

## CRITICAL NATIONAL PRIORITIES

*What will the new policy presumption mean in practice?*

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# INFRASTRUCTURE CONSENTING SPECIALISTS

## OUR DCO EXPERIENCE

Heysham to M6 Link Road <b>1</b>	M25 Junction 10 <b>23</b>	Luton Airport Expansion <b>45</b>
North Doncaster Rail Chord <b>2</b>	M25 Junction 28 <b>24</b>	Hinckley Rail Freight Project (for local authority) <b>44</b>
M1 Junction 10a Improvement <b>3</b>	Able Marine Energy Park <b>25</b>	Heathrow Airport (for third parties) <b>47</b>
Stafford Chord <b>4</b>	North Killingholme Power Station (for objectors) <b>26</b>	New Tees Crossing <b>48</b>
A564 Knutsford to Bowdon Scheme <b>5</b>	Willington C Gas Pipeline (for affected party) <b>27</b>	Humber Low Carbon Pipelines <b>49</b>
Woodside Link <b>6</b>	Swansea Tidal Lagoon (for objector) <b>28</b>	East-West Rail <b>58</b>
Morpeth Northern Bypass <b>7</b>	Hornsea Project Three Offshore Wind Farm (for third party) <b>29</b>	Lighthouse Green Fuels Project, Stockton on Tees <b>51</b>
A160 / A180 Part of Birmingham Improvement (for objector) <b>8</b>	Manston Airport <b>38</b>	NSIP Solar Project, Cumbria <b>52</b>
Thames Tideway Tunnel (for objector) <b>9</b>	Norfolk Vanguard Offshore Wind Farm (for third party) <b>31</b>	NSIP Solar Project, East Riding <b>53</b>
Hinkley Point C to Seabank Grid Connection <b>18</b>	Thurrock Flexible Generation Project (for affected party) <b>32</b>	H2 Teesside (for third party) <b>54</b>
North London (Electricity Line) Reinforcement <b>11</b>	MetroWest Phase 1 (for third party) <b>33</b>	Small Modular Reactor (confidential) <b>55</b>
National Grid Richborough Connection <b>12</b>	Keadby 3 Carbon Capture (for third party) <b>34</b>	Small Modular Reactor (confidential) <b>56</b>
A19 Testo's Junction <b>13</b>	Sizewell C Nuclear Power (for local authority) <b>35</b>	Small Modular Reactor (confidential) <b>57</b>
A63 Castle Street, Hull <b>14</b>	Silvertown (s35 and implementation) <b>36</b>	Small Modular Reactor (confidential) <b>58</b>
A19 Downhill Lane Junction <b>15</b>	Boston Alternative Energy <b>37</b>	London Resort (to acceptance) <b>59</b>
Roskery South Energy from Waste (for DECC) <b>16</b>	Hornsea 4 (for third parties) <b>28</b>	International Advanced Manufacturing Plant (for third party) <b>68</b>
M42 Junction 6 <b>17</b>	Lower Thames Crossing <b>39</b>	Wyfa Nuclear Power (for third party) <b>61</b>
Hinkley Point C Nuclear Power Station (for third party) <b>18</b>	Net Zero Teesside <b>46</b>	Navitus Bay Wind Park (for objector) <b>62</b>
North London Heat and Power Project (for affected party) <b>19</b>	Lincolnshire Green Energy Park (for third party) <b>41</b>	Thanet Offshore Wind Farm (for third party) <b>63</b>
Riverside Energy Park (for third party) <b>28</b>	Drax Bioenergy with CCS (for third party) <b>42</b>	National Grid North West Coast Connections <b>64</b>
Esso Southampton to London Pipeline Project <b>21</b>	Sunnica Energy Park (for third party) <b>43</b>	
Great Yarmouth Third River Crossing (for third party) <b>22</b>	HyNet pipeline <b>44</b>	



# WHAT I AM GOING TO COVER

- Overview of DCO statutory policy context
- New suite of Energy National Policy Statements
- New Critical National Priority
- What constitutes '*low carbon infrastructure*'?
- How does the new policy presumption work?
- How has it been applied so far?



# OVERVIEW OF DCO STATUTORY POLICY CONTEXT

- **S.104 Planning Act 2008**
  - Secretary of State must decide a DCO application **in accordance with** any relevant **national policy statement** save where:
    - *this would lead to UK being in breach of international obligations, a break of any statutory duty imposed on the Secretary of State or it would otherwise be unlawful*
    - *the adverse impacts of the proposed development would outweigh its benefits*
    - *any condition prescribed for deciding the application otherwise than in accordance with the NPS is met*
- There are 12 NPSs in total, covering the energy, transport, water, wastewater and waste sectors
- Each NPS sets out the need for the type of development to which it relates alongside assessment principles to be employed as part of the project development and consenting phases

# NEW SUITE OF ENERGY NATIONAL POLICY STATEMENTS

Title	Designated
<a href="#"><u>EN-1 Overarching Energy</u></a>	17 January 2024
<a href="#"><u>EN-2 Natural Gas Electricity Generating Infrastructure</u></a>	17 January 2024
<a href="#"><u>EN-3 Renewable Energy Infrastructure</u></a>	17 January 2024
<a href="#"><u>EN-4 Natural Gas Supply Infrastructure and gas and oil pipelines</u></a>	17 January 2024
<a href="#"><u>EN-5 Electricity Networks Infrastructure</u></a>	17 January 2024
<a href="#"><u>EN-6 Nuclear Power Generation</u></a>	23 June 2011
<i>EN-7 Nuclear Power Generation</i>	Consultation draft expected later in 2024

# NEW CRITICAL NATIONAL PRIORITY

- Recognising the need to develop new low carbon sources of energy at speed and at scale if we are to meet our energy security and net zero ambitions
- Government has concluded that there is a Critical National Priority (CNP) for the provision of nationally significant low carbon infrastructure



## New presumption (para 3.3.63 of EN-1):

*“Subject to any legal requirements the urgent need for CNP Infrastructure to achieving our energy objectives, together with the national security, economic, commercial, and net zero benefits, will in general outweigh any other residual impacts not capable of being addressed by application of the mitigation hierarchy”*

- Government strongly supports the delivery of CNP Infrastructure, and it should be progressed as quickly as possible
- This applies to all ‘low carbon infrastructure’

# WHAT CONSTITUTES ‘LOW CARBON INFRASTRUCTURE’?



## **Electricity Generation**

*All onshore and offshore generation (other than fossil fuel combustion) including nuclear, some energy from waste as well as natural fired gas generation which is carbon capture ready*



## **Electricity Grid**

*All power lines within the scope of EN-5 including network reinforcement and upgrade works and associated infrastructure such as substations – these are not limited to any particular generation technology*



## **Section 35 Energy Schemes**

*Where they fit within the normal definition of ‘low carbon’ such as interconnectors, Multi-Purpose Interconnectors or ‘bootstraps’ to support the onshore network when routed offshore*

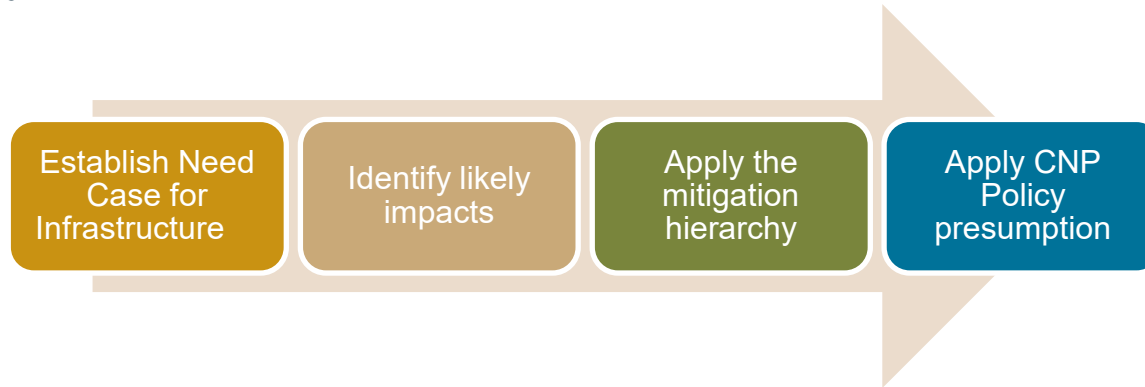


## **Other Energy**

*Fuels, pipelines and storage infrastructure, which fits within the normal definition of ‘low carbon’, such as hydrogen distribution, and carbon dioxide distribution*

# HOW DOES THE NEW POLICY PRESUMPTION WORK?

- EN-1 assessment principles ***continue to apply*** to CNP infrastructure
- CNP policy does not create an ***additional*** or ***cumulative*** need case or weighting



Applicants must still follow the mitigation hierarchy and show how any likely significant negative effects would be avoided, reduced mitigated or compensated for



# HOW DOES THE NEW POLICY PRESUMPTION WORK?

- The CNP presumption is *'relevant during the Secretary of State's decision-making process and specifically in reference to any residual impacts'*
- This means it will be relevant to the Examining Authority and, in reality, to the DCO applicant in developing its proposals!
- EN-1 sets out how:
  - non-HRA and non-MCZ residual impacts are to be considered in the planning balance; and
  - HRA derogations and MCZ assessments are to be treated, including how the alternative solutions and IROPI tests are to be considered

# HOW DOES THE POLICY PRESUMPTION WORK?

- Non HRA or Non MCZ impacts are unlikely to outweigh the urgent need for CNP infrastructure:
 

*“In all but the most exceptional circumstances it is unlikely that consent will be refused”*
- Starting point is that any test set down in the NPS which require a ‘clear outweighing of harm’, ‘exceptionality’ or ‘very special circumstances’ is to be treated as met:

Very special circumstances justifying green belt development

Benefits will clearly outweigh likely impacts on features of SSSI and any broader impacts on the national networks of SSSIs:

Exceptional circumstances justifying development in nationally designated landscapes

Exceptional or wholly exceptional need justifying substantial harm or loss of significance to heritage assets

Exceptions for unacceptable risk or interference with: *human health and public safety, defence, irreplaceable habitats, unacceptable risk to the achievement of net zero, Navigation (offshore) and Flood and coastal erosion (onshore)*

# HOW DOES THE POLICY PRESUMPTION WORK?

- HRA or MCZ residual impacts will continue to be considered under the framework set out in the Habitats Regulations and MCAA 2009 respectively
- In the context of any derogation case, the starting position is that energy security and decarbonisation:

*“requires a significant number of deliverable locations for CNP Infrastructure and for each location to maximise its capacity. This NPS imposes no limit on the number of CNP infrastructure projects that may be consented. Therefore, the fact that there are other potential plans or projects deliverable in different locations to meet the need for CNP infrastructure is unlikely to be treated as an alternative solution. Further, the existence of another way of developing the proposed plan or project which results in significantly lower generation capacity is unlikely to meet the objectives and therefore be treated as an alternative solution; and*

*are capable of amounting to imperative reasons of overriding public interest for HRAs, and, for MCZ assessments, the benefit to the public is capable of outweighing the risk of environmental damage (for MCZ assessments) for CNP infrastructure”*

- Compensatory measures (or those of equivalent environmental benefit) are still required



# HOW HAS IT BEEN APPLIED SO FAR?

- New policy only applies to DCO projects accepted following designation of EN-1 (January 2024), but it has already been referenced in some recent DCO decisions:

## Yorkshire Green Energy Enablement Project (March 2024)

- In her decision letter in relation to this electricity transmission scheme, the Secretary of State noted that the scheme would be considered a critical national priority and that *“this strengthens the need case for the Proposed Development”*

## Net Zero Teeside Project (February 2024)

- This scheme involves a gas fired plant with carbon capture storage and the decision letter notes *“that designated 2024 EN-1 further strengthens the support for the Proposed Development by making nationally significant low carbon infrastructure, including natural gas fired electricity generation which is CCR, a critical national priority... this is in addition to the moderate beneficial weight accorded to the socio-economic effects”*

# HOW HAS IT BEEN APPLIED SO FAR?

## Cruyton Solar Farm

- Appeal against Dorset Council's refusal (in November 2022) to grant planning permission for a new 12MW solar site at Cruyton Farm in Dorset
- The Secretary of State's [decision letter](#):
  - took account of EN-1 and EN-3
  - acknowledged the CNP for significant low-carbon infrastructure
  - But disagreed with the Inspector's conclusions on exceptional circumstances
  - concluded that:
    - *the impact on an AONB,*
    - *harm to a public right of way, and*
    - *reduction in agricultural land*all meant that the overall planning balance was, in the view of the Secretary of State, negative and the appeal was refused



# THANK YOU AND QUESTIONS

Drop me a line if you have any follow up questions:  
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