

Submission to HM Treasury's consultation on the governance, structure and operation of the National Infrastructure Commission

March 2016

1. Introduction

- Balfour Beatty is a leading international infrastructure group. We have more than 100 years of experience globally and draw on the engineering skills and innovation of over 20,000 highly committed employees across the UK. Balfour Beatty finances, develops, delivers and maintains the increasingly complex infrastructure that underpins this country's daily life – in transportation, power and utility systems, social and commercial buildings: from Crossrail and the Channel Tunnel Rail link, Heathrow T2b to the M25, M4, M5 and M6 smart motorways; Sellafield and soon Hinkley B nuclear facilities; and the Olympics Aquatic Centre.
- Balfour Beatty welcomes the proposals set out by the government on the National Infrastructure Commission (NIC), especially the remit to identify strategic infrastructure needs over a 30-year period as well as considering and proposing solutions to the most pressing infrastructure issues in the UK. It is completely right that decisions on infrastructure should be based on expert analysis, the long-term strategic interests of the UK as a whole and that an independent body should be tasked with undertaking this and with building consensus around its recommendations.
- It is essential for the UK's future competitiveness that we secure increased private investment into national infrastructure. In order to attract this investment in an increasingly competitive global economy, it is imperative to have clear, robust long-term goals for infrastructure as well as a stable policy/regulatory framework. Given infrastructure development typically requires planning processes that exceed five-year parliamentary terms, it will be important for the Commission to secure a cross-party support and be transparent about how its recommendations are implemented.
- Balfour Beatty welcomes the establishment of the NIC, which heralds a new and much needed approach that deals with interdependencies between sectors over the long-term. We believe that the establishment of such an important body and its impressive members demonstrate the seriousness with which the government is approaching the infrastructure agenda.
- In our view, how effective the NIC proves to be will depend on how it works in practice, not just in terms of its own operations, but also how it works alongside existing structures, regulators and government departments.
- We hope our expertise and responses provided in this document will add value to the development of the proposals set out in the consultation paper.

2. Status and Governance of the Commission

Q1: Do you agree that the National Infrastructure Commission should be established as a non-departmental public body via primary legislation?

- Balfour Beatty supports the proposal for the NIC to be formed through primary legislation and agrees that it should be established as a non-departmental public body (NDPB). As rightly pointed out in the consultation paper, the Commission should be independent and separate from HM Treasury, government departments and regulators. The NDPB model, in our opinion, provides the Commission with the legal form that will enable it to be as autonomous as possible. Not being an integral part of any government department and carrying out the work at arm's length from Ministers will ensure that the NIC has the required instruments and tools at its disposal to be successful in the pursuit of its duties. To reinforce the NIC's independence, it would make sense for the commissioners and staff to be located separately from HM Treasury, government departments and regulators.
- The consultation paper states that the Commission will not make recommendations on social infrastructure, such as housing, hospitals and schools but is silent on the rationale behind this chosen approach. Needless to say that the development of social infrastructure also fosters the long term economic growth and influences the UK's international competitiveness as well as the level of well-being of UK citizens (the purpose of the Commission as outlined in the paragraph 2.1). Given both economic and social infrastructure are critical to socio-economic development of the UK, a holistic approach to their strategic planning should be adopted by a single overarching body. Excluding social infrastructure from the remit would limit the Commission's ability to make viable recommendations because the long term planning for infrastructure renewal and expansion cannot be conducted in isolation from its social element adequately. For example, a significant boost to the UK economy from HS2 will be achieved if the development of HS2 is accompanied by regeneration and renewal of social infrastructure in the related regions (a HS2 station near Birmingham Airport and a potential new community, "UK Central", illustrates this case). The inclusion of social infrastructure into the Commission's remit would also ensure that the limited public sector resources and market capability are appropriately managed and with a sense of priority. For these reasons, the NIC should include social infrastructure within its remit.
- Balfour Beatty supports the Commission's proposed method of funding, particularly the principles of providing a rolling "grant-in-aid" and giving the authority to use it however the Commission feels appropriate in the pursuit of its duties. The "grant-in-aid" should be secured for a long period of time. The size of the team of experts and the financial resources available to the Commission should be commensurate with its remit and scope. This would ensure funding certainty, considerably strengthen the Commission's independence and help it to formulate robust recommendations.
- The NIC Chair and the Commissioners are proposed to be appointed by the Chancellor for an initial term of up to 5 years, after which they may be reappointed for one more 5 year term. While Balfour Beatty sees the selected process of appointment as suitable, we would like to propose some alternatives for consideration. For example, the term of the Chair and the Commissioners could be extended to 7 years non-renewable. Given infrastructure development typically requires planning processes that exceed five-year parliamentary terms, this approach will help to mitigate the impact of the short term policy changes introduced by the newly elected governments on the Commission's work. Separately, a cross-party appointment of the Commissioners, who would elect the Chair of the Commission themselves (subject to the final Chancellor's approval) would, in our opinion,

considerably increase the chances of successful delivery of the Commission's recommendations.

- Balfour Beatty believes that the creation of the NIC is a major step forward towards an accelerated socio-economic development of the UK in comparison to the existing framework. However, the consultation paper stopped short of describing the mechanism for crystallising the NIC's recommendations into a long term pipeline of projects including identified sources of funding, timeframes for implementation and proposed commercial vehicles for delivery. The visibility over these aspects is key to establishing private sector confidence and commitment.
- We support the Infrastructure Projects Authority (IPA) in their continued extensive effort of production of the annual National Infrastructure Plan (NIP). In our opinion, the current format of the NIP should be expanded further to include more details on the future projects, programmes and schemes which the government proposes to finance on a project finance basis. Such details include the planned sources of funding (paid by the state budget or directly by the consumer), the recommended timeframes for implementation and the anticipated risk sharing mechanism between public and private sectors. In terms of the risk allocation, there are existing tried and tested partnership models in the UK and these could be used more widely for future projects (for example, the PF2 public private partnership model for procurement and allocation of commercial/financial risks is well known to the private sector investors).

3. Outputs of the Commission and the Timing

Q2: Do you agree that the commission's National Infrastructure Assessments should be laid before Parliament and that the Government must respond within a specific timeframe? What would an appropriate timeframe be?

Q3: Do you agree that it should not be mandatory for the Government to lay the recommendations from specific studies before Parliament, but that the Government should have discretion to do so where necessary?

Q4: Do you agree that economic regulators should 'have regard' to Endorsed Recommendations?

Q5: Do you agree that Government should legislate to oblige the commission to produce National Infrastructure Assessments once in every Parliament?

Q6: Do you agree that that the precise timing of reports and interim publications should be a matter for the commission in consultation with relevant departments?

- Balfour Beatty agrees that the National Infrastructure Assessment (NIA) should be laid before parliament and that a duty should be placed on HM Treasury to respond on behalf of the government within a specific timeframe. In our opinion, an appropriate timeframe for the government to respond would be 6 months.
- Balfour Beatty supports that the identified infrastructure needs a time horizon of up to 30 years and that the production of the NIA should be a primary function of the Commission. It makes sense for the recommendations accepted by the government (i.e. Endorsed Recommendations) to become the foundation of government policy for the infrastructure development.
- Balfour Betty considers that the recommendations from specific studies should also be laid before parliament. These specific infrastructure studies are likely to concern important

infrastructure development plans and projects and it seems appropriate that they should be subject to the same level of scrutiny as the recommendations made in the NIA.

- It is proposed that the Endorsed Recommendations would not be legally binding on the economic regulators, such as Ofcom and Ofgem. However, the legislation would place an obligation on these regulators to “have regard” to Endorsed Recommendations alongside their other duties and interests. While this makes sense, it does seem to fall between two positions and leaves the potential for ambiguity, especially as it states elsewhere that Endorsed Recommendations will be considered as government policy. We would also welcome clarity on the proposed approach for resolving conflicts between the Commission’s recommendations and the decisions/actions of the regulators including the Committee on Climate Change.
- It is proposed in the consultation paper that the responsibility for taking decisions on what infrastructure needs to be built, and for delivering or facilitating the delivery of the infrastructure itself, will remain with the government and regulators. Whilst the principle is confirmed that the Commission will hold the government to account for delivery of the Endorsed Recommendations and individual projects, the exact mechanics of control and audit are not described in the paper and will be crucial to its efficacy. One of the key responsibilities of the NIC should be to monitor how effectively its recommendations are being implemented by the government. Balfour Beatty recommends that, as part of its monitoring duties, the Commission produces an annual progress monitoring report which assesses and opines on the status at the time of the Endorsed Recommendations.
- The recommendations made by the Commission in the NIA should remain realistic and deliverable from the moment they are accepted by the government until they are executed, which could be a long period of time. This is likely to be a challenge given a number of factors (for example, technological advances, changes in the global socio-economic trends, climate change, etc) can impact the NIA’s recommendations. It therefore makes sense to allow a certain degree of flexibility for the NIA to be updated at regular intervals in order to factor any relevant dynamics. For example, the Commission’s annual progress monitoring report could include a section on any changes to the Endorsed Recommendations that the Commission is proposing for government’s consideration.
- Balfour Beatty agrees that the government should legislate to oblige the Commission to produce the NIA once in every parliament. Balfour Beatty agrees that the timing of the NIAs issuance will be important, both to ensure that the government is able to endorse and deliver on the Commission’s recommendations, and so that it can influence decision-making processes on large scale infrastructure programmes. In terms of the NIAs, Balfour Beatty believes that the government should set in legislation the maximum allowable time period for the Commission to issue the NIAs, for example, within 12 months from the election of a new parliament. As far as the interim documents and notes are concerned, we agree that the timings and the nature of these should be a matter for the Commission itself to decide.
- The production of the first NIA might take longer than its subsequent versions, particularly given that the Commission’s operational structure has yet to be fully established and the minimum time period required to collect data/analysis and form relationship interfaces with HM Treasury, government departments and regulators. It would therefore make sense to allow a reasonable amount of lead time for the first NIA to be produced and this should be a matter for the Commission and the government to agree upon.

4. The Commission's Remit

Q7: Do you agree that a GDP envelope would provide the most effective fiscal remit for the commission?

Q8: Do you agree that a transparency requirement should be placed on the commission with regard to its economic remit?

Q9: Do you think that any additional constraints are necessary to deliver the commission's anticipated benefits to consumers?

Q10: Do you agree that the remit should be set by a letter from the Chancellor, on behalf of the Government?

- Balfour Beatty supports the proposal that sets out a fiscal remit and an indicative financial envelope for the Commission. This will help to ensure that the Commission's recommendations are as credible, realistic and deliverable as possible and bought into by the government and market participants. We do not see any specific issues with using the GDP envelope methodology as an effective fiscal remit for the Commission and we agree that both the fiscal remit and the duty to provide an indicative financial envelope should be enshrined in legislation.
- The Commission should consider various alternative routes of financing the capital requirements of the infrastructure projects and identify the likely funding sources which will ultimately pay for the asset (i.e. paid by the consumers, through public spending raised from taxation or a combination of the two).
- Balfour Beatty agrees that a transparency requirement should be placed on the Commission with regard to its economic remit and does not think that any additional constraints are necessary to deliver the Commission's anticipated benefits to consumers.
- Balfour Beatty expresses no objection to the fiscal and economic remit to be set by a letter from the Chancellor at the beginning of each parliament. The Commission should be allowed to comment on the adequacy of the financial envelope, fiscal and economic remit proposed to the long term infrastructure development needs independently formulated by the Commission. When commenting on the remit as proposed by the Chancellor, it would also be useful to analyse the experience and recent statistics from similar developed countries.
- The consultation paper does not propose a mechanism for allowing the performance of the Commission itself to be measured (i.e. what are the Commission's KPIs?) and clarity on this aspect would be useful.

5. Operation of the NIC

Q11: Do you agree that the commission's working assumption should be to only review those areas of infrastructure that are the responsibility of the UK Government?

Q12: Do you agree that the decision of whether to accept or reject the commission's recommendations should rest with the responsible Government?

Q13: Should departments be obliged to accede to the commission's requests for analysis?

Q14: Do you agree that the legislation used to create the commission should place obligations on the relevant regulators and public bodies to share information with the commission?

Q15: Should legislation also place obligations on the relevant regulators and public bodies to provide analysis for the commission?

- Balfour Beatty believes that the Commission’s duties should cover areas of infrastructure development that benefit the country as a whole including any devolved administrations. In our view, the Commission should work closely with the devolved administrations to define the pinch points and infrastructure priorities for each area of the country as well as considering issues of national importance such as aviation capacity, connectivity beyond the southeast, the long-term plan for high speed rail and roads’ network, energy and climate. In addition, it is important that the Commission takes an active role in supporting the devolved administrations in the development of their own infrastructure planning capabilities. This will be increasingly important as Authorities based in city regions take on ever more ambitious infrastructure programmes. The Commission’s cooperation with the devolved administrations should also include knowledge transfer and sharing of experience/expertise.
- It is reasonable for the responsible government to be able to accept or reject the Commission’s recommendations, as long as the basis for rejection is transparently shared with parliament and the public.
- In terms of its work with other government departments, the current proposal is that an MoU would be required between the departments and the Commission on sharing information. However, given that this information will be so critical to the Commission’s work, there may need to be a specific duty in statute on the government departments to share the information with the Commission.
- We agree that the relevant regulators and public bodies should be obliged by law to share information with the Commission and that the same bodies should be obliged to provide analysis for the Commission. The Commission will need full access to this information and analysis to carry out its duties. The only other option, in our view, would be for the Commission to carry out the analysis itself, which would be more costly to the public purse and possibly not as effective, requiring duplication of the roles and resources which already exist within government departments and regulators.
- The Commission should not become another layer of governance for organisations such as Transport for London and Transport for the North.

6. Planning

Q16: Do you agree that the Government should specify a timetable to review or replace a National Policy Statement when endorsing recommendations?

Q17: Do you agree that, while additional consultation may be necessary, consultation undertaken by the commission should not be repeated by the Secretary of State when preparing a National Policy Statement?

- Balfour Beatty considers that the Endorsed Recommendations should be material considerations (as opposed to “likely to be” as per the paragraph 7.4) for the purpose of both the Nationally Significant Infrastructure Projects (NSIP) and locally led planning regimes. Given the Endorsed Recommendations will become government policy it would be appropriate for the decision-makers to treat them as material considerations without any ambiguity.

- Balfour Beatty believes that the Endorsed Recommendations should be reflected in the National Policy Statement (NPS) and agrees that the government should specify a timetable to review or replace a NPS when endorsing recommendations.

More generally, it is important that the work needed to produce the Endorsed Recommendations and an NPS is not duplicated by the Commission and government departments. As far as we understand, any contradictions between the Endorsed Recommendations and an NPS will be resolved through regular amendments to an NPS. However, it remains unclear how the Endorsed Recommendations and an NPS would complement each other. The detailed scope proposed for the Endorsed Recommendations is not provided within the consultation paper and it is therefore difficult to assess how this will work in practice and what complementary information will be contained in an NPS. We would welcome clarity on this point.

- Balfour Beatty agrees that the consultation already undertaken by the Commission should not be repeated by the Secretary of State when preparing a NPS.

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