

National Needs Assessment

Institution of Civil Engineers

Call for Evidence

Response of Pinsent Masons LLP

1. PINSENT MASONS LLP

We are the largest international law firm providing full service legal solutions to the infrastructure sector. We provide the full breadth of legal services that our clients need for any infrastructure project or asset almost anywhere in the world.

We advise all types of stakeholders in all infrastructure sectors across the whole life-cycle of infrastructure assets: authorisation, procurement, financing, delivery, operation and investment.

As a law firm, we are not the experts in what the drivers for demand for UK national economic infrastructure will be. However, we can bring our expertise to bear in setting out what we have observed are the main constraints on the UK's ability to provide sufficient UK national economic infrastructure and what solutions or mitigations of those constraints the UK can adopt as well as the changes in policy and regulation the UK should prioritise.

2. A LONG TERM PLAN

2.1 The ICE's vision and outcomes for the NNA is set out as follows:

The UK will invest efficiently, affordably and sustainably in the provision of infrastructure assets and services to drive the economic growth necessary to enhance the UK's position in the global economy, support a high quality of life and shift towards a low carbon future.

This requires a comprehensive decision making framework which considers both demand and supply-side approaches to meeting the UK's needs and which can deliver:

- *Resilient, flexible and efficient infrastructure, designed with consideration for future technological advances and climate change and where asset and networks' cross-sectoral interdependencies are identified and managed.*
- *National decision-making that is integrated with regional and local planning.*
- *Timely investment in new low-carbon infrastructure capacity.*
- *Technological innovation in the provision and consumption of infrastructure services.*
- *Management of demand in ways that will enhance system efficiency and service quality.*
- *Investment in resilience to ensure continuity of service when systems are under stress.*
- *The efficient provision of infrastructure services which meet the changing needs of users.*

- *Long-term, objective and consistent policy, regulatory and investment regimes*

- 2.2 We agree that there is a need for a comprehensive decision making framework and in our view, **the key priority and our focus in this response is the pressing and urgent need for consistency and stability in Government policy towards infrastructure provision in the UK**, that is to say, Long-term, objective and consistent policy, regulatory and investment regimes. For too long, the short-term political calendar has dominated the thinking behind infrastructure provision, resulting in instability and an unattractive environment for infrastructure promoters, financiers and constructors. This is reflected in the fact that in the recent Arcadis Index of Built Asset Wealth, the UK was ranked only 13th in the world, behind most other G7 nations and the trend for the UK is generally downwards.
- 2.3 The **key aspect of that framework which is currently lacking is a comprehensive long-term plan**. That plan needs to be cross-sector and adopted over a time period of at least 15 to 20 years. It should identify the UK's infrastructure needs and establish the priority for the delivery of those needs over the period of the plan.

Key features of a long term plan

- 2.4 The long term plan should be **ambitious** and to be truly effective in giving consideration for future technological advances and climate change, it should not look only at adding to, augmenting or altering existing infrastructure assets and networks. It should look at what is needed, not only what can be altered. For example, in relation to electricity grid connections, the future will need a grid that looks quite different from the one in place today.
- 2.5 The plan should consider what cross-sector synergies could be achieved, for example combining national highway / motorway provision with new energy grid connections.
- 2.6 The plan will need to recognise devolution of decision-making and financing powers but should nevertheless retain a national spatial remit to ensure that regional and sub-national projects do stitch together in a coherent network.

Benefits of a long term plan

- 2.7 The consequences of the absence of such a plan are the key constraints on the UK's ability to provide sufficient UK national economic infrastructure assets and services:
- 2.7.1 **skills and training:** without a long term plan and long term stability employers and businesses, particularly in the construction industry, are not able to plan and make provision for the workforce that will be necessary to meet the needs to construct and operate necessary infrastructure – this is particularly telling in the context of nuclear new build, for example;
- 2.7.2 **migration:** a long-term plan would allow Governments of the day to adopt a sensible managed migration policy (whether in or out of the European Union) to supplement the workforce with skills that cannot be delivered by adequate education and training, if necessary;
- 2.7.3 **financing:** a clear pipeline of infrastructure projects presents finance from international sources with a sufficient scale of investment and scale of return to be of interest – individual infrastructure projects in the UK are often not sufficiently large to attract financing from such sources, for example, Chinese investment funds; and
- 2.7.4 **funding:** a settled long term plan would help guard against (although not altogether prevent) sudden shifts in Government policy on funding of infrastructure, for example as was the case in the recent shift in policy on

renewable energy tariffs, which can serve as disincentive for international financing.

3. **AN INDEPENDENT INFRASTRUCTURE AUTHORITY**

3.1 Other significant constraints to infrastructure development in the UK are:

3.1.1 a lack of accurate data as to the whole cost of infrastructure (construction, maintenance and operation);

3.1.2 a lack of data as to how those costs can most efficiently be met (private sector or public sector financing and funding); and

3.1.3 no clear independent advocate for UK infrastructure to review financing, funding, procurement and delivery models, promote change and explain to markets the contracting and investment routes into UK infrastructure that are available.

3.2 Those constraints can be addressed with the creation of an independent statutory infrastructure authority, such as Infrastructure Partnerships Australia, which is a public policy partnership between Australia's Federal and state governments, and the private sector. This is a well-respected body acting as a source of data on the Australian market and seeking to continue to evolve world-leading models to drive efficient private provision into the delivery of infrastructure assets, and public services.

3.3 Such an independent authority could identify necessary changes to models for delivery, such as PFI2, advocate the benefits of such models and help establish large-scale investment funds to finance infrastructure identified in the plan. Such funds would relate to more than one infrastructure project in order to provide the necessary scale for investment that the market seeks, as identified above.

4. **A COMMITMENT TO FINANCE, STABILITY OF FUNDING**

4.1 Together with a long-term plan, a crucial part of '*long-term, objective and consistent policy, regulatory and investment regimes*' must be a stable commitment by Government to funding infrastructure that is identified in the plan. It must be recognised that it will often not be possible or most effective for infrastructure to be financed entirely, partly or at all by public finance, but what would provide certainty and an incentive to the provision of private finance would be for Government to commit, in the same way as it presently does on overseas aid or to military expenditure for NATO purposes, to allocate a certain percentage of GDP to the provision of national infrastructure. Uniquely amongst such committed expenditure, infrastructure will always provide a direct return to UK plc in terms of economic growth.

4.2 In addition, the UK must present a stable picture in relation to the funding streams applicable to different infrastructure types. Sudden changes in Government policy such as those in relation to renewable energy tariffs undermine confidence and trust in the UK as an opportunity. Any changes to regulatory regimes affecting funding, if absolutely necessary, should be forward-facing only, and should allow sufficient time for markets to adapt and price in such changes.

4.3 Additionally, Government and industry regulators must, in relation to funding streams, settle on a certain position as to whether the 'user pays' principle is always to apply in those sectors and if so, that requires current users to pay for future upgrades; or whether taxation is to subsidise users and / or future upgrades.

5. **PLANNING REFORM**

5.1 The planning process has recently been usefully reformed under the Planning Act 2008 to provide for fixed time periods within which the consideration of, and decisions

on, applications for permission for major infrastructure are to be undertaken. It is important that such reforms, particularly establishing a timeframe within which decisions must be given, are extended to other authorisation processes, for example under the Transport and Works Act 1992 and under any processes that may come to be adopted or administered by devolved authorities to ensure that smaller scale projects do not take longer to determine than larger projects.

- 5.2 Thought should also be given to extending the availability of permitted development rights for infrastructure, subject to overall Environmental Impact Assessment requirements.
- 5.3 Lastly, a primary cause of delay in the authorisation of major infrastructure can be the number of objectors to those schemes. A principal source of objections from residents and businesses results from the uncertainty surrounding the timing of and amounts of payment of compensation for the exercise of compulsory purchase powers. Reform on the basis that early compensation was payable would assist to shorten authorisation processes.

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