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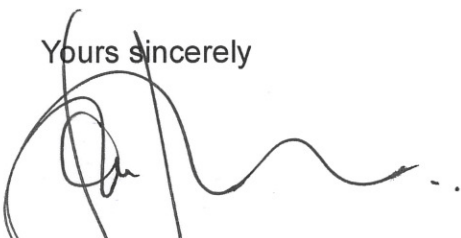
Dear Alison

**Draft National Policy Statement on Waste Water**

Please find enclosed the response from the Infrastructure Planning Commission (IPC) to the Government's Consultation on the draft Waste Water National Policy Statement.

If you require any further information, please do not hesitate to contact me on the details above.

Yours sincerely



**John Saunders OBE**  
**Chief Executive**

cc Christine Hemming, DCLG

The IPC gives advice about applying for an order granting development consent or making representations about an application (or a proposed application). The IPC takes care to ensure that the advice we provide is accurate. This communication does not however constitute legal advice upon which you can rely and you should note that IPC lawyers are not covered by the compulsory professional indemnity insurance scheme. You should obtain your own legal advice and professional advice as required.

We are required by law to publish on our website a record of the advice we provide and to record on our website the name of the person or organisation who asked for the advice. We will however protect the privacy of any other personal information which you choose to share with us and we will not hold the information any longer than is necessary.

You should note that we have a Policy Commitment to Openness and Transparency and you should not provide us with confidential or commercial information which you do not wish to be put in the public domain.

## **Waste Water National Policy Statement Consultation** **IPC’s Consultation Response**

### **Background**

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 waste water infrastructure developments above the thresholds specified in the Act. Once the National Policy Statements (NPSs) have been designated by the Secretary of State, the IPC will have the power to decide such applications, and must do so in accordance with the NPSs.

The Coalition Government has reaffirmed the importance of NPSs in the infrastructure planning regime. The IPC is to be abolished, subject to the will of Parliament, from April 2012, although the expertise of the organisation will be retained in a Major Infrastructure Planning Unit as part of a reorganised Planning Inspectorate. NPSs will continue to play a central role in examination of and decision-making on major infrastructure projects.

The IPC has no remit to comment on policy matters. Our comments in response to the Government’s consultation, are therefore restricted to the clarity with which policy is set out in the NPS and other aspects of its fitness for purpose. As a result our comments are most coherently contained completely in our answer to question 6.2.

### **Responses to Defra’s Consultation Questions:**

**6.2. Do you think the draft Waste Water NPS adequately sets out for the Infrastructure Planning Commission the key assessment principles to inform the assessment of future waste water development applications?**

### **Role of the NPS**

The purpose of a NPS is to set out national policy in relation to a specified type of development, and it is our observation that, with the exception of the draft NPS on nuclear energy (EN-6) and this draft NPS, they do so without making reference to specific locations for particular proposed infrastructure. The clarity with which the need for infrastructure in general is set out as a matter of policy is fundamental to the utility of the NPS in the work of the examining authority and the decision-maker. The NPS assists the Examining Authority most where it is able to provide clear and unambiguous policy guidance on the weight to be attached to evidence, including impacts and mitigation measures both in general (section 6.3 on odour is a good example) and in relation to particular proposals where policy conclusions can be drawn from the Appraisal of Sustainability.

Conversely, an NPS risks straying from its proper role if it attempts to reach conclusions on detailed planning considerations relating to particular proposals. The locationally specific sections of this NPS will need to be reviewed with particular care to ensure that they provide a robust policy context without infringing on areas which are properly the province of the applicant or the IPC. For example, paragraph 3.1.3 does not in our view constitute policy, and the conclusions drawn in paragraphs 3.1.5 and 3.1.8 are expressed in terms which could be considered to fetter the proper exercise of judgment as to the principal issues

It is important for the NPS to avoid using language which risks creating tensions with statutory provisions. At certain points in the text, for example, paragraph 5.1.1 (i) and paragraphs 6.1.3-5, the draft runs the risk of appearing to restate statutory provisions in different terms. This has no value as the terms of the statute obviously take precedence. It would be helpful if the draft was reviewed to avoid repeating or interpreting aspects of the Planning Act 2008 and associated regulations.

A key role of the NPS is to provide clarity to applicants and others in relation to the appropriate approach to seeking development consent for proposals which may fall within the scope of the NPS. This may be of additional importance in the future if provisions in the

Localism Bill (clause 111) which would extend the opportunities for proposed infrastructure projects to be directed to the Major Infrastructure Planning Unit become law. The need for clear policy and guidance may well reach beyond the two proposals specifically identified in the NPS.

Particular areas where greater assistance might be provided include:

- a. Hazardous substances. In Section 5.9. of the draft, although the IPC will have power to direct that hazardous substances consent is deemed, the IPC is wrongly identified as the designated Hazardous Substances Authority, and applicants could helpfully be directed to identify uses of land in the vicinity which would assist the IPC in meeting statutory requirements for decision making.
- b. Associated development. It would assist applicants in particular if Government were able to offer guidance in this NPS on the type of development which it would regard as associated development to the NSIP which it is proposed to add to the waste water field.
- c. Flexibility. An important concern being raised with the IPC by a number of applicants is the extent to which a development consent order may or may not offer a degree of flexibility in the parameters of the authorised development. While this is ultimately a matter for the courts to determine, policy guidance from Government, such as that provided to offshore windfarm developers in the Renewable Energy NPS EN-3, assists applicants, the IPC, and other parties.

### **Role of the IPC**

The IPC’s principal role is to act as Examining Authority for major infrastructure applications, considering the evidence put before the Commissioners and weighing all important and relevant considerations in reaching a decision or recommendation. This quasi-judicial role is the same whether or not the IPC is itself the decision-maker, and will not change in this respect as a result of the Localism Bill. Guidance given to the IPC in the NPS needs to reflect accurately the nature of that role. For example, it is not appropriate for policy to suggest that the reasonableness or otherwise of the conduct of interested parties would be relevant to the decision on the application itself; paragraph 6.2.10 should be either deleted or amended to remove reference to the IPC’s role in assessing behaviour that might lead to withdrawal of an objection.

It is also important to distinguish clearly and correctly between the role of the applicant and the role of the IPC. For example:

- a. It is the applicant, not the IPC, who must consult the Marine Management Organisation about potential impacts on marine areas (paragraph 5.7.5).
- b. It is the applicant who must consult the Health and Safety Executive and ensure that appropriate requirements relating to mitigation or limitation of nuisance are included in the draft development consent order (paragraph 5.11.2).
- c. It is not the role of the IPC to “encourage the conservation of [ancient woodland]” (paragraph 6.5.13).