

Written evidence submitted by National Infrastructure Planning Association
(NPS0010)

Submission on behalf of the National Infrastructure Planning Association

Introduction

The National Infrastructure Planning Association (NIPA) was established in November 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 introduced by the Planning Act 2008. We provide a forum for those with an interest in the planning and authorisation of national infrastructure projects in the UK, particularly those brought forward within the framework of the Planning Act 2008. 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 review of the energy-related National Planning Policy Statements (referred to below as “the NPS”) and the opportunity to comment on the changes to policy proposed by the Department for Business, Energy & Industrial Strategy (“BEIS”). NIPA formed a working group, comprised of members who are actively engaged in energy-related Nationally Significant Infrastructure Projects (“NSIPs”) and which represents a cross-section of interests, e.g. developers, consultants, local authorities and other stakeholders. The working group reviewed the suite of five NPS and identified potential issues and opportunities for improvement. Those have been submitted to BEIS in response to its consultation exercise and have provided the basis for this response to the BEIS Committee’s call for evidence in relation to the NPS.

NIPA’s submissions in response to the specific questions raised by the Committee

The clarity of the NPS in terms of its scope and its applicability to the Energy White Paper?

The White Paper in Chapter 2, states that the Government will “*accelerate the deployment of clean electricity generation through the 2020s*”, in the context of demand for energy doubling by 2050, with a proposal to close coal-fired power stations by 2024, which “*would require a four-fold increase in clean electricity generation with the decarbonisation of electricity increasingly underpinning the delivery of our net zero target*”. It goes on to say “*We are not targeting a particular generation mix for 2050, nor would it be advisable to do so*” and “*A low-cost, net zero consistent system is likely to be composed predominantly of wind and solar*” [our

emphasis].

More particularly, the White Paper confirms that “*Onshore wind and solar will be key building blocks of the future generation mix, along with offshore wind*” [our emphasis], “*We will consider the role of wave and tidal energy, following further evaluation of the commercial and technical evidence*” [our emphasis] and “*We will need sustained growth in the capacity of these sectors in the next decade to ensure that we are on a pathway that allows us to meet net zero emissions in all demand scenarios*”.

The NPS are inconsistent with the above because they do not support onshore wind or tidal range:

- onshore wind continues to make a significant contribution to clean energy generation and if planning policy was framed more positively towards that technology, new projects would come forward. This is particularly the case given the recognition of the cost efficiency of wind within the NPS. We had an expectation that the inclusion of onshore wind in the White Paper signalled the reinstatement of that technology to the Planning Act 2008 regime and inclusion of that technology in the new EN-3;
- proof of concept in relation to tidal range exists in France and South Korea and it is a technology being considered in other countries. Government granted development consent for the Tidal Lagoon project in Swansea some years ago but chose not to lend financial support due to cost concerns. Even so, a similar project, in the same location, is being promoted by a public/private partnership and there is suite of similar suitable locations around England and Wales. Therefore, we recommend the inclusion of Tidal Range in EN-3; and
- the omission of these technologies, in the context of the White Paper and the Government’s climate change and net zero policies, potentially leaves the NPS susceptible to judicial review, on the basis it may be claimed such omission is unreasonable/irrational and so unlawful. We recommend that both onshore wind and tidal range are included in the NPS and that onshore wind is reinstated to the Planning Act 2008 regime.

In addition to the references to solar in EN-1 (see above), EN-3 states the Government has committed to sustained growth in solar capacity to ensure that we are on a pathway that allows us to meet net zero emissions, and that solar is a key part of the Government’s strategy for low-cost decarbonisation of the energy sector.

The Government’s Net Zero Strategy (“NZS”), published in October 2021, recognises the centrality of solar to delivering net zero at the lowest cost to consumers. However, unlike offshore wind, nowhere in EN-3 or the NZS will one find a generation target for solar. The Committee for Climate Change has identified a need to deploy 54GW of solar by 2035 to keep on track to deliver net zero by 2050. This equates to roughly 40GW of solar by 2030, and the solar industry body, Solar Energy UK, in its 2021 report “*Lighting the Way*”, demonstrates how that target is possible. Moreover, it is already too easy for those opposed to solar development to point to offshore wind as the perceived panacea of decarbonisation and the progress made in offshore wind deployment when claiming there is no need for the solar

development in the location selected.

Given that increased solar deployment would help reduce reliance on offshore wind, and enhance security and diversity of supply, we recommend that a target for solar generation should be included in the NPS, which requires at least 40GW by 2030. This would help demonstrate the scale of the need for that technology (alongside others) and increase investor confidence in solar development. The same points apply to Pumped Hydro Storage, which also has no generation target in the NPS.

How effectively the revised NPS reflects Government's policy proposals in the Energy White Paper?

The NPS confirm the Government's expectation given in the White Paper, that electricity demand will double by 2050 and to meet that a fourfold increase in low carbon electricity generation is needed, with most of this likely to come from renewables.

'Project Speed' has been commissioned to identify ways in which the delivery of infrastructure can be expedited, and there is a greater role for the NPS to minimise delay.

Yet, there has been divergence in approach to the balance of national need and local impacts taken by the Planning Inspectorate, appointed Examining Authorities and the Secretary of State over the last two years leading to delays in determining DCO applications, particularly for renewable energy infrastructure. Moreover, it has been clear that whilst the Secretary of State places significant weight on the national need, the Planning Inspectorate and appointed Examining Authorities have placed greater weight on local impacts.

In the above context, the case for additional energy infrastructure needs to be expressed in the NPS in the strongest possible terms. The NPS must give a clear direction in this regard with emphasis on the presumption in favour of development.

We do not consider the suite of draft NPS achieves that. Indeed, our opinion is that the national need and presumption have been diluted by the identification of technology-specific impacts given the absence of any direction on the weight to be applied to the impacts or on which issues should prevail. In effect, this is left to be determined at project level. This is most obviously the case in EN-3 in relation to offshore wind where, despite that technology being the backbone of the Government's Net Zero Strategy (at least 40GW by 2030), relevant impacts are identified but the NPS stops short of saying how they should be balanced and determined.

If BEIS does not grapple with that balancing exercise in the NPS, that will potentially lead to further uncertainty, delay and inconsistency in decision-making, and undermine the investment in offshore wind. We recommend BEIS reconsiders the NPS and asks itself if more direction can be given in relation to the weight to be applied to key impacts.

The National Planning Policy Framework (NPPF) may assist here, which arguably contains a stronger presumption in favour of renewable energy development. It says the decision-maker should "*approve the application if the impacts are (or can be made) acceptable*". However, we submit that the NPS should go further than this and

recommend a weighting test (similar to that used for heritage matters) where the presumption is grant unless the harm outweighs the benefits.

We also recommend that the policy related to need stated at paragraphs 3.1.1 and 3.1.2 of EN-1 is given greater prominence and reiterated in section 1.1. The key message that the government has identified: (i) a need for significant amounts of new large-scale energy infrastructure to meet its energy objectives; (ii) that need as being urgent and should be given substantial weight; and (iii) it will not be possible to develop the necessary amounts of such infrastructure without some significant residual adverse impacts, must be communicated in the strongest possible terms in the NPS so that the message is not undermined in decision-making. The Planning Inspectorate, appointed Examining Authorities, and Statutory Consultees must be given a clear steer in this regard.

The scale of the challenge should not be underestimated. The absence of clear targets for onshore wind and solar and unhelpful references to simply providing *more* of both in the Net Zero Strategy means it is all too easy for opponents to challenge the need for renewable technologies. The investment required for promoters to embark on the Development Consent Order (DCO) process without the certainty of clear policy support for the scale of technology required to meet this need is also a huge obstacle. The renewable mix required to deliver decarbonisation of the energy sector by 2035 will simply not happen if this uncertainty continues. The National Infrastructure Commission in their 2020 paper¹ looked at the renewable mix required to meet net zero by 2050. These could be regarded as minimum recommendations now the Government is even more ambitious. The NIC commissioned an independent analysis by Aurora Energy Research. This looked at the capacity mix of 3 modelled scenarios of 60%, 80% and 90% renewables by 2050. This resulted in a recommended figure of between 56-121 GW of solar, 18-27GW of onshore wind and 54-86 GW of offshore wind by 2050.

Using solar as an example, the UK has 14GW of installed capacity and 17GW in the planning pipeline². This still leaves between 25-90GW of solar to be delivered by 2050 (equivalent to between 1 and 3GW a year). Similar analysis by Solar Energy UK³ shows that 40GW of solar is required by 2030 to achieve net zero by 2050 (or 4GW a year). To put this in context, an NSIP scale solar farm typically generates in the region of 350MW. Meeting the NIC target would require around 260 NSIPs to be consented and built between now and 2050, or 1,800 49.9MW projects. Rather more starkly, using Solar Energy UK's figure of 40GW, it would require 114 NSIPs to be built and delivered in the next 9 years, or 800 49.9MW projects. There is still only one solar NSIP to have been granted, Cleve Hill, and this has not yet been constructed. Policy needs to be strong and unequivocal to enable more projects to be promoted and consented.

EN-3 sets a target of 1GW of floating wind, which isn't ambitious, and doesn't reflect the action being taken by The Crown Estate to encourage this technology. Similar to the comments above, it would be helpful to have a higher target, particularly to drive

¹ Net Zero: Opportunities for the Power Sector, NIC, March 2020 <https://nic.org.uk/app/uploads/Net-Zero-6-March-2020.pdf>

² Lighting the Way, Solar Energy UK, 2021 <https://solarenergyuk.org/resource/lighting-the-way-making-net-zero-a-reality-with-solar-energy/>

³ Lighting the Way, Solar Energy UK, 2021 <https://solarenergyuk.org/resource/lighting-the-way-making-net-zero-a-reality-with-solar-energy/>

investment in the Celtic Sea and reduce the cost of the technology generally. The number of sites suitable for offshore wind with fixed foundations is reducing, so we need floating technology to advance, and significant cost reduction, through this decade. Meaningful cost reduction is associated with scale. More generally, the NPS will need to be updated to reflect emerging marine planning policy reform, such as that expected through the Defra led Marine Spatial Prioritisation Programme, which aims to agree a holistic vision for the marine environment for 2050 through optimisation and prioritisation of marine activities.

Stronger support is required for repowering renewable energy projects, given that the principle of development at that site is already accepted (and indeed will form part of the baseline in environmental impact assessment). This is important given the urgent need for renewable power and the high levels of embodied carbon associated with existing infrastructure. There is an assumption running through the suite of NPS that repowering would require a fresh application for a DCO. This need not be the case and creates a situation, and outcome of, additional cost and delay. Repowering can be permitted and controlled in a DCO, e.g. a 'phasing and repowering plan' controlled via a DCO requirement (i.e. a condition).

How effectively the revised NPS supports the Government's targets for net zero by 2050?

We welcome the fact that EN-1 has been updated to reflect Net Zero commitments.

There seems to be no indication of how the Secretary of State should prioritise NSIPs contributing to net zero targets. Simply stating our Net Zero and Climate targets does not go far enough. We would recommend that EN-1 recognises the urgency to decarbonise the energy sector in line with the Prime Minister's Ten Point Plan for a Green Industrial Revolution (2021) and the White Paper.

EN1 should be updated to reflect the ambitions set out in the 6th Carbon Budget, the White Paper and the Hydrogen Strategy, all of which will require significant new infrastructure to deliver. It should also reflect the outcome of the decarbonisation readiness proposals.

We strongly recommend that more work is needed in this area to strengthen the commitment to Net Zero in the decision-making process. We would therefore suggest that EN-1 be amended to provide a clear and unambiguous direction to the Secretary of State to afford greater weight to the importance of climate change in decision-making.

We would strongly support the introduction of an express policy within the NPS setting out how the climate emergency should be considered within the decision-making process, including that significant weight within planning terms should be derived from the contribution that each project makes towards the achievement of net zero / offshore wind targets.

How effectively the revised NPS takes account of other aspects of the Government's plans for energy generation?

EN-5 (and EN-1) should go further in emphasising the need for connecting all sources of energy and support for grid connection projects, without the urgent

delivery of which it will not be possible to realise the low carbon generation targets set out in the NPS.

It should also be acknowledged that the consenting of generating stations should not need to wait pending those for transmission infrastructure, and it will not always be the case that coordinated transmission results in less environmental impacts than point to point, e.g. coordinated transmission may result in larger infrastructure.

How effectively the proposals in the revised energy NPS supports the communities who will be impacted by the delivery of new energy infrastructure?

The NSIPs regime provides significant opportunity for those communities impacted by new energy infrastructure to directly engage in the consenting process at all stages. Local authorities also have an important role in the regime and voice the concerns of constituents.

However, there is a huge disparity in the resources of applicants and other interested parties in the process. For example, it is a lacuna in the Planning Act 2008 that there is no application fee or other source of income provided to a local authority to resource itself for DCO applications. Given the important role the local authorities have in preparing Local Impact Reports and representing the interests of constituents during the DCO process, that position must change.

Allied to the above, the NSIP regime can only be as effective as those participating in it. The regime is not assisted by the lack of resource within the Planning Inspectorate and it is undermined by the lack of resource within the SNCBs, such as Natural England. There are instances of examinations being delayed whilst appropriate Inspectors are appointed, and SNCBs being unable to participate in hearings due to resource constraints.

If BEIS and other government departments are serious about expediting the NSIPs regime and, more generally, "Project Speed", then adequate resourcing of key stakeholders must be made available so that they are able to engage effectively in the regime.

How effectively the revised energy NPS takes account of sustainability and environmental considerations?

We note the footnote in EN-1, which states that a Biodiversity Gain Statement will be designated alongside the NPS in due course, should the Environment Bill be enacted as currently drafted. This needs to be amended given the Environment Act 2021 is now in place. Part 6 has not yet come into force. Even so, we recommend stronger policy could be included in the NPS encouraging biodiversity net gain in advance of the legal requirement. Precedent already exists for this approach in the draft water resources infrastructure NPS, which refers to both Environmental Net Gain and Biodiversity Net Gain. The energy-related NPS should take a consistent approach and also fully embrace Environmental Net Gain.

EN-3 does not acknowledge the delay to offshore wind deployment attributable to EIA/HRA matters, including compensation measures, and the significant cost to developers in this regard, which is not aligned with reducing the costs to consumers. Better acknowledgement of the need for strategic compensation measures is required, and the role BEIS, the MMO, SNCBs and The Crown Estate have to play in

delivering those measures. The Crown Estate is engaging with developers in relation to strategic compensation measures as it seeks to work with government, regulators, statutory advisors, and other key stakeholders to establish how strategic compensation can be secured through the development process.

The NPS needs to place a duty on the public sector to also engage and support the measures being considered, as some SNCBs have consistently maintained a view that it is not for them to advise on what compensation measures should be, yet find fault with those proposed by developers. That attitude must change if policy objectives are to be met. It will not be possible for 40GW of offshore wind to be deployed by 2030 if the attitude of SNCBs remains that all projects have the potential to have adverse effects on the integrity of protected habitats. Clarity over “de minimis” thresholds is also required. The NPS must go further to resolve this.

EN-3 confirms that agricultural land value should not be the predominant test in site selection for solar projects. It should be acknowledged that there is broadly an inverse relationship between agricultural land value and Biodiversity Net Gain (“BNG”). In other words, the lower the quality of agricultural land, the higher the baseline BNG will be, e.g. pasture land, and vice versa. Therefore, if solar is proposed in part on best and most versatile (“BMV”) land, this could be acceptable in policy terms if, on balance, a higher percentage of BNG can be achieved. It would be helpful if the NPS could clarify this.

EN-5 contains a welcome attempt to clarify the scope of powers of compulsory acquisition (CA) that may be included in a DCO, particularly in relation to BNG and mitigation measures. This is important to avoid unnecessary debate on the scope of such powers, particularly given previous Examining Authority reports on habitats mitigation. However, as set out below the text is not entirely accurate, and as CA powers may be required to deliver mitigation, enhancement and BNG measures for all forms of energy infrastructure, we recommend similar policy is included in EN-1, e.g. *“powers of compulsory acquisition may extend to mitigation measures, landscape enhancement or biodiversity net gain programmes”*.

The effectiveness of the Government’s consultation on the proposals contained in the energy NPS?

The effectiveness of the consultation will not be known until the NPS are published in final form. Only then will we be able to judge whether the consultation has been meaningful and BEIS has considered and responded to the points by those who have provided responses.

When submitting a DCO application, applicants are required to submit a Consultation Report, which sets out how they have considered and responded to consultation responses, and how those have influenced the NSIP applied for. We would expect BEIS to undertake a similar exercise in respect of the NPS. For example, if BEIS chooses to continue to omit onshore wind and tidal range from the NPS, we would be very interested to see the evidence relied on to support that approach.

The consultation was commenced later than indicated by BEIS, but in effect that provided consultees with longer notice that it was coming. The consultation has been undertaken over a period of 3 months, which we consider adequate time for consultees to respond meaningfully.

Given the extent of changes proposed by NIPA, Renewable UK and Solar Energy UK (we have seen the responses made by those two bodies), arguably a further consultation exercise should be undertaken in respect of any revised draft NPS. However, we accept that this must be balanced against the need to designate the new NPS as soon as possible (to provide certainty and confidence in the NSIP regime) and the opportunity to undertake a review in no later than five years' time (preferably sooner).

BEIS undertook an informal consultation exercise in Autumn 2020, inviting key stakeholders, including industry bodies, to suggest key points for BEIS to have regard to when undertaking the formal review of the NPS heralded in the White Paper. It is not clear how, if at all, the responses BEIS received have influenced the NPS consulted upon.

The NSIP regime in the Planning Act 2008 is one aspect of the suite of regulatory processes governing the development and operation of energy infrastructure. It is unclear the extent to which BEIS has tried to align those processes and, importantly, the regulators operating within them, to ensure joined-up thinking and approach throughout. For example, it is not clear the extent to which Ofgem and the OGA have been consulted in respect of the NPS. It is imperative that BEIS, Ofgem, the OGA and other regulators are aligned in order that policy objectives can be achieved and that the outcome of the DCO process is not undermined by subsequent action taken by a regulator, as has regrettably happened in the past.

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