

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Cabinet
<b>Date of Decision:</b>	25 January 2010
<b>Decision Title:</b>	Draft National Policy Statements for Ports and Energy
<b>Decision Reference:</b>	1178
<b>Report From:</b>	Director of Environment

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#### 1. Executive Summary

- 1.1. This report sets out the recommended response to the public consultation on the Draft National Policy Statements (NPS) for Ports and for Energy. The closing dates for comments are 15 February 2010 for the Ports NPS and 22 February for the Energy NPS.
- 1.2. The Draft National Policy Statements for Ports and Energy are part of the first tranche of NPSs to be published by Government. They set out the framework for future decisions on proposals for nationally important infrastructure proposals to be taken by the new Infrastructure Planning Commission (IPC).
- 1.3. The NPS for Ports sets out the broad need for port capacity, looking ahead to 2030 and beyond, taking into account Government's forecasts of port freight demand and the regional and local economic benefits of port activity. It identifies locations with consents for container port developments or which have plans to increase capacity, including the Port of Southampton. It does not identify locations or ports where wholly new port development should take place, but sets out criteria to guide decisions on such proposals.
- 1.4. The Overarching Energy National Policy Statement establishes national policy for major energy infrastructure provision in England and Wales. It is supplemented by five sector-specific NPSs for nuclear power stations; renewable energy generation; oil and gas pipelines and gas storage; fossil fuel power stations; and electricity power lines. The objectives of Government energy and climate change policy for the power industry are to

reduce emissions; provide security of energy supply; expand grid capacity; keep costs down; and contribute to sustainable development.

- 1.5. The purpose of this report is to seek Cabinet approval for the recommended response to these consultations.

## **2. Background**

- 2.1. NPSs lie at the centre of the new regime established by the Planning Act 2008 for nationally significant infrastructure projects. The Government has now published the first tranche of NPSs, including Ports and Energy. The Draft NPS for Ports is accompanied by a Habitats and Wild Birds Directive and Regulations: Assessment of Ports NPS (Incorporating Appropriate Assessment), Appraisal of Sustainability and Developing a Ports National Policy Statement: Consultation Document. The Energy NPS focuses on the transition to a reliable low-carbon economy. It comprises an overarching Energy Policy plus separate policies relating to particular energy infrastructure. Subject to the outcome of the public consultation and parliamentary scrutiny, it is intended that these NPSs will be 'designated' (the official term being used for formal approval of them) over the course of 2010.
- 2.2. The aim of NPSs is to set out Government's policy on the provision of new infrastructure, bringing together relevant social, environmental and economic policies, and contribute to sustainable development. It explains to planning decision-makers the approach they should take to proposals, including the main issues that will need to be addressed to ensure that future development is sustainable, and the weight to be given to the need for the development and to the positive and negative impacts it may bring.
- 2.3. The NPSs will be the principal policy documents that the newly established Infrastructure Planning Commission (IPC) will use in making decisions. The IPC's role is to decide applications for nationally significant infrastructure projects, for example power stations, airports, harbours, dams and reservoirs.
- 2.4. Local authorities have a role, both prior to the submission of an application for development consent to the IPC and once the application has been accepted for submission. As part of the pre-application process, the potential applicant must consult the relevant local authorities (any authority responsible for the area in which the proposed development lies, and any adjacent authority) about their proposals, and have regard to any views they express. In addition, to help ensure that the development proposals take proper account of local community views, and the impact of any development on a location, the potential applicant must prepare and publicise a Statement of Community Consultation, through which the promoter must consult with and have regard to the views of any relevant local authority. Once the IPC has received an application, relevant local authorities will be asked to offer their views on the adequacy of the

consultation. The IPC will have regard to any such views when deciding whether or not the application is valid.

- 2.5. If the IPC accepts an application, relevant local authorities will have a role in any pre-examination meetings, and as part of the examination process be invited to submit a local impact report giving details of the likely impact of the proposed development and reflecting local community concerns.
- 2.6. The County Council will have the right to appear at any examination for a project located within Hampshire or adjoining authority area.

### **3. Ports Policy Framework**

- 3.1. Over the past decade the Government has been developing its national policy for ports. The key documents are:
  - (i) Modern Ports: A UK Policy (2000);
  - (ii) Eddington Transport Study – The Case for Action (2006);
  - (iii) Ports Policy Review Interim Report (2007);
  - (iv) Towards a Sustainable Transport System (2007); and
  - (v) Delivering a Sustainable Transport System (2008).
- 3.2. In summary, Government policy seeks to:
  - (i) encourage sustainable port development to cater for long-term forecast growth in volumes of imports and exports by sea;
  - (ii) allow judgments about when and where new developments might be proposed to be made on the basis of commercial factors by the port industry, or port developers operating within a free market environment; and
  - (iii) ensure that all proposed developments satisfy the relevant legal, environmental and social constraints and objectives, including those in the relevant European Directives and corresponding national regulations.
- 3.3. Government also wishes to see port development support sustainable transport as far as possible; provide a basis for trans-modal shifts from road transport to shipping and rail; and provide additional capacity for the development of renewable energy.

#### 4. Draft National Policy Statement for Ports

- 4.1. The NPS outlines the essential role of ports in the UK economy, the UK ports sector being the largest in Europe in terms of tonnage handled. In 2008, ports in England and Wales handled 443 million tonnes of goods, out of a UK total of 562 million tonnes, representing about 95% of the total volume of UK trade and 75% of its value. Ports also have an important role in the import and export of energy supplies, including oil, liquid natural gas and biomass, in servicing off-shore energy installations and in supporting terminals for oil and gas pipelines. They also play an important role in the tourism and leisure industries, including passenger cruise liners. Overall, ports play an important role in local and regional economies. In 2005 100,000 people were estimated to be working on port-related activities or on the port estate, indirect employment and induced employment.
- 4.2. Forecasts of demand for port capacity in the period up to 2030, published on behalf of the Department for Transport and updated in 2007, suggest increases of a near trebling in containers and a doubling in roll-on roll-off traffic at UK ports (against a 2005 base). Although the recession has led to a severe downturn in demand, the Government states that the long term effect will be to delay by a number of years, but not ultimately reduce, the eventual predicted demand for port capacity.
- 4.3. If all the development (currently with consent and planned) were to be built, the NPS states that aggregate container capacity growth would be broadly in line with forecast demand over the next 20 years or so. However, the extent of developments, and the speed with which they proceed, will depend upon commercial judgments. The document therefore says that there may be opportunities for other developers to bring forward proposals for alternative or additional developments that satisfy demand not met by consented developments, as well as a continuing requirement for further new container capacity to meet anticipated longer term growth.
- 4.4. Government considers that port capacity needs to be provided at a wide range of facilities and locations, and its forecasts do not attempt to predict the locations where demand would occur. For the same reason, the NPS says that the Government does not intend to dictate where port development should occur. In order to ensure choice for port users, Government considers that total port capacity in any sector will need to exceed overall forecast demand if the ports sector is to remain competitive.
- 4.5. Overall, the Government view is that there is a compelling need for substantial additional port capacity, over the next 20-30 years, to be met by a combination of development already consented and development for which applications have yet to be made. To exclude the possibility of providing additional (port) capacity through new port development, the document argues, would, amongst other things, be to accept limits on economic growth. Such an outcome would, in the Government's view, be strongly against the public interest.

- 4.6. In light of the above, the NPS states that when determining an application for an order granting development consents in relation to ports, the decision maker should accept the need for future capacity to:
- (i) cater for long term forecast growth in volumes of imports and exports by sea for all commodities, indicated by the demand forecast figures accepted by Government, taking into account capacity already consented;
  - (ii) support the development of off-shore sources of renewable energy;
  - (iii) offer a sufficiently wide range of facilities at a variety of locations;
  - (iv) ensure effective competition between ports and provide resilience in the national infrastructure; and
  - (v) take full account of both the potential contribution port developments might make to regional and local economies.
- 4.7. The 'Guidance on Assessment' part of the main NPS document outlines the Department for Transport's policy on the weight to be given to economic, environmental and social impacts when assessing individual development applications, defining the acceptable limits of adverse impacts and explaining the levels of mitigation likely to be required, depending on local circumstances. A list of the issues covered in the 'Guidance on Assessment' is included in Appendix 1.
- 4.8. The NPS identifies those ports where, since 2005, consents have been granted for container port developments eg Felixstowe South, Bathside Bay and London Gateway. In addition it indicates that *'Southampton, which currently handles 1.9 million containers, has advanced plans to expand terminal capacity within its existing development rights, and expects this to provide capacity for an additional 1.7 million containers'*. This is the only specific reference to Hampshire ports in the main body of the NPS. However, the Port of Southampton and Dibden Bay are briefly mentioned in the Habitats and Wild Birds Directive and Regulations: Assessment of Ports NPS (incorporating Appropriate Assessment). In the section on alternatives, the Port appears in a list, along with other large ports, to illustrate the difficulty of avoiding protected sites. The main European /Ramsar sites are identified with the comment alongside the sentence: "Clear possibility of impacts, including from known Master Plan aspiration to develop Dibden Bay."

## **5. National Policy Statement for Energy**

- 5.1. The overarching energy policy states that the IPC should start its assessment from the basis that there is a significant need for all types of energy generation. This premise establishes that issues relating to the need for a specific type of infrastructure will not be debated again.

Consequently, the NPS offers no clear guidance on the energy mix in the UK, implying that this is to be driven by the applications received.

- 5.2. With the exception of nuclear power, specific locations or sites are not identified. Five main principles for determining applications are set out in the overarching policy that are expected to guide the IPC to its decision once an application is submitted:
- (i) Need - if the development contributes to meeting the need and is in accordance with the NPS, then consent should be given;
  - (ii) Local impact – a report produced by the Local Authority, together with other matters considered relevant and important;
  - (iii) Benefits - on a national, regional and local scale (environmental, social and economic);
  - (iv) Impacts and mitigation – where adverse impacts should be considered, as well as longer term and cumulative impacts alongside proposed mitigation; and
  - (v) Decisions - if the IPC considers that the adverse impacts (after mitigation) outweigh the benefits, then consent should be refused. In the event of a conflict with existing planning policy, the NPS will be followed. The NPS identifies a series of criteria and impacts applying to all energy infrastructure projects which the IPC will take into account when reaching a decision.
- 5.3. It should be noted that the overall draft National Policy Statement for Energy Infrastructure does not include wave and tidal power – these are intended to be decided by the Secretary of State with IPC recommendation. A Strategic Environmental Assessment has been started on this topic and an NPS is intended in the future. This NPS is likely to be relevant for Hampshire's coast when it is released. Generally, the draft document adopts the stance that consent may be given in exceptional circumstances where there is increased flood risk but it must be demonstrated there is mitigation to an 'acceptable level.' In regard to PPS7 (Sustainable Development in Rural Areas), the draft NPS shows that the Government proposes to retain and clarify the protection provided for nationally designated areas.
- 5.4. The main conclusions of the Appraisal of Sustainability (AoS) for non-nuclear energy NPSs were that:
- (i) they are expected to speed up the transition to a low-carbon economy, thus prompting a positive effect on the AoS climate change objectives as UK climate change commitments will be realised sooner than by continuation under the current planning system;

- (ii) they will contribute positively towards improving the vitality and competitiveness of the UK energy market, provide greater clarity for developers, give greater investment certainty and opportunities for skilled workers; and
  - (iii) together, the combination of the Energy NPSs and IPC are intended to deliver faster and more transparent decisions on energy infrastructure, which should both improve the UK's security of supply and benefit the economy from reliable energy supplies.
- 5.5. The chapter relating to nuclear power has none of the Strategic Siting Assessment locations proposed for energy production or nuclear waste disposal sited in the South East Region. Nationally, one or more sites will be selected for geological disposal of nuclear waste and for this to be operational by 2040. Some 30% of the UK has suitable geology for this. Ministers are satisfied that effective management and disposal arrangements will be put in place, therefore the IPC need not consider this question nor any regional network distribution, as site selection is on the basis of voluntarism. So far three councils in the Cumbria area have expressed interest. The question of the disposal of low-level waste (and whether in some cases this might be combined with the disposal of other nuclear waste) is not addressed.
- 5.6. Turning to the individual Energy NPSs, the Nuclear NPS differs from the other ones as it lists sites judged to be potentially suitable for the development of new nuclear power stations by the end of 2025. It envisages that 40% of UK energy generation could be provided by nuclear power by this date.
- 5.7. The Renewable Energy NPS covers large energy generation from on-shore wind, biomass and waste plants and off-shore wind (but, as already noted, not wave and tidal power). In terms of site selection there is no specific guidance to applicants. On the one hand, national designations are expected to continue to be protected and not compromised. However, guidance also states that the environmental benefits of renewable energy may override the harm caused by locating projects in these locations and that the non-permanent nature (25 years) of wind farms should be taken into consideration. Off-shore wind energy developers will be expected to explain how they have drawn on the Government's rolling strategic environmental assessment of UK waters in making their site selections. On-shore grid connection corridors must also be identified.
- 5.8. The Fossil Fuels NPS covers the provision of large coal, gas and oil-fired generating infrastructure over 50 megawatts in capacity. Fossil fuels will continue to play an important role in the energy mix, providing security and flexibility of supply as the UK makes the transition to a low-carbon economy. The Government expects to provide funding for up to four coal power carbon capture and storage demonstration projects to be operational by 2020.

- 5.9. The NPS for Gas Supply and Gas and Oil Pipelines includes large underground gas storage and liquid natural gas facilities, and gas and oil pipelines over 10 miles in length. During the transitional period, gas is expected to play an important role in energy supply, and assessment principles will include noise and vibration, water quality and visual impact.
- 5.10. The NPS for Electricity Networks Infrastructure covers long distance above-ground transfer of electricity and its associated infrastructure. It notes that, in future, the network will need to be able to support a more complex system of supply and demand, and cope with generation occurring in a greater diversity of locations.

## **6. Proposed Hampshire County Council response**

### **National Policy Statement for Ports**

- 6.1. The purpose of the consultation document accompanying the draft NPS for Ports is essentially to seek views on whether the NPS presents enough information to inform decision-making. The County Council will be responding, where appropriate, to the 36 consultation questions. It is proposed that its response will be based on the Cabinet report, together with more detailed officer comments, to be approved and signed off by the Leader of the County Council for submission before the consultation deadlines. The Cabinet report concentrates on the authority's 'strategic' response to the NPS.
- 6.2. The principle of publishing NPS is broadly welcomed. In particular, the NPS:
  - **Informs applicants of the main issues** the decision-maker will take into account and the policy aspects they will use to reach decisions; and
  - **Signals the information that applicants should be providing** to assess and mitigate impacts.
- 6.3. However, in relation to the NPS for Ports, the County Council should express its concerns in relation to a number of key issues, in particular the lack of any spatial context in the NPS, applying caution to the Government's demand forecasts, and flagging the need to ensure that the wider transportation impacts of new port developments are considered and funded. Clarification should also be sought from the Secretary of State over the 'need' for Dibden Bay. These issues and concerns are explained in more detail as follows:
  - **Spatial context** - some spatial context is required from Government as to how future demand for port capacity should be met. Whilst it would be inappropriate for the NPS to be site-specific in regard to potential locations for future new port developments yet to be consented, it is equally inappropriate to leave it solely to the market. In this respect the

NPS for Ports takes the policy framework within which the decision making process takes place little further forward than existed when the Dibden Bay Inquiry took place. A more appropriate balance between commercial market considerations and identifying the nation's overall needs is required.

- **Land-side infrastructure** - a spatial context is important to enable the requirement of supporting land-side infrastructure to be identified and delivered. Otherwise such an approach could lead to disjointed and piecemeal decisions.
- **Government's demand forecasts** - the Government's approach is essentially 'predict and provide'. In this respect, caution should be applied to the Government's forecasts underpinning proposals for new port development. The Government itself accepts that they are subject to "substantial uncertainty" and intends to review them at approximately five-yearly intervals.
- **Port promoter forecasts** - the demand forecasts produced for the Department for Transport do not attempt to predict the locations where demand would arise. It is up to individual port promoters to make the case for development. The concern is that individual port promoters may overstate the benefits of their proposals in the light of the competitive nature of the ports sector. Port promoter forecasts should be subject to a robust and rigorous examination by the decision maker, taking into account the plans and aspirations of other ports in their master plans. This should be reflected in the Guidance on Assessment.
- **Habitats Regulation Assessment** – There are concerns that the Habitats Regulations Assessment accompanying the NPS for Ports is not in accordance with the Habitats Regulations and that it may inappropriately influence future decisions on individual port proposals. A short expert independent report has been commissioned to review this matter (summarised in Appendix 2). The report indicates that the Habitat Regulation Assessment is not in accordance with the Habitat Regulations, and that an Appropriate Assessment (AA) should not have been applied to the NPS, since the NPS is not site-specific. The AA provides an inappropriate lead to decision makers as it infers that there will be unavoidable impacts on European Sites. Some of the same concerns are applicable to the Energy Policy Statement. There is also a question about whether some of the material in the accompanying documents is tantamount to policy and ought therefore to have been included in the Policy Statement itself.
- **Wider transportation impacts** – the wider significant port development transportation impacts are often underplayed by port promoters. Forecasts for growth in container volumes will mean increases in numbers of lorries using the strategic road network to serve ports (even with modal shift to rail and short-sea shipping). Historically, some port

operators have been unwilling to contribute towards off-site infrastructure improvements to networks used to access ports. Therefore the statement in the NPS that the “*developer is expected to fund provision of transport infrastructure to ensure that traffic generated does not have a detrimental effect on existing users of networks*” is welcomed. However, there is a need to broaden this statement to make it clear that it applies to wider strategic transport routes to the port and not just networks in the immediate locality of the port.

- **Infrastructure funding** - any decision on new port expansion would need to demonstrate that it could be integrated with delivery of the necessary land-side transport infrastructure to support the onward transportation of freight arising from the port development. The ability of port promoters and Government to fund and deliver any necessary transport infrastructure improvements, as well as their environmental impacts, would also have to be assessed. The NPS does not recognise the long lead-in times for planning, funding and delivery of strategic road and rail improvements, and there is a danger that promoters of port development may overlook this unless the point is made explicitly. In the event that further port development in Hampshire is approved, the developers and Government would need to fund an appropriate level of infrastructure to accommodate the increased traffic demand.
- **Modal share targets** - modal share targets for movement of port-related freight (both to and from the port) should be made mandatory rather than advisory. For port expansions, both modal share targets and port travel plans should apply to the whole port site, not just the new port development or expansion element. To be robust and effective, port travel plans should encompass freight and delivery management and not be restricted to employee travel, and should be regularly monitored.
- **Lorry parking facilities** - the NPS should refer to the need to provide additional lorry parking facilities on the wider strategic road network, to meet demand caused by new port development, in addition to within the port itself and in the local vicinity.
- **Guidance on Assessment** – the Guidance on Assessment needs clarification to include, as a key consideration for decision makers, the need to give appropriate weight to environmental considerations, including the impact of development on local communities.
- **Smaller port-related developments** - whilst the NPS is also intended to inform decisions on smaller developments that fall below the threshold for referral to the IPC, it is not clear how smaller port-related developments, such as aggregate wharves and waste processing facilities, should be considered at the planning application stage at this level. There is also a lack of weight given to the economic value of some of the smaller port-related developments. Non-cargo related needs are also not considered.

- **Export of minerals and waste** - the role of ports for the import or export of minerals or waste is not discussed. Similarly, the NPS does not provide any capacity requirements for the import and export of aggregates (dry bulk materials) or waste, focusing rather on container capacity.

### **Port of Southampton**

- 6.4. The NPS for Ports is of importance as it will provide the framework for any future new development proposals at the Port of Southampton. The Ports function as a key international gateway and transport hub is acknowledged. In this regard the County Council is supportive in principle of the European Commission's "motorways of the sea" policy, the aim of which is to foster integrated, intermodal options (including rail), based on short-sea shipping, providing high quality alternatives to road transport. The Port of Southampton has the potential to make an important contribution to delivering this initiative between the different European regions. In this respect the statement in the NPS (Guidance on Assessment) that "rail and coastal or inland shipping should be encouraged over road transport" is welcomed.
- 6.5. Last year Associated British Ports (ABP) published for public consultation its Port of Southampton Master Plan. This included an aspiration to develop Dibden Bay for port facilities. Hampshire County Council's Cabinet considered the Master Plan at its October 2009 meeting. The NPS (main document) makes only one reference to the Port and only to the fact that it has "advanced plans to expand terminal capacity within its existing development rights, and expects this to provide capacity for an additional 1.7 million containers." Comparing this statement to the port's Master Plan the "1.7 million containers" appears to relate only to its expansion plans within the existing Western and Eastern Docks up to 2030, and does not include ABP's aspiration for future development at Dibden Bay. However, it would be appropriate to seek confirmation on this with the Department for Transport. If this is indeed the Government's position, this should be welcomed, as the NPS does not recognise the need for Dibden Bay.

### **National Policy Statement for Energy**

- 6.6. The 29 questions on the draft NPSs for energy infrastructure focus on the need for national level infrastructure and IPC assessment principles. Unlike for the Ports NPS, there is little benefit in responding to these individually. Within the six draft policy statements themselves, there are some positives to note and also some concerns to raise.
- 6.7. **A positive for the County Council to note**, in addition to those identified for the Ports NPS, is that the statements do:
- **set the threshold level of power output of proposals for Renewable Energy Infrastructure to be taken before the IPC at 50 megawatts**

(which is the equivalent of 2.5 times the Marchwood power plant) and which should not be lowered.

6.8. **Concerns the County Council should express:**

- **development impact on European-designated habitats** - as for the Ports NPS, some of the wording in statements regarding the possible development impact is not clear and there is also the apparent inference that development will almost inevitably be permitted in such cases;
- **blanket assumption that the NPS will be followed** - in the event of conflict with existing planning policy it is assumed that the NPS will be followed (the potential for conflict is looked at in more detail below in respect of proposals affecting minerals and waste plans);
- **assumption that above-ground electricity transmission lines are acceptable** – the presumption should be in favour of undergrounding, taking into account security of service, resilience to climate change, landscape impact and local amenity. Decisions may need to be substantiated by the use of cost-benefit analysis;
- **disposal of low-level nuclear waste** – at the moment, Fawley is the only low-level nuclear waste-receiving facility in the country and the County Council is concerned about this over-reliance (and associated transport risks) and requests that adequate regional receiving and treatment arrangements be made for such waste before consents for additional nuclear-powered plants are granted; and
- **potential conflict with minerals and waste plans** – the proposed Statement does not require applicants for potential biomass and waste combustion plants to take account of local spatial policies and strategies. It is possible that such plants submitted to the IPC will be in competition with sites being considered by the authority in its minerals and waste plans – both for minerals and waste uses or uses associated with the transportation of such materials. Without a provision to take account of these matters, such proposed plants could prejudice proposals in the Hampshire Minerals and Waste Development Framework. This would clearly be contrary to the proper planning of the area, but is capable of easy resolution by minor word changes.

6.9. It is proposed that the County Council's response – based on the above with any amendments agreed by Cabinet – be approved by the Leader for submission to Government.

**7. Recommendation**

- 7.1. That the Leader be authorised to approve and submit the County Council's formal response to the National Policy Statements consultation, based on the points contained in Section 6 of the report.

**CORPORATE OR LEGAL INFORMATION:****Links to the Corporate Strategy**

**This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because:**

Responding to the consultation allows the County Council to make clear its opinion on a policy document that, through the guidance it provides on major new port developments, may have transportation, environmental and economic significance to Hampshire.

**Other Significant Links****Links to previous Member decisions:**

<u>Title</u>	<u>Reference</u>	<u>Date</u>
Port of Southampton Master Plan	993	26/10/2009

**Direct links to specific legislation or Government Directives**

<u>Title</u>	<u>Date</u>

**Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

DocumentLocation

Advice to the Hampshire County Council.  
Review of the Department for Transport's  
Assessment of Ports NPS (incorporating  
Appropriate Assessment) under the  
Habitats and Wild Birds Directive and  
Regulations. November 2009

Environment Department Library

## **IMPACT ASSESSMENTS:**

### **1. Equalities Impact Assessment:**

- 1.1. The County Council's response to the NPS will not have any direct impact on Equalities.

### **2. Impact on Crime and Disorder:**

- 2.1. The County Council's response to the NPS will not have any direct impact on Crime and Disorder.

### **3. Climate Change:**

- a) How does what is being proposed impact on our carbon footprint / energy consumption?

Not directly. However, the draft NPS for ports guides the decision-maker to encourage promoters to consider the energy efficiency of the port estate, and to consider incorporating renewable energy where practicable.

- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

The draft NPS for Ports also sets out the climate change adaptation that ports should be expected to fulfil, and where additional requirements should be stipulated by the decision-maker.

## **Guidance on Assessment**

The issues covered in the 'Guidance on Assessment' are as follows:

- benefits – environmental, social and economic
- adverse impacts
- cumulative and in-combination/synergistic impacts
- alternatives
- defence and national security
- health

### Economic impacts

- commercial impacts
- competition
- tourism

### Environmental impacts

- Environmental Impacts Assessment
- Pollution control and other environmental consenting regimes
- Biodiversity and geological conservation
- Capital dredging
- Maintenance dredging
- Climate change mitigation
- Shipping
- Emissions from ships in port
- Inland transport
- Climate change adaptation
- Flooding

- Coastal change
- Transport
- Waste generation and resource use
- Water
- Air quality
- Dust odour, artificial light, smoke, steam and insects
- Noise
- Landscape and visual amenity
- Historic environment

#### Social Impacts

- Open space, green infrastructure, sport and recreation

## **Review of the Department for Transport's Assessment of the Ports National Policy Statements**

### **Summary of analysis by David Tyldesley and Associates (6 January 2010)**

- 1. The Assessment is not in accordance with the Habitats and Wild Birds Directive and Regulations. An Appropriate Assessment should not have been applied to the National Policy Statements (NPS).**
  - 1.1. The prescriptive steps of the Habitat Regulations are:
    - Assessment of likely significant effects on a European Site
    - Appropriate Assessment of these effects
    - If 'no adverse effect' cannot be confirmed - consideration of alternative solutions, and where there are no alternatives
    - Consideration of whether there are Imperative reasons of Overriding Public Interest (IROPI) for the development to proceed
    - Compensatory measures to maintain ecological functions of the site.
  - 1.2 If an NPS would be likely to have a 'significant effect' on a European Site it should be subject to an Appropriate Assessment. The key question is "will the NPS be likely to have such a significant effect?"
  - 1.3 The step-wise procedures of the Directive and Regulations depend upon the competent authority having identified the likelihood of significant effects on one or more particular European sites. However, the NPS does not propose any particular port development or location. The Assessment does not 'screen in' any site for assessment. The Policy is general guidance and cannot have any significant effect on a European Site since it is not site specific.
  - 1.4 In the opinion of David Tyldesley, the Department for Transport should therefore not have attempted an Appropriate Assessment, rejected possible alternative solutions, argued IROPI or discussed compensatory measures.
- 2. David Tyldesley's opinion is that the assertions, assumptions and conclusions made will not prejudice decisions on future port development applications because:**
  - The Planning Act 2008 obliges the determination of applications to be in accordance with the NPS, not the Assessment of the NPS
  - Decision makers must apply the step-wise procedures of the Directive and Regulations to the individual applications.

3. **However, whilst this opinion is technically correct, Hampshire County Council officers remain concerned that the NPS does not in any way discourage port development that may affect European Sites. It is considered that the Appropriate Assessment gives a strong lead to the future decision making process because it implies, for example, that there are unlikely to be any alternative sites for port developments that do not have a significant impact on European Sites.**

4. **Other reasons for non-conformity with the Regulations:**

- No consideration is given to European Offshore Marine Sites
- The Department cannot be satisfied that there are no alternative solutions to the policies in the NPS. Paragraph 31 says avoiding all possible developments on or near protected sites is not feasible, but this is contradicted by paragraph 32 which says the opposite.

5. **There is no basis for judging that IROPI overrides harm to European Sites – this requires a balancing decision where the benefits of the NPS can be weighed against the scale of harm caused by the NPS. The Assessment simply assumes that the benefits would override any degree of harm anywhere over any period of time.**

5.1 Neither the NPS nor Assessment secure any compensatory measures, which are required once IROPI is invoked.

6. **Other issues**

6.1 Compensatory measures are defined as needing to be 'of equal value' rather than to 'sustain the same ecological function'. If this is Government policy it would represent a significant shift in policy. This could be poor drafting and previous European Commission (EC) guidance and Government advice should prevail.

7. **Implications and options open to Government**

7.1 Government could have concluded that, as the NPS is a general statement of policy, it could not have a significant effect on a European Site and therefore an Appropriate Assessment would not be necessary.

7.2 Given that Government has undertaken an Appropriate Assessment and concluded that there is a negative assessment on site integrity, no alternative solutions and IROPI applies, it needs to report this to the EC and advise it of compensatory measures. This is impractical because impacts have not been defined.

7.3 A suitable alternative would be for Government to convert the Assessment to a discussion paper, re-screen the NPS and conclude that there is no significant effect.