

15 February 2010

By email: portsconsult@dft.gsi.gov.uk

Mr Mike Davey
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Dear Mike

DEVELOPING A PORTS NATIONAL POLICY STATEMENT – DfT CONSULTATION

Thank you for consulting us on the draft National Ports Policy Statement; our responses are below:-

Q1: *Do you think the draft ports NPS provides suitable guidance to decision-makers on the question of what need there is for new port infrastructure?*

The guidance clearly supports the need for increased capacity up till 2030. We very much support the forecasts and the slight caveat that in spite of the recession, the overall trends are sound, although completion of the forecasts could be delayed. To counterbalance this, our experience of previous forecasts is that they have tended to underplay expansion. We also welcome the NPS's steer towards producing some spare capacity which could help to deal with new markets and unforeseen events.

The forecast for bulk goods at 4% presents a stark contrast to increases in unitized traffic. One of the difficulties in forecasting bulk is the variety of markets which it covers and their unpredictability. There could be much higher rates of expansion for individual markets, for example energy. The 4% increase therefore should be seen as an all encompassing figure within which there could be significant variations. Allowance should be made for this, both in reviewing the forecast and dealing with development applications.

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Q2: Do you think the draft ports NPS provides suitable guidance to decision-makers on considerations relating to inland connections for new port infrastructure and the appropriate modal share of traffic?

This section provides a reasonable summary of the process decision makers should go through. So far as modal choice is concerned, the reality is that in England and Wales, two-thirds of all traffic entering or leaving ports is carried by road. Although alternatives are realistically looked at, we can only expect that this domination by road transport will continue in the absence of new policies aimed at achieving modal shift, presumably through a system of financial incentives. We agree (para 2.17.17) that rail and coastal shipping should be encouraged over road transport, but only sound commercial and practical reasons are likely to have any influence on freight movers – who ultimately make the choice – to divert from road. For rail in particular, many ports have struggled to put in place the right rail connections; congestion on the rail network can be as critical and limiting as road congestion.

Inevitably new capacity will generate more traffic with the potential for congestion and the draft NPS addresses this comprehensively. The draft places strong emphasis on the developer. Solutions to issues of access and congestion nevertheless lie as much with the government and levels of investment in public infrastructure. The Eddington report highlighted the value for money of access schemes serving international gateways which provide “an average return of £6 per £1 of government expenditure”. Notwithstanding the guidance provided in the draft, therefore, it is clear that successful developments will continue to require a mix of private investment backed by public investment in transport infrastructure. The use of port masterplans, which the IPC will need to take account of, should help to inform this process.

Para 2.17.29 is concerned with the funding of connecting infrastructure. We now have guidance on developer contributions which is a methodology to determine funding shares. Although the policy is therefore set, the IPC needs to be aware that it is a policy followed by no other EU member state in dealing with port development applications. The requirement to fund infrastructure is therefore an additional cost to UK developers and will have an affect on the UK’s competitive position.

Q3: Do you think the draft ports NPS provides suitable guidance to decision-makers on the economic impacts of port infrastructure?

The section on economic impacts summarises well the contribution of ports which go far beyond the basics of cargo and passenger handling. The document refers separately to the findings of the Oxford Economics Study and its important findings on the economic contributions made by ports to employment, the UK economy and to tax revenues.

Q4: It is a requirement of the Planning Act that an NPS must include an explanation of how the policy set out in the statement takes account of Government policy relating to the mitigation of, and adaptation to, climate change. Do you think the draft ports NPS adequately fulfils this requirement?

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We have no particular problem with the climate change section so far as it goes; it covers territory that is becoming progressively more familiar. The main difficulty for an applicant at this stage could be factoring in some complex data where final outcomes are still unknown – there are significant variations in forecasts for the next 50 years. The larger ports are mostly subject to the Carbon Reduction Commitment programme and will also need to respond to climate change adaptation legislation. On an issue of detail, the Environment Agency have still not provided full information of a sufficient quality on, for example, coastal flood data to enable a realistic risk assessment to be carried out. Ports will depend heavily on data generated by the government and its agencies; where data is insufficient, a pragmatic view should be taken. Clearly knowledge and techniques will improve over time, but the likelihood is that the first applications to go before the IPC will reflect incomplete data.

A particular issue arises for ports below the threshold. How these climate change provisions will be applied to smaller projects is an important issue, especially as the majority of ports will not be subject to national climate change legislation as described above.

Q5: *Do you think the draft ports NPS provides suitable guidance to decision-makers on the extent to which coastal and inland shipping should be considered?*

The guidance is reasonably flexible – which in our view it has to be – and we have no particular problem in the approach set out in section 2.17. It is especially important (para 2.17.22) that target modal shares for coastal shipping (and rail) should be “appropriate but not mandatory”. Ports would like to be in a position whereby they can offer different modes to access the port, but in many cases this is simply not possible. Also, the port itself only has limited influence on how cargo arrives at or leaves the port – these decisions are largely in the hands of freight forwarders.

Q6: *Do you think the draft ports NPS provides suitable guidance to decision-makers on the safety, security and health impacts of port infrastructure?*

Yes.

Q7: *Do you think the draft ports NPS provides suitable guidance to decision-makers on the need to promote equal access to the jobs, services and social networks created by port infrastructure?*

These sections tend to state objectives rather than provide guidance per se; this is an area that might be expanded. We are confident, for example, that a port development will create new and significant opportunities for jobs and services, but the role of “equal access”, and the extent to which ports might protect this and express this as part of a planning application, could be developed further.

Q8: *Do you think the draft ports NPS provides suitable guidance to decision-makers on the impacts of port infrastructure on the local population?*

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This has been partly covered in our response to Q6, but ports will need to take into account the views of the local population and the impacts of any development. Any impact would have to be balanced with overall economic gains which in themselves will most likely have a clear benefit to local communities. The existence of marine planning under the Marine and Coastal Access Act could help here in that it should identify where there may be conflicts between a development and existing activity.

Q9: Do you think the draft ports NPS provides suitable guidance to decision-makers on the impacts of port infrastructure on the natural environment?

We believe the draft NPS provides sufficient guidance to decision makers on these impacts. What should be borne in mind is that none of these areas is static and will be subject to developing policy and legislation – for example, on water quality, the Water Framework Directive will start to have an increasing impact as measures associated with river basin management plans start to take effect.

Q10: Do you think the draft ports NPS provides suitable guidance to decision-makers on the impacts of port infrastructure on biodiversity?

The advice on biodiversity is comprehensive and a useful summary of policy and legislation to guide both promoters and decision makers. This is a technically sophisticated area where ports are bound to need specialist advice on their impacts. It also raises the issue of the applicability of this extensive advice to “below the threshold” projects to be dealt with by the MMO and which could involve much smaller developments (see Q15b).

Q11: Do you think the draft ports NPS provides suitable guidance to decision-makers on the impacts of port infrastructure on the historic environment?

The advice is very comprehensive and seems to be largely a pulling together of advice with which the industry is reasonably familiar from current sources.

Q12: Do you think the draft ports NPS provides suitable guidance to decision-makers on the key considerations to inform the assessment of future port development applications?

We agree that Section 2.1 provides suitable guidance to decision makers as far as it goes. However, we feel the draft NPS is weak on the characteristics of UK ports which make them unique within the EU. In our view, it is especially important that the IPC understands the structure of ports, their markets and the European and international context within which they work. For example, we do not believe that it is brought out sufficiently clearly that of all the transport sectors that will be subject to an NPS, UK ports are quite different. This stems from their private sector status and the absence of a national masterplan, or regulator like the CCA, or systematic subsidy; expansion is dependent on ports recognizing commercial opportunities and providing and funding facilities to service them. In this connection, we take exception to the DfT’s assertion that “the private sector operates 15 of the largest 20 ports”. This suggests that the remainder are

operating as a public sector, yet in the same paragraph there is acknowledgement that all ports “operate on commercial opportunities, independently of government and without public subsidy” which to us is a clear description of a private sector enterprise.

We also believe that the draft NPS pays insufficient attention to the EU and international markets within which ports largely operate; there are very few ports which only serve discreet UK markets. Again, this is a factor quite different from that driving decisions on road and rail, where the concentration will largely be on the UK national market. This brings in issues of competition. The IPC should also be aware that on the whole, Continental ports, many of which will be in competition with UK ports, are not only publicly funded but receive other benefits such as reduced interest rates on loans and other tax benefits. Obviously, a promoter in putting forward their case, will wish to highlight the competitive distortions that this situation can create; nevertheless, the IPC should be aware through the NPS itself, that the context for port developments is likely to be quite different from that which applies to other parts of transport.

We suggest that the following changes are made as follows:-

Para 1.8.3

Add: “the context for most port trade is European and international. New capacity will, for example, need to reflect changing patterns of production and the impacts of the eastwards expansion of the EU”.

Para 1.9.1

- Delete sentence beginning “The private sector
- Add: “Ports policy and port financing have characteristics distinct from the other transport sectors subject to an NPS. New capacity is entirely dependent on proposals from private sector developers based on their assessment of the market.”

Para 1.11.10

After sentence ending “.....at full physical capacity”, add:- “Developments may be in direct competition with other EU ports, whose funding and strategies will be strongly influenced by public subsidy and ownership.”

It might also be helpful if the final draft draws more attention to the effect of the Marine and Coastal Access Act which sets up the MMO and whose expertise the IPC will draw on. The IPC will need to develop a strong working relationship with the MMO. It will produce marine plans which will characterize the coast in terms of commercial and other activity and provide important information to promoters and the IPC. Marine plans will provide data not previously available. Similarly, port development will need to comply with the principles of a National Marine Policy Statement, again introduced under the Marine and Coastal Access Act which will be consulted on over the coming year. We believe that the current NPS does not reflect these important changes sufficiently strongly.

Q13: Do you think the draft ports NPS gives appropriate guidance to decision-makers on how they should consider alternatives when it comes to particular projects?

We are concerned that the guidance raises more questions than it answers. Although under the Habitats Directive, there is a legal requirement to consider alternatives, developments outside Natura 2000 sites but which nevertheless come under the Planning Act, seem to be subject to the IPC taking a decision on “whether the project could be on a better scale, or design, laid out, constructed or operated in a better way, or located on a better site or route”. This suggests a level of speculation on port projects which goes beyond assessment of a proposal simply taken on its merits. There is almost a suggestion that the IPC could start to build up its own views on appropriate developments, going beyond the NPS and possibly in conflict with promoters. We would appreciate clarification on these points and a possible re-wording of the current version so that the precise role of the IPC is clear.

Q14: Do you think the draft ports NPS gives appropriate guidance on how the cumulative and in-combination/synergistic impacts of port development should be considered by decision-makers?

The guidance is appropriate and should be further informed by marine plans as described under Q13 above.

Q15: To what extent do you think the draft ports NPS as a whole provides suitable guidance to decision-makers to help them make decisions about development consent applications for new port applications? Please consider this in relation to both potential decision-makers

a) The IPC for port applications over the NSIP threshold; and

The Guidance is very much directed at projects above the threshold and, notwithstanding our comments on some of the detail, is generally clear and appropriate. Nevertheless, the thresholds are high and the number of projects with which the IPC will have to deal, certainly in the short term, is likely to be very low. It may take some years, therefore, before the IPC develops a full understanding of ports and their markets.

b) The future Marine Management Organisation for port applications under the NSIP threshold.

As projects under the threshold will cover a very wide range of developments and markets, some thought will have to be given to the proportionality of using the guidance as a whole for smaller projects, making clearer how the commitment to proportionality set out in 2.1.1 can be delivered. For example, the section on Climate Change is quite complex, dealing with data that is new and technically sophisticated. Although one would expect all projects to take account of climate change impacts, it would not make sense to go through such a thorough appraisal for what in some cases could be very modest developments.

Q16: Do you think the draft ports NPS considers all of the significant potential impacts of port development? If not, what do you think is missing and why?

The NPS is thorough and there are no other significant impacts which we could identify.

Q17: It is a requirement of the Planning Act that a NPS must give reasons for the policy set out in the statement. Do you think the draft ports NPS fulfils this requirement?

Yes, the background to the policy is set out clearly and is consistent with the development of ports policy since publication of Modern Ports in 2000.

Q18: It is a requirement of the Planning Act that the Secretary of State must have regard to the desirability of achieving good design. Do you think that the draft ports NPS fulfils this requirement?

Yes.

Q19: To what extent do you think the methodology used to assess the sustainability of the draft ports NPS is appropriate?

The methodology used is very thorough and we have no particular issue with it.

Q20: Do you agree that the environmental component of the AoS constitutes a SEA for the purposes of Directive 2001/42/EC?

Yes.

Q21: Has the AoS considered all the relevant plans, policies and programmes?

Yes.

Q22: Has the baseline analysis in the AoS missed or misrepresented any environmental, social or economic data?

No.

Q23: Are there any additional key sustainability issues relevant to the Ports NPS that need to be considered in the AoS?

No.

Q24: Are the AoS objectives and sub-objectives as set out in the AoS framework appropriate?

Yes.

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Q25: Are there any incompatibilities between the main NPS objectives and the AoS objectives which have not been identified in the AoS?

Although this is not necessarily an incompatibility, we do note that above the threshold projects have “primacy” over regional and local transport strategies and plans. Although this could of course be helpful to a port development, there could also be examples where agreement has been reached after long consultations on regional transport strategies which were then set aside as resources are dedicated to an alternative IPC project. The relationship between these plans, and the fact that regional transport strategies have been agreed before the Planning Act and the setting up of the IPC, means that there could be some incompatibility. At the very least, the NPS should refer both to Regional Transport Strategies and Port masterplans (neither of which are mentioned anywhere in the draft) as important contributions to planning of which the IPC should be aware.

Q26: To what extent do you think the alternatives covered are appropriate? Are there any additional alternatives that should be included?

The alternatives covered are all highly appropriate.

Q27: To what extent do you think the approach taken to the assessment of alternatives is suitable?

We have no problem with the approach to the assessment of alternatives.

Q28: Do you agree with the results of the assessment of alternatives?

We agree with the results.

Q29: To what extent do you think the approach used to identify and assess effects is appropriate?

The approach is appropriate.

Q30: To what extent do you think the assessment correctly identifies the sustainability effects of the draft NPS?

We believe the assessment identifies them correctly.

Q31: Do you agree with the recommendations proposed in the assessment?

Yes.

Q32: Have any key findings from the AoS report not been taken account of properly in the NPS?

No.

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Q33: To what extent do you think the approach to monitoring is sufficient to monitor the sustainability effects of the NPS?

We agree it is sufficient.

Q34: To what extent do you think the Appropriate Assessment is a suitable high-level assessment of the impact of port development on protected sites and species?

We agree it is suitable.

Q35: Do you agree with the analysis of costs and benefits set out in the Impact Assessment?

Yes.

Q36: Are there any impacts of producing a National Policy Statement that have not been considered?

No.

Yours sincerely



David Whitehead
Director