

The Draft National Policy Statement on Ports Written Evidence of the Infrastructure Planning Commission to the House of Commons Select Committee on Transport

Summary

The IPC welcomes the publication of the draft National Policy Statement on Ports. While we consider that the draft is fit for purpose, we have identified a small number of areas where it should be improved to achieve greater clarity.

Introduction

1. The IPC was established on the 1st October 2009, under the Planning Act 2008, to examine applications for development consent for Nationally Significant Infrastructure Projects (NSIPs), including port developments above the thresholds specified in the Act. The IPC will be able to receive applications for energy and transport NSIPs after 1 March 2010.
2. Once the National Policy Statement (NPS) has been designated by the Secretary of State, the IPC will have the duty to decide such applications under Section 104. While the NPS remains in draft the IPC must make a recommendation on the application under Section 105 for the Secretary of State to decide, giving appropriate weight to the draft NPS.
3. An important feature of the new infrastructure planning regime is the separation of policy making from decision making. Government sets the policy and the IPC is the planning authority which determines applications in accordance with it, taking account of other factors as set out in statute. It follows from this separation of powers that it would be wrong for the IPC to comment in any way on the policy of the Government. Our comments in both written and oral evidence to the Committee will therefore be restricted to the clarity with which policy is set out in the NPS and other aspects of the NPS's fitness for purpose.
4. The IPC considers that the Appraisal of Sustainability associated with the NPS lies behind the policy, rather than forming any part of the NPS itself, and it would not therefore be appropriate for us to pass any comment on it at all.

Overall fitness for purpose

5. The IPC considers that the draft NPS on Ports is fit for purpose. The NPS provides a sufficiently clear statement of Government policy and appropriate guidance to applicants and interested parties. It gives the IPC sufficient guidance on how various aspects of that policy should be considered in determining applications.

Areas for improvement

6. We have identified three main areas in which we believe there is scope to improve the clarity and fitness for purpose of the NPS.
 - a. Both the IPC and applicants and other interested parties would benefit from a clearly and distinctly identified summary of the policy on ports set out in Section 1. Section 1 as it stands comprises both contextual discussion and policy, and what is required for purpose of reference and citation is to highlight the policy itself – largely set out in unambiguous

terms in paragraphs 1.11.12 and 1.12.1 – in an appropriate text box at the end of the section.

- b. The draft confuses the role of the applicant and the role of the IPC. Throughout section 2 – for example in paragraphs 2.1.1 and 2.6.4 – the NPS appears to be directing the IPC to carry out an assessment using particular methodologies or approaches. Conducting assessments in this way is the responsibility of the applicant. The IPC will examine all evidence presented to it in the manner set out in the Planning Act, including considering whether applications are consistent with the NPS.
 - c. The draft does not give detailed consideration to inter-modal freight facilities at ports. It should ensure that this NPS is consistent in its treatment of such facilities with the proposed National Networks NPS.
7. We also have a number of specific observations, some of which have been set out directly in correspondence with Government lawyers, while others are set out here:
- a. In section 2.1.1, at the beginning of the Guidance on Assessment part of the document, the introduction for the first time in the NPS of reference to the Government's wider objectives for transport seems out of place. If these wider policies are important here, they should be set out in section 1, the Policy on Planning for Ports, with appropriate reference to source documents.
 - b. In section 2.2.2, there is reference to the 'costs' of development in the final sentence. It would provide added clarity if this is reworded to 'adverse impacts'.
 - c. Section 1.12.1 makes it clear that additional capacity arising from individual port proposals should be accepted. In section 2.3.4, unless the intention is actually for the IPC to revisit the evidence for the extent and urgency of national need, it would be beneficial to clarify that the need referred to here is solely for the specific project under examination.
 - d. In section 2.4.4, the role of the IPC in relation to security matters is left unclear. The IPC has already asked the Government to clarify its position in this regard with respect to all National Policy Statements.
 - e. In section 2.9.1, the policy of promoting the historical legacy of working ports lacks specificity and is open to a range of interpretations. It would provide added clarity if the NPS were to indicate the lead consultee on this matter, presumably English Heritage.
 - f. In section 2.13.9, the use of the word "offsetting" may not be appropriate in the context of climate change mitigation. If our understanding of the Government's intention is correct, the meaning would be clearer if the text were amended to refer to replacement or compensatory habitat.
 - g. In section 2.15.7, the reference to applicants arranging pre-application discussions with "the decision maker" should be amended to refer to discussions with "the IPC". Such discussions will be with members of the IPC Secretariat rather than with decision-making Commissioners themselves.

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Chair
Infrastructure Planning Commission
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