

**CONSULTATION IN RESPECT OF
NATIONAL POLICY STATEMENT FOR GEOLOGICAL DISPOSAL INFRASTRUCTURE**

RESPONSE BY THE NATIONAL INFRASTRUCTURE PLANNING ASSOCIATION

Background

1. This is a response to the consultation launched in January 2018 by the Department for Business, Energy and Industrial Strategy ("DBEIS") on developing a national policy statement ("NPS") for geological disposal infrastructure submitted on behalf of the National Infrastructure Projects Association ("NIPA").
2. The NIPA is an organisation of over 500 members created to bring together all those involved in the planning and authorisation of Nationally Significant Infrastructure Projects ("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 Planning Act 2008 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, this could hinder deliverability which in turn presumably could have effects on the nuclear generation industry in the UK. For example, for the purposes of continuing to ensure the requirement on page 99 of the Nuclear White Paper 2008 is met i.e. that before development consents for new nuclear power stations are granted, the Government will need to be satisfied that effective arrangements exist or will exist to manage and dispose of the waste they produce. Hence clarity is of utmost importance.
6. By way of further example, in terms of clarity and certainty, care should be taken in paraphrasing legislation or policy and making sure that terms used in the NPS are consistent and properly defined. Statutory references to the Planning Act 2008 need to be checked carefully.
7. Also, as a general point, the NPS should be carefully checked to ensure it extends appropriately to the marine environment and appropriate marine policy (part of the Planning Act 2008 (as amended) s104 tests).
8. The majority of the consultation questions are best answered by the nuclear industry themselves. There are however a number of areas where NIPA can usefully contribute, as follows.

Specific consultation questions

Chapter 3 – the need for geological disposal infrastructure

Question 1. Does the draft NPS provide suitable direction to the Planning Inspectorate and Secretary of State on the need for geological disposal infrastructure?

9. Yes in broad terms. The UK Government has expressed a strong preference to manage the inventory for disposal in one GDF and that at present there is supporting work and evidence to support the need for this solution. However, it may not be possible or practicable to dispose of all the waste in one geological disposal facility and so it cannot be ruled out that more than one facility will be required. Therefore, given the lack of certainty as between there being one site or more, it might be of assistance to set out in Chapter 3 more detail around the factors that should be taken into consideration where a site is promoted, as to the level at which it is planned and promoted to fulfil the full need, as against a site which may expressly only be planned to be part of the solution, or implicitly is allowing for other sites to come forward in due course. It should also be clear that there may be a difference between borehole and repository where they are separate infrastructure applications.

10. The NPS should, for example, make it clear that any DCO application should have regard to the latest inventory for disposal to justify the planned size of the proposed GDF the subject of the DCO application.

11. In addition, due to the nature of these facilities, and their disposal operational lifetime of some 150 years, there might be merit in an express reference to the need for more 'parameter' based approaches to design (and the limitations on what is realistic in terms of environmental topics), given the time period over which the development would operate and endure. Climate change and transport evolution are both already mentioned, but we suspect that any ExA might welcome greater clarity in the NPS on the level of 'future proofing' required and the approach to how this will be dealt with in the environmental impact assessment.

12. In relation to timings and future proofing – the NPS needs to be clear and set out consistent timescales and the level of assessment/information required to be taken into account for the whole lifetime of the project (i.e. including decommissioning and post-closure). It is important to future-proof a GDF i.e. to design the GDF to take into account climate change as well as disaster/emergency/accident mitigation/response at the construction, operation, decommissioning and post-closure stages. It would also be useful for the NPS to set out greater clarity on the level of information required by each regulator e.g. the EA and the ONR and when and how this information interacts with that required under the DCO consenting process. This will ensure there is clarity on which regulator is responsible for regulating the different aspects of the GDF whilst ensuring efficiency in producing information at the relevant stages and to prevent uncertainty or duplication.

13. On a more detailed but important note on timing the NPS would benefit from greater clarity on the timing of borehole infrastructure applications and tranches of boreholes as well as clarity and consistency over the use of terminology for a single purpose in each instance.

14. In terms of the interplay with EN-6 (for example, see paragraph 2.10), presumably as the time comes to update that NPS, that NPS will further build on the direction given by this new NPS. This will be important in terms of ensuring that Examining Authorities on nuclear generation projects have certainty around the disposal of waste and latest thinking as expounded in this new NPS. The emerging new nuclear NPS will replace EN-6 as the NPS under which nuclear new build is consented. As such, the GDF NPS would benefit from making reference to the updated waste conclusions in the emerging new Nuclear NPS.

15. Most importantly, the NPS would benefit from making it clearer that the need for the GDF is set out in the 2014 White Paper/the underlying Government policy e.g. para 2.35 of the 2014 White Paper "Implementing Geological Disposal" provides that "at the moment, no credible alternatives have emerged that would accommodate all of the categories of waste in the inventory for disposal.... in any realistic future scenario, some form of GDF will remain necessary". As such, the NPS needs to clearly set out that the SofS and ExA are not required to and should not consider alternatives to the preferred solution of developing a GDF for the long term management of higher activity radioactive waste in the DCO/planning consenting process itself.

Chapter 4 – assessment principles

Question 2. Do the assessment criteria adequately address the principles that the developer, the Planning Inspectorate and the Secretary of State should take into account in an application for development consent? If not, what further information on the assessment criteria is required?

16. Overall, broadly we are of the view that the assessment criteria adequately address the relevant principles.

17. Further to the above point about the long life of a GDF, in respect of climate change, at paragraph 4.6.11 it is stated that there is not a need for detailed information on climate change for the period after active operations have ceased – hence in respect of other topics it might be useful to be clear as to what is expected. It would be beneficial for the NPS to set out with further clarity and information what it is reasonable for the NPS (and therefore the SofS and ExA) to consider/assess in terms of design/specification at each stage of the GDF project including closure/post-closure, so that it is proportionate to each stage and recognises the need for flexibility where necessary. For example, at paras 4.29 and 4.2.10 (uncertainty in underground design), we feel that the NPS would benefit from clearly identifying the expectation that there will be uncertainty (even with deep borehole information) and that flexibility will be required in the approach to the application and DCO drafting to ensure any consent is capable of implementation and effective delivery within scoped parameters and limits of deviation.

18. Paragraph 5.9.4 addresses impacts on human health, including health of workers and the public. There may be benefit in some tightening of the wording in paragraph 5.9.4 to differentiate the assessment of impacts on public human health (within the ES) to 'standard' operational health and safety (HSE of workers). This could assist in clearly demarcating what is expected for the DCO and what can be relied upon through the relevant regulatory regimes.

19. More generally, given the clear focus of the Government's historic policy on the need for community consent and support for taking forward the development of a GDF on a specific site (i.e. the voluntarist approach) we wonder whether the NPS could provide greater clarity on the interaction of the NPS with the proposed and updated Working with Communities Policy. The Planning Act 2008 (as amended) development consent process places specific requirements to consult local communities, local authorities, statutory bodies and other interested parties before any application for development consent is made. This is consistent with working in partnership with willing communities, however, the NPS may benefit from drawing these strands together i.e. how the NPS interacts with the siting process set out in the proposed Working with Communities Policy. In term of site selection, the Appraisal of Sustainability touches on providing "greater certainty in respect of the location of geological disposal infrastructure" in terms of an NPS including exclusionary criteria, and whilst this is discounted, it seems to us that there might be merit in the NPS at least addressing the types of exclusionary factors considered there, albeit not taking the full 'exclusionary' approach, but setting out further details on the merits and approach.

20. In addition, on page (xix) of the Appraisal of Sustainability, it provides that the Government wants to ensure that the separate siting process has sufficient flexibility to identify the safest location for a GDF over the lifetime of the facility. It is unclear as to how this sits alongside the "willing host community" approach set out in the proposed Working with Communities Policy. Further, it is not clear how the "willing host community" approach set out in the proposed Working with Communities Policy will interact with, for example, the application of the Habitats Regulations and "no alternative sites".

21. In the alternative we can also see the merits of the current approach of leaving the NPS as drawn in respect of the siting process for a GDF i.e. the NPS does not expressly set out the details of and interaction with the proposed Working with Communities Policy in order that the NPS is a "standalone" document and therefore would not need to be revised in light of any changes to the Working with Communities Policy in the future.

22. This may be an area where the nuclear industry itself would be best placed to comment.

Chapter 5 - impacts

Question 3. Does the draft NPS appropriately cover the impacts of geological disposal infrastructure and potential options to mitigate those impacts? Please provide reasons to support your answer.

23. In general, the matters set out and the types of mitigation proposed seem appropriate. However, we feel the NPS would benefit from a careful review as to how the tests on certain impacts are applied and further certainty on the level of information required so it is proportionate. As currently drafted, there are tests in the NPS where no discretion is given to the SofS/ExA which is not appropriate, for example, for impacts which are only temporal/short-term in nature set against the national and long term needs of GDF. Meeting/not meeting some of the tests is too black and white and runs the risks that a DCO not being granted on the basis of matters such as temporary short term impacts e.g. noise during the construction period. Further differentiation and consideration is required as to how effects on a temporal basis are assessed as against permanent likely significant effects and if, in particular circumstances where an impact cannot be avoided or mitigated and is still significant, a balancing test can be established or compensatory provisions made.

24. Further, when addressing impacts, the NPS needs to clearly set out an approach and criteria to assess both the land and marine environments. This will aid the NPS in being cognisant of the tests in the 2008 Act, with regard to S.104(2)(aa) "the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009", and support the decision maker in respect of the consideration, assessment or mitigation within the marine environment context, or with regard to the relevant marine bodies.

25. In terms of waste management and impacts on e.g. transportation, the NPS does not clearly set out whether the intention is for the NPS to cover the disposal of the whole of the UK's identified and projected inventory.

Appraisal of sustainability

Question 4. Chapter 5 - Do you agree with the findings (of 'likely significant effects') from the Appraisal of Sustainability Report and the recommendations for enhancing the positive effects of the draft NPS? Please provide reasons to support your answer.

26. Broadly, yes, we agree that the findings and recommendations as presented appear to cover the matters we would expect and reach a logical position in conclusion. However,

there are some considerations that we feel it would be beneficial for the AoS to address, including:

- the AoS does not clearly set out whether the GDF is to receive devolved nations' waste in addition to English waste, or just English waste
- the AoS should be sense checked to make sure marine/sea bed impacts are appropriately addressed
- the AoS needs to be carefully checked to make sure it reflects the most up to date legislation has been used to inform the strategic environmental assessment i.e. the criteria set out in the EIA Regulations 2017
- as set out above, the NPS does not expressly or clearly set out how the NPS interacts with the proposed "willing host community" approach set out in the proposed Working with Communities Policy. There are several references in the AoS to the siting process set out in the Working with Communities Policy e.g. para 1.9 refers to the Government favouring an approach to siting a GDF that is based on the willingness of local communities. It is not clear whether this has any implications for the strategic environmental assessment. Further, para 2.9 provides that the siting process is separate from the development consent application process but no express consideration is given to the siting process in the SA/SEA.

Question 5. Chapter 6 - Do you agree with the conclusions of the Appraisal of Sustainability Report? If not, please explain why.

27. Yes, the conclusions as presented appear logical, for the reasons set out in the draft report. See above comments.

Habitats Regulations Assessment

Question 6. Do you agree with the findings from the Habitats Regulations Assessment Report for the draft NPS? Please provide reasons to support your answer.

28. Broadly, yes, the findings as presented appear logical, for the reasons set out in the draft report.

All documents

Question 7. Do you have any other comments on the draft NPS and the accompanying documents (Appraisal of Sustainability, Habitats Regulations Assessment)?

29. One issue that we are aware of from the NSIP projects of our members, is the juxtaposition of the Planning Act DCO regime requirements and tests, and those of the other regimes with which promoters must comply (such as regulated utilities). In the case of geological disposal infrastructure and any promoter of such an NSIP, we consider there is merit in greater guidance being included in the NPS to ensure that the parallel regimes of the Planning Act and nuclear regulation properly and sensibly interface with one another. This could bring with it the benefit of reduced examination time (and resource) spent on such issues which are in reality out-with the ambit of the Planning Act, but which might be legitimately raised by those engaging with the DCO process.

30. For example it would be of benefit for a clear and simple table of consenting and staged regulation that applies to this type of infrastructure and also when and how regulatory bodies are expected to interface with, contribute to and engage fully with the DCO pre-application

and examination process to ensure that the DCO consultation process is not undermined or made ineffective by later regulatory processes and that they are all fully informed and integrated as far as they can be at each relevant stage within the DCO process.

31. It may be that the nuclear industry is content with the interface, but we raise it now given our members' experience elsewhere and the recent learning from other regulatory utilities experience such as the overhead transmission projects and Ofgem.

32. 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 to, 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>. 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 as seen in our example set out in relation to the need for flexibility in the underground design parameters above.

National Infrastructure Planning Association

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