

## **Energy and Climate Committee Inquiry into The Proposals for Energy National Policy Statements**

**Evidence from Friends of the Earth England, Wales and Northern Ireland  
January 2010**

### **Executive Summary**

1. Although Friends of the Earth has expressed its strong concerns about the new IPC structure created under the 2008 Planning Act, we have always recognised that clear statements of national policy in relation to nationally significant infrastructure projects (NSIPs) can play a very important role in the transition to a low carbon economy, and in delivering other critical Government goals, such as energy security. However, the problems with the draft NPSs, and the manner in which they have been assessed, are so serious (in both legal and policy terms) that we believe that major reforms are required before the NPS can be designated. We will shortly be writing to the Secretary of State regarding our legal concerns, and will provide the Committee with a copy of that letter.
2. Our evidence below sets out our concerns and proposals for how the NPS could be amended. This is split into six sections:
  - How climate change is treated in the overarching NPS:
    - Why climate change needs more comprehensive treatment
    - Three mechanisms to do this:
      - Clearer guidance on pathways to 2050
      - Carbon assessment
      - Safeguards to prevent lock-in
  - The Government's case for need for all types of electricity generation
  - Safety and need issues in the Nuclear NPS
  - Inclusion of energy-from-waste plants in the Renewables NPS
  - Strategic Environmental Assessment
  - Consultation, Scrutiny and Examination of NPS

### **Section 1      Climate Change**

3. We have major concerns that the draft NPSs are taking a very blasé approach to climate change, and that there is a significant danger of lock-in of the UK to new high-carbon infrastructure. We propose that these risks be tackled by:
  - Clearer guidance on carbon trajectories for the electricity sector for 2030 and 2050,
  - Policy safeguards to prevent lock-in; and
  - Requirements for developers to set out full life-cycle carbon profiles for their applications.

### **Overview**

4. The type of new electricity generation plants built in the next two decades will have a major impact on whether the UK meets its overall climate goals. The Government's advisory body - the Committee on Climate Change - has said that the UK's electricity sector should be decarbonised by 2030, en route to an economy-wide 80% cut in emissions by 2050.

5. The IPC has the final decision on which applications to approve. The draft NPS set out very clearly that they intend that the IPC must make its decisions in accordance with the NPS, with a very limited set of exceptions. Therefore the content of the NPS on carbon is critical in determining the carbon profile of approved applications.
6. In this context, we could reasonably expect strong guidance from the NPS for the IPC on carbon budgets. However, the opposite is the case. The Government believes that the NPS will automatically ensure the carbon budgets are met. The Government says that because Government policies which *“underlie the NPS have been set according with the low-carbon transition plan and carbon budgets, the IPC does not need to assess individual applications in terms of carbon emissions against the budgets”*
7. The first problem with this approach is that in sectors covered by the EUETS – including electricity generation - the Government measures progress towards its carbon budgets not by actual emissions in those sectors, but simply by the number of permits the UK is allocated. So, in practice, for the purposes of meeting carbon budgets it does not matter what the electricity mix is, coal or gas or renewables – the UK simply records allocated permits; real emissions are irrelevant. With this reporting system in place, it is therefore irrelevant to argue that climate change is covered because the NPS is compatible with carbon budgets, because anything and everything is compatible with carbon budgets, high carbon or not.
8. We hope the Government will close this loophole, and record actual emissions as the judge of progress towards carbon budgets. However, if it did there would still remain a further problem. This is that the Government is saying that the policies in its Low Carbon Transition Plan are sufficient to create a regulatory and market environment in which developers will bring forward a mix of proposals which would be in line with the UK’s climate goals. The critical point here is that this approach amounts to a hope that its, as yet, untested set of policies will succeed and does not provide a level of certainty appropriate to the importance and urgency of tackling climate change.
9. Such an approach is very risky. If we lock ourselves into high-carbon infrastructure with a working life of several decades, it will be very expensive to change direction later, as well as significantly increasing the risks of not meeting essential and legally binding climate targets. The Government argues that there is no “right” mix of electricity, but that many different mixes are acceptable, and that we should let the market decide. There are indeed a number of acceptable “right” approaches, however it is also true there are most definitely “wrong” mixes of electricity which do not take the UK down a fast enough decarbonisation path. At present the NPS offers no guarantees we will not get such a “wrong” mix. Indeed, there appear to be very significant risks that a “wrong” mix is quite likely. This risk is something the Committee on Climate Change warned of in strong terms in their October 2009 report – highlighting the dangers of inadequate policy leading to excessive investment in new gas-fired electricity generation at the expense of renewables.
10. The rest of this evidence sets out why we believe this to be the case, and sets out some proposals to address this situation.

**Will existing guidance in the NPS deliver on the UK’s climate goals:**

11. We believe that the existing guidance is flawed for three reasons.
12. First, it is very short-termist – with policies being set out for delivery of carbon budgets which only go up to 2022, with a lead policy (EUETS) for which there is no policy certainty beyond 2020. In contrast, decisions taken by the IPC will affect

emissions for decades. Basing the NPS solely on policies in the Low Carbon Transition Plan is not adequate, as the plan only has policies designed to meet budgets up to 2022.

13. Second, the Government appears to believe that a wide range of scenarios for generation capacity and mix are acceptable in 2030, with wildly differing levels of average carbon emissions from electricity generation in 2030, because they are all compatible with a pathway to an 80% cut in carbon emissions by 2050. We believe this is a fundamental misunderstanding of the difference between long-term targets - which are concerned with end-points - and carbon budgets - which are concerned with total cumulative emissions. It is carbon emitted over the whole period from now to 2050 that matters from a climate perspective, not the end point in 2050. This is the major point about the Government's new carbon budgeting approach - which appears not to have made its way into all Government thinking yet. This is not a small issue – the Government's Low Carbon Transition Plan sets out a wide range of scenarios for electricity generation to 2030, with average carbon emissions varying by a factor of 5 – all of which are compatible with a pathway to 80% by 2050, but with a huge range of cumulative carbon budgets.
14. Third, there is a belief that the EUETS and other policies will be an adequate driver for electricity decarbonisation. The Government's belief that the "right" developments will come forward is set out in a section extolling the virtues and strength of the EUETS as a driver for investment in cleaner electricity generation – the EUETS takes up  $\frac{3}{4}$  of the overarching NPS' entire section on "the power sector and carbon emissions". Other policies are later acknowledged to be important<sup>1</sup>, but it is asserted that Government is taking adequate action on these fronts. We believe this focus on the EUETS and the linked belief that the Government's current market interventions are sufficient is a dangerously complacent attitude. The CCC have major concerns here. In their October 2009 report on UK progress they say:
  15. *"inclusion of the power sector in the EU ETS ...will not automatically bring forward the low-carbon investment to deliver required emissions cuts in the 2020s and beyond. This is because the EU ETS cap to 2020 could be met through coal to gas switching without any significant new investment in lowcarbon plant, and because the cap beyond 2020 is highly uncertain"* (p112). They continue:
  16. *"There are plausible scenarios where investors favour investment in gas-fired rather than low-carbon generation. This is likely to ensue where investors require higher returns in response to risks that are induced by the current arrangements, and/or where investments are made on the basis of prevailing carbon prices rather than an assumption of increasing carbon prices. These scenarios lead to lock-in to high-carbon assets and failure to make sufficient progress with decarbonisation by 2030, unnecessarily high system costs/prices, and loss of any security of supply benefits associated with generation from low-carbon sources rather than imported gas"* (p140)
17. This Government approach on carbon is indicative of a more general over-reliance on hoping that the market framework will deliver the right mix and levels of capacity. For example the NPS section on energy security rightly says that it is critical to have "secure and reliable sources of electricity" and that "we need...a safety margin of spare capacity" – however in the accompanying Appraisal of Sustainability (AoS), in dismissing the idea of a more directive approach to energy policy as "unreasonable", the Government states that "Energy policy does not dictate the amount of capacity considered necessary in the UK..it is also for **industry** to determine the margin needed between peak demand and total capacity" (our emphasis, AoS, page x)

18. We also note that the policies in the Low-Carbon Transition Plan are in any case only based on an extremely weak interpretation of what is an acceptable level of UK progress on climate change. These policies are based on an insufficient target to meet a too-high chance of an unacceptable level of danger, with too many loopholes. For example:

- They are based on the “interim” 34% target (rather than the “intended” 42% target);
- The EUETS, the prime policy in the electricity generated sector, is heavily flawed because it allows carbon offsetting to capture 50% of all required emissions cuts for the EU up to 2020. These carbon offsets from outside the EU fatally compromise the global environmental integrity of the EUETS because they bring in “cuts” from uncapped nations.
- The intended target is based on a 56% to 63% chance of global temperatures exceeding two degrees, ie greater than 50:50. The UK and EU have by contrast said that the global goal is NOT to exceed two degrees – implying targets based on a far lower chance than 50:50;
- The two degrees target would itself commit the world to a colossal amount of suffering. The Chair of the G77 group at Copenhagen noted that the IPCC reports that a two degree global warming would warm Africa by 3.5 degrees, and called this “*certain death for Africa, devastation for island states*”.

19. In response to concerns that policies are not strong enough, the Government will argue that policies can be strengthened if too much high-carbon infrastructure is built, or if goals tighten. However, if infrastructure is built, we are locked-into it – it is expensive and politically difficult not to use it.

20. This is not some semantic discussion. As the CCC notes there is a real danger of, for example, a dominance of gas-fired power stations – which is borne out in evidence of recent approvals and applications.

### **Proposed reforms to NPS to address climate change mitigation**

21. We propose three broad solutions to these problems:
- Clearer guidance on future pathways;
  - Requiring carbon assessment; and
  - Introducing policy safeguards to prevent lock-in;

### **Clearer guidance**

22. The Government should move away from its approach that “all scenarios are acceptable” and also broaden its coverage to look beyond 2022. **The overarching energy NPS needs to set out a stronger, clearer section setting out a carbon trajectory for the electricity generation sector, and within it set a range of acceptable generating mixes, for 2020, 2030 and 2050.** This section would also need to set out clearly that climate goals are very likely to get stronger in time, requiring a precautionary approach to any ranges or trajectories set. Even if the Government does not accept that 2 degrees is too high a target, or that a 50:50 chance is far too much risk to take, it has accepted that the interim target will need to be replaced with something tougher in future. We understand that the Government is currently looking at pathways to 2050 – if this work is not fully completed by the time NPS are designated, the NPS should set out clearly where it will be found, and

that the IPC should use this as its guidance when the CCC has assessed that this pathways work is compatible with the UK's carbon budgets.

### Carbon Assessment

23. The NPS explicitly tells the IPC not to consider carbon. However, even with stronger guidance and policy in the NPS series on climate change, there would still be a need for carbon assessment for the IPC to adequately fulfil their requirement to assess all the costs and benefits of a proposal (EN-1 4.1.1). We suggest:

- NPS should require applicants to set out life cycle greenhouse gas emissions. This would be linked to -
- a requirement in NPS for the IPC to use these figures in overall project assessment of costs and benefits as set out in EN-1 section 4.1.1 (this requirement would be set out in a section on carbon mitigation alongside the existing section on carbon adaptation);
- the IPC should be required to inform DECC of the net greenhouse gas emissions of applications and approvals (see following section).

### Safeguards to prevent lock-in

24. We believe **the Government should set safeguards to prevent lock-in to high-carbon infrastructure**. The new rules on coal and CCS appear to reduce the likelihood of a large number of new coal applications coming forward. Although the new rules would still allow very high emissions from post-combustion plants (as CCS only needs to operate on 300MW of capacity) and in our view require significant tightening, it is unlikely that in the short-term there would be more than the planned 4 demonstration plants, given large commercial risks for the utilities. However, there is a major risk from lock-in to large quantities of new gas-fired generation. Although gas (average 390 tCO<sub>2</sub>/GWh<sup>ii</sup>) is much less carbon-intensive than coal (910 tCO<sub>2</sub>/GWh), it is still far more than renewables (on average much less than 100 tCO<sub>2</sub>/GWh). The low C transition plan barely mentions gas; there is almost no mention of it in the overarching energy NPS. Given the huge amount of recent applications and approvals (see paragraphs 32-33), and the dangers the CCC outline, it is appropriate that the Government set safeguards to prevent a new dash for gas overwhelming investment in renewable energy.

25. Although the IPC's decisions will have a major impact on the carbon emissions from the electricity sector, the IPC cannot however be expected to decide whether an individual application is compatible with the entire carbon budget system, as this would require detailed knowledge of progress and potential in other sectors of the economy. But, some mechanism is needed as a safeguard to ensure the sum of all its decisions is compatible with the UK's carbon budgets, preventing potential lock-in to high-carbon infrastructure.

26. We suggest a five-stage mechanism to do this through the NPS:

- A requirement on applicants to set out the full life-cycle greenhouse gas emissions of its proposed development.
- The IPC is required to produce an annual report to Parliament. We suggest that this report must contain an assessment of the life-cycle greenhouse gas emissions of i) new applications coming to the IPC in that year, and ii) applications approved by the IPC in that year.

- This assessment would be scrutinised by the CCC, who would be required to report to the IPC within 6 months setting out i) whether the greenhouse gas profile of all approved applications to date was compatible with the UK’s overall carbon budget; ii) whether applications pending (if approved) plus already approved applications would be compatible with the UK’s overall carbon budgets.
- If there is incompatibility, the CCC would be required to set out to the IPC the actions the IPC should take to ensure that the sum of future approvals bring the cumulative impact of IPC decisions within the UK carbon budgets (for example, a prohibition on more than X GW of new capacity of more than Y gCO<sub>2</sub>e/KWh).
- The IPC would then be required to implement the recommendations of the CCC in their decision-making.

## Section 2 The Government’s “need” argument:

27. The Government argue in EN-1 that there is significant need for all types of electricity generation (our emphasis) for energy security reasons. However this case has not been adequately demonstrated. There is however a need for a lot of new renewables (to meet EU legislation, UK targets and for the UK to decarbonise) and there should be safeguards to ensure that this is not compromised by large numbers of approvals from other sources. This section sets out why we believe the Government’s argument on need is not robust.
28. The overarching energy NPS states<sup>iii</sup> that taking into account planned closures, we need 43GW of new capacity by 2020, 26 GW renewables, and 17 GW “*of other generating capacity*”. By 2025 we need 60 GW (35 GW renewables, 25 GW “other”).

### Summary of NPS analysis: Table 1

	GW new capacity	
	2020	2025
Need	43	60
Renewables	26	35
Other	17	25
“Already underway”	20.5	20.5

(this table takes into account planned closures eg due to LCPD regulations in 2016)

29. It also states<sup>iv</sup> that the market is responding with “*over 20 GW of investment under construction or with planning consent*”, and so therefore<sup>v</sup> “*the need for new build in the central scenario in 2020 is more than 20 GW over that which has already obtained planning consent and close to another 20 GW by 2025.*”
30. It is this analysis that around 20 GW of new capacity is required by 2020, and another 20 GW by 2025 which leads the overarching energy NPS to assert that<sup>vi</sup> “*The IPC should expect to receive applications for all types of electricity generation. It should start its assessment of them from a basis that there is a significant need for all types of generation*” [our emphasis].

31. However from the above data it is clear that the generation type of the capacity “*already underway*” is crucial – if for example 17 GW of the 20.5 GW was “*other*” there would be no need for any non-renewable capacity to 2020.
32. The Government set out in December 2010 that 14.3 GW of capacity “*already underway*” is non-renewable capacity<sup>vii</sup>.
33. On top of this there are a large number of applications which have not been consented but which are in the current planning system – from DECC figures this appears to consist of at least 7 GW additional CCGT plant<sup>viii</sup>. These applications will not be dealt with by the IPC.
34. From these Government figures then, there is likely to be 14+7=21 GW of new capacity on the way. This appears to suggest that there is no need for new non-renewable capacity to 2020, and only 4 more GW to 2025 as well. Indeed, if the Government’s 4 coal CCS projects occur, then beyond these coal CCS projects and renewables, there would be no need for any other new capacity to 2025.
35. In addition, the Government’s assumptions of need for new capacity assume that there will only be 4 GW of small-scale electricity generation by 2020. Analysis by Poyry for DECC in 2009 suggests however that stronger design of the Government’s forthcoming feed-in-tariff would result in almost 4 times more energy than in the Government’s current proposals<sup>ix</sup>.
36. This implies that the draft NPS have not made the case that there is significant need for all types of generation. It looks as if the very large quantities of new gas power stations consented will mean there is no need for any additional non-renewable capacity, and if so this should be reflected in the overarching and other energy NPSs. We hope that the current assertion of overwhelming need for large amounts of non-renewable capacity will be rigorously scrutinised by parliamentarians and the DECC select committee.

### **Section 3      Nuclear NPS**

37. We do not believe the Government has set out a robust case for the need for new nuclear capacity – see Section 2 of this evidence. In addition, we do not believe the Government has made an acceptable case for how it will tackle radioactive waste. As a result, we believe that on need and safety grounds the NPS should not allow new build nuclear power stations.
38. The Government states (section 3.8.1 of nuclear NPS) that before new nuclear plants can be consented, “*effective arrangements exist or will exist to manage and dispose of the waste they will produce*”. The NPS goes on to say that “*geological disposal is the way higher activity waste will be managed in the long term.. preceded by safe and secure interim storage*”.
39. We do not believe that the Government has set out a robust case that there will be a safe geological disposal site. It accepts that it has not found a site. It accepts that worldwide “*no spent fuel geological disposal facility is currently in operation*”. It states that even if these issues could be overcome it would be 2130 before wastes could be put into such a facility, and that it is likely to be 160 years before high-level waste could be cool enough to put into a geological disposal facility. If geological disposal is the preferred method of waste management, 160 years seems a long time to put up with an interim solution.

40. On-site storage would be at coastal sites. The Government is saying that it will store high-level waste there for 160 years, yet the Government's models for sea-level rise from climate change only go up to 2100 – 90 years from now. In this context we do not see how the Government can justify that on-site storage is safe.
41. We also note that 4 members of the first Committee on Radioactive Waste Management have written to the Secretary of State that their recommendations on waste management have been “*seriously misrepresented*” in the Nuclear NPS, and that “*we do not consider it credible to argue that effective arrangements exist or will exist either at a generic or a site-specific level for the long-term management of highly active radioactive wastes arising from new nuclear build*”<sup>x</sup>.

### **Renewables NPS and “energy from waste”**

42. We believe that “energy from waste” plants, covered in sections 2.5.3 and 2.5.8, should not be included in the renewable NPS, or permitted within the NPS series.
43. The NPS itself says that energy from waste plants contain “non-renewable sources of waste”. This proportion of “non-renewable” sources is not small, and the average CO<sub>2</sub>e output of an energy from waste plant is more than an average gas fired power station<sup>xi</sup>. Energy from waste plants, although they contain some renewable fuel, are in reality fossil-fuel plants.
44. As well as their direct CO<sub>2</sub> emissions, energy from waste plants have an additional, and major problem, regarding climate change impacts. Energy from waste plants are in direct competition with recycling and reuse as alternatives to landfilling waste. Large energy from waste plants will require a constant feed of large quantities of “residual” waste for several decades. In addition in many cases such plants require local authorities to enter into long-term contracts – typically 25 years – guaranteeing supply of large volumes of waste. This puts direct pressure on these local authorities not to improve recycling facilities and rates. Recycling and reuse is a preferred option to energy from waste in the Government's waste hierarchy, and in addition recycling and reuse have much lower carbon impacts – because recycling prevents the need for mining, extraction and processing of virgin materials. The UK could save an extra 20 million tonnes of CO<sub>2</sub>e by recycling materials that are currently thrown away<sup>xii</sup>.
45. Contrary to some assumptions the figures<sup>xiii</sup> for municipal waste indicate that total waste arisings have either stabilised or are decreasing. Meanwhile recycling rates are set to increase still further. The obvious implication of this is that there will be a *decreasing*, rather than increasing, requirement for residual waste processing capacity. Defra is already predicting<sup>xiv</sup> over-capacity in residual waste treatment.
46. We are also concerned that the inclusion of these plants in the renewables NPS will encourage developers to propose much larger energy from waste plants, exacerbating the above problems, as greater than 50MW energy from waste plants would fall under the NPS regime, which under current proposals have no requirement for assessment of either need or carbon emissions, and have heavily pared down opportunities for public participation in decision-making. Given the already high degree of controversy consistently associated with incinerator planning applications we do not envisage the public will take kindly to the combination of larger plant applications and reduced opportunity to participate in the decision-making process.

47. We are aware that the Government may make the argument that the carbon emissions from such plants are not a concern for the IPC, as these emissions are covered by the low-carbon transition plan (LCTP). However, this is not the case. The LCTP makes almost no mention of energy-from-waste plants, and no mention of their carbon emissions. In addition, the conventional Government argument that power stations don't matter because they are covered by EUETS does not apply either, as hazardous or municipal waste incinerators are not included in the EUETS<sup>xv</sup>.
48. We believe that energy from waste plants should be removed from the renewables NPS. In addition, the fossil-fuels NPS should make it clear that the IPC should not approve energy-from-waste plants because of their negative climate impacts – both in direct carbon emissions, and indirectly via their suppression of recycling and reuse take-up.

## **Section 5 Strategic Environmental Assessment (SEA)**

49. The NPSs are accompanied by a number of Appraisal of Sustainability (AoS) documents. There is one AoS for each NPS and one non-technical summary (NTS) for each of them. We refer to them numerically – for example as AoS-1 when referring to the AoS to EN-1.
50. Our overall conclusion is that the AoSs are of very poor quality and do not comply with the SEA requirements set out in law and/or guidance.
51. The AoSs all state explicitly that they are produced to comply with legal requirements on Strategic Environmental Assessment (SEA) and that they have been prepared to reflect the Government's own SEA guidance. It is our view that they neither comply with the legal requirements of the SEA legislation nor reflect the Government's SEA guidance. We set out a more detailed explanation of the legal compliance issues in a letter to the Secretary of State which we will forward to the Committee shortly and which we invite the Committee to consider.
52. SEA operates by requiring that an 'environmental report' is prepared and issued for consultation prior to designation of the 'plan or programme' (in this case the NPSs). The Report and that consultation forms central parts of the process of designating the final plan/programme and the results of the consultation must be taken into account by the decision maker.
53. It is unlawful to designate a plan or programme subject to the SEA legislation without complying with the requirements of that legislation.

### **54. Reasonable Alternatives**

55. The SEA legislation requires the environmental report to include reasonable alternatives. Those 'reasonable alternatives' must be described and evaluated in the same manner as the proposed option. This is a particularly important part of the SEA process and is designed to assist the authority (here DECC) to avoid or mitigate significant adverse effects by seeing whether there are other ways of achieving their objectives that are less environmentally harmful.
56. We believe that DECC has clearly not met its obligations in this regard and highlight the following points in particular:

- a. The specialist environmental consultants (ENTEC) retained by DECC to draft the AoS reports suggested a number of different ‘alternatives’ to be evaluated by DECC. DECC refused to evaluate any of them saying that none of them were ‘reasonable alternatives’.<sup>1</sup> Our complaint here is not that DECC evaluated those alternatives and then rejected them but that DECC refused even to evaluate them as SEA alternatives.
- b. The reasons why DECC refused to evaluate the proposed alternatives are not legitimate. In many cases (see especially AoS-1, fig. 2.1) the reasons given are that the alternatives would conflict with high level Government policy. Such an approach is illogical (as well as unlawful) and can be contrasted with the approach taken in both NPS Ports and EN-6 (nuclear) in which cases the Government did set out alternatives that are inconsistent with its own policy.
- c. DECC’s approach results in the very strange situation that all 5 (non-nuclear) energy NPSs are assessed against the same three ‘reasonable alternatives’. In other words there are no specific ‘reasonable alternatives’ for say, the NPSs on Renewables, Fossil Fuels or Networks. In each case the ‘alternatives’ selected consist simply of (a) do nothing; and (b) three separate ‘nested policy options’ (i.e., Generic policy only; generic plus locational criteria; or generic plus locational criteria plus mitigation guidance (see e.g., AoS-1, p.12). In other words there are no substantive policy alternatives. Leaving aside the legal issues we consider that their failure here represents an important missed opportunity in policy making terms.
- d. When the Government consulted its Agencies as part of a scoping exercise as to what should be in the NPSs, a number of them raised the issue of inadequate alternatives. For example the Environment Agency said “*Each individual AoS should consider a wider range of alternatives. In particular the role of demand management in limiting the need for future energy infrastructure...*” (AoS-1, Annex C, para. 32). That was good advice which the Government failed to heed.

57. Quite separately, there is a further problem with alternatives. As noted, DECC states that it considers four alternatives (see para. 55c above). However, the ‘evaluation’ of those alternatives (which is required to be of the same level as the evaluation given to the chosen option) is wholly inadequate. The evaluation of the effects of all four ‘alternatives’ on all nine environmental objectives for the overarching NPS consists of half a page in table format (Table 4.1, AoS-1, p.27). Moreover, the evaluation is neither quantitative nor qualitative but impressionistic.

58. There is no evaluation of alternatives for EN-2 to EN-5 in any form at all.

### **Non-technical summary**

59. DECC are legally required to provide a non-technical summary (NTS) of the AoSs. The purpose is to allow members of the public without detailed technical knowledge to have access to a summary of what is assumed will be a relatively technical environmental report. It is notable that in this case the NTSs (see e.g., AoS-2 and its NTS: compare pages xiii-xv with pages 7-9, the pattern continues) are often verbatim

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<sup>1</sup> In AoS-1 (p.13, Table 2.1) ENTEC proposed 8 alternatives; in AoS-2 (p.xxx) ENTEC proposed 1 alternative; in AoS-3 (p.5) ENTEC proposed 5 alternatives; in AoS-4 (p.6) ENTEC proposed 2 alternatives; in AoS-5 (p.5) ENTEC proposed 1 alternative. All 17 alternatives were rejected without evaluation.

copies of the main report. In some cases (e.g., EN-2) the NTS is actually longer than the report it is intended to summarise. Such documents cannot, by definition, be non-technical summaries. However, the approach taken should perhaps mainly be seen as an indication of the non-technical (poor) quality of the main environmental reports (AoSs).

### **Cumulative Effects**

60. It is an important requirement of SEA legislation that SEA reports assess the cumulative effects of the projects falling within the scope of the plan/programme. However, DECC misunderstands this requirement and, instead of assessing the cumulative effects of different projects, simply instruct the IPC to carry out that cumulative assessment themselves (e.g., *“IPC should consider how the accumulation of effects might affect the environment economy or community as a whole...”* AoS-1, para. 4.3, p.37, quoting 4.2.4 of EN-1)). That is both unlawful (because it fails to do what is required by the legislation) and entirely at odds with the Government’s own guidance which explains that *‘[cumulative effects] are very hard to deal with on a project-by-project basis through EIA. It is at the SEA level that they are most effectively identified and addressed’* (ODPM Guidance on SEA). The only assessment of cumulative impacts that DECC has purported to carry out relates to cumulative impacts across NPSs and not cumulative impacts of the projects that will come forward (AoS1, Table 4.3.1).

### **Other environmental impacts flaws**

61. The assessment of environmental impacts (which should be the heart of the Environmental Report) is extremely thin.
62. We note that the climate assessment given to the national policy statement for fossil fuels (AoS-2, p.9) consists of half a side (even less assessment of climate is given to EN-1 (AoS-1, p.29). Moreover, (and in common with the other AoSs) that ‘evaluation’ includes no assessment of, or information about, how much CO<sub>2</sub> will result from the implementation of EN-2. Given the importance of these NPSs to achievement of the UK’s climate objectives that is somewhat extraordinary.
63. The assessments themselves (see e.g., the assessment of climate at AoS-1, p.29) demonstrates a further error in DECC’s approach which is that they chose not to assess any of the policy content within the NPS but only the environmental effect of having a new process. That is both illogical and unlawful under both the SEA legislation and section 5(3) Planning Act 2008 which requires an appraisal of the sustainability of the ‘policy’ in the statements.

### **SEA conclusions**

64. So, what should DECC do? Our provisional view is that the approach taken by DECC to its SEA obligations is unlawful. In order to make it lawful DECC should reissue and consult on a fresh environmental report (taking account of and acting on the points above). If it does not do so it is at risk of having its NPSs quashed in Court.

### **Section 6: Consultation, Scrutiny and Examination of NPS**

65. Following the Government’s publication of the Energy and Ports National Policy Statements on 9<sup>th</sup> November 2009, a public consultation began which will run until 22<sup>nd</sup> February 2010.

66. In the Planning White Paper the Government said that:

**3.22** National policy statements would therefore potentially have important and far reaching consequences, both nationally, and for the individuals and places likely to be most affected. It is therefore essential that national policy statements are authoritative, and are seen to be authoritative. In order for this to be possible, the Government is committed to ensuring thorough and effective consultation before policy statements are finalised and adopted.

**3.23** Such consultation would also help the Government to ensure that its proposals for national infrastructure have been properly debated and tested, and reflect the right balance of interests and objectives.

...

**3.25**...including setting out clearly the proposals on which views are sought, allowing sufficient time for responses, ensuring wide accessibility, encouraging effective stakeholder participation and ensuring that views are taken into account before final policy proposals are developed”.

67. We consider that this commitment is extremely important bearing in mind the huge significance and novelty of the NPSs. However, we do not consider that the consultation process to date has been ‘thorough and effective’ or that it has allowed the issues to be ‘properly debated and tested’.

68. Proper debate and rigorous testing of the evidence is of critical importance bearing in mind the unique weight to be accorded to NPSs in determining whether nationally significant infrastructure projects should go ahead (and in what form).

69. The Committee will be aware that IPC decisions must be made in accordance with NPSs (other than in limited circumstances) and that policy set out in the NPS (including need and location) may not be re-opened in the examination process<sup>xvi</sup>.

70. Bearing in mind the importance of the issues and the long timescales over which the NPSs will have effect we consider that the process of testing the NPS has been inadequate in the following specific regards:

- a. The Select Committee has not in our view been given sufficient time to scrutinise these enormous documents. Time constraints means written evidence deadlines are over a month before the public consultation closes, and its overall scrutiny period a long way short of the unambiguous Government commitment that “Committees will have at least four to six weeks after the end of the three-month consultation period to complete their work.” (HC Deb 20 May 2009 cc1533-40 Ian Wright).
- b. Given parliamentary timetabling, the Committee report will need to be published before the Easter Recess and if a debate is recommended or timetabled, this will either need to take place before Easter Recess or afterwards. It is clear that likely General Election timetables are putting a squeeze on an important process which should be given a proper amount of time for consultation, scrutiny, and examination.
- c. There are only six national events being held, three with less than a month’s notice following publication of the National Policy Statements on the 9 November. There is only an hour of a “question and answer” session as part

of these events. One hour at six events does not allow the public to contribute their input in a meaningful way.

- d. The site specific events, five of which were held less than a month after the publication of the Nuclear NPS, seem to have been a facilitated public discussion after the presentation of the NPS by the Government. In most of the discussions, the issue was raised that the public awareness and publicity surrounding the events had been very poor. The effect on local communities of the site specific NPS is very considerable indeed. Yet, the level of consultation given to them on these issues is very considerably less than they would have on, for example, the production of a Local Development Framework. We note that the National Policy Statement on Nuclear was published on Monday 9<sup>th</sup> November and the consultation in Hartlepool, one of the affected sites, took place on the Thursday of the same week. That is wholly inadequate. We understand that the Government will be sending a representative to the local authority's own 'Question Time' event later this month. However, doing so cannot be a substitute for a Government run consultation event.
- e. The Planning White Paper (which led to the creation of these NPSs) refers to the document *Community involvement in Planning: the Government's objectives* ODPM 2004. That paper states that (p8, para 2.5) "active participation in the development of options and proposals should be at the heart of the process". In relation to NPSs the Government chose not to involve members of the public in development of options and proposals (as it could have done) but only to consult once it has drafted its proposal and set out the options it had chosen to test.

### **Parliamentary Scrutiny**

71. The Select Committee scrutiny process is a very important (and unusual) part of designating these nationally important policy documents which will have considerable legal weight. We consider that this process could have benefitted from taking a different format incorporating elements of different plan assessment procedures for example, those used for e.g. the London Plan, or an RSS. It is not necessary for these examinations to be extremely lengthy e.g. the London Plan examination took around 7 weeks (i.e. around 28 days of examination with witnesses and cross-examination employed and a chance for people to contribute orally), but time pressures will have prevented the Committee exploring or taking up these options. In the context of location specific NPSs (i.e. Nuclear) that level of investigation would be entirely appropriate, particularly as the question of location cannot be opened subsequently.

72. The Planning White Paper stated that:

3.25 where national policy statements include detailed assessments of demand and capacity, or proposals for infrastructure which raise important technological or safety issues, or which may have a significant impact on climate change goals and targets, or on market development, they should be based on a thorough consideration of evidence. This may include consulting relevant experts or organisations in the drawing up of proposals for national policy, before they are published in draft;

73. The NPS, particularly the Nuclear NPS, are precisely such documents. However, it will be very hard to properly test the complicated and detailed issues underlying these documents tested through the current time-shortened Select Committee process.

## **Recommendations**

74. The Government should give fresh consideration to ensuring that future NPSs are subject to a much higher quality of public participation and consultation. There are many stakeholders, including Friends of the Earth, who could assist the Government with developing a meaningful public participation and consultation package.

75. An effective consultation would be one that provided the public with a meaningful and fair opportunity to engage on the issues of importance. The importance of public engagement in the land-use planning system cannot be overestimated. Planning is intended to be a means of mediating between different interests and ensuring the best possible outcome for people and the environment. Meaningful public participation is crucial to ensuring that takes place.

76. It is therefore extremely important that the NPS series in general follows the following procedure for consultation:

- A proper appraisal is carried out considering alternatives;
- At least one month's notice and a three month public consultation period with events over a number of times/days;
- An examination in public into NPS EN 1-5 held by the Planning Inspectorate;
- Parliamentary committee scrutiny of each NPS;
- A debate in both Houses;
- Sufficient time for the Government to consider responses.

77. For the site specific NPS, hearings should be held at each suggested location, under the auspices of the Planning Inspectorate (i.e. run by an Inspector with the skills and experience to carry out a proper inquiry).

78. We do not recommend that these NPS are designated without a) the consideration of alternatives and a proper appraisal and b) without a re-issue of an improved consultation process and examination of the NPS in an inquiry format.

**ENDS.**

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## **References:**

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- i Policies such as Renewables Obligation, CCS for coal, the Climate Change Levy, etc
  - ii [www.decc.gov.uk/en/content/cms/statistics/publications/dukes/dukes.aspx](http://www.decc.gov.uk/en/content/cms/statistics/publications/dukes/dukes.aspx), table 5C. 2008 figures.
  - iii Section 3.3.14
  - iv Section 3.3.12
  - v Section 3.3.15

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- vi Section 3.7.1
- vii Parliamentary Answer, 16 Dec 2009 : Column 1335W. The figure “already underway” is now up from 20.5 GW to 21.6 GW. Of this 21.6 GW, 7.3 GW is renewable, 14.3 GW non-renewable.
- viii <https://www.og.decc.gov.uk/EIP/pages/applications.htm>
- ix Design of Feed-in Tariffs for sub-5MW Electricity in Great Britain, Quantitative analysis for DECC, Poyry and Element Energy, June 2009. [25 TWh electricity compared with 8 TWh, with a baseline of 2 TWh].
- x Letter of 20<sup>th</sup> Nov 2009 from Professor Andrew Blowers, Professor Gordon MacKerron, Mary Allen and Pete Wilkinson.
- xi An electricity-only incinerator has far higher emissions than a gas plant, a CHP incinerator has similar emissions to a gas plant. The technical issues here are complicated but the bottom line is that energy-from-waste plants have major carbon emissions. See table 1 page 11 of [www.foe.co.uk/resource/reports/changing\\_climate.pdf](http://www.foe.co.uk/resource/reports/changing_climate.pdf)
- xii Page 2, [www.foe.co.uk/resource/reports/gone\\_to\\_waste.pdf](http://www.foe.co.uk/resource/reports/gone_to_waste.pdf)
- xiii <http://www.defra.gov.uk/evidence/statistics/environment/wastats/bulletin09.htm>
- xiv Waste Strategy Board meeting minutes 22<sup>nd</sup> January 2009, as reported in [http://www.letsrecycle.com/do/ecco.py/view\\_item?listid=37&listcatid=217&listitemid=10992](http://www.letsrecycle.com/do/ecco.py/view_item?listid=37&listcatid=217&listitemid=10992)
- xv Page 43, [eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2003L0087:20090625:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2003L0087:20090625:EN:PDF)
- xvi Planning Act 2008: 106 Matters that may be disregarded when deciding application (1) In deciding an application for an order granting development consent, the decision-maker may disregard representations if the decision-maker considers that the representations—  
(b) relate to the merits of policy set out in a national policy statement, or