

## Insights

# THE NEW WATER NPS: A MILESTONE FOR WATER RESOURCES INFRASTRUCTURE PROJECTS

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## SUMMARY

Publication of the Water Resources Infrastructure NPS marks a milestone for water infrastructure projects as it is the first NPS for water resources pursuant to the 2008 Act, coming 15 years after the regime's creation. First published in draft in late 2018 – and with a four and a half year wait for its ultimate update - this publication will provide much needed clarity for developers of and interested parties to the projects that come within its scope.

The new Water Resources Infrastructure NPS is a hugely important policy for water infrastructure developers, as it will become the primary basis for the examination of water infrastructure Development Consent Order (DCO) applications. It establishes the need for water resources projects in England that fall within the scope of the NSIP regime (for example reservoirs, water transfer schemes, desalination plants and effluent reuse but also other infrastructure types not specified in the Planning Act 2008 but that are made subject to a 's35 Direction') and introduces a presumption in favour of granting development consent for these DCOs (as explained further below).

It is also helpful in that it brings together government policies and planning guidance relevant to the consideration of water resources infrastructure and clarifies the relationship between how other policies (for example the NPPF, development plans and other NPSs) and relevant legislation should be applied to these DCO applications.

Crucially, it sets out the range of factors the Secretary of State must take into account in the decision making process, the weight to be given to them (for example substantial weight must be attached to the risk of flooding and coastal erosion) and when the Secretary of State is entitled to refuse an application (for example if significant harm to biodiversity resulting from the development cannot be avoided, following application of the mitigation hierarchy).

## PRINCIPAL CHANGES

Many of the changes to the published NPS made since the 2018 draft are updates that reflect the post-Brexit legal landscape, the current climate position and relevant current legislation and policy that links to the government's water resources ambitions and its planning.

A few key changes made to the final NPS that stand out include:

- **Clarification of the role of Water Resources Management Plans (WRMP) in the context of need.** If an NSIP is included in a water company's published final WRMP, which must be prepared every five years and approved by the Secretary of State under a separate process, the 'need' for that project has been demonstrated, and the details of the options appraisal process would not need to be reconsidered as part of the DCO application. However, infrastructure applications that fall outside the thresholds in the Planning Act 2008 but are subject to a s35 Direction will have to demonstrate there is a need for that type of infrastructure.
- **A new requirement that NSIP applications include a statement on the planned financial arrangements.** This statement must explain how the proposed infrastructure delivers value for money by reference to the analysis in the WRMP. This exposes DCO applications to a new avenue for examination, one that arguably extends beyond the planning considerations of the case. It will be interesting to see the extent to which consideration of these issues are permitted in examinations.
- **Clarification that the Environmental Statement should assess the likely worst-case environmental, social and economic effects of the proposal where some details are still to be finalised** (this change reflects more recent case law) along with mitigation measures and their likely efficacy and details of any ongoing monitoring or remediation that maybe required.
- **A requirement for a statement demonstrating how opportunities for delivering wider environmental net gains** (which is broader than and includes biodiversity net gain (BNG)) have been considered and incorporated into the project design to be included in the NSIP application.

## COMMENT

Of particular note in the context of need, is that the 2018 draft was clear that the need for a project does not need to be revisited as part of the DCO process, whereas now the final NPS leaves the door open, such that the needs case 'would not be expected' to be revisited. This will therefore be a matter on which examining authorities can form a view, depending on the level of information before them in terms of the needs case and will play into how the need is expressed in the respective WRMP – and what that need is expressed to be for.

The golden thread between the NPS and WRMP therefore remains crucial and WRMPs will effectively now need to perform a new planning function. The NPS also creates an express link between WRMPs and the new regional water resource process. It recognises in terms the

“collaborative, larger scale approach to meeting long term water resource challenges”. With so much change and new interdependent policies and plans, and a generational level of water resources required, the NPS will be tested hard from its very first outings.

## RELATED PRACTICE AREAS

- Planning & Zoning
- Infrastructure
- Water & Utilities

## MEET THE TEAM



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