

IDENTIFYING THE BARRIERS
TO DELIVERY OF STRATEGIC
INFRASTRUCTURE GOVERNED
BY REGULATORY FRAMEWORKS

UTILITIES

FOREWORD

The phenomenal potential of our region simply cannot be realised without investment in enabling strategic infrastructure and services, ensuring it is in place to support transformational levels of economic and housing growth.

That is why England's Economic Heartland (EEH) commissioned Bircham Dyson Bell to identify opportunities to improve the delivery of utility infrastructure in the Oxford-Milton Keynes-Cambridge growth corridor and surrounding areas.

Their report, summarised in this document and available in full on our website, is an important first step in ensuring our strategic infrastructure is fit for the future.

It provides a number of recommendations on how to overcome what currently seems to be an inability to secure enabling infrastructure in a timely and efficient manner.

We will now consider these recommendations before deciding our next steps to be taken jointly with Government, infrastructure owners and providers, regulators and local authorities.

The leadership being provided by England's Economic Heartland Strategic Alliance in identifying and tackling the challenges facing the region head on is central to enabling us to realise our potential.



Councillor Martin Tett

Chairman of England's
Economic Heartland

Summer 2018

FIVE KEY CONCLUSIONS AND RECOMMENDATIONS

Collaboration, co-ordination, clarity and transparency



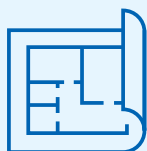
EEH has a strong role to play in bringing all interested bodies together to provide an integrated infrastructure development approach and clarity on the Heartland's ambition and objectives to central government and potentially private investors. A Strategic Infrastructure Delivery Board should be formally established, with the identification of named champions for each infrastructure sector to work across departments and parties.

Establish new approaches to infrastructure investment



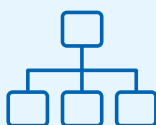
Central government is encouraging more private investment through its Industrial Strategy to help unlock infrastructure development. The newly established Strategic Infrastructure Delivery Board could have a lead role in assessing innovative financing models, such as tax incremental finance and land value capture to create the scope for the investment needed. Delivery models should also be examined, such as the Ebbsfleet Development Cooperation.

Lead in streamlining the planning process



There are opportunities to make small changes during the planning process to help streamline and improve decision-making. EEH should make the case and provide strong evidence of infrastructure needs at pre-planning stage and continue to work with regulators and utility providers across sectors to refine assumptions and future growth scenarios.

Realise the potential changes in regulatory frameworks



Regulation will go through a transitional period in order to meet future needs and allow for technological change and this will affect infrastructure investment in the future. However, enhancements can be made in the short-term. EEH in taking a lead in pulling together agencies into alignments to best serve the needs of the area; in particular by proposing revisions to regulatory frameworks.

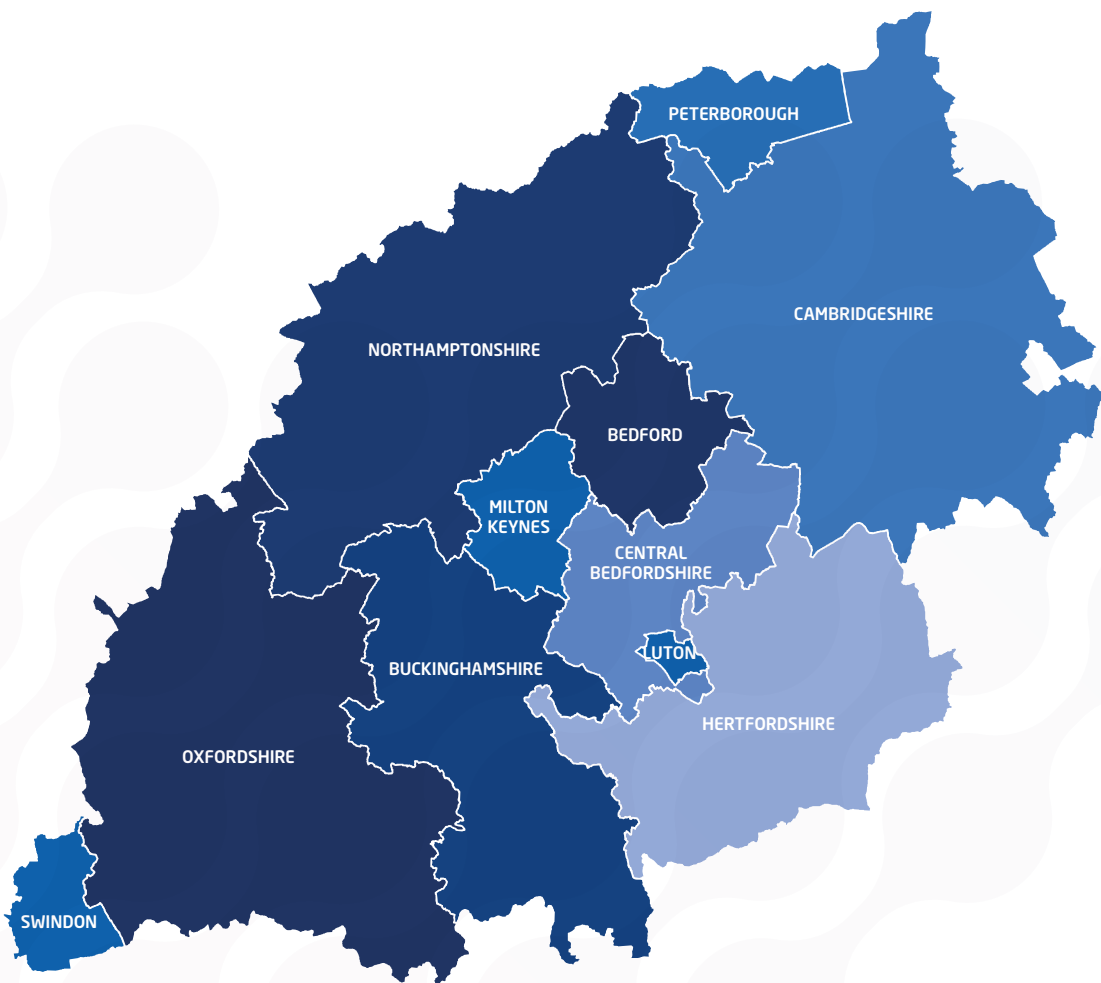
Seek further policy support for the Heartland



A National Policy Statement could potentially be used to encourage regulators to take account of the need for advance delivery of strategic infrastructure. EEH should consider whether to press Government for a Heartland-specific NPS or seek other available mechanisms to replicate NPS benefits.

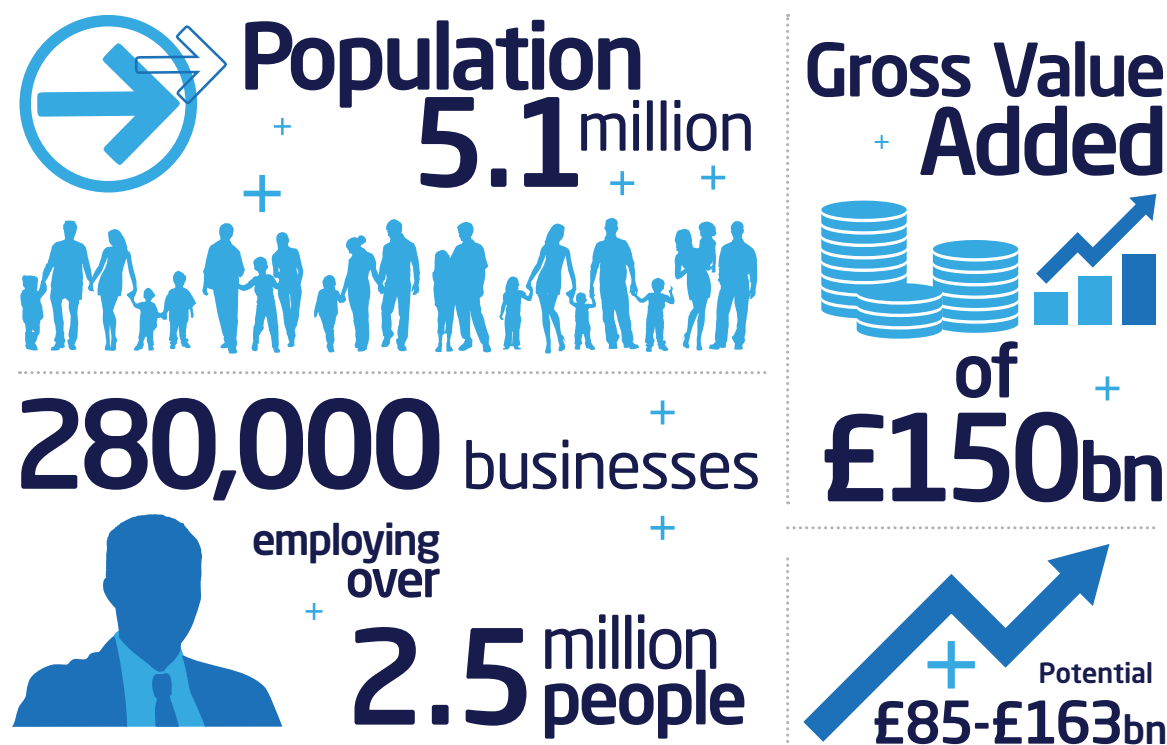


Infrastructure development is key in the Heartland Region



EXECUTIVE SUMMARY

AN AREA OF ECONOMIC SUCCESS



The Oxford-Milton Keynes-Cambridge Growth Corridor represents 5.1 million people and 280,000 businesses employing 2.5m people, all of which are reliant on effective and efficient infrastructure. The current GVA across the EEH area is £150bn per annum with the potential of an additional £85 - £163bn GVA per annum.

However, business growth is currently constrained by strategic infrastructure which is nearing capacity. In order to realise the economic potential and raise productivity in the Heartland, there is a need for wider strategic infrastructure investment, aligned across all sectors. Stable and consistent regulatory frameworks will also help to enable long-term investment, innovation and security.

This report identifies the opportunities and barriers to strategic utility infrastructure delivery governed by the existing regulatory framework and how it affects infrastructure delivery in the Heartland. It was compiled following an assessment of the regulatory regimes for each sector, and engagement with key stakeholders, including local authorities, LEPs, regulators, central government and utility providers.

The review has identified that there is a disconnect in the governance of the different sectors involved in utility provision, with national and local government, regulators and utilities working to different time frames from each other and taking account of different factors. Utilities report having the same conversation in parallel with different authorities across the region. Stakeholders considered that the Joint Statutory Spatial Plans being developed in Oxfordshire and in Cambridgeshire and Peterborough could be developed further across the Heartland to guide and co-ordinate an integrated infrastructure development approach. Further cross-boundary work could be achieved by establishing a Strategic Infrastructure Delivery Board, comprising representatives from across the Heartland to agree on governance, assessment, coordination and enablement of required infrastructure. This Delivery Board could lead to more effective dialogue with central Government and other strategic bodies, but there needs to be clarity about the Heartland's ambitions and objectives for it to be most effective.

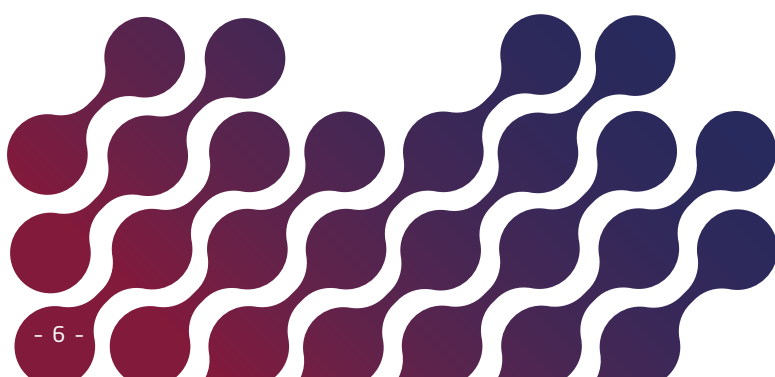


Regular dialogue with central government departments and at Ministerial level can help England's Economic Heartland (EEH) to influence the guidance issued to regulators ahead of forthcoming price control periods that would facilitate the delivery of infrastructure in the Heartland region. Political champions for the EEH can also be identified to make the case for infrastructure investment in the region. Other sub-national bodies can also help reinforce this.

The main impediment to the advance delivery of strategic infrastructure appears to be the regulatory framework for utilities, particularly the price control mechanisms. These do not easily allow utilities to recover their expenditure on infrastructure enhancements unless they can demonstrate both a clear need for the enhancements, and that they were carried out efficiently.

A variation of Tax Increment Financing, based on pooling retained business rates, could potentially be used to finance public infrastructure, including utilities. For instance, EEH could consider a model under which a guarantee is provided to guard against the risk that infrastructure provided by utilities to meet anticipated demand ends up not being used as heavily as expected, and so regulators take the view that the full costs of providing the infrastructure should not be met by consumers. The guarantee could potentially be funded by a loan repaid from TIF/CIL/s.106 contributions. More generally, EEH should continue to make the case that prioritising and aligning strategic infrastructure will help enhance economic growth and benefits.

Alternatively, a prospectus approach to infrastructure funding could be implemented through land value capture, modelled on the Milton Keynes Tariff.



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Builders have claimed that the process and time it can take to make utility connections is one of the more significant delays in providing new homes, and have estimated it can in some cases, add a three to six month delay after construction has started. Generally speaking, infrastructure providers benefit from extensive permitted development rights. However, the relaxation of restrictions on permitted development rights for utility provision in connection to new development in the Heartland region could make utility connections easier to provide. In addition, utilities have found that it is difficult to change local planning policy as it needs to be steered by central Government. There is a role for the EEH to provide collective responses to Government consultations and influence national policy and regulation.



Stable and consistent regulatory frameworks help to enable long-term investment, innovation and security across infrastructure sectors. However, current infrastructure regulation is often fragmented and siloed between government bodies. Different utilities are governed by specific and different legislative provisions and regulation, which makes co-ordination more difficult and can cause inefficiencies. The right regulatory framework is required to incentivise investment in infrastructure and more consistency is required across sectors to achieve a whole-systems approach. The National Infrastructure Commission (NIC) will be considering these issues and how adaptive regulation could be managed.

Long-term big scale developments can also present a challenge when it comes to regulation as the planning timeframes for all parties are different (for instance, regulatory approvals versus land-use planning permission). Certainty is required throughout the planning process. This could be provided by adopting a process in the Heartland that is similar to that for "Projects of Common Interest" under the EU's Regulation on trans-European energy infrastructure (the TEN-E Regulation), which requires designated projects of European importance to be consented within a fixed timescale and following a streamlined procedure.

EEH could take the lead in pulling agencies into alignment to best serve the needs of the area; in particular by proposing revisions to regulatory requirements that act as barriers to advance delivery of infrastructure. EEH should consider submitting evidence to the NIC's review on regulatory frameworks, when this is made available. EEH should also consider responding directly to each regulator's consultation on forthcoming price control and similar mechanisms.



In the Energy sector, Distribution Network Operators (DNO), have a monopoly over electricity distribution, so they are subject to strict price control regulations. These price controls are administered and reviewed by eight year periods, which determine how much distribution network operators can invest in their networks, and how much income they can collect from distribution charges over the period. These eight year periods therefore tend to act as default planning periods. In setting these price control mechanisms, Ofgem seeks to incentivise innovative delivery of utilities, but also to protect the consumer from the costs of funding investment in speculative infrastructure that is not ultimately required. This can have the effect of making utilities reluctant to fund such infrastructure as they may not be able to recoup their expenditure unless they can demonstrate a clear need for it. The issue is therefore not always the length of price control periods, but Ofgem's concern to ensure that consumers do not pay for infrastructure that is not needed. However, Ofgem can also use the price control framework to reward utilities for the delivery of Government's social or environmental policies, even where these are not directly related to meeting consumer demands.

Ofgem is currently updating its price control mechanism, and recognises that this could cause difficulties for the delivery of infrastructure across a period of more than five years. It is therefore considering adapting the use of a mechanism to allow operators to bring forward investment in "strategic wider works" where these have not already been recognised in the price control settlement. This is potentially a mechanism for EEH to encourage the delivery of infrastructure ahead of need in the Heartland area.

Additionally, as DNOs are statutory consultees for local plans, the proposed Strategic plans could be used to provide further details on forecasting and demand requirements to DNOs so that expectations can be managed effectively. It would also be beneficial if DNOs (and other affected energy providers) were consultees in the planning application process.

DNO and local authority boundaries do not align. DNOs generally contain multiple counties, but in some cases, several DNOs operate in one county. This rarely causes complexities or challenges. It may be that the border of the DNO has weaker networks, but they all have a duty to provide quotation and delivery to make connections. There are opportunities in bringing the DNOs together with a single strategic forum to improve standards, share best practice and mitigate any cross boundary interaction issues.



In the water sector, the planning process is split into 5 year “asset management periods” or AMPs. The current period is AMP 6, running from 2015-2020, and AMP 7 will run from 2020-2025. The year before each AMP starts, Ofwat sets out its methodology for that AMP’s “Price Review”, and water and waste water undertakers are required to submit business plans, which Ofwat reviews before setting the prices for that AMP. The business plans must also take into account a longer 25-year water resource management plan into account, approved by the Environment Agency, and showing how the undertakers will ensure an efficient, sustainable secure supply of water over the 25 year planning period. Most are produced on a company-by-company basis, but there is some regional co-operation, include Water Resources South East, which both Affinity Water and Thames Water are party to and which covers the southern parts of the EEH area from Swindon through to Stevenage.

Ofwat set its methodology for the 2019 Price Review in December 2017, and undertakers are due to submit their business plans by September 2018. Like Ofgem, Ofwat’s primary focus is on regulating the prices charged to consumers, and seeking to improve undertakers’ performance. The particular focusses for the next AMP are environmental improvements (e.g., reducing leaks), resilience, and affordability. One particular concern for EEH might be that Ofwat is reducing the extent to which undertakers can pass their financing costs onto consumers. While Ofwat justify this by the reduced cost of borrowing, this could make undertakers reluctant to borrow for the purposes of delivering strategic infrastructure.

When setting price controls, Ofwat must comply with the UK Government’s strategic priorities statement (SPS). The current SPS sets no specific objectives in relation to the delivery of infrastructure. Rather, the SPS requires Ofwat to further water supply resilience, through both the planning and delivery of new supply and also measures to improve water efficiency and reduce demand. Ofwat has followed this requirement, by proposing a cost assessment framework that treats demand and supply based solutions neutrally. This may well be appropriate across the country as a whole, but would not encourage new supply, where demand management and improved resilience would be more cost effective. In order to estimate the amount of network enhancements required, water companies should work with local authorities to identify specific needs from development plans. As water companies tend to work at a wider than local authority scale, they could benefit from engaging with a pan-regional strategic forum, to ensure a co-ordinated approach.

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As with Ofgem, Ofwat allows companies to recover “efficient costs” of delivery, but where companies spend more than this to meet their obligations, the responsibility to cover the costs falls on their investors. EEH could push Government to update Ofwat’s objectives for the next AMP period, so as to require Ofwat more explicitly to encourage the delivery of strategic infrastructure in the Heartland. Alternatively, EEH should explore whether a different price control mechanism could be adopted for its region, to encourage the advanced delivery of strategic infrastructure – as Ofwat has proposed for the Thames Tideway Tunnel. Ofwat also has a different price control mechanism for large-scale projects. EEH could explore whether Ofwat would consider adopting such an approach for new infrastructure in the Heartland region, irrespective of whether it meets the normal threshold.

The field of telecommunications (including broadband) primarily relies on competition to deliver consumer benefits and new infrastructure. The Department for Digital, Culture, Media and Sport (DCMS) encourages ‘digital local plans’ to be devised through collaboration with parties, including local authorities and providers to tackle issues, including street works, planning and breaking down internal barriers. Telecommunications operators claim that it is often unclear who in the LAs has overall responsibility for such infrastructure issues and this is unhelpful to the telecommunications companies. DCMS would welcome local ‘barrier busters’ – a named champion in an LA, who can work across departments and parties.

DCMS are also working with the telecommunications team in HM Treasury on the issues of broadband, telecommunications and 5G, along with the Department for Transport, with regards to roadworks, and the Ministry of Housing, Communities and Local Government, inputting into the National Planning Policy Framework (NPPF). No 10 have prioritised Housing and Digital as core issues to pursue.

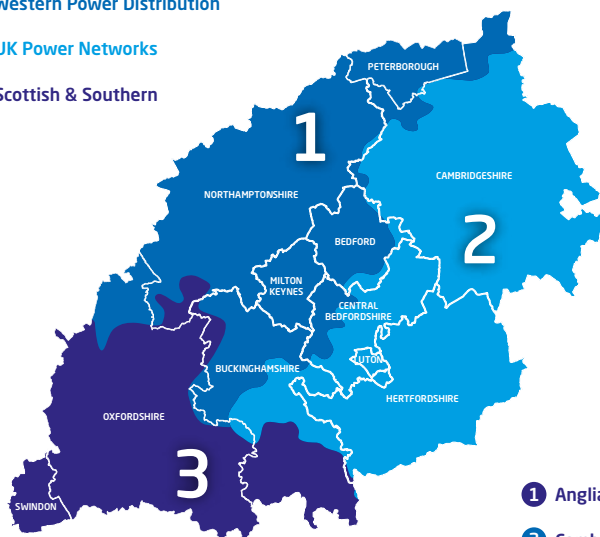
The NIC have highlighted that if there were a regulatory mechanism to ensure that data about the location of the infrastructure networks is shared with other network operators and utilities then a cross-sector system level view could be taken which could avoid the energy company cutting into the water pipe and cutting off water supply and delaying the connection of additional electricity resource. Regulators should take a more cross sector approach to encourage open data within and across industries to enable greater innovation. EEH could take a role in encouraging this by bringing different industries together on a strategic board.

As noted above, much of the infrastructure installed by utilities benefits from permitted development, and does not need specific planning permission. Larger development, particularly that involving the construction of new buildings, does require planning permission, in which case it falls to be determined by the local planning authority, in accordance with the NPPF and their Local and in the future Strategic plans. EEH should build on the work being done by Oxfordshire and by Cambridgeshire and Peterborough, to propose strategic spatial frameworks encouraging the delivery of infrastructure to support housing growth that would be taken into account by local planning authorities in the production of their own local plans.

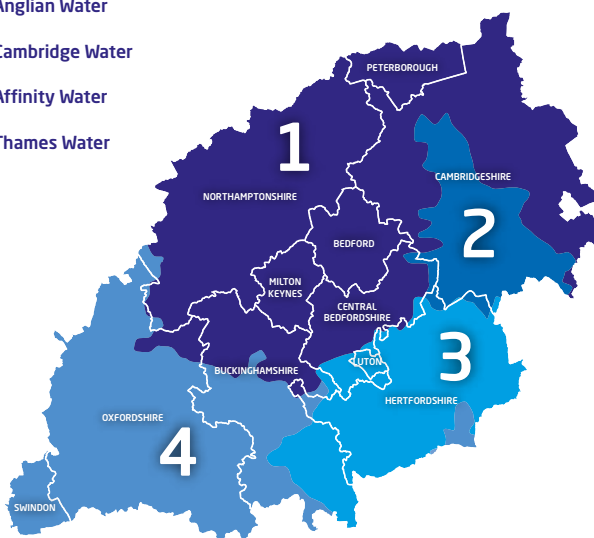
When the development exceeds a certain threshold, it is classified as a Nationally Significant Infrastructure Project (NSIP), and must be approved by way of a Development Consent Order (DCO), rather than through planning permission. DCO applications are made to the Planning Inspectorate (PINS) and determined by the Secretary of State for the sector concerned, rather than being dealt by local planning authorities. Rather than having to comply with the NPPF and local plans, the Secretary of State must decide the application in accordance with any National Policy Statement (NPS) that is in effect, unless specified circumstances apply. The 11 NPSs in effect at the moment are sector-specific, but it is possible for NPSs to make policy covering infrastructure development in a sub-national region such as the Heartland. As well as its formal function, which is limited to NSIPs, such an NPS could potentially be used as a lever to encourage regulators to take account of the need for the advance delivery of strategic infrastructure in the Heartland region in their price control mechanisms. It would also provide certainty for investors that such infrastructure would be provided. EEH should therefore consider whether to press Government for a Heartland-specific NPS, or to seek to replicate its benefits through other mechanisms – such as Defra’s SPS to Ofwat, or a statement of Government policy outside the NSIP framework.

Electricity Boundaries

- 1 Western Power Distribution
- 2 UK Power Networks
- 3 Scottish & Southern



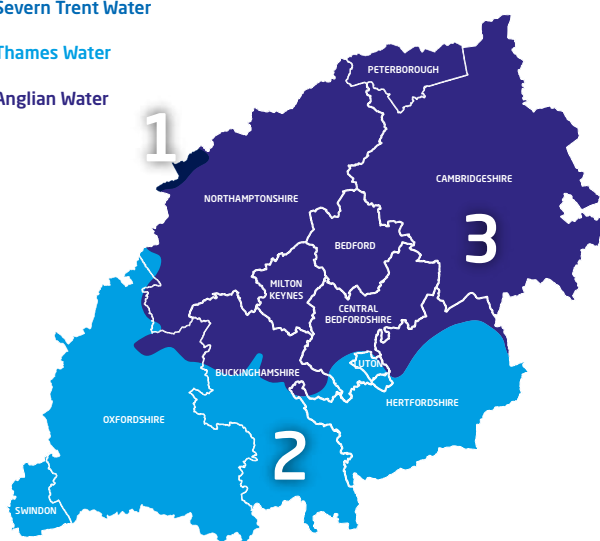
- 1 Anglian Water
- 2 Cambridge Water
- 3 Affinity Water
- 4 Thames Water



Water Boundaries

Sewerage Boundaries

- 1 Severn Trent Water
- 2 Thames Water
- 3 Anglian Water



England's Economic Heartland Strategic Alliance works with Government and the private sector to ensure the right investment in strategic infrastructure and services, in the right places and at the right time.

Its membership includes eleven local transport authorities stretching from Swindon across to Cambridgeshire and from Northamptonshire down to Hertfordshire – a total population of over 5.1 million and GVA of £150bn.

The National Infrastructure Commission believes the region's economy could double or even triple with the right investment, and the Government has made realising this potential a national priority. England's Economic Heartland is also the emerging Sub-national Transport Body for the region.

Bircham Dyson Bell is a top 100 law firm based in both London and Cambridge. Many of its lawyers and advisers are recognised leaders in their practice areas.

Its infrastructure and regeneration team advises on a wide range of planning issues including Development Consent Orders (DCOs), Compulsory Purchase Orders, nationally significant projects, environmental and regulatory issues. They also have a dedicated public affairs team, who specialise in political communications, stakeholder management, reputation management and policy monitoring. Their clients include government offices, public bodies, utilities companies, government-owned and private companies.

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