

**National
Infrastructure
Projects
–
The New Decision
Making Process**

DLP BRIEFING NOTE 4

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National Infrastructure Projects - The New Decision Making Process

The Planning Act 2008 has created the long mooted new *regime* for the consideration and consenting of **national strategic infrastructure projects (NSIPs)** in England and Wales (Part 10 of Act only). Speaking in July, the Prime Minister, Gordon Brown, stated that the new procedures would, “*speed up decisions...for the national infrastructure*”.

What is covered by the legislation and the procedures set out? In effect **any project** over a certain threshold involving:-

- Waste (including waste water);
- Energy;
- Transport;
- Water

By way of example, in relation to power/energy supply, this will include:

- the installation of an above ground electricity lines of more than 132 KV;
- The construction of cross country pipelines that would otherwise require authorisation under Section 1 of the Pipe-lines Act 1962.
- On-shore energy generating projects of more than 50 megawatts
- Off-shore energy generating projects of more than 100 megawatts

With regard to transport, water and waste developments, again, a series of threshold have been established. For example, for transport/movement:-

- Where the Secretary of State is the highway authority, the construction or alteration of a main highway;
- The construction or alteration of a railway line, or construction of a freight interchange, where the railway concerned is part of a network operated by an approved operator ;
- The construction of new maritime/harbour facilities;
- The construction of an airport where it will serve at least 10 million passengers per year or cargo passengers of at least 10,000 air transport movements per year.

In terms of water:-

- The construction of a dam or reservoir where the volume of water is at least 10 million m³, or the transfer of water where this will exceed 100 million m³ per annum

With such proposals the Act requires that the development, which is, or forms part of, a national strategic infrastructure project, must obtain a **development consent**.

A **development consent** is an all-embracing approval and **does not require any other form of statutory planning consent**, which in certain circumstances cannot any longer be obtained under the present planning and associated regimes. **The development consent will therefore provide planning permission and any associated consents required under related legislation**, e.g. conservation area consent or listed building consent.

It will also cover **compulsory purchase powers and stopping up of rights of way decisions**. The procedure therefore **unifies** the consent regime, avoiding the need to pursue a number of separate consents under different statutory provisions, which has in the past often resulted in considerable delay and confusion.

Obtaining Consent – The Infrastructure Planning Commission (IPC)

Applications for a Consent Order must be made to the **Infrastructure Planning Commission (IPC)**. The IPC is **an independent body**, made up of experts from a range of related fields relevant to infrastructure decision making.

The IPC (either via a **single commissioner** or **a panel – the Examining Authority**) will have responsibility for **determining applications made to it**, and for **conducting inquiries into applications** and for **making recommendations/decisions**

Before submitting an application the developer is required to consult the public on the proposed application, giving consultees (local authorities, the public, other interest groups) 28 days to respond. Local authorities are required to prepare and submit a **local impact report** setting out the potential implications of the proposed development on the local (and wider) area.

Where a National Policy Statement (NPS) for the type of development is in effect, and a single Commissioner of the IPC is considering the application, then he/she will make a recommendation to the IPC who will make the final decision. Where a Panel of the IPC hold a hearing, it will determine the application.

If an NPS has not yet been adopted, then the Panel, or single Commissioner, will make their recommendation directly to the Secretary of State to make the final decision.

The expressed aim of the new regime is to speed up and simplify the decision making process, whilst ensuring adequate examination of issues relevant to development. Accordingly, the *Examining Authority's* consideration of an application will initially take the form of reviewing all written representations, including those submitted by the public. A hearing will be held only where the *Examining Authority* decides it is necessary to ensure a fuller examination of the issues. When a Hearing is held, the *Examining Authority* will decide what submissions may be made and whether a person/representative making oral representations may be questioned by another person/representative. Oral hearings will be less adversarial than current planning inquiries and all examinations are to be completed within six months from initial meetings between the parties to discuss the issues and procedures.

Decisions of the *Examining Authority*, following examination, are to be made in accordance with relevant national policy statements, except in certain circumstances where significant adverse impact (of the proposed development) outweighs its benefits.

National Policy Statements

National policy statements (NPS) will establish the types and scales of development both nationally, or for specified areas. They will also set out the **criteria** to be applied in deciding whether a location is suitable for a particular type of development and may identify one or more locations.

The Secretary of State is required to consult upon and publicise any proposals for NPS. If the NPS identifies locations suitable for development the Secretary of State is required to consult the relevant local authorities on the appropriate steps for consultation, including consultations with residents and community groups.

NPS will be subject to scrutiny by Parliament before it takes effect.

Progress to Date – Implementation - July 2009

Regulations on the pre-application requirements and the detailed requirements of applications will come into force on 1 October 2009.

It is anticipated that the regulations covering details of how the IPC will run its examinations, matters the IPC must have regard to when coming to decisions, and the fees it may charge will come into force on 1 March 2010.

The new regime for NPS's for the energy and transport sectors will commence on 1 March 2010, for the waste water and hazardous waste sectors in April 2011 and the water supply sector in April 2012.

NPS's for nuclear power, renewable energy, electricity networks, fossil fuel regeneration, oil and gas infrastructure, ports and national networks (roads and rail) will be published in Autumn 2009.

Following public consultation and parliamentary scrutiny it is intended that they will be designated over the course of 2010. The other required NPS's will be brought into force in 2011 to 2012.

The ICP will be able to receive applications from the energy and transport sectors from 1 March 2010.

The Conservative Party has consistently opposed the introduction of the IPC and has indicated that should it form the next Government it will abandon the body. It has stated however that it will support the preparation of national Policy Statements, decisions arising from which will then be taken at local or national level depending on the scale of the proposals.

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