

Insights

WHAT'S GOING ON DOWN AT THE NIC?

May 20, 2016

SUMMARY

A progress report on the UK's National Infrastructure Commission.

The UK NIC is now established in shadow form, with a CEO and commissioners; it's delivered three initial reports, the recommendations of which were all accepted by Chancellor George Osborne in his Spring 2016 Budget and the NIC was then given two new tasks, on 5G and the Cambridge-Milton Keynes-Oxford corridor. Alongside the NIC let's not forget that the work of the Airports Commission is now with Government for a decision, there's a new commission under Lord Heseltine looking at the Thames Gateway, and we have the review of tidal power under Charles Hendry – so the NIC isn't quite the only show in town, but it is the only overarching body.

Most recently then, in the May 2016 Queen's Speech, we've had confirmation that there will (as we expected) be a bill including provisions to establish the NIC on a statutory footing. That has flowed from the Government consultation in early 2016 which looked at how the NIC should be set up and function. In parallel with the main consultation, the response from Government notes that there were "discussions with infrastructure experts, including investors, academics, lawyers, planners, asset owners, network operators, representatives from the supply chain and economic regulators." So one would hope that the next steps are aligned with a broad consensus.

The Government has now responded to that consultation (see [Government response to consultation](#)), and this blog summarises that response.

It's worth remembering the express objectives of the NIC, as set out in the response, are to:

- "foster long-term and sustainable economic growth across all regions of the UK
- improve the UK's international competitiveness
- improve the quality of life for those living in the UK"

Overall, it is (unsurprisingly perhaps) reported that there was a large amount of support for the NIC and improving long-term infrastructure planning in the UK.

In terms of the detailed topics, the headlines are:

STATUS AND GOVERNANCE

- The NIC will be a Non-Departmental Public Body (NDPB).
- The chair, commissioners, and CEO will be appointed by the Chancellor (who must consult the chair before appointing commissioners).

OUTPUTS

- The Government of the day will set specific studies, following consultation.
- The Government says it will 'endeavour to' respond to all NIC recommendations (both in National Infrastructure Assessments (NIA) and specific studies) within 6 months – but there will be a statutory longstop date for responses of one year.
- Where the Government agrees with the NIC then the recommendations will become 'Endorsed Recommendations'.
- The Government 'intends' (so not 'it will'!) to give the NIC a duty to produce an annual progress report on how the Government is doing in delivering the Endorsed Recommendations. So a little bit of holding the feet to the fire – maybe...
- The Government 'proposes' to require regulators to 'have regard' to Endorsed Recommendations – what that ultimately means might be up for debate.

REMIT

- Legislation will enshrine the 'main aspects' of the NIC's duties.
- Government will have to issue a 'remit letter' once every Parliament, including fiscal remit, such that the NIC will have to consider affordability and deliver 'realistic' recommendations.
- In 'exceptional circumstances' the remit can be altered more often.
- The remit will tell the NIC when it has to produce its Assessments (NIAs), and will set out 'pressing objectives'.

OPERATION

- The NIC role will be allowed to ‘evolve with devolution settlements’ – and will have to ‘be aware’ of interactions with devolved administrations.
- The NIC will also be able to liaise with and request data from central Government departments.
- The NIC will also be allowed to request data and existing analysis from economic regulators – but importantly there won’t be an obligation on regulators to respond – which could leave some rather interesting balances and considerations in the future.

PLANNING

- Since the Planning Act 2008 we have had National Policy Statements (NPSs) for Nationally Significant Infrastructure Projects (NSIPs) – albeit the NPSs have taken a number of years to produce and some are now 5 years old – hence the Government states that, in response to a recommendation from the NIC, it will set out a timetable for reviewing the relevant NPS. That will include considering the scope of work required to ‘accommodate’ the Endorsed Recommendation.
- Usefully the response states that the Government recognises that Endorsed Recommendations and NPSs might ‘occasionally conflict’. Hence where there is conflict then the legislation will provide that in determining NSIP / DCO applications the Secretary of State may take their decision in line with the Endorsed Recommendation.
- Where there is no NPS, then Endorsed Recommendations will (where relevant) be taken forward as an ‘important and relevant matter’ by the decision maker.
- In terms of consultation on NPS reviews, the proposal is that any NIC consultation will be a starting point, and then the Secretary of state will have discretion as to how to use that NIC consultation work when consulting on the revised NPS.
- In terms of non-NPS infrastructure or indeed non-NSIP infrastructure (e.g. those where planning consent comes under the conventional Town and Country Planning Act), then the Government states it will amend the National Planning Policy Framework (NPPF) to give clarity on how Endorsed Recommendations are to be taken into account.
- So where decision making is at a local level, this should offer direction – but the response expressly refers to the ability of the Secretary of State to intervene where there is a ‘risk to the delivery of an Endorsed Recommendation’.

FINAL THOUGHTS

So in summary, the UK infrastructure arena continues to make good progress – and all the signs from the NIC (and indeed from UK Government) so far have been broadly positive – which gives much hope that UK plc can become a true world leader in co-ordinated infrastructure delivery, ready to support the next generation’s needs.

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MEET THE TEAM



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