

---

# NIPA NEWSLETTER

National Infrastructure Planning Association

---

## Newsletter – May 2019

---

### Introduction from NIPA Board Secretary Robbie Owen



Welcome to the latest edition of our NIPA Newsletter designed to keep you informed of national infrastructure developments and NIPA's activities.

I wanted to highlight to you how NIPA is working hard to both promote best practice in nationally significant infrastructure planning, and to input into the constantly changing public policy environment. In the last couple of months we have already seen the Government's consultations on a Draft Water Resources National Policy Statement and on Energy Storage within the Planning System, both of which NIPA has responded to (see below), and just this week the legal judgement on the Government's Airports National Policy Statement (NPS) has been published (see below for more information).

Yet despite this, as the Brexit saga continues, developers are finding the investment climate pretty challenging, with continual policy flux; changes in local government structures with the establishment of Combined Authorities; and the lack of long-term certainty impacting on the ability to secure finance / funding. To provide an opportunity for Members to discuss these issues and their impact, NIPA is holding a series of Regional Networking Events for Members – see below for detail.

We are also keen to hear from you on practical issues within the Nationally Significant Infrastructure Project process that you believe could be improved by reform, so that we can feed them into policy-makers.

**If you have evidence / examples, and ideas of possible solutions that could improve how the NSIP process works, please email them to NIPA's Policy Adviser, Jane Smith at [jane.smithassociates@yahoo.co.uk](mailto:jane.smithassociates@yahoo.co.uk).**

I hope you find this edition of our newsletter interesting and informative, and if you have any suggestions on items you would like us to cover, please contact us on [info@nipa-org.uk](mailto:info@nipa-org.uk).

---

### Legal Judgement on the Judicial Review of the Airports NPS

On 1 May the High Court issued its judgement on the judicial review of the Airports National Policy Statement launched by several parties. A copy of the judgment can be found [here](#). Essentially none of the grounds of the challengers was successful; it remains to be seen whether the case is appealed, and if so, this is expected to be directly to the Supreme Court.

### Energy Storage

#### ***Energy Storage and the Planning System***

On 14 January, BEIS launched a consultation on whether electricity storage should be defined as a

nationally significant infrastructure project under the Planning Act 2008, which confirmed that, subject to Parliamentary time being made available, electricity storage will be defined as a form of generation. The consultation document can be found [here](#) and closed on 25 March.

The consultation proposed a threshold of 50MW (i.e. the same as the onshore electricity generation threshold for other types of generation) for storage projects on their own. Additionally, for combined projects with traditional generation or other forms of infrastructure with storage on site, then one or other of the elements has to be over 50MW before it becomes an NSIP (rather than a combined total of over 50MW).

Pinsent Masons' Gareth Phillips led a Working Group to formulate NIPA's response, which can be found on the [NIPA Website](#)

### ***Ofgem's Targeted Charging Review***

Ofgem's consultation on Targeted Charging has recently concluded, with a proposal to introduce residual charges and remove the current Triad arrangement, which provides energy storage providers with a stable income. The proposals, which can be found [here](#), whilst designed to encourage greater deployment of energy storage, will actually drastically reduce the returns that energy storage providers will get, as well as penalising those who have invested in solutions that provide flexibility.

## **Water Resources**

### ***Draft Water Resources NPS Consultation***

[NIPA's Response to the Draft Water Resources NPS](#) (National Policy Statement) was submitted in March 2019. The NPS aims to set the policy framework to help address the immediate need for additional resilience in the water sector to address pressure on water supplies caused by population growth and climate change. The suggested approach included both demand management (leakage reduction and increased water efficiency measures), and new water supplies, such as reservoirs and water transfers. NIPA's response highlights several key points including:

- The need to strengthen the relationship between the NPS and the statutory Water Resources Management Plans (WRMPs), which are consulted upon and ultimately agreed by the Secretary of State. NIPA has called for clarification to be included so that if a Nationally Significant Infrastructure Project (NSIP) is identified in a final WRMP then the need for that NSIP should be considered to be established, and the examination of the DCO to take place on that basis.
- The need for transitional provisions to be agreed for the WRMP19 process, which will be finalised before the Water Resources NPS is designated, including clarity over how the Government will confirm the planned national level of resilience and the NSIPs required to achieve this, following the publication of final WRMPs, and whether this will be via the NPS or a written ministerial statement, and what the status and weight would be.
- Concern over the proposal that before applying for development consent, a developer should consider whether it needs to revise its WRMP, for example due to some of its content being out of date, with NIPA suggesting the removal of this requirement, or if not, changing the requirement to only apply to water companies.
- The need to include abstraction that is necessary to facilitate an NSIP within the Water Resources NPS.

- Inclusion of the degree that the proposed water resource development contributes to meeting the water resource need identified in a Water Resource Management Plan (WRMP) in paragraph 3.1.3 of the NPS. This will then facilitate the Examining Authority and Secretary of State to reflect on, and have due regard to, the contribution that the proposed water resource development makes in addressing the water supply deficit for the water company and the region.
- The inclusion of 'environmental net gain' prior to the conclusion of the separate DEFRA consultation appears to pre-empt the outcome, and may leave the decision-maker attaching inappropriate weight to environmental net gain.
- If enhancements for Biodiversity net gain are to be delivered through Development Consent Order (DCO) projects then it will be important for the NPS to make it clear that works being brought forward for these purposes can meet the tests for Compulsory Acquisition.
- Clarity is needed over what "Appropriate weight should be given to outstanding or innovative designs which promote high levels of sustainability" means.
- The NPS should cover an update to the MHCLG guidance on associated development to give examples of potential associated development that might be included in an application for a water resources DCO.

#### ***EFRA Committee Inquiry into the Draft Water Resources National Policy Statement***

Additionally, NIPA submitted a response to the EFRA Select Committee inquiry into the Draft Water Resources National Policy Statement (NPS), which was based on the NIPA response to the above DEFRA Consultation on the draft Water Resources NPS. The Committee [Report](#) was published on 26 April and extensively relies upon the NIPA submission.

## **Marine Management Organisation proposes to charge for Statutory Consultations under the Planning Act 2008**

The MMO, the body that licenses works in the sea and tidal rivers, has recently signalled in a letter to customers, its intention to start charging from 29th April 2019 for Statutory Consultations under Section 42 of the Planning Act 2008. The MMO is a statutory consultee for NSIPs that have impacts in the coastal / estuarine areas

The charge will be at cost (based on £122 per hour), and the letter estimates the average cost of a S42 consultation response to be around £8,500 (about 70 hours work). The letter justifies this introduction by saying that the MMO can charge for its services under Section 27 of the Marine and Coastal Access Act 2009, and that cost recovery is in line with Government policy, however, it has generally been Government's position that Statutory Consultees cannot charge for statutory duties, and so NIPA will be seeking clarification on this matter.

## **Historic England**

On 28<sup>th</sup> March 2019, the Department of Culture, Media and Sport announced the start of a Tailored Review of Historic England (required to happen once during every Parliament and the first since the split to create Historic England and the English Heritage Trust). The Review, which can be found [here](#), will be conducted by DCMS officials and comprised two stages, with the first stage being:

- A robust challenge to the continuing need for the functions performed by Historic England, and if the need for those functions is confirmed, a further review as to whether those functions should be delivered via alternative delivery models or Historic England.
- An assessment of the current model and relationship with the English Heritage Trust, including the robustness and long-term sustainability of the financial and governance arrangements following the 2015 split of English Heritage from Historic England.

If the review finds that the functions should continue to be delivered by a Non-Departmental Public Body (like Historic England), then the second stage will review the structure, efficiency and effectiveness of Historic England. The Call for views is open until **9<sup>th</sup> May 2019**.

## New Strategic Licensing for Developers in Cheshire to Better Protect Great Crested Newts

On 28<sup>th</sup> March 2019, MHCLG announced the launch of an 'innovative' approach by Natural England to protect great crested newts and encourage sustainable development in Cheshire. The press release ([here](#)), outlines the approach which allows developers in Cheshire to apply for a licence under the **District Level Licensing Scheme for Great Crested Newts**. This enables developers to invest in mitigating the impact of a development by restoring and creating offsite compensatory ponds in areas of the county suitable for newts, rather than species being squeezed in around the margins of a development, thereby increasing the breeding grounds, to better support great crested newt populations over time.

## New Garden Towns Funding Announced

Government announced on 25<sup>th</sup> March 2019 additional funding of £3.7m to fast-track specialist survey and planning works for five new garden towns:

- Grazeley Garden Settlement, delivering up to 15,000 homes
- Hemel Garden Communities, delivering up to 11,000 homes
- Easton Park Garden Community, North Uttlesford Garden Community and West of Braintree Garden Community, an opportunity to deliver up to 18,500 homes
- Tewkesbury Ashchurch Garden Community, delivering up to 10,195 homes
- Meecebrook, in the north of Stafford borough, delivering around 10,000 home

The MHCLG Announcement can be found [here](#).

## Thames Estuary 2050 Growth Commission Report and Government's 2050 Vision for the Thames Estuary

On 25<sup>th</sup> March 2019 Government published its response to the Thames Estuary 2050 Growth Commission Report led by Sir John Armitt (previously published on 25<sup>th</sup> June 2018) setting out an ambitious vision and delivery plan for North Kent, South Essex and East London.

The Government's response, [here](#), supports the Commission's vision that by 2050 the Estuary would generate an additional £190 billion Gross Value Added and 1.3 million new jobs, and at least 1 million new homes, but it also confirms that:

- It would support and deliver growth in the Estuary by working in partnership with local partners, including local government, South East Local Enterprise Partnership and London Economic Action Partnership, businesses and civil society.
- The challenges – including fragmented governance; scale of the area; joining up housing and infrastructure delivery; significant areas of low skill and entrenched deprivation; the need for improvement in the affordability, quality and connectivity in local and regional transport; and the risk of tidal flooding.
- To address those challenges Government commits to:
  - Strengthen governance: Creating a new £1 million strategic board, chaired by an independent Thames Estuary Envoy.
  - Strengthen ministerial advocacy: Creating a new Cabinet-level ministerial champion for the Thames Estuary, acting as an advocate / critical friend within government.
  - Delivering homes: Exploring ambitious housing and infrastructure deals with Estuary authorities, and the potential for at least two new locally-led development corporations.
  - Improving mobility and infrastructure: Continuing with transport infrastructure investment in the Estuary, including around £200 million of Local Growth Fund, £125 million on improvements to the strategic road network at Bean and Ebbsfleet, and multi-billion-pound investments in the Lower Thames Crossing and the Elizabeth Line.
  - Launching an officer-led, cross-government group to realise the wider benefits of the Lower Thames Crossing, as well as supporting local partners in enhancing transport links from Abbey Wood to Ebbsfleet in Kent.
  - Agreeing Local Industrial Strategies: Ensuring places across the Thames Estuary have fully-evidenced Local Industrial Strategies, aligned to the UK Industrial Strategy, to increase productivity, clarifying how all Estuary communities can contribute to, and benefit from, economic prosperity.
  - Great Thames Park: A study to develop options and consult the community on the benefits of a Great Thames Park and increase general understanding of the natural capital opportunities for the Estuary.
  - Environmental: To bring together relevant authorities to collaborate on the Thames Estuary 2100 Plan actions required to make sure that growth is sustainable and resilient.

## Development Consent Order Update

With thanks to NIPA's Board Chair Angus Walker, here is a short summary of recent developments in respect of DCO applications, including:

**Millbrook Power Station** – On 13<sup>th</sup> March the Secretary of State for Transport granted a Development Consent Order (DCO) for the Millbrook Power Station in Bedfordshire. The Project is a 299MW power station at Rookery Pit near Bedford by the Millbrook Power Ltd, which is part of the Drax Group. The decision letter flags the disagreement over whether a DCO can amend an earlier one for a different project

with a different promoter (the Rookery South DCO). Millbrook Power Ltd, the Examining Authority and the Secretary of State all agreed that this was possible and so, the Millbrook DCO amends the Rookery South DCO.

**Rail Central Strategic Rail Freight Interchange** - The applicant for the Rail Central strategic rail freight interchange, whose representation period finished on 15 January with 1324 representations received, has requested a delay to the Preliminary Meeting until September or possibly November this year, according to this letter. The Examining Authority is consulting on whether to allow this delay.

**Tees Gas-Fired Power Station** – On 5th April the Secretary of State granted a Development Consent Order (DCO) for the 1700MW Tees Gas-Fired Power Station on Teesside between Redcar and Middlesbrough. The promoter is Sembcorp Utilities and here is the Development Consent Order (DCO). Given that the project is over 300MW it is required to be carbon capture ready, and during the process there was an argument about whether the proposed development allowed enough room to facilitate this. Therefore, a requirement was added limiting output to 1520MW until the CCR requirements for full operation could be developed, and an obligation on the promoter to review the situation 12 months after the development is brought into use. Interestingly, on combined heat and power, the plant could provide it but there aren't enough nearby customers.

The next decision is not until 8th July, and is for the Kemsley Paper Mill Project.

## **NIPA Insights II Project Update – including NIPA Meeting with MHCLG and the Planning Inspectorate**

Following the NIPA Members' Workshop held on 14<sup>th</sup> November, NIPA met with the Ministry for Homes, Communities and Local Government (MHCLG) and the Planning Inspectorate on 26<sup>th</sup> March to share the current thinking on key recommendations emerging from the NIPA Insights II Project, which focuses on how best to incorporate flexibility within the DCO process. The Project Management Group Chair Keith Mitchell gave a short overview of the Project and its four workstreams:

- Workstream A – Engagement.
- Workstream B – Assessment and Application Documents
- Workstream C – Requirements and Codes.
- Workstream D – Possession and Land Acquisition.

He also outlined:

- The research undertaken by University College London (UCL), which underpins the report and covers engagement at all stages of an NSIP and a review of projects to identify different tools and techniques used to create flexibility.
- The emerging recommendations.

The Inspectorate and MHCLG gave some helpful initial feedback, suggesting that the second volume of Insights should provide another useful contribution to National Infrastructure project planning and delivery. We are now seeking more detailed feedback from them as well as the NIPA Board, Council and Project Members. This will shape the final version, before launch at NIPA's AGM (see below).

For more information, please contact Keith Mitchell at [kmitchell@peterbrett.com](mailto:kmitchell@peterbrett.com).

## NIPA Events Programme 2019

Following the Manchester event on 30<sup>th</sup> January 2019, NIPA has held / is planning a number of events in 2019, including:

### **Midlands Regional Networking Event, 30<sup>th</sup> April**

Kindly hosted by Eversheds Sutherland at their Birmingham Office. Speakers included:

- **Midland Connect's Stakeholder Management Lead Sarah Spink** – who spoke about Midland Connect's infrastructure plans and the challenges.
- **Angus Walker (our NIPA Board Chair)** – who gave an overview of NIPA activity and an update on policy developments affecting the infrastructure sector.
- **Paul Maile**, Partner from Eversheds Sutherland - who shared his thinking on the opportunities and challenges associated with NSIPs.



**NIPA Board Chair Angus Walker** gave a short overview on NIPA, how it operates, priorities, and key activities, NIPA's key events (see below) and the **recent notification to Members about vacancies for a three-year term on the NIPA Board**. He also commented on:

- The continuing high volume of DCO applications entering and going through the system.
- **The fact that existing NPSs are getting older, asking for evidence of how this is impacting on bringing forward developments.**
- New NPSs making slow progress (Nuclear Power; Geological Disposal; Water Resources; Fracking; and possibly an amended NSIP category to accommodate battery storage).



He then outlined how NIPA is actively engaging on a range of policy issues, including direct engagement with Government and other key stakeholders; responding to consultations; developing best practice in dialogue with Government and the Inspectorate (including Insights II), but that **NIPA needed help in providing evidence on why further reform is needed, and what possible solutions might be.**

Next the audience heard from **Sarah Spink, Midland Connects Head of Stakeholder Management**, who explained:

The organisation's important role included pulling together 23 local planning authorities; 9 Local Enterprise Partnerships; 9 Chambers of Commerce,

Highways England and Network Rail to develop a long-term transport strategy for the Midlands.

The focus of the organisation was on researching, developing and recommending transport projects to Government, by providing compelling evidence of the need.

Midlands Connect was funded by Department for Transport, and was tasked with developing an overall Transport Strategy, which was published in March 2017, and established standard criteria for recommending a project to Government, including journey reliability, journey time reduction and the project needing to deliver benefits to the region, including supporting economic growth.

### **Midlands Connect needed support from the Industry as to why investment in key projects was necessary.**

Paul Maile, Partner at Eversheds Sutherland then gave a short overview of the opportunities and challenges when bringing forward NSIPs, including:



#### ***Opportunities***

- The benefits of the NSIP system in delivering predictability, and the structured approach in ensuring faster and fairer decisions involving stakeholders and in turn delivered consequent certainty.
- The use of compulsory acquisition within the NSIP process, and the introduction of temporary possession to undertake works had encouraged the use of Compulsory Acquisition Order powers outside the regime too.
- The NPS clarified the urgent national need for infrastructure, although he acknowledged that some were out of date and didn't reflect current Government policy.
- The mediation approach which encouraged all interested parties to engage and reduced the area of conflict / risk.
- The ability to include other consents if promoters wanted to.

#### ***Challenges***

- The difficulty for promoters in securing sufficient flexibility in their DCO to accommodate beneficial changes post-DCO, that might arise due to construction contractors bringing forward better solutions; technological developments; changes in legislation / policy / funding.
- The DCO amendment process and challenges and length of time for non-material changes, which still required Secretary of State approval and had no statutory timetable.
- The lack of consistency in the Examination process.
- The risks of actually implementing the DCO, including discharging requirements, with lack of local planning authority resources and understanding of a project often delay project progression.

This was followed by a Q and A and networking over drinks and nibbles afterwards.

***NIPA Annual General Meeting, 22<sup>nd</sup> May***

Kindly being hosted by WSP at their Chancery Lane offices (WSP, 70 Chancery Lane, WC2A 1AF) the event starts from 5.30pm for a prompt 6.00pm start, including our Guest Speaker from the Inspectorate. The Agenda is as follows:

- Introduction from NIPA's Council Chair, Steven Norris
- Annual Report from NIPA's Board Chairman, Angus Walker
- Financial Update from NIPA's Treasurer, Mr Michael Humphries QC
- Launch of the NIPA Insights II Project Report by Keith Mitchell (NIPA Project Management Team Chair)
- **Guest Speaker - Dr. Pauleen Lane, Group Manager, National Infrastructure, The Planning Inspectorate - followed by a Q & A session**
- Any other notified business

Afterwards there will be drinks and nibbles available, with the opportunity to network.

**If you would like to attend please email [jennifer.bowling@pinsentmasons.com](mailto:jennifer.bowling@pinsentmasons.com) by 10th May 2019 latest to secure your place.**

***NIPA Annual Conference, 26<sup>th</sup> June***

This event is again being kindly hosted by Clifford Chance at their Canary Wharf offices at 10 Upper Bank Street. For more information and to book your place email [conference@nipa-uk.org](mailto:conference@nipa-uk.org).

***NIPA Annual Dinner 2019***

As last year, will be held at the Brewery, Chiswell Street, London, on **Thursday 21 November 2019** (booking will open in July).

***London***

A NIPA event will be held in **London**, exploring the shift in investors' appetite and the perception of developers that the continuing uncertainty around Brexit and the current policy climate is not necessarily as infrastructure friendly as it has been. **MHCLG** have agreed in principle to speak at this event – more details to follow.

***Leeds***

The NIPA Board have agreed to hold an event in Leeds and preparations will be commencing in May, to ideally hold the event in late Summer – more details to follow.

***South West***

A further event in the South West is in development.

***North West***

A further event in the North West will be organised for later in the year.

**Contact**

Email: [admin@nipa-uk.org](mailto:admin@nipa-uk.org)

Website: [www.nipa-uk.org](http://www.nipa-uk.org)

