

## **CONSULTATION ON DEVELOPING A NATIONAL POLICY STATEMENT FOR WATER RESOURCES AND PROPOSALS TO AMEND THE DEFINITION OF NATIONALLY SIGNIFICANT WATER RESOURCES INFRASTRUCTURE IN THE PLANNING ACT 2008**

### **RESPONSE BY THE NATIONAL INFRASTRUCTURE PLANNING ASSOCIATION**

#### ***Background***

1. This is a response to the consultation launched in November 2017 by the Department for Environment, Food and Rural Affairs ("DEFRA") on (a) developing a national policy statement ("NPS") for water resources; and (b) proposals to amend the definitions of water resources nationally significant infrastructure projects ("NSIPs") contained in the Planning Act 2008 ("the PA 08").
2. The National Infrastructure Planning Association ("NIPA") is an organisation of over 500 members created to bring together all those involved in the planning and authorisation of NSIPs in the UK and to promote best practice.
3. NIPA's members are drawn from a wide variety of organisations including project promoters, local authorities, law firms, environmental consultants, planning consultants, surveyors and multi disciplinary consultancies.

#### ***Overall issues***

4. Given the requirement of section 104 of the PA 08 that an application for a DCO must be determined in accordance with any relevant NPS having effect (subject to certain exceptions), NIPA's overall view is that it is critical that the requirements contained in the NPS are as clear as possible (and able to be satisfied, albeit with robust mitigation in place, etc). This enables promoters to prepare and submit high quality applications, resulting in a smoother path through the process for them, but also for the Secretary of State, the Examining Authority, and interested parties.
5. If there is a lack of clarity in the NPS, bringing water resource projects into the DCO regime could have the effect of hindering deliverability – clearly the opposite of the desired outcome. Clarity is therefore of utmost importance.
6. The majority of the consultation questions are best answered by the water companies themselves. There are however a number of areas where NIPA can usefully contribute, as follows:

#### ***Q2. Do you have any views or comments on these principles for developing the NPS?***

7. It is important that the principles are clearly defined. As currently drafted, they would benefit from further definition.
8. Principle 1 sets out the 'twin track' approach to managing water resources. The relationship between the WRMPs and the NPS needs to be made very clear. As much as possible, the NPS needs to be a freestanding document and should not cross refer to the WRMPs, for instance to the optioneering required in WRMPs. Instead the NPS should make it clear that if a project is contained in an approved final WRMP, alternatives have been considered and need is established, so cross-referencing goes no further than to check the projects listed in the WRMP.
9. Principle 2 notes that projects contained in a final WRMP will themselves have been subject to social, economic and environmental appraisals, i.e. SEA and HRA. The

NPS should also make this clear, noting that those appraisals can then be built upon for the DCO applications themselves.

10. Principle 3 regarding enhancing the environment would benefit from better definition. The Government sets out its ambition to include 'net environmental benefit' as a criterion of demonstrating good design, which will be referred to when examining a DCO application. If that is to be a pre-requisite to consent, there must be very clear and detailed guidance on how a net environmental benefit can be measured and established. NIPA is concerned that at present there is little definition around this potentially difficult concept.
11. If the required definition cannot be achieved, in order to avoid confusion and delay at examination, this criterion should not be included in the NPS. Instead environmental benefit should be considered in the traditional way via the environmental statement.
12. The concept itself also needs to be clearer. Having referred first to 'net environmental benefit', the same paragraph in section 45 of the consultation then states the intention to ensure that schemes are designed to 'maximise potential to enhance the environment'. This seems to go further than establishing a 'net environmental benefit'.

**Q3. Do you consider there to be any further principles for developing the NPS? Please explain your reasoning.**

13. As mentioned above, the fundamental principle should be to achieve maximum clarity. If new approaches are being taken, this should be spelt out and the reasoning behind them should be explained, thus avoiding long debate at examination, as for example occurred on noise issues at the Thames Tideway Tunnel DCO examination.
14. In addition, NIPA considers it an important principle that the NPS makes appropriate provision in relation to the delivery and implementation of the NSIPs it relates too, i.e. the focus of the NPS should not just be on the consenting/DCO stage because deliverability is an important issue to consider. This view is supported by recent research published by NIPA in June 2017 and undertaken on its behalf by University College London. The relevant reports can be accessed via the NIPA website: <https://www.nipa-uk.org/news/NIPA-Insights-Research-REPORTS-LAUNCHED> and NIPA's summary of the research can be [found here](#):
15. The research project was aimed at providing evidence about barriers to effective infrastructure delivery in the planning process for NSIPs and it concluded that whilst there was no 'silver bullet', there was scope to create a greater focus on deliverability at all stages of the process; and to ensure that project delivery, not development consent, is seen as the key objective. Public trust and engagement starts with the relevant National Policy Statement and tackling deliverability upfront in the NPS would set the right direction and ensure appropriate consideration of the need for flexibility during scheme preparation, examination and delivery in practice.

**Q7. Do you have any comments on the discussion on potential reasonable alternatives to the NPS (section 2.4 of scoping report)? Should any further alternative scenarios be considered? Please support your suggestion with your reasoning.**

16. NIPA's view is that the AoS should consider alternative means of meeting water demand to large-scale infrastructure. Whilst the NPS will establish need for this infrastructure as part of a 'twin track' approach, NIPA suggests that, for example, demand management methods should be considered in the AoS in terms of being a sole solution, even if just by way of a brief acknowledgement and dismissal.
17. NIPA also queries whether there is a need to consider properly alternative policy approaches. Whilst the AoS Scoping Report does reference a 'non-NPS' scenario (presumably with WRMPs), there are no alternatives mentioned in terms of other potential policy frameworks.
18. Obviously assessment of reasonable alternatives is essential under SEA law to establish a legally robust NPS. The approach to alternatives should therefore be very carefully considered, to avoid legal challenge and delay in the delivery of these important schemes.

**Q8. Do you think that the proposed approach to assessing the NPS against the Habitats Regulations is appropriate?**

19. NIPA's comments in respect of alternatives set out above should also be taken into account in respect of the HRA.

**Q11. What are your views on the factors we have set out here for considering if schemes are nationally significant?**

20. These appear reasonable and NIPA notes that they broadly reflect the factors set out in the written ministerial statement in respect of criteria to be taken into account when determining whether a direction under section 35 of the PA08 should be issued in respect of business and commercial projects.
21. It is essential that Government carefully considers water companies' views on whether the various thresholds are set at appropriate levels to catch the projects with these characteristics, since those are the projects that will benefit from the Planning Act regime. NIPA agrees strongly that bringing the right projects into the DCO regime will bring significant benefits. Equally, however, NIPA recognises that water undertakers have a track record of delivering water infrastructure through conventional regimes, including the town and country planning regime. It is therefore important that consideration of the project thresholds in the PA08 takes into account water undertakers' experiences of quickly consenting large projects under existing consenting regimes.
22. Inevitably the line will require to be drawn somewhere and some stakeholders will think that too many projects are caught and some will think not enough are caught. Rather than catch too many projects, if the line is drawn at higher thresholds, section 35 directions could be used to bring in projects that would benefit from the regime. The NPS could support this process by specifically recognising that is expected to be used for certain projects and setting out the relevant criteria.

**Q16. What are the main benefits and risks of setting the same threshold for all infrastructure types? For example, do you see any reasons that the thresholds for reservoirs and transfers should be/ not be the same?**

23. NIPA is aware that there is a point of view that for a particular need, if one type of project fell into the DCO process and one did not (i.e. if the thresholds were different), that could dictate the project type chosen (potentially ahead of other cost/benefit considerations).

24. However NIPA's overarching view is that there would only be very limited scenarios where the consenting route applicable to a project would dictate the final solution chosen - clearly overall effectiveness in meeting the need is more important.

**Q17. What are your views on the inclusion of desalination schemes in the definition of nationally significant infrastructure?**

25. Given the experience of Thames Water, if the question of need for such schemes was settled in the NPS (and, as such, became central Government policy) this would clearly be beneficial in responding to objections, particularly around the significant energy use required for such infrastructure. This would of course have to be balanced against the Government's overall climate change obligations and a particular scheme meeting the various requirements, particularly around environmental impact.

**22 December 2017**