

Introduction

The National Infrastructure Planning Association (NIPA) was established in 2010 with the aim of bringing together individuals and organisations involved in the planning and authorisation of major infrastructure projects. Our principal focus is the planning and authorisation regime for nationally significant infrastructure projects (NSIPs) introduced by the Planning Act 2008; however, our members work across all consenting regimes and we act as a forum and community for anyone with an interest in the challenge of driving better national infrastructure planning outcomes.

In summary, we:

- advocate and promote an effective, accountable, efficient, fair and inclusive system for the planning and authorisation of national infrastructure projects and act as a single voice for those involved in national infrastructure planning and authorisation;
- participate in debate on the practice and the future of national infrastructure planning and act as a consultee on proposed changes to national infrastructure planning and authorisation regimes, and other relevant consultations; and
- develop, share and champion best practice, and improve knowledge, skills, understanding and engagement by providing opportunities for learning and debate about national infrastructure planning.

NIPA welcomes the opportunity to respond to this consultation on proposed revisions to the National Policy Statement for Ports ('the Ports NPS'). This response answers the questions considered of most relevance to NIPA members and it is noted that whilst it has used the questions proposed by the Department as a framework for responding to this consultation, the points we have made do go beyond the direct scope of the question asked in some instances. We hope that these responses will assist the Department in finalising the revisions to the Ports NPS.

Consultation Questions

Question 5: do you agree that the need for development in the Ports sector should continue to be market driven and that decision-makers should accept proposers' perception of demand and hence need other than in exceptional circumstances?

NIPA agrees that the need for development in the Ports sector should continue to be market-driven and that decision-makers should accept proposers' perception of demand and hence need, other than in exceptional circumstances. However, NIPA considers that further nuances need to be included within the Ports NPS in relation to how the need for Port development is set out in the document.

Balancing Need and Impacts

We consider that the Ports NPS should be more precise in terms of when the presumption in favour of development applies. Issues have arisen in recent DCO Examinations whereby the presumption has been (wrongly) interpreted as a *carte blanche* for the port development proposed.

NIPA considers that the Ports NPS should make it clear that the contribution a project makes to that need should be able to be balanced against the harms of the development (e.g. considering the sustainable nature of the development, how functionally well designed it is, and whether it provides a positive contribution to competition and resilience).

Related to this, NIPA considers it is unclear on the status and role that paragraphs 2.2.2 and 2.4.1 have in policy terms. In respect of paragraph 2.2.2:

- Are these criteria that all port developments must meet?
- If so, must all be met for a development to be acceptable, or would any one of them suffice?
- If they are not criteria, what exactly is their purpose within the policy and in particular balancing the benefits of meeting need against harms?
- If they are criteria, how are the Applicant and the ExA meant to judge whether a particular proposal has done enough to satisfy them?

In respect of paragraph 2.4.1, we consider that the Ports NPS should be clear as to whether the factors listed are just explanations of why need should be treated as being established, or whether an applicant needs to demonstrate that its scheme falls under one or more of these categories to benefit from the policy statement on need.

Energy Supplies

NIPA has noted that there is no recognition within the Ports NPS of the role of Ports in respect of the delivery of the Government's aspirations for carbon capture and storage (CCUS) or sustainable aviation fuel (SAF). Both of these technologies form a crucial part of the Government's policies for Net Zero.

For example, in respect of CCUS, following a call for evidence in [November 2024](#), the recent Industrial Strategy set out that a further consultation on Non-Pipeline Transport for carbon will be published in Autumn 2025. The use of ports for carbon transport is already being considered by projects in the NSIPs regime (e.g. the Cory Decarbonisation project), and others that NIPA members are advising on.

In relation to SAF, the supply chain for the products that will be used as feedstock to create SAF will in some instances require transport by ship. For example, the Project Dragon SAF plant in Port Talbot will require a new jetty within that port. The on-going development of SAF is also vital to the delivery of the Government's Jet Zero Strategy.

We therefore suggest that section 2.1 and paragraph 2.4.1 of the revised Ports NPS are updated to support port development that facilitates CCUS and SAF development or the transport of materials relevant to those processes (and the latter paragraph also should reference ammonia and hydrogen so that there is internal consistency between these two parts of the Ports NPS).

Role of Demand

NIPA is concerned that paragraphs 2.3.7 and 2.3.11 leave it unclear as to what role (if any) changed forecasts would play in decision-making. If the idea is that the policy is set and changed forecasts should not affect decision-making, this should be made much clearer. If they are meant to play a role, it should be clearly explained what that role is – for example, is it that a promoter would need to explain why their forecasts differ from the national forecasts, and how that will affect the need case they present in their DCO application?

It is also noted that in paragraph 2.3.9 of the revised Ports NPS, in discussing container ports, there is reference to 'pre-recession demand' (i.e. pre 2008) being potentially met by already consented development. We consider that there should be no reference to such old demand forecasts when

there are now updated 2025 forecasts which could be met by those existing consents and new development.

Protecting Ports

Given the rightful importance that has been placed in the revisions to the Ports NPS on enabling ports to be an economic success story, NIPA recommends that further consideration is given to how ports can be appropriately protected from other developments. For example, whilst the Energy NPSs do make some references to protecting shipping and navigation, these references are limited and do not properly represent the importance of protecting ports' ability to operate both now and in the future.

This goes beyond protecting international shipping lanes and ensuring the involvement of the Maritime and Coastguard Agency and Trinity House – for example, in the Lower Thames Crossing Examination, ports wished to ensure that that project's dredging proposals did not impact on ships' ability to access the Port of London both now and in the future, when larger ships are predicted.

Given the difficulties there would be in updating all other NPSs to ensure greater clarity is provided on this point, NIPA recommends that the Ports NPS should make clear that section 2 of the Ports NPS must be considered to be an important and relevant consideration where other types of NSIPs will affect the operations of a port, including the navigation of vessels to and from those ports.

Question 6: to what extent do you think the draft revised NPSP as a whole provides suitable guidance to decision-makers to help them make decisions about development consent applications for new port applications?

Question 10: do you think the draft revised NPSP gives appropriate guidance to decision-makers about when and how they should consider alternatives when it comes to particular projects?

CNP Status and Alternatives

NIPA recommends that consideration should be given to revisions to the Ports NPS so as to impart the benefits of 'critical national priority' ('CNP') status that has been given to low carbon energy projects in the Energy NPSs, to port infrastructure.

Given the economic importance of ports in recent publications such as the National Infrastructure Strategy, it is clear that ports perform a vital role in the sustainable economic growth of the UK economy and therefore port infrastructure projects should, in principle, be considered as a critical national priority.

For example, if CNP status were given to port infrastructure that supported the delivery of low carbon projects (such as construction or operation and maintenance hubs for offshore wind farms, or jetties to support CCS transport) this would ensure that the full 'chain' of supply to enable those CNP energy projects to actually provide their nationally significant benefits will benefit from what government hoped to achieve with the introduction of CNP status originally, i.e. streamlined and proportionate consenting.

This is important as the benefits of CNP status are very relevant to ports as they are, in most cases, being constructed / augmented close to, or in, HRA-protected sites, SSSIs, the Green Belt or designated heritage assets (given that ports often include older port infrastructure within them that is listed) and that questions in respect of alternatives are also often asked. CNP status gives clarity to all parties as to how the planning balance should be applied to CNP projects.

However, if it is considered that CNP status should not be given to ports projects, then we consider that consideration should be given to updating the wording in the alternatives section of the Ports NPS. Given that the need case within the NPS is clear that all commercially viable port projects should benefit from the presumption of consent, the Ports NPS should say that it should be assumed that any other possible port project which meets that need should not be considered as an 'alternative solution' in HRA terms, as all such port projects are needed.

This would align with one of the key benefits of CNP status (particularly given the HRA constraints of most port development) as expressed in the Energy NPS (which takes a similar approach to all low carbon projects being needed) without going so far as granting the status itself.

In respect of alternatives more generally, NIPA notes paragraph 3.6.4 as being factors a decision-maker should take into account, but considers that the NPS should make it explicit that it sets no requirement for applicants to consider alternatives, and that outside any other policy or legal obligation to consider alternatives, it would only be in exceptional circumstances that alternatives would be important and relevant.

Furthermore and relatedly, NIPA has real concerns in respect of the wording of the third bullet point of paragraph 3.6.4, which appears to suggest that Examining Authorities ('ExA') can choose to 'seek alternatives' from an applicant if they consider it important and relevant to do so, but with no guidance given as to whether/how such an alternative can itself be important and relevant. NIPA considers that this brings a large amount of uncertainty to the consenting process as it will not be clear to any applicant when an ExA may decide to suggest an alternative, or how much work might be involved in establishing how feasible that alternative is.

NIPA considers that in circumstances where an ExA does seek an alternative, that brings greater legal risk to the consenting process in terms of whether appropriate levels of assessment or public consultation/engagement has taken place.

NIPA therefore strongly recommends that this bullet point is removed from the revised Ports NPS, or if it is to be kept, it is made clear where this applies (e.g. potentially in respect of where the s.245 Levelling-up and Regeneration Act 2023 is relevant).

Section 35 Projects

NIPA also feels strongly that the position set out in paragraph 1.2.7 in respect of the status of section 35 projects and the revised Ports NPS should be amended. The revised Ports NPS is clear on the status that the NPS should have in relation to NSIPs, TCPA planning applications, Harbour Revision Orders and Marine Licences.

Projects that have obtained a section 35 Direction are simply TCPA projects that have chosen to take on the Planning Act 2008 process. It should not be the case therefore that they are in a more uncertain position with regards to the NPS than TCPA and NSIP applications.

NIPA considers that the Ports NPS should simply say that it applies to section 35 projects. Where a NPS states that, then section 104 will apply to determination of the application in question. That solves the issues that came up in the *Wheelabrator* case, which was (partly) to do with the fact that the 2011 Energy NPSs did not have such a statement.

This approach has also been taken in the recently updated Energy, Water Resources, and National Network NPSs, and NIPA is keen to see a consistent approach across the suite of NPSs on common matters such as this.

Indirect Effects

NIPA is particularly concerned by the retention of paragraph 3.9.7 of the Ports NPS, as written. Further to the decision of the Supreme Court in *Finch* and subsequent judicial consideration of this issue in the West Cumbrian mine and Jackdaw and Rosebank oilfield case, it is not legally correct to say that a decision-maker ‘does not need to consider’ the impact of a new port development on greenhouse gas (GHG) emissions from ships transiting to and from the port.

The impact of ships transiting to and from new port infrastructure built pursuant to a consent is very clearly an indirect effect of the consented development. The case law is clear that, under the EIA Regulations, a decision-maker must consider such effects in making its determination. As such, it is the case that the GHG movements of ship movements predicted to arise from use of the port development must be considered by the decision-maker in considering port development applications.

However, it can be a matter for policy to set out how much weight should be given to the GHG emissions arising from such vessel movements and/or to provide guidance on how those effects, should be assessed.

NIPA considers that such guidance would be invaluable in respect of indirect effects more generally - it is a complex matter to consider given the nature of ports (e.g. as part of a wider CCS chain, or for LNG terminals) and it would assist ExAs, the Department and the courts if a clear position is set out in the Ports NPS.

Such approaches have been taken to carbon matters in the National Networks NPS, and in oil and gas infrastructure by OPRED. NIPA therefore strongly recommends that paragraph 3.9.7 should be updated to reflect the latest legal position, and that more guidance is provided on how indirect emissions should be dealt with in ports DCO applications.

s. 245 Levelling-up and Regeneration Act 2023

NIPA considers that the NPS could usefully clarify how the revised duty in section 245 of the Levelling-up and Regeneration Act 2023 in respect of National Parks, the Broads and National Landscapes should be applied to port development.

The application of this revised duty has already been the subject of a number of High Court cases, and was the subject of extensive debate in the Examination of both the Lower Thames Crossing and Luton Airport DCOs.

This is also a concern for ports as the applicant body will almost certainly be a statutory undertaker and so the duty will be relevant to both the development of development proposals, as well as in the Secretary of State’s determination of any development application which could affect those protected areas.

In that context, NIPA is concerned that:

- paragraph 4.13.11 seems to frame the duty in the context of the scheme’s design and delivery – as discussed above, there is limited scope in how much a port development can achieve aesthetically pleasing design, particularly in the context of a National Landscape; and
- it is not clear how an applicant could ‘satisfy’ the Secretary of State that the design and delivery of port infrastructure furthers the statutory purposes of the relevant area – particularly

in the context of the questions posed in the DEFRA non-statutory [Guidance for relevant authorities on seeking to further the purposes of Protected Landscapes - GOV.UK](#).

As such, we consider that the Department should consider how that DEFRA non-statutory guidance could be adjusted to apply to ports and to the Secretary of State's consideration of port development.

Furthermore, NIPA considers that the bullet points within paragraph 4.13.11, which indicate how applications in the relevant protected areas should be considered, seems to be misaligned with the general thrust of the need case set out in section 2 of the NPS. In particular:

- it is not clear why impacts on the local economy should be a relevant 'need' question only when considering this specific duty, given the national importance of ports (and noting that effects on tourism already need to be considered pursuant to section 3.3 of the Ports NPS), and therefore NIPA suggests that the second half of the first bullet point of this paragraph be deleted; and
- NIPA considers that being able to introduce questions of whether an applicant is right to say that an alternative option would be too costly or outside of the scope of the proposed development is likely to lead to extensive debate in Examination on the point. Given that the NPS is predicated on commercial operators determining that a development is viable to be brought forward to meet a need, NIPA suggests that the paragraph should make clear that alternative viability reports put forward by a third party cannot be an important and relevant consideration for ExAs and the Secretary of State's consideration of this question (acknowledging, however, that it is appropriate for those parties to be able to scrutinise and question the Applicant's evidence).

Question 9: do you think the draft revised NPSP provides suitable guidance to decision-makers on the impacts of port infrastructure on the local population?

Although not directly relevant to 'impacts', NIPA is conscious that the draft revised Ports NPS is silent on the potential role that Port Masterplans play in bringing local authorities and local populations 'on the journey' with applicants in developing proposals for development within their ports.

It is recognised that such Masterplans are mostly not brought forward as part of the local plan development process, however they are documents that usually go through a public consultation process.

As such, NIPA considers that the draft revised Ports NPS (perhaps section 3.8 on good design) should recognise that where a Port Masterplan exists that has been through public consultation and a local authority indicates that it supports it in its Local Impact Report, and the application proposals substantively reflect that Masterplan, then that should be sufficient to indicate that the development has undertaken a good design process.

Consideration should also be given to how similar policy statements could be made in respect of the role of a Masterplan in identifying that LVIA and/or Heritage impacts can be considered acceptable.

Question 11: do you think the draft revised NPSP provides suitable guidance to decision-makers on the impacts of port infrastructure on the natural environment and biodiversity?

In respect of this question, NIPA would note only that section 3.7 (BNG) will likely need to be updated to account for the outcome of DEFRA's recent consultation on this topic.

Whilst it is appreciated that the finalisation of the NSIP BNG regime may not align with designation of the revised Ports NPS, it is suggested that paragraph 3.7.4 may need to be streamlined to account for the fact that:

- the DEFRA BNG consultation gives equal weight to on and offsite BNG delivery, which has general infrastructure planning industry support;
- the DEFRA BNG consultation has proposed that applications for development consent should include biodiversity gain plans at submission stage, which has had strong pushback from the infrastructure planning industry – if this changes then paragraph 3.7.4 may need to be adjusted; and
- DEFRA does appear to be considering the linkages between BNG and the proposals in Part 3 of the Planning and Infrastructure Bill (e.g. Environmental Delivery Plans) which may need to be reflected in this part of the NPS.

Question 12: thinking about dredging specifically, do you think that the draft revised NPSP provides suitable guidance on environmental safeguards for capital dredging and requirements for maintenance dredging after a project is implemented?

In respect of paragraph 4.3.6, NIPA considers that it should be recognised that disposal of maintenance dredging arisings on land should only be in exceptional circumstances, as the paragraph as drafted appears to suggest that it could be something that is developed as a mitigation measure.

This is suggested in the context that the ability to dispose dredgings on land would be limited once a port development is actually built, and finding and using a suitable land disposal site can be costly and complex.

Question 16: it is a requirement of the Planning Act that the Secretary of State must have regard to the desirability of achieving good design. Do you think that the draft revised NPSP fulfils this requirement?

Whilst NIPA is supportive of the principles of good design generally and the publications put out by the former National Infrastructure Commission ('NIC') on this practice, NIPA has concerns about the policy proposals contained within the draft revised Ports NPS on this topic.

In many, if not most cases, port development will leave little room for aesthetic refinement, as it is a functional piece of infrastructure within an industrial setting. Experience of some NIPA members suggests that even with the current NPS wording, taken with the direction of travel with the NIC publications and the PINS Advice Note on Good Design, ExAs have sought to push promoters into what members consider are unrealistic demands for aesthetic refinement and control of functional port infrastructure.

This may lead to the potential for wasted time and effort in Examination but could also add to the cost of investing in port infrastructure for little or no real public benefit, particularly when local planning authorities mostly often understand the constraints for the ports and are often more realistic and pragmatic about design matters.

The proposed wording in paragraph 3.8.1 ('every effort') would seem to encourage even greater scrutiny of this issue and create unrealistic expectations of what functional ports can achieve. NIPA's concern is that could become restrictive on growth and investment for port development.

NIPA also has some process concerns with:

- the drafting of paragraph 3.8.3, which should take into account the role LPAs play in the pre-application process. Engagement with LPAs on design should be said to be able to be sufficient to constitute independent advice on design, rather than applicants necessarily having to pay for other third party advice; and
- the drafting of paragraph 3.8.7, which indicates that a decision-maker should seek its own independent advice on what constitutes 'good design' of a proposal. It is not clear how, or who by, this would be done; and seems to potentially undermine the role of ExAs in providing advice to the Secretary of State on key matters such as this. NIPA would suggest that this paragraph is deleted.

To address the points above, NIPA recommends that the NPS adopts a more proportionate approach to design principles that incentivises good scheme development relationships between port developers, local authorities and local stakeholders, that result in good design, rather than make it a matter for significant scrutiny at examination.