding. Such signals are important and should help to avoid raising expectations that every good scheme or policy can be funded, and to provide an incentive to focus on the most effective policies.

1.28 Third, to decide on overall funding allocations between specific policy proposals and projects, decision makers need to compare the returns available from different options. The more the benefit:cost ratios can be developed to reflect the full range of relevant impacts, the easier this process will be. However, there are always likely to be some impacts that are hard to monetise. Some social, environmental and economic impacts will show threshold effects and inter-dependencies which make valuation particularly difficult. The aim should be to integrate these considerations where they are important to decision making, without discarding the valuable information provided by the appraisal. In some, but not all, areas, sensitivity analysis will provide an effective way of reflecting the potential of such impacts to affect the overall prioritisation.

Current system for option generation and funding allocation

DfT has levers to consider full range of options

1.29 The transport sector is now on a more stable footing after a period of turbulence, which provides greater opportunity to take a forward-looking, strategic approach to option generation and decision making. DfT and other delivery bodies are well placed and already have many of the levers to consider a full range of policy options. As set out in volume 3, both the Highways Agency and Network Rail consider a range of policy options when identifying policies to improve the performance and capacity of the networks, from better use through to marginal capacity enhancements to large scale infrastructure improvements.

[1] See Volume 3, Chapter 3.5 to understand in more detail how cost-benefit analysis is used to appraise and compare options.

1.30 In recent years, the Highways Agency has placed increased emphasis on better use measures, including the use of traffic officers, and the current pilot of active traffic management and hard shoulder running on the M42. Similarly, Network Rail makes a thorough assessment of the potential for better use measures as part of the development of its route utilisation strategies, looking at policy options such as timetabling changes, longer platforms and trains, and investment to relieve congestion at pinch points on the network.

1.31 More broadly, the Government explored the case for using price signals to make better use of the road network in its Road Pricing Feasibility Study published in July 2004.

1.32 The Air Transport White Paper, published in December 2003, also assessed a number of options, including the use of a carbon pricing mechanism to ensure users pay the external costs of their journey, and measures such as 'mixed mode' which increase the effective capacity of runways by enabling planes to take off and land from the same runway.

Some problems addressed at modal level

1.33 Some problems are addressed at a modal level, rather than through a top down cross modal approach to identifying the most effective policy solution. This approach can risk missing promising options, and may end up focusing on problems which do not feature as priorities at the strategic level. This also has implications for sub-national decision making, and these issues are discussed further in chapter 4.2.

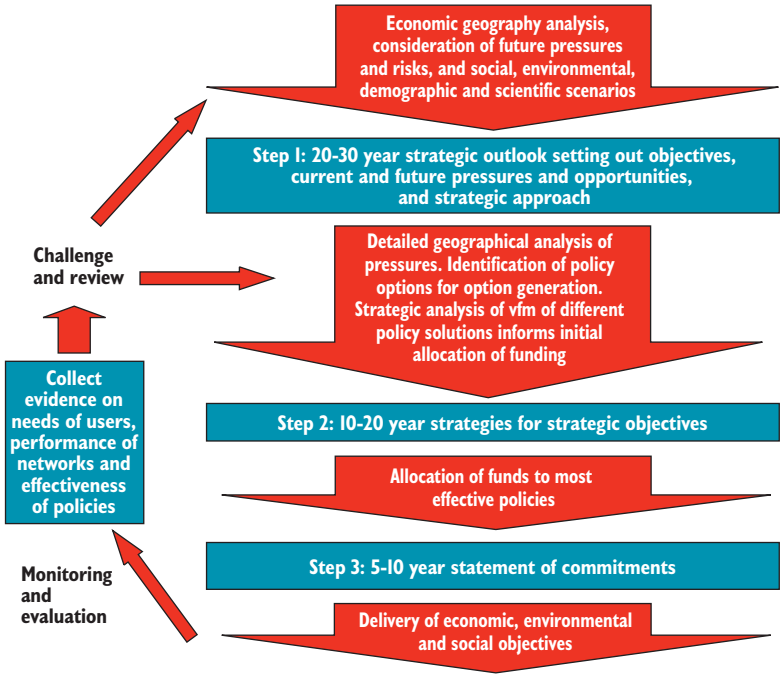
1.34 However, the Transport Innovation Fund is a non-modal spending pot that has begun to examine enhancements across modes against objectives such as relieving pressure on the strategic freight networks, and will allocate funding according to those proposals with the highest returns. This type of funding arrangement could provide incentives to look across modes, and options, thereby improving the effectiveness of the policy solutions being put forward. There would be advantages from adopting a more cross-modal approach to option generation in other areas of the Department's strategy and spending.

Proposals for building on the current system

1.35 In order to further embed a systematic cross-modal option generation and prioritisation process, Figure 1.3 draws the four strategic principles identified in figure 1.1 together to set out one proposition for how these principles might be applied in practice, to further develop the long term strategic framework for transport. Many of these outputs and processes already exist in some form, meaning this is more about developing and building on existing strategic process than a radical shake up.

1.36 The process moves from understanding the challenges which need to be addressed, bringing forward and narrowing down the choice of options to meet those challenges, through to making final decisions about the allocation of funding. It attempts to balance the need to look long-term and provide certainty to stakeholders, with the desirability of being able to respond quickly to new challenges and priorities.

Figure 1.3: One option for a long term decision-making cycle



Source: Eddington study.

A long-term decision-making cycle

1.37 The public outputs from this indicative model of a strategic cycle (marked in blue), which correspond to the strategic principles identified in figure 1.3, might be:

1. first, **a 30-year strategic outlook**, setting out the long-term objectives, together with a high-level identification of problems and opportunities that transport policy is seeking to address. This should provide the long term context to focus policy on the big strategic challenges, drive the option generation process, and provide transparency about the long-term decision-making process;

2. second, a more detailed **medium-term 10-20 year strategy** for delivering the objectives in the 30-year outlook, bringing forward options focused on meeting the challenges set out in (1), so that they can be developed, appraised and put forward for funding at the appropriate point in time. (Some initial spending will be needed to develop options to sufficient degree of confidence on their time, costs and risks for good decisions to be taken on whether to proceed or stop); and

3. third, **detailed 5-10 year statement of commitments** of policy commitments and known decision points, identifying the most effective policies for delivering the objectives and transport outcomes set out in the medium term strategy.

1.38 Whilst these are described as separate stages, they will in practice form a continuous cycle. At any one point in time, government will be developing and implementing at all three stages simultaneously, not least because they cover differing time horizons. These potential outputs from a long term strategic cycle are discussed in more detail below.

30-year strategic outlook

Defining objectives and identifying challenges and opportunities

1.39 The 30-year strategic outlook would include a clear articulation of the Government's economic, social and environmental objectives for transport, reflecting evidence and conclusions from this Study, the Stern Review, and other relevant evidence. This strategic outlook would set out analysis of the current and anticipated pressures on and requirements from the transport system over the next 20-30 years, including consideration of risks and opportunities associated with economic, environmental, social, demographic, scientific and technological scenarios and trends. It would also provide transparency about the principles Government would apply in identifying and allocating funding to the most effective policies.

1.40 Given the long lead times involved in delivering many transport projects, this outlook is crucial to defining the start of the option generation process. By articulating the long-term challenges that need to be met in order to deliver on its objectives, the Government will be able to drive subsequent option generation to focus in the areas and on the right types of issue. Such an outlook should directly shape the options being prioritised for funding in years to come, and if the challenges and opportunities are not defined clearly enough then it seems unlikely that appropriate solutions will emerge.

Medium-term strategy or strategies

Setting out the most promising policy options

1.41 A medium term strategy would taken option generation to the next stage by providing more detailed analysis on specific strategic objectives, such as improving performance of the strategic priority links, or meeting the Government's social and environmental objectives. This would include a more detailed assessment of the policy goals and current and anticipated pressures, including geographically specific 'whole journey' analysis where relevant. These strategies would look across modes and the policy spectrum from better use to additional capacity, to identify at the strategic level the policies that would be expected to be most effective, and to narrow down the options that are in play.

1.42 Given the long lead times involved in delivering many transport objectives, it would be important for these strategies to look over a 10-20 year period. This would also provide an opportunity to drive option generation for the medium term, where there is arguably more opportunity for flexibility and genuine consideration of a full range of policy options.

1.43 Both the 30-year strategic outlook and the medium term strategies would need to be reviewed periodically, to reflect an up-to-date understanding of Government policy objectives for transport, external pressures and risks (including economic trends and implications for economic geography), and evaluation evidence on the most effective policies.

5-10 year statement of commitments

Setting out policies and schemes to be delivered

1.44 The policies set out in the 5-10 year statement of commitments would be selected after a thorough assessment of the costs and benefits of the policy options identified in the strategies, with funding allocated to those polices and investment options that offer the best returns to society. These plans would set out the policies and schemes that would be delivered over the subsequent 5-10 year period, including timescales, to provide users and investors with the information they need to inform their own investment and location decisions. To provide transparency these statements of commitments should identify the value for money which will be provided by government's spending plans.

1.45 There would be a greater amount of detail in the first 5 years of the statement of commitments, recognising the need to balance greater certainty about Government delivery plans for users and the private sector with the need to maintain some flexibility to respond to changing pressures, objectives or evidence. These policies will have been identified after consideration of the different cross-modal options. In some cases it may be efficient to deliver these policies in a more modal way once a decision has been made on the mode or combination of modes that is most effective.

Funding allocation

1.46 The final allocation of funds to the highest return projects needs to be decided in order to provide the statement of commitments, however early stages in the process will need to be informed by a realistic idea of the scale of available funding.

1.47 Likely budget constraints need to be anticipated in developing the medium-term strategies, and in developing particular propositions for appraisal. This need not mean making firm budget allocations to particular strategic policy priorities, but could involve setting out a range of the likely funding availability, to give a sense of the overall budget constraints that must be worked within. Indicative budget guidelines could be informed by a strategic analysis of the likely value for money of policies in that area. These guidelines could then be firmed up as more evidence became available on the value for money offered by specific spending proposals or programmes. Alternatively, value for money thresholds could be used during strategy development, to provide an early signal of the scale of return that projects will need to deliver in order to be realistic candidates for funding.

Listen intelligently to the numbers

1.48 To decide on overall funding allocations between specific policy proposals and projects, decision makers need to "listen to the numbers" so that appraisal information on value for money can be used intelligently to guide spending decisions. At the funding allocation stage, decisions should reflect the relative returns provided by competing schemes. The more the benefit:cost ratios can be developed to reflect the full range of relevant impacts, the easier this process will be. However, as argued earlier in this chapter there are always likely to be some impacts that are hard to monetise and the decision-making process must be able to reflect these dimensions, without discarding the valuable information provided by the appraisal.

1.49 The Study has also shown that in a globalising world, the needs of the UK economy are dynamic and in some circumstances economic change might be quite rapid. This can mean that it will be desirable to respond quickly to new priorities as they come along, and this may have implications for the way in which funds are allocated. In practice there will also be real-world constraints on funding availability and the cost and value for money of polices may change through time due to a number of factors including planning costs, inflation and other risk factors. A balance will need to be struck between providing responsiveness to change and providing business investors with the certainty and transparency they desire.

Implications of other policy developments for the long-term decision-making cycle

Ensuring read-across with other policy objectives

1.51 Transport policy will have important implications for the delivery of other Government objectives, including those on housing, environment, social inclusion and productivity, and vice-versa. The decision-making cycle will need to include opportunities for periodic reviews of the long-term strategic outlook and the medium term strategies to test read across with policy developments in other areas, and ensure that, as far as possible, objectives and timescales are aligned.

1.52 Other chapters in this Volume have set out analysis and recommendations on other delivery issues, including planning and sub-national decision making. Some of these recommendations, should Government choose to accept them, could have implications for the long-term decision-making cycle described above.

Implications of other Eddington recommendations

1.53 One of the recommendations in the planning chapter is that the Government should publish Statements of Strategic Objectives, setting out its view on the need for strategic transport capacity and development, balancing national economic, environmental and social considerations and between national needs and possible local impacts. These Statements might be published alongside the medium term strategy or strategies described above. For example, if the Government were to publish a medium term strategy on key international passenger and freight gateways, this might be accompanied by a Statement of Strategic Objectives setting out the Government's view on the need for additional ports and airports capacity.

1.54 Government would want to consider both the level of specificity needed from these Statements should it choose to take forward the planning recommendations set out in chapter, and the appropriate role for sub-national decision-making bodies in this process.

Principle 4: Ensure the evidence base can support this process, providing information on the needs of users, the use and performance of the network, supporting option generation through modelling and appraisal of options, and evaluating impacts to inform future decision making.

Evidence-based policy

1.55 It is essential to have the right evidence base and analytical tools in place to inform option generation and allow assessment of the most effective policies and strategies. This includes:

1. information and analysis on the use and performance of the current network, and forecasts of future demand and performance under different social, environmental and economic scenarios, to help identify current and future challenges and drive the option generation process;
2. models which allow assessment of the costs and benefits of (i) different modal options and (ii) the full range of policy options on the strategic priority links, including pricing mechanisms, to inform option generation and decisions on most effective policies;
3. methodologies for estimating and monetising, where possible, the impacts of policy options on social, environmental and economic objectives; and
4. evidence on what policies deliver in practice, to test and refine appraisal assumptions and inform option generation.

Existing evidence base and analytical tools

DfT has a good existing evidence base and analytical tools

1.56 DfT has good information on the level of usage and performance of strategic road and rail networks and of international passenger links. It, however, has less information on complete journeys, or who uses the network on the strategic economic priorities identified in this report.

1.57 As discussed previously, delivery bodies are increasingly considering better use options alongside options for increasing capacity and improving performance of the networks.

1.58 Chapter 1.3, Volume 1 noted that transport appraisal has evolved considerably over the last 30 years, and that internationally, the UK is considered to be at the forefront of thinking on appraisal of transport's impacts on the economy, society and the environment. Recent developments have included the publication of draft guidance on capturing wider economic impacts of transport schemes, for use in assessing schemes competing for DfT's Transport Innovation Fund programme, and guidance that scheme appraisals must take account of carbon impacts, whether positive or negative.

1.59 There is scope to improve the evidence base on what policies deliver in practice, through evaluations of polices and schemes.

Proposals for building on current strengths

1.60 Volume 1 identified a number of ways in which the appraisal guidance could be further improved, to better capture the full range of social, environmental and economic impacts (figure 1.4). Similarly, there would be benefits from further work to understand the impacts that different schemes and policies have, and how users respond. These proposals are discussed in more detail below. DfT is widely acknowledged to be building from a position of strength in this area.

Figure 1.4: Capturing the impacts of transport on the performance of the economy

The Study suggests that consideration should be given to the following issues in appraisal:

- **valuations of time savings:** valuation of time based on local wages is essential to capture the true economic gain from a transport improvement in a particular region and to correct for the current anomaly between the calculation of costs and benefits in appraisal;
- **freight valuations:** the full GDP benefits realised from freight traffic could be considerably higher than currently assumed, reflecting the wider impact of transport on business operations and logistics. There is a strong case for exploring whether the current valuation of freight time fully reflects the benefits to this sector;
- **reliability:** it is clear that the performance of the transport network in terms of reliability often matters just as much, if not more, than any direct time savings from a transport journey. Evidence seems to suggest that these are considerably higher than has been appreciated in the past. There is a strong case for reliability valuations to reflect developing evidence in this field;
- **agglomeration economies:** thinking on transport's relationship with agglomeration economies is relatively new. There is very little literature that attempts to explain and measure this relationship, particularly in the context of service agglomerations. The UK is at the forefront of establishing techniques on how this relationship can be modelled. However, it is clear that there is merit in better understanding this relationship, not least because of the continuing importance of urban agglomerations to the future prosperity of the UK. The DfT's developing methodology on agglomeration economies should be applied to the appraisal of all transport schemes. This could increase the assessed value of schemes, especially in urban areas;
- **gains from trade:** the contribution of transport policy in supporting trade is not well understood or quantified. But it is clear that acknowledging this relationship and quantifying its scale through appraisal, is pivotal to informing good transport policy, particularly around ports and airports, and surface access routes. These are not captured currently in appraisal. New research would need to be undertaken to consider how such gains could be captured and reflected;
- **globally mobile activity:** additional GDP gains are difficult to quantify for individual schemes, but analysis suggests that it will be important for transport policy to reflect this driver at relevant times.

1.61 Because decisions about the most effective policies need to be based on as full as possible an assessment of the environmental, social and economic impacts, it will also be important to continue to develop methodologies for better estimating social and environmental costs and benefits as new evidence becomes available, and for ensuring appraisals for different modal schemes are comparable.[2]

1.62 There is a need to build on the existing evaluation evidence to develop a better understanding of what policies and schemes deliver in practice, to test and refine appraisal assumptions and inform option generation.

[2] Where there are strong cross effects, this will often suggest a need for multi-modal models.

RECOMMENDATIONS

Recommendation 4

In order to meet these transport challenges, the policy process needs to: start with the strategic economic priorities; define the problems; consider the full range of options and ensure that spending is focused on the best policies:

(i) Transport's contribution to productivity should be reflected in both DfT and Treasury's objectives and performance indicators. In particular;

- **DfT's objective should include an objective on enabling productivity, supported by performance indicators for each of the strategic economic priorities (congested and growing urban areas, key international passenger and freight gateways, and key inter-urban corridors), and by an indicator of the value for money of DfT's spending plans, drawing on appraisal evidence.**
- **HMT should consider how to better monitor and assess the impact of transport on productivity.**

(ii) DfT should work with local and regional bodies to put in place a process to drive option generation which is both cross-modal and which encompasses both better use and investment options; it should ensure funds are allocated to the policies which most cost-effectively contribute to DfT's objectives.

(iii) To do this, DfT should develop a three-part decision-making cycle:

- **One, a long-term outlook of economic, environmental and social pressures and challenges over the next 20-30 years.**
- **Two, a medium-term strategy for delivering on each of its objectives, including a detailed analysis of the nature of the problem or challenge, the transport outcomes required, and the policy options for delivering those outcomes over 10-20 years; and**
- **Three, published 5-10 year statement of commitments, identifying those policies and schemes in place which will most cost-effectively deliver the required transport outcomes over the next 5-10 year period, providing updates of committed policies and schemes, and timings of forthcoming decisions.**

(iv) To inform periodic reviews of these strategic outputs, DfT should continue to improve its evidence base and analytical tools, including through:

- **Research and evaluation to monitor the impacts of policies; and significantly improve our understanding of the most effective transport measures, both in urban areas and in supporting international trade.**
- **Collecting information on the performance and usage of the network, and the requirements of users.**
- **Building the findings of this study into its methods of appraising the value for money of transport policies.**
- **Continuing to improve its methodologies and modelling tools for measuring the full social, environmental and economic impacts of transport policies, and quantifying these impacts where possible.**

1.63 The next chapter considers the third strategic economic priority of congested and growing urban areas, where the primary function and impact of journeys is at the sub-national level.

4.2 SUB-NATIONAL DECISION MAKING

Headlines

- **The current framework for sub-national decision making in transport is highly complex, with a number of different structures and organisations, and a large number of players.**
- **Within a single functional economic area, a number of different bodies can play a role in decision making; responsibilities for different policy levers are often split across different bodies; and funding streams may not be structured to incentivise effective decision making.**
- **Sub-national decision-making bodies often cooperate closely across a single functional economic area – but such partnership working may impose unnecessary costs if it is having to operate across inappropriate functional splits in responsibility and/or there are too many parties involved.**
- **There are some very important practical challenges faced in how to manage the demands of shared infrastructure (e.g. multiple users of the rail network) and interlinked, networked infrastructure (e.g. the relationship between the urban road network and the strategic road network, administered by the Highways Agency).**

WHY DOES SUB-NATIONAL DECISION MAKING MATTER?

2.1 Chapter 4.1 examined the four key principles that should form part of a transport strategy aimed at identifying and funding those policies which most cost-effectively deliver Government's objectives. It is crucial to get this process right across the three strategic priority areas of: international gateways; key inter-urban corridors; and congested and growing urban areas because of their significance for the UK's productivity and competitiveness.

2.2 The previous chapter examined how transport strategy might be developed for international gateways and key inter-urban corridors. Much of the analysis of that chapter might be expected to apply to congested and growing urban areas. However, a cursory glance at sub-national governance arrangements in England suggests that decision-making responsibilities are spread across a range of players, to the extent that no single body has the powers to develop and implement cross-modal transport strategies in these areas. Each of the devolved administrations has separate sub-national governance arrangements for transport; these are not covered by this Study.

2.3 Efficient transport systems can play an important role in national productivity and competitiveness by supporting the commuter journeys, local freight and business journeys, and surface access to local ports and airports for urban areas and their catchments. But the primary function and impact of many of these journeys are relatively self-contained at a sub-national level – by their nature they are local journeys. This chapter therefore considers the sub-national governance challenges posed by the need to deliver an effective transport system to support the third strategic economic priority of congested and growing urban areas and their catchments.

2.4 Appropriate governance structures, powers, incentives and accountability frameworks are required to identify the transport infrastructure needed and to deliver it. Stakeholders' input into this Study, and the Study's own analysis, shows that economic change is putting different pressures on our transport networks. As understanding of the issues continues to evolve, improvements and reform will continue to help support decision making in the future. In the current system, many different bodies are involved in different ways and at different levels of responsibility, from local to national, covering a single mode or many. Taken together these people, structures, regulations and organisations form the "governance" arrangements for transport. In this context, governance is about:

- **Who decides policy?** Local, regional or national bodies? Is the decision up to a single body or does there need to be agreement or negotiation between several different bodies?
- **What is the geographic reach of decisions?** Where is the impact of the transport interventions felt? How wide is the geographical remit of the decisions? Will it impact on people outside of that body's remit? Do the transport bodies have any influence or control over these impacts?
- **What are the powers and responsibilities of different bodies?** What can be decided by whom? Do they have a multi-modal remit or powers over only one or several modes? How are the needs of the whole journey or the full network supported?
- **Where do the incentives in the system lead?** Do funding arrangements incentivise efficient trade-offs or do they inadvertently distort decision making? Can decisions be taken within appropriate timescales?

2.5 The decision-making process for transport must fit alongside a broader policy context, particularly in areas such as housing, employment, skills, planning, physical regeneration, and economic development. For example, land-use decisions interact with transport needs; planning decisions influence transport demands; and planning powers can put restrictions on timings for freight delivery, which in turn can impact on how efficiently transport networks can be utilised.

2.6 Furthermore, any body with decision-making powers for transport needs to have clear and appropriate accountability structures to ensure it takes high-quality decisions which result in value for money and delivery of transport policy objectives. This poses much wider questions for Government, which are currently being considered in various other studies and reviews. This Study therefore simply aims to set out some of the other key governance objectives required to deliver transport in congested and growing urban areas in the most efficient and effective manner. It recognises that a final way forward would need to address the wider questions.

Figure 2.1

Sub-national Review of economic development and regeneration

The Government is currently undertaking a review of Sub-national Economic Development and Regeneration. This review is exploring the opportunities for further releasing the economic potential of England's regions, cities and localities, and to respond more effectively to the ongoing challenge of tackling pockets of deprivation. In particular, the review is also considering how to improve accountabilities and governance arrangements for economic development and regeneration policies at all levels of government. The findings of the Sub-national Review will inform the 2007 Comprehensive Spending Review.

The Lyons Inquiry into local government

Sir Michael Lyons was commissioned by the Deputy Prime Minister and the Chancellor of the Exchequer in July 2004 to undertake an independent inquiry into local government funding in England. He was asked to consider and to make recommendations on changes to the present system, including the reform of council tax. In September 2005 the Government announced an extension to the Inquiry's terms of reference to cover questions relating to the function and future role of local government, as well as the funding system. The Inquiry published an interim report[a] in December 2005 and a further report, *National Prosperity, Local Choice and Civic Engagement* in May 2006.

[a] Lyons Inquiry into Local Government – Consultation Paper & Interim Report, 2005.

2.7 This chapter:

- introduces the current sub-national decision-making process for transport: the reality of taking decisions and making transport happen on the ground;
- considers what might be the objectives for the system for administering transport policy;
- considers how the current system performs against the objectives identified; and
- provides some initial consideration of what types of changes to levers and incentives Government could consider to build on the changes already made or underway.

INTRODUCTION TO THE CURRENT SYSTEM

2.8 The current system for making decisions at a sub-national level involves a large number of different players (both the public and the private sector), with varying responsibilities, powers and incentives. The private sector has an important role to play, including bringing forward investment for private-sector owned transport infrastructure, such as ports and airports. However, this chapter focuses on the role of public bodies in bringing forward and influencing transport policy. It sets out:

- the levers that national bodies have in relation to sub-national decision-making;
- the role of regional bodies;
- local government's existing roles, responsibilities, funding and accountability arrangements;

- the particular role played by Passenger Transport Authorities (PTAs) in six of the larger urban areas; and
- the unique arrangements in London.

National bodies

2.9 National players make decisions that have a direct influence on local transport networks. The Department for Transport (DfT) is responsible for negotiating almost all of the commuter rail passenger franchises and for purchasing infrastructure renewals or enhancements from Network Rail. DfT, PTAs and local authorities, with Network Rail and the train operating companies, work together to bring about improvements to heavy rail services and stations in the larger urban areas.

2.10 The Highways Agency is responsible for the strategic road network, which carries inter-urban journeys, but which often also supports important intra-urban journeys (commuter, local freight distribution, or surface access to local ports and airports).

2.11 Central government is also the source of much sub-national transport funding. This is discussed in more detail below.

Regional bodies

2.12 Regional bodies tend to play a strategic role with regard to sub-national transport policy. Regional Assemblies are bodies drawn from elected members of local authorities and social, economic and environmental partners. They are responsible for producing Regional Transport Strategies as part of Regional Spatial Strategies, which provide a broad development strategy for each region, identify the scale and distribution for provision of new housing, and establish regional priorities for the environment, transport and infrastructure.

2.13 Alongside this, the Regional Development Agencies are responsible for setting out the shared growth priorities for each region and sub-region in Regional Economic Strategies.

2.14 Regions have sought to enhance alignment between their spatial and economic strategies which the Government has sought to strengthen through the Regional Funding Allocations process.[1] In 2005, the Regional Assembly and Regional Development Agency in each region was asked to jointly advise central Government on priorities within long-term indicative allocations for transport, housing and economic development. The process is designed to ensure that decisions on these issues are not made in isolation, but rather in a coordinated way that demonstrates alignment between the Regional Spatial and Regional Economic Strategies.

2.15 This was the first time that the regional tier had been asked to advise on specific transport priorities within an indicative budget allocation, and a number of regions chose to establish a Regional Transport Board, composed of representatives from across relevant regional and local agencies. In the North of England, the Northern Way Growth Strategy has established a Transport Compact to identify pan-regional investment priorities to support economic growth.[2]

[1] *Regional funding allocations: guidance on preparing advice*, HM Treasury, DTI, DfT and ODPM, July 2005.
[2] *The Northern Transport Compact*, Northern Way, 2006. See: www.thenorthernway.co.uk.

Local government

Figure 2.2: Sub-national decision-making structures

There are a number of different structures for local government in England.

1. In areas with two-tier governance, transport powers are split between the county council and the district council, (e.g. Cambridge and Cambridgeshire, Oxford and Oxfordshire, Chester and Cheshire) though the majority of powers lie with the county council.

2. In areas with unitary authorities, transport powers are united in a single unitary authority (e.g. Bristol, Reading, Milton Keynes, York, Nottingham).

3. In London, transport powers are shared between the boroughs, the Greater London Authority and the Mayor of London (administered through Transport for London).

4. Six of the larger urban areas have a "PTA structure". Transport powers are split between the Passenger Transport Authorities (PTAs) and the Metropolitan authorities (who in policy areas other than transport have broadly the same powers as unitary authorities). The PTA is responsible for passenger transport, but responsibility for local roads (including maintenance and providing for bus priority measures, such as bus lanes) lies with the member metropolitan authorities.

5. PTAs are supported by their respective Passenger Transport Executive (PTEs). They are found in the following large urban areas:

- **Greater Manchester representing 10 metropolitan authorities;**
- **Merseyside representing 5 metropolitan authorities;**
- **South Yorkshire representing 4 metropolitan authorities;**
- **West Yorkshire representing 5 metropolitan authorities;**
- **West Midlands representing 7 metropolitan authorities; and**
- **Tyne & Wear representing 5 metropolitan authorities.**

6. Regional bodies, such as the Regional Development Agencies and Regional Assemblies, also play a strategic role in transport policy producing the Regional Transport Strategy, the Regional Spatial Strategy and the Regional Economic Strategy.

2.16 Day-to-day management of local transport networks is primarily the responsibility of local government. Local government's core transport powers are for:

- highways: power to construct new roads, carry out maintenance and road improvements (e.g. safety and traffic calming measures) etc;
- traffic: power to introduce bus lanes; impose traffic or parking restrictions (e.g. one-way streets); pedestrianise streets, impose parking restrictions, manage roadworks, traffic lights etc; and
- passenger transport powers: powers to secure passenger transport services for the purpose of meeting any public transport requirements in their area.

2.17 Local transport authorities are required to: prepare a Local Transport Plan setting out their policies and plans for transport facilities and services to, from and within their area; keep the Plan under review; and replace it at least every five years.

Local government funding comes from a number of sources

2.18 Local government's transport funding is from the following sources and supplemented through locally-based contributions such as developer funding and council tax:

- Revenue Support Grant – based on Funding Formula Shares, administered by the Department for Communities and Local Government;
- capital funding allocation administered by DfT, the borrowing costs of which are reflected in the Revenue Support Grant allocations;
- supplementary funds for major capital projects (usually projects of greater value than £5m) from DfT-administered funds and now allocated drawing on the advice from the Regional Funding Allocation process; and
- a few specific grants such as Rural Bus Grant.

2.19 Bid-in processes such as the Transport Innovation Fund (TIF) play a valuable role in allowing bigger projects, which fall outside of the ability of regular funding streams, to be brought forward. Through the competitive TIF process, DfT compares proposed schemes from a range put forward by different sub-national transport bodies and makes the final decision on which transport projects to fund. This means that funding can be targeted where it demonstrates the best returns within a budgetary constraint. Once allocated, this funding is effectively tied to that specific project.

2.20 Presently a high proportion of all money that is spent both by agencies of central government and by local government is ultimately provided, and controlled, by Whitehall. There is therefore a legitimate interest in Whitehall in how local money is spent. However, neither the DfT nor the DCLG funding sources are ring-fenced, which means the funding can be spent on areas other than transport, should local government wish.

2.21 DfT, together with DCLG, provides the strategic framework and accountability monitoring for local government's transport decisions and the Local Transport Plans (LTPs). LTPs include targets that contribute to both local and national performance measures (e.g. some of the largest urban areas have a local congestion target that contributes to the national congestion target) and a series of Best Value Performance Indicators ranging from pavement condition to street lighting. The LTP is taken into account in the Local Development Framework which provides the spatial framework for economic development in a local area.

2.22 External assessment of local government performance is currently carried out through the Comprehensive Performance Assessment, led by the Audit Commission. The Local Government White Paper, however, set out a series of reforms to improve and strengthen this approach (see Figure 2.3).

Figure 2.3: Strong and prosperous communities: The Local Government White Paper

The Local Government White Paper,[a] published in October 2006, emphasises the importance of strong leadership in making the tough decisions that are necessary to drive and support economic growth. It states that Government will encourage stronger leadership models, but makes clear that the best way to improve strategic decision making is through effective partnership with locally determined governance arrangements, not a one size fits all model imposed from the centre.

The White Paper stresses the need for effective collaboration between local authorities and with regional agencies to deliver sustainable economic development. The White Paper also acknowledges that many of the necessary interventions rely on action at a broader geographic scale than a single local authority. The White Paper suggests that groups of local authorities who wish to come together to pool resources and align objectives across a sub-region could do so through Multi Area Agreements (MAAs). These are expected to develop on a voluntary basis and are based on the existing Local Area Agreement model for pooling different funding streams within a local authority. The White Paper states that MAAs could have a particular role to play in larger cities, but that they need not only apply to large cities. DCLG will work closely with those local authorities who wish to develop proposals for MAAs.

The White Paper presents the case put forward by cities for bringing together broader powers of traffic management, addressing demand for road space and the need for improved public transport to tackle congestion. It also presents comparisons with Transport for London and international examples showing that delivering real transport improvements in cities is facilitated by holding transport powers alongside other policy levers. The White Paper states that DfT will be proposing a package of reforms for all PTAs to enable a more coherent approach to governance in major cities, and putting forward proposals to change the way that bus services operate.

[a]See www.communities.gsi.gov.uk

Passenger Transport Authorities exist, as a particular local government structure, in six of the largest cities

2.23 Passenger Transport Authorities (PTAs) only exist in six of the largest cities in England. Where they exist, the role of local government is slightly different to other areas – see Figure 2.2. PTAs were created following the 1968 Transport Act and survived the abolition of the Metropolitan County Councils in 1986, when these areas moved to single-tier governance (e.g. Manchester City Council and Stockport Borough Council). A subset of policy areas including transport as well as fire, police, and in some cases waste disposal remained at the metropolitan level (i.e. city-wide level), where there were deemed to be economies of scale from continuing to manage them at this level. Separate overarching authorities were created for each of the areas and functions.

2.24 PTAs' responsibilities are focused on serving the needs of public transport passengers. PTAs are made up of councillors from each of the metropolitan authorities within its boundary and are supported by officials in their respective Passenger Transport Executive (PTE). PTAs source the majority of their funding from an annually negotiated levy on the member authorities but can also receive funding through centralised funds, such as the Regional Funding Allocation and the Transport Innovation Fund.

PTAs are responsible for passenger transport

2.25 In other two-tier authorities (county and district councils) the highways and traffic powers are at the same level (county council) as the responsibility for delivering passenger services (buses and light rail). Concessionary fares, however, are at the district council level. There are however further challenges in PTA areas. The PTA is responsible for passenger transport, including:

- a general duty to formulate policies "with respect to the general descriptions of public passenger transport services they consider it appropriate...to secure for the purpose of meeting any public transport requirements in their area..." (in other areas this falls to the unitary authority, or to the county in two-tier authorities);
- powers on concessionary fares – (in other areas this falls to the unitary authority, or to the district council in two-tier authorities); and
- duty to prepare a Local Transport Plan, but with a responsibility to work with metropolitan authorities in doing this (in other areas this falls to the unitary authority, or to the county council in two-tier authorities).

2.26 Although PTAs have passenger transport powers, they do not have any direct powers over local roads, such as timing of maintenance works, or providing for bus priority measures, such as bus lanes. Nor do they have powers to introduce demand management schemes such as local pricing. Instead these powers lie with the member metropolitan authorities.

2.27 PTAs have the following powers and influence over commuter rail in their area;

- involvement in the long-term planning of the rail network;
- statutory right to be consulted on rail franchises in their area; and
- role in proposing amendments to the franchise specification in their area.

2.28 PTAs are able to 'buy' additional services (and also reduce fares and/or require better standards) if Network Rail can agree the necessary availability of capacity and if they meet the full incremental cost for as long as such costs are incurred. These are known as "increments". PTAs can also reduce services (or increase fares and/or propose lower standards) and retain the savings to reprioritise elsewhere. These are known as "decrements".

London has a unique governance structure

2.29 London's transport governance structure is unique. The Greater London Authority and the Mayor have much broader city-wide transport powers and funding freedoms and flexibilities than any other urban area in the UK and a clearer leadership structure.

OBJECTIVES FOR SUB-NATIONAL DECISION MAKING AND THE CASE FOR CONTINUING TO IMPROVE THE CURRENT SYSTEM

2.30 The rest of this chapter looks at how sub-national decision making in England performs against the objectives set out below. At any level, it is critical that decision-makers have the appropriate levers at their disposal, but also that these levers are effective in delivering the desired objectives. The decision-making arrangements at a sub-national level have changed over time and continue to do so.

Figure 2.4: Government has already committed to greater coordination of levers and greater decision-making influence at a sub-national level.

In the 2004 Transport White Paper, 'The Future of Transport',[a] Government committed to progressively extending the influence of local and regional bodies beyond local authority investment to some strategic road schemes, and potentially to decisions on regional railways. This was intended to ensure that transport services could be tailored to local needs and preferences.

Government has already delivered the following reforms:

- **In London, responsibility for many transport decisions has been devolved to the Mayor and the Greater London Authority. This allows the Mayor to exploit economies of scale, prioritise major investment decisions across different modes of transport, and move towards integrated ticketing, pricing and travel, without reference to central government.**
- **At the local level, five-year indicative funding allocations for local authorities have been introduced to encourage longer-term planning of integrated transport. The introduction of Local Transport Plans has given authorities more autonomy in decision making.**
- **At the regional level, Government has sought and taken into account regional priorities for major investment in local and regional Highways Agency schemes.**

The Future of Rail White Paper[b] and the Railways Act 2005 set out a new role for the Passenger Transport Authorities in England in relation to rail. The new arrangements give PTAs greater flexibility and incentives to make choices about the balance between rail and other modes in order to deliver better transport for the metropolitan areas. It also provides greater clarity about their role within the franchise specification, letting and management process.

[a] *Future of Transport White Paper*, DfT, 2004.
[b] *Future of Rail White Paper*, DfT, 2004.

2.31 The current system for transport decision making at a sub-national level is complex. The following section:

- sets out objectives for decision-making structures (see Figure 2.5);
- explains the objectives in more detail; and
- considers how the current system performs against the objectives, including identifying specific areas where government policy is already moving in a direction consistent with these objectives.

Figure 2.5: Objectives for decision-making structures

The following general objectives are derived from earlier recommendations and apply equally to decision making at all levels of government. As far as possible:

1. The scope of transport bodies' decision making should reflect sub-national economic geography and the nature of the key journeys affected by each body's decisions. Transport bodies need to effectively manage the use of infrastructure that is:

- **shared by more than one type of user; and/or**
- **interlinked networks.**

2. The duties and powers vested in transport bodies should equip them to make decisions that:

- **reflect the needs of all users (business, freight, commuters, non-work/leisure);**
- **consider all/a range of modes (within reason – all the modes that are feasible along that corridor or on that network); and**
- **have assessed the most effective solutions from a broad range of intervention options, including better use, demand management, as well as infrastructure solutions.**

3. Incentives, including funding, should be aligned to support identification and prioritisation of the most effective measures to support productivity and competitiveness, alongside other objectives.

4. Transport bodies should have the capability and capacity needed to bring forward and assess options and make evidence-based decisions.

2.32 It is clear that concepts of place and identity, and physical as well as economic geography, are very important in this context. The issues are different in different places, and may have a more or less significant impact depending on historical and cultural factors as well.

Objective 1: The geographical scope of transport bodies should reflect sub-national economic geography and the nature of the key journeys affected by each body's decisions. It will also be critical for transport bodies to effectively manage the use of networks that are:

- **shared by more than one type of user; and/or**
- **interlinked.**

2.33 This Study has emphasised the importance of taking a "whole journey" approach when considering transport policy. For governance, this means understanding the totality of journeys: looking at the type of journeys that people and businesses typically seek to make, often on multiple modes, and, as far as possible, trying to make sure that the administrative boundaries correspond to those travel patterns.

Decisions should aim to reflect sub-national economic geography

2.34 This means that within a single functional economic area, as much as possible, a single body should make decisions where the majority of those decisions are felt within that geographic area. This reduces spillovers – where some of the impact of decisions is felt outside the decision-making area. An example of this would be where a decision is made to expand capacity on a local road but this creates increased traffic flows for the neighbouring authority's roads.

2.35 With the complexity of trip patterns on the UK's networks, clearly administrative boundaries will rarely be able to match all trips perfectly – but where possible they should at least match the dominant journey patterns. The starting point is to try to identify at what level most spillovers can be contained. This will ensure that decisions are taken at a level that can take account of the fullest range of costs and benefits. This means:

- trying to identify the primary function and impact of the journeys made on a network – whether they are local in nature and impact on the local economy, or are long distance trips and have wider economic benefits – and putting responsibility for that part of the network at the most appropriate level; and
- there is a strong, 'in principle', case for policies to be tailored to local conditions. The market failures underlying transport policy impact differently both within and between different area types. For example, congestion in London is different in impact to congestion in Birmingham and different again to congestion on inter-urban roads.

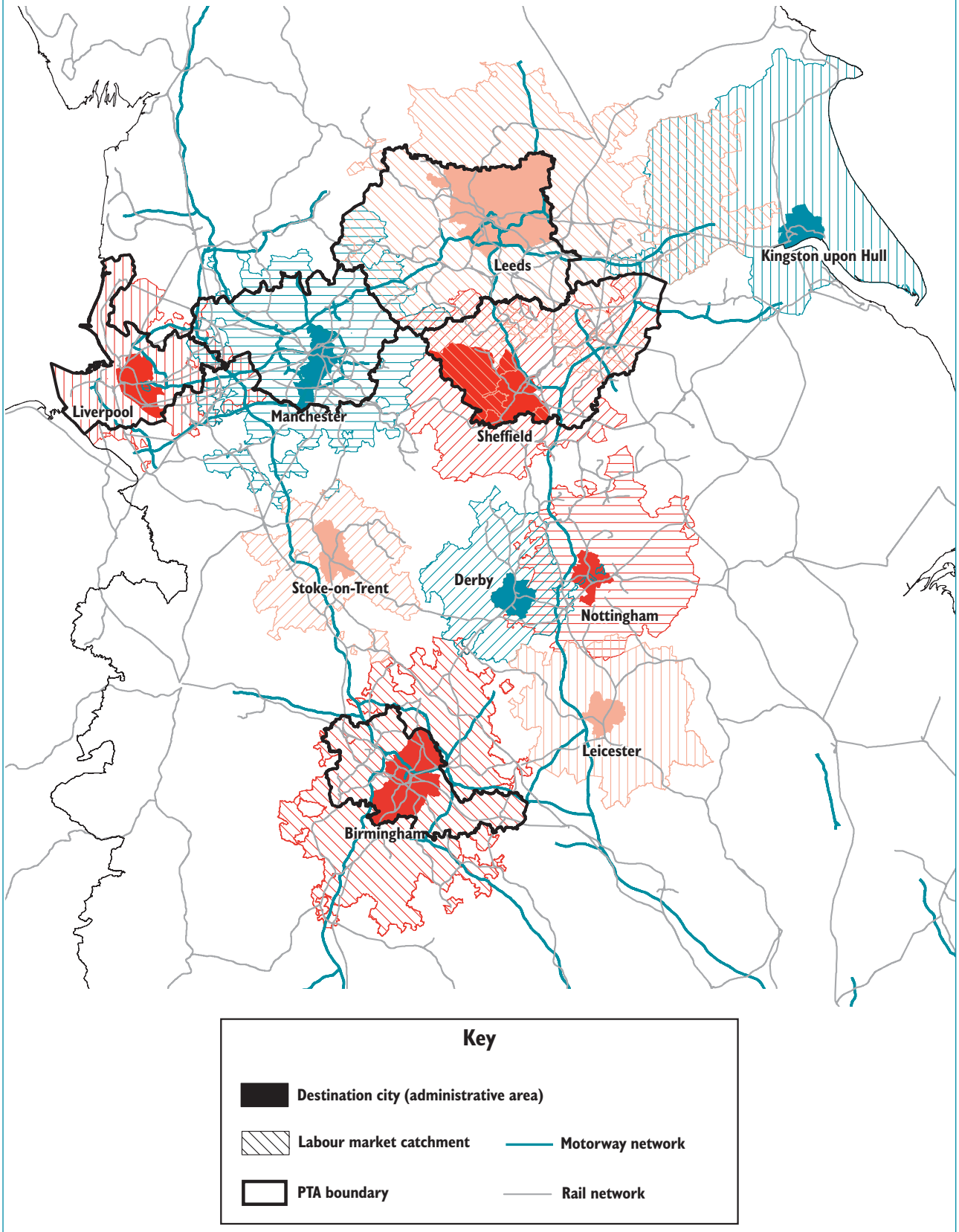
2.36 There are a number of consequences for sub-national decision making that flow from the fact that decision-makers' influence may not reflect the patterns of economic activity on which their decisions impact. Firstly, local government may lack the decision-making powers for policies even where the impact of the policy is by and large restricted to their own area of responsibility. Where such decision-making power rests with a higher level of government, it may lack the detailed local knowledge to design an intervention that is well-suited to local conditions. This may mean that good local policies are either not brought forward, or are designed in a way that does not deliver the best local outcomes.

2.37 Conversely, local government may have decision-making powers over policies of national economic importance that just happen to be located within their area of responsibility, for example policies over nationally significant ports or airports. In this case, the body may have weak incentives to take important national economic benefits into account in its decision whether or not to bring forward or to deliver a scheme. As a further example, there may be a small number of strategic roads that are currently classified as being of regional strategic importance, which might now be judged as being of national strategic importance, perhaps because they are important corridors for international freight or passenger movements, or because they form parts of key inter-urban routes.

2.38 Similarly, existing levels of local government may be at too local a level for their transport decisions to reflect the functional economic area of the journeys that take place in the area. For example, commuter journeys are likely to cut across local administrative boundaries. This creates risks that policies with economic benefits that would be felt outside the immediate area of influence of the decision-maker may not be brought forward or may be rejected because of negative impacts at local level. If these wider benefits were included, the local impacts may be more than offset, resulting in a net benefit to the UK.

2.39 Indeed, the definition of what constitutes the sub-national network is likely to change over time; links that are currently not of sub-national importance may become so, and some links that are currently considered to be of sub-national importance may take on a different function as patterns of economic activity shift. It is clear that to respond to these dynamics requires an understanding of the changes in the importance of the networks for different users over time.

Figure 2.6: Labour market catchments of a selection of English cities, 2001



© Crown copyright. All rights reserved Department for Transport 1000202237 2009 gisu0607j052Map3

Source: DfT.

Labour markets can cover a wide area

2.40 Figure 2.6 shows that a labour market can cover a wide area and can cut across a number of existing administrative boundaries. The 'catchment' in the map consists of all wards with over 100 commuting trips a day into the destination district. The overlaps between neighbouring areas' catchments can be clearly seen. Administrative boundaries are always, in some sense, artificial, but these need to be drawn somewhere. They will never be definitively "correct" but efforts can be made to get a close fit. Many current boundaries are historical, have worked well for many years and still do. Others, particularly in growing and congested urban areas, no longer provide a sensible fit to the economic realities of today or likely future changes. This situation is unlikely to be unique to transport's administrative boundaries, but given the physical nature of transport networks and journeys (a single journey may cut across administrative boundaries, and use both nationally and locally controlled infrastructure or services), the consequences of not having a sensible fit can be particularly problematic.

2.41 Where administrative boundaries are not sufficiently flexible to match the changing needs of local economies, this creates a barrier to allowing the full impact of decisions to be properly considered by the decision-maker. There are two main challenges currently faced in urban areas.

2.42 First, existing boundaries often do not reflect recent and likely future economic footprints of growing and congested urban areas and their catchments. England's largest cities and other urban areas have grown since their boundaries were drawn up in the 1970s and continue to do so, including significant growth around and beyond the outer ring-roads. As major sub-national centres, the PTA areas tend to have an extremely large "reach", in that they draw people in from very far afield, be it for employment or for non-work/leisure purposes.

2.43 Secondly, different types of urban areas play different economic roles with their surrounding regions and neighbouring urban areas and may have different governance structures. For instance, places such as Liverpool, Manchester, Leeds and Sheffield form a Northern belt of interlinked and spatially over-lapping urban economies; whereas other urban areas such as Bristol, Newcastle are regional economic centres; smaller urban areas such as Hereford, Cheltenham often play a role as county economic centres; and some places such as Derby, Leicester and Nottingham and their respective counties play a particularly interlinked role with other closely located centres.

Partnership working is used to work across a realistic economic area

2.44 In a number of places, local government bodies have realised that it makes more sense for different units to work together across a more realistic economic area, and are working together on a voluntary basis, delivering good outcomes. For example:

- the cities of Nottingham, Leicester, Derby and their counties work together to maximise their potential. Nottinghamshire and Nottingham City work together to produce the Greater Nottingham Local Transport Plan; and the three cities and their counties have put in a joint successful bid for pump-priming funding to explore innovative ways to tackle local congestion as a step towards longer-term national decisions on road pricing;
- the four unitary authorities in Bristol (Bath and North East Somerset, Bristol, North Somerset and South Gloucestershire) have developed a joint Greater Bristol Local Transport Plan; and
- Teesside authorities work together in the Tees Valley Transport Partnership and Strategy Unit.

2.45 But partnership working can have unintended consequences, especially if it is used to overcome the problems of imperfect governance arrangements, rather than in a situation of well-aligned boundaries and functional responsibilities. In some cases, there is a risk that the need for coordination can slow or even stall progress, since the costs of working together can be very high, both in terms of time and levels of negotiation required. There might be no clear incentive for partners to work towards the outcome that is best for the urban area and its catchment as a whole. Instead the incentive is for each party to represent the individual interest of their own district or body. This creates a risk that the chosen option is the one that is most acceptable to everybody around the table, which may not be the same as the one that is most beneficial to the group or area as a whole (pejoratively known as a 'lowest common denominator' outcome). In the larger of the PTA areas, this can mean that up to 10 local views need to be reconciled.

2.46 The number of different bodies involved in sub-national decision making can mean that the participation can be costly, including for the non-government bodies involved. For example, freight companies whose local activities cross a large number of administrative boundaries have to engage with a large number of different bodies.

Some parts of the network are shared

2.47 In transport there are two particular challenges to identifying the primary function of a route or specific piece of infrastructure, or the economic geography of the journeys that are taking place on it. First, the UK is a densely populated country, and in many cases several types of users use one part of the infrastructure with different requirements from the network. For instance, commuter rail trains use the same tracks as freight or long-distance passenger trains. This sharing of such networks implies the need for a decision-making process that can allocate existing capacity, and where appropriate consider the case for enhanced capacity (which will again need to be allocated in some way).

Some parts of the network are particularly interlinked

2.48 Second, while a distinction can be made between the primary function of local and national routes that serves the majority of users' needs, ultimately road and rail networks each form a single interlinked network spanning the whole country. The flows between different parts of the networks (for example, between adjacent local authorities; or from local to national networks) need to be effectively managed. This means that decisions taken by one body need to take account of knock-on impacts on other parts of the network. For instance, a junction improvement by the Highways Agency may lead to increased traffic generation and congestion on urban feeder routes, which the sub-national decision-making body may need to take account of when developing local policies. These are a complex set of interactions to manage and account for.

Managing shared networks is essential

2.49 How to manage the needs of interlinked and shared networks therefore needs to be carefully considered at both a national and a sub-national level. In some cases for these parts of the network it may be impossible to ensure that a sub-national decision-maker has control over all the modes. A mechanism to manage questions such as capacity allocation and enhancements on a shared network is therefore essential to manage potentially competing views from a national and sub-national perspective. Partnership working between national agencies and sub-national decision-makers is likely, particularly to get the best options on the table for consideration. But a final, single decision-maker may be preferable to a negotiated, possibly compromised, outcome between a number of different bodies.

2.50 However, the need for partnership working is made more difficult under the current system, given the number of players and different interests at a sub-national level. A large number of parties need to be involved in partnership working to get things done. This can add unnecessary costs to a process and create risks that could be reduced if decision-making powers better reflected economic realities and fewer players were at the table.

Objective 2: The duties and powers vested in transport bodies should fully equip them to make decisions that:

- **reflect the needs of all users (business, freight, commuters, non-work/leisure);**
- **consider all/a range of modes (within reason – all the modes that are feasible along the corridor or on the network); and**
- **have assessed the most effective solutions from a broad range of policy options, including demand management as well as infrastructure solutions.**

2.51 This Study has advocated a non-modal approach to decision making that considers the needs of a range of users and a range of policy interventions to address transport problems. The separation of policy levers across different bodies can have a number of distinct impacts.

All users

2.52 Some transport bodies are set up to focus on one set of users and therefore have no explicit reason to consider the impact of their decisions on other users. For example, some bodies have a narrow remit to provide passenger transport and may consequently not consider the needs of freight users, even where these freight journeys may be predominantly local in nature. Transport bodies need to be given a broad remit to enable them to consider and address the needs of all users.

All modes

2.53 Transport powers are often split amongst a number of different players at a sub-national level (both in PTA areas, London and in district/county areas). This means that often a decision-making body does not have levers over the full range of modes which can support the effective functioning of an urban area and its catchment. For example, in PTA areas:

- the metropolitan authorities (local authorities within PTA areas) are responsible for highways and traffic powers;
- the PTA is responsible for buses and other passenger transport; and
- DfT is primarily responsible for specifying and letting commuter rail franchises in almost all areas (as discussed earlier).

2.54 London has a similar structure. The London Borough councils are responsible for highways and traffic powers over almost all London roads. The Mayor and the GLA have highways and traffic powers over a number of strategic roads and are responsible for the funding and operation of bus franchises.

Limited incentives to consider all modes

2.55 Individual bodies have no incentive to consider options across a range of modes; and often may be focused on one particular user-group with limited reason to consider how any intervention may impact on other types of users. For example, PTAs have a narrow responsibility for passenger transport, so considering the needs of the local leg of freight journeys in their urban area is not a priority, although it will be considered in LTPs. Splits of responsibility across different bodies create a risk that decisions are made for the benefit of one set of users (such as removing freight loading bays for bus stops) without fully considering the impact this may have on local freight users. In reality, these impacts are usually identified through consultation processes and close relationship working – but this can be costly both in terms of time and effort.

2.56 In other cases the levers are retained at the national level. For example, commuters in a major city and its catchment may use a combination of trains, buses and trams to travel into work, but almost all rail governance is at a national level. As discussed above, shared networks are one area where providing full powers over modes at a sub-national level may not always be possible. However, in such circumstances, governance arrangements will still need to consider how to incentivise bodies to consider the full range of modal options, on the assumption that they do have direct levers. DfT has begun to consider whether there is scope for devolving some responsibility for commuter rail to urban areas, building on the reforms in the Rail Act 2005 with the proposals for the increment and decrement approach explained above.

2.57 In some areas, greater responsibility has been given to sub-national decision-making bodies where the self-contained nature of the network, the service, and the market it serves means that franchises are more suited to greater local control and accountability. Merseyside PTA has responsibility for the commuter franchise within its catchment. From November 2007, Transport for London (TfL) will take over responsibility for the passenger rail services on the North London Line from DfT. TfL will also run the East London Railway when it opens in 2010, following the extension of the existing East London Line.

Full range of policy options

2.58 The Study has identified a 'menu' of policy options for option generation across all appropriate modes. This ranged from:

- making better use of existing assets, including encouraging changes in behaviour e.g. through pricing or information campaigns;
- investing in variable capacity such as increased bus frequencies or train lengthening; to
- investing in new fixed infrastructure capacity, ranging from walking and cycling infrastructure or additions to the road network.

2.59 It is important to consider the full range of these possible interventions and identify the one that best meets policy goals taking account of the full range of costs and benefits.

2.60 Without levers across a full range of options, each body may not have the necessary levers to fully deliver its own objectives and priorities. For example, bus priority measures (such as bus lanes) can be a critical part of delivering increased frequency and reliability from bus services. However, in PTA areas, the PTA has no direct influence over roads. This can create a barrier to PTAs being able to co-ordinate their policy interventions, as their attempts

to introduce bus priority measures will have to be negotiated with up to ten metropolitan authorities in the area to reallocate road space. Greater alignment of levers would help reduce the costs of this coordination, which may in itself encourage the use of a wider range of policy levers. PTAs also currently have no powers to introduce pricing or demand management schemes on roads and it is also difficult for neighbouring authorities to put in place pricing policies that impact across administrative boundaries. The 2006 Queen's Speech announced that the Government would publish a draft Road Transport Bill to revise the existing legal framework for the introduction of road pricing schemes in England and Wales as set out in the Transport Act 2000.

2.61 To make truly cross-modal decisions and deliver a range of policy responses, decision-making bodies should have direct levers over as broad a range of policy options and modes as possible. But there may be significant challenges to achieving this, particularly around shared and interlinked networks. Even where decision-makers do not have direct levers over all modes and policy options, it is important that incentives are still aligned to encourage them to consider the full range of options.

Objective 3: Incentives, including funding, should be aligned to support identifying and prioritising the most effective measures to support economic success and other objectives.

2.62 Funding is one of the most critical incentives to deliver effective decision making. At the most basic level, decision-makers may not consider options if they do not have any prospect of funding available to deliver them. The more that decisions can be taken within a single funding constraint that takes account of the costs of holding capital, the greater the incentives for decision-makers to prioritise effectively. By comparing options directly and facing the true trade-offs between them, the full consequences of those decisions can be appreciated. For instance, the decision to go ahead with rail investment, instead of funding bus services to key employment areas. If poorly aligned, funding arrangements can risk creating perverse incentives in a number of different unintentional ways.

Funding can be tied to modes

2.63 Funding can be linked to specific modes in its initial allocation. This can risk narrowing option developments to a particular mode without full consideration of alternative modes for addressing the transport problem identified.

Figure 2.7: Funding classifications: capital and revenue

Public sector bodies have separate revenue and capital budgets. Revenue spending is spending which is recurrent, and its effects are felt that year (such as staff resources such as enforcement officers, road-sweeping, buses etc). Capital spending is spending where the cash cost of procuring an item is realised immediately, but the benefit is felt for a number of years (for example, infrastructure investment such as road improvements, or interchange facilities which last for long periods of time). Capital spending always results in an asset (usually with ongoing maintenance obligations), whereas revenue spending does not. Resource accounting and budgeting spreads the cost of capital investment over the life of the asset which is being purchased through an annual depreciation charge in revenue spending. This means that decisions on whether to invest in an asset up-front, or to pursue an option with revenue costs, can be made on a more consistent basis.

The difference between resource costs and capital spending is central to the Government's fiscal rules (the "golden rule" and the "sustainable investment rule"). To ensure sound public finances and that spending and taxation impact fairly both within and between generations requires that:

- **those generations who benefit from public spending also meet, as far as possible, the costs of the services they consume; and**
- **the Government meets its priorities while avoiding an unsustainable and damaging rise in the burden of public debt.**

The "golden rule" aims to achieve generational fairness by allowing borrowing for capital purposes which is then repaid from future taxation. Depreciation of capital assets purchased is scored as a cost in the calculation of the current surplus against which the golden rule is measured, and so the costs of investment are spread more fairly among those who will receive its benefits today and in the future. By barring borrowing to fund current spending (taking account of the effects of the economic cycle) it prevents future generations being forced to pay for services consumed today which will not benefit them. The second fiscal rule, the sustainable investment rule, ensures public debt remains at a stable and prudent level, and so constrains the amount of borrowing available to fund capital investment. The fiscal rules, and the objectives behind them, are the basis of the separate constraints on resource and capital expenditure within which budgetary allocation and control have to operate.

Funding classifications may skew decisions

2.64 Where decision-makers' revenue budgets do not bear the current costs of investment (depreciation and costs of capital) but do bear other current costs, it can encourage them to focus on options that place less pressure on their revenue budget for instance, infrastructure (capital spend) prioritised over better use measures (revenue spend). Equally, in many cases it is easier to postpone capital investment projects than current costs, and therefore a simple cash budget, making no distinction between revenue and capital, (as has operated on occasions in the past) would skew decisions away from potentially higher value for money up-front infrastructure investment.

2.65 As set out above, local government can access funding for transport policies from a number of different sources. Some of these sources are transferred directly to local government (e.g. Revenue Support Grant and capital allocation) and are not ring-fenced or limited to spending only on transport. This leaves local government with flexibility to spend the funding on local priorities, subject to the targets and accountability arrangements that they have with central government. This funding, alongside council tax, is the main source of funding for local government.

2.66 Evidence on local government expenditure outturns suggests that historically there have been fewer pressures on capital funding than on revenue on transport spending. This suggests that funds may be available to undertake up-front capital investment if necessary.[3] This is in contrast to simple cash funding regimes, which by scoring both revenue and larger, conceptually different, capital costs within a single budget provide a systematic bias against capital spending. In some cases, the revenue budgets of decisions-makers do not bear the current costs involved in capital spending (asset depreciation and the cost of holding capital, equivalent to interest payments). This can happen when, for example, capital is financed by central government grants rather than by local government borrowing. There is a risk therefore that investments in infrastructure options (funded from capital) may be perceived to be more attractive, because it avoids the difficult decision to deliver less on another local priority in the revenue budget such as social services.

2.67 The Commission for Integrated Transport (CFIT) carried out a study into local authority expenditure,[4] drawing on 139 self-completed questionnaires and 28 interviews from a range of authorities selected according to geographical location and authority type (county, unitary, metropolitan district and London borough).

2.68 This study supports the point that separate capital and revenue allocations have a real effect on decision-makers: "Employers say they would like a bus service to a new employment site, and we have to say "You can have a new road, because we have capital for that, but no revenue for buses" (unitary authority officer).

2.69 Alternatively, revenue spending in transport (such as road-sweeping or minor maintenance repairs) can often be delayed or substituted for more costly intervention funded from capital: "In transport, revenue pressures are not coming in today or tomorrow, maybe next year or 1-2 years down the line and they are easier to put off" (unitary authority officer). For example, when maintaining roads, small repairs which allow an authority to maintain the existing quality of the road are often revenue spend. If these are not addressed, initially it is often not problematic, but may eventually lead to pot-holing and more substantive structural damage which creates safety concerns and is likely to require a more expensive intervention, usually funded from capital sources. In theory, the correct incentive to make the best value for money trade-off between options with different capital and revenue costs would be created by scoring the depreciation costs associated with an asset, including impairments to the value of an asset as a result of delays in maintenance, within the decision-makers' revenue budget.

2.70 Future revenue pressures also appear to influence authorities' decisions on the sorts of capital schemes that will be implemented. Revenue is required to fund the preparation of options for new schemes. Without local flexibility to provide such input up-front in scheme development, there is a risk that older schemes are resubmitted, where they may no longer be the priority or best-value scheme for the needs of the area.

External sources of funding may have risks

2.71 Central government also provides competitive, bid-in pots for supplementary funding for local government that fall outside the usual budgetary process and function as stand-alone sources of funding for sub-national bodies. These can be used for two different reasons:

[3] Resource Data is from joint ODPM/ONS annual Statistical Releases on LA revenue expenditure; Capital Data from DfT.

[4] *Local authority survey* (2003) and *Local authority expenditure – a review of capital and revenue funding for transport* (2005) at www.cfit.gov.uk

- to fund large-scale or infrequent investment which fall outside of the usual budgetary capacity of a single authority, or other funding options. These types of projects are often difficult to accommodate easily with an annual budget of an organisation the size of a local authority, particularly where the risk of cost-overruns also needs to be managed;
- to encourage investment in projects central government considers are a priority, but at a sub-national level are at risk of not being prioritised otherwise.

2.72 The pots are often administered as competitive bid-in processes where authorities (or PTAs) put forward detailed proposals for specific schemes that are then considered and ranked against published criteria by DfT (or other central departments). The intention of these processes is to ensure that the funding is targeted on the best selection of projects within a budgetary constraint.

2.73 However, because they are a source of funding that sits externally to usual funding streams, stand-alone pots have some risks:

- proposals may be brought forward that are not necessarily the highest priorities or have the highest returns, but because the extra source of funding is seen as a 'free good'; and/or
- dedicated funds may encourage decision-makers to skew their option generation to develop proposals that fit the criteria of the funds, when across their specific, sub-national networks there may be higher priorities in other areas; or schemes with higher returns that tackle different problems.

2.74 A participant in the CFIT study[5] noted that their options were being constrained by the availability of supplementary funds. "If you have an initiative that should be funded, like a taxi bus serving a station, why should you have to wait for the next rural bus grant? You should be able to say we have a new initiative that we think will work. Can I get some funds from a discretionary pot? The Government Office could then help you work up your proposal, rather than saying you have to have something on rural buses" (unitary council officer).

2.75 Schemes may be more costly in design to fit into the timing and criteria of the bid-in process. A participant in CFIT's study[6] commented that "The rural bus grant goes in three-year tranches. Getting the staff, getting vehicles, and training everybody means that it's up and running 18 months into the three years. The price of an 18-month lease is horrendous – you pay over the odds – and we can't afford to buy it as we haven't got the capital." (County council officer). Bidding bodies may also try to 'force' their projects to fit the objective criteria of the schemes, including working to external timetables outside of their control. Where funding timetables do not reflect project lead-times, then bringing schemes forward too quickly may impact adversely on cost-control and the end quality and effectiveness of the proposals.

[5] *Local authority survey* (2003) and *Local authority expenditure – a review of capital and revenue funding for transport* (2005) at www.cfit.gov.uk
[6] *Local authority survey* (2003) and *Local authority expenditure – a review of capital and revenue funding for transport* (2005) at www.cfit.gov.uk
[7] *Local authority survey* (2003) and *Local authority expenditure – a review of capital and revenue funding for transport* (2005) at www.cfit.gov.uk

2.76 There is also a risk that proposals may be brought forward that are unsustainable because the necessary associated investment may not be easily available. For example, a participant in CFIT's study[7] commented: "The capital is there for proposals like urban traffic control and real-time information. We can bid for those and get funding. But there is nothing to sustain them: paint the white lines, keep the signs clean, make sure the electronic systems work etc" (Unitary authority officer).

Retaining revenues may make hard decisions easier

2.77 Without some means to retain transport revenues, whether from pricing or fares on public transport, there is often little incentive to take difficult pricing decisions. However, some pricing structures are likely to remain national because of the breadth of network that they encompass.

Objective 4: Transport bodies should have the capability and capacity needed to bring forward and assess options and make evidence-based decisions.

2.78 A wide range of capabilities is required for transport policy. For example, specialist skills and information are required for a range of different transport-related tasks:

- developing and appraising policies and schemes;
- managing delivery and implementation; and
- marketing to promote changes in behaviour e.g. smart card measures.

2.79 Effective option generation is reliant on identifying problems and opportunities, and a thorough assessment of the costs and benefits of potential policy responses. In turn this requires expertise in transport modelling and appraisal methods and/or the capacity to manage contracts for external expertise. A smaller body may not be able to easily access or retain this capacity, and even where a smaller body has the capability and capacity it may not be able to cope with peaks in workflow.

2.80 There are likely to be considerable economies of scale from aiming to provide for this capacity at a larger scale where there is more likely to be a regular flow of work.

2.81 Leadership skills are essential to understand the strategic trade-offs or potential integration of different proposals; marshal a consensus about issues which may lead to both winners and losers; and come to informed decisions. Strong leadership skills are particularly important given the prominence of partnership working in delivering positive outcomes. Transport is not always considered an immediate priority by the general public, compared to other local issues, and where local funding is not ring-fenced it can often be prioritised to other more immediate pressures like social services. In PTA areas, the chair is chosen from one of the member metropolitan authorities and may change from year to year, creating a risk of instability.

Summary of challenges

2.82 Decision-making powers and funding streams for transport in urban areas are split across a number of different bodies. This means that at a sub-national level, no single body that considers the need of the full urban area has control over a full range of policy levers across different modes. Instead, a number of bodies often work together in a voluntary way, recognising that they need to consider the economic patterns of development in the area together. Partnership working to manage interlinked and shared networks will remain essential, regardless of whether administrative boundaries can be more appropriate. Partnership working should therefore be seen as a complement to, not as a substitute, for endeavouring to continue to improve existing structures.

2.83 The following consequences flow from the current sub-national arrangements, as they affect congested and growing urban areas and their catchments:

- decision making is constrained to where the decision-maker has direct levers and influence, rather than finding the best solution for the economic geography as a whole;
- a full range of appropriate options cannot be developed or considered;
- good value for money projects may not be brought forward and determined;
- delivering outcomes is often reliant on partnership working to overcome the problems of multiple administrative units within an urban catchment. In many cases this works well, but it can be costly, and at worst may lead to gridlock in the decision-making process; and
- there will always be a need to manage the needs of interlinked and shared networks.

2.84 Government has made commitments to move towards progressively extending the influence of local and regional bodies over transport decisions. The following section proposes changes to the powers and structures of transport governance in urban areas and their catchments to continue progressing further towards this goal.

STRENGTHENING SUB-NATIONAL TRANSPORT DECISION MAKING

2.85 A 'first principles' analysis of the objectives, without considering the costs or practicalities of delivering them, suggests that Government needs to ensure that:

1. the area that is under the decision-making control of sub-national bodies should reflect, as much as possible, where the respective urban area's economic activity takes place;
2. sub-national bodies should have control over discrete networks (where they can be separated and shared usage is limited), while mechanisms to incentivise the efficient management of shared and interlinked networks need to be developed; and
3. sub-national bodies have a consolidated funding pool with a capital budget and a separate revenue budget to cover investment in new policies, subsidy of services, maintenance and the revenue consequences of capital investment in infrastructure, so that the bodies can consider how best to co-ordinate and trade-off different policy responses. It is important that separate capital and current budgets be retained, to avoid re-introducing a bias against capital spending into decision making.

2.86 There are, however, some substantive delivery challenges to achieving these outcomes, which suggests that these conclusions may not be practical to deliver without careful preparation. Some of the most difficult questions are about how to manage the networked nature of transport infrastructure. These challenges are discussed below and a more nuanced approach suggested.

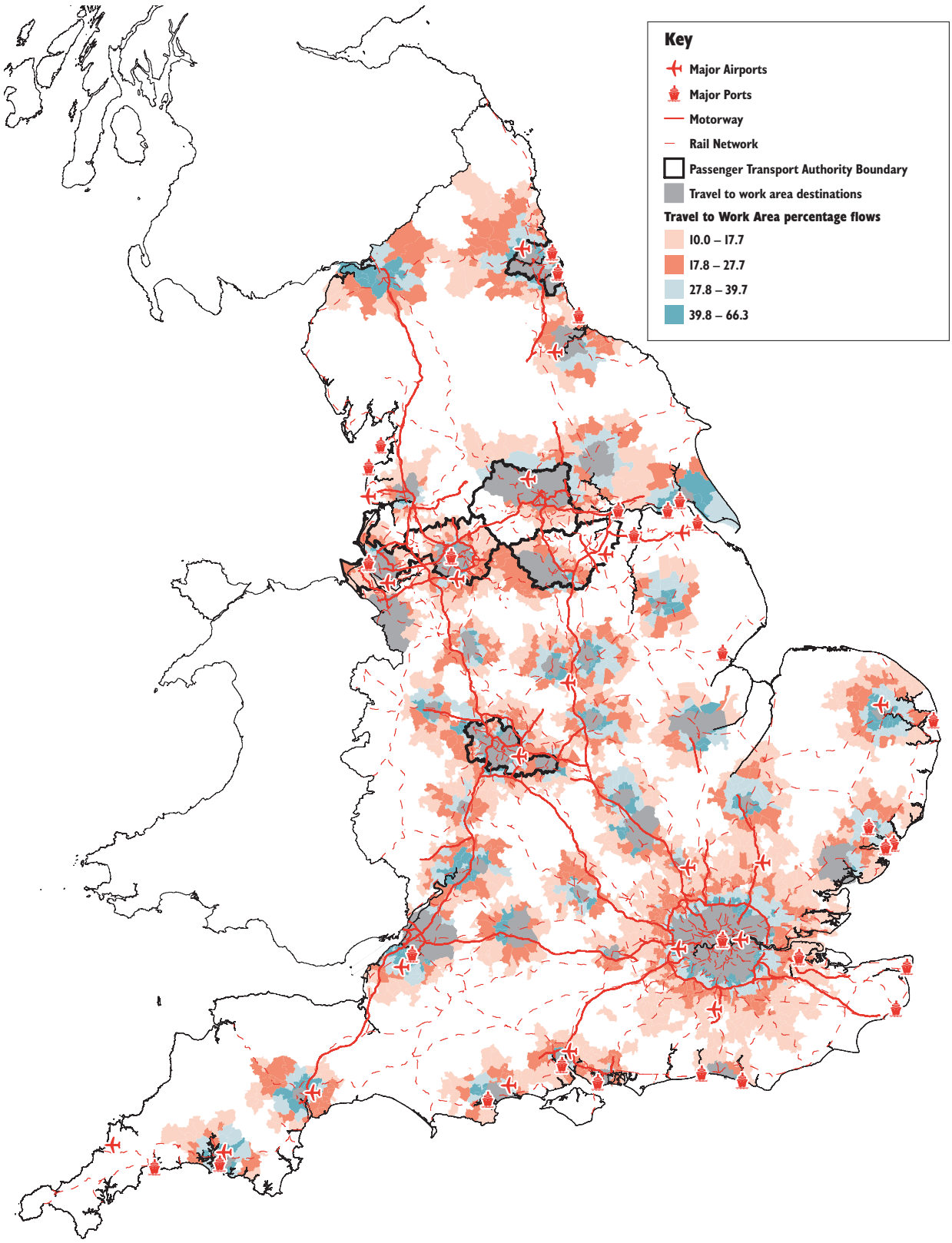
Boundaries better reflecting the economic geography

2.87 It is likely that existing local authority boundaries in many urban areas do not fully reflect and capture the needs of commuters, local freight and business journeys within an urban area and its catchment, including any surface access requirements of the area. However, local knowledge and decision making is likely to be more valuable in identifying tailored solutions, than centralised decision making.

2.88 As set out above, one of the travel patterns that is most significant to the economy of an urban area and its catchment is its travel-to-work area. This reflects commuter journeys. Much less is known about the scale and pattern of the majority of local freight journeys. Greater understanding of these should also be taken into account when considering how transport patterns contribute to the local economy. The map in Figure 2.8 shows how travel-to-work areas, across a selection of urban areas in the UK compare to:

- existing administrative boundaries: local, PTA (where they exist) and regional boundaries; and
- the location of a selection of ports and airports (of both national and sub-national importance).

Figure 2.8: Sub-national travel-to-work areas and international gateways, 2001



Source: DCLG.

The TTWAs are based on a minimum of 10% of gross employee flows from that ward travelling in to the destination area, but excluding origin wards whose absolute flows are fewer than 20.

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2.89 Looking at these patterns of travel, it is clear that better matching decision making to sub-national economic activity is difficult and complex, and is made more difficult by the lack of good quality local freight data. In the absence of such data, looking at the travel-to-work patterns alone, it does seem likely that consideration should be given to enabling greater flexibility to respond to changing patterns of economic activity, both in:

- areas where PTAs currently exist; and
- other urban areas and their catchments.

2.90 However, as always, there are a number of significant implementation and delivery questions that any policy changes would need to consider and manage carefully before reaching a conclusion on the appropriate spatial level and organisational structure. It is clear that the following issues need to be considered:

- there is unlikely to be a single size or structure suitable for all urban areas that reflects their patterns of economic activity; and
- economies of scale are likely to be required to ensure the necessary capability and capacity of the body.

2.91 There are also some substantive, over-arching considerations that this Study has not sought to address. But nonetheless, Government will need to consider what impact these have on the desirability of moving towards decision making within boundaries that better reflect economic realities:

- the accountability structures, including the monitoring and performance framework, of the body will be critical to its success;
- how to fit any change with the roles of existing players at local, sub-regional, regional and national levels;
- the costs and practicalities of any changes; and
- what benefits can be gained from aligning transport decision making with other policy powers.

Sub-national bodies have control over discrete networks

2.92 In delivery terms, there are some real challenges to being able to provide sub-national bodies with the necessary levers and powers to give them control over discrete networks. The most significant of these challenges is in managing the shared and interlinked transport networks (e.g. commuter rail sharing the same tracks as passenger and freight rail; the inter-linkages between local road networks and the Highways Agency's strategic network). This is a problem probably more pronounced for transport policy than for other economic development policy areas because of the UK's economic geography and the nature of the existing transport networks. Finding a way to manage the shared and interlinked networks is a serious challenge that policy and decision-makers have struggled with for a long time, and for which there is no easy, quick-fix solution.

2.93 The challenges of shared and interlinked networks mean that the following parts of the network are going to be much more difficult, and in some cases may not be possible, to fully devolve to a sub-national body for their sole responsibility:

- planning and strategic responsibility for Highways Agency strategic roads which support a wide range of uses related to the local economy within an urban area and its catchment, and maintenance responsibilities for those roads; and

- commuter rail: greater direct input into commuter rail infrastructure requirements and/or a lead role in specifying and funding franchise agreements for commuter rail services.

2.94 Unless the HA strategic roads, and commuter rail networks can be discretely identified, the funding for both of these will be potentially very difficult to separate and allocate directly to the decision-making body. Without the alignment of funding alongside powers, there is a risk that decision-makers see the option as a 'free good' since they are not faced with the fiscal consequences of any investment decisions.

2.95 Notwithstanding the challenge presented by these shared and interlinked parts of the network, there are some clear opportunities for further improvement that build on the current systems and direction of travel for sub-national governance. Consideration should be given to whether sub-national bodies could have greater control over discrete networks by co-locating the following powers (some of which are currently national, and some of which sit with local government) at a sub-national level:

- local highways and traffic powers across the main urban road network (i.e. those roads that currently sit with local government) within the area and maintenance for those roads; to provide for bus lanes, parking restrictions, traffic management etc;
- legal powers to adopt road-pricing proposals for urban congestion, consistent with any national design, or technology standards;
- existing, and any new, bus powers for both commercial and non-commercial routes (see Chapter 4.3 of this Volume for more detail);
- ownership of local authority-owned ports and airports, where applicable, and strategic policy responsibility for privately-owned local ports and airports (of sub-national significance, which have catchments predominantly with the same boundaries); and
- developing options for necessary surface access to these ports and airports.

Sub-national bodies have a consolidated funding pool

2.96 There are also practical implementation challenges to be addressed in aiming to give a consolidated funding pool to sub-national bodies as outlined above. In particular, it is unlikely that the infrequency of transport investment for major investment is fully manageable through a single pool of funding for a sub-national body for a single urban area and its catchment. These funding requirements can be infrequent and large-scale. In the current system, this challenge has been tackled through the separate funding streams for major projects (projects typically greater than £5 million, drawing on advice from the Regional Funding Allocation) and through the Transport Innovation Fund.

2.97 To meet the future needs of urban areas and their catchments, this suggests there may be a case to retain a 'pot' of funding at a level that provides the necessary economies of scale to smoothe the unavoidable infrequency and scale of some investment and also manage pooling of risks more effectively. At a sub-national level, the funding stream should not be internally ring-fenced between modes at initial allocation and should provide as much flexibility as possible to support a wide range of policy options.

2.98 Consideration should also be given to ensuring availability of both capital and ongoing revenue budgets for any supplementary funding would be possible, to ensure that a full range of options, including demand management, can be implemented at a sub-national level. Assuming there are fewer decision-making bodies at a sub-national level (given the

likely greater economic area they would cover), there may also be a possibility for central government to consider whether the current threshold for supplementary funding for projects remains appropriate.

2.99 Although it is clear that not all funding may be devolved to a sub-national body in a consolidated pool, with separate revenue and capital budgets, there are some clear opportunities for improvement that build on current government policy. Consideration should be given to whether the following existing funding sources and assets could be consolidated for a single sub-national body (some of these funds are currently national, and some currently sit with local government):

- reformed fuel duty subsidy;
- concessionary fares funding;
- some revenue support grant and some direct capital allocation funding (currently in local government funding sources to reflect the change in some local roads responsibilities discussed above); and
- local-authority owned airport and port assets of local significance (where applicable).

2.100 Consideration should also be given to how decision makers can be incentivised to adopt demand management options, including pricing, where appropriate. It might also be appropriate for the body to have the ability to make use of prudential borrowing powers. Prudential borrowing allows a body to finance capital projects that might otherwise have been delayed due to short-term funding constraints. Money can only be borrowed for capital projects and cannot be used to finance operations e.g. bus service improvements. Prudential borrowing provides freedoms and much greater control over capital work programme. Any financing received through borrowing must be repaid and is therefore constrained by the future ability of the borrowing body to repay the capital. This more effectively exposes the body to the revenue budget costs of the capital involved by requiring them to trade off interest and debt repayment against other revenue costs.

Conclusions and Recommendations

2.101 Taken together, the analysis above suggests that there are areas where consideration could be given to how better outcomes could be delivered at a sub-national level, through better alignment of powers and funding, and with a better match between decision-makers' administrative boundaries and economic activity. However, there is a need to be realistic about what can be delivered, given the way UK transport networks are often interlinked and shared. This puts a premium on establishing clear and effective incentives, both for effective cross-modal decision making and the management of shared and interlinked networks. Government's current policy to move towards giving greater decision-making powers to sub-national bodies, as set out in the Transport White Paper and the Local Government White Paper, and being conisdered in the Sub-national Review of economic development and regeneration, is clearly heading in this direction. On the basis of this Study's work, it is clear that some important questions remain, and further work is needed to develop coherent and workable options. Future work and progress should continue to look at the scope for greater consolidation of powers, building on this work.

Recommendation 5(a)

To ensure that sub-national decision making can meet emerging challenges, Government should consider:

(i) Ensure that sub-national decision making reflects, as much as possible, patterns of economic activity.

(ii) Developing and implementing effective mechanisms between transport bodies to manage shared and inter-linked transport networks.

(iii) To what extent powers should be vested in a single decision-making body at the sub-national level, including, for example, highways and traffic powers over strategic local roads, including road pricing; and powers for buses.

(iv) How such a body might be funded, including to what extent:

- large-scale and infrequent major projects need to be funded by a separate, supplementary process;
- existing funding streams could be consolidated, such as: reformed bus subsidy; concessionary fares; appropriate revenue support grant and direct capital allocation; and prudential borrowing powers; and
- any other proposals for reform to local revenue raising powers arising from the Lyons Inquiry's work.

(v) How best to ensure that sub-national bodies have the capacity and accountability to undertake this enhanced role.

DFT, working with the Sub-National Review, should consider how best to take these recommendations forward. The Lyons Inquiry may also wish to consider these issues before publishing its final report.

4.3 Using buses to secure successful outcomes in growing and congested urban areas

Headlines:

- **Buses are a fundamental part of the urban transport network.**
- **The bus sector has been in long-term decline since its peak in the 1950s. This aggregate picture masks real differences in outcomes observed in different urban areas in recent years: the market is expanding in some areas, especially London, but is shrinking rapidly in others while congestion continues to grow – the problem is especially acute in the areas covered by the Passenger Transport Authorities.**
- **Securing the effective operation of buses in urban areas requires some important policy choices. This includes, where appropriate: mechanisms for strengthening competition; decisions on bus investment; and demand management where congestion is growing.**
- **Getting this right has clear benefits: supporting the growth of urban areas; securing environmental and social benefits, including accessibility; as well as contributing to the successful delivery of road pricing.**
- **In the UK, prior to 1986, buses were owned and controlled by government. In 1986 competition was introduced into the sector. Following deregulation, London adopted an 'off-road' competition for the market model through franchising, while the other urban areas adopted an 'on-road' competition for the consumer model.**
- **The necessary building blocks for using buses to secure successful outcomes in growing and congested urban areas are: 'competition' forces; 'coordination' of services; and 'cooperation' between operators and local authorities. The fundamental question is what blend of these 3Cs will be effective in different urban areas in the UK.**
- **There are three broad options that urban areas might adopt to deliver bus services: (i) the current model of 'on-road' competition for the consumer; (ii) partnership working with some limited "on-road" competition; and (iii) franchise model with 'off-road' competition for the market. Underlying each of these options is the principle of employing competitive forces. There is no evidence to suggest that there should be a return to the pre-1986 era where government owned buses.**
- **It is not clear that any one option is necessarily superior or best suited across all urban areas at any one time. But it is clear that the current position in many urban areas can be improved. In particular, the evidence points to the potential of a franchise bus model with competition for the market to improve efficiency and outcomes in growing and congested urban areas.**
- **Governance and subsidy reform can further strengthen outcomes by creating the right structures and incentives in the bus market.**

INTRODUCTION: WHY DO BUSES MATTER TO THE EDDINGTON AGENDA?

3.1 The earlier volumes have highlighted the strategic importance of transport to UK's growing and congested urban areas. Some four fifths of all road congestion occurs in urban areas, and this level of congestion is set to rise. Tackling it raises some important policy choices.

3.2 Where congestion is growing, buses can contribute to better use of scarce road capacity and help alleviate peak traffic. Even with road pricing, public transport, including buses, will remain critical where a credible alternative to the car is needed to support labour markets in cities.

3.3 Buses are the most widely used public transport mode in urban areas, providing a flexible form of capacity which can, in the right circumstances, offer a cost effective solution to tackling pinch points on the network. They can also support the delivery of environmental and social objectives, including accessibility.

Buses operate as part of a wider transport network

3.4 There is a lively debate on whether the current bus model in urban areas is fit for purpose to secure desired economic, social and environmental outcomes. A disadvantage buses currently face relative to the car is that roads are effectively free and not priced: individual car owners do not face the true costs of travelling on the roads during peak times.[1]

3.5 By next year public expenditure on buses in England will amount to £2.5 billion per annum (see Figure 3.8). Before consideration is given to future spending on buses, it is important to understand and address any underlying issues with the current bus competition model. Only then will there be an opportunity for buses to become a credible alternative to the car, with value for money secured on bus expenditure, and buses playing a pivotal role in growing and congested urban areas in the future.

3.6 This chapter considers the current and future role of buses purely in urban areas. It does not attempt to examine, or draw any conclusions for, the operation of buses in rural areas. The chapter:

- begins by exploring the historic trend in the bus market and specifically examines the trends in different urban areas over the last 20 years;
- considers what might be driving the observed outcomes – exploring the intrinsic characteristic of the bus market, but also the external factors that influence its operation;
- introduces, and explores, the evidence in relation to the 3C principles: "competition" forces, "coordination" of services and "cooperation" between local authorities and operators, essential for the successful delivery of bus services in urban areas;
- sets out proposals for strengthening competition in the bus market in urban areas, to put in place a model which can be sustained in a world with and without road pricing; and
- highlights how governance and subsidy reform can further strengthen outcomes by creating the right structures and incentives in the bus market.

THE LONG-TERM DECLINE IN THE BUS MARKET AND ITS ROLE IN GROWING AND CONGESTED URBAN AREAS

Bus demand has been in sharp decline since the 1950s

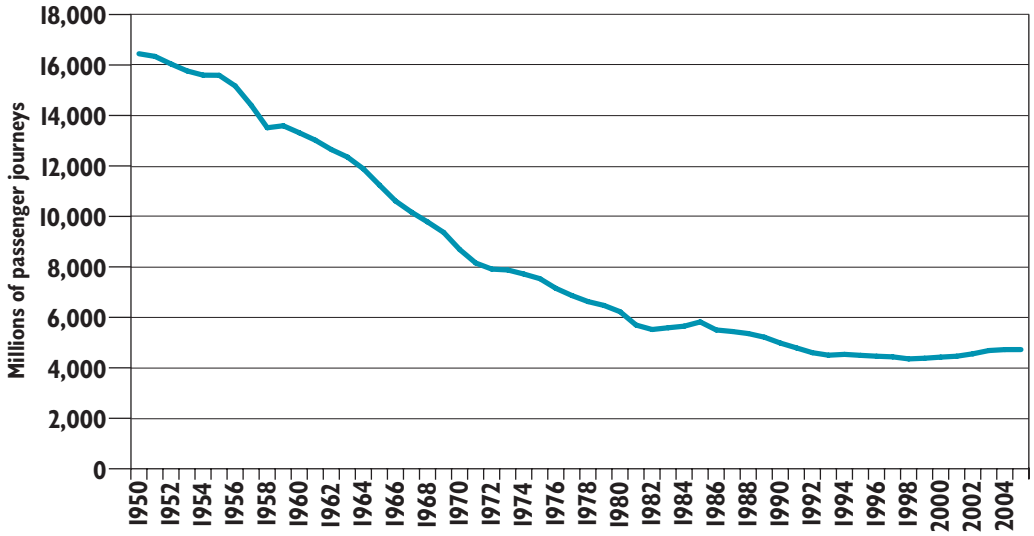
3.7 Over time, wealth creation has fuelled the demand for cars. Car travel[2] in Great Britain doubled in just seven years between 1953 and 1960. It doubled again between 1960 and 1967. By 1990, the distance travelled by car had increased to more than ten times the 1953 figure.

[1] Although clearly congestion and traffic will have an impact on car users' decision to travel during these periods.
[2] Measured in vehicle kilometres.

3.8 The consequential decline in bus patronage[3] is of little surprise. At its peak in the 1950s, there were 16,455 million passenger journeys by bus per annum. By 1971 this figure had halved. By 1999 it had halved again, to approx 4,350 million. The number has picked up in recent years to 4,719 million (see Figure 3.1).

3.9 The bus and coach sector today has approximately one seventh of its market share in 1952, when the industry accounted for some 42 per cent of all travel[4] in Great Britain. This share had fallen to 28 per cent by 1960; by 1973 it had dwindled to 14 per cent. Since 1991 the market share has stabilised at around 6 per cent.[5]

Figure 3.1: Decline in bus patronage in Great Britain since the 1950s peak[a]



[a] *Figure comprises passenger journeys from bus, trolleybus and tram. Bus passenger journeys comprise the greater majority.*
Source: PSV Annual Inquiry (STATS100).

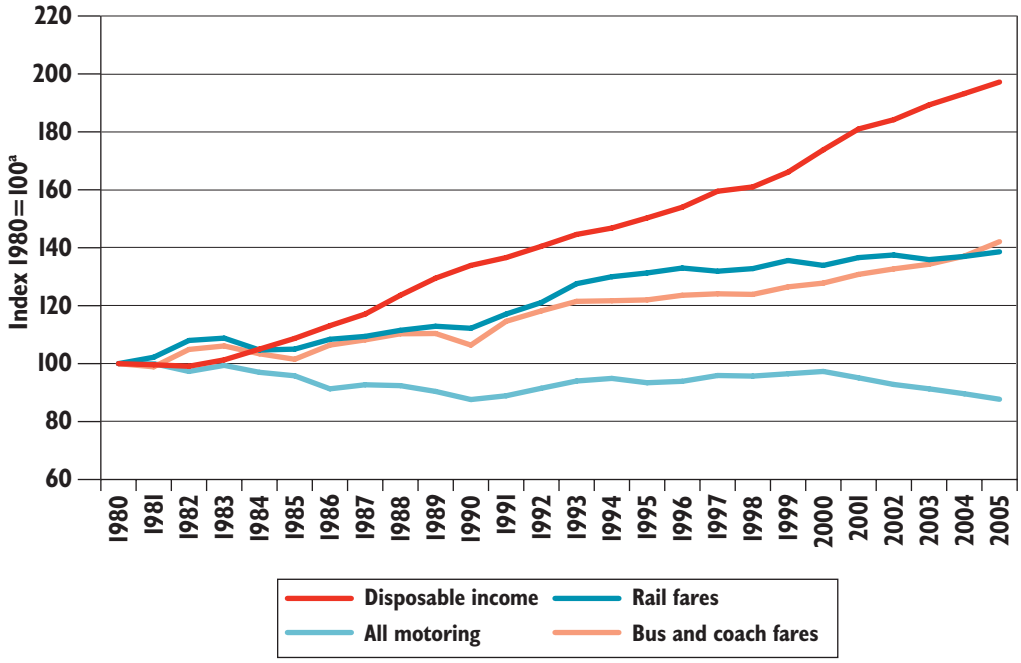
Widening gap between public transport and motoring costs

3.10 Even in recent decades the bus continues to lose out to the car. Although expanding bus use is not a goal in itself, where urban congestion is growing and road capacity is scarce, buses can make an important contribution to economic growth and environmental objectives.

3.11 The overall cost of motoring has remained at or below its 1980 level in real terms. By contrast, public transport fares have risen in real terms since 1980. In 2004, bus and coach fares were 37 per cent higher than in 1980. Over the same period, average disposable income increased by more than 95 per cent in real terms. Transport by any mode has therefore become more affordable, but with a significantly greater improvement in the affordability of car use than that of public transport, especially buses (see Figure 3.2).

[3] Includes bus, tram and trolleybus.
[4] Measured in passenger kilometres.
[5] Measured in passenger kilometres.

Figure 3.2: Changes in the real cost of transport and income in the UK, 1980-2005



[a]The price indices are taken from the Retail Price Index (RPI), re-based to 1980=100 for convenience.
Source: ONS and DfT.

Buses still remain critical to many users

3.12 Despite these external factors, the bus continues to remain critical. Many cities have been working hard to reverse the trend of downward bus use, as wealth creation has raised the importance of environmental and quality of life factors. There are still some 4.1 billion bus journeys per year in England[6] – equivalent to some 187 bus journeys per household. Although the sector accounts for just 8 per cent of all journeys, the bus remain the most widely used public transport mode, and across the UK the number of bus trips is twice the number of rail plus underground trips.[7]

Supporting labour markets

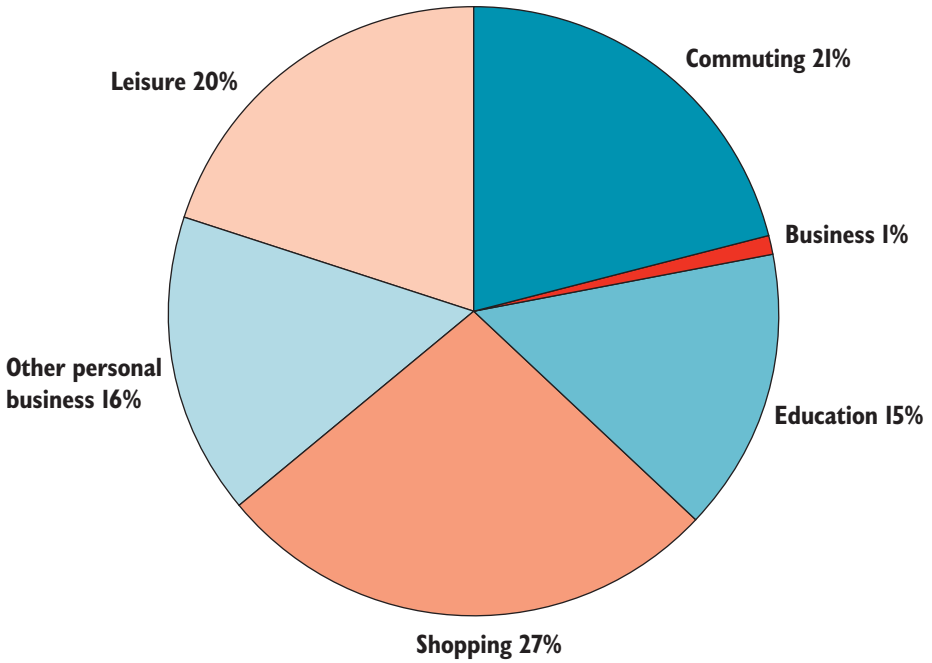
3.13 Buses are especially important in supporting labour markets in urban areas. The bus continues to play a major role in getting people to and from work – particularly in the UK's larger towns and cities. Over a quarter of workers in cities such as Liverpool, Manchester, Birmingham, Sheffield and Leeds travel by bus.[8] A quarter of all households in England (excluding London) are without access to a car – this figure is two fifths for London; this is a principal driver for continued bus demand.

Tackling road congestion

3.14 Buses also have a role to play in tackling road congestion. In the right circumstances buses can be important in encouraging modal shift from the car in congested areas. Although buses typically tend to support non-business trips (see Figure 3.3), without them some of these would, potentially, be made by car. Buses can therefore play a valuable role in attracting leisure and commuter travellers off the road network, freeing up road space and reducing travel time for business and freight traffic (see Figure 3.4).

[6] Measured through bus boardings.
[7] DfT. However, in terms of distance travelled, rail and underground modes account for a slightly larger share than bus and coach travel.
[8] 2001 Census, Office for National Statistics.

Figure 3.3: Bus trips by purpose in England, 2005 (percentage of total trips)

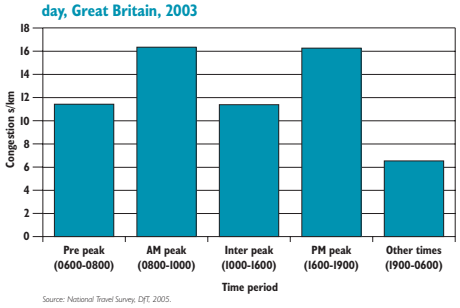


Source: National Travel Survey, DfT, 2005.

Flexible intervention

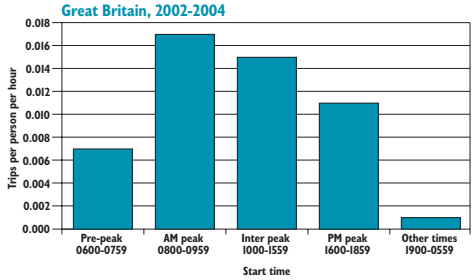
3.15 Bus services are a very flexible form of transport capacity that can be deployed relatively swiftly in response to high travel demand and pressures on the road network, as well as on other parts of the transport network (in London, for example, buses are able to take pressure off the tube network, especially in inner London). But, buses are competing not only for users, but also often for scarce road space with cars and freight traffic, which has implications for their overall effectiveness and the circumstances under which they can be usefully deployed.

Figure 3.4(a): Congestion on the road network by time of day, Great Britain, 2003



Source: National Travel Survey, DfT, 2005.

Figure 3.4(b): Weekday trips by local bus by start time, Great Britain, 2002-2004



Source: National Transport Model, DfT.

THE DEREGULATION OF THE UK BUS MARKET

3.16 The bus industry in the UK was largely under government ownership until 1986. At that time, the Government's concerns about the sector's efficiency and responsiveness to passenger needs, along with the increasing level of subsidy needed to support it, led to the deregulation and privatisation of the bus industry outside London.[9] Change occurred in London slightly later – in 1993 the London Bus Ltd subsidiaries were privatised and franchising of bus services was introduced.

3.17 Although two very different bus models were introduced, the principle underpinning change in both markets was the use of competition forces to secure efficiency in the sector and deliver appropriate and comprehensive network coverage with the speed, reliability, quality, and prices that users value.

London: 'off-road' competition for the market

3.18 London's franchising model was introduced on the model of private operators competing to operate in the bus market through short- to medium-term contracts. This can be described as 'off-road' competition. Payment to operators is directly linked to performance, with fares and service routes determined by the Mayor and Transport for London, who also bear any revenue risk.

Other urban areas: 'on-road' competition for the user

3.19 For commercial services outside London, which currently represent 78 per cent of the market,[10] a more deregulated model was introduced whereby bus operators, rather than competing to operate in a particular market, compete directly for customers and determine routes and fares on the basis of profitability i.e. 'on-road' competition. For non-commercial services outside London, which constitute the remainder of the market, the model akin to London operates i.e. 'off-road' competition through tenders. These subsidised services are mostly on routes that the main bus operators in the area find uneconomical to run, either at less popular times or on less profitable routes.

The impact of deregulation

3.20 This section explores some of the outcomes observed in different urban areas following the introduction of competition in the bus market. London has seen a substantial reduction in fares, growth in vehicle mileage and large increases in bus subsidy and patronage. By contrast, in the Passenger Transport Authorities[11] (PTAs), bus subsidy has stayed roughly static while patronage has fallen by over a third in the last 20 years. In other urban areas, bus subsidy has risen fast while patronage has stayed constant, despite reductions in the number of services. In a small subset of urban areas, the market has been expanding with service levels and patronage increasing (e.g. Oxford, Cambridge, York).

[9] The reforms of the mid-1980s combined deregulation (the ability to run bus services anywhere, initially at 42 days notice and then extended to 56 days in 2002) with privatisation of the National Bus Company and Scottish Bus Group subsidiaries. The PTAs and municipal undertakings were reorganised as "arms-length" companies and the majority have since been sold to the private sector.

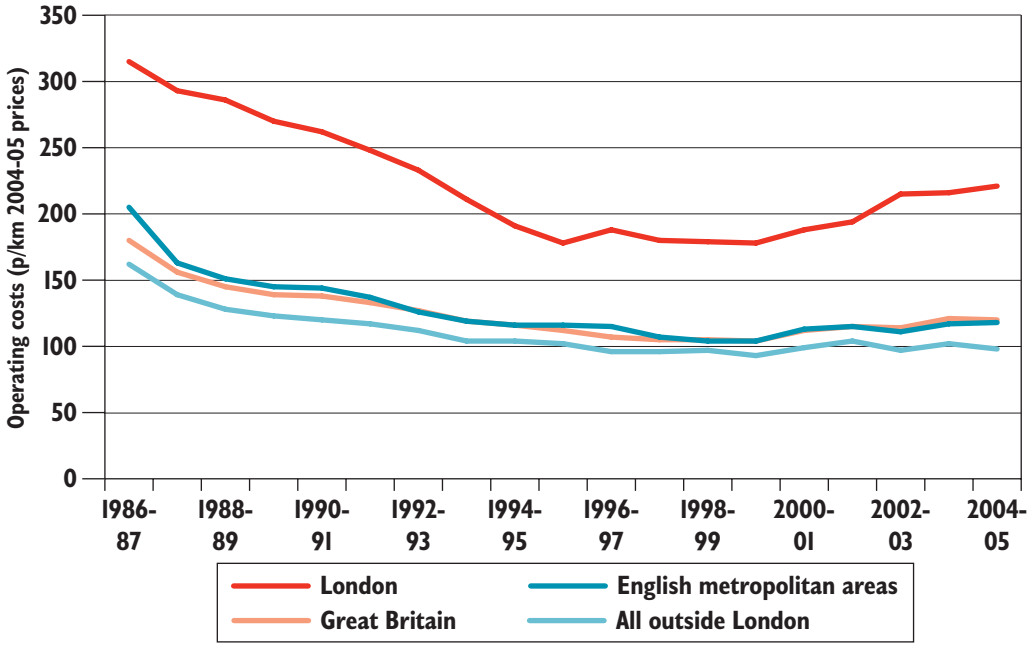
[10] Measured in vehicle kilometres.

[11] PTAs were created following the 1968 Transport Act. There are six in England: Greater Manchester (10 metropolitan authorities); Merseyside (5 metropolitan authorities); South Yorkshire (4 metropolitan authorities); West Yorkshire (5 metropolitan authorities); West Midlands (7 metropolitan authorities); and Tyne & Wear (5 metropolitan authorities). PTAs are made up of councillors from each of the metropolitan authorities within its boundary and are supported by officials in their respective Passenger Transport Executive (PTE).

Operational efficiencies have increased

3.21 The introduction of competition forces in the bus market has achieved a substantial reduction in operating costs. Cost reductions have been experienced in both the franchise market in London, and in deregulated markets in other urban areas.[12] The largest real term reductions in operating costs from 1986-87 to 2004-05 have taken place in Scotland (48 per cent) and the PTA areas (47 per cent) with a 34 per cent reduction in costs in London (see figure 3.5).

Figure 3.5: Bus operating costs in Great Britain, 1986/87-2004/05



Source: PSV Annual Inquiry (STATS100).

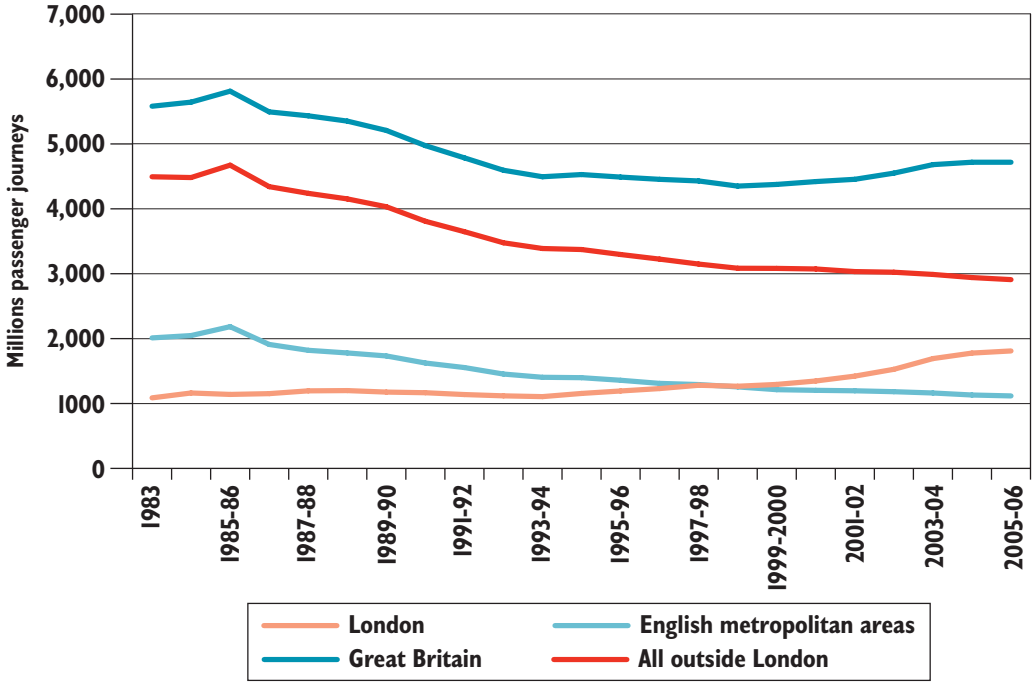
3.22 However, in recent years costs have been rising across the industry. This increase, particularly in London, has been driven by rising costs of wages, as well as insurance, pensions, depot, fuel, rising congestion, and higher quality services. In contrast to costs per kilometre, costs per passenger journey have fallen by 28 per cent in real terms in London since 1985 but have increased by 8 per cent outside London. This difference largely reflects the higher load factors that have been achieved in London.

Patronage has started rising in recent years

3.23 The decline of the bus market has continued since deregulation, albeit more slowly (partly because it has been falling from a much lower base). Overall, passenger numbers in Great Britain have seen a fall of 19 per cent since 1985-86, although recent years have seen an increase: a rise of 8.5 per cent since the lowest point in 1998-99 (driven by London, which now accounts for 38 per cent of the market). While London has seen its market grow by 59 per cent since 1985-86, other areas have suffered major declines in passenger numbers: PTAs by 49 per cent; English shires by 57 per cent; and Scotland by 30% (see Figure 3.6).

[12] For example, Heseltine and Silcock (1990) state that in the early phase of deregulation, two thirds of the fall in unit costs was due to productivity improvements, and the remainder is a mixture of real fuel price falls and falling real wages. See *The Effects of Bus Deregulation on Costs*, Keseltine, P. M. and Silcock, D.T. (1990) Journal of Transport Economics and Policy, Vol 24, No 3, pp283-294.

Figure 3.6: Bus passenger trends in Great Britain, 1983-2005/06



Source: PSV Annual Inquiry (STATS100).

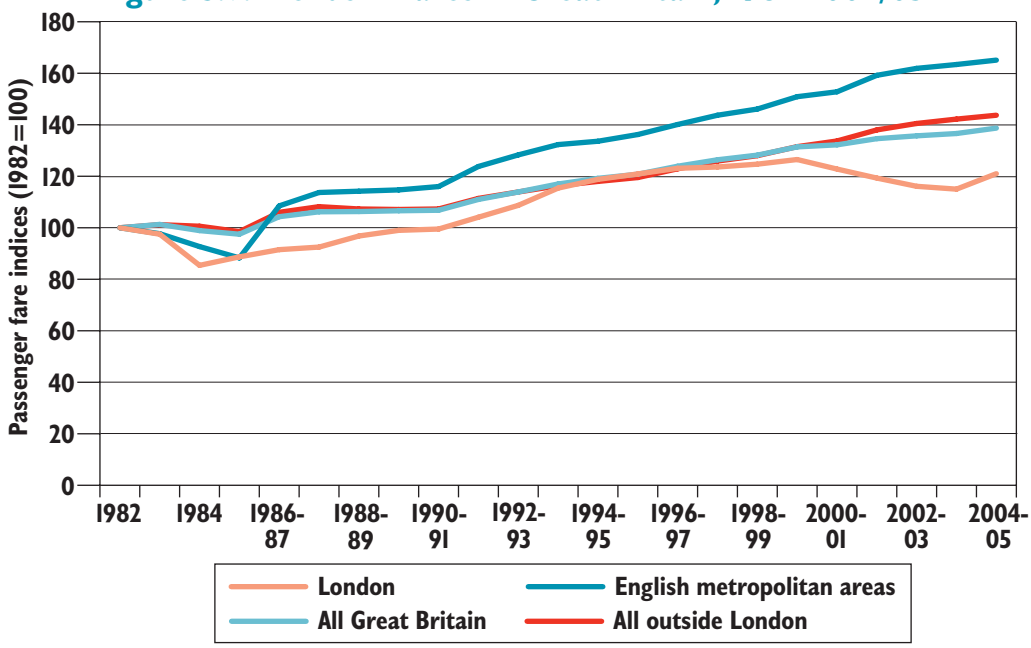
Bus fares have increased

3.24 Over this period bus fares have been rising sharply in real terms (see Figure 3.7). The changes in fares in different areas reflect the level of subsidy pre- and post-deregulation.

Decrease in bus subsidy

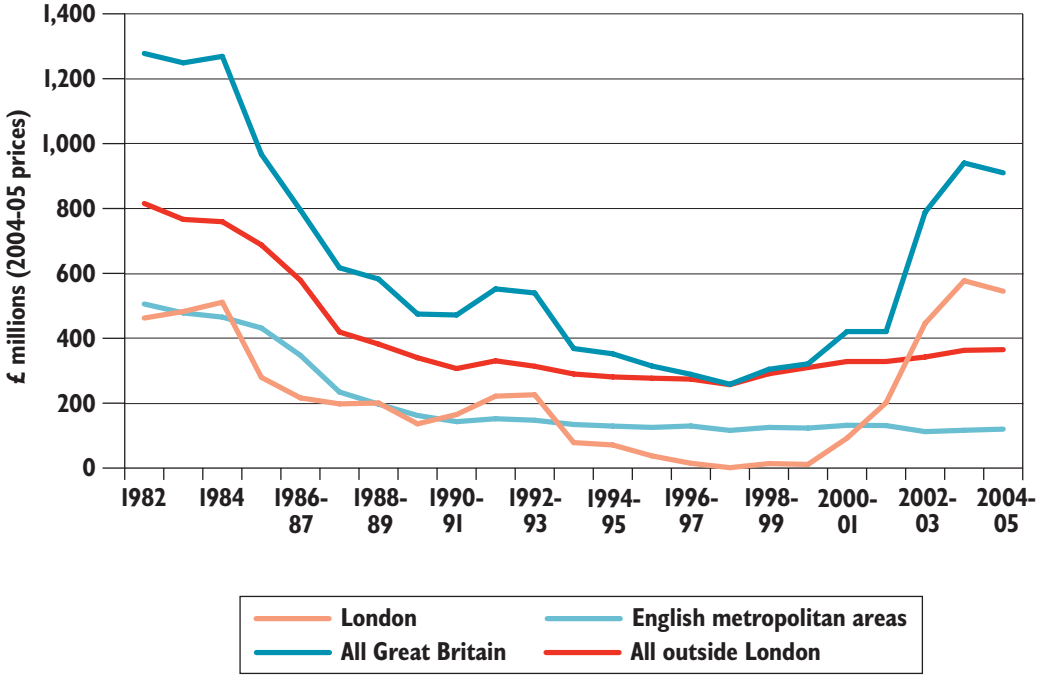
3.25 Following the introduction of competition, and in common with other privatised markets, the balance of funding has shifted towards greater funding by users through fares and away from the general taxpayer through public expenditure and bus subsidy. The latter has however, started to increase in recent years and almost doubled over the last decade (see Figure 3.8).

Figure 3.7: Trends in fares in Great Britain, 1982-2004/05



Source: Bus Fares Survey.

Figure 3.8: Trends in the level of bus and coach subsidy, Great Britain, 1982-2004/05



Source: DCLG and DfT.

3.26 Overall public expenditure on buses is set to rise to some £2.5 billion in 2006-07, largely reflecting expansion of concessionary fares, and growth in expenditure in London (see Figure 3.9).

Figure 3.9: Public expenditure on buses in England, £ million (nominal)

	2003-04	2004-05	2005-06	2006-07
DfT grants to operators (Bus Subsidy Operating Grant)	350	359	380	398
DfT grants to local authorities (mostly rural bus subsidy grant)	74	82	73	73
Local authority spending on secured services	232	232	238	254
London bus support	572	545	634	711
Concessionary fares	448	469	482	830
Capital spend (PTAs, Shires, Metropolitan districts)	229	235	240	246
Total spending on buses in England	**1,905**	**1,922**	**2,047**	**2,512**

Source: DfT.

UNDERSTANDING THE DRIVING FORCES OF THE OUTCOMES OBSERVED

3.27 There are a number of possible explanations why the bus market may not be delivering appropriate and comprehensive network coverage at the quality and prices that bus users value:

- as this chapter has already explored, rising wealth, and the increasing affordability and attractiveness of the car have underpinned the long-term decline of the bus industry. A rising cost base in recent years has also been a critical factor in driving increased fares. Both of these factors bring about service reductions;
- other inherent factors in the sector distort market mechanisms and incentives for delivering the bus services that users value, e.g. the absence of road pricing, bus subsidy and the governance arrangements. Road congestion is not only making bus use less attractive (at least up to a notional 'tipping point'), it is also increasing its cost by reducing efficiency (for example, the same journey takes longer, and more buses and drivers are needed to maintain a given frequency); and
- the current competition framework does not generate the right incentives given the wider characteristics of the bus market and the bus mode.

3.28 This chapter goes on to explore the second and third issues listed above in further detail. It begins by looking at factors that influence demand for bus services before examining the factors that impact on supply.

Understanding the demand for buses

3.29 The characteristics of the bus market directly influence the demand and supply of bus services. The determinants of the demand for buses can be broken down into three broad categories: direct factors influencing the demand for bus services such as journey time and reliability, fares and frequency; broader network factors such as route coverage, integrated timetabling and stability; and factors external to the bus network such as car restraint measures, trends in car ownership and demographic change. Figure 3.10 sets out some of the evidence on the importance of these drivers. This illustrates that while it is difficult to attract bus customers it is very easy to lose them – this is partly because for many, a ready-made alternative, the car, exists.

Figure 3.10: Factors influencing the demand for buses

Direct demand factors[a]

- **Fares:** These are an important determinant of demand. London's maintenance of fare increases below inflation from 2000 until 2004 helped to stimulate nearly 30 per cent of demand growth in that period.[b]
- **Journey times:** The overall speed (time spent in the vehicles but also waiting time for bus) relative to other modes is important.
- **Waiting times:** Waiting times are valued at around two and a half times higher than the time spent on the bus, and measures to reduce these can have a large impact on demand.[c]
- **Service frequency:** Via reductions in waiting time, increases in service frequency can have a large effect on demand. Typically, an increase in frequency from 4 buses an hour to 6 buses an hour could increase demand by 20 per cent.
- **Quality:** Quality factors such as comfort, ride quality, seats, air conditioning etc. are highly valued and are particularly important to encourage mode shift.[a]

Network factors – Many of these will directly impact on demand through the impact on journey times, reliability and quality.

- **Real time information:** Real time information is valued at between 4p and 9p per trip, and where it has been introduced it has increased demand. For instance, on-bus information announcements on the London route 149 are being extended across the network after 90 per cent of passengers claimed it improved their journey.
- **Information, branding and marketing:** Branding and targeted marketing campaigns have coincided with rises in patronage, for example, of 5 per cent a year in Brighton, and of 50 per cent since 1998 on specific routes with bus priority measures in Nottinghamshire.
- **Coverage:** In 2002, 27 per cent of people stated that they did not use the bus because it did not go where they wanted it to.
- **Predictability and reliability:** The predictability of public transport routes was the third most important determinant of quality cited in a large survey of bus users in Leeds in 2004. The reliability of bus services is invariably cited as passengers' most important concern.[d]
- **Interchange:** Improvements to interchange facilities, and to bus facilities in general, providing secure, convenient and accessible interchange, have a large impact on demand. The new bus station at Vauxhall Cross has, for example, seen a rapid rise in passenger numbers.[e]
- **Bus lanes and other bus priority measures:** These lead to reductions in journey time; increased reliability; and the ability to increase frequencies beyond those achievable in mixed traffic. These improvements are important for mode shift, for example a new bus lane in Dublin made the bus 20-25 minutes faster than the same journey by car, leading to an estimated reduction of 8-10,000 fewer cars daily on the road.

External factors impacting on bus demand

- **Demographics:** An ageing population should in theory lead to more demand for buses, but in practice car ownership is increasing for the over-50s group. Population growth in London is one of the reasons for its growth in bus patronage. While in other cities, reduction in inner city population densities will have a negative impact on bus demand.

[a] For details on the importance of different factors see 'The Demand for Public Transport: A practical guide' TRL, 2004.
[b] TfL.
[c] WebTAG 3.5.6.
[d] New Horizons Research into Citizens' Understanding of Journey Quality.
[e] Implications for Appraisal, 2004, awaiting publication, DfT.

- **Car ownership:** Rising car ownership is the main external factor that explains the decline in bus patronage. However, levels of driving licence ownership have been falling among 17-20 year olds, but rising for the over-60s. These groups are the main users of buses, and the introduction of free fares for the over-60s may reverse the trend to some extent.[f]
- **Car limiting measures:** These have been crucial to most examples of successful patronage growth and bus partnerships. Car owners' preference for the car compared to the bus is valued at the equivalent of around 20 minute's worth of time or £2 to £3 a trip, irrespective of other costs.[g] Any traffic-demand-management scheme that reduces this difference, such as prioritising road capacity in favour of buses, car parking restrictions or road pricing, will result in an increase in demand for buses. The London Congestion Charge caused a 15 per cent reduction in traffic which helped increase bus speeds by around 5 per cent and deliver a 4 per cent mode shift.[h] Graham and Glaister 2004[i] suggest national road pricing could increase bus use by 7 per cent.

[f] Transport Trends: 2005 Edition, DfT.
[g] Manchester Metrolink Study 1996, unpublished.
[h] London – Impacts Monitoring, Fourth Annual Report, June 2006.
[i] *Pricing our roads: vision and reality* IEA Volume 1 2004. Graham and Glaister 2004.

Understanding the wider environment in which buses in urban areas operate

3.30 The environment in which buses in urban areas operate is a complicated one. A number of factors distort market signals and incentives that lead to the delivery of appropriate and comprehensive network coverage at the quality and prices that bus users value. This section explores the specific characteristics of the model in operation in urban areas outside London.

Tendered and non tendered services

3.31 As discussed earlier, while in London bus services operate on a purely tendered model, in all other urban areas a mixed model operates with two parallel markets. A large proportion of services are delivered through 'on-road' competition for the consumer. However, the Government intervenes in the market to provide supported services, which are not commercially viable, but which meet social and other objectives. This is delivered through 'off-road' competition for the market through tenders. It leads to a combination of supported and non-supported, tendered and non-tendered bus services in urban areas, which can distort market signals and incentives for investment and responding to the needs of bus users.

Two suppliers: operators and local authorities

3.32 Although operators are responsible for the provision of bus services, the local authority is responsible for the provision of bus infrastructure such as bus stops, bus lanes, and the wider road network. There is, therefore, mutual dependency between the two suppliers: one cannot be successfully delivered without the other. This suggests that both local authorities and operators need to have the incentives and preferences for expanding bus use.

Roads are not priced

3.33 A further factor that distorts market signals in the bus sector is the absence of pricing on the road network. This distorts users' travel choices, and, when combined with the growing affordability of cars, further reduces the attraction of buses. The Government intervenes in the market to at least partially correct for this through subsidies, bus priority measures, and car restraint measures that help tackle road congestion.

THE PRINCIPLES FOR DELIVERING EFFECTIVE BUS SERVICES: COMPETITION, COORDINATION, AND COOPERATION

3.34 Recognising the factors influencing the demand for buses, and the broad environment in which buses operate, this Study's view is that there are three key principles for securing the successful operation of buses in urban areas:

- 'Competition' forces;
- 'Coordination' of services; and
- 'Cooperation' between operators and local authorities

Competition model

3.35 This Study is strongly of the view that competition forces rather than the alternative model of State ownership and control are the appropriate mechanisms for securing successful economic outcomes in urban areas and delivering bus services that users value. Competition forces create on-going incentives for efficiency, and responsiveness of provision to the needs of users. The former has clearly been evident since deregulation, which led to a fall in operating costs in some markets of 50 per cent. There has also been considerable innovation in the bus market following deregulation including improvements in bus fleet, variable bus sizes, out-sourcing of maintenance, smart ticketing and the introduction of part-time working arrangements for employees in the sector.

3.36 The key question is which model of competition, 'on-road' competition for the user or 'off-road' competition for the market, is the best mechanism for securing these outcomes.

Coordination of services

3.37 Buses are an integral part of the transport network. Coordination of bus services, and other modes of transport are essential to delivering the services that users value (as set out in Figure 3.10). As discussed earlier, failure to integrate services, or rapid changes to timetables as operators introduce and remove services creates instability that reduces the attractiveness of bus use. Coordination of services is likely to be even more important in large conurbations where multi-trip journeys may be more common.

Cooperation between operators and local authorities

3.38 It is also clear that cooperation between operators and local authorities matters. Local authorities own the bus infrastructure as well as the wider road network. They therefore have the levers to introduce bus priority and car restraint measures, which impact on the demand and supply of bus services (e.g. through journey time and reliability). In PTA areas, coordination between the PTA and member authorities is essential.

3.39 The competition arguments for securing delivery are robust, well-rehearsed and backed up by evidence across a range of industries. Evidence on the desirability, and level, of coordination and cooperation is more limited. This section goes on to consider what might be the right blend of competition, coordination and cooperation for securing the desired outcome in the bus market in different urban areas. Figure 3.11 highlights the current picture in different urban areas. These have been split into three broad categories:

- A. Urban areas with shrinking bus markets (including PTA areas)
- B. Urban areas with growing bus markets; and
- C. London.

3.40 The section goes on to explore how the current levers of, and incentives for, different partners may be contributing to this.

Figure 3.11: Current model of securing the 3Cs in different urban areas

	A. Urban areas (including PTAs) with shrinking bus markets	B. Urban areas with growing bus markets	C. London
Competition forces	Competition forces through 'on-road' competition: up to 50 operators but two or three dominant players	Mixed situation. Genuine 'on-road' competition tends to be limited, with many areas characterised by a single or handful of operators	Competition is delivered through off-road competition, but tender numbers can be low which may come at a cost[a]
Coordination of services	Limited. Coordination can often suffer through competition – but in some PTAs can occur as a consequence of unwritten understanding between main players	Tend to be one or two main players and secured through partnership agreement with local authority	Strong and formalised through franchise with TfL determining routes and services and integrating with wider transport network
Cooperation between operators and local authorities	Limited. Some areas, particular PTAs may be too large to create effective cooperation through partnerships – multi-lateral arrangements needed	Some areas, usually unitary authorities, secured through informal/voluntary agreements – although often not binding on either party	Secured in franchise through traditional contractual relationship

[a] *Average number of bidders received in London has increased recently from 2.5 to 3 per tender.*

Source: Eddington study.

A. Urban areas (including PTAs) with shrinking bus markets

3.41 A large proportion of urban areas outside London, including the PTA areas, are experiencing shrinking bus markets. Figure 3.12 below illustrates the experience of Greater Manchester and South Yorkshire.

3.42 In some urban areas, switching from bus to other modes, including the car, may be a desirable outcome where it does not impose significant costs to others. This may especially be the case where road congestion is not a problem. However, in growing and congested urban areas, it is clear that buses have an increasing role to play.

Figure 3.12: The operation of buses in the PTAs[a]

Since 1986, PTA areas have experienced falling bus patronage, rising fares and increasing provision of subsidised services. For instance:

- **Greater Manchester: Bus use has declined per head of population by 30.9 per cent between 1987-88 and 2003-04. Over the period 1994-95 to 2002-03, fares have risen about 8 per cent in real terms. A total of 15 per cent of services are now run non-commercially and funded by the PTA. However, there is still considerable demand for buses in the city. The bus accounted for 90 per cent of local public transport journeys in Manchester in 2000.**
- **South Yorkshire: Bus use per head of population has declined by 46.8 per cent between 1987-88 and 2003-04, whilst passenger journeys declined by 53 million, some 33 per cent reduction between 1994-95 and 2004-05. During this period there was a considerable rise in fares, of 13 per cent between 1994-95 and 2002-03, and then of a further 30 per cent in 2004-05. The PTA area has also experienced a 30 per cent decline in commercial kilometres run over the period 2000-01 to 2005-06. At the same time the number of non-commercial kilometres tendered out by the PTA has increased by 106 per cent. 10 per cent of all services are now funded by the PTA.**

[a] For more information see: *The decline in bus services in English PTE areas: the quest for a solution*, NERA, 2006 and *Bus services across the UK*, the Transport Select Committee 11th report of the session, 2005-6.

3.43 In these growing and congested urban areas, the current status of the 3Cs and associated levers at the disposal of the different parties can create perverse incentives. These can lead to outcomes which cannot be sustained in the long run, or which come at a cost i.e. instability and loss of bus passengers to the car (a cost which is particularly high in congested urban areas if there is no road pricing).

Limited levers for bus operators

3.44 Operators have limited levers to control the bus services on offer: the provision of such services is dependent on access to the road network, including through priority bus measures.[13] The demand for bus services is influenced by road pricing (and in the absence of road pricing, by other forms of car restraint measures). But both bus priority and car restraint measures are determined by local authorities and government – not operators.

Limited levers for PTAs

3.45 The situation in PTA areas is complicated further. The PTAs are responsible for local transport planning, including producing a bus strategy, and procuring non-commercial bus services. However, they have no highway, traffic or parking powers and cannot therefore introduce the necessary complementary measures such as demand management or public transport packages. PTAs are dependent on the cooperation of their member authorities to implement necessary bus priority measures. This issue is explored further in Chapter 4.2.

Limited benefits to users

3.46 As a consequence, benefits to users can be limited. Although the theoretical arguments for competition between operators leading to positive outcomes for the bus user are strong, the outcomes observed in practice in many urban areas suggest that there is scope for further improvement.

3.47 That is not to say that competition has not resulted in positive outcomes for some bus users. In Oxford, for example, competition between Stagecoach and Go-Ahead has in part

[13] For example, quality bus corridors.

contributed to the expansion of the market.[14] However, it is very difficult to identify successful growth of bus markets in congested urban areas where partnership and/or car restraint measures are absent.

3.48 Equally there are examples where competition has not secured the expected outcomes. Although some operators have sought to improve services,[15] in general they currently have limited long-term incentives to improve service quality and meet users' needs. Product differentiation on quality is difficult. Users do not have loyalty to an operator (although some have tried to build customer relationships through advanced discount ticketing), nor do they necessarily distinguish between good and bad service providers in the short term – for example, someone waiting for the bus will get on the first bus that arrives.[16] As a result, poor quality buses and services can undermine the overall image and therefore attractiveness of the mode over the longer term.

3.49 Operators seldom engage in direct competition for customers: bus users only genuinely have a choice of service provider on 4 per cent of routes.[17] In PTA areas in particular, the dominant players habitually choose not to compete on another operator's patch.

Wasteful competition

3.50 However, where competition between operators does occur, it sometimes generates the wrong type of competition. Operators have limited incentives to ensure bus services complement other public transport services. In some circumstances, bus operators have been known to compete with other modes of transport, rather than helping to offer a credible alternative to the car.[18] This can lead to a waste of resources where these other modes are also publicly funded.

3.51 It can also lead to frequencies above optimal levels, which may be beneficial to bus users in the short term, but can also create significant road congestion and impact on journey reliability.[19] Bus wars can lead to a bunching of services and timetable instability, which can be very disruptive and drive bus users to shift to other modes of travel. Hence competition for the user in some urban areas can come at a cost to coordination and stability, and impact on the overall transport network.

3.52 A clear merit of the current system is the relative ease and low cost with which operators can register their services.[20] This considerable network flexibility allows operators to experiment with growing routes, and allows incumbents to drop services easily and contract operations that are no longer commercially viable.[21] From a market perspective this level of efficiency may seem a good thing, but from the perspective of the bus user it can result in changing timetables with potential knock-on effects in terms of instability, unreliability, fragmented services and lack of coordination.

[14] There are also factors, including traffic restraint and the growth of the student population that have no doubt also contributed to the growth of the bus market, and that may have enabled the competition to be sustained.

[15] For example, Blazefield (now owned by Transdev) in Yorkshire, and Lancashire and Trent Barton in Nottinghamshire and Derbyshire.

[16] As payment is at the point of consumption, consumers face a zero or low cost of switching bus operators. Although it is considerably higher for those who have single-operator travelcards (and have to pay for other operators' services)

[17] TAS report on Competition in the bus market, 2005, prepared for the Commission for Integrated Transport.

[18] For example, recent evidence in Tyneside where the bus directly competed with the Metro.

[19] For example, when UK North challenged Stagecoach on one route in central Manchester, this resulted in 30 buses per hour at some stops – causing significant road congestion and disruption to the tram.

[20] Operators must register services (routes, timetables etc) with the traffic commissioner giving at least 56 days notice. 56 days notice must also be given of any variation in the particulars or of cancellation of services. There is some discretion for the traffic commissioner to accept shorter notice periods, for example, if a service is being introduced to replace a cancelled one.

[21] In addition there are no realisable incentives for operators to attempt to turn around marginal routes.

Case for strengthened competition

3.53 In summary, while competition forces are prevalent through 'on-road' competition for the user, they may not always deliver the desired outcomes, and can often come at the expense of what bus users value owing to their impact on instability and lack of coordination of services. There is, therefore, a strong case for strengthening competition forces to enhance delivery of efficiencies and successful outcomes in urban areas. It is also clear that current levers and governance arrangements limit the cooperation that may be desirable.

B. Urban areas with growing bus markets

3.54 Many point to growing patronage and improving services in medium-sized urban areas, such as Brighton and Hove, Oxford, Cambridge and York (see Figure 3.13) as an indicator of 'on-road' competition for the user delivering outcomes that bus users value.

Figure 3.13: Urban areas with growing bus markets[a]

Some urban areas are experiencing considerable growth in bus patronage. These tend to be medium-sized areas, and often, although not always, unitary authorities cooperating with one or two major bus operators. In many cases they are historic town centres where car restraint can easily be applied, as residents recognise the value of preserving them. There is usually a wide spread cultural acceptance of the need for alternatives to car transport among the population. For example:

- **York: Has achieved patronage growth of 50 per cent in the last 5 years. 30 per cent of growth was due to park and ride schemes, where one principal bus operator worked in voluntary partnership with the unitary authority to introduce high-quality services. The historic city centre is naturally unsuited to cars and this has enabled easier introduction of restraint measures such as limited parking.**
- **Oxford: The City of Oxford is a striking example of how congestion can be reduced by a sustained and coherent policy, combining traffic and parking restraint with the promotion of bus use. This has been achieved over a period of more than 30 years through partnership between Oxfordshire County Council, Oxford City Council, bus operators and others. Patronage growth was achieved at a time when it was falling in most other places, e.g. by 80 per cent between 1988 and 2002, and is continuing to grow. Oxford is not a unitary authority, and is a rare example of the local authority maintaining successful partnerships with two competing operators without restraining competition. A strong demand management policy, together with 5 park and ride schemes and a large and growing student population, has promoted an environment where there is room for two major operators, and some smaller ones, to thrive.**
- **Brighton and Hove: Has experienced passenger journey growth of 62 per cent (equivalent to 14 million journeys in total) between 1993 and 2005. A unitary authority with distinct geographical boundaries operates in a voluntary partnership with the single principal bus operator to achieve high-quality services using bus priority lanes, frequent marketing campaigns and real-time information. Brighton and Hove's medium-sized population offers excellent potential for a bus market, with over 50 per cent of workers travelling less than 5 km to work. 97 per cent of services are commercially run.[b]**

[a] *Bus services across the UK*, the Transport Select Committee 11th report of the session, 2005-6.
[b] Evidence provided to the Eddington Transport Study by Brighton and Hove Bus and Coach Company, and Brighton and Hove City Council, 2006.

3.55 Some of the main factors contributing to the outcomes observed in these urban areas are:

- Scale of market: these areas tend to be medium-sized towns often characterised by a unitary authority, e.g. Brighton, York, Telford, although not always, for example, Oxford and Cambridge;
- Monopoly in provision: The operator predominantly enjoys some form of local monopoly in provision: where one or possibly two operators can be sustained in servicing an area of this size. Operators are rarely in direct competition with each other;[22]
- Partnership arrangements: The existence of voluntary partnerships allows cooperation between the operator and the local authority, possibly because the smaller number of players appears beneficial to both parties;
- Captive market: The existence of a captive bus market for consumers is common, with some form of bus priority and car restraint (parking fees) in operation; and
- Preference to prioritise bus use to tackle congestion: Councils that have the incentive and preference to introduce car restraint measures and promote bus use to tackle congestion.

3.56 Although coordination and cooperation is delivered through partnership working, it is less clear what role competition forces are playing in securing the market outcomes characteristic of these urban areas. For example, these arrangements do not preclude new operators entering the market and providing bus services in these areas, but they can make it difficult.

C. London bus market

3.57 The London model differs greatly from other urban areas in that competition forces are secured through 'off-road' competition for the market in the form of franchising. See Figure 3.14 below. Patronage in London has increased rapidly in recent years, but this has also been accompanied by a large rise in subsidy.

3.58 Coordination is secured through tendered contracts with TfL, which determines the routes; and cooperation is secured through incentives and levers for both TfL and the bus operator to improve the provision and quality of services.

[22] In Oxford, the two dominant operators, subsidiaries of Go-Ahead and Stagecoach respectively do run a number of competing services. There are some issues about non-exchangeability of tickets.

Figure 3.14: The London franchise model and the incentives it creates[a]

- **Over 700 bus routes are in operation in London with over four fifths of the market supplied by 5 key players. The number of tenders is often limited, although the average has increased from 2.5 in 2001 to 3 per route tendered. The key point however, is that there is genuine, effective and sufficiently periodic competition.[b]**
- **TfL introduced net contracts in the mid-1990s. Under this model, bus operators bear the revenue risk. This resulted in operators considerably raising risk premiums to cover revenue losses beyond their control, e.g. due to roadworks. Operators also became averse to network changes such as route alterations which could damage patronage (even if only in the short term).**
- **Gross contracts were re-introduced in the late 1990s as an interim measure. Under this model, TfL bore the revenue risk. However, this model removed bus operators' incentives to increase revenue, hence service quality declined further. Rising costs saw operators' returns reduced and some pulled out of the market altogether.**
- **In 2001, TfL moved to quality incentive contracts, where routes are tendered on a gross basis but include a bonus/penalty mechanism linked to quality factors. Under this model, the operator risk is reduced, whilst providing an incentive to increase service quality. Contracts last for 5 years, with the potential for a 2-year extension for good performance. These contracts have resulted in significant improvements in performance e.g. the excess waiting time borne by bus passengers at bus stops has fallen from 2.2 minutes in 2000-01 to 1.1 minutes in 2005-06.**

[a] For more information see: *Value added? The Transport Committee's assessment of whether the bus contracts issued by London buses represent value for money*, London Assembly Transport Committee, March 2006

[b] The bus market is characterised by a good second hand market: barriers to entry are low, overheads and capital investment are low. It is important to ensure that the procurement process continues to foster genuine competition.

IMPLICATIONS FOR THE COMPETITION MODEL THAT MIGHT BE SUITABLE FOR BUSES OPERATING IN GROWING AND CONGESTED URBAN AREAS

The market failures in the bus market

3.59 In exploring the type of competition model that may be appropriate for buses, it is useful to consider whether these might be influenced by the size and presence of market failures in the sector.

3.60 The UK bus market consists of a handful of big operators, approximately 1,500 small operators and very few medium-sized operators.[23] This aggregate picture is replicated at the urban level, where the number of operators that can be sustained appears to be limited: 2-3 players tend to dominate in any one area with many other smaller operators working on the periphery. This market outcome may indicate that too many operators can result in inefficiencies and cannot be sustained for long periods of time, pointing to a weak form of economies of scale in provision.

[23] The majority of companies are owned by five large operating groups who also have extensive rail and overseas interests. A number of larger independent companies have been taken over in the last 3 years, either by one of the five large operating groups or by an overseas group. Nevertheless, a number of independent, or council-owned, companies with around 50-150 buses do still remain in business, some of them providing a mixture of coach and bus services.

3.61 In common with other transport modes, the bus market is characterised by the presence of externalities. In particular, additional bus services can generate additional bus passengers, resulting in higher frequencies and reduced travel time for all travellers.[24] Such benefits to bus users are not reflected in the decisions made by the operators and hence 'on-road' competition for the user could lead to under provision of services in some areas.

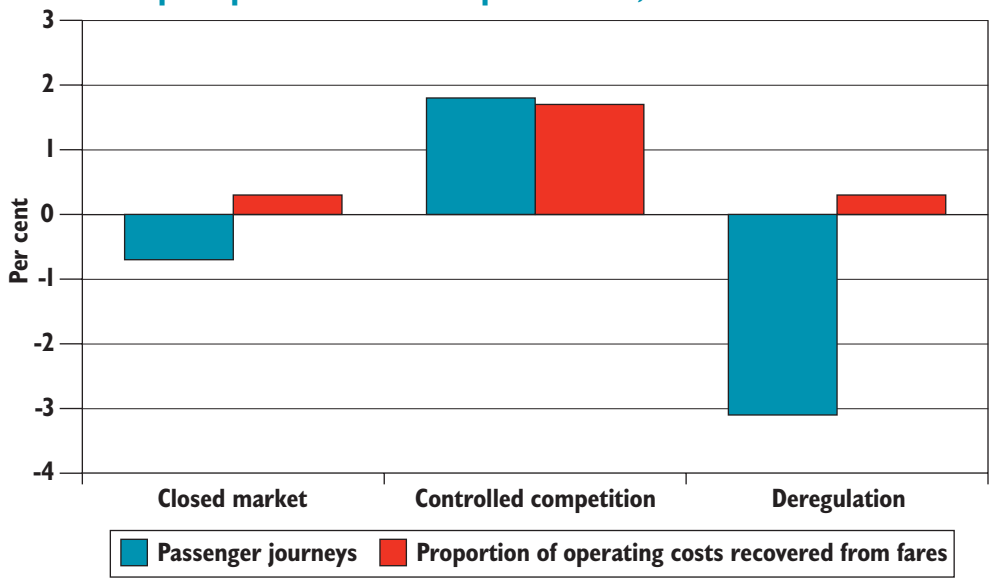
Competition for the user may not work

3.62 More fundamental to the argument on the most suitable competition model for the bus market are the market failures created as a result of 'on-road' competition for the user. In particular, the coordination and cooperation that is necessary to prevent instability and successfully deliver bus services in growing and congested urban areas can, at times, sit uncomfortably with 'on-road' competition for the user.[25]

Evidence from models in operation internationally

3.63 In practice, although it is difficult to disentangle the contribution made by the competition framework to delivering services that users value, the European experience of public transport in cities suggests that on the whole competition for the market delivers more growth in the market (measured as passenger journeys) and efficiencies (indicated by operating costs covered by fares), rather than competition for the user.[26] See Figure 3.15.

Figure 3.15: Effect of different regulatory frameworks in public transport provision in European cities, 1991-2001



Source: Data from Study of good practice in contracts for public passenger transport, Colin Buchanan and Partners for EUDGTREN.

But the London package may not be directly replicable

3.64 However, it would be a mistake to conclude from (i) international evidence indicating a relationship between 'off-road' competition for the market and the expansion of the bus market, and (ii) UK evidence that 'on-road' competition for the consumer is not reversing the decline in bus patronage in congested urban areas, that the London package is the answer for all urban areas.

[24] This is known in the literature as the Mohring effect. See Mohring, H. (1972), *Optimization and Scale Economies in Urban Bus Transportation*, American Economic Review, 591-604.

[25] And as a consequence the private car alternative is often more of a 'competitor' than other bus operators.

[26] However, these results should be viewed with caution: it is not clear what other factors including level of subsidy and car restraint are influencing the outcomes observed.

3.65 There are factors unique to London that may mean that the model is not directly applicable elsewhere. This includes the size of the London economy, and the existence of measures to limit the use of the road network such as: the London congestion charge, limited and high charges for car parking, and low car ownership (approximately four-fifths of the level elsewhere in England). London has also observed constraints on alternative public transport modes (for example, parts of the tube network).

3.66 However, other factors are less unique to London. High frequencies of bus services, improvements in vehicle quality and reliability, and low fares, for example, are not intrinsically unique to London, though they do require high levels of and appear to indicate large levels of subsidy.

3.67 Furthermore, governance arrangements in London are very different to those currently in place in other urban areas. In London, the Mayor has direct responsibility for, and powers to innovate and improve, bus services, alongside the wider transport strategy for the city. Outside London, local authorities/PTAs only have direct responsibility for the bus services they subsidise and the Highways Agency has responsibility for the strategic road network. See Figure 3.16.

Figure 3.16: London and other urban areas: difference in governance and bus models

	London	Other urban areas
Decision making	TfL has direct responsibility for bus services in London.	Local authorities have direct responsibility for 20 per cent of the bus services they subsidise.
Control over transport network	TfL/Mayor has direct powers to innovate, improve bus services and deliver an integrated transport strategy, including the introduction of the London Congestion Charge.	Local authorities/Passenger Transport Authorities do not control the highway network, districts do, therefore they are unable to implement bus priority schemes or demand management measures such as road pricing.
Fare setting	Set by Mayor.	Operators set fares in response to commercial incentives.
Scheduling services	TfL determines the services that will operate.	Operators choose how and where to run services on the basis of profitability.
Accountability	Operators are accountable to TfL on the quality of services.	Operators are not formally accountable for reliability and punctuality of their services.

PROPOSALS FOR REFORM: INJECTING COMPETITION INTO THE BUS MARKET AND SECURING STRUCTURES AND INCENTIVES FOR DELIVERY

3.68 The evidence presented above shows that different combinations of the 3Cs – 'competition' forces, 'coordination' between operators and 'cooperation' between local authorities and operators exist in different urban areas, with varying degrees of success in securing successful outcomes for users. While there are some indications that 'on-road' competition for the user can, in the right circumstances, deliver improved services that bus users value, in practice such examples are rare, and more often the model can generate perverse outcomes, or lead to a significant cost in terms of network instability and continued congestion on the road network.

3.69 As the previous section set out, some useful indicators can help identify the right competition model for buses in urban areas, namely:

(i) understanding the extent to which competition forces are driving improvements in service levels in London and some of the medium-sized market towns, whilst limiting improvements in other areas, particularly PTAs;

(ii) whether competition theory and the presence of market failures can offer any guidance; and

(iii) international evidence on the outcomes of different competition models.

3.70 Overall, the evidence explored indicates that competition for the market through franchising has the potential to deliver improved outcomes in urban areas, if accompanied successfully with coordination of services and cooperation between operators and local authorities. However, in practice, the right blend of the 3Cs will depend on the characteristics of the urban area.

3.71 This Study's view is therefore that there could be a range of competition models that can help deliver bus services that users value. The appropriate model is likely to differ depending on the geographic size and economic and social characteristics of the urban area. Local authorities need to choose the option that allows them to secure best value for public expenditure while ensuring the model delivers in the public interest. Doing so means demonstrating that the competition model, combined with coordination and collaboration, works to deliver appropriate and comprehensive network coverage at the quality and prices that bus users value, and help to secure broader economic and social outcomes.

Policy options

3.72 There are three broad options that urban areas might consider adopting:

(I) the current model of direct competition for the consumer ('on-road' competition);

(II) partnership working between local authorities and operators of key services and routes, but with some direct competition for the consumer from new entrants to ensure on-going contestability (a mix of 'on-road' and 'off-road' competition); and

(III) franchise approach with competition for the market rather than the consumer, and the absence of any direct competition for the consumer, particularly where the risk of destabilisation and value for money benefits are high ('off-road' competition).

3.73 Each of these models is explored briefly below.

(I) Current model of 'on-road' competition for the user

3.74 This approach assumes that bus services that users value are best delivered through bus operators directly competing for the consumer. However, the evidence presented in this chapter suggests that this form of competition can, at times, sit uncomfortably with the coordination and cooperation which – given the wider characteristics of the bus sector, and their existence as part of an integrated transport network – are equally important for bus delivery.

3.75 Where this approach is chosen by urban areas, the goal must be to ensure that competition forces work effectively to deliver services that bus users value, rather than creating perverse incentives and consequentially disbenefits for users through inefficiencies and wasteful competition.

3.76 A robust regulatory framework is essential to ensure that competition forces enhance (and do not prevent), the delivery of efficiencies and successful outcomes in urban areas. For example, some form of standard setting on the circumstances and conditions under which bus operators can engage in the market may help provide coordination and stability.

(II) Partnership approach: mix of 'off-road' competition and 'on-road' competition

3.77 Bus success stories, such as Oxford, York and Brighton and Hove have taken place in urban areas where operators have worked in partnership with local authorities, often enjoying a local monopoly situation, and the willingness of local authorities to deliver necessary car restraint, as well as bus priority measures. However, these partnerships are not legally binding, and care must be taken to ensure that local market power is not institutionalised through voluntary partnerships.

3.78 Critically, it is essential for there to be contestability at both the stage of partnership formulation, and through on-going direct competition for users from new operators. Partnership models should be designed such that competition forces influence with which operators the authority engages in partnerships, and direct competition between operators means these partnerships are (i) regularly contested, and (ii) deliver positive rather than wasteful competition (which can be destabilising).

3.79 Effective bus market regulation is key. Local authorities also need to be able to benchmark the performance of partnerships against the cost and service qualities being offered in other areas under other competition models.

(III) Franchise model – competition for the market

3.80 A move to franchising bus services would secure the necessary coordination and collaboration between authorities and operators, whilst shifting to 'off-road' competition for the market rather than direct 'on-road' competition for the consumer.[27]

[27] It should be noted that all, or virtually all, experience of setting up a franchising system has been as a replacement of a public sector monopoly. All competitors in those circumstances were on a level playing field, and the public authority presumably provided them with identical market information. These conditions could not be replicated where the pre-existing situation is of dominant private sector incumbents with market information that is commercially confidential and not to be shared with others. There will also be other barriers to entry such as ownership of depots and access to vehicles, which may need proactive fostering of entry by local authorities to create effective competition. TfL has needed to be proactive to create and maintain a competitive market in London.

3.81 The evidence presented in this chapter suggests that such a model is likely to be a priority in growing and congested urban areas where there is need to tackle urban congestion, and to deliver a bus model that can work in the presence of road pricing. Furthermore, prior to road pricing, some form of car restraint policies in these areas is likely to be important alongside bus priority measures.

3.82 International examples and London's experience indicate that a number of factors need to be considered when establishing a franchise model, to ensure that these 3Cs work effectively. This means locking in operator incentives to innovate and grow the market while introducing new incentives and levers for local authorities to expand the bus market where this meets the overall economic goal in the urban area. See Figure 3.17 below.

3.83 This model should only be pursued where (i) it offers good value for money (ii) competition forces continue to work to deliver efficiencies and improvements in bus services for passengers.

Figure 3.17: Securing effective franchising – what factors need to be considered?[a]

Route or area tendering: Franchises can be offered for a series of routes e.g. London and Copenhagen, or for a defined area e.g. Lyon and Adelaide. Area tendering allows operators to develop services within a set boundary; this can aid integration within the area but makes inter-area services harder to coordinate; where areas are large they may also prove a barrier to entry, reducing bidders to just a few large companies. Route franchising enables clusters of linked routes to be tendered. This provides greater flexibility of service provision and opens the market to a wider range of bidders, whilst big firms can still increase efficiencies by bidding for multiple groups of routes.

Determination of routes: Both tendering options need to consider whether the power to determine services lies with the local authority or the operators, as each will have different knowledge and expertise in this regard. Area tendering offers greater potential for operator determination, whereas route tendering favours local authority decisions. However, as London and Adelaide demonstrate, both models can incorporate flexibility, with negotiation processes that encourage both partners to cooperate to ensure an innovative network in the public interest. This can allow an optimal network to be determined, for example, by removing any 'over-bussing' on certain routes.

Gross or net contracts: Franchises can employ either net contracts, where the revenue risk is borne by the operator, or gross contracts, where it is borne by the authority. Net contracts mean that operators are automatically penalised for poor performance by lower revenue and this may dissuade smaller operators. Also, due to the nature of bus demand, operators can still make profits whilst performing poorly by cutting quality, so there is less incentive to increase revenue through increasing patronage, which can mean that consumers suffer. Gross contracts, however, do not incentivise the operator to increase revenues by expanding markets, as their only mechanism for increasing profits is to reduce operating costs.

Quality factors: To ensure that franchises incentivise operators to both reduce costs and increase revenue from patronage, many authorities build quality factors into their contracts, ensuring that operators have a stake in improving services. In London, for instance, gross contracts contain provision for financial penalties/rewards for operators against reliability targets.

Length of contract: A sensible contract length needs to be considered when tendering. Short contracts may dissuade operators from committing investment, whereas overlong contracts may reduce competitive pressures on the incumbent. One option for ensuring a suitable length of contract might be to offer extensions after a set expiry period, if operators have satisfied a range of quality criteria.

Determination of fares: Fares can be set by the operator, local authorities or a combination of the two. If set by the operator, fares may exceed socially optimal levels which would discourage considerable patronage growth and social inclusion; if set by local authorities, fares may be too low to offer reasonable cost-recovery and would rule out price competition on the network; but, local authorities are better able to introduce integrated and electronic ticketing systems. Some countries, like Norway, employ a combination of the two, with authorities setting a maximum fare structure within which operators are free to determine optimal levels at any particular time.

[a] For more information see: *Models for the provision, regulation and integration of public transport services*, NERA and TIS.PT, 2001 and *Value added? The Transport Committee's assessment of whether the bus contracts issued by London buses represent value for money*, London Assembly Transport Committee, March 2006.

Effective regulation

3.84 Irrespective of the model chosen, it is important to ensure that the 3C principles – competition, coordination and cooperation – that are necessary for the successful operation of buses in urban areas are retained. The case for effective regulation of the sector to ensure that competition incentives continue to deliver in the public interest is strong and undisputed. Strengthening the case for competition should not come at the expense of incentives for the operator to reduce operating costs and increase innovation (this has been the real advantage since the shift away from state control).

Reforming governance arrangements can lead to a more effective outcome

3.85 This Study's view is that improving competition forces, together with coordination and cooperation can lead to more effective delivery of bus services in urban areas. This could be further enhanced through governance reform to give the sub-national bodies responsible greater levers and incentives to secure bus services as part of an overall transport strategy for the area. Under the current structure, the split governance and funding arrangements between local authorities and PTAs, and between districts and counties, do not always allow sensible integrated planning of transport in urban areas.

3.86 The current allocation of powers can create a number of tensions or constraints to providing a successful bus market. As Chapter 4.2, on sub-national decision-making has explored, there are concerns about whether capacity, funding and powers are aligned. This is especially true in two-tier authorities where the districts are in charge of subsidising individual travel (concessionary fares), whilst the counties are responsible for securing the overall bus network, including subsidising non-commercial services. The problem is especially acute for PTAs, which have no highway, traffic or parking powers.

Review subsidy

3.87 Possible competition reform and changes to governance also provide an opportunity to look at bus subsidy and consider how it can better be targeted to deliver the bus services users value.[28] In particular, it is not clear that the current system of funding to operators (a system of fuel duty rebate based on vehicle kilometres) creates the right incentives to support the priorities this Study has identified for buses in urban areas. First of all, it sits oddly with the Government's environmental objectives by providing little incentive for fuel efficiency; secondly, it offers few incentives for operators to improve services and expand patronage while limiting bus congestion on the road network. There are therefore clear merits to more effective targeting of existing bus subsidy.

3.88 It is not immediately evident that strengthened competition in the bus sector to enhance the delivery of efficiencies and successful outcomes in urban areas needs to be accompanied by additional public expenditure. However, it is important to ensure that any spending continues to deliver value for money.

3.89 It is clear, that reforming and better targeting of existing bus subsidy can help deliver improved outcomes. In addition, devolving bus expenditure to the appropriate sub-national body can create the financial capacity for such bodies to negotiate outcomes with bus operators on the basis of local circumstances, as well as providing fiscal incentives for securing sustained public expenditure on buses in the long term. Such devolution could be particularly desirable in areas that choose to introduce the franchise bus model.

[28] Evidence from New Zealand and Norway shows that where bus subsidy is better targeted it can deliver modal shift and reduce congestion and thereby contributing to GDP.

CONCLUSIONS

3.90 A large proportion of urban areas outside London, including PTAs, are experiencing shrinking bus markets. In some urban areas, switching away from bus to other modes, including the car, may be desirable where it does not impose significant costs to others – particularly where road congestion is not a problem. However, in growing and congested urban areas, it is clear that buses have an increasing role to play. Buses can provide a flexible form of capacity suitable to many urban traffic flows and can contribute to environmental and accessibility objectives. Road pricing will also place a premium on effective public transport markets in urban areas.

3.91 The urban bus market as it has developed in the UK since deregulation has not been truly contestable across the piece. Although patronage overall has stabilised in recent years, fares have been rising and service levels declining, whilst public expenditure on buses continues to grow.

3.92 Securing the effective operation of buses in urban areas to tackle congestion requires some tough important policy choices. Government, local authorities – PTAs, unitary and two-tier councils – and bus operators all need to play their part and respond to this challenge. This includes, where appropriate: mechanisms for strengthening competition; decisions on bus investment by local authorities and bus operators; and willingness at the sub-national level to implement car restraint measures in the short-term, and road pricing in the long-term.

3.93 Getting this right has clear benefits: supporting the growth of urban areas; securing environmental and social benefits, including accessibility; and sustained long term investment in transport in urban areas.

3.94 This chapter argues that 'competition' forces, 'coordination' of services and 'cooperation' between operators and local authorities are the essential building blocks to successful delivery of bus services and successful outcomes in urban areas.

3.95 There are three broad options urban areas might adopt to deliver bus services: (i) current model of competition for the consumer; (ii) partnership working with some limited competition for the consumer; and (iii) franchise model with competition for the market. However, whichever competition model is chosen, the underlying principle of employing competitive forces to secure the effective operation of buses must be retained. There is therefore a strong case for effective regulation of the sector to ensure that competition operates in the public interest.

3.96 It is not clear that any one option is necessarily superior or best suited to application across all urban areas at any one time. But it is clear that the current position in many urban areas can be improved. In particular, the evidence points to the potential of the franchise bus model to improve efficiencies and outcomes in growing and congested urban areas. However, this approach should only be adopted if it can be demonstrated to lead to a better service and deliver value for money. Adequate capacity within the sub-national local body to deliver this change will also be essential. Equally, any change should be phased to minimise instability in the bus market.

3.97 Governance and subsidy reform can further enhance delivery by creating the right incentives in the bus market. There is a strong case for targeting existing bus subsidy more effectively.

RECOMMENDATIONS

Recommendation 5(b)

To strengthen competition in the bus sector to support the economic success of growing and congested urban areas:

(i) Deliver effective regulation of the bus sector to ensure competition forces can be harnessed to improve efficiencies and successful outcomes in urban areas.

(ii) Legislate to allow sub-national bodies the option of introducing franchising of bus services, where the following pre-requisites can be demonstrated: the change offers good value for money; competition forces continue to deliver efficiencies and improvements in bus services for passengers; and the sub-national body has the adequate capability and resources to make this model work.

(iii) To strengthen the successful outcomes from a franchise approach by taking forward recommendation 5(a) by, in particular: aligning highways, traffic and bus powers in the appropriate sub-national body; and for those areas, reforming and devolving bus subsidy to allow effective targeting of spending and secure higher value for money.

4.4 Engaging the private sector

Headlines

- **The case for engaging the private sector in transport is well rehearsed and in the right circumstances can deliver:**
  - **reduced costs through greater efficiencies in construction and delivery of projects to time and budget; and**
  - **potential for increased benefits where efficiencies free up public funds for new investments.**
- **The Government is already using the private sector to deliver transport infrastructure and services in ways which secure value for money.**
- **Structural changes in the sector provide new and unique opportunities to engage the private sector where it represents value for money – most notably:**
  - **unprecedented global investor appetite actively looking for the potential stable and long-term returns offered by transport infrastructure projects; and**
  - **as markets mature, a narrowing of the gap between the costs of borrowing for the public and private sectors.**
- **As the sector evolves, Government must continue to learn the lessons of experience and help shape the future market:**
  - **offering certainty and transparency through a clear framework for private sector engagement, including managing a pipeline of potential projects; and**
  - **employing the right skills at all levels of Government to sustain this.**

INTRODUCTION

4.1 Globally, both developing and developed countries are recognising the importance of an efficient and effective transport system to support the economy. In the UK, both the public and private sectors play a key role in delivering transport projects. Public sector investment in transport infrastructure amounted to some £9 billion in 2005-06, securing benefits to the economy and wider society.[1]

4.2 As Volume 3 highlighted, the Government can secure value for money on public spending through effective prioritisation. Much can be achieved through a combination of targeting, full appraisal and better use of existing resources.

4.3 The Government also needs to consider how to make the most of private sector engagement in transport: through the planning system (as Chapter 4.5, Volume 4 explores); through the procurement of projects; but also in terms of funding and financing of transport projects.

4.4 All projects must, of course, be funded from some stream of revenue. In the context of transport, there are two choices. Either the government pays through general taxation or the users of the transport infrastructure or service pay through some form of charging, i.e. fares or pricing. In practice, and as is often common for public transport and roads, there is a combination of the two, for example, the government subsidises bus provision but bus users also pay a fare (albeit lower than would be the case without the subsidy).

[1] *Public Expenditure Statistical Analyses*, HM Treasury, 2006. This figure includes capital spending by central government, local authorities and the devolved administrations.

4.5 Technological advances and greater acceptability of user charging continue to provide new opportunities for Government to review both the balance of public and user funding, and the allocation of risk between the public and private sectors. This chapter concentrates on those projects that are predominantly publicly funded but are delivered, where it represents value for money, through some form of private sector engagement.

Chapter context and structure

Transport has a long history of private sector engagement

4.6 The UK has a long history of private sector engagement in the transport sector. Railways in the nineteenth century were built through private sector entrepreneurship. Many of the major ports and airports in the UK operate through successful private ownership. And across all modes of transport, the private sector is already delivering through a range of models in which both the public and private sector play a part.

4.7 Of course in reality, all UK major transport projects and services are delivered through some level of co-ordination between the public and private sectors. Very little can be achieved by government without drawing to some extent on private sector skills, capacity and ability to manage risks. But the extent of such engagement varies significantly by project and in some cases private firms may only be involved as the supplier or sub-contractor.

4.8 Furthermore, boundaries between the respective role of public and private sectors are not fixed, and their potential involvement alters through time. Looking at recent experiences in the UK and elsewhere highlights that there is scope for the private sector to add value and secure value for money through effective engagement.

4.9 Structural changes in the financial and infrastructure markets present potential new opportunities, notably: unprecedented appetite for private sector investment in the transport sector; and, as markets mature, the narrowing of the gap between the costs of borrowing for the public and private sectors.

4.10 In addition, Government and the private sector now know more about what does and does not work, and can learn from past experiences. This is important to ensure the desired outcomes are achieved through the appropriate allocation of risk and obtaining value for money for public expenditure.

4.11 This chapter is split into three parts:

- the first discusses the balance between public and private sectors in the efficient delivery of transport projects based on the appropriate allocation of risks;
- the second discusses the structural changes in the financial and infrastructure markets and the potential opportunities they create for delivering transport through the private sector; and
- the third sets out conclusions and recommendations.

THE BALANCE BETWEEN PUBLIC AND PRIVATE SECTORS IN THE EFFICIENT DELIVERY OF TRANSPORT PROJECTS

4.12 There is a broad spectrum of models across the transport sector, within which the public and private sectors are engaged to varying degrees in delivering transport projects. The appropriate model will be largely dependent on the risks involved and how they are allocated to the party best able to manage them:[2]

[2] It may also depend on the level of control the service provider requires over the asset.

- at one end of the spectrum is private ownership with little or no government involvement, for example, UK ports and the majority of airports;
- following on from this is a model whereby the private sector has responsibility for the transport asset but with oversight through an independent regulator, for example, a number of the large UK airports; in some cases such regulation is also accompanied by government support through subsidy, as with Network Rail;
- the largest range of models involving both public and private sectors come under the umbrella of Public Private Partnerships (PPPs). This includes Private Finance Initiatives (PFIs), where the private sector is involved in service delivery from the asset; and
- finally, at the other end of the spectrum is the public ownership model, for example, the local road network, where the private sector is usually only a contractor.

Private ownership

4.13 The public sector plays little or no role in the operation and enhancement of privately owned ports and airports.[3] Due to the monopoly nature of some privately owned transport assets, a regulatory regime may be necessary in order to protect the interests of transport users.[4]

Regulatory regimes

4.14 The primary examples of regulated transport companies are: the provider of the air traffic control system, NATS En Route Ltd; and the four largest UK airports, Heathrow, Manchester, Gatwick and Stansted. Each sub-sector has its own independent regulator that has received its duties and powers through separate Acts of Parliament. Each of these regulatory frameworks has been designed to accommodate and incentivise investment through the pricing regime set by the regulator, to allow a suitable financial return to be made on investment. In some cases, the regulators will have processes for requiring specific investments from companies.

4.15 A variation of this model is that adopted by Network Rail (NR). NR is a private company that owns and operates the majority of rail infrastructure in Great Britain. This model differs from some other regulatory models because of its 'not-for-profit' status, with any profits earned going straight back into improving the railways. Furthermore, its debt is backed by Government guarantees and it receives subsidy from the Government. NR's financing requirements are principally met by debt raised from the capital markets.

Public Private Partnerships

4.16 Internationally, transport has absorbed a major share of the market for Public Private Partnership capital in the wider OECD, particularly in Europe. Over the four years to the end of 2008, Public Private Partnership projects under procurement will result in an estimated €55 billion of investment being committed, three quarters of which will be in the transport sector.[5]

[3] Although some ports and airports are owned by local authorities, such as Manchester Airport and Portsmouth Port.

[4] Such regulation would be required where there are market failures, such as monopoly power, or externalities, like congestion and environmental damage. These would not be accounted for in private behaviours or decision making and therefore under- or over-provision of transport capacity would result.

[5] John Laing plc estimates quoted in *What Makes a PPP Effective For Government? A public sector perspective, Background Paper for 2005 PPP Transport Summit*, published DfT 2005, as part of UK Presidency of EU programme.

4.17 The range of PPP models includes variations of the design, build, finance and operate (DBFO),[6] which the Highways Agency has adopted for some enhancements to the strategic road network; the build, own, operat (BOO),[7] or the design, build, finance, transfer (DBFT) where the assets transfer to the client at the end of the construction period. In practice, in nearly all other models the assets are owned throughout, financed and operated by the public sector.

4.18 One particular form of PPP is the PFI, whereby the private sector is also involved in service delivery from the asset. In the UK, the transport sector has been a key recipient of PFI investment, with 41 projects with an aggregate value of £4.7 billion having reached financial close by 2006 and a further £4 billion scheduled to progress through procurement to financial close by 2010.[8] These statistics do not capture the investment that has taken place under different PPP structures, which are significantly different from more standard PFI procurements.[9]

Public ownership

4.19 Finally, many transport assets are under public ownership. The private sector is still involved but it would only be contracted to act as the delivery agent, typically managing the risks around construction. This approach is used for the majority of local and strategic road enhancements, for example.

The appropriate allocation of risk

Risks should be allocated to the party best able to manage them

4.20 In delivering transport projects, which by their nature have inherent risks (ranging from pre-construction, construction, to operational stages), the most appropriate model to adopt will largely be determined by how those risks are best allocated, i.e. by assessing which party would be best placed to manage them. This is a crucial component of the extent to which value for money of public expenditure can be achieved. The risks can be broadly characterised into different types, including:

- pre-construction;
- construction and operation;
- demand; and
- network and other external factors.

Pre construction risk

4.21 Pre-construction risks can be significant for some schemes and can impact both on the costs and timing of delivery, and in some cases on design. This might be the case, for example, for projects where planning permission is not straightforward. Depending on the stage of procurement, this risk tends to be managed by both the public and private sectors. Outline planning risk in the early stages is usually managed by the public sector but later in the process risk associated with detailed planning (post financial close) tends to be better managed by the private sector.

[6] Here a Special Purpose Vehicle (SPV) is created by the private sector, which is responsible for raising finance, designing, constructing and operating the assets. The SPV is entitled to a payment stream, which may comprise of direct charging (e.g. real tolls/fares), availability payments or shadow tolls.

[7] Here the private sector owns the asset outright and therefore bears all revenue risk in perpetuity. It has the right to design, build, own, operate and maintain the asset.

[8] *PFI: strengthening long-term partnerships,* HMT, 2006.

[9] *PFI: meeting the investment challenge,* HMT, July 2003.

Construction cost risk

4.22 Most often, construction cost risks are managed by the private sector, as they are priced into the cost of the project through the contract. This is an area where the private sector has substantial experience and the levers to manage design risk, and can deliver on time. Where costs come in higher than originally planned, it would generally therefore be the private sector that pays.

Operational cost risk

4.23 There is also substantial risk in the operational phase: risks associated with maintenance and operating costs can be substantial and can vary according to the level of demand for the infrastructure in question. Where whole-life cost risk is managed by the private sector, it is best placed to take a view on balancing design, construction methods and quality against the long-term operating costs and maintenance requirement.

Demand risk

4.24 Revenue streams from transport projects are often dependent on demand and risks around demand projections therefore matter. The inherent difficulties and uncertainties often associated in projecting demand can have significant implications for costs and in some cases the viability of the project.

Network and external risks

4.25 Policy changes on the network are also a risk that needs to be managed. For example, changes in policy that affect certain parts of the transport network, such as closures or new links, may impact on the demand for other pieces of infrastructure. This could potentially affect the costs, and in some cases the viability, of a particular project. Other external factors such as economic growth, and changes to prevailing laws such as environmental standards, also have the potential to affect the costs of delivery, operation and maintenance of the asset.

The potential efficiencies from effective private sector engagement

4.26 In securing the delivery of transport projects, the likelihood of achieving best use of public funds will be vastly increased if:

- the procurement process is efficient and programmes are implemented as planned;
- major cost overruns are avoided;
- completion is on time so services are not delayed;
- whole-life costs in operation are minimised; and
- assets are adequately maintained and serviced over long periods.

4.27 Under the right circumstances, the private sector can make a valuable contribution to achieving these goals.

Reduced costs through greater efficiencies

4.28 An important component of the assessment of major transport projects is the cost of construction. The true costs of implementing interventions can in some cases prove higher than were initially envisaged at the stage of the public investment decision. This may be due to poor cost estimation by the promoter, poor project management, or unexpected costs in delivery for which insufficient contingency has been allowed.

4.29 International experience suggests that governments have often struggled with the effective planning and delivery of major capital investments.[10] This is an area where the private sector, given its experience in the design, construction and delivery of large capital-intensive[11] projects, on time and to budget has particular potential to add value, especially where the process of relying on project finance clearly incentivises performance.

4.30 After construction the asset needs to be maintained. The long life of many transport investments requires strong attention to the issue of minimising whole life costs and the private sector is often better placed to plan and manage spending efficiently over a 25-30 year contract, than a public sector body with a shorter planning horizon. This can potentially be a substantial source of efficiency savings. This potential is recognised under the PFI model in the UK in the context of maintenance of street lighting and highways infrastructure where a number of such contracts have been let.

4.31 The evidence also suggests that the private sector is able to:

- bring a broad range of skills to project delivery, including project management, innovative design and risk management;[12] and
- increase the likelihood of projects being delivered to time, as well as managing the cost risks. The NAO found that of the schemes they looked at, over 70 per cent of PFI projects were delivered on time and budget as opposed to just 30 per cent for non-PFI projects.[13]

4.32 Efficient use of public resources can also be achieved through PFI models, as payments are only made against service delivery or asset availability. This will only be the appropriate model if:

- these payments are affordable over the longer term;
- the private sector is actually better placed to manage the risks;
- the benefits, including cost, time, and value for money are not outweighed by the flexibility requirements of future service provision or being locked into a long term contract; and
- the use of private finance offers the best balance of whole-life benefits and costs for the public sector.

Greater efficiency may allow public resources to be 'freed up'

4.33 By adopting the right model to allocate risks appropriately, efficiencies can be realised. This could allow public resources to be freed up and hence potentially more projects can be funded than would otherwise have been the case. The overall value for money of public funds could therefore be improved.

REALISING THE BENEFITS OF ENGAGING THE PRIVATE SECTOR

4.34 Although the evidence suggests that there is potential for efficiencies to be achieved through engaging the private sector in transport project delivery, the government needs to ensure that the context is right to allow such benefits to be realised.

[10] *MegaProjects and risk*, Flyvbjerg, Bruzelius and Rothengatter, 2003.
[11] *PFI: meeting the investment challenge*, HMT, July 2003.
[12] *PFI: meeting the investment challenge*, HMT, July 2003.
[13] *PFI: construction performance*, National Audit Office, February 2003.

4.35 In recent years, significant developments have been made in the ability to exploit efficiency gains through appropriate private sector engagement. But there is potential to push this even further. Recognising developments in the UK and overseas, the Government can play an important role in securing efficiency and helping shape the future market. The Government needs to continue to revisit these possibilities as the commercial environment evolves and as the track record of delivery under different models becomes more extensive.

Managing a pipeline of investments

4.36 In the global market place, the UK is competing to attract the investment capacity of private firms that are able to offer skills, capabilities and efficiencies in the delivery of major transport projects. The UK should continue to position itself as a key player in this regard by sending the right signals about future investment opportunities for the private sector. This could offer potential investors a greater opportunity to understand the UK market and to develop the specific expertise to offer efficiencies in delivering projects, both in the near term and in the future.

4.37 Private sector capacity and the weight of competition will naturally be attracted to those markets where the potential pipeline of investment opportunity is seen to be both significant and stable, as this offers greater scope for expertise to be acquired and a portfolio of investments to be developed. The UK market has been a frontrunner, by some margin, in this regard in recent decades and has traditionally been an attractive market, exhibiting both a depth of opportunity and few artificial barriers to entry.

4.38 By setting out a clear programme or pipeline of investment opportunity, the inherent risks for the private sector in bidding for projects can be diversified across the range of investment opportunities. A potential efficiency from such a programme is the ability to invest in a bid where lessons learned can be carried forward to the next bid and standardising documentation allows costs to be reduced. This effect was seen with the announcement of the Government's Building Schools for the Future programme (BSF), for example, where the number of bidders tripled in 2 years. The DfT is also using this approach for its street lighting PFI programme.

Certainty and transparency

4.39 Certainty and transparency in procurement exercises are also essential in attracting both domestic and international investors. Where a procurement process has been initiated but then affordability or other reasons lead to the project being aborted or delayed, there are likely to be significant implications for investor confidence in a particular market. Not only is considerable project development effort likely to be wasted, in terms of overcoming successive planning and approval hurdles, but there are potentially substantial financial and reputation costs for all parties involved, impacting both on investor returns and the value for money obtained by the public bodies.

Reputation and past experience in the market

4.40 This can also have an impact on the operation and effectiveness of subsequent projects. Where private financing is relied on to deliver a project, the financial institutions set the cost of borrowing. If there is a perceived higher risk attached to those funds due to previous project problems, a higher return will be demanded with implications for value for money for public expenditure.

Adequate competition

4.41 Achieving value for money and securing potential efficiencies also requires adequate competition in procurement among a variety of potential providers. These include not only sponsors and developers but construction contractors, and equipment and technical service providers, all of whom must have adequate capacity to undertake the delivery tasks required of them and the financial standing to underwrite their obligations.

Skills and capacity

4.42 The extent to which the procurement process is efficient and risks appropriately allocated will, in large part, be driven by the skills and capabilities in taking the procurement process forward. This was recognised in the Government's most recent stock take of PFI.[14] Here the Government has recognised the importance of refining and improving the procurement process of the private financing of public infrastructure. Such skills should be backed by continuous, evidence-based evaluation of financing options and potential project structures.

CHANGES IN FINANCIAL AND INFRASTRUCTURE MARKETS CREATE NEW OPPORTUNITIES FOR ENGAGING THE PRIVATE SECTOR

4.43 As well as continuing to seek greater efficiencies through current engagement with the private sector, Government must also be forward looking and seek to respond effectively to structural changes in the finance and infrastructure markets globally.

4.44 Over recent years there have been some very substantial structural changes in financial markets. These changes potentially offer significant opportunities that could help secure efficiency gains through more effective private sector engagement, notably,

- there is unprecedented investor appetite for transport infrastructure, driving up the value of those assets; and
- growing private sector expertise and capacity to manage and price risk. Risk premia are therefore falling, allowing relatively lower private sector borrowing costs.

Unprecedented investor appetite

Infrastructure sector has been very active

4.45 Investment activity in the transport sector, especially in infrastructure, has been particularly active over the last 12 months or so. Major deals in the UK have included Ferrovial's acquisition of BAA and Goldman Sachs buying AB Ports. Overseas, Abertis intends to merge with Autostrade; the French government has sold its remaining stakes in 3 autoroute operators; and the City of Chicago has sold a 99 year concession on its Skyway toll road to Cintra-Macquarie.

4.46 Planned private investment in new infrastructure has also continued, for example, ports developments at Bathside Bay and Felixstowe South were recently approved.

4.47 Competition for deals has led to unprecedented multiples that the acquirer is prepared to pay. For example, BAA paid 30 times the annual business cash flow[15] for Budapest Airport; the service provider Cintra and the Macquarie Infrastructure Group consortium paid 63 times the annual cash flow for a 99 year concession on the Chicago Skyway in the US. These high multiples are an indicator of the private sector's perception of future profitability and therefore the potential value of this type of asset.

The market is global, large and growing

4.48 Fast, growing demand for infrastructure assets saw almost $100 billion raised globally to fund deals in the sector during the first half of 2006, a year-on-year increase of about 71 per cent.[16] Although this covers a wide range of transactions, including sales of existing private assets, it does provide a useful indication of the current scale and dynamic nature of activity in this sector.

[14] *PFI: strengthening long term partnerships*, HMT, 2006.

[15] As measured by EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization) as operating revenues less operating expenses, meaning it represents operating income before amortization expense, net benefit plans cost, and restructuring and other items.

[16] $100 billion raised as deals boom in infrastructure Financial Times (London), Jul 18, 2006.

Infrastructure as a distinct asset class

4.49 Ten years ago, activity in the sector was dominated by construction companies and new infrastructure deals financed through bank debt. The market has evolved considerably since then. Infrastructure is rapidly being treated as an asset class in its own right, that is, it is separately recognised by financial investors as offering an attractive diversification opportunity, as part of a wider portfolio of investments. This is being accompanied by the creation of infrastructure investment vehicles that are international in reach, considerable in scale and growing at pace. This is largely in response to pensions and savings markets exhibiting a heightened appetite for access to the stable, long-term cash flows that infrastructure assets can yield during the operational phase, see figure 4.1.

Figure 4.1: The evolution of the infrastructure market

Direct private sector appetite to build, operate and maintain transport assets is growing:

- **transport is highly capital intensive: private sector has a wealth of experience in the effective construction and delivery of large capital projects;**
- **long-life nature of transport assets: eases the financing of projects due to longer periods to service the debt; and**
- **predictable and stable cash flows: travel demand is relatively insensitive to economic cycles and so less vulnerable to many external factors.**

This is also supported by increased attraction by fund managers:

- **asset/liability matching is attractive to pension funds: utilities infrastructure funds, including transport, are seen as a new product, in-between equity and debt. Such funds act as a reasonable proxy for global GDP growth and are an alternative to index-linked bonds, for which yields are very low at present;**
- **earnings stability for private capital: earnings are relatively predictable over the longer term compared to other asset classes;**
- **often offer an established track record of cash flows;**
- **diversification: low correlation with more traditional asset classes allows a reduction in portfolio risk; and**
- **retail market is also starting to develop, e.g. for the Connect East project in Melbourne, some local people are buying a share in their road as this is seen as a social/community asset.**

4.50 The emergence of infrastructure as a more distinct asset class (and investment in transport projects and undertakings is an important subset of this asset class) has been furthered by:

- the track record established by a greater number of operational projects;
- capital recycling by original sponsors and equity investors seeking to deploy resources on new projects;
- the growth of intermediaries purchasing in the secondary market; and, importantly;
- changing asset allocation strategies adopted by pension funds, life companies and institutions seeking to match long-term liabilities with assets that are capable of generating long run predictable returns.

Supporting the pension fund sector

4.51 These trends have been particularly pronounced in markets where a high degree of workforce pension coverage has resulted in a steady and substantial flow of funds into industry, trade union and company pension schemes. This has, in turn, often been associated with the early development of the private financing of infrastructure. The Australian and Canadian markets are prime examples and it is noticeable that, more recently, an increasing number of institutions from these jurisdictions have, in the past two yeas, been among the most active participants in the growing number of infrastructure sector transactions globally.

Private sector appetite and ability to manage and price infrastructure risk is growing

4.52 In a further sign of the medium to long-term nature of this shift in allocation strategies, infrastructure fund managers and pension companies are exhibiting greater interest in acquiring development capacity, often at a premium to net asset value.[17]

Private sector capacity is increasing

4.53 Private sector capacity and expertise for managing all types of transport infrastructure risk is growing. Aspects include:

- construction and engineering groups extending their capacity to invest directly in long term concessions;
- the emergence of integrated infrastructure companies, where construction and engineering divisions are matched by considerable operational service business activities, plus facilities and system management capacities;
- the formation of consortia combining independent specialists to bid for PPP contracts in competition with these integrated groups;
- the growth of funds, specialist banking divisions and both listed and unlisted companies specialising in infrastructure equity investment;
- increased competition between different forms of financing from the banking and capital markets to support transport investment and increasing sophistication in financing; and
- growing sophistication in the commercial evaluation of project risks as part of the project financing, delivery and operation cycle.

4.54 In addition, the fact that the UK offers a stable system of financial regulation, low and stable inflation, and strong institutions is attractive to private investors because it creates a more favourable background in which to manage risks.

The maturing market for infrastructure has brought about reduction in the private sector risk premium for debt

4.55 In assessing the overall value for money likely to be delivered by different procurement options, Government needs to take into account the relative borrowing costs of the public and private sectors, and whether any differential in favour of the public sector is fully offset by the value to the taxpayer of risks transferred and implementation efficiencies gained. Equally, the overall cost of capital employed in private finance solutions will be

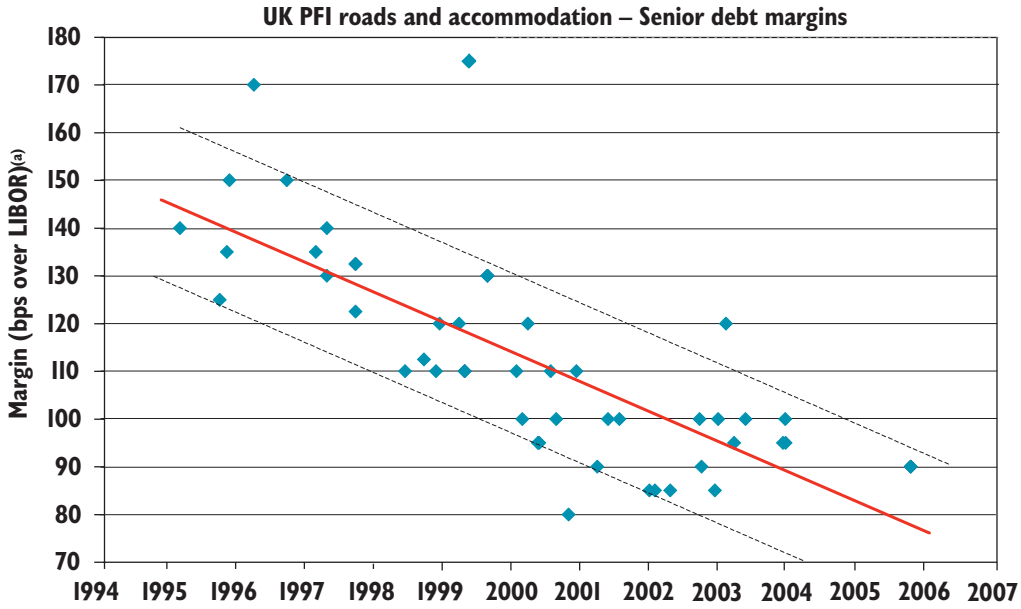
[17] For example, the competition between Henderson and Allianz to acquire John Laing plc, a listed PFI/PPP developer.

influenced by the return demanded by equity investors for taking on the delivery and operational risks, and the mixture of different classes of equity and debt required to deliver a viable, project-financing strategy (the gearing level).

4.56 In this light, the fact that long-term borrowing rates are presently at an historic low is relevant, but not the most important factor. Low real interest rates impact on borrowing terms for both government and its authorities, as well as major operating companies investing in facilities or project companies set up to deliver and service specific infrastructure. What is central to the debate about borrowing costs and the broader cost of finance is, first, the margin over and above government borrowing charged by private financiers for different categories of risk, and, second, the equity return required by investors. In both these dimensions there is evidence that the evolution of the PFI/PPP market has been supported by a lowering of the risk premia applied by debt providers and equity investors to projects with a similar risk profile.

4.57 Figure 4.2 shows the evolution of the costs of borrowing for the private sector for a portfolio of PFI schemes.

Figure 4.2 The margin of basis points above base rates, i.e. the price of risk



(a) Margin of basis points (bps) above base rate (LIBOR). LIBOR is the London Inter Bank Offered Rates, based on the interest rates at which banks offer to lend unsecured funds to other banks in the London wholesale money market.
Source: Dealogic Projectware.

UK is attractive because of macro economic stability

4.58 Figure 4.2 shows the margin at which lenders have provided debt, shown as basis points (bps) above the base rate (LIBOR), for a particular portfolio of road and hospital PFI projects,[18] i.e. projects for which the risk profile has not materially changed. The downward trend in margins over time reflects an increase in competitiveness between lenders and a reduction in their perception of risk.[19]

[18] Half are road projects, half hospital projects.

[19] This chart is intended to illustrate the trend in margins for a given portfolio of projects for which the risk profile has remained relatively stable over time. For other projects, which involve a greater level of demand risk, for example, the margins would be likely to be higher.

4.59 In the UK PFI/PPP arena, debt markets appear to have responded over time in the face of the lengthening track record of projects passing through the construction phase and into successful operation with a very low default rate. This, and the competition between different forms of senior debt financing, together with a closer understanding of the risks involved in delivering projects (now more frequently covered by standard terms and contractual conditions) have led to a significant narrowing of the differential between public and private sector borrowing costs.

4.60 Although extensive data series are not available, competitive processes and more established markets have also led to a lowering of the minimum equity returns required by sponsors and developers of projects, including third-party specialist investors in the sector. Whereas it was once common for bids to incorporate base-case equity returns in the high to mid teens (in percentage terms) for availability based projects this is now rarely the case.[20] Downward pressure on these returns is being furthered by the evolution of the secondary market where investors are prepared to pay high prices for equity interests in operational projects.

The maturing of financial markets and the infrastructure sector

4.61 The challenge for Government going forward is to continue to review the respective role of the public and private sector across the transport sector. The status quo is continuously shifting and much can be learned from experiences in the UK and internationally about what does and does not work. Strategy and procurement policy must continue to evolve and respond effectively to new opportunities that arise for private sector engagement in the transport sector, through appropriate allocation of risk from new advances and innovations in the market.

UK Government needs to compete for global investment

4.62 Within the environment of broader changes in the financial markets, transport as a sector has to compete for private funds that can often be deployed across a range of infrastructure opportunities globally. Attracting the private sector to invest is increasingly dependent therefore, on the transport infrastructure market being positioned favourably by government in a growing globalised market. This is particularly relevant given that the key players are international in focus and highly mobile, with portfolios sufficiently large in scale to take on big transport investments through better management of risks.

4.63 The UK has the opportunity to make the most of this unprecedented investor appetite, by ensuring that it continues to attract such investment where it is value for money. However, it cannot be complacent: where opportunities are not realisable private funds will go elsewhere.

Reflecting value of portfolio diversification

4.64 It is also important that government continues to scrutinise value for money assessment in all areas of private sector engagement (and more broadly, of course, across all public sector spending) to ensure sensible trade-offs are being made as part of the decision-making process. Developments in this process are already emerging. For example, portfolio diversification is valued by the private sector and therefore feeds through into investment decisions; the differentiated nature of returns on infrastructure investment may allow investors to accept a lower rate of return than would be required on other assets of similar riskiness.

[20] Those on which the SPV is paid where the asset is available (e.g. the road is available for use) as opposed to being paid for the use of that asset (eg real or shadow tolls).

CONCLUSIONS AND RECOMMENDATIONS

4.65 There are strong reasons why current circumstances suggest there is merit in the public sector continuing to secure efficiency gains through private sector engagement in the provision of transport projects. The key is finding the right balance between the public and the private sector to deliver projects, by allocating risks to the party best able to manage them.

4.66 If carried out effectively, private sector engagement has the potential to deliver significant efficiencies. Actions for the Government that would be likely to increase the efficiency of project delivery through the private sector are:

- offering certainty and transparency through a commitment to a programme of potential transport projects; and
- employing the right skills at all levels of government to secure efficiency savings.

4.67 It has also been shown that there are major structural changes in the finance and infrastructure markets, which open up new and unprecedented opportunities in the context of achieving value for money in the delivery of transport projects. This includes:

- unprecedented appetite for transport investment given a neat match between the long term and stable returns, and the requirements of pension fund investments; and
- the ability of the private sector to better manage the risks of such investment, which is allowing a narrowing of the gap between the costs of borrowing for public and private sectors.

Recommendation 5(c)

Continue to look for efficiency gains and secure value for money in the delivery of transport projects through the private sector by:

(i) Securing transparency and increased certainty for the private sector by using the opportunities provided by the development of 10-20 year strategies and 5-10 year statement of commitments to identify a pipeline of transport projects and programmes to be completed in partnership with the private sector.

(ii) Continuing to build adequate capacity and skills within government for efficient procurement and delivery of projects.

(iii) Recognising and responding to changes in financial and infrastructure markets to make the most of new opportunities for efficiencies through private sector delivery.

4.5 Reducing the complexity and uncertainty of the planning system

Headlines

The current system delivers thoroughly considered and evidence-based decisions. But there are three key challenges with the way the system operates:

- **It can take too long;**
- **It can create too much uncertainty for communities, businesses and promoters; and**
- **It can cost too much for participants and for the UK economy.**

The consequences of these problems are diverse and potentially substantial. Delays and the time taken to deliver new transport infrastructure can impact on the ability of communities to participate in the process, and on the UK's international competitiveness:

- **Participants (community groups, promoters, and objectors) often face direct costs in participating in a lengthy process and can be affected by blight and uncertainty;**
- **High-quality projects may not get brought forward because of fears of cost and uncertainty;**
- **Delivery of the infrastructure needed for the UK economy both to compete effectively and to raise the quality of life for UK society can be delayed. This means that the problems that investment is seeking to address may go unresolved, and in many cases may deteriorate;**
- **Associated private sector investment, such as information technology investment to manage logistic chains, may also be delayed;**
- **The direct impact of delays can be accentuated where the markets are European-wide (such as for ports and airports) and European competitors can move more quickly to deliver new capacity. This directly impacts on the UK's competitiveness; and**
- **Uncertainty and delays can create difficulties for both public and private sector to maintain finance for projects.**

There are a number of different features of the planning system that cause these problems, including unclear strategic direction, complex processes, lengthy public inquiries and decision-making periods; and scope for legal challenge.

The nature of the challenges presented by the current planning system leads to a wide range of impacts and costs. Recent reforms have brought improvement to the system, but it is clear that further incremental change is unlikely to be sufficient to fully tackle the challenges at hand.

5.1 The study's stakeholder engagement showed that there was clear consensus that the current planning system can be very costly and inefficient, especially for major projects.[1] The impacts on the UK of the system are potentially wide-ranging. This review is not the only one that is concerned with the relationship between planning and the regimes for delivering major infrastructure. The Barker Review of Land Use Planning will also bring forward recommendations in this area. The proposals below were developed in consultation with the Barker review, which covers a wider range of issues.

[1] Both town and country planning and many areas of environmental policy are areas for which responsibility has been devolved to the Northern Ireland, Scottish and Welsh administrations. Unless the contrary is stated or evident, references in this Chapter to current planning legislation are references to legislation that applies in England and Wales. Detail on recent reforms to the Scottish planning system are discussed below in Figure 5.6.

5.2 This chapter of the report is split into three sections:

- provides an introduction to how the current planning system for major transport infrastructure operates in England and identifies three main objectives that must be delivered by an efficient and legitimate planning system for major transport projects that provides for and responds to current and future needs and expectations;
- assesses how the current system delivers against these objectives – and concludes that there is a strong case for building further on recent reforms; and
- proposes a package of reforms that would ensure an appropriate balance between these different objectives, but which is less costly, less uncertain and has fewer delays than the current system.

5.3 The Annex to this Volume provides more detailed analysis of each of the individual proposals.

INTRODUCTION TO THE PLANNING SYSTEM IN ENGLAND

5.4 This section of the chapter:

- sets out the broad purpose of a planning system in a democratic, modern society;
- explores how the current system has developed from private Bills in Parliament to the current mode-specific processes with Ministers making final decisions;
- provides an overview of the key stages in the current system; and
- concludes with setting out the objectives of an effective transport planning system.

What is the purpose of the planning system?

5.5 The Government's objectives for the planning system are set out in the Department for Communities and Local Government's (DCLG's) *Planning Policy Statement 1: Delivering Sustainable Development*. "Planning shapes the places where people live and work and the country we live in. Good planning ensures that we get the right development, in the right place and at the right time. It makes a positive difference to people's lives and helps to deliver homes, jobs, and better opportunities for all, whilst protecting and enhancing the natural and historic environment, and conserving the countryside and open spaces that are vital resources for everyone."

Planning decisions are about balancing different objectives

5.6 The planning system therefore needs to play an impartial and transparent role in finding an appropriate balance between costs and benefits. This will involve balancing national, regional and local benefits; economic, environmental and social objectives; as well as possible tensions between an individual's rights and the needs of society as a whole.

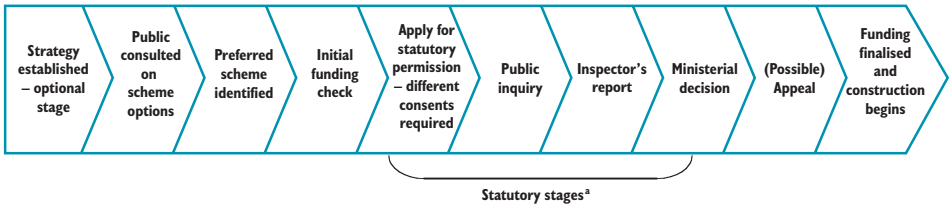
5.7 But government intervention of this kind can impose costs. Transaction costs (the costs of participation and the costs of administration) can be significant. Government intervention can itself risk creating further market distortions ("government failure"), e.g. when it favours one development proposal over another. It is therefore essential to ensure that the system is efficient in delivering its objectives, while maintaining thoroughness and fairness.

The current system for major transport projects

5.8 The current planning system for transport projects is highly complex and different elements of it have evolved in different, and often incremental, ways over a number of decades in response to the needs of the different periods in its history. The main changes that have occurred over a number of decades are outlined below. The process for delivering major transport projects typically involves the application of a number of separate, but overlapping, planning systems, that vary between modes. In practice, the different systems are co-ordinated as much as possible.

5.9 The system, as a whole, consists of a number of distinct stages and applies to both government-funded schemes and those proposed by private developers. Figure 5.1 sets out the main stages of the process through which an individual major transport scheme usually progresses before planning permission is determined.[2] The stages usually operate sequentially, but there are inter-relationships between the different stages.

Figure 5.1: The planning process from start to finish



[a] *For more information on the statutory stages of the planning process for strategic transport projects, see Figure 5.2.*
Source: Eddington Study.

The early stages of the process

5.10 Before an application on an individual scheme is made, in some circumstances government will have published a strategic policy document such as a White Paper. This document may set out what sort of development it is anticipated will be required. Where this exists, the strategy is fed through into the different spatial tiers of the planning system – the Regional Spatial Strategy (RSS), and then the Local Development Framework (LDF). However, this staged process does not always happen as an integrated and seamless process, either because there is no published government strategy or because the RSS and LDFs are already in place before the White Paper or strategy is published.

5.11 A specific scheme must then be identified and tightly defined before an application can be made. Usually more than one detailed scheme will be worked up to compare different ways of building the scheme, e.g. a rail scheme with slightly different routes or specifications identified. An extensive public consultation will usually be carried out before the preferred option is identified and worked up in more detail, e.g. with relevant local authorities and other statutory bodies, and with the general public via the local press and noticeboards in libraries and community centres. The promoter has discretion as to how to carry out the consultation, and practice varies.

[2] References to 'planning permissions' or 'necessary powers' in this document refer to both planning permission under the Town and Country Planning Act, and any other required authorisations (such as Orders or consents under other Acts).

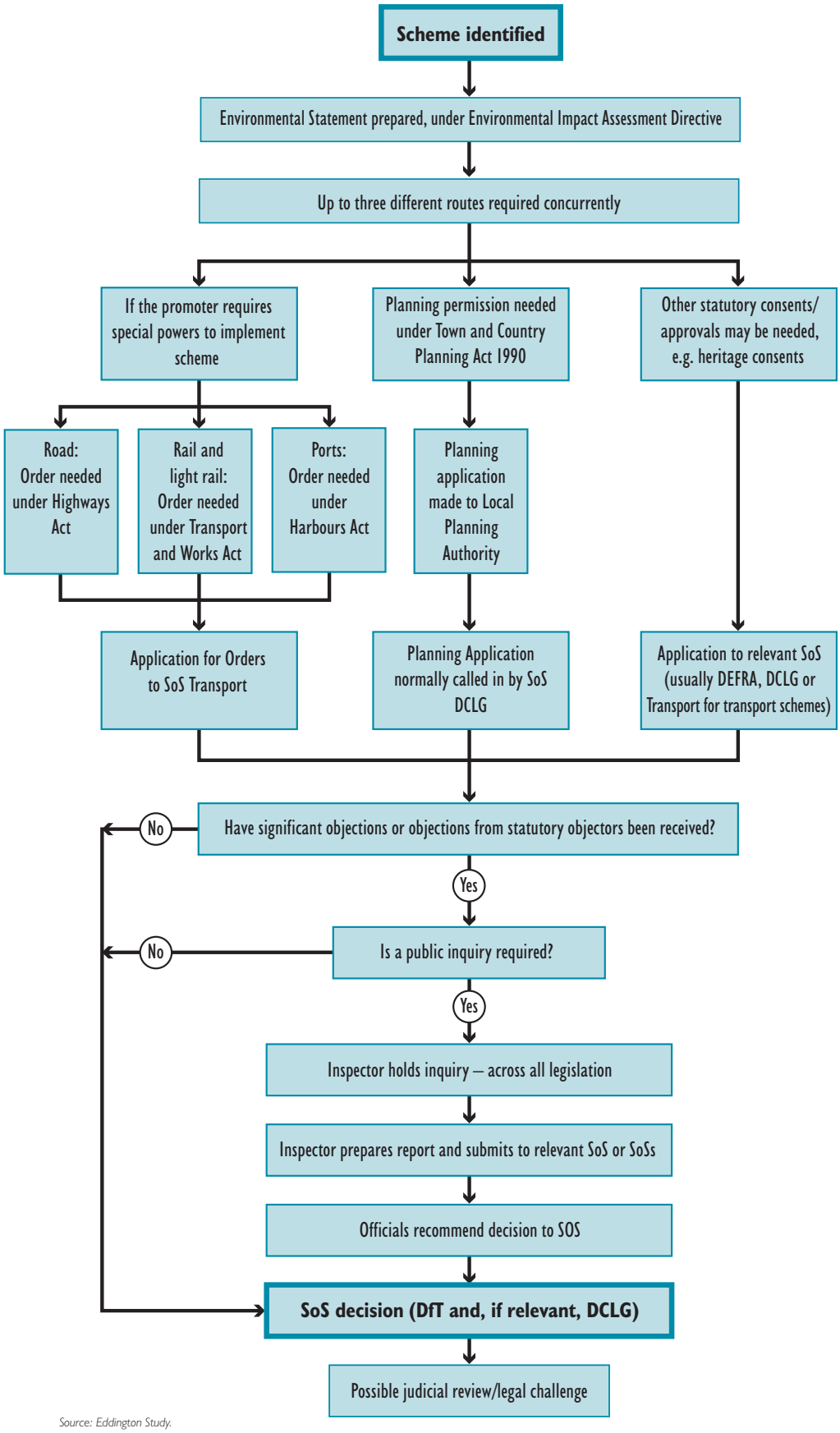
5.12 Once a preferred option is identified, it is best practice for the promoter to then consult the public again on the more detailed scheme. This process helps to identify problems at an early stage and resolve areas of dispute in an informal process. It can also be important to get public buy-in to a proposal.

5.13 During this period, the promoter is also likely to start lining up finance, whether this is from public sources of funding or from private capital markets. This acts as an initial filter for projects that are unlikely to be implemented because of costs (especially for projects funded from taxation) or projects that are too high risk in terms of the possible future returns (for both privately and publicly funded projects).

The statutory stages of the process

5.14 The application for a specific scheme then enters the statutory stages of the planning system. This process is set out in Figure 5.2. The relevant legislation contains all the necessary powers to authorise the various aspects of a development project. It includes powers to impose any conditions that need to be attached to the authorisations, such as environmental mitigation measures, to allow the development to proceed. A wide range of supporting information is required for an application, including an environmental impact assessment of the development.

Figure 5.2: Summary of typical statutory routes for strategic transport infrastructure schemes



Source: Eddington Study.

5.15 Applications for statutory permissions are made to the relevant decision-making authorities. A number of different Ministers may be involved. This will include:

- applications to the Secretary of State for Transport for consents under transport legislation and/or deemed planning permission under the Transport and Works Act 1992;
- applications to the local planning authority, if planning permission is required. For major transport infrastructure proposals, the Secretary of State for Communities and Local Government will almost invariably 'call in' and then decide any applications for planning permission (and related applications), and in some cases will be required to also act jointly with the Secretary of State for Transport in determining the application; and
- for certain projects, other consents may also be required which other Ministers are responsible for determining. For example, applications for listed building or conservation consent are made to the local planning authority, in a similar way to planning permission, and would similarly be called in by the Secretary of State for Communities and Local Government.

5.16 A single project can require many different consents. These are set out in Figure 5.3. For example, BAA's application to develop Heathrow Terminal 5 in 1993 eventually sought 37 separate applications across at least seven different pieces of legislation. More recently, the application made by Hutchison Ports UK to add new capacity to Bathside Bay required applications under at least five different Acts; and the Thameslink 2000 scheme required over 30 consents under four different Acts.

Figure 5.3: The current system is very complex – with a number of different consents required for a single project

The current system has developed in a number of different ways that are mode-specific, as well as often engaging the broader land use planning system. The key consents that are likely to be required for transport infrastructure development are:

- **for heavy rail, light rail or applications for inland waterways, an order under the Transport and Works Act 1992;**
- **for ports applications, an order under the Harbour Acts 1964;**
- **for roads, an order under the Highways Act 1980; and**
- **planning permission for development may also need to be sought under the Town and Country Planning Act 1990.**

A further complication is that major transport projects often involve a number of inter-related developments, each of which plays a critical role in the potential effectiveness of the project as well as helping to mitigate negative environmental impacts. For example, a ports development will often require improvements to the road and rail links which allow freight to enter and leave the port. Highways development may involve mitigation works, such as tunnelling or noise-shielding in sensitive areas, to reduce environmental impacts. New powers may be required to carry out these works. This usually means that a combination of the above powers would need to be sought, both for new development and for expansion of existing infrastructure such as widening of a highway or expanding an existing port.

The Dibden Bay proposal, which was a typical example of the complexity of a major development such as a port or airport, required a number of consents under the following legislation:

- **Harbour Revision Order under the Harbours Act 1964: this was to permit dredging of the harbour to ensure large ships could berth safely at the port;**
- **order under the Transport and Works Act 1992: to provide for the necessary upgrades to the rail connections to the ports;**
- **planning permission and orders under the Town and Country Planning Act 1990: to provide distribution and storage facilities for the containers once unloaded from the ships; and**
- **applications under the Acquisition of Land Act 1981: to acquire the land necessary for the development to go ahead.**

5.17 The planning process also needs to be compatible with relevant European Community law requirements and human rights legislation. The key European Directives that impact on the planning process are:

- Environmental Impact Assessment Directive – this requires a promoter to carry out a detailed assessment of the likely environmental impact of the development and consider options to mitigate the impact. The promoter is required to submit an environmental assessment with the applications for consideration by the relevant authorities. This is a critical component for understanding the environmental impacts of the development;
- noise and air quality directives – which provide limits on noise and air quality levels; and
- Habitats Directive – which is aimed at development in 'designated European sites', which are environmentally sensitive locations. Where a development would have a negative impact on such a site, and there is no alternative solution, the Directive requires the development to be of 'over-riding public interest'.

5.18 The requirements of the Human Rights Act 1998 are also applicable to seeking planning permission for transport projects, since the development of transport infrastructure often impacts on individual property rights and interests.[3] This creates duties to ensure that the system considers the balance between social need and individual rights in an impartial and balanced way.

5.19 Once the applications for statutory consents are lodged, a public inquiry will most likely be called for any major development proposal, as this will be likely to raise significant objections and a wide range of issues. The inquiry is usually headed up by a Planning Inspector – a civil servant with planning expertise. The inquiry provides a formal forum for:

- public consultation and participation – both objectors and interested individuals, such as property owners or local community members, have an opportunity to present their views;
- accessing information that can improve the quality of the proposal, such as developing a better understanding of the environmental impacts or economic returns of the development; and
- testing and challenging the details and merits of the application.

5.20 After the inquiry, the Inspector takes time to prepare a lengthy written report and recommendations. This period allows both the written and oral evidence which has been submitted to be fully considered. The Inspector weighs up the different evidence, seeking to balance externalities, such as environmental impacts, appropriately. The Inspector's report will contain a recommendation as to whether the project should be granted the necessary permissions to proceed, and may also suggest extra conditions that should be imposed on the development, such as trees or wildlife that should be protected, or conditions about disposal of waste from the construction works. Usually these conditions relate to environmental mitigation measures. The report is then submitted to the relevant Ministers.

[3] In particular, planning cases potentially engage Article 1 of the First Protocol, Article 6 and Article 8 of the European Convention on Human Rights which is incorporated into domestic law by the Human Rights Act 1998. Article 1 of the First Protocol provides for the protection of property; Article 6(1) of the Convention provides, inter alia, "In the determination of his civil rights and obligations... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law"; and Article 8 provides for a right to respect for a person's private and family life, his home and his correspondence.

5.21 As discussed above, the application is likely to cut across more than one consent regime. Each of the regimes has its own departmental home and Minister responsible for making decisions under them. This means that a number of different Ministers, in different departments, can each be involved separately in making a decision in relation to various aspects of a single major transport infrastructure proposal.

5.22 Each of the relevant Ministers considers the Inspector's report and recommendations and reaches a final decision on whether the project should be granted the necessary permissions to proceed and, if so, whether any conditions should be imposed. In the vast majority of cases, Ministers accept the Inspector's recommendations. In doing so, Ministers are performing a quasi-judicial role, as set out in Figure 5.4.

Figure 5.4: What is involved in a Minister's quasi-judicial decision role?

Under the current system, Ministers perform a quasi-judicial role when deciding planning applications (e.g. under the Town and Country Planning legislation or under transport-specific legislation). This imposes strict limits on the factors that can influence their decisions.

In performing a quasi-judicial role of this kind, the Minister/s concerned must act within the usual confines of administrative law. Constraints on the decision-making process exist in both legislation and in the common law. The constraints of EC law and under the ECHR derive from UK legislation but enjoy supremacy. The Minister/s must make a "reasonable" decision i.e. in reaching their decision they must apply logical or rational principles. They must neither exercise their discretion on the basis of irrelevant factors, nor fail to take account of all relevant considerations (including, but not limited, to those prescribed by the legislation concerned). They will, of course, need to consider any relevant policies and how they should be applied in the context of the proposal but they will not be involved in the formulation or development of relevant policy during their period as decision maker.

The decision-making process must be fair, open and impartial. If it is not, it is open to challenge through the courts by judicial review or by means of a statutory challenge in the courts under the relevant Act. Departments go to considerable length to set up appropriate arrangements to ensure that the process does not give a basis for legal challenge against the decision on propriety or other grounds.

5.23 The considerations that will need to be taken into account for a particular planning decision will depend in part upon the specific powers conferred by the specific provisions of the relevant regime. For example, planning applications made under the Town and Country Planning Act must be determined in accordance with the statutory Development Plan, which consists of Regional Spatial Strategies (RSS) and Local Development Plan documents, unless there are 'material considerations' which would suggest otherwise. National policy, such as a transport white paper, an environmental white paper, or a DCLG Planning Policy Statement[4] would all be considered as important material considerations, if not already incorporated into the Development Plan.

[4] Planning Policy Statements (PPSs) are produced by the government to explain statutory provisions and provide guidance to local authorities and others on planning policy and the operation of the planning system. The PPSs relevant to transport cover issues such as delivering sustainable development, biodiversity and conservation, transport, housing, retail, green belts etc. See www.communities.gov.uk.

The final stages of the process

Legal challenges

5.24 Judicial review and statutory legal challenges are important safeguards against the improper exercise of these planning powers. Opportunities for legal challenge arise at a number of stages of the planning process. A consultation paper may in some circumstances be susceptible to challenge by way of judicial review.[5] Aspects of a White Paper or of other strategic policy statements may also be open to challenge by way of judicial review,[6] although the law is still developing. This needs to be borne in mind in considering the discussion that follows in this Chapter. The final planning decision is also subject to legal challenge. In the event of a legal challenge, the project generally cannot advance until the case has been heard and determined. Delays of two years or so are possible, although many cases will be heard within six months.

5.25 Of course, not all projects are subject to appeal or judicial review. Legal challenges are most likely to be successful where a process has clearly not been carried out properly or a substantive environmental issue has not been addressed – i.e. where there are valid reasons to revisit the decision. However, legal challenges can also be used inappropriately by a small minority of parties with the main intention of delaying progress on a scheme or a government policy. Currently there appears to be a growing trend towards legal challenge, especially of higher-profile projects.

Finalising funding

5.26 The final stage in the process, finalising the funding, happens outside the statutory planning system. A promoter who has obtained all necessary legal powers to proceed then needs to finalise the funding required to construct the project. Any conditions that have been imposed may also have changed the costs of the project. It is therefore not possible to finalise the funding before this point, whether the project is funded from public or private sources.

Hybrid bill process can provide an alternative

5.27 Instead of an application going through the process outlined above, the Government has the option of introducing a hybrid bill to Parliament for a particular project. Hybrid bills allow the necessary approvals to be granted through a single Parliamentary Act that gives both public and private powers.

Hybrid bills are used infrequently

5.28 In practice, hybrid bills are used infrequently. The Crossrail Bill is currently going through the process. This is the first hybrid bill since the Channel Tunnel Rail Link, which received royal assent in 1998. If enacted, the Crossrail Bill would give the powers needed for the construction, maintenance and operation of Crossrail, a new east-west railway linking Maidenhead and Heathrow with Shenfield and Abbey Wood through new tunnels under central London.

5.29 As a Parliamentary process, rights of legal challenge are reduced and there are more defined consultation processes with a hybrid bill process than in a standard planning inquiry. Hybrid bills also take up considerable Parliamentary time and can add considerable pressure to a crowded legislative calendar and the timetables of Parliamentary committees. The Transport and Works Act 1992 (which provides the necessary powers and deemed planning permission for heavy rail, light rail or inland waterway development) was a deliberate move away from a parliamentary process with a concern over pressure on Parliamentary time being a key driver for change.

[5] See, for example, the "Medway case" [2002] EWHC 2516.

[6] See, for example, the "Air Transport White Paper cases" [2005] EWHC 20 (Admin).

Figure 5.5: The planning system in Scotland

Planning responsibility is devolved to the Scottish Executive and, as with the English planning system, the Scottish system continues to evolve. Scotland's planning processes for transport projects have recently changed from requiring an Act of the Scottish Parliament to a decision by a Scottish Minister.

The Scottish Executive published a White Paper, *Modernising the Planning System*, in June 2005, and introduced a comprehensive Planning Bill in the Scottish Parliament in December 2005. The aim of the reforms is to make the Scottish planning system more efficient – with revitalised and regularly updated development plans – and more inclusive, with many measures to improve public participation in the system. One distinct element is a statutory status and role for Scotland's National Planning Framework (NPF), which will both set out the Scottish Ministers' strategy for the spatial development of Scotland and designate "national developments" – projects of strategic national significance. The NPF will analyse development trends, identify key areas of change and highlight the strategic challenges Scotland faces. It will provide a national context for development plans and planning decisions; set out Scottish Ministers' priorities for sustainable development, growth and regeneration; and provide a forum for co-ordinating and integrating the spatial elements of the strategies and policies of the Scottish Executive, public agencies and local authorities.

The Scottish Executive introduced the Transport and Works (Scotland) Bill in June 2006 which confers an order-making power on the Scottish Ministers for the authorisation of rail and tram developments, rather than delivering them through a Private Bill process. The Bill provides for all transport developments of national significance (which includes heavy and light rail, inland waterway, trunk roads and major harbour/port developments) as designated within the NPF to be subject to Parliamentary approval. Since the projects are set out in the NPF, this should ensure that inquiries will concentrate on local effects rather than matters of principle or policy. The Bill also provides a right of access to land to prospective promoters in order to improve the design, development and route specification of proposals and thereby reduce instances of blight and objection. Decisions on individual projects will now be made by Scottish Ministers, rather than by the Scottish Parliament.

The system continues to evolve

5.30 The Transport and Works Act (TWA) was enacted in 1992. This was the most recent substantial reform to the transport planning legislation and is the most recent transport planning Act. But since then, individual elements of the system have continued to evolve in more incremental, and sometimes uncoordinated, ways, without the design of the system being considered as a whole. Reforms to the TCPA (which applies to the planning process more broadly than transport alone) have seen changes being made to the inquiry stage. These changes are in the process of being rolled out but do not currently extend to transport legislation.

Figure 5.6: Major Infrastructure Project procedures – recent reforms to the Town and Country Planning Act

The Planning Green Paper in 2001 (which cut across the whole of planning policy covered by the Town and Country Planning Act: housing, commercial development and infrastructure) included specific proposals on major infrastructure projects ("MIPS" proposals). Some key procedural proposals for infrastructure projects of national or regional significance were enacted in the Planning and Compulsory Purchase Act 2004. The key provisions are:

- **the Secretary of State is empowered to "call in", for his own decision, applications for planning permission and certain linked applications if s/he thinks that the development concerned is of national or regional significance;**
- **the promoter is required to prepare an economic impact statement for submission alongside their planning application;**
- **separate sessions of the public inquiry may be held concurrently by a team of Inspectors – this is intended to allow a number of different issues (e.g. environmental impact, design, traffic impacts, etc.) to be considered simultaneously, rather than consecutively; and**
- **The Secretary of State is required to set a timetable for his decision on "called-in" applications. This may vary between projects.**

These new procedures are starting to be rolled out, but have not yet been fully tested. They do not currently apply directly to inquiries under transport legislation which was not amended alongside the TCPA.

The planning system reflects changes in society

The planning system has evolved in response to change

5.31 The current system has developed over many decades in response to a number of different drivers: changes in domestic policy and law; new EC and ECHR law requirements; and cultural and social changes. The three main areas of change are:

- a deliberate move away from the Acts of Parliament used for the 19th century railways and throughout the British Rail era to the system we have now – these changes were instigated at the request of Parliament and reinforced when the TWA was introduced in 1992. More recently, the relevant Select Committee argued against the-then DETR proposals to introduce a Parliamentary process for Major Infrastructure Projects ("MIPs") as part of the 2004 Town and Country Planning Act reforms. In response to these arguments, the proposal was dropped from the final Bill;
- EC law and ECHR developments – EC law and the European Convention on Human Rights (ECHR) impose requirements that impact significantly on the development of transport projects. The main areas of EC legislation that impact on planning relate to environmental impacts and the need for adequate public participation in relation to such matters. Such requirements have developed in response to growing expectations and awareness of the need for environmental protection; and
- broader social and cultural developments – these mean that more people have views on the role of transport and the need for investment and there is a greater expectation from individuals and communities to have their views heard and taken into account. This can also be seen in the growth of

environmental awareness as people become more aware of the need for sustainable development and want to participate actively in decisions that affect them.

5.32 Given the extensive social and economic change that has occurred over recent decades, it is right to consider if current structures will remain appropriate for the future and will be able to respond effectively to changing challenges and expectations. As social and economic change continues over the next 25 years, the planning system will need to be suitably responsive to continue to support society's expectations, and deal with the increasingly complex environmental issues that we face in delivering the infrastructure necessary to support sustainable economic growth. These changes continue to pose new challenges for ensuring the process remains efficient and accessible.

WHAT DOES THE UK NEED FROM A PLANNING SYSTEM FOR TRANSPORT PROJECTS?

5.33 As set out in PPS1, *Delivering sustainable development*, "Sustainable development is the core principle underpinning planning. At the heart of sustainable development is the simple idea of ensuring a better quality of life for everyone, now and for future generations."[7] Planning contributes to sustainable development through supporting sustainable economic development and protecting and enhancing the natural environment.

5.34 Within this context, this Study has identified three main objectives that must be delivered by an efficient and legitimate planning system for major transport projects that provides for and responds to current and future needs and expectations. Such a system should ensure that:

1. The infrastructure projects the UK needs to support sustainable development are identified and, where appropriate, brought forward;
2. Environmental, social and economic objectives are balanced appropriately in the final decision;
3. The process is fair, effective, and transparent:
   - Fair – interested parties ("interested' parties throughout this document is intended to also include "affected" parties) should have an opportunity to put forward their views, and these views will be properly considered;
   - Effective – the final decision-maker must be able to have thoroughly determined the relevant facts and strike a balance between different views in a timely and cost-effective manner; and
   - Transparent – participants and the public understand how the process and decision-making works and to what timetable.

In delivering these objectives, the costs and duration of the process should be proportionate, and uncertainty minimised.

5.35 A system that meets these objectives would be able to deliver efficiently the transport infrastructure required to support the UK's quality of life, by supporting the economy, whilst balancing the social and environmental impacts of development and ensuring participation for local communities and other interested parties.

[7] See Government's Planning Policy Statement 1 at www.communities.gov.uk.

THE IMPACT AND CHALLENGES OF THE CURRENT SYSTEM

5.36 This section looks at how the current planning process performs, and identifies where there are opportunities to build further on previous reforms and recent improvements to the system. It asks whether the current system provides an efficient means to understand and balance the environmental, economic and social impacts of the transport infrastructure that is needed to enable the UK to face future economic and environmental challenges and opportunities over the next 25 years.

5.37 There are many conflicting views as to whether the system achieves the right balance between different objectives in the decisions that it reaches. To a great extent, people's viewpoints are dictated by the weight they ascribe, as individuals, to each element. The balancing exercise that needs to be undertaken in relation to each planning decision is therefore a crucial yet difficult job. The study has not found any evidence to suggest that the planning system often gets the balance wrong: sensible judgements are made that allow the UK to grow and develop without imposing unjustified environmental and social costs.

5.38 However, there are three key challenges commonly identified with the way the current planning system goes about reaching its final decisions:

- it can take too long;
- it can create too much uncertainty for local communities, businesses and promoters; and
- the system can cost too much for all participants and for the UK economy.

5.39 It is clear that a planning system is needed to play an important role in seeking to mitigate some of the costs of development, such as environmental damage. It does this in a thorough and fully considered way that also aims to ensure fairness. At the same time, if a system is poorly designed or operated, it risks imposing large costs on society and the economy. The costs of the system need to be proportionate to the benefits that it can deliver. Although it is difficult to quantify the costs that the system may be having, it is clear that they affect both the direct participants in the system (promoters, local communities, other objectors) and the UK more broadly, including small and medium-sized businesses wanting to make their own private investment decisions.

5.40 The Study has considered a range of case studies both in the UK and further afield to understand different experiences of the system and to consider different options for addressing them.

Clear messages from stakeholders

5.41 During the course of the Study, the team has spoken to a large number of stakeholders from business organisations and individual businesses, local government, Regional Assemblies, Regional Development Agencies and non-governmental organisations. One of the key messages that came out clearly through this engagement was the broad consensus around the challenges of the planning process for major projects.

5.42 Critically, respondents to the Study consistently noted that the length of time the process takes, and its uncertainty, can create significant economic costs – both directly for participants, and indirectly for the UK economy and society as a whole. Over the years, Government has made a number of positive attempts to address the challenges presented by the planning system, with some degree of success. However, it is clear that Government and stakeholders both recognise the need for further, continued, improvement.

5.43 Stakeholders' comments also supported the view that it is not always the planning system itself which is at fault. For example, deficiencies in the detail of the application of the project selection process as undertaken by the promoter can lead to delay or additional costs while these deficiencies are rectified so that a fair decision can be made.

The process can take a long time

5.44 A selection of the comments received by the Study is included in Figure 5.7.[8]

Figure 5.7: Stakeholders have identified different challenges associated with the current system

Business very much supports the focus on tackling barriers such as planning issues. It is vital to address these issues to ensure that the impact of investment is maximised...The planning system is widely seen as a key barrier to the delivery of transport projects. Experience to date in relation to Terminal 5 at Heathrow, rail and road projects and ports developments reinforce frustrations. In a crowded democratic country, it is inevitable that major projects will take some time to get approval and to deliver, but there is significant scope to increase certainty and improve processes and timescales. This must be a key focus if the impact of investment is to be maximised (not just public infrastructure funding but also private sector investment)." CBI

"There is significant concern expressed, especially by Government and business interests, about the length of time it takes to build transport projects... Where delays occur, they are often blamed on involvement of the public or on the planning system per se, and this is often used as an argument for reducing the level of public consultation or public involvement in the planning of transport infrastructure, or at least to reduce the scope of inquiries... The reason for delays lies elsewhere – in fact...earlier and better public involvement can be beneficial." Transport 2000

"The procedures for authorising major projects are notoriously slow... the procedures under the [Transport and Works] Act have proved slow and cumbersome and the provision for parliamentary approval in principle for projects of national importance has not been used. Planning procedures for roads and airports are equally slow and cumbersome.... Efforts to speed up the processes in the past have proved unsuccessful".

London First

5.45 The current process can be very time consuming. It may take a number of years for a promoter to work up their scheme in detail, including considering different detailed options such as route variations or different mitigation or design options. This process all needs to be co-ordinated with the financing horizons, which can be difficult, as economic circumstances and the cost of capital can change markedly over the time periods in question. The total length of the whole process, from scheme development through the public inquiry to the decision process, can make it difficult for local communities to be properly engaged with the process or to understand how the proposals affect them in practice.

5.46 The Barker Review of Land Use Planning analysed on the length of time taken for cases across the planning system (more broadly than transport). It was clear that transport cases, alongside other major infrastructure, took the longest time of any development to progress through the planning system.[9]

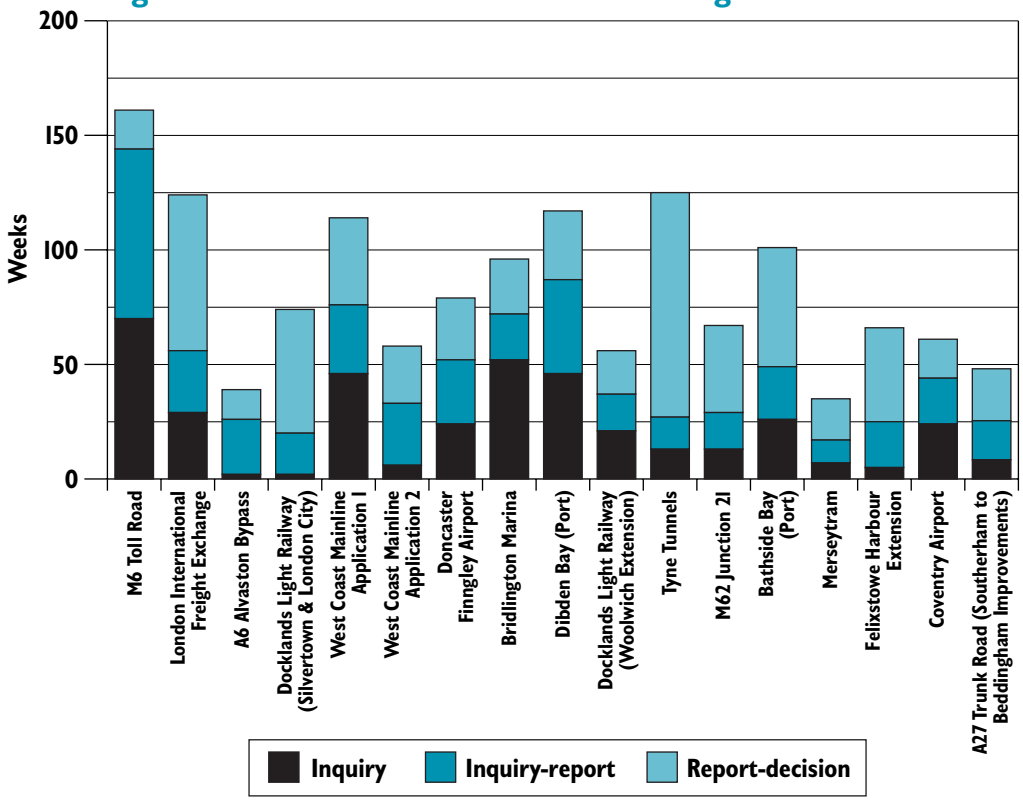
[8] The full consultation responses are available on the study website.

[9] Barker Interim report was published on 4 July, 2006. It can be found at www.hm-treasury.gov.uk.

5.47 Individual scheme applications can take a very long time to progress through the statutory part of the planning system. Figure 5.9 sets out the amount of time taken through three distinct phases of the system:

- the time spent at inquiry;
- the time taken by the Inspector in writing up their report; and
- the time taken for Minister/s to make the final decision.

Figure 5.8: Individual cases can take a long time



Source: Eddington's analysis of Planning Inspectorate and DfT data.

5.48 The above chart demonstrates that the time taken can be extensive - often years, rather than months. There is also considerable variation, which creates uncertainty for promoters and participants. Most major transport applications take a number of years to get through the system. The M6 toll road, Manchester Airport and the London International Freight Exchange all took over three years to reach a conclusion. Terminal 5 is an extreme example of the delays possible in the system. The application was lodged in 1993, the public inquiry sat for a total of 46 months, the Inspector took a year and a half to write his report, and the Government took 11 months to consider the report before issuing a decision. In total, this meant that it took more than seven years from the date the application was made to the issuing of the final decision.

The process can be unpredictable

5.49 Given the complexity of major projects, to ensure a thorough and fair consideration of the issues, some time is required to consider the impacts and likely effects before being able to reach an informed view on whether it should proceed. But one of the challenges with the current system is that given the various different stages; different requirements; and different decision-makers, it can be very difficult to know how long the process will take.

5.50 The situation is further complicated by the different roles that Ministers play at different stages of the process. These range from setting strategy through planning policy statements and White Papers which may be relevant to specific development proposals; prioritising publicly-funded schemes within their own departmental budgets; and then acting in a quasi-judicial way to make final decisions on specific schemes. These sometimes overlapping roles, which are carefully managed through the creation of separate teams and robust information barriers within government, when combined with Ministers' heavily constrained decision role at the end of the process risks creating a misperception externally about where democratic accountability sits within the system. These complexities are also evident where private sector development, such as ports or airports, impacts on public sector infrastructure such as highways or rail capacity. It also means that the process is not always transparent for participants or observers.

The way decisions are made can be unclear

5.51 The sometimes complex process of how decisions are made can also create uncertainty for developers and local communities and businesses. Under the TCPA, the statutory development plan provides the starting point for decision making but a very wide range of factual factors can influence decisions, through the concept of 'material considerations' in planning law. These factors can range from national policy issues as diverse as economic growth and regeneration through to climate change, as well as site-specific issues such as local flora and fauna. For the general public, and non-specialists, it is not clear what the Minister's decision role entails in practice. As discussed above, the extent to which 'political' considerations can influence the final decision is considerably less than is perceived to be the case.

The process itself can be highly costly

5.52 A disproportionately costly process is an inefficient use of resources for all parties directly involved in the process and also for the UK economy and society more broadly. High costs can prevent effective representation for all interested parties. These costs include the lengthy time commitment required to effectively participate. This is likely to impact particularly on smaller businesses, or individuals, who may not have the flexibility or resources to actively participate throughout a lengthy process with an undefined end date. The costs of participating in the system may mean that unless individuals feel very strongly about the merits or costs of a project, they may often choose not to participate at all. Survey evidence suggests that majority local views are not necessarily represented fully in the planning system.[10]

5.53 The process can also lead to cost-escalation for individual projects. Cost escalation can occur in two distinct ways:

- the sheer length of the planning process means that cost inflationary pressures are likely to come into effect, such as increased land prices or construction costs (labour, energy and construction materials); or
- the Inspector may suggest conditions be added to a project. These conditions are usually to mitigate environmental effects and can impact substantially on project costs. These conditions can then later be accepted, added to, or reduced by the decision-making Minister.

5.54 In either situation, the promoter could attempt to hedge against the risk of construction cost inflation by entering into contracts before the permission is granted. However, their ability to do this is limited because of the risk that the project specification will be altered during the consents process. The Highways Agency has been trialling a new process of engaging early with contractors on a without prejudice basis to try and identify potential construction costs and pressures earlier in the process to avoid the 'surprise' of new costs. There are mixed views as to how successful this new approach has been.

[10] For example, Saint Index, March 2006 http://www.communicateresearch.com/poll.php?id=76.

THE NATURE OF THE SYSTEM HAS CONSEQUENCES FOR PARTICIPANTS AND THE ECONOMY MORE BROADLY

5.55 Although the previous discussion identifies distinct challenges, it is the combination of these that can have the greatest impact. It can create significant direct and indirect costs and implications for the promoter of schemes, participants and the UK economy.

The effects of planning blight can be prolonged

5.56 Delays in the process impact directly on those potentially affected by the development. While permission is being sought for a specific development, planning blight can affect surrounding areas. This can be manifested in reduced property values, or an inability to sell or develop the property further, until the decision on the scheme is made. This can create considerable uncertainty for those people living or working in the surrounding area, as well as local businesses. For example, this has been seen in relation to property affected by developments such as the Thameslink 2000 proposals, where land has stood derelict because planning permission to develop it cannot be sought since eventually it may be required for the Thameslink development. This uncertainty can have economic impacts but it can also have a significant 'uneconomic' impact, for example the stress of waiting and living with such uncertainty.

The public can face high costs of participation

5.57 The complexities and length of the current process mean that the costs of participating for local communities can be significant. In the worst cases, they may act as barriers to participation, and mean that interested individuals do not feel able to be heard. These high costs can also affect organisations such as local authorities. During the Terminal 5 inquiry, for example, the sheer length of the inquiry process and the costs of legal representation throughout the inquiry, contributed to Hillingdon District Council having to pull out of the process, as its funds had been exhausted.

High-value proposals may not be brought forward

5.58 There is a clear risk that economically beneficial projects are not brought forward for consideration and debate. It is appropriate that some projects are not brought forward or do not proceed successfully through the system if this is due to the scale of their environmental impacts, where these impacts are real and impact on the net value of the project by outweighing the benefits of the project. However, where it is the costs of the system or uncertainty about how it operates that is affecting decisions to invest – this suggests that the costs and inefficiencies of the system may be disproportionate.

5.59 By its very nature, it is difficult to quantify or estimate the impact of this risk. Projects may not be brought forward for three distinct reasons which are likely to be inter-related:

- promoters may not be able to afford the process because the transaction costs of the system are disproportionate to the value of the scheme. This means that in some situations, it is not cost-effective to bring forward projects, although they may deliver benefits;
- the complexity of the system may act as a barrier to promoters who are not experienced in its use. In the privately funded transport sectors this may have implications for competition and act as a barrier to entry, especially for smaller businesses. In the public sector, institutional knowledge and experience can be lost between major projects; and
- uncertainty may also impact on the willingness of investors to bring forward projects in the first place.

5.60 A costly system may result in proposals not being brought forward because parties simply cannot afford the process. This is likely to impact particularly on smaller projects, which as the Study has identified can often have good returns per pound spent – a costly system will have a proportionally greater impact on the delivery costs of a smaller project. It may also impact on the ability of small-medium businesses to bring forward proposals. Where good projects are not brought forward, this can mean that the congestion and delays on the transport network remain unresolved and the costs these impose persist.

The realisation of benefits can be delayed

5.61 A long process also risks delaying or not realising the full benefits of schemes at an earlier stage. Again, while the project is being considered, the transport problems that it is seeking to address are likely to be continuing to get worse and imposing greater, direct costs on users of the network and indirect costs on the economy more broadly. These affect all travellers, whether businesses, freight, commuters or leisure travellers. At the extreme, delay may cause projects to be abandoned.

Associated development may not go ahead

5.62 Associated development, including private investment, may also be delayed, when a specific transport scheme is delayed. This investment may encompass a range of things from new offices or housing developments, to different location choices for business. It may also include business investment by firms in new technologies to support innovative practices such as better logistics management. This type of investment can deliver environmental benefits as well as efficiency savings, through better use of resources, such as reducing the number of HGVs required for goods delivery. Where delays and uncertainty are unmanageable for businesses to work within, this investment simply may not go ahead or the funds may get invested elsewhere to fit in with business planning cycles.

The UK's international competitiveness may be threatened

5.63 In an increasingly globalised world, the UK does not operate in isolation from other countries. Transport infrastructure can impact on the UK's international competitiveness, both in the transport sector but also through increasing operational costs to UK businesses. International aviation and shipping, in particular, are EU-wide markets and major UK airports and ports compete directly with EU competitors for the benefits of being used as the hub connection for air or shipping connections. The direct impact of delays that may be faced in the UK when developing new capacity may be accentuated where European competitors can move more quickly to deliver new capacity required by the market.

5.64 For example, while applications for container port expansion have been progressing through the system in the UK, expansion has been delivered at ports, such as Rotterdam and Antwerp, in other EU countries. Future expansion is also in the pipelines in these and other places. Similarly, in the time taken to consider and start constructing Terminal 5 to provide extra capacity at Heathrow, Schipol airport in the Netherlands and Charles de Gaulle in Paris have both increased their capacity with runway expansion and terminal capacity improvements. This comparative delay means that both UK ports or airports may lose business to EU competitors. It also risks imposing extra costs on UK businesses, as goods may have to be trans-shipped or direct connections from the UK may not be possible for air journeys, forcing longer, and often more expensive, journeys to be made.

Alternative proposals may not be advanced

5.65 A long, drawn-out process also means that developers may be limited in their ability to develop or advance alternative proposals while waiting for the decision on their application. Again this risks good projects not being brought forward in a timely way and may delay or stop other options from going ahead. In areas where development is private-sector led, however, alternative proposals can, and to a certain extent are still advanced by competing developers. As with the sheer length of time that the process takes, as discussed above, this uncertainty about the duration of the process can also impact on related investment decisions or the development of alternative proposals.

The cost of capital and risk of investment may increase

5.66 Uncertainty also increases the risk of investment, which may result in higher financing costs. Uncertainty is difficult to fit into business investment planning horizons. This is likely to impact most on the private sector, whether promoters of the transport investment itself, or private business seeking to invest in complementary investment. Uncertainty about the point at which the project will be delivered is likely to be reflected in higher costs of capital, as the uncertainty creates increased risk for investors. These higher financing costs are then likely to be passed onto the final users of the infrastructure.

5.67 Uncertainty may also impact on the public sector's ability to manage the financing for projects, given government budgetary cycles and the 'lumpiness' of major transport investment. The size of the government's capital portfolio may help to make this easier to manage from a macro-economic perspective. However this can be difficult to understand for communities anticipating development of a project in their area but uncertain of when, or if, it might be delivered.

Other EU countries face similar challenges with their planning systems

Other EU countries face similar problems

5.68 The UK is not alone in facing increasing difficulties in delivering major transport infrastructure through its planning process. Other EU countries are faced with similar challenges in balancing increasing environmental pressures and their requirements for infrastructure to support economic growth.

5.69 There is no easily comparable evidence of the relative speed at which different countries deliver projects, but it is clear that other countries have tried to address the uncertainty and lack of transparency faced in the UK, with varying success. It is clear that most countries do not consider that their system is ideal and many continue to seek further improvement.

5.70 A number of stakeholders suggested that France has a system that ensures that local communities buy into the need for development which results in infrastructure proposals progressing relatively smoothly through the process. However, the evidence suggests that the French too are finding it increasingly difficult and highly costly to deliver major projects. Although the French formal system may appear to show faster delivery times than the UK, the complexity of the full process from start to finish is not fully captured in such a comparison.

5.71 The Netherlands has a well-established plan-led system, which includes a national spatial plan, containing a series of maps of infrastructure, which must be approved by the national parliament. The last national plan came into force in February 2006 and is valid for 15 years to ensure it remains responsive to the needs of the Dutch economy. However, depending on the political context, it can sometimes be very difficult to progress the plan through the Dutch Parliament, which creates an extra barrier to delivering infrastructure.

5.72 Ireland has recently adopted major reforms to its planning process for major transport, and other major infrastructure, projects. These reforms consolidate the procedures, which were different for different types of infrastructure, into a uniform planning consent process. Ireland previously had one system for projects brought forward by local government and a different and lengthier system for private sector proposals. Entirely different procedures applied to specific types of state infrastructure such as energy developments. Those differences have been removed, with all types of infrastructure proposals now going directly to An Bord Pleanala (Ireland's independent planning body) for determination. Ministers in Ireland are not involved in the final decision on a scheme.

WHERE COULD FURTHER IMPROVEMENTS BE MADE?

5.73 The previous section has identified that there are considerable problems with the current system that are having significant impact. To address these problems, we need to know how they have arisen. This section identifies the causes of the problems.

5.74 Our analysis suggests at least six substantive causes of delay, uncertainty and cost in the UK system:

1. **The balance of government policies or priorities is unclear** – This can make many stages of the process lengthier, especially the public inquiry, if there is no published, strategic context to help establish the 'need' for development.

2. **Cumbersome, complex system with overlapping statutory and formal processes** – The current system has different legislation for different modes, as well as general planning legislation and other consent regimes, with different Ministers accountable for each and responsible for decisions under their respective legislation. This leads to difficulties in balancing the merits of the project as a whole.

3. **Lengthy inquiry period** – The current inquiry process is an adverserial and costly process, including a large amount of time spent cross-examining witnesses. Evidence is often given orally, as well as in written form, which can create inefficiencies and repetition.

4. **Two separate phases of decision making: the Inspector's recommendations and the Ministerial decision** – Both the preparation of the Inspector's report and recommendations and the Ministerial decision stages can be subject to delay, as new matters and evidence arise or issues need to be revisited for clarification.

5. **Multiple decision makers** – Because of the different legislation and the different Ministerial accountabilities, often more than one Minister will be involved in making the final decision on a specific project.

6. **Legal challenge** – The risk of legal challenge is present throughout the process. This legal challenge can be through statutory appeal rights or an application for judicial review of the decision-making process. These challenges can be in respect of (a) decisions about strategic policy and any related consultation exercise and/or (b) final decisions on a specific scheme.

5.75 The impacts of these causes are discussed in more detail below.

1. Clarity of government policy

5.76 Experience has demonstrated that where the strategic context or objectives of government policy are not clearly articulated, this can risk hindering the delivery of some major projects, especially those brought forward by the private sector. It is logical to look to Government to clarify the national strategic interest and objectives for major projects, balancing the various relevant factors.

5.77 The Government's Air Transport White Paper[11] set out to provide a clear strategic framework, so that subsequent planning inquiries on specific proposals could focus on understanding and mitigating the local impacts, rather than revisiting issues of national need. For example, with reference to expansion at Stansted, both government administrators and a number of stakeholders are broadly optimistic that the existence of the White Paper, especially once it is incorporated into the Regional Spatial Strategy for the East of England and the relevant Local Development Framework, should help the inquiry be more focused and run more efficiently.

5.78 This remains to be fully tested. The circumstances surrounding airport capacity and development, especially in the greater South East of England, have some unique characteristics. The Air Transport White Paper may not necessarily be the best model for all other sectors. But it does clearly illustrate the principle that prior establishment of the national strategic interest and objectives can help to lift some of the potential burden of debate from inquiries into individual proposals. This may also reduce duplication and potential confusion, where a number of individual proposals arise to be considered simultaneously or sequentially.

5.79 There is also potential confusion caused by the number of strategic documents which can impact on development. For example, the Regional Economic Strategy and the Regional Spatial Strategy can both include regional priorities for transport development.

2. Cumbersome and complex process

5.80 The statutory phase of the planning process – making the application, conducting the public inquiry, and making the decision – is only one stage in the full planning process that is undertaken before a project can be legally developed. It provides a number of challenges for a system that is aiming to provide certainty, speed and reduced costs.

Wide range of consents is often required

5.81 For major transport development proposals, a wide range of consents and permissions is often required before construction can legally begin. This is particularly the case where there are 'linked' applications, such as the required surface access improvements for proposed port or airport development. For example, the application to develop the second runway at Manchester Airport required consents and powers from at least five different statutory regimes. For bigger or complex projects, powers for related parts of the development (e.g. access roads) often also require the co-operation of other bodies from both the public and private sector, such as the Highways Agency or Network Rail. The objectives of these organisations may not always align with the objectives of the promoter. Resolving this can cause delay and uncertainty, with even more delay when the public sector seeks developer contributions from the private promoter.

5.82 Most of the different statutory consent processes have their own procedural rules, which although similar in many respects, have some fundamental differences. In practice, this inconsistency is managed well by Inspectors, when considering linked applications

[11] The Future of Air Transport (2003) www.dft.gov.uk.

across different statutory regimes. Where the rules differ, an Inspector will seek to apply them in a manner which gives the most flexibility to the participants. Notwithstanding the best efforts made by Inspectors to make the process more coherent, it is clear that it still has the potential to baffle users who are unfamiliar with how it operates. This can significantly increase the costs of applications and participation, as professional advice is almost essential in order to participate effectively in the process. For communities and small businesses, this can act as a real barrier.

Different processes can add complexity and uncertainty

5.83 The existence of different possible processes adds complexity and uncertainty to the process. As mentioned previously, the Planning and Compulsory Purchase Act 2004 ('the 2004 Act') enacted a set of procedural reforms which apply to major infrastructure projects. These reforms, which have recently come into force, introduce a number of new process mechanisms for use in inquiries. One of the most significant reforms is the possibility of different Inspectors holding concurrent sessions of the same inquiry and reporting to a lead Inspector. Commentators consider that these changes are a positive step in the right direction.

5.84 However, the reforms that were made in this area only apply to applications made under the Planning Acts and do not apply to the part of the inquiry that is considering any accompanying applications under transport planning legislation, such as the TWA or the Highways Act. The development of a second runway at Stansted may provide an opportunity to test these new provisions, but only in relation to the elements of the application that fall under the Town and Country Planning Act. This would include the main application for the runway expansion, but not questions about surface access. Primary legislation would be required to extend the proposals to all transport planning legislation.

5.85 The complexity of the process means that it can sometimes be difficult for promoters and other participants to anticipate all the likely detailed elements of the process that need to be considered. Administrators and environmental groups see a lack of careful promoter preparation early in the process as being a major cause of delay at later stages. However, it could be argued that promoters are strongly incentivised to minimise delay because of the costs it imposes on them directly. The consequences of an ill-prepared application, or an application where late changes are made to project specification, range from a longer and more drawn out public inquiry to new consents needing to be sought (e.g. heritage consents). At the most extreme, this can mean re-opening the public inquiry, as happened with the Thameslink 2000 application.

3. Lengthy inquiry period

5.86 The element of the planning system which has perhaps attracted the most attention over the years is the public inquiry and the length of time that it can take. This stage can also introduce uncertainty to the process because of the absence of any reliable indicator in advance as to how long the inquiry is likely to take.

5.87 In the current system, the public inquiry is a key point for public participation in the system and can often involve significant commitment from participants. Because oral evidence is one of the main ways of giving evidence, attendance at the inquiry is often vital to understanding the issues and evidence being examined. The 'average' inquiry for a major transport proposal takes almost 30 weeks but there is considerable variation within this.[12] The public inquiry for the A303 trunk road around Stonehenge took about 16 weeks; and the two inquiries for the separate West Coast Mainline applications took a total of 52 weeks.

[12] These figures cover applications submitted since 2000, with public inquiries greater than two weeks. The number of weeks includes both 'sitting' and 'non-sitting' days for the inquiry length. The figures given as averages do not include Terminal 5 – this was such an extremely lengthy case that it distorts the figures to include it.

Inquiry process needs to cover complex issues

5.88 Projects that are of national significance or that cut across a number of different transport modes may be substantial in scope and size. By their nature they will have significant effects on the surrounding area, both during the construction period and in their operation, and are likely to generate significant public interest both in supporting and opposing the development. Individuals' property rights are likely to be directly affected (for example, where the development is dependent upon the compulsory acquisition of land to proceed). There may also be public debate about whether there is really the need for such scale of development and what the possible consequences of it may be.

5.89 These are complex issues, and consequently, because of the number of interests involved, the nature of those interests and the scale of development, to ensure a fair and balanced outcome, the inquiry stage of the process will necessarily involve a significant period of consideration. However, it is important that the costs of participation are not prohibitive, the costs of the system are not disproportionate, and that the risks of planning blight are minimised.

5.90 There are a number of hypotheses as to the factors that can make major public inquiries so lengthy. There is also much uncertainty about how much time should be accommodated within project timetables for the inquiry stage. Some of the factors that cause delay are related to the nature of the projects – particularly the complexity and scale of the projects and their significant localised impact. However, there is also evidence that suggests there may be some factors which are more to do with the conduct of the inquiry itself, and the different incentives and approaches that different parties use during the inquiry.

5.91 The main factors that the Study has identified include:

- scope of issues that the inquiry is attempting to cover – from technical issues such as the extent of environmental impacts, to providing a forum for interested community interest groups and individuals, to objectors debating what is current government policy and whether it is 'correct' or not;
- the process is adversarial, with a significant emphasis on oral presentation of evidence and oral cross-examination; and
- timetabling is not always used effectively to manage the process.

Delay can be a tool for objectors

5.92 Participation by interested parties is a key objective of the inquiry, especially where this increases understanding of the proposal and helps to improve the proposal's quality. However, delaying projects can be used as a tool against progress of a proposal by objectors. This is assisted by the fact that the incentives for ensuring efficiency in the process are not balanced evenly between the different parties. For example, there is a significant risk that well-organised objectors to the development are unlikely to be unduly concerned about any extra delay that their actions may cause the promoter, since they face only their own direct costs of participation. The awarding of costs is highly unusual in a planning inquiry and responsibility for ensuring that evidence remains focused and relevant rests mainly with the Inspector holding the inquiry.

Inspectors may not have appropriate incentives

5.93 Inspectors have a range of tools that have been introduced through different reforms to the planning systems. These include such measures as powers to introduce timetables to inquiries, and the power to encourage evidence to be presented efficiently and to focus on relevant issues. In some circumstances, these tools have been used effectively. Although the Inspector has a number of different tools designed to help run an efficient inquiry, they are not necessarily always appropriately incentivised to use them.

5.94 First, concern about possible legal challenge to their recommendations means that Inspectors may be cautious about managing overly long oral evidence or cross-examination or in enforcing timetables.

5.95 Second, there may be a degree of legal experience imbalance between the Inspector and the planning barristers who represent the major parties. Inspectors, appointed by Ministers, are usually civil servants who although very experienced in handling planning applications are unlikely to have had formal legal training, whereas the major parties often employ experienced QCs to represent them.

Allocation of costs may be inefficient

5.96 Third, there is inconsistency across the different planning processes as to the allocation of costs and these may not create incentives for efficiency. Each party is responsible for meeting its own costs of participation, such as the costs of seeking legal or other professional advice. But one party seeking to cause delay does not face the extra costs this imposes on other parties at the inquiry, except in the rare cases where a successful costs claim is made by a party which has incurred unnecessary expense as a result of another party causing unreasonable delay. These costs might be substantial, and for community groups or local authorities may mean the difference between being able to continue participating or being forced to pull out. There is therefore a risk that those with the deepest pockets have an advantage within the current system.

5.97 In addition to the direct costs of participation, there are also substantial administrative and overhead costs from holding an inquiry – such as providing meeting rooms, the costs of the Inspector and secretariat staff. The different regimes have an inconsistent approach to who pays these administrative costs. For example, the Planning Inspectorate meets the full administrative costs of holding the inquiry under the TCPA. Since government meets the full administrative cost, on the face of it, this does not incentivise the promoter or objectors to be efficient. However, promoters are probably already sufficiently motivated to not unnecessarily delay the inquiry given their desire to get the scheme approved in a timely period and because delay can affect the costs of the project. On the other hand, TWA inquiries and Harbour Order inquiries (for ports) provide for the full administrative costs of the inquiry to be charged to the promoter. These can be substantial, with Associated British Ports estimating that the planning process as a whole (including the inquiry cost and preparing an application) cost up to £40 million.

5.98 An inefficient inquiry process impacts on the costs faced by all participants. Both the promoter and society as a whole benefit from an efficient, well-functioning planning system. To reflect this, the costs of inquiry should be shared consistently between the government and the promoter.

4. Two separate phases in decision-making

Inspector makes recommendation, then Ministers make final decision

5.99 Once the inquiry has closed, there are essentially two distinct and sequential phases in reaching the final decision. First, the Inspector draws together the evidence that has been submitted in writing and presented at the inquiry and prepares a report to the relevant Minister(s). This report will identify what the Inspector saw as the key issues, present a summary of the main evidence presented in relation to them, draw conclusions on each of the issues and then conclude with a recommendation from the Inspector as to what the final outcome should be. This can be seen as the first decision point. The Minister/s then consider the Inspector's report and after possibly seeking further evidence or views on issues which they consider unclear in the Inspector's report will make the final decision. This is the second and final decision point.

5.100 It is possible, but highly unusual in transport cases, for Ministers to reject the Inspector's recommendations. Over the last five years, data from the Planning Inspectorate shows that it is very rare for Ministers to reject the recommendations of the Inspector with respect to transport projects, with the exception of some non-substantial conditions that have either been added or removed from the consent. However, without exception, Ministers deliberate for a considerable period of time before adopting the Inspector's recommendations – in some cases, important loose ends have been left unresolved from the inquiry and need to be referred back to parties. This brings into question whether this two-step structure of decision-making is efficient.

5.101 Recent measures have been adopted for TCPA cases to ensure the Ministers set timetables for making their decision. These timetables are set on a case-by-case basis. They have shown positive improvements in the processing of TCPA cases, but currently do not apply to 'linked' or transport proposals, which are often more complex and cover multiple pieces of legislation and require decisions from more than one Minister. Furthermore, although the timetabling may be useful to address unnecessary delay, they are likely to do little to reduce uncertainty because they are introduced so late in the process.

Delay breeds delay

5.102 Delay breeds delay – the longer the process takes, the greater the risk that circumstances change and further information needs to be considered and explored. Until the final decision is made by the Minister/s, anything that becomes an additional relevant consideration, such as a change in relevant government policy, must be taken into account. In the interests of fairness, all interested parties must also be given the opportunity to comment on any such additional changes or considerations. Given the period of time between the closing of the public inquiry and the presentation of the Inspector's report, and then a further delay until the Ministerial decision, this can be a long period of time. During this period new information or changes that need to be made can be substantial.

5.103 A drawn-out process risks creating an endless spiral of new requirements and questions, with new information needed to address them. In the interests of fairness, interested parties will need an opportunity to comment on any new information. For example, recently after the inquiry had closed on the application for a port development at London Gateway, new planning guidance was published,[13] which meant that the issue it covered had to be dealt with between interested parties through an exchange of written information and meant that at least three months was added to the whole process. The two separate decision stages compound this problem because, by their necessarily sequential nature, they extend the time taken to fully conclude the process.

Multiple final decision makers

Ministerial decisions are often cross-Whitehall

5.104 Each statute has its own responsible Minister, so on major cases there are often multiple decision makers at Ministerial level. Each Minister must consider the application from the perspective of their own respective statute, yet needing to conclude with a coherent response. The decisions and advice that inform the Minister's decisions have to be carefully co-ordinated and managed across Whitehall – a task which can itself cause major delays and administrative complexity. As a result, interdepartmental processes are put in place to manage these issues but it is inevitable that delays can still occur. There is also a risk that splitting individual elements of the project across different decision makers leads to difficulties in balancing the need for the project as a whole and how best to deliver the Government's transport objectives.

[13] Circular 06/05 Biodiversity and Geological Conservation – Statutory obligations and their impact within the planning system, ODPM/Defra, 2005.

Risk of legal challenge

5.105 Uncertainty about whether the project has permission to proceed is compounded by the risk of legal challenge at every stage of the process. The current opportunities for legal challenge in the transport planning system vary across the different statutory consent regimes.[14] The possibilities are:

- a statutory appeal against the decision; or
- an application for judicial review of the process by which the decision was reached (the consultation exercise, the strategic decision, and/or or the detailed decision on a specific scheme)

5.106 There is a clear and valid need for such rights. Legal challenges to government decision making plays a vital role in ensuring that a decision is made in accordance with legal principles, such as that decision makers should address relevant considerations (and should discount irrelevant ones); and should act procedurally fairly. However, legal challenges can be costly and time-consuming and may significantly delay progress on a proposed transport scheme. And such rights are open to abuse – challenges can be a useful delay tactic for objectors. Challenges also create extra uncertainty for local communities, objectors and promoters of schemes and even where unsuccessful can delay the development of the project.

5.107 The risk of legal challenge at the strategic policy-making stage is a relatively recent development and is demonstrated by the Air Transport White Paper cases. Aviation policy was subject to judicial review at two different stages of its development – both at the Green Paper stage and following publication of the Air Transport White Paper itself. In total, these challenges took about two and a half years to resolve. Although certain aspects of the decision-making processes were identified as being defective, such as an inadequate consultation process at the Green Paper stage, the majority of the arguments made by the claimants were rejected by the courts.

[14] Some examples of the rights available include:

Town and Country Planning Act 1990: Planning decisions made by the local planning authority (LPA) may be challenged by way of an appeal to the Secretary of State. This right is conferred on the applicant only. There are no specific statutory grounds for an appeal. There is a 28-day time limit for exercising this right. A third party challenge to a decision by an LPA can only be made by way of a judicial review claim to the High Court. Such claims must be made promptly (and in any event within three months of the decision concerned). This is not an appeal on the merits, but a claim for a review of the manner in which the decision was made. The court cannot, therefore, substitute its own decision for that being challenged. Where the application is "called in" for a decision by the Secretary of State, the decision of the Secretary of State may be challenged in the High Court by "a person aggrieved " by that decision or the local planning authority. There is a six-week time limit for exercising this right. The statutory grounds for such an appeal are (i) that the decision is not within the powers of the Act or (ii) that any of the requirements of the Act (or any relevant secondary legislation) have not been complied with.

Transport and Works Act 1982: Any person who is aggrieved by an order under section 1 or 3 may, within a 42-day time limit, challenge in the High Court the validity of the order, or of any provision contained in it, on the ground that (i) it is not within the powers of the TWA, or (ii) any requirement imposed by or under the TWA or the Tribunals and Inquiries Act 1992 has not been complied with. Where this statutory right of challenge is not available – for example, because the Secretary of State has decided not to make an order – an aggrieved person may seek to challenge the decision by way of a judicial review claim to the High Court.

5.108 It is not clear what impact the judicial review of the Air Transport White Paper has had on when proposals for airport expansion that would be consistent with the Government's objectives as set out in the White Paper might be brought forward. There is always likely to be some lag between publication of a government policy statement and developers being able to come forward with detailed proposals. While a policy is under challenge, this creates considerable uncertainty. However, if a proper and careful process has been carried out, as was almost entirely upheld by the courts in respect of the Air Transport White Paper, the policy is likely to remain largely intact.

5.109 A challenge to government policy may also be made at the end of the process in response to a planning decision on a specific proposal. A claim, for example that the decision maker should not have taken account of a particular government policy, could form the basis of a statutory challenge or proceedings for judicial review.

5.110 The scope for challenging decisions at every stage of the planning process is thus very wide. The existence of a number of independent statutory rights of legal challenge, in addition to the possibility of judicial review claims, with different grounds and time limits, adds to the complexity and uncertainty of the planning system.

BUILDING ON REFORM – PROPOSALS FOR CHANGE

5.111 The following section presents a package of proposals which offer the potential to make a significant difference to the UK's ability to deliver the transport infrastructure schemes that the UK economy needs to support sustainable development.

5.112 This part of the chapter:

- presents a package of proposals, designed to deliver a more efficient system with extensive and defined opportunities for participation;
- identifies what the proposals offer as a package;
- assesses how the proposals meet the objectives set out above, and the gains that can be delivered through these changes.

5.113 The Annex to this Volume looks in more detail at the proposals.

5.114 The proposals outlined aim to address the challenges identified and discussed earlier in this chapter – length of process, uncertainty and cost – while delivering against the objectives for the planning system. The proposals have the potential to have a significant impact without limiting the ability of the process to ensure balanced, considered judgements.

Recommendation 5(d)

Significantly reform the planning process for strategic transport infrastructure schemes to improve efficiency and predictability without compromising fairness; specifically act, including introducing new legislation where necessary, to:

(i) Put Ministerial direction and accountability at the heart of the process: at the outset, the government should produce clear statements of strategic objectives which articulate the need for strategic transport capacity and development, balancing national economic, environmental and social considerations and the balance between national needs and possible local impacts.

(ii) Introduce new statutory provisions to reinforce the requirement for full and wide-ranging public consultation when drawing up these national strategies, enshrining the role of individual members of the public and interested organisations in shaping the national priorities for the future.

(iii) Provide increased certainty for all interested parties, by establishing a presumption in favour of development for schemes the main aims of which are consistent with the objectives set out in a strategic statement.

(iv) Encourage best-practice consultation requiring scheme promoters to consult with the local community and interested parties at an early stage of individual scheme development, so that promoters are adequately prepared for issues likely to arise, and applications can proceed efficiently through the inquiry stages.

(v) Establish a new independent Planning Commission for strategic transport schemes comprised of well-respected experts of considerable standing. Having conducted an inquiry stage, the Commission would take the decision in relation to planning applications for strategic transport schemes.

(vi) For those schemes that fall to the Planning Commission to determine, Ministers would have no planning decision-making role. The Commission would determine whether the main aims of a planning application are consistent with the objectives set out in a strategic statement, within a sustainable development context. Where they are consistent, there would be a presumption in favour of granting permission for the scheme, subject to ensuring that the scheme is compatible with:

- **EC law, including EC environmental law requirements;**
- **ECHR law requirements; and**
- **any other exceptional circumstances that Ministers may have specified in the Strategic Statement.**

The Commission would have the power to determine appropriate mitigation measures, including environmental mitigation measures.

(vii) Provide for a more focused inquiry process with more accessible opportunities for participation by all parties, by moving to an inquisitorial, rather than adversarial, inquiry process. There would be a presumption in favour of written representations.

(viii) Impose challenging, but achievable, statutory time limits on the key stages of the inquiry process, to provide greater certainty for all those likely to have an interest in a specific scheme.

(ix) Simplify and consolidate the statutory process for strategic transport schemes, by creating a new statutory consent regime under the jurisdiction of the Commission. There would be one set of procedural rules.

(x) Establish clear and defined statutory rights of legal challenge at key stages of the process to form a complete framework for challenges to decision making under these proposals. The definition of these rights, along with the opportunities for participation set out above, provide extensive and defined opportunities for interested parties to participate in and influence the full decision-making process.

5.115 The Study has not considered the devolution-related issues that would arise if its recommendations were accepted and taken forward by the UK government. Such issues are outside the scope of this work. The recommendations in this section do not, therefore, seek to address the possibility and/or desirability of any new legislation extending to the territory of a devolved administration. Such fundamental issues would clearly need to be addressed and resolved, should the UK government wish to take forward these recommendations.

THE PACKAGE OF PROPOSALS

5.116 The proposals summarised in this chapter offer substantial reform and should be considered as a package. Together they help balance the national need for and potential benefits of well-targeted transport infrastructure with the social and environmental impacts that development may have. Together they create a system that retains Ministers at its heart while delivering a fair and transparent system with increased certainty for all those affected by the development.

5.117 The package seeks to separate out the distinct roles of determining strategic questions of 'need' – how much development does the UK need? – from questions of 'implementation' – what should detailed implementation of this look like? How should its impacts be mitigated?

5.118 In developing these proposals, which are focused on the problems and causes identified above, the Study has sought to build on recent experience and to engage with experts. The proposals:

- draw on previous experience and improvements adopted in the UK;
- draw on best practice from systems in other countries; and
- have been tested with experts in the planning field as they have been developed.

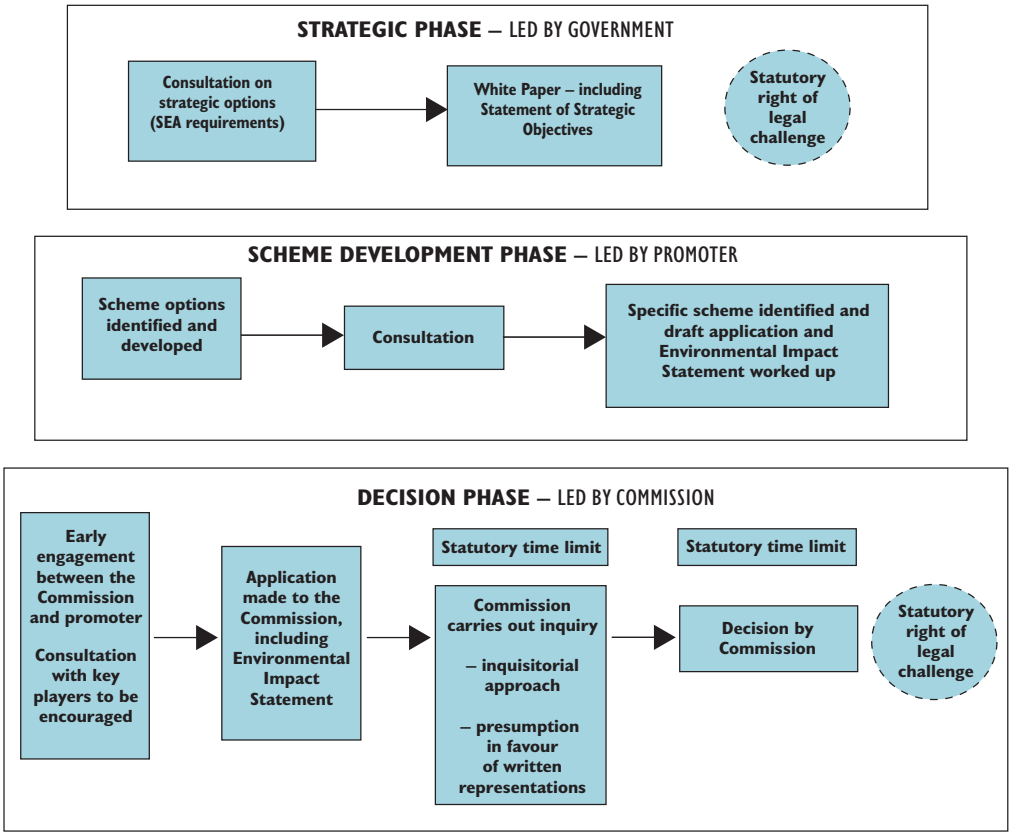
5.119 Some of the elements of the proposals have been advanced in previous proposals for reform, or have actually been reflected in recent reforms of the non-transport planning system. They also draw on successful practices operated elsewhere in the UK domestic legal system, or from further afield in Europe. But, to date, such ideas and reforms have not been brought together into a coherent system to fully capture the possible benefits.[15] Detail on the individual proposals is discussed in the Annex to this volume.

The proposals

5.120 The proposed new process would have three main phases, as set out in the following diagram.

[15] Hybrid Bills provide a parliamentary route for the consents required for a project to proceed. However, as set out above, they involve complex parliamentary processes and can be very time and resource intensive. They also have more defined consultation processes for members of the public compared to an inquiry process. This Study's proposals would not remove the ability to use the hybrid bill process, where that was considered to be the most appropriate route. But it is clear that simply putting all projects through the hybrid bill route would not be a sustainable solution for delivering the infrastructure needs of the UK economy. The Study also considered developing an alternative Parliamentary process but concluded that it was not worth pursuing further. Detail can be found in the Annex.

Figure 5.9: The package of proposals



Source: Eddington Study.

5.121 The package of proposals would significantly reform the planning process for major transport projects to improve efficiency and predictability in the system without compromising fairness.[16]

Strategic phase

5.122 The strategic phase seeks to put Ministerial direction and accountability at the heart of the process. At the outset, the government should produce clear statements of strategic objectives which articulate the need for strategic transport capacity and development, balancing national economic, environmental and social considerations (such as the government's climate change objectives) and the balance between national needs and local impacts. Ministers could also make clear any significant environmental or social restrictions where they would not consider development appropriate.

5.123 New statutory provisions should be introduced to reinforce the requirement for full and wide-ranging public consultation when drawing up these national strategies, enshrining the role of individual members of the public and interested organisations in shaping the national priorities for the future.

5.124 Increased certainty should be provided for all affected parties, by establishing a presumption in favour of development for schemes the main aims of which are consistent with the objectives set out in a strategic statement.

Scheme development phase

5.125 Best-practice consultation should be encouraged to require scheme promoters to consult with the local community and interested parties at an early stage of individual scheme development, so that promoters are adequately prepared for issues likely to arise, and applications can proceed efficiently through the inquiry stages.

[14] References to 'transport projects' in this part of the Study are references to 'transport infrastructure projects' unless the context otherwise requires.

Decision phase

5.126 A new independent Planning Commission for strategic transport projects should be established, comprised of well-respected experts of considerable standing. The Commission would oversee the inquiry stage, and would take the decision in relation to planning applications for strategic transport schemes.

5.127 For those projects that fall to the Planning Commission to determine, Ministers would have no planning decision-making role. The Commission would determine whether the main aims of a planning application are consistent with the objectives, set out in the government's strategic statement. Where they are consistent, there would be a presumption in favour of granting permission for the scheme, subject to ensuring that it is compatible with:

- EC law, including EC environmental law requirements;
- ECHR law requirements; and
- any other exceptional circumstances that Ministers may have specified in the Strategic Statement, such as any environmental or social restrictions on development.

The Commission would have the power to determine appropriate mitigation measures, including environmental mitigation measures.

5.128 A more focused inquiry process should be provided for, with more accessible opportunities for participation by all parties, by moving to an inquisitorial, rather than adversarial, inquiry process, with a presumption in favour of written representations. Challenging, but achievable, statutory time limits should be imposed on the key stages of the inquiry process, to provide greater certainty to those with an interest in specific schemes.

5.129 The statutory process for transport projects of strategic importance should be simplified and consolidated, by creating a new statutory consent regime under the jurisdiction of the Commission. There would be one set of procedural rules.

Legal challenge

5.130 Clear and defined statutory rights of legal challenge should be established at key stages of the process to form a complete framework for challenges to decision making under these proposals.

The proposals work as a package to deliver against the objectives

5.131 Together these proposals create a fair and transparent system. The statutory opportunities for participation set out above provide extensive and defined opportunities for interested parties to participate in and influence the full decision-making process, supported by the definition of the rights of legal challenge. At the same time, the system would be more efficient and provide increased certainty for promoters and communities, while retaining thoroughness and fairness.

5.132 Each individual proposal offers benefits. However, the separate proposals are designed to function most effectively, and to deliver the greatest overall benefits against the objectives, when established as a coherent and complementary package.

Figure 5.10: The objectives of an efficient and legitimate planning system for major transport projects

Such a system should ensure that:

1. The infrastructure projects the UK needs to support sustainable development are identified and, where appropriate, brought forward;

2. Environmental, social and economic objectives are balanced appropriately in the final decision; and

3. The process is fair, effective, and transparent:

- **Fair – interested parties ("interested' parties throughout this document is intended to also include "affected" parties) should have an opportunity to put forward their views, and these views will be properly considered;**
- **Effective – the final decision maker must be able to have thoroughly determined the relevant facts and strike a balance between differing views in a timely and cost-effective manner; and**
- **Transparent – participants and the public understand how the process and decision making works and to what timetable.**

In delivering these objectives, the costs and duration of the process should be proportionate, and uncertainty minimised.

Delivers the right infrastructure

5.133 The full and wide-ranging public consultation would help Ministers to determine the strategic need for infrastructure projects to support sustainable development. Statements of Strategic Objectives would balance the national social, economic and environmental impacts and allow government to articulate the need for strategic transport capacity and development.

Balances social, environmental and economic objectives

5.134 Environmental issues would be considered thoroughly at a number of different stages of the process. The consultation on the Statement would, where relevant, satisfy the requirements of the Strategic Environmental Assessment Directive and, where relevant, the Habitats Directive, and Ministers would consider the strategic environmental issues, such as the Statement's climate change impacts, when articulating the need for strategic transport capacity in the Statement.

5.135 Environmental issues, particularly local impacts, under relevant EC directives would be thoroughly tested and considered during the decision phase. Early engagement between the promoter, the local community, and other interested parties would help to identify the key environmental questions relating to a specific scheme. These would then be addressed in detail in the promoter's environmental impact statement that would be submitted as part of their statutory application.

Ensures participation is fair, effective and transparent

5.136 The package would ensure multiple opportunities for participation by local community groups and other interested groups or individuals during the process. The public consultation on the Statement would enshrine the role of individuals and interested organisations in shaping the national priorities for development, and the balance between environmental, social and economic objectives.

5.137 Scheme promoters would be encouraged to consult with the local community and interested parties at an early stage of individual scheme development so that promoters are adequately prepared for issues likely to arise, and applications can proceed efficiently through the inquiry stages.

5.138 The proposed inquiry process would also contribute to ensuring the process is fair, effective and transparent. The inquiry would provide for parties to present their case and challenge the evidence of others through written representations and would also provide an opportunity for individual views to be presented.

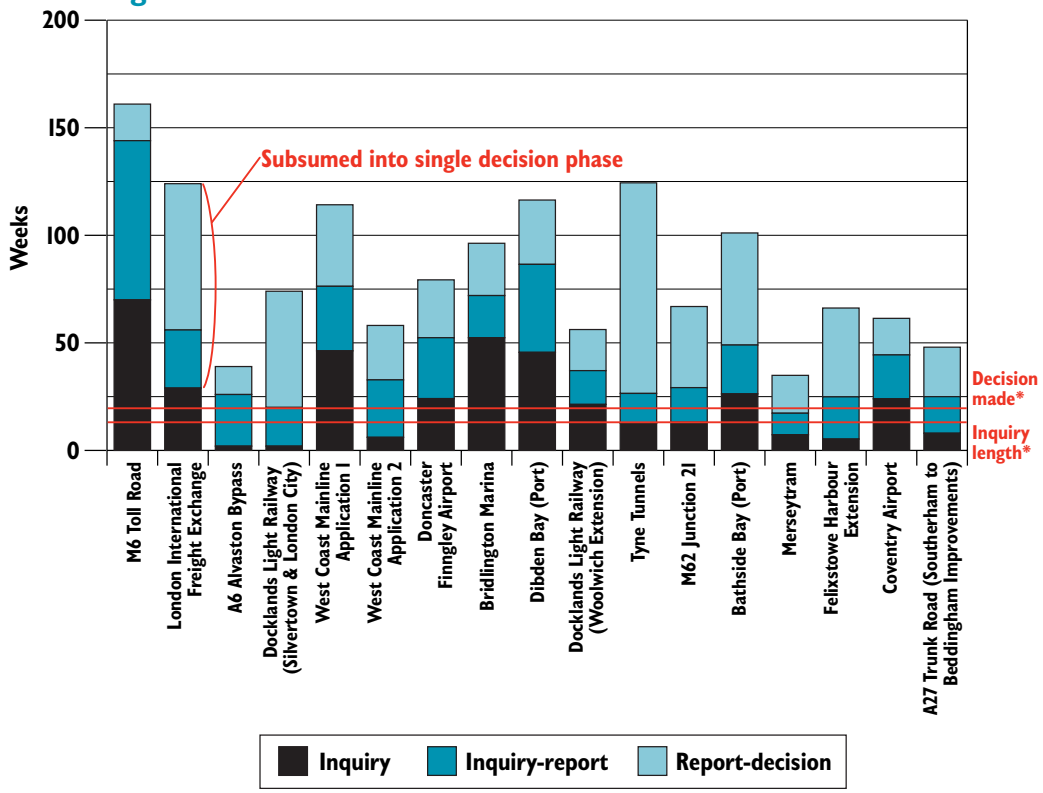
5.139 The inquiry process would also be the main mechanism for ensuring the process is effective. It allows the Planning Commission to determine the relevant facts needed to take the final decision on the balance between national benefits and local impacts and, specifically, to ensure that a specific scheme is compatible with ECHR and EC law requirements. Transparency would be delivered through the clear distinction between a Minister's strategic role in publishing the Statement of Strategic Objectives and the scheme-specific decision made by the Commission. Although the Minister's decision-making role under the current system is quasi-judicial, there is a perception that they can make purely political decisions, which is not the case. This incorrect perception would be removed and the process made more transparent with the establishment of an independent Commission.

The proposals can deliver major gains by ensuring uncertainty, costs and duration are proportionate

5.140 The elements of the package would complement one another in a coherent system to ensure that the uncertainty, costs and duration of the proposed process were proportionate. This in itself would help to remove a significant barrier to participation.

5.141 The proposals have the potential to increase the certainty for interested parties (both developers and local communities) and have a substantial impact on the length of time individual schemes take to progress through specific stages of the system. The time limits that should be introduced at key stages of the process should be challenging, yet achievable. Figure 5.11 demonstrates the impact that indicative time limits of a six-month maximum for the public inquiry and three months for the Commission to make its final decision could have. There would need to be provision for extension of the time limits in 'exceptional circumstances'. The Study's analysis of case studies to understand why delays occur in the current system, and input from stakeholders, suggests that time limits of this scale of duration should be achievable.

Figure 5.11: The reforms can deliver substantial benefits



*These are intended as indicative timings only.
Source: Eddington's analysis of Planning Inspectorate and DfT data.

5.142 A number of measures in the package contribute to this conclusion - not simply the time limits themselves:

- a clearer strategic framework is established by the Statement of Strategic Objectives;
- consultation at scheme development stage will help to ensure that the Promoter's applications would be better prepared;
- the inquiry is be more focused using an inquisitorial approach and applying a presumption in favour of written representations; and
- a single decision-making phase replaces the existing two stages of an Inspector's report, followed by a Ministerial decision.

5.143 There are two key risks in being able to achieve these, or any, fixed timetables. First, there is the risk that issues arising at the inquiry cannot be resolved within the allotted timeframe of the inquiry, e.g. because they require agreements between key parties. An adjournment of the inquiry may help to overcome this, although sometimes issues such as these can take considerable time to resolve. Encouraging parties to engage with key parties earlier would also help mitigate this. Secondly, there is the risk that important new issues or evidence arise after the inquiry has been completed but before a decision has been taken. The greater the reduction in the timescales, the more this risk reduces. Having only a single decision phase should help in this regard.

CONCLUSIONS

5.544 It is clear that the current planning system can act as a significant barrier to the delivery of transport infrastructure. The system can take too long, can create too much uncertainty and can impose too many costs on promoters of schemes, local communities, participants in the process and the UK more broadly.

5.545 The costs of the system materialise in a number of ways:

- the benefits that projects can deliver can be delayed;
- private sector investment by businesses may be unable to proceed while waiting for certainty about delivery of the infrastructure; and
- costs of participation can be significant.

5.546 When taken together it is clear that the challenges presented by the current system are complex and that to build on the improvements that recent reforms have made, further change is needed.

5.547 The proposals presented in this chapter provide a package that can deliver substantial benefits for the UK economy – ensuring that environmental objectives are balanced appropriately while delivering a fair, effective and transparent process and that the uncertainty, costs and duration of the process are also proportionate.

4.A Annex: Planning proposals – the detail

1 This Annex looks in more detail at the separate components of the package. The risks of the individual proposals are also explicitly discussed in this section. It is clear that there is no silver bullet to tackling the problems with the planning system and although the proposals are not risk-free, on balance, the Study's analysis supports proposing these recommendations for further consideration by government: Significantly reforming the planning process for strategic transport infrastructure schemes to improve efficiency and predictability without compromising fairness; specifically act, including introducing new legislation where necessary, to:

(i) Put direction from Ministers at the right stage in the process: at the outset, the government should produce clear statements of strategic objectives which articulate the need for strategic transport capacity and development, balancing national economic, environmental and social considerations and the balance between national needs and possible local impacts.

(ii) Introduce new statutory provisions to reinforce the requirement for full and wide-ranging public consultation when drawing up these national strategies, enshrining the role of individual members of the public and interested organisations in shaping the national priorities for the future.

(iii) Provide increased certainty for all interested parties, by establishing a presumption in favour of development for schemes the main aims of which are consistent with the objectives set out in a strategic statement.

(iv) Encourage best-practice consultation requiring scheme promoters to consult with the local community and interested parties at an early stage of individual scheme development, so that promoters are adequately prepared for issues likely to arise, and applications can proceed efficiently through the inquiry stages.

(v) Establish a new independent Planning Commission for strategic transport schemes comprised of well-respected experts of considerable standing. Having conducted an inquiry stage, the Commission would take the decision in relation to planning applications for strategic transport schemes.

(vi) For those schemes that fall to the Planning Commission to determine, Ministers would have no planning decision-making role. The Commission would determine whether the main aims of a planning application are consistent with the objectives set out in a Strategic Statement, within a sustainable development context. Where they are consistent, there would be a presumption in favour of granting permission for the scheme, subject to ensuring that the scheme is compatible with:

- EC law, including environmental law requirements;
- ECHR law requirements; and
- any other exceptional circumstances that Ministers may have specified in the Strategic Statement.

The Commission would have the power to determine appropriate mitigation measures, including environmental mitigation measures.

(vii) Provide for a more focused inquiry process with more accessible opportunities for participation by all parties, by moving to an inquisitorial, rather than adversarial, inquiry process. There would be a presumption in favour of written representations.

(viii) Impose challenging, but achievable, statutory time limits on the key stages of the inquiry process, to provide greater certainty for all parties likely to have an interest in a specific scheme.

(ix) Simplify and consolidate the statutory process for strategic transport schemes, by creating a new statutory consent regime under the jurisdiction of the Commission. There would be one set of procedural rules.

(x) Establish clear and defined statutory rights of legal challenge at key stages of the process to form a complete framework for challenges to decision making under these proposals. The definition of these rights, along with the opportunities for participation set out above, provide extensive and defined opportunities for affected parties to participate in and influence the full decision-making process.

Figure 1: Which projects would go through the system?

These proposals were originally developed to provide a new system for 'major transport projects'. As the proposals have developed further, it has become clear that there may be value in extending the proposals further to encompass a wider range of transport projects. There appear to be three advantages to having a single system for all projects:

- **it would avoid imposing a relatively arbitrary threshold;**
- **it would offer the advantages of speed and certainty outlined above for all applications; and**
- **it would avoid the potential anomaly whereby Ministers had a role in determining less important/major projects, but were removed from the direct process for the most important planning applications.**

The major disadvantages of having no threshold and having a single system for all transport projects are that:

- **if the Commission were required to decide all transport infrastructure development applications, it may be swamped and create pressures on achieving the proposed time limits; and**
- **decisions on smaller schemes that may be more appropriately determined at a local level would be drawn into a centralised scheme.**

Recommendation

(i) Put direction from Ministers at the right stage in the process: at the outset, the government should produce clear statements of strategic objectives which articulate the need for strategic transport capacity and development, balancing national economic, environmental and social considerations and the balance between national needs and possible local impacts.

(iii) Provide increased certainty for all interested parties, by establishing a presumption in favour of development for schemes the main aims of which are consistent with the objectives set out in a strategic statement.

2 The process would start with Ministers establishing a clearer strategic framework for major transport projects by producing Statements of Strategic Objectives, to articulate the need for strategic transport capacity and development. There would be no single model for

such statements, and the level of detail is likely to vary, for example between sectors where development is primarily delivered by the private sector in a commercial, competitive environment and where development is delivered by the public sector. There is a need to avoid pre-empting the detailed working of the market or distorting competition. At the same time, statements of strategic objectives should add value to the planning process by setting a clearer context within which individual development applications can be decided.

3 Thus such statements might include:

- demand and capacity projections for strategic transport capacity and development for the time period covered by the statement;
- where practicable and desirable, the strategic spatial and environmental impacts of development (including with respect to climate change), potentially including strategic environmental assessment and habitats issues;
- the wider consequences of development, including linked transport development;
- statements about other issues which Ministers exceptionally wish to bring to the attention of the Planning Commission, including significant local social considerations.

4 In deciding planning applications, the Planning Commission would be required to apply a statutory presumption in favour of specific schemes the main aims of which are consistent with the Statement of Strategic Objectives. Further details on what this would mean in practice for decisions on a specific scheme is set out below.

5 As part of the process for balancing local and national environmental, economic and social considerations when producing the Strategic Statement, Ministers would need to consider how they wish the Statement to fit with other relevant government policies, such as government's objectives on climate change, to ensure the intent of the Statement is clear. Ministers could also make clear any significant environmental or social restrictions where they would not consider development appropriate. The statement would need to be capable of being amended or revoked to respond to changes in government policy. It is likely that there would be a need to re-consult where any substantial change were made. The statements would also need to be as up-to-date as possible. Government should consider how best to deliver this in practice. It will be important to consider how to ensure there is sufficient accountability to Parliament with regard to the Statement.

6 A clear and defined statutory right of legal challenge to the Statement should be established. See below for more detail.

Figure 2: Air Transport White Paper

The 2003 Air Transport White paper[a] provides an example of the types of issues that a Statement of Strategic Objectives might provide direction on. This White Paper looks at the future needs of the UK's air transport market through until 2030 and identifies the likely capacity requirements for new capacity. It also identifies spatial priorities for the new capacity – such as South East airports, particularly Stansted.

The Study's proposal would provide a clearer status to such Statements by establishing that it would create a presumption of development for subsequent specific schemes that are consistent with the Statement.

[a] *The Future of Air Transport*, DfT, 2003.

7 The proposal delivers the following:

- Ministerial accountability. Ministers are clearly responsible for articulating the need for strategic transport capacity and development and for establishing the legal framework for future decisions on implementation of specific schemes;
- opportunity for broad and wide-ranging public debate about strategic priorities;
- can help speed up later stages of the process, especially the inquiry; and
- increased certainty for promoters and communities about the strategic need for projects.

8 The strategic phase of identifying transport priorities is a core central government role. Central government is best placed to manage the balancing of national sustainable development objectives, such as responding to transport demand while balancing environmental outcomes such as climate change impact, landscape and biodiversity. Strategy is best done in a coherent way, rather than on a case-by-case basis during the local inquiry in response to individual applications. This allows a broad and wide-ranging national public debate to be held rather than immediately focusing on the merits of detailed specific proposals in a particular location.

9 As identified in Chapter 4.5, an unclear view of strategic objectives and priorities makes later stages of the consent process more complex and uncertain for promoters, objectors, and local communities. In particular, it can mean that the public inquiry stage, which should be used to focus on local issues, ends up trying to reconcile and balance different national interests and policies without full open debate on these questions outside of the inquiry.

10 As set out above, a presumption in favour of development for schemes consistent with the Statement of Strategic Objectives would provide increased certainty for promoters and communities. This presumption would be capable of being overridden on EC and ECHR law grounds and any other exceptional circumstances that Ministers may have specified in the Strategic Statement.

11 This clear status for the Statement would minimise the need for the decision maker, the Planning Commission, to attempt to reconcile different government policy statements that may seek to deliver different objectives. Under the current system, the decision maker may be required to balance national planning policy (which may be contained in a number of different policy statements) against other national policies, such as environmental, social or economic policy (often set out in White Papers). The presumption in favour of development for later schemes has the effect of doing this balancing of national policy up-front, within government. This would helps provide increased certainty for promoters and communities alike. It would be clearer which issues remain to be resolved at a later stage, particularly those concerned with managing significant local impacts of development and mitigation options, rather than balancing a number of different national priorities. All interested parties, including local communities, would face less uncertainty as to the conditions their schemes would have to meet in order to have a good prospect of approval. This would provide a more confident climate for investment.

Risks **12** The proposal carries the following risks:

- the status of Statements means the policy process may become risk averse;
- preparation of Statements, including the necessary evidence-gathering, analytical, and consultation phases, could prove very time-consuming and risk eroding the benefits of time saved in later stages of the process; and

- for private sector led development, in particular, a White Paper that is too specific could result in government inappropriately 'second-guessing' the market.

13 The first major risk of establishing a presumption in favour of development for schemes the main aims of which are consistent with the Statement is that the government policy process to develop them becomes risk averse. This might mean that Statements err on the side of caution or are too vague to have significant enough impact at later stages. Since the process of preparing the Statement allows government to balance strategic social, economic and environmental impacts upfront rather than leaving to a later stage, other departments and Ministers may also be less willing to commit to its conclusions.

14 However, mechanisms such as the established Cabinet Committee process are already in place to support Ministers to make the judgments on balance between different government objectives. Later Statements could amend, revoke or replace an earlier Statement. The process of developing Statements is therefore suitably flexible to allow government to be responsive to external changes that might mean a shift in relative priorities across government policies over time. It is clear that the potential benefits of the full package of reform will be significantly reduced if a clear, strategic direction is not provided up-front.

15 The second risk is that the preparation of Statements is so time-consuming that it may add time to the whole process compared to the current system. However, offsetting this risk is the fact that government already prepares strategic documents in a number of sectors, which could potentially be adapted easily for this role. The overall impact that the Statement would be expected to have in terms of reducing uncertainty, also needs to be taken into account when considering how much detail a specific Statement should go into. Retaining flexibility and avoiding a 'one-size fits all' approach to producing Statements should help to mitigate the risk of their being unduly time-consuming to prepare. Updating Statements and underlying forecasts is unlikely to be as time-consuming as going through the process for the first time.

16 The third major risk of placing a significant emphasis on the role of the Statement within the system is that it will create a risk that government will be tempted to second-guess market decisions. This risk would be of particular relevance where the private sector is responsible for bringing forward investment proposals. If the Statement becomes too overly specific, it risks unnecessarily slanting market decisions. It is worth observing, however, that the planning system already potentially distorts market decisions because of the scope of its regulatory impact on investment decisions. In drawing up the Statement, government will therefore need to determine the appropriate balance between providing sufficient detail to establish a framework for later decisions, while still supporting the freedom of the private sector to bring forward commercially sensible proposals, where this is appropriate. In practice, having regard to the consultation process described below will further mitigate this risk.

Recommendation

(ii) Introduce new statutory provisions to reinforce the requirement for full and wide-ranging public consultation when drawing up these national strategies, enshrining the role of individual members of the public and interested organisations in shaping the national priorities for the future.

Wide, public consultation would be key part of developing strategy

17 In working out the need for development and any preferences for where it should be spatially located, Ministers would balance strategic environmental, economic and social objectives, and local and national needs to ensure the development is sustainable. Because of the potential significance of such policies, it is envisaged that a wide public consultation exercise, based on clearly defined statutory requirements, would need to be undertaken.

18 Prior to the final publication of a Statement of Strategic Objectives, there would be a wide and open public consultation exercise. The requirements for consultation would be given statutory force to reinforce their importance. The purpose of this exercise is to:

- elicit a wide range of views on the environmental, economic and social impacts of the possible strategic options in order to assist the Government in shaping a balanced and relevant set of strategic aims; and
- encourage full public participation in the process and provide individuals, communities and interest groups with the opportunity to help shape the national priorities for the future.

19 The statutory provisions could draw on the best practice guidelines set out in the Cabinet Office Code of Practice on Consultation. They would include a requirement to undertake a written consultation exercise with a minimum consultation period, such as 12 weeks.

20 The statutory provisions could reflect the requirements of the Strategic Environmental Assessment Directive 2001/42/EC ("SEA"), which requires an environmental assessment of certain plans and programmes. The SEA requires the preparation of an environmental report "in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated". The designated environmental authorities and the general public are required to be consulted on the draft plan/programme and the environmental report before it is adopted. Following the adoption of a relevant plan/programme, the UK is required to publish a statement describing how it integrates the environmental considerations and how it took account of the report, the consultation responses and the reasons for choosing the plan/programme in the light of other reasonable alternatives identified.

21 If the policy proposals were likely to have a significant effect on a protected European site, they may also be subject to the requirement in the Habitats Directive 92/43/EEC for an "appropriate assessment" to be undertaken. This also entails a public consultation exercise, which may need to be reflected in the proposed statutory consultation provisions.

22 Full and open consultation plays a very important role in enhancing transparency and ensuring that Ministers, when taking a decision to adopt a Statement, are fully apprised of the views of the local communities, potential developers, local and regional authorities and interested groups such as environmental groups. In that way, democratic accountability is assured. It is also the best way of ensuring the process is fair. A wide, and thorough, statutory consultation process should reduce the risk of legal challenge and any subsequent delays.

Recommendation

(iv) Encourage best-practice consultation requiring scheme promoters to consult with the local community and interested parties at an early stage of individual scheme development, so that promoters are adequately prepared for issues likely to arise, and applications can proceed efficiently through the inquiry stages.

23 Well-prepared applications, where the promoter has engaged early with the local community and key players, tend to proceed more smoothly through later stages, such as the inquiry. This is clear from case studies of applications made under the current planning process. A well-prepared application has often anticipated possible areas of concern and considered ways to address them.

24 Once a formal application and proposal have been made and the process proceeds through the various stages, it can become increasingly difficult and costly for changes to be made to the original proposals. One of the most effective ways of avoiding late changes is to identify potential problems early on. Consultation can play a key role in this, as can early engagement with those administering the process to draw on their familiarity with the system.

25 To ensure the fairness of the process, interested parties should have an opportunity to put forward their views, and those views should be properly considered. It is important that this happens both at the point where strategic priorities are being determined and also as individual projects get developed in detail.

26 Promoters should therefore be encouraged to consult on project options with the local community and interested parties at an early stage of developing individual schemes and before committing to a final preferred option. This provides an early, low-cost opportunity for interested communities to understand the proposals and influence their direction and development.

27 There are potentially a number of informal opportunities for interest groups to feed into the process. At a minimum, this process should be viewed as 'best practice' with promoters being strongly encouraged to carry it out. Consideration could be given to giving this greater status, but care would need to be taken to allow for the different requirements for different projects. For example, who should be consulted, and what type of consultation is most suitable, will depend to a large extent on the size and nature of the project.

28 Experienced promoters already recognise the value of consulting with interested groups, especially environmental and community groups, before finalising their application:

- while drawing up and considering different scheme options, e.g. different alignments of roads, different options for environmental mitigation; and
- in drawing up the draft application and draft environmental statement.

29 The main benefits of early engagement with interested parties are to address community concerns and to identify potential problems with the proposals at an early stage of development. The end result should be a better-prepared application, which is likely to have a greater appreciation and consideration of the environmental and social impacts. Interested communities should also have an increased understanding of what the project might mean for them. This should reduce delay, uncertainty and cost at later stages, especially the inquiry stage.

30 The promoter of a project would also be required to engage with the Planning Commission a number of months before a formal application is submitted. During this stage, the Planning Commission would not be giving views on the likely success of the proposal. Instead, the focus would be on ensuring the application and environmental statement are properly prepared and that the promoter has consulted and spoken to those groups who are likely to have an interest in the inquiry or the proposal. This draws on existing best practice in other areas of planning.

31 The Planning Commission would be able to encourage the promoter to consult with key players (e.g. statutory environmental bodies, Highways Agency, key non-governmental organisations) with a view to avoiding or reducing possible disputes at a later stage by encouraging parties to engage earlier. Measures would need to be in place to ensure the propriety of the engagement. The Commission's role at this stage would be solely advisory and it would need to be clearly set out that their advice is without prejudice to any later decision. Early engagement, in the form of pre-application discussions, is already encouraged between private developers and local planning authorities on significant developments, such as housing or commercial developments. Where carried out well, these are often highly valued by prospective applicants as they can reduce delays at later stages of the process.

32 This proposal would mean that:

- problems that are identified could be remedied earlier, when the costs of responding to them are lower;
- the promoter, who may only have irregular or one-off contact with the planning process, could benefit from the experience and expertise of the Planning Commission; and
- the inquiry process would be speeded up leaving fewer unresolved issues.

33 The Planning Commission would be very familiar with the formal processes of the planning system and how these play out in practice. This expertise can be very valuable, especially for promoters new to the process. Early engagement allows the proponents to benefit from this expertise and identify potential problems that they need to address while it is still relatively easy to make changes. In turn, this reduces the risk of an ill-prepared application and means that the inquiry can focus on really understanding what is being proposed, rather than needing to spend time addressing the problems of ill-prepared applications.

Risks

34 This proposal has the following risks:

- a possible perception that the Planning Commission would be pre-determining issues without having heard the full evidence;
- objectors will dominate the process and cause unnecessary delays; and
- possible risk of legal challenge – if, at this stage, the Planning Commission oversteps its proper role in managing and advising on the process.

35 There is a risk that early engagement with the Planning Commission may create the expectation of a certain outcome. Early engagement is already encouraged through pre-application discussions between developers and local authorities for local projects, and managed appropriately to ensure propriety. The practice of early engagement could be further supported through relevant statutory provision, and the establishment of relevant procedures, such as careful documentation of all engagement that occurs.

36 There is a risk that objectors to the scheme, particularly those who object to it in principle, will dominate this process and cause delays. It is therefore important to ensure that the promoter has sufficient flexibility to determine how best to carry out the consultation. Later stages of the process, particularly the inquiry phase, will continue to be an important forum for objectors to the scheme to engage and present their views.

37 It will be essential to ensure that propriety issues are managed carefully throughout the process but this should be achievable. Consideration could also be given to whether there would be a formal separation between the 'advice' team and the decision-makers themselves.

Recommendation

(v) Establish a new independent Planning Commission for strategic transport schemes comprised of well-respected experts of considerable standing. Having conducted an inquiry stage, the Commission would take the decision in relation to planning applications for strategic transport schemes.

(vi) For those schemes that fall to the Planning Commission to determine, Ministers would have no planning decision-making role. The Commission would determine whether the main aims of a planning application are consistent with the objectives set out in a Strategic Statement, within a sustainable development context. Where they are consistent, there would be a presumption in favour of granting permission for the scheme, subject to ensuring that the scheme is compatible with:

- **EC law, including environmental law requirements;**
- **ECHR law requirements; and**
- **any other exceptional circumstances that Ministers may have specified in the Strategic Statement.**

The Commission would have the power to determine appropriate mitigation measures, including environmental mitigation measures.

38 A new independent Planning Commission (the "Commission") should be established to take the final decision in relation to strategic transport schemes. Since the Commission would play such an integral role in the planning process, it would be critical to ensure it would be able to command respect and has the necessary skills to perform its job. The Commission would consist of a panel of well-respected experts of considerable standing. This group would need to include planning expertise but should draw from a wider range of skills to ensure that complex transport schemes can be considered thoroughly. This would be likely to include skills such as legal, engineering, economic, and environmental expertise, so different and broad backgrounds can be brought to bear on the final decision. All decisions would be made by panel decision to reflect the equal role of members and the skills they brought to the table.

39 Ministers would have no day-to-day involvement in the Commission. They would however play a critical role in its creation, by introducing the necessary framework legislation which would establish the Commission and set out the rules regarding its constitution and powers. This would ensure the appropriate accountability and monitoring arrangements for the Commission in its decision-making role. Ministers would appoint members to the Commission. Ministers would have no planning decision-making role in relation to specific schemes, but would have a greater strategic role, as discussed above. For publicly funded projects, Ministers would retain the final funding decision on whether the project should proceed – the planning decision does not commit government, or a private promoter, to proceed with the project at any cost.

40 The Commission would perform the following roles:

- engage with the promoter prior to the formal application being made;

- ensure the inquiry is conducted in a manner that means the key issues are appropriately tested and the right information is made available to the Commission to reach its decision;
- take the final planning decision on whether the specific scheme should proceed in the manner described in recommendation (vi).

41 The Commission would have a set time limit after the close of the inquiry to reach and issue a decision. Extensions of this time limit could be sought in exceptional circumstances.

42 To ensure the fairness and legitimacy of the process, it is important that the Commission's decision was subject to the possibility of legal challenge but that the ability to challenge is balanced against the risk of unnecessary delay. The detail of how this would be delivered is discussed below.

Figure 3: Independent expert body determining issues within a strategic framework

Although the Planning Commission would be a radical change to the existing English planning system, a number of parallels can be seen with other policy areas and internationally.

As noted in Chapter 4.5, Ireland has had an independent planning board since the 1970s. The role of this Board has recently been extended to include determining all major infrastructure proposals.

The Enterprise Act 2002 introduced a new regime for the assessment of mergers and markets in the UK. In most merger and market references the Competition Commission is responsible for making decisions on the competition questions and for making and implementing decisions on appropriate remedies. This decision role was previously carried out by Ministers.

Similarly, the establishment of the Bank of England Monetary Policy Committee took responsibility for detailed decisions on monetary policy away from Ministers. Decisions are still, however, taken within a framework established by Ministers through the setting of the inflation target.

43 This proposal would deliver the following:

- a single, independent body would be involved in all key stages of the application;
- there would be a single phase to the decision making (rather than the current two phases of an Inspector's report and recommendations, followed by the Minister's decision);
- experts would be engaged throughout the process and have the skills necessary to understand the local impacts of development; and
- time limit for decision provides certainty for promoters and participants.

44 The Planning Commission would be involved both before a formal application is made and then throughout the formal process of inquiry and decision-making. This should help to ensure effective case management. Because the Commission would be involved directly throughout the process, the different stages of scheme consideration are dealt with consistently. This reduces the risk of delay at later stages and the consistency also reduces uncertainty for promoters.

45 The Commission would make the final decision on an individual transport scheme. Ministers would cease to perform this role. This would mean that there would be only one phase to decision making, rather than the current two phases (where the Inspector prepares a report and recommendations for the Minister, who then makes the final decision), and that there would be a single decision-maker. This would ensure that unnecessary delays could be avoided and expert skills brought to the final decision. Reducing the period of time spent on the decision stage also avoids creating further delays because of new information arising that needs to be considered for the application. This minimises the problem of delay causing further delay.

46 Given the other measures proposed in the package, these efficiencies would be delivered while still retaining thoroughness and democratic accountability, and without compromising the quality of the decision-making. The Commission would be involved throughout the process – from carefully managed pre-application discussions to the inquiry stage. They would therefore be familiar with the application and its likely impacts and have had the opportunity to thoroughly test the application through the inquiry stage. The independence of the Board would also potentially be a significant benefit in being able to objectively consider the impacts of a scheme.

Risks **47** The proposal has the following risks:

- a perception of lack of democratic accountability in the system;
- a risk of cost-escalation or risk-averse decision making by the Commission; and
- time limit is set to an unrealistic period and means the Commission cannot fully consider the evidence.

48 The major substantive risk of this proposal is that because it would be such a radical shift from the current process, it may create a perception of a lack of democratic accountability in the system. However, in practice, this would not be the case. Taking the package as a whole, there is clear and proper accountability, with Ministers taking the role that is properly performed by them (to clarify the national interest through the Statement of Strategic Objectives) and being involved at the most appropriate stage (at the front end of the process). Moreover, under the current system, Ministers perform a quasi-judicial role when making transport planning decisions on specific projects; and so a purely political approach is not open to the decision-making minister. That said, Ministers do sometimes reject the recommendations of planning Inspectors and that possibility would be excluded under these proposals. Under the proposed package, the upfront Statement from Ministers would help provide greater clarity about the policy framework and remove this possible reason for different decisions. Ministers would also play a critical role in establishing the statutory framework and rules that would govern the operation of the Commission.

49 There may also be a concern that if mitigation issues are left to the Commission to determine, rather than Ministers, they might impose substantial and disproportionate new costs on projects through the setting of conditions to address the environmental impacts. This could risk cost-escalation of projects and may mean that projects are no longer financially viable, or more costly for the public-sector. This is already a risk under the existing system, since conditions are usually recommended by the Inspector and then affirmed or changed by the Minister.

50 However, a number of elements of the package would help to mitigate this risk:

- the increased efficiency and reduced uncertainty of the whole system will itself lower the risk of cost-escalation, which often relates to factors external to the planning system (such as construction cost inflation). The longer the system takes, the greater the risk of such inflation;
- the measures in the proposed package which encourage the promoter to engage early or seek mediation with key stakeholders should help to identify mitigation opportunities earlier in the process when it is easier to incorporate them effectively into the proposal;
- a greater use of price signals and an increasing ability to quantify impacts would help ensure a greater understanding of the relative merits of different mitigation options to ensure the most efficient balance. The establishment of the Commission provides the opportunity for Ministers to set out the more detailed framework that decisions should be taken within; and
- in drawing up their Statement, Ministers could consider whether they wish to set out in the Statement any policy parameters which decisions should consider, such as in what circumstances particularly costly mitigation would be appropriate to consider (e.g. tunnelling).

51 The final risk is that the time limit is considered unreasonable and means the Commission cannot fully consider the evidence to reach an informed decision. Again, the Commission's familiarity with the project because of their early and sustained engagement throughout the process; and the clear focus of the inquiry because of the Strategic Statement; means that a shorter and defined time period in which to determine the final decision should be achievable.

Recommendation

(vii) Provide for a more focused inquiry process with more accessible opportunities for participation by all parties, by moving to an inquisitorial, rather than adversarial, inquiry process. There would be a presumption in favour of written representations.

(viii) Impose challenging but achievable, statutory time limits on the key stages of the inquiry process, to provide greater certainty for all parties likely to have an interest in a specific scheme.

52 The inquiry process is a critical and valuable element of the planning process. The consideration and testing of the application and the promoter's environmental statement are a fundamental part of ensuring a fair and efficient process and outcome. It is also important to provide a forum for publicly voicing views and concerns. The inquiry therefore needs to be understood to be more than simply an oral hearing and testing of evidence. As such, the inquiry stage needs to achieve a number of different objectives:

- testing questions of fact – under the current system, this is done both through written submissions and lengthy oral cross-examination by parties' legal representatives;
- providing a forum for participants (promoters, objectors and supporters) to give their views on how different interests should be balanced; and
- giving legitimacy to the process by allowing interested individuals, communities and other interest groups an opportunity to participate in the decision-making process.

53 It is not clear that the current adversarial approach overseen by a Planning Inspector is the most effective forum to deliver these outcomes. It can be inefficient in testing questions of fact because it is heavily dependent on the parties and their advocates focusing on the issues that they consider most important and using cross-examination to test them. This means there is a risk that the inquiry is not focused on the issues that the Inspector considers most important. There is also the risk of repetition of information and evidence that is common ground between parties or is unlikely to be integral to the final decision. Under the current system, Inspectors do have some powers to run the inquiry more efficiently, but it is not clear that they feel sufficiently empowered to use these effectively.

54 The inefficiencies of the adversarial process mean that it is also difficult to judge how long the inquiry is likely to take or when particular issues are likely to arise. This can make it difficult for people to participate in the process because they cannot anticipate the level of involvement to which they will need to commit. The adversarial approach, which has become increasingly legalised in major cases, can also be daunting for community representatives and individuals to participate in. The recent shift towards greater timetabling of inquiries under the current system may help this to a certain extent, but is still only done on a case-by-case basis so does not provide certainty until a very late stage in the development of a specific scheme.

55 Instead, the Study proposes a radical rethink to the inquiry stage:

- move to an inquisitorial process with the Commission, or their representative, leading the process and focusing it on the issues they consider to be important;
- establish a presumption in favour of written evidence; and
- establish a challenging, yet achievable, statutory maximum time-limit for the length of the inquiry stage.

56 An inquisitorial model would require a proactive Commission, who take a strong lead in managing the full inquiry process, ensuring that it remains focused on the central issues. Their role is critical in ensuring the process runs efficiently and as a consequence, they must be held in high regard by participants.

Inquisitorial approach

57 In practice, the Chairperson would have sufficient discretion to adjust processes on a case-by-case basis to provide flexibility while ensuring a fair process. After the promoter has submitted the formal application, the Commission would consider and make publicly available the written submissions from the developer and all other written submissions from other parties. The Commission would then identify the issues, if any, they think need to be tested more fully during the inquiry. These are likely to include technical issues and issues of fact where the evidence is inconsistent, where issues have been inadequately addressed by the parties, and where legal issues require resolution. Other parties could also submit to the Commission a list of the issues that they think need to be considered and tested further in the inquiry.

Presumption of written evidence

58 The Commission would then choose how best to test the evidence and provide for public participation. A presumption in favour of written representations would be the norm. The inquiry could have two distinct phases, which could be held concurrently:

- inquisitorial phase to address issues of fact that the Commission has identified as being appropriate to consider in this way; and
- 'open floor' phase to allow interested individuals or parties to speak to their concerns.

59 The presumption of written evidence would mean that there would be no right to present oral evidence, or to conduct oral cross-examination. Written representations would be the main way of submitting evidence to the inquiry. The majority of cross-examination of issues would also be carried out by exchange of written materials. This would allow technical questions to be explored and tested in depth, where necessary, to feed into the final decision. The Commission would be assisted by a secretariat to support this process. The Commission would have the powers to call witnesses and could orally question them directly themselves, or could appoint an advocate to ask questions on their behalf. They may decide there is no need to call any oral evidence.

60 The second phase – the 'open floor' phase – would provide the opportunity for interested individuals or other parties to have their say within a defined period of time. This would not be intended to be the place to introduce new factual information, but, typically, would rather allow advocates to draw out the key features of their arguments (building on written representations) and to provide an opportunity for people to voice their opinion and state how the development is likely to affect them personally. Each oral representation would be subject to a time-limit, as happens (for example) in the European Court of Justice where the presentation of arguments is limited to a short span of time. Even though the ECJ does not routinely determine factual issues, the scope for a time-limited, yet fair, oral procedure is a valuable way to ensure the key issues are addressed publicly. If advocates or other participants feel that they have not had sufficient time to represent their views, a further written submission could also be made to the Commission.

61 At the close of the inquiry, the Commission could choose to seek written closing submissions from key parties: identifying what they see as the key issues that need to be addressed in the final decision and their views on how they should be determined. As with oral closing submissions in the current adversarial approach, this allows the Commission to draw on the expertise of the parties as to how the evidence should be balanced or determined.

62 The maximum length of the public inquiry would be established by statutory time limits. Provision would need to be made for the time limits to be extended in exceptional circumstances. Further consideration would need to be given to appropriate enforcement measures.

63 The Commission would also have powers to direct parties to mediation or other forms of dispute resolution to ensure a resolution of disputed issues, both before and during the inquiry. For example, these powers could be used to encourage parties to agree mitigation measures.

Figure 4: 'Examination in public' for Structural Plans

The recent planning reforms to the Town and Country Planning Act (TCPA) include an 'examination-in-public' process (EIP) for consideration of Structural Plans and to resolve outstanding questions, such as conflicts with national or regional policies, or where changes need to be made to the plan.

As with this Study's proposals for an inquisitorial inquiry, the examination-in-public process is driven by the examiner. The examiner is responsible for selecting the issues on which they need to be more fully informed by means of public discussion in order to reach their decisions.

The changes to the TCPA have only recently been introduced and to date only two Structural Plans have been through this process. The evidence from the two EIPs to date suggests that it has allowed the testing period to be significantly reduced.

The Study's proposals take elements of this model and extend them further.

64 These proposed changes would deliver the following:

- removes most oral cross-examination from the inquiry. Stakeholders suggest this can be a cause of considerable inefficiency in the current system;
- because of the Commission's breadth of powers and the nature of the inquiry, the inquiry can focus on understanding the issues of local impact; and
- the time limits provide increased certainty for participants of time-scales and provide incentives for the Commission to run a focused and efficient inquiry.

65 Cross-examination has traditionally been used within an adversarial process to test evidence. It therefore has value, but is far from being the only, and certainly not the only effective, method of testing evidence. Stakeholder evidence suggests that, in practice, oral cross-examination can lead to "grandstanding" by parties' legal representatives. The inquisitorial process and presumption of written representations would largely remove oral cross-examination as a means of testing the evidence from the process. The existing system, even where very carefully handled by the Inspector, has the potential to create delays as repetition comes into the process as different parties present their cases, and issues that could be more quickly resolved are extensively cross-examined by different parties.

66 Mechanisms to test evidence are retained in the inquisitorial model but adapted to suit the needs of the Commission. The Commission would be able to direct the questioning through focusing on the questions and witnesses that they see as important and core to understanding the merits of the case. This would ensure that the process remains thorough.

67 The Statement would have established Ministers' strategic priorities and articulate their views on the 'need' for strategic transport capacity and development. This means that the inquiry can focus on issues of local impact and options for mitigation, because this strategic need has already been established and tested through wide public consultation. With an inquisitorial model, the Commission drives what the inquiry examines and more actively controls what the time of the inquiry is spent on. It is therefore easier for the Commission to maintain the focus on identifying and understanding the local impacts of the proposal, and whether they are consistent with ECHR and EC environmental requirements, than is possible under the existing adversarial system.

68 Time limits on the length of the inquiry would provide increased certainty for promoters and other participants. The possibility of an extension provides the necessary flexibility to deal with exceptional cases.

Risks **69** The proposal carries the following risks:

- lack of buy-in to the process from stakeholders and participants;
- written representations process may be unduly time-consuming and resource intensive;
- the Commission could become risk averse in the way it conducts the inquiry to avoid legal challenge and consequently any possible time savings are reduced; and
- the time limits are too short for complex applications.

70 A move to an inquisitorial model may appear to be a radical departure from the current planning inquiry approach. The current adversarial approach draws heavily on traditional UK legal traditions of oral hearings and oral challenge. However, a number of other European countries operate a much more written-based approach to their inquiries while still retaining the essential elements of thoroughness and procedural fairness. In the UK, there is no legal requirement to have oral hearings, since representations can be made fairly through other ways. An inquisitorial approach also has parallels with the examination-in-public approach undertaken for testing and adopting the London plan and Regional Spatial Strategies discussed in Figure 4.

71 A proposal to move to a presumption of written representations and to an inquisitorial model does therefore create a risk of a lack of buy-in to the process from stakeholders and participants, especially where people may perceive this as a diminution of their rights. This can be mitigated through clear communication of how the new system will work. This should particularly emphasise the 'open floor' phase of the inquiry which provides people with the opportunity to voice their views; and that written evidence is a more effective way to present complex evidence.

72 A move to a presumption of written representations and the removal of oral cross-examination from the inquiry stage would not be costless to administer. The Study considers that this could operate effectively but recognises that it is likely to require greater secretariat support to facilitate the process than is currently available to decision-makers and inspectors. The extensive use of electronic technology to store, reproduce and circulate information, as well as adopting procedures that let parties opt in or out of receiving papers depending on their interest, could help make this less paper-intensive. Such procedures have recently been adopted under the TWA. If people do not wish to receive the full version of documents, they can opt to simply see the relevant parts of it, or not at all.

73 Clear, firm and fair direction would be required from the Commission. This is required for any well-run inquiry, under any model, but would be of particular importance for an inquisitorial process. They would need to make effective use of the powers, including focusing on the key issues in the inquiry, and the presumption of written representations. There remains a risk, however, that due to concern about the potential for legal challenges based on alleged procedural unfairness, the Commission might adopt an increasingly risk-averse approach to conducting inquiries. This would risk any time-savings from switching to an inquisitorial model being lost.

74 The risks of this could be mitigated by providing the Commission with the appropriate training and guidance, but also necessary expert (including legal) support. The composition of the Commission would also be a critical component in ensuring it has the necessary standing. Provision could, for example, be made for the inquiry to be headed by a High Court judge. The statutory time limit on the length of the inquiry, with extensions available only on an exceptional basis, would also act as an incentive for the Commission to be efficient. The possibility of an extension also helps to manage the risk around exceptionally complex projects not fitting within the standard time limits.

Recommendation

(ix) Simplify and consolidate the statutory process for strategic transport schemes, by creating a new statutory consent regime under the jurisdiction of the Commission. There would be one set of procedural rules.

75 This could deliver benefits of increased clarity. A single set of procedural rules should govern the regime.

76 There are various ways in which the necessary powers for deciding relevant transport planning applications could be conferred on the Commission. One possibility would be for the necessary framework legislation to amend each piece of existing transport planning legislation (and other relevant primary legislation, e.g. the Town and Country Planning Act 1990) in order to transfer the decision-making powers, and related powers/duties, in relation to strategic transport projects, to the Commission. This, however, is not an attractive option. It would entail tinkering with a number of pieces of existing legislation which, whilst overlapping in some respects, are framed in very different ways. Some of the legislation is old and is in need of reform. Understanding the Commission's powers would require a read-across to other legislation and it would be very user-unfriendly. This option would most likely be a complicated exercise with a potentially messy outcome and for these reasons it is not recommended.

77 An alternative approach would be to create, within the necessary framework legislation, a bespoke consent regime for relevant transport planning projects under the jurisdiction of the Commission. This would confer on the Commission all the powers necessary to authorise proposals for relevant transport development projects (including compulsory purchase powers) and any related statutory duties. Ideally, there would be little or no read-across to other primary legislation, although matters of process might need to be dealt with in secondary legislation. There would be one set of procedural rules governing the conduct of the planning inquiry and all other process elements of the system. This would result in a self-contained, up-to-date consent process which would be tailor-made for use by the Commission and promoters, both public and private, seeking permission to develop transport infrastructure. Although the creation of a new statutory regime would be far from straightforward, it would seem to offer significantly greater clarity for participants in the process.

Recommendation

(x) Establish clear and defined statutory rights of legal challenge at key stages of the process to form a complete framework for challenges to decision making under these proposals. The definition of these rights, along with the opportunities for participation set out above, provide extensive and defined opportunities for affected parties to participate in and influence the full decision-making process.

78 The right of legal challenge is a vital check on the proper exercise of power by the decision makers in the system, whether Ministers or the Planning Commission.

79 There are two distinct stages where participants should have a right of challenge:

- following the publication of a Statement of Strategic Objectives; and
- following the Planning Commission's decision in relation to a specific scheme.

80 Clear and defined statutory rights of legal challenge should be established to form a complete framework for challenges to decision making within this new planning system. The definition of these rights, along with the opportunities for participation set out in earlier sections, provide extensive and defined opportunities for interested parties to participate in and influence the full decision-making process.

81 More specifically, the proposals would:

(1) Create a statutory right of challenge to the High Court in respect of the content of a Strategic Statement and the process by which it is adopted:

- it is recommended that the grounds for such a challenge should be limited to those that are strictly necessary. Under section 288 of the Town and Country Planning Act 1990 (right of appeal to High Court against planning decisions of the Secretary of State), challenges may only be mounted on the basis that the Minister has (a) acted outside the powers in the Act (which includes a right of challenge on EC and ECHR law grounds) or (b) breached a relevant procedural requirement;
- it is recommended that similar provisions should be adopted in connection with this proposal. It is recognised, however, that in taking these proposals forward the Government may decide to widen the grounds of appeal; and
- the challenge should be made within a set period (e.g. 6 weeks) from the publication of the statement and no other form of legal challenge would be permitted. Provision would need to be made to ensure that the statement could not have any legal effect on planning applications until the appeal was resolved.

(2) Create a statutory right of challenge to the High Court against the decision of the Planning Commission:

- the grounds of appeal would be the same as for challenges against Strategic Statements, the same time limit would apply and, again, other forms of legal challenge would be precluded. It is also recommended that challenges to the content of any relevant Strategic Statement or the process leading to its adoption should be precluded at this stage (save as required by the law) because that possibility would have been available at an earlier stage in the process. It would defeat the object of the Strategic Statements if they were susceptible to repeated legal challenge at every stage of the process.

Risks **82** The Strategic Statements would be subject to an express right of legal challenge – this risks causing delay and uncertainty. Given the proposed impact of the statements on the planning decision-making process and the intention that (so far as the law permits) they should not questioned at the planning inquiry stage, it is vital that there are clear and well defined rights of challenge against the decision-making process that leads to their production.

83 The Air Transport White Paper cases have in any event shown that strategic government policy statements are, under the present regime, subject to legal challenge by way of judicial review. The creation of an express, clearly defined legal right is preferable to the current position.

84 The only way to prevent the delays and uncertainty of judicial review is for the Statement of Strategic Objectives to be introduced into Parliament as a Bill. This option is discussed below as a separate option but is not recommended for the reasons set out there.

85 Although it is difficult to remove the use of judicial review as a delay tactic, it is, however, possible to substantially reduce the risk of a successful challenge that might require a re-writing of the Statement (i.e. a change of government policy). This is essentially through ensuring that the correct process is carried out carefully. It is clear that:

- full consultation on a broad range of options must occur. Options should not be excluded prior to consultation, and options that are not consulted on should not be included in the final Statement.

86 A clear and defined statutory right of legal challenge helps to achieve the appropriate balance between ensuring the process is fair, while minimising the risk of the misuse of legal challenges.

87 A clear and defined statutory right of legal challenge helps to achieve the appropriate balance between ensuring the process is fair, while minimising the risk of the misuse of legal challenges.

Not recommended: Establish a new Parliamentary process for Government's strategic priorities

88 As an alternative to the hybrid bill route, the Study also considered whether a new parliamentary bill process should be introduced as an optional additional step for enacting strategic priorities that the Government considers to be of particular significance, in order to protect them from the risk of delays caused through challenge on domestic law grounds. This would entail a bill being introduced as soon as possible after publication of a Statement of Strategic Objectives.

89 A bill would be required each time the Government wanted to make use of this option. Unlike the hybrid bill process, it would not grant planning and other permissions for a specific development. Relevant planning applications would need to be made and considered at a later stage, after the legislation was passed, and following a planning inquiry. Such applications would need to be capable of being rejected on EC and/or ECHR law grounds. This would mean that even with an Act of Parliament that approves one or more strategic aims, there would be no guarantee that any specific scheme would be permitted.

90 This proposal would have one major benefit – successful passage of a bill would remove the possibility of the delays and uncertainty that can be caused by judicial review of the Statement of Strategic Objectives on domestic law grounds. Any such primary legislation would still be open to challenge on EC law grounds such as a failure to comply with environmental requirements.

Risks **91** There are, however, some substantive risks raised by the proposal:

- a new Act, and the associated parliamentary time, would be required every time this option is used; and
- Parliament has previously indicated that it does not consider that Parliament is the best forum for communities to feed into the planning process.

92 Parliamentary time would be required each time Ministers wished to make use of this provision. To provide for Parliament to reject or modify the proposals, any Statement of Strategic Objectives going through this process would have to be precluded from having any effect on planning decisions, until the Act was in force. This might therefore delay the Statement having any effect by up to two years, to allow for drafting and introduction to the next available Parliamentary session.

93 Even where the Bill was successfully enacted, detailed scheme proposals would still need to be brought forward and considered by the Planning Commission through the public inquiry process. It is not clear, therefore, whether there would be any substantive time-savings delivered by this proposal.

94 A similar proposal was considered in the 2001 Planning Green Paper[1] (that led to the Planning and Compulsory Purchase Act 2004). This option sought to provide Parliament with a role in approving the 'need' for a specific major project so that the planning inquiry could focus on the detail of the application. In that case, the process was intended to result in a Parliamentary order, rather than primary legislation, so would still have been susceptible to the delays and uncertainty of legal challenge. The Select Committee's main concerns were:

- whether it would save any time;
- risk of the public losing confidence in the inquiry system since long-established rights of hearing would be restricted, and difficulties in aligning Parliamentary procedures with the Human Rights Act;
- risk of whipping of MPs in the passing of legislation in the House of Commons;
- potential duplication at inquiry – how could you avoid discussing need for and location of a major infrastructure project?; and
- inappropriate use of Parliamentary time: this was why private bills for transport were replaced with the TWA process.

95 The ODPM response to the Select Committee recognised particularly the concern about whether the process would be speeded up. The proposal was removed from the Bill following the Select Committee process.

Conclusion **96** On balance, the Study has concluded that the practical consequences, including pressures on Parliamentary time and the potential barriers that a Parliamentary process might create for public participation, mean that a legislative proposal for Strategic Statements should not form part of the final package.

[1] *Planning – delivering a fundamental change*, Office of the Deputy Prime Minister, 2001. See www.communities.gov.uk.