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Response to Consultation on Developing a Ports National Policy Statement

The City of London Law Society (CLLS) represents over 13,000 City lawyers, through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response to the consultation on the draft National Policy Statement (NPS) on ports has been prepared by the CLLS Planning and Environmental Law Committee (the "Committee"). The Committee is made up of leading specialists in the field of planning and environmental law.

Response

The Committee welcomes the opportunity to comment on the draft National Policy Statement on ports and recognises the importance of the document for the new system of development consents for Nationally Significant Infrastructure Projects.

The Committee has chosen only to respond to those questions in the consultation where we have something material to add to the points that have been raised.

Q1. Do you think the draft Ports NPS provides suitable guidance to decision makers on what need there is for new port infrastructure?

We are concerned that the NPS does not strike the right balance between policy and guidance on assessment, with the latter occupying a disproportionately large part of the NPS. As a consequence, we think the policy section suffers from a lack of detail. In particular, the evidence base which is incorporated within the actual NPS is dealt with only briefly and cross-refers to forecasts which the NPS acknowledges may already be out of date. In our view there must be some doubt as to how durable this statement of need is especially in terms of the timing of additional capacity. It may mean that issues of need are opened up at IPC hearings, contrary to the objectives of the new system.

Q2. Do you think that the draft Ports NPS provides suitable guidance to decision makers on considerations related to inland connections, new port infrastructure and the appropriate modal share of traffic?

We think this aspect of the NPS suffers because of the disproportionate attention given to guidance assessment. The policy section of the NPS should advocate and support a more strategic approach towards the planning of inland connections, including a statement of need and priority which is addressed specifically to those connections. This part of the NPS would also benefit from cross-reference to the NPS on National Networks, if the timing of that document permits.

Q4. It is a requirement of the Planning Act 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 Ports NPS adequately fulfils this requirement?

No. Whilst climate change mitigation and adaptation is addressed in the guidance for the assessment section of the NPS, it is absent from the core policy section, which in our view is the more appropriate place to address this. We think that the Government needs to ensure that there is clear policy level reconciliation between the declared need for additional port capacity and its policy on climate change mitigation and adaptation.

Q15. To what extent do you think the draft Ports NPS as a whole provides suitable guidance to decision makers to help them make decisions about development consent applications for new port applications?

Please see our comments above. Our principal areas of concern are:

- the imbalance between policy and guidance for assessment which currently exists in the draft NPS;
- the absence of a stronger and more detailed exposition of need, with a supporting evidence base; and
- the need for a clear policy level reconciliation between the support for additional port capacity and the Government's policy on climate change mitigation and adaptation.

In addition, we would add the following:

- As a general comment, we think that, whilst helpful, the guidance for the assessment section of the NPS is too detailed and detracts from the main purpose of the document as a statement of policy. We think this part of the NPS goes beyond the requirements of Section 5 of the Planning Act 2008 and may be more appropriately dealt with in separate guidance. As currently drafted, we think there are risks that this section will be a straight-jacket for applicants and the IPC and an area for objectors potentially to exploit. If it is retained, as a minimum we suggest removal of the text which is intended to guide the applicant's assessment, since in practice the applicant's approach to assessment will be addressed and

determined through the normal Environmental Impact Assessment scoping procedures.

- It will be helpful if the NPS, both in the context of the development of ports themselves but also in relation to inland connections, was to set out clearly the anticipated relationship between the NPS and local development frameworks/regional strategies.
- To be given its full weight, the draft NPS needs to be subject to full and rigorous consultation. In particular, we think it is unfortunate that there is a mismatch between the deadline for consultation responses and the deadline for evidence to be placed before the Select Committee which will be responsible for scrutinising the draft NPS. In this latter regard, we think it is important that the department identifies a way of placing consultation responses received after 15 January 2010 before the Select Committee.
- Subject to this, we look forward to designation of the NPS at the earliest opportunity in order to bring certainty to the new system.

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