

# Planning for major infrastructure in England and Wales

Richard McCarthy offers *Planning on London* a view of the future from CLG.



Richard McCarthy is Director General, Housing and Planning at the Department for Communities and Local Government.

**New infrastructure is essential** for sustainable economic growth. The Government made clear its commitment in the October 2010 Spending Review, highlighting some £200 billion of private and public sector investment in new infrastructure expected over the next five years, Ministers are putting a premium on ensuring that the planning system for major infrastructure is fit for the twenty-first century.

This investment in infrastructure is not just about growth and new jobs – although that’s vitally important over the coming years – it’s also a day to day necessity, and, although we may take it for granted, having the right infrastructure in place will be essential for us and future generations to come.

So, the Government is committed to a planning regime for major infrastructure that is effective, efficient and transparent and is making some important changes to the Planning Act 2008, through the

Localism Bill to improve the system.

## The Localism Bill

Some of the changes in the Localism Bill aim to improve and streamline existing processes. But the most important changes aim to restore democratic legitimacy in the regime. First, a new requirement for Parliament to scrutinise and approve National Policy Statements before they are designated; second, returning the responsibility for major infrastructure decision-making to Ministers whilst ensuring that decisions are taken within the previously established statutory time limits.

Subject to the passage of the Bill, the Infrastructure Planning Commission (IPC) will close in April 2012 and its functions will transfer to a new Major Infrastructure Planning Unit, within the Planning Inspectorate. Transitional arrangements will ensure projects before the IPC at the time of these changes will not have to

start the planning process again. Greg Clark, the Minister for Decentralisation recently confirmed additional details about the transition including leadership arrangements for the Planning Inspectorate and plan to retain the skills and expertise of Commissioners until 2014.

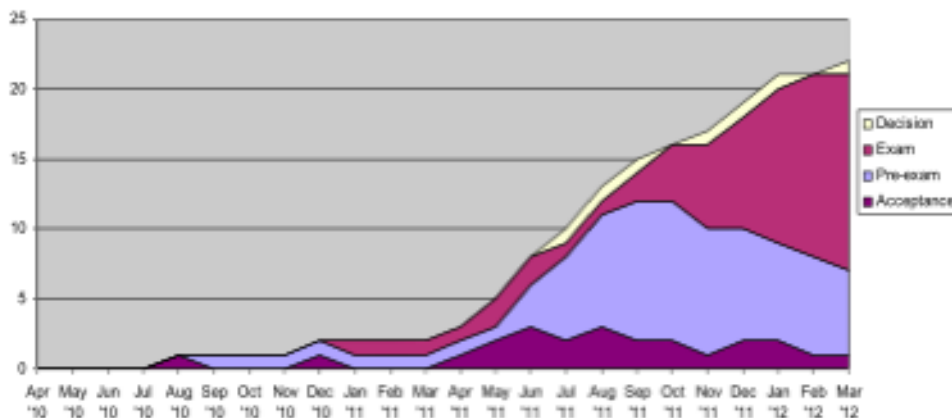
From 1 April 2011, Sir Michael Pitt became Chief Executive of the Planning Inspectorate in addition to his current post as head of the Infrastructure Planning Commission. He is dividing his time equally between both organisations. Once the Infrastructure Planning Commission closes Sir Michael will become the full-time Chief Executive of the Planning Inspectorate that includes the Major Infrastructure Planning Unit. He will oversee the transition period and ensure that the new integrated Planning Inspectorate delivers an excellent service across its range of work as well as providing excellent value for money. These arrangements will provide strong leadership and valuable stability during a period of significant change for both organisations.

The Minister was clear that following the changes in the Localism Bill the regime must be:

- a front-loaded regime with clear opportunities for local communities to engage throughout the process;
- a regime where the policy is clearly set out in National Policy Statements providing certainty and predictability;
- a speedy and efficient regime, with in-built statutory timetables, which delivers robust results; and
- a democratically accountable regime which allows Parliament to approve National Policy Statements and Ministers to determine all infrastructure applications of national importance.

Estimated number of major infrastructure applications to April 2012

Figure 1: Central estimate of caseload to April 2012 (excluding pre-application work)



ALSO IN THIS SECTION

- Nigel Hewitson on NISPs
  - Simin Davoudi: From IPC to the MIPU
  - Fiona Howie on What the future holds
  - Steve Hornsby and Robert Musgrave on Smarter planning
- AND SEE Sir Peter Hall on joining up London's rail  
PLUS the LP&DF minutes discussing London's infrastructure

The Department produced in December 2010 a Work Plan for major infrastructure planning reform which gives further information about the Government's specific proposals for the major infrastructure planning regime. It is available on our web site at: <http://www.communities.gov.uk/publications/planningandbuilding/mip-workplan>

**Progress with National Policy Statements**

Good progress is being made to finalise and put in place the suite of National Policy Statements (NPSs), which will provide the decision-making framework for the Infrastructure Planning Commission and then for Ministers. Draft Energy NPSs and the draft Waste Water NPS have been published for consultation and scrutiny by Parliament. We expect to lay a final version of the Energy NPSs for approval in the spring and the Waste Water NPS in the summer, prior to designation.

**New applications**

There has been some discussion about the volume of applications, which the Infrastructure Planning Commission (IPC) were predicted to receive in its first year. To date, three applications have been made to the IPC. Of those, two have been accepted for examination and one has been rejected. There are also around 50 projects currently with the IPC at the pre-application stage. The regime is still in its infancy but we do expect to see an increasing flow of applications between now and 2012. The IPC's caseload estimates pre-

dict that around 20 projects will be with them by April 2012, representing a total potential investment value to the UK of around £15 billion.

**New Infrastructure projects in London**

London will, of course, have its share of new major infrastructure projects of which Crossrail and the Thames Tunnel are just two. 2011 should mark the start of an exciting period for Crossrail which is due to begin tunnelling activity towards the end of the year. Crossrail will provide a world class railway; servicing eight new underground stations in the central section, and 27 upgraded stations which will bring an additional 1.5 million people within 45 minutes commuting distance of London's key business districts. There should be a phased introduction of Crossrail services from 2018.

The Thames Tunnel is another major new proposal which will benefit London by helping to prevent the pollution of the river Thames. The Tunnel is a sewer proposed to be 7.2m in diameter (the width of three London buses), which will run around 22km, from west to east London, up to 75 metres below ground, broadly following the route of the river. If granted permission, it will intercept the most polluting sewer overflows, to capture sewage which would otherwise spill into the Thames, before transferring it via the Lee Tunnel to the Beckton sewage works to be treated. Thames Water has a target date of mid-2012 for the submission of their planning application. The Government recently consulted on the draft Waste Water National Policy Statement which

included details of the Thames Tunnel and proposes to bring the application into the major infrastructure planning regime because of its scale and complexity. On that basis the final decision is likely to be made by Ministers at some point in 2013.

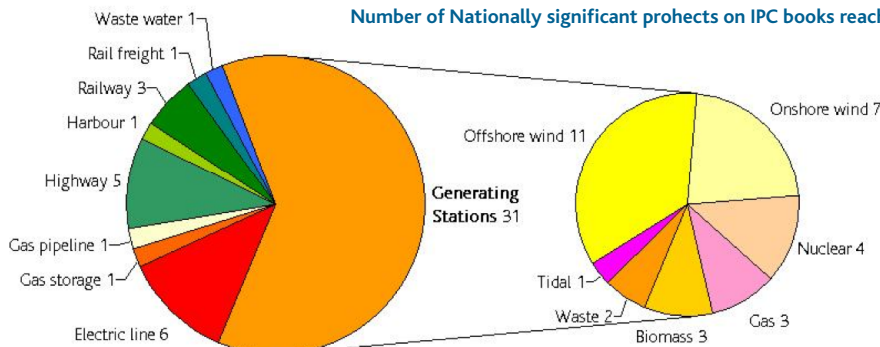
**The new regime**

The changes we are putting in place will give the country a planning system for major infrastructure which is faster, more predictable, efficient and transparent. They will give us a regime which provides business with the confidence and certainty it needs to move forward with new infrastructure projects. In turn this will help us to secure the investment we need to deliver the updated, modern infrastructure which is critical for the UK's future growth and prosperity.

Some developers may be waiting to see the outcome of these changes before making a firm commitment to new investment in projects – I can provide some reassurance on this. Whilst we are still working on some of the procedural detail, these changes will be implemented without causing any unnecessary delays or interruption to applications – Ministers are absolutely committed to existing timetables. There will be no difference, or radically different experience, for developers and others with an interest in the progress of a case in the system. The changes the Government is making are not an overhaul of the major infrastructure regime: we are retaining the key elements of the infrastructure planning regime set out in the Planning Act 2008. It will be an efficient, speedy and transparent regime, but it will also be a more democratic one.

The Government is also listening carefully to what our external partners have to say about the new major infrastructure planning regime. We are interested in hearing about people's experience of the process and their ideas on how we can improve the operation of the regime. But that is for tomorrow. Right now we are working hard to ensure that the day of transition to the new regime will be an unremarkable and an uneventful day! •

Number of Nationally significant projects on IPC books reaches 50



# Nationally Significant Infrastructure Projects

Nigel Hewitson provides his wish list for the transition process from the IPC to MIPU



Nigel Hewitson is a partner and the Head of the London Planning Team at international legal practice Norton Rose LLP

**Central to both** the Conservative Party Green Paper "Open Source Planning" and the planning policies contained in the Coalition Agreement Document "Our Programme for Government" was the clear policy commitment to "abolish the unelected Infrastructure Planning Commission (IPC) and replace it with an efficient and democratically accountable system that provides a fast track process for major infrastructure projects". This commitment is being taken forward and the intention is that probably on 1 April 2012 the IPC will cease to exist and its functions and staff will be transferred to a new Major Infrastructure Planning Unit (MIPU) within the Planning Inspectorate (with whom the IPC already shares a building in Bristol).

The question on everyone's lips is: What impact will these proposals have on the planning system? Cynics would no doubt answer: "probably very little". We know from Government statements that the procedures are to remain largely the same. They will remain "within the same statutory fast-track timeframe as the current regime". It appears that the commissioners and staff will stay the same, simply being transferred across under the Transfer of Undertakings Employment Protection (TUPE) regulations. Although a couple of statutory changes are proposed - all decisions are to be made by the Secretary of State and National Policy Statements must be approved by a positive vote of both Houses of Parliament - this is, the argument goes, merely tinkering round the edges and it will be "business as usual" once MIPU is established.

But, if the very real and urgent infrastructure needs of the country are to be addressed, it is to be hoped that the opportunity will be taken in the passage of the Localism Bill and in the negotiations going on between the IPC and the Planning Inspectorate to address some of

the perceived shortcomings that are certainly expressed by developers about the system, with which, it must be acknowledged, many are struggling to get to grips.

The IPC was set up to deal with Nationally Significant Infrastructure Projects (NSIPs) - major projects in the energy, transport, waste and water sectors. In London, the only project currently on the IPC's books is Thames Water's proposals for the Thames Tideway Tunnel - a proposed 14km long 8m diameter tunnel which will store sewage which, in storm conditions, currently overflows into the Thames. The project is urgently needed to enable the UK Government to comply with an EU water quality directive.

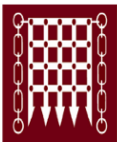
Other projects which could well go to the IPC or its successor, MIPU, include new rail projects (such as the proposed high speed London to Birmingham rail link which is currently being consulted on) and energy projects which generate at least 50 MW of electricity. Whilst I intend no criticism of the IPC itself, which I think is doing a very good job in very difficult circumstances, it is undeniable that there are a number of concerns, particularly among developers and would-be developers, about how the system is operating in practice.

Firstly, just how fast track is "fast track"? It must be acknowledged that the IPC is operating a new system, which is complex, with huge demands being placed on developers, with which they are still getting to grips. But whatever the reasons, it does seem there is a major problem in terms of actually even getting to the point where the application can be submitted to and accepted by the IPC. There are lengthy and complex pre-application consultation processes which have to be demonstrably gone through before the application will be accepted, and no-one appears able to put a timescale on these processes. Whilst there are tight statutory timescales the

IPC is required to meet once the application is before it, there is no measurement of the pre-application timescales. This can be illustrated by the fact that, of the 50+ projects which were notified to the IPC quite quickly after it opened for business at the end of 2009, 46 are still described on the IPC website as being in pre-application. Only three have reached the stage of an application having been accepted and only one is in examination.

There are, no doubt, a number of reasons why that might be - developers and their advisers not yet being familiar with the system; uncertain economic outlook, lack of available finance etc - but there is uncertainty among developers about how long to allow for the pre-application process. What the promoters of infrastructure schemes need, like all developers, is reasonable certainty as to the timescale involved. The system seems, at the moment, to be failing them in that regard.

A second concern relates to national Policy Statements (NPSs). NPSs are the primary consideration in the IPC's decision making. Where there is a relevant NPS in place, decisions on NSIPs must, except in very limited circumstances, be made in line with any relevant policies in that NPS. The problem is that, although the NSIP system has been in place for about a year, to date, no NPSs have been formally adopted. The CLG document "Major Infrastructure Planning Reform: Work Plan" sets out the rough timetable for adoption of the NPSs. The first, the suite of energy NPSs are due to be presented to Parliament in "Spring 2011" with the aviation NPS not proposed to even go out for consultation until March 2012. Given the central importance to the system of NPSs, their absence must be having an impact on the work of the IPC. Again, what developers want and need is a reasonable degree of certainty. NPSs will give them the certainty that, if their development



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*This article is based on a short talk given by the author to the Westminster Energy, Environment and Transport Forum Keynote Seminar "The Future for Planning in England and Wales" on 22nd February 2011.*

## London infrastructure

### Thames Tideway Tunnel, ring main extensions, water and sewage works

Thames Water

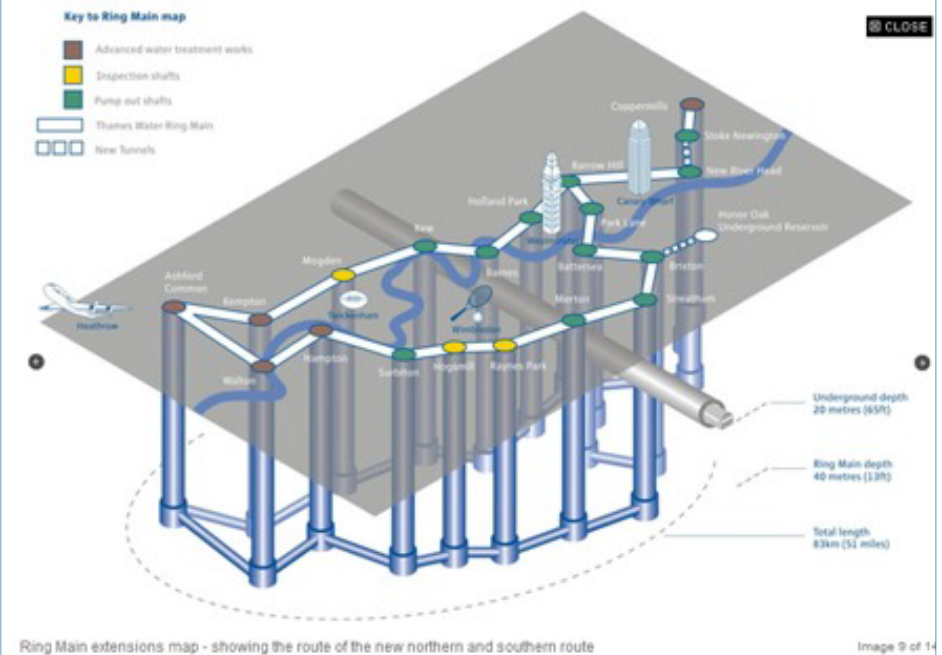
accords with relevant policy, all other things being equal, they should receive their Development Consent Order. At the moment, developers are operating in a policy vacuum.

There are also concerns in terms of the statutory procedures for examination of applications. Evidence is primarily to be in written form and, where there are hearings, they are to be inquisitorial in nature, led by the Commissioner(s). One of the perceived shortcomings of an inquisitorial process as against an adversarial process is the lack of opportunity to forensically cross-examine witnesses. The existence of cross-examination imposes a discipline on expert witnesses. If they know they are going to be cross-examined, they will temper what they say in evidence and make sure they can defend it. Absent the opportunity to cross-examine, it is important to ensure that the commissioners who are going to lead the process have the expertise to ask the key questions, to impose that same discipline on expert witnesses, so that they don't make claims that perhaps, on forensic cross-examination, they wouldn't be able to support.

There is a perceived lack of parity of arms in the system. Local authorities and community groups have a key role to play in the process but simply do not have the resources, that the developer has, to employ a team of expert witnesses and lawyers. It is difficult to see how that issue can be addressed in the current financial climate, but it is a concern.

Finally, there must be a risk of potential legal challenges particularly under the Human Rights Act. Article 6 of the Convention provides that everybody is entitled to a fair trial within a reasonable time of matters concerning their civil liberties, and Article 1 of Protocol 1 provides protection for an individual's property, except by process of law. Where there is compulsory purchase in particular, I expect early decisions of the commission to be challenged on the basis of the system allegedly breaching those principles.

So my wish list for the transition process from the IPC to MIPU is: (1) streamline and clarify the pre-application procedures - especially the timescales involved; (2) ensure that the NPSs are



#### Thames Water: Our business

- UK's largest water and wastewater services provider
- 13.8 million customers
- 4,600 employees
- One of the cheapest providers, with un-metered customers paying an average of 88p per day and metered customers paying an average of 73p per day
- Kemble Water Limited, a consortium of institutional investors managed by the Macquarie Capital Funds (Europe) Limited, acquired Thames Water on 1 December 2006

#### Water services

- 8.7 million clean water customers in London and the Thames Valley
- 2,600 million litres of drinking water supplied per day
- Operation and maintenance of 100 water treatment works, 30 raw water reservoirs, 288 pumping stations and 235 clean water service reservoirs
- Our tap water costs less than a tenth of a penny per litre
- Drinking water quality is meeting 99.98 per cent of stringent tests
- Half a million drinking water quality tests undertaken each year

#### Sewerage services

adopted at the earliest possible time so that developers can have greater confidence that ultimately their scheme will obtain Development Consent; (3) ensure that the necessary expertise is available among Commissioners so that all expert witnesses can be forensically examined to ensure their evidence is sound in all respects. This would also assist greatly in minimising opportunities for legal

challenges to be brought under the Human Rights Act.

The country desperately needs new infrastructure. For example, unless new generating capacity is delivered, there will be an energy shortage in the UK within a very few years. It is to be hoped MIPU quickly becomes the efficient, fast-track process we have been promised. •



# From the IPC to the MIPU

Good news for democracy but is it be good news for speed and efficiency too? – asks Simin Davoudi



Simin Davoudi is Professor of Environmental Policy & Planning at the School of Architecture, Planning & Landscape in Newcastle University

On 29 June 2010, Decentralisation Minister Greg Clark announced the closure of the Infrastructure Planning Commission (IPC) in line with the Coalition Government's Agreement. The IPC, created in 2009, replaced eight previous consent regimes for major infrastructure applications (such as railways, airports, waste management facilities and energy plants). The Localism Bill has now confirmed the abolition of the IPC and its replacement with a Major Infrastructure Planning Unit (MIPU) within the Planning Inspectorate.

For Londoners, all this may bring back memories of the infamous Heathrow Terminal Five (T5) planning process which will go down in history as an example of how not to do planning. The Heathrow T5, took nearly nine years (February 1993 to November 2001), cost about £60 million in fees, generated a 600-page report, and despite nearly four years of public inquiry left many people disenchanted the planning system. Highlighting this paradox, the Economist Journal wrote: "Few countries have ended up with a planning system which manages both to hold projects up for decades, and to give people the feeling that they don't have any say at all" (The Economist, 10 November 2001:38). Many factors contributed to the Heathrow T5 saga, such as:

- National policy vacuum (no national aviation policy framework to inform the inspector's decision)
- Inappropriate level of decision making for nationally significant development
- Lack of adequate evidence base (insufficient technical and other information)
- Adversarial public hearing (formal cross examination)
- Inefficient government's performance (lengthy pre- and post-inquiry processes)

The Heathrow T5 experience, therefore, is seen as a major catalyst for the reform of the planning system in 2008 and the creation of the IPC, an independent and



centrally-appointed body which became responsible for considering and deciding on major infrastructures. The question we need to ask is the extent to which the 2008 reform and the IPC addressed the shortcomings of cases such as Heathrow T5, and whether the new regime and the transition to the MIPU would make the decisions better or worse.

The problem of national policy vacuum was addressed, albeit to a limited degree, by the government's commitment to issue National Policy Statements (NPSs) for different types of infrastructure (see Table 1 on progress made so far). The NPSs are prepared by different government departments. The lack of overarching and integrated framework means that the connection between different national policies on different types of infrastructures is tenuous, despite the Department for Communities and Local Government's coordinating role. Furthermore, with the exception of the nuclear energy, the NPSs lack a spatial dimension. Therefore, there is no indication of what needs to go where, and how new infrastructures are to be

integrated into local development strategies.

This lack of spatial clarity and the limited consultation on the broad location of future major infrastructure has created uncertainty for the industry and led to inadequate engagement with local communities. Therefore, any future improvements to the NPSs should include a spatial overlay which is not to be confused with detailed site allocation. Making the NPSs spatial will encourage local communities to become more proactive. It will also enable local planning processes to maximise the potential opportunities which may arise from new infrastructure investments in their particular localities. Giving local communities the chance to be involved upstream is crucial if government is serious about its Localism Agenda. A major change introduced in Localism Bill is that the NPSs will be subject to Parliamentary approval.

As regards the level of decision making, the 2008 reform was also an improvement compared with the previous system because, it made it clear that nationally

*This article is based on the author's presentation at 'the future of planning in England and Wales' seminar organised by Westminster Energy, Environment & Transport Forum, 22 February 2011, London*

**BELOW LEFT:** Heathrow Terminal 5

Source: [dailymail.co.uk](http://dailymail.co.uk)

**RIGHT:** Brig y Cwm Energy from Waste (EfW) Facility at Cwmbargoed, Merthyr Tydfil, Application submitted to IPC, currently at pre-examination stage.

Source: IPC



significant infrastructures should be decided at the national level. However, up-scaling decision making does not mean bypassing the democratic processes, as the IPC did. As in other levels of planning, decision making should always reside with democratically elected members in town halls, Whitehall or Westminster, as appropriate. The role of independent professionals and experts is to ensure that such decisions are informed by the best available knowledge, which includes not just the coded knowledge of experts, but crucially the knowledge and experience of local communities. The transition from the IPC to the MIPU will restore the democratic accountability of infrastructure planning and is therefore a step in the right direction. However, more can be done to enhance the quality of public engagement which is not necessarily the same as conducting excessively long consultation processes.

On the issue of evidence-base, the IPC was not expected to undertake original research. Instead their responsibility was to gather the existing evidence and examine their validity by drawing on a pool of expert advisors. A significant part of the evidence gathering process was the Local Impact Report (LIR). Relevant local authorities were required to provide detailed information about the proposed site in a relatively short period time. This in the past has put a lot of stress particularly on smaller, insufficiently-resourced local authorities. The new MIPU will follow a similar procedure so there will not be any major changes except that in the current climate of cuts in public expenditure, local authorities will find it increasingly difficult to

produce LIR (or its equivalent in the new system) in a timely and satisfactory fashion.

The creation of IPC streamlined the long adversarial public hearing and replaced it with an inquisitive system with questioning at hearings being led by Commissioners. The new systems will return to the adversarial style which although is useful in teasing out complex details and unravelling technical jargons, it may at the same time alien those stakeholders who are less versed in cross-examination skills.

Finally, with regard to government's performance in delivering fast-track and efficient decision making the new consenting regime seems less convincing than the IPC. The main concern is that the new system, in which decisions will be taken not by an independent panel but by a minister, may cause unreasonable delays and bottlenecks. Given the state of the existing infrastructures in the UK and the government's ambitious targets for transformation to a low carbon economy and adaptation to climate change, such delays may lead to severe consequences. These concerns are grounded in governments' past performance in relation to cases such as the Heathrow T5, where in addition to the time taken by the public inquiry further delays were caused by the post-inquiry process. It took nearly two years (February 1999 to December 2000) for the inspector to complete their report, and nearly one year (December 2000

to November 2001) and a change of Minister for the government to announce the decision. People are now rightly concerned that the new consenting regime may fall into a similar pattern and become stuck in political wrangling.

To conclude, I believe that the transition from the IPC to the MIPU is a step forward in terms of addressing issues of democratic accountability. To ensure that it does not turn out to be a step backward in terms of addressing issues of speed and efficiency two things need to be put in place: one is strategic and the other is procedural. Strategically, the forthcoming national planning policy framework (NPPF) should act as firstly, an overarching strategy for different types of infrastructure development, and secondly, a link between this and other major policy areas such as future housing supply. Furthermore, both NPPF and NPSs should be spatial; indicating in broad terms not just what infrastructure we need, but also where we need them most. Making these policy frameworks spatial will provide more certainty for the industry and better opportunities for local communities to be pro-active in shaping the future of their localities. Moreover, achieving upstream agreements on the broad location of critical infrastructures would help making the MIPU's decisions less contentious. Procedurally, it is important that both the inspectors' recommendations and the ministers' decisions are made within a pre-defined timescale to which they strictly adhere. In is true that there are statutory timetables already in place; the question is how far they will be observed.

All this means that the coming years will be testing times for the government's twin promise of: on the one hand enhancing democratic accountability in major infrastructure planning, and on the other hand making timely, efficient and sustainable decisions, and in the context of a vastly reduced resource base and an expected rise in the number of applications. I can only wish them luck! •

Source: Adapted from the IPC web - sites <http://infrastructure.independent.gov.uk/>

Sector	NPS	Responsible government Department	State of NPS
Energy	Overarching energy	Department for Energy and Climate Change	Draft NPSs published in November 2009 for consultation by previous government and republished in 2010 for consultation by the Coalition government
	Renewable energy		
	Fossil Fuels		
	Oil and Gas Supply and Storage		
	Electricity Networks		
	Nuclear Power		
Transport	Ports	Department for Transport	Draft NPS published but not designated Not published
	Transport Networks (rail and roads)		
	Aviation		
Waste, waste water, water	Water Supply	Department for Environment, Food and Rural Affairs	Not published  Published for consultation
	Hazardous Waste		
	Waste Water Treatment		