

Planning and Environmental Law Committee response to Defra Consultation on a Draft National Policy Statement (NPS) for Hazardous Waste

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The CLLS responds to a variety of consultations on issues of importance to its members through its 18 specialist committees. This response in respect of the Defra consultation on a Draft National Policy Statement (NPS) for Hazardous Waste has been prepared by the CLLS Planning and Environmental Law Committee.

General Comments

This consultation and the questions posed by it raise operational and practical policy issues in relation to how the Infrastructure Planning Commission (“IPC”) should consider applications for consent for nationally significant hazardous waste infrastructure.

Due to the focus of the Consultation on non-legal issues, we have not responded to all of the questions raised.

Question 1: Do you think this draft Hazardous Waste NPS clearly establishes the need for such infrastructure for those considering developing proposals for nationally significant infrastructure projects for hazardous waste?

Response: While there is an obvious need for more infrastructure to drive the management of hazardous waste up the waste hierarchy and for more sustainable management, which is reasonably made out, it does not appear to be so certain that there is a proven need for Nationally Significant Infrastructure Projects (NSIPs) for hazardous waste (as defined in the Planning Act 2008). There does not appear to be any substantive consideration of the amount or type of hazardous waste infrastructure that might be required through the lifetime of this NPS. However, need is dependant upon demand and it seems entirely possible that demand for certain types of hazardous waste NSIP could be met even during the lifetime of the NPS while still falling within the presumption in favour of granting permission.

On the above basis, even if it is possible to state (as in section 3.1 of the draft NPS) that “the IPC should start its assessment of applications for infrastructure covered by this NPS on the basis that need has been demonstrated”, we feel there is a need for that statement to be qualified and for need to be reassessed during the lifetime of the NPS.

Question 2: Do you think that the types of infrastructure outlined by the draft Hazardous Waste NPS captures a need for nationally significant infrastructure to help implement the Strategy for Hazardous Waste Management and drive the management of hazardous waste up the waste hierarchy? If not, what else should be included?

Response: Please see the response to question 1 in relation to the need for nationally significant hazardous waste infrastructure.

Question 3: Do you think the draft Hazardous Waste NPS adequately sets for the Infrastructure Planning Commission the key assessment principles to inform the assessment of future hazardous waste infrastructure development applications?

Response: Paragraph 4.1.2 states “there should be a presumption in favour of granting consent to applications for hazardous waste NSIPs which clearly meet the need for such infrastructure established in this NPS”. Although there are subsequent references to principles that introduce and support concepts of sustainable development (e.g. paragraphs 4.1.4 and 4.5.3) it is considered that because of the significance of the presumption in favour of permission for development which is *sustainable*, this concept should be more fundamentally embedded within the presumption set out in paragraph 4.1.2.

It is noted that reference is made in various locations in the draft NPS (for example paragraph 4.1.5) to Planning Policy Statements and Planning Policy Guidance Notes. Taking into account the proposals in the National Planning Policy Framework we would query the ongoing relevance of reference to these documents.

Question 4: Do you think the draft Hazardous Waste NPS adequately sets out for the Infrastructure Planning Commission how it should consider alternatives when it comes to particular projects?

Response: Yes.

Question 6: It is a requirement of the Planning Act 2008 that an NPS must include an explanation of how the policy set out in the statement takes account of Government policy relating to the mitigation of, and adaption to, climate change. Do you think the draft Hazardous Waste NPS adequately fulfils this requirement?

Response: We consider the draft NPS fulfils the requirement to take account of Government policy regarding adaptation to climate change sufficiently. However, the draft NPS is virtually silent on how *mitigation* of climate change should be taken into account. While the potential impact of climate change on infrastructure appears to be dealt with, the equally important issue of the impact of infrastructure on climate change needs to be better dealt with.

Question 7: Have all the potential environmental impacts of hazardous waste development and options for their mitigation been identified in the Assessment Principles and Generic Impacts part of the Hazardous Waste NPS (this is Part 4 and Part 5)?

Response: Please see response to question 6 regarding climate change issues.

In relation to section 4.11, dealing with common law nuisance and statutory nuisance, we consider that great care needs to be taken, and therefore advised, in the application of section 158 of the Planning Act 2008 to development consent orders. It is suggested that

any defence of statutory authority should be restricted, to the greatest extent possible, to the activities permitted by the Consent Order.

In paragraph 5.7.18 it is not clear how site layout and surface water drainage systems should be able to cope with events that exceed the design capacity of those systems? Clearer guidance needs to be provided on the extent to which systems should be designed to exceed any particular capacity.

Taking into account the comment in paragraph 5.7.21 that “opportunity should be taken to lower flood risk” we suggest that paragraph 5.7.19 should refer to “peak flow rates of surface water leaving the site are **at least** no greater than the rates prior to the proposed project” and should perhaps go on to state that applications reducing prior flow rates will be looked on with more favour.

Question 8: Do you think the draft Hazardous Waste NPS considers all the significant impacts of hazardous waste development? If not, what do you think is missing and why? (This is Part 5.)

Response: Please see response above in relation to Part 5 of the draft NPS.

Question 9: Do you think that the Government should formally approve (“Designate”) the draft Hazardous Waste NPS?

Response: Subject to the issues raised in these responses being adequately addressed, we feel that the draft NPS should be designated.

Question 17: Do you agree with the preferred option, which is to produce a Hazardous Waste NPS that allows for market led infrastructure development with no specification of location or suitable technologies? If not, please provide information as to why.

Response: We understand the current need for the provision of nationally significant hazardous waste infrastructure to be market led and also the importance of ensuring that no inappropriate restrictions are placed upon innovation and emerging technologies. Nevertheless, locational and technological constraints exist which must be taken into account appropriately. The IPC must be able to understand and deal with these issues.

An additional concern is whether the market will, in fact, be able to meet emerging and evolving needs for nationally significant hazardous waste infrastructure and there must therefore be flexibility to enable regulatory and Government action to ensure compliance with national and international controls, objectives and targets.

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