



# Developing a Ports National Policy Statement Consultation Document

February 2010

We are writing in response to your consultation 'Developing a Ports National Policy Statement'. Environmental Protection UK has considered the consultation document carefully and welcomes the opportunity to comment.

## About Environmental Protection UK

Environmental Protection UK brings together organisations from across the public, private and voluntary sectors to promote a balanced and innovative approach to understanding and solving environmental problems, through policy development and education. We are a registered charity with 110 years experience of environmental campaigning, public information provision, producing educational resources and policy formulation.

Environmental Protection UK's membership includes policy makers, regulators and practitioners from local authorities, consultants, developers, academics, industry and interested NGOs.

The main areas of work for Environmental Protection UK are air quality and climate change, land quality and noise and nuisance. Our comments on this NPS therefore focus on issues relating to these areas of local environmental quality.

## General comments on the Ports NPS

We support in principle the development of National Policy Statements to guide the development of major infrastructure. In the Ports National policy statement we welcome the consideration of the following points:

- a) Applications to be considered in context: The NPS needs to provide for applications to be considered in any necessary wider context (2.2.1-2.2.3). It is crucial for the IPC to recognise that different infrastructure projects may be interdependent, e.g. where a port may facilitate development of offshore renewables. It is therefore important that consent for one does not make consent for another a *fait accompli* – and as far as possible prevents the creation of potential barriers for another development.
- b) Cumulative impacts: Greater recognition is needed in 2.2.5 – 2.2.10 that while individual projects may not have significant impacts, the cumulative impacts of serial proposals for related projects, e.g. for a port extension followed by a road or rail link, must be considered.
- c) Health: The recognition that ports have the potential to affect health, well-being and quality of life at 2.5 is welcome, as is the obligation for the applicant to identify measures to avoid, reduce or compensate for these impacts. In addition, to ensure potential health

impacts are fully accounted for the IPC must include Commissioners with suitable experience and knowledge of environment and health in the assessment of planning applications. The potential for the development to blight neighbouring properties and the effects this may have on quality of life and well being would be a welcome addition to these indirect health impacts.

- d) Spatial considerations: The NPS needs to reflect spatial planning principles and take clearer account of other planning guidance, this is crucial if the country is to be certain of getting the right infrastructure in the right place, and address national needs in locally sensitive ways. This is particularly imperative in view of the absence of a national spatial plan, which would integrate plans for jobs, housing and tackling climate change with those for energy, transport and water. We are pleased to see that the AoS makes reference to existing planning policy statements and guidance.

We would like to see the following general points better addressed:

- a) Direction: NPSs are policy statements rather than guidance and therefore need to be consistently directory in their language – throughout the document the use of ‘must’ rather than ‘should’ would be more appropriate. For example, at 2.10.5 ‘the decision maker should consider how... effects might affect the environment etc’ – this would be better expressed if it reads ‘must consider’, in particular given the emphasis on cumulative effects at 2.2.5. This is necessary both to ensure rigorous application of policy principles and to ensure decisions reflect a truly strategic view.
- b) Public participation: The active participation of Local Planning Authorities (LPAs) is an important part of the decision-making process in particular in the production of Local Impact Reports. Such Reports are likely to require considerable input from planners, supported by their environmental health colleagues. Local authority manpower is under increasing pressure, and Government has said it will not provide additional funding for LPAs for this purpose. Therefore, the IPC needs guidance on how to proceed where a LPA is unable to take part appropriately, otherwise we risk failing to meet our national obligation to facilitate adequate public participation in the process.
- c) Pollution control: There needs to be some mapping of existing pollution controls to identify potential “residual pollution”, i.e. not covered by predictive pollution control regimes and which therefore needs to be controlled through planning conditions. While the AoS gives environmental baselines, UK averages do not account for local/regional conditions nor do they indicate of what healthy baselines should be.
- d) Associated developments: Clearer guidance needs to be given with regard to the legitimate limits to these.
- e) Environmental Impact Assessments: The scope of EIAs should not be limited by NPSs, but should be a matter for the applicant in agreement with LPAs and the IPC. It would help if the guidance on general impacts, currently part of the NPSs, were removed and issued as associated guidance.

## **4. Our answers to selected consultation questions**

Q6: Do you think the draft ports NPS provides suitable guidance to decision-makers on the safety, security and health impacts of port infrastructure?

Our comments on this question focus on health impacts in relation to air quality and noise:

## Air Quality

We are pleased to see that the draft NPS includes a full consideration of potential air quality impacts in section 2.20, and have the following comments to make on the draft text:

- a) Introductory section – This section provides a good overview of the potential air quality impacts of port development. We do however feel that it needs to include brief mention of the impacts of air quality on human health, as this is the main driver for improving air quality, and also reference the air quality targets and limit values in the Air Quality Strategy, as currently these are mentioned in later paragraphs without introducing what they actually are. With this in mind we recommend that two extra paragraphs are included after section 2.20.2, to read:

*2.20.3 Poor air quality has a significant impact on human health. Air pollution is currently estimated to reduce the average life expectancy of every person in the UK by an average of 7-8 months with estimated health costs of up to £20 billion each year<sup>1</sup>.*

*2.20.4 The Government's Air Quality Strategy includes standards and objectives for levels of health-threatening pollutants. These include benzene, 1,3-butadiene, carbon monoxide, lead, nitrogen dioxide, particles, sulphur dioxide, ground level ozone, and PAH. Objectives have also been set for the preservation of ecosystems and vegetation.*

- b) 2.20.3 – This paragraph describes technical efforts to reduce emissions from shipping and road vehicles. We feel that this needs expanding to adequately describe the current situation, and suggest that it should read as follows:

*2.20.3 International agreements to limit emissions from ships have been set under the International Convention for the Prevention of Pollution from Ships (MARPOL). Limits on the sulphur content of marine fuels and nitrogen dioxide emissions from marine engines have been set, with both standards becoming more stringent over time. Sea area Emission Control Areas, where more demanding standards apply, can also be designated for sulphur dioxide, nitrogen dioxide and/ or particulate matter. Emission and fuel standards for road vehicles have also been set at European level, which have greatly reduced emissions from individual road vehicles. Despite these initiatives, concentrations of several air pollutants remain above Air Quality Standards in many parts of the UK.*

- c) 2.20.5 – This paragraph provides a good description of what an Environmental Statement should contain with regards to air quality. We feel however that the language could be modified slightly to provide greater clarity, to read:

*2.20.5 The ES should describe:*

- current concentrations of air pollutants in the area that could potentially be affected by the proposed project;*
- any significant air emissions that may arise from the proposed project, their mitigation and any residual effects distinguishing between the construction and operation stages, and taking account of any significant emissions from any road traffic generated by the project. These should cover not only the absolute emission levels of the proposed project during construction and operation, after mitigation methods have been applied, but also the relative change in air quality from existing concentrations;*
- any relevant contribution of the air emissions to critical levels and loads for the protection of vegetation and ecosystems; and*

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<sup>1</sup> This second sentence is taken from the introduction to the Air Quality Strategy (2007)

- *any cumulative effects on air quality from developments related to the proposed project.*
- d) 2.20.9-10 – Reference could be usefully made here to a wide range of guidance on the control and mitigation of emissions including:
- The London Best Practice Guidance: The control of dust and emissions from construction and demolition ([http://www.london.gov.uk/mayor/environment/air\\_quality/construction-dust.jsp](http://www.london.gov.uk/mayor/environment/air_quality/construction-dust.jsp))
  - Guidance provided by DEFRA to local authorities under the Local Air Quality Management Process - <http://www.defra.gov.uk/environment/quality/air/airquality/local/guidance/>
  - 'Development Control: Planning for Air Quality' guidance produced by Environmental Protection UK [www.environmental-protection.org.uk/.../Development\\_Control\\_planning\\_for\\_air\\_quality.pdf](http://www.environmental-protection.org.uk/.../Development_Control_planning_for_air_quality.pdf)
- e) 2.20.13 – The inclusion here of 'cold ironing' is to be strongly welcomed. We do however feel that the language in this paragraph introduces the subject in a negative way, with focus on why the technology might be technically difficult to implement. We suggest that the paragraph could be improved to read as follows:  
*2.20.13 Local air pollution may also be abated through the provision of shore-side fixed electrical power to replace ships' generators while in port, this being known as 'cold-ironing'. Cold-ironing can also help to mitigate noise from ships, and to a lesser extent reduce emissions of carbon dioxide. At the current time the technology is most appropriate for large vessels expected to be in berth for prolonged periods, and problems of frequency compatibility and technical standards need further work to fully resolve. There is possibility that supra-national instruments will require the use of cold-ironing in the future.*

#### **Dust, odour, artificial light, smoke, steam, insects**

The NPS states at Paragraph 2.21.13 that developers may apply for the grant of a defence of statutory authority in respect of nuisance. Whilst such a permissive approach would be welcome, it appears to be at odds with Section 158 of the Planning Act 2008, which automatically attaches the defence to any development consent, unless disapplied by the decision-maker in any particular case. It is in the interests of all parties that this is clarified, to ensure there is no confusion as to the application of the Planning Act across the sectoral NPSs.

Regardless of the previous point, it is important that the potential for nuisance impacts and mitigation measures are subject to thorough and detailed examination in all cases in order that any application of statutory authority does not jeopardise protection of neighbours of any development. We therefore feel that the additional considerations should be included:

- f) 2.21.2 - If the defence of statutory authority against nuisance is to be considered, it is paramount that these impacts are given a thorough examination.
- g) 2.21.3 - We find it problematic that it is up to the IPC to judge whether a development is likely to be able to keep impact on amenity 'to an acceptable minimum'. To date, acceptability has been a matter for judgement by experienced specialist environmental health practitioners. To ensure potential health impacts are fully accounted for the IPC must include Commissioners with suitable experience in environment and health.
- h) 2.21.6 - In consulting the local planning authority, the applicant must also consult environmental health specialists about the scope and methodology of the assessment.

- i) 2.21.9 - We welcome the statement that the decision-maker should (must) consider whether the defence of statutory authority against nuisance is justified – and is given the option to partially or wholly remove the defence if it concludes it is not. This leads us to continue to question why the defence is available at all.
- j) 2.21.10 - Given the requirement for consents and permits for projects (from the Environment Agency etc), we believe that the decision-maker ‘must’ place a requirement in a development consent order, in order to secure certain mitigation measures.’

**Mitigation**

- k) 2.21.12 - We welcome the inclusion of these measures – which must be in place for any development.
- l) 2.21.13 - The explanation of the defence of statutory authority is helpful, however we believe it would help the decision maker further if a list of statutory nuisances under Part III of the EPA 1990 is given here.

**Noise**

- m) 2.22 - We welcome the acknowledgement that noise can impact on health, quality of life and quiet areas.
- n) Noise Action Plans – while Noise Action Plans for England have not yet been published, they are expected soon (very likely before this NPS is finalised). Those for Wales have already been published. Therefore, the applicant should consult the Secretary of State responsible for noise action planning, if any proposal is in an area currently covered by noise mapping. Reference can usefully be made to :Noise Action Plans Wales  
<http://wales.gov.uk/topics/environmentcountryside/epq/noiseandnuisance/environmentalnoise/actionplans/finalplans/?lang=en>, and to Noise Mapping England - <http://services.defra.gov.uk/wps/portal/noise> (and to noise action plans, assuming they are published before this NPSs is finalised)
- o) 2.22.18 - We particularly welcome the obligation for the decision-maker, in cases where all other options have been exhausted, to consider noise mitigation through sound insulation or, in extreme cases, compulsory purchase.

Q8: Do you think the draft ports NPS provides suitable guidance to decision-makers on the impacts of port infrastructure on the local population?  
 See answers to Q.6 above

Q9: Do you think the draft ports NPS provides suitable guidance to decision-makers on the impacts of port infrastructure on the natural environment?  
 No. We are greatly concerned that land is considered here only in for its value as a landscape or a social amenity. Section 2.23 considers ‘Landscape and Visual Amenity’ whilst section 2.25 considers ‘Open space, green infrastructure, sport and recreation’. Land and specifically soil provide a number of vital ecosystem services that are fundamental for local environmental quality, such as reducing urban flooding and supporting biodiversity. It is essential that impacts on land quality and land use are considered holistically and on the basis of soil functions, and not solely as a visual or social amenity. As promoted in Defra’s soil strategy ‘Safeguarding our Soils’, managing the impact of construction and development on soil’s essential functions is vital. In order to

guide decisions makers towards an appropriate consideration of the impacts of ports on the natural environment, it is essential the importance of soil and land quality is recognised explicitly. We recommend that this is done by renaming the impacts 2.23 and 2.25, possibly to assimilate these under the single heading 'land and soil quality including ecological, social and visual amenities'.

Some acknowledgement of these services is given in the detail of the impacts, such as the recognition that a brownfield site may have a significant biodiversity or geological interest however these impacts fall under the heading 'Social Impacts' and as such are misleading, fail to promote a holistic approach and are likely to lead to important impacts being overlooked.

Paragraphs 2.25.8 notes the need to take into account soil quality whilst paragraph 2.25.14 notes that loss of high quality soil should be taken into account. Defining soil as 'high quality' in this way fails to protect soil on the basis of its functions. High quality soils in urban areas for example, are unlikely to exist as the definition is relevant to agricultural land. However there are soils performing vital functions to maintain local environmental quality in urban areas - this wording therefore needs to be amended.

Q12: Do you think the draft ports NPS provides suitable guidance to decision-makers on the key considerations to inform the assessment of future port development applications?

2.11 - On pollution control and other consenting regimes, to ensure that any decision on planning is properly integrated into relevant regimes, 2.11.3 should read as follows: *'Applicants 'must' make early contact with relevant regulators ... to discuss their requirements for environmental permits and other consents'*

This is essential to ensure any infrastructure proposal is developed in line with regulatory requirements.

Q14: Do you think the draft ports NPS gives appropriate guidance on how the cumulative and in-combination/synergistic impacts of port development should be considered by decision-makers?

We are encouraged by the inclusion of consideration of cumulative impacts in 2.25 – 2.2.10. Our answer to Q.6 above outlines what needs to be considered with regard to impacts on local environmental quality. The input of local specialists will be essential here in informing the decision maker of potential impacts.

Q19: To what extent do you think the methodology used to assess the sustainability of the draft ports NPS is appropriate?

While the Assessment of Sustainability does contain detail – there are some instances where it may be misleading. While the use of Environmental Baselines at 3.1.1 gives context, we do not believe it describes the status of the environment that may be affected by the ports NPS in all cases – see Q. 22

Q21: Has the AoS considered all the relevant plans, policies and programmes? Environmental Noise Regulations for England and Wales are included; Noise Action Plans for Wales should also be included. Noise Action Plans for England are expected, hopefully during March 2010, and these and any associated noise guidance should also be included if available when the final NPS is published. Reference should also be made to the WHO Night Noise Guidelines for Europe 2009.

Q22: Has the baseline analysis in the AoS missed or misrepresented any environmental, social or economic data? No references are given for the data used – or date of collection for some of it. This data must be properly referenced and dated in the finalised AoS.

### **Noise**

UK mean noise levels for day and night are quoted – no source is given for this data. As the NPS covers England and Wales, this UK average could be misleading. Also, noise is a local issue and its impact on neighbours/wildlife are relative to existing background noise levels – for example the additional noise from a port development in a large urban area might have less impact on people and biodiversity than a development on a more open stretch of coast (which might in turn impact on local tranquillity/tourism). For the purposes of this AoS it would be more helpful to give a breakdown of sources of environmental noise – road/rail/air/industry. The data summary at 3.2 refers to a proportion of population in LAeq noise bands – it is not clear what this relates to. If this data was taken from government noise maps, these do not cover the whole population.

### **Air Quality and Greenhouse Gases**

For air quality, acknowledgement is given that air quality tends to be poorer in urban areas. However, no acknowledgement is given that rural air pollution (tropospheric ozone) can impact on crops and other vegetation.

### **Light**

This baseline assumes that impact on the night sky is the only impact of artificial light. The recent RCEP report 'Artificial Light in the Environment' focuses on the impact of street lighting, and supports the view that lighting from ports and other transport facilities should be included in the nuisance legislation under the Clean Neighbourhoods and Environment Act 2005. It also acknowledges impacts on wildlife. In the absence of any recent quantitative data on the extent of obtrusive light, we would prefer this to be worded: *'In recent decades the impact of artificial light has extended beyond our major urban centres to the extent to which only the most remote areas of England and Wales are now free from its impact'*

### **Flooding**

No date is given for this data – does it account for recent development of flood risk land? For consistency, this should be dated.

### **Soil and undeveloped land**

More recent data is available, and as such should be used.

Q24: Are the AoS objectives and sub-objectives as set out in the AoS framework appropriate?

For each of the Key Issues the AoS needs to read 'The AoS must consider' – this is policy not guidance. We also have comments on the following key issues:

#### **a) Key Issue 12: Light**

The first sentence here is poorly worded, indicating light intrusion is essential to safety.

This would better read:

*'Lighting at port developments is often essential to operations and safety, particularly at night. Over bright or poorly directed lights can lead to intrusion to people residing nearby. It also has the potential to impact on wildlife and denigrate amenity'*

**b) Key Issue 13: Noise**

We welcome that the AoS should (must) consider strategies to reduce noise levels as much as possible. We would recommend that this should read:

*'in particular during the evening and night – that is between 7pm and 7am'*

**Contact Us**

If you require any further information on the views expressed in this response please contact our policy team:

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