



**OFFICER REPORT TO CABINET MEMBER**

**CONSULTATION ON DRAFT NATIONAL POLICY  
STATEMENTS FOR ENERGY INFRASTRUCTURE  
10 FEBRUARY 2010**

**KEY ISSUE/DECISION:**

This consultation provides the opportunity to comment on the first tranche of the Government's draft national policy statements, which will provide the framework for consenting energy infrastructure proposals, including potential gas and oil storage and supply and renewable energy proposals in Surrey.

**BUSINESS CASE:**

**Introduction**

1. In November 2009, the Department for Energy and Climate Change (DECC) published for public consultation six draft National Policy Statements (NPSs) for energy infrastructure. The consultation aims to identify whether the draft NPSs provide a suitable framework for the Infrastructure Planning Commission (IPC) to determine Nationally Significant Infrastructure Projects (NSIPs). The Planning Act 2008 introduced a single development consent for NSIPs and provided for the establishment of the IPC and the publication of NPSs. The new system will provide the policy framework for determining applications for the projects covered by the individual NPSs, whether the IPC or the County Council (depending on whether they are deemed 'nationally significant') determines them.
2. Surrey currently has two sites that are being appraised to assess the potential for underground gas storage. If planning applications were to come forward, these would involve gas storage and associated pipelines and other above ground infrastructure. This type of project is covered in the draft NPSs. Renewable energy projects are also coming forward in Surrey, although the prospect for applications of the requisite scale to be NSIPs is less likely. In this instance, the County Council would be a consultee in the NSIP process.
3. The consultation provides the County Council with an opportunity to comment on the draft NPSs and to press for considerations and criteria to be included. The overarching NPS (EN-1), the Renewable Energy Infrastructure NPS (EN-3) and (EN-4) the draft NPS for Gas Supply Infrastructure and Gas and Oil Pipelines are likely to be the most significant for Surrey.

4. The NPSs will be introduced in tranches. The first tranche of draft NPSs comprises six covering Energy Infrastructure, which are the subject of public consultation until 22 February 2010, along with one on Ports. The NPSs will be subject to parliamentary scrutiny. Government has made clear its intention to finalise and formally designate these six energy NPSs in 2010. Further NPSs covering Road and Rail Networks, Waste Water, Hazardous Waste, Airports and Water Supply will follow in due course.

### **The Overarching NPS for Energy (EN-1)**

5. The Overarching National Policy Statement for Energy (EN-1) sets out the Government's energy policy, explains the need for new energy infrastructure and instructs the IPC on how to assess the impacts of energy infrastructure development. EN-1 is an umbrella document, under which all the remaining draft energy NPSs sit. Its main roles are to:
  - set out how the suite of energy NPSs will work and to explain the framework of existing government policy; and
  - establish the need for new energy infrastructure.
6. The draft Overarching Energy NPS establishes the general need for new energy infrastructure. It goes on to consider the more specific issues relating to the need for new electricity generation capacity, alternatives to new large scale electricity generation, renewable and fossil fuel electricity generation, electricity network infrastructure, gas supply infrastructure and pipelines and oil pipelines.
7. The conclusion drawn is that there is both a general and specific need, and that the IPC should start its assessment of applications covered by the energy NPSs on the basis that:
  - need for energy infrastructure has been demonstrated
  - there is a significant need for all types of generation
  - there is a significant need for the electricity transmission and distribution infrastructure to be provided
  - as the North Sea supplies decline there is a significant need for supply, storage and transmission of gas to be provided
  - there is a significant need for oil pipelines to be provided.
8. The NPSs do not provide clarity on the Government's preferred energy mix, as one of the Government objectives is a diverse energy mix to provide security of supply. Therefore the IPC is not being asked to consider the relative advantages of one technology over another.
9. The NPS sets out the key principles the IPC should adhere to when determining applications. These include:
  - i) Having regard to any local impact report submitted by a relevant local authority
  - ii) National, regional and local benefits (environmental, social and economic) including contribution to the need for energy infrastructure, job creation and long term of wider benefits identified in the NPSs, application or elsewhere should be taken into account.

- iii) Taking into account adverse impacts identified in the NPSs, local impacts and longer-term and cumulative adverse impacts that have been identified.
10. In the event of a conflict between Planning Policy Statements (PPSs), Planning Policy Guidance Notes (PPGs) or a development plan, NPSs take precedence for the purposes of IPC decision-making, given the significance of the infrastructure. There is only passing reference to the possible need for the IPC to refer to other documents, including development plans, without any indication of the weight to be given to the statutory development plan for the area, other than the precedence of the NPS.

### **Draft NPS for Fossil Fuel Electricity Generating Infrastructure (EN-2)**

11. The NPS covers infrastructure with over 50MW of capacity and includes coal, oil and gas fired stations, and integrated coal gasification combined cycle stations. No new coal-fired stations would be allowed without some carbon capture and storage. Factors influencing the selection of sites for fossil fuel generation stations are set out and the most relevant impacts identified.

### **Draft NPS for Renewable Energy Infrastructure (EN-3)**

12. The NPS sets out principles to be applied in the assessment of impacts in relation to biomass and waste combustion and onshore and offshore wind farms. It covers onshore renewables over 50MW; other onshore decisions remain with local authorities. The NPS does not extend to tidal or wave energy. The 50MW threshold has been associated with energy from waste plants with a capacity of around 400,000 tonnes per annum, although if heat output is added through a Combined Heat and Power system, that capacity threshold could be halved. This threshold is still likely to be above the output of any plant that might be proposed in Surrey.
13. The NPS states that consent for renewable energy projects should only be granted in nationally designated areas, for example sites of Special Scientific Interest (SSSI) and Areas of Outstanding Natural Beauty (AONB), where it can be demonstrated that the objective of designation will not be compromised and any significant adverse effects of the qualities for which the area has been designated are clearly outweighed by the benefits. Given the extent of AONB in Surrey, the protection of these designated areas is welcomed.
14. The approach put forward in terms of locating renewable energy projects in the Green Belt could have implications for Surrey, which has a large amount of Green Belt. The NPS recognises that many renewable energy projects will comprise inappropriate development in the Green Belt. The IPC will need to assess whether there are very special circumstances to justify inappropriate development. In view of the presumption against inappropriate development, the IPC will attach substantial weight to the harm to the Green Belt when considering any application for such development. It does state however, that very special circumstances could include the wider environmental benefits associated with increased production of energy from renewable sources. A further locational issue that could have implications for Surrey is that the IPC *'should not use a sequential approach in the consideration of renewable energy projects (for example by giving priority to the re-use of previously developed land for renewable technology developments)'*.

15. In assessing windfarms, the NPS states that proximity to housing is not a reason to turn down applications. The cumulative visual impact of wind farms is not commented on. Windfarms are to be regarded as temporary development on account of the 25 year estimated life of wind turbines, and the IPC are directed to regard them as 'non-permanent' in assessing their impact on landscape and heritage features. For biomass projects, *'the IPC does not need to consider the source or sustainability of the proposed biomass fuel to be used within the proposed plant'*. The IPC is directed not to use a sequential approach in the consideration of renewable energy projects, where normal planning practice would give priority to looking initially at any options for using previously developed land.
16. Whilst it is not currently anticipated that Surrey would have development proposals of the size that would require determination by the IPC, the NPS will be a consideration when the County Council assesses smaller renewable energy proposals.

#### **Draft NPS for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4)**

17. The NPS applies to underground storage of gas, Liquefied Natural Gas (LNG) facilities, new or an alteration to a gas reception facility and gas transporter pipelines. Underground storage includes storage in natural porous strata i.e. depleted hydrocarbon fields, aquifers and gas storage in caverns.
18. Surrey has several hydrocarbon fields in various stages of development. There are currently two planning applications in the process of being determined to carry out exploration. There are also sites in the appraisal stage and sites currently in production. The operator of two sites in Surrey (Albury and Bletchingley) has indicated an interest in developing underground gas storage facilities and has progressed to an initial stage, an application for gas storage at 'Albury 1' (with the Department of Energy and Climate Change DECC) under the Gas Act 1965. 'Albury II' is still undergoing appraisal.
19. The potential projects in Surrey were included in the Secretary of State's Second Report to Parliament on Security of Gas and Electricity Supply in Great Britain July 2006, the later Joint Energy Security of Supply Working Group Report December 2006 and the former Department of Business, Enterprise and Regulatory Reform (BERR) Energy Markets Outlook October 2007. Both the 2008 and 2009 Energy Market Outlooks refer to the list of existing, under construction and publicly announced proposals for gas storage facilities given in the annual Transporting Britain's Energy report produced by the National Grid. The 2008 report referred to both Albury and Bletchingley, but the 2009 report lists only Albury 1 as potentially having 0.2 billion cubic metres (bcm) and Albury II as having 0.4 bcm. The preliminary submission for a Gas Storage Authorisation Order for Albury 1, showed that the project would involve the need for above ground structures and pipelines.
20. Any planning applications for gas storage infrastructure and gas and oil pipeline projects in Surrey, whether they are of the scale to be determined by the IPC or smaller projects to be determined by the County Council, will have to comply with this NPS.

### **Draft NPS for Electricity Networks Infrastructure (EN-5)**

21. The NPS covers above ground electricity lines above 132kV (unless lines are associated with an NSIP) and other infrastructure for electricity networks associated with a NSIP. In relation to impacts, this NPS covers landscape and visual and noise impacts. It also includes additional factors in relation to electric and magnetic fields (EMFs) and routing and provides a route map for dealing with EMFs.

### **Draft NPS for Nuclear Power Generation (EN-6)**

22. The draft Nuclear NPS differs from the other technology specific NPSs in that it is locationally specific. It lists the sites that the Government has judged to be potentially suitable for new nuclear power stations by the end of 2025. No sites have been identified, nor were any alternative sites considered within Surrey. The NPS also sets out the Government's preliminary conclusion that it is satisfied that effective arrangements will exist to manage and dispose of waste produced by new nuclear power stations, although the NPS is not locationally specific in terms of nuclear waste disposal.

### **Associated Provisions of the Planning Act 2008**

23. Most of the NSIP projects have a prescribed trigger level; however there are some such as gas pipelines and highway related development that will become an NSIP if they are *'likely to have a significant effect on the environment'*. To define whether a project of this sort falls within the scope of the new regime will require judgement and that is likely to be an area that will give rise to conflicting views. The provisions of the Act suggest that a challenge to the decision on whether a project is a NSIP cannot be made until the conclusion of the decision making process. Any challenge must take place within a non-extendable six-week period post determination.
24. The new development consent order for a NSIP will encompass various consents required pursuant to eight statutory regimes. Therefore a project granted a development consent under this Act will not require consent under a number of existing consent regimes, for example planning permission, pipe line construction authorisation, gas authorisation order etc. Development consent orders will also be able to confer certain rights on developers to facilitate the project i.e. compulsory purchase of land or stopping-up of highways where there is a compelling case in the public interest.
25. The removal of statutory nuisance rights to bring proceedings for nuisances caused by development authorised by this process is likely to be contentious and could potentially raise Human Rights implications (respect for home and right to property). The removal of rights to bring proceedings for nuisances could potentially result in unexpected problems arising from a NSIP development being without a legal remedy and will fuel concerns that local issues are not being fully considered. Human Rights issues could also be raised by the compulsory purchase of land and the right to a fair hearing may be invoked in relation to the local location specific NPSs.
26. The new system is front loaded with much more expected prior to applications being submitted. Applicants will not only have to publicise the application but will also have to carry out consultation with various authorities and other interested

parties before they submit their application. There appears to be some flexibility in the consultation with residents as the consultation process is not prescribed in detail, instead applicants are required to consult all the local authorities for the development site about the proposed method of consultation with local residents. Such flexible consultation obligations provide scope for disagreements and differing approaches in different areas. Although there is a strict timetable for the determination of applications by the Commission the pre-application stage appears open ended. There is a 28 day minimum period of consultation but there is no set time limit for responses. As the applicant is required to take account of the responses to the consultation, the system may not produce the speedy results anticipated.

27. The IPC must invite all the relevant local authorities to submit a Local Impact Report (LIR) giving details of the likely impact on their area. The LIR would be in addition to the local authority making representations on the application and the relationship between the two has the potential to create difficulties for local authorities. Clearly local authorities could come under pressure to produce LIRs that are not objective and neutral and if this is the case the line between the LIR and representation could become blurred.
28. The examination process, intended to be less than six months, is to be predominantly written submissions rather than oral evidence. The Commission has not been given the power to summon witnesses and require the production of documents.
29. Where necessary, development consents will be subject to conditions and obligations. It is not entirely clear how conditions set by the IPC will be enforced but enforcement of the development consent is likely to become the responsibility of the local authority.
30. One of the potential areas of conflict is likely to be that the IPC can grant a development consent for 'associated development' but the new regime applies only 'to the extent that development is or forms part of a NSIP'. As a consequence an applicant may need to apply for both a development consent and planning permission for what the applicant would consider part of one project. However, there is the ability to grant consent for 'associated development' and conflict could arise of what is defined as 'associated development'. This could be an issue for Surrey with potential underground gas storage proposals.

### **FINANCIAL AND VALUE FOR MONEY IMPLICATIONS**

31. There are unlikely to be significant cost implications for the County Council. There would be costs involved in producing the Local Impact Reports, but with the applicant and IPC taking over planning process responsibilities from the local authority for major infrastructure proposals, there may be net savings to the local authority when and if such proposals come forward. Pre-application discussion is encouraged, and there may be an issue over whether local authorities should seek to charge for such discussions and advice, or foster early engagement with applicants who may be discouraged by charging.

### **EQUALITIES IMPLICATIONS**

32. There are no equalities implications.

## **RISK MANAGEMENT IMPLICATIONS**

33. There are no direct risk management implications.

## **IMPLICATIONS FOR THE COUNCIL'S PRIORITIES OR COMMUNITY STRATEGY/LOCAL AREA AGREEMENT TARGETS**

34. There are no direct implications.

## **SECTION 151 OFFICER COMMENTARY**

35. There are no direct financial implications as a result of this report. Any future implications will be reported at the time.

## **CONCLUSIONS**

36. The consultation seeks responses to 26 multi-part questions, many of which are not relevant to Surrey. Therefore it is proposed to respond around the relevant points discussed in this report and set out in Annex 1, some of which relate to the associated procedures being introduced along with the NPSs under the 2008 Planning Act.

## **RECOMMENDATIONS:**

It is recommended that the Cabinet Member:

- (i) endorses the draft outline response to the DECC consultation on draft National Policy Statements for Energy Infrastructure, attached as Annex 1.
- (ii) agrees that authority be delegated to the Acting Planning Manager to make any further changes to the Surrey County Council response in consultation with the Cabinet Member for Environment, ahead of the consultation deadline.

## **REASONS FOR RECOMMENDATIONS:**

The newly established Infrastructure Planning Commission (IPC) is responsible for providing advice and guidance to developers and determining applications for development consents for significant infrastructure planning applications. The NPSs will be the principal documents upon which the IPC will base its decisions.

To ensure that Surrey County Council's views are made known to Government.

## **WHAT HAPPENS NEXT:**

The Surrey County Council response will be submitted to the Department of Energy and Climate Change by the consultation deadline of 22 February 2010.

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**Consulted:** Cabinet Member for Environment

Surrey County Council Officers consulted:  
Damian Testa, Lead Manager, Environment and Economy  
Roger Hargreaves, Head of the Environment Service  
Trevor Pugh, Strategic Director for Environment and Infrastructure

**Informed:**

South East County Planners

**Sources/background papers:**

DECC consultation document on draft National Policy Statements for Energy  
Infrastructure – November 2009

Surrey County Council consultation response to the CLG consultation on the list of  
statutory consultees for National Policy Statements – April 2009

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**Draft Outline Surrey County Council Response to the DECC consultation on draft National Policy Statements for Energy Infrastructure**

Key Points

- Surrey County Council welcomes the opportunity to comment on the draft NPSs. In so doing, we seek additional considerations and criteria to be included in the NPSs, particularly in respect of the overarching NPS (EN-1), the Renewable Energy Infrastructure NPS (EN-3) and the draft NPS for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4), as these are likely to be the most significant for Surrey.
- Whilst it is not currently anticipated that Surrey would have development proposals of the size that would require determination by the IPC, other than perhaps for underground gas storage, the NPS will be a consideration when the County Council assesses smaller renewable energy or gas storage proposals. It is therefore important that the NPSs reflect circumstances in Surrey
- The NPSs do not indicate the Government's preferred energy mix. Such a steer could provide a signal to the market for investment in specific types of energy infrastructure.
- The NPSs do not provide a spatial distribution or any locational strategy for energy infrastructure, other than for nuclear power installations. Such provision would help industry to bring forward proposals where they are needed and can be most suitably accommodated, and to avoid unsuitable and inefficient locations and unacceptable cumulative impacts.
- The NPSs give insufficient weight to consideration of the development plan, represented in Surrey by the South East Plan, Surrey Waste and Minerals Plans and the borough and district local development frameworks. If practicable on timing, energy infrastructure proposals should be promoted, considered and incorporated, if appropriate, within the development plan system. This would help to ensure a rounded assessment in terms of the objectives, other development priorities and safeguards for the county and local areas.
- It is not accepted that wind turbines should be treated as temporary structures when considering impacts such as landscape and visual effects and potential effects on the setting of historic assets. Turbines may well last past their 25 year design lifespan and can be replaced, particularly with grid connections and other infrastructure in place.
- The NPS states that consent for renewable energy projects should only be granted in nationally designated areas, for example sites of Special Scientific Interest (SSSI) and Areas of Outstanding Natural Beauty (AONB), where it can be demonstrated that the objective of designation will not be compromised and any significant adverse effects of the qualities for which the area has been designated are clearly outweighed by the benefits. Given the extent and value of AONB in Surrey, the protection of these designated areas is welcomed and must be retained in the final NPS.

- The NPS recognition that many renewable energy projects will comprise inappropriate development in the Green Belt and that the IPC will attach substantial weight to harm to the Green Belt is welcomed.
- A sequential approach in the consideration of the location of some renewable energy projects, such as biomass power plants, would be appropriate in some circumstances, so should not be ruled out unless there are particular locational requirements for the specific energy infrastructure proposed.
- The NPSs should include recognition of the role of the local planning authority role in advising upon, negotiating and enforcing planning conditions and agreements under Section 106 of the 1990 Town and Country Planning Act.
- Several provisions under the associated development consent orders in the Planning Act are matters for concern, particularly
  - compulsory purchase of land or stopping-up of highways
  - removal of statutory nuisance rights
  - scope for disputes given the flexibility in the consultation obligations
  - the lack of oral evidence and powers to summon witnesses at the examination to be conducted through written submissions
  - potential conflict in the consent regime for 'associated development'