

Insights

WHAT DOES THE NEW WATER NPS MEAN FOR WATER COMPANIES?

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SUMMARY

Following compliance with the parliamentary requirements, the [National Policy Statement \(NPS\) for water resource infrastructure](#) was finally designated by the Environment Secretary on 18 September 2023, bringing it immediately into force.

This designation follows publication of the final draft in April 2023 and is almost five years since the initial consultation which commenced in late 2018, which we commented on in this BCLP Insight: [The New Water NPS: a milestone for water resources infrastructure](#).

WHY DOES THIS MATTER?

Many major water resource schemes will not simply need planning permission in the conventional sense – they will be so big as to be classified as ‘nationally significant infrastructure projects’ (NSIP) – and hence will require a different kind of planning authorisation, known as a ‘Development Consent Order’ (DCO) which is issued by central Government. At the heart of securing a DCO, is compliance with the relevant NPS.

OBJECTIVE OF THE NPS

With water resources infrastructure increasingly in the spotlight due to concerns around climate change and the adequacy of water supply to support housing delivery and other development plans, this NPS should provide water companies with greater clarity on the need and the government’s policies for the development of nationally significant water resources infrastructure projects in England.

The NPS aims to ensure these types of projects are delivered in a timely manner where needed to deliver new and secure resilient water supplies. As such, it will be used as the primary basis for examination and decision making of water resources DCO applications.

DRIVERS FOR NEED

This NPS sets out the need for water resources NSIPs alongside actions to reduce the demand, which is the basis of the government's 'twin track approach' to secure resilient water supplies. It identifies the four main drivers of need being climate change population growth, economic growth and environmental protection and enhancement.

RELATIONSHIP BETWEEN WRMPs AND DCO DECISIONS

The NPS clarifies the relationship between water resources management planning and applying for a DCO, setting out that it is through the process of preparing (including consultation), publishing and maintaining water resources management plans (WRMPs) in accordance with water companies' statutory obligations, that decisions will be made on what additional water resources infrastructure is required.

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' (para 1.4.5) to be revisited (albeit other parts of the NPS are firmer in stating that the need 'would not be revisited' (para 2.4.4)). 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 the new suite of WRMPs (as recently submitted by the water companies) will effectively now need to perform a new 'planning' function and be capable of being read through the lens of the NPS and DCO process. Water companies going through WRMP inquiries will no doubt be keeping a close eye on this new 'secondary' function of their statutory plans.

The NPS also addresses the link between WRMPs and the new regional water resource process. 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.

ASSESSMENT CRITERIA

Applicants will welcome clarity on the principles of assessment for DCO applications, which include climate change adaptation, design, the environment, health, safety and security, as this will support application preparations, along with guidance on the statutory environmental assessments required and the other regimes, such as environmental permitting and abstraction licensing, that operate alongside the Planning Act 2008 and guidance on assessing biodiversity net gain for these types of projects.

Helpfully, it clarifies the difference between environment net gain and biodiversity net gain, and confirms that the potential for environmental net gain would not be equal in all instances as the impacts of each of the three types of water NSIPs (being dams and reservoirs, transfer water resources, and desalination plants, as defined in the Planning Act 2008) would be different.

IMPACTS AND MITIGATION

The generic impacts to be considered during the DCO process are set out and covers 14 topic areas, with each topic area including specific advice on assessments, decision making and mitigation measures. Following the consultation, more detail was included particularly around mitigation, which should support applicants in the preparation of robust DCO applications.

COMMENT

It is hoped that designation of this important NPS will help give more certainty for the development of much needed water infrastructure projects. There is a whole suite of so-called 'Strategic Resource Option' (SRO) projects, being progressed through the Regulators' Alliance for Progressing Infrastructure Development (RAPID) 'gated' process, many of which will require a DCO. However, whether water companies and Examining Authorities will find that the NPS fulfils its objective and provides the clarity needed, will shortly be tested as a number of projects are in the pipeline and heading towards DCO examination in the coming years.

RELATED PRACTICE AREAS

- Planning & Zoning
- Infrastructure

MEET THE TEAM



James Parker

London

james.parker@bclplaw.com

[+44 \(0\) 20 3400 4132](tel:+442034004132)



Clare Eccles

London

clare.eccles@bclplaw.com

[+44 \(0\) 20 3400 4267](tel:+442034004267)

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