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Draft National Policy Statement (“NPS”) for Water Resources & other Legal Mechanisms

A few of us from Thames Blue Green Economy recently met with your Policy Advisor, Richard Benwell, to discuss our thoughts as to how we see the implementation of the NPS for Integrated Water Resource Management (IWRM) in England, which we understand to be in the latter stages of drafting.

Our prime concern to date has been that the earlier April 2018 draft was too narrow and focused on the accommodation within the planning framework of NSIP investments in water supply, whereas we believe that a wider context is called for. Indeed, over recent months and weeks the enthusiasm for events such as Green GB Week has shown the growing public awareness, involvement and support for initiatives across the environment and water sectors, requiring a broad response.

The comments below, therefore, are provided with the intention of assisting DEFRA in the preparation of the final text.

1. Scope of NPS:

Water is a physically-defined item. It is manifest to mankind in many forms. As a “resource”, it represents both a “supply”, and a “stock”.

However, the earlier draft NPS focused primarily on the “supply” of water in the UK, with little regard for the “stock”. Hence, its current scope may be considered as too narrow.

Any NPS for “Water Resources” in the UK should essentially cover the “stock”, or management, of water resources, i.e. water and flood management.

As the draft NPS did not adequately address the wide range of potential investments needed in the water sector as a whole, re-focusing of the NPS is required.

2. “The Perils of Vanity”:

The focus of the draft NPS was the identification of large, multi-million £ projects, - defined as “NSIP”s, - which in reality are often not the optimal solution to the issues faced. Mega-projects

carry higher risks, both for completion to time, cost and specification and for financiers, when cheaper, lower risk alternatives are available.

In the context of water management, such “mini-investment projects” are a common feature, with many proposals best addressed as local, modest initiatives rather than as some “grand projet”. For example, the issues of water catchment, SuDs, real-time management of sewers, etc. are seemingly ignored in the draft NPS in contrast to mega-investment projects beloved of engineers, bankers, politicians and lawyers.

A wider perspective of the issues faced in the water sector would take into account the implementation and impact of IWRM, which many cities around the World are now adopting and a requirement of the Sustainable Development Goal 4. The NPS is an opportunity not to be missed for the UK to be up with the leading nations in this field. Unfortunately, with this draft NPS, the UK will be seen as still living in the 20th century.

3. **NSIPs:**

Unfortunately, the draft NPS takes as a precedent NSIP the Tideway Tunnel (NB. not to be confused with the Thames – Lee Tunnel, built from Hampton to Lee Valley in the 1950's), which is technically already out of date.

Furthermore, the Tideway Tunnel is arguably structurally flawed, - commercially, corporately and financially, - and its designation as an NSIP only brings HM Government into disrepute.

Apart from the complex structure and multiple conflicts of interest between the incumbent water utility (Thames Water), the “infrastructure provider” (Bazalgette), DEFRA, the Regulator, the advisors and financiers, the Tideway Tunnel seemingly breaches the statutory Water Industry (Specified Infrastructure Projects) Regulations 2013 (ref. para 4.3) in that the incumbent water utility/undertaker (Thames Water) is to lease the assets on completion to deliver the service required by the NSIP (which it was banned from using under the Regulation).

Additionally, the Tunnel being a 25km 7m diameter concrete and steel tube indirectly emits large volumes of CO₂ in its construction.

Simpler, lower cost, and lower risk investment proposals, which achieve the same outcomes, are available today, and the NPS should focus on them.

4. **The NPS: a Flawed Strategic Plan:**

The Amec Foster Wheeler “scoping study” for the NPS confirmed that “the uptake of sustainable drainage systems” should be encouraged and “flood risk presents a significant planning issue in the development of major infrastructure projects” (ref. para 5.2 & 7.4). Sadly, such issues have seemingly been relegated in the draft NPS.

A more holistic approach to the management of water resources in its wider interpretation is needed. Further, a piece-meal approach is sub-optimal, both in planning and management terms.

Given the potential risks from flooding faced by London and The Thames Valley, - not least as the main engine room of the UK economy, - there is a responsibility for Government to seek a more comprehensive and publicly acceptable national policy for water management in all its aspects than is represented by the draft NPS.

In this context, the planned construction by the Environment Agency of the £500mn Jubilee 2 Scheme (under the River Thames Scheme, “RTS”) is a prime example where a holistic plan, embracing Government, local authorities and water utilities is required to manage potential flooding events rather than what currently is being proposed..

This investment project arose out of the £0.5bn est. damage arising from the Feb 2014 floods around Wraysbury/Staines.

In summary, the RTS involves upgrades of various weirs on the lower part of the non-tidal Thames, - some of which have already been implemented, - plus the construction of three new bypass channels, collectively known as "Jubilee 2", viz. (a) Datchet-Staines; (b) Staines-Chertsey; and (c) Chertsey-Walton, to complement Jubilee 1 (Windsor-Maidenhead, built in the late 1990's - 2004, not without controversy, at a cost of approx. £100mn).

These new channels, in the event of surplus floodwater arriving from the Upper Thames, will allow floodwater to be passed down the Thames quicker and in greater volume to the Teddington/Twickenham area.

The key question asked, - which the Agency have yet to answer, - is what happens at Teddington Lock when the increased volume of floodwater arrives and there is a spring tide coming back upstream over the weir at Teddington Lock at the same time? - an event which often occurs without Jubilee 2! There could be significant flooding in Teddington/Twickenham, as a result.

The argument that on such occasion the Thames Barrier will keep back the tide is somewhat a flawed response. What happens if the Barrier fails, or is inadequate, as some climate change forecasts predict? Wider areas of London could be at greater risk.

The obvious answer to mitigate and minimize the risk is to build some additional flood-plain capacity in the Upper reaches of the Thames and its tributaries to meet such events. To date, however, the Environment Agency has seemingly dismissed this option.

In fact, after the 2014 floods, using the flow data at Kingston Bridge, it was calculated that a flood plain, or "reservoir", with a capacity of twice that of the QE II Reservoir in the Upper Thames Valley would be needed, built either as one, or at multiple, sites along Thames tributaries, in order to maintain water levels at or around that experienced in Teddington in 2014.

The message from the above is obvious. A comprehensive and justifiable policy for water management in river catchment areas is lacking, and this is not addressed by the NPS.

Given the issues and the need for a holistic approach to water resource management, the question arises as to where responsibilities should lie?

The England & Wales water supply and sewerage services are provided by privatized utilities under OFWAT regulation, with DEFRA having oversight. Nevertheless, the parties who have greatest knowledge and data as to water resources nationally are these water utilities.

5. An Institutional Framework for Developing Integrated Water Resource Management:

It is clear that the current institutional framework for managing the UK's water resources in all its parts is sub-optimal. Currently, the legal responsibilities are piecemeal with no one entity with overall oversight, responsibility and accountability.

Consideration, therefore, should be given via the NPS for:

- (a) a review to be undertaken of the current geographic responsibilities of the water supply and sewerage service utilities in the context of the water resource assets currently within their remit and their water resource management capabilities. Do such geographical and operational responsibilities match national water resource availabilities in a coherent structure? If not, are regional reorganizations required to give an optimal response to water resource management demands? This may ultimately require utility mergers or consolidations along river catchment areas, etc. to be effective;

- (b) the definition of responsibilities and accountability for the entities responsible for the different components within overall national water resource management, with an appropriate command structure to ensure coherence and coordination of activities. Such a framework must embrace:-
- the Environment Agency (representing agricultural, as well as environmental interests, amongst many interests);
 - Local Authorities / Councils;
 - Coastal protection authorities;
 - Water and Sewerage Utilities;
 - Internal Drainage Boards; and
 - Flood Management Authorities.
- (c) Within the above structure, the current water utilities should play a key role, which may require an adjustment or expansion of their statutory responsibilities, e.g. for flood management, with an appropriate compensation mechanism attached for their efforts. In many instances, such utilities have most experience and knowledge of local conditions so as to be best placed to lead initiatives to enhance water resource management.
- (d) Providing, via support for expediting planning approvals by Local Authorities, etc., for private / public initiatives to implement water resource management projects, e.g. SUDs, “blue-green” enhancements, etc., with, where appropriate, concessional funding, supported either directly, or indirectly via the tax system, so as to encourage public support for environmental enhancement within the community.

6. **Other Existing Legal Mechanisms**

We also suggest that the NPS should include decision making criteria to be followed and justified by all the listed bodies above. The criteria needs to be derived from existing legal obligations that are not currently being discharged adequately i.e. the obligations under the Climate Change Act 2008 (reduction of carbon, mitigation and adaption), the Water Framework Directive 2004 (to have achieved ‘good water quality’ status by 2015), The Natural England and Rural Communities Act 2006 (to enhance and conserve biodiversity) and Health & Social Care Act 2012 (The solution/proposal should benefit health of the local and neighbouring populations).

The NPS policy could bridge this gap.

We hope that the above comments and suggestions will help DEFRA to finalise the NPS so that a more comprehensive policy can be implemented going forward.

Tony Berkeley
