

Cabinet – 2 October 2024

Nationally Significant Infrastructure Projects – approach, governance, and resourcing

Purpose	For Decision
Classification	Public
Executive Summary	This paper provides a summary of Nationally Significant Infrastructure Projects and seeks to formally set out how the council should be involved in the determination process, including by the use of Planning Performance Agreements.
Recommendations	It is recommended that Cabinet: <ul style="list-style-type: none">i. notes the provisions of the Planning Act 2008 in relation to the process by which Nationally Significant Infrastructure Projects are determined and agrees for the council to be involved in future projects in its role as a host authority.ii. delegates authority to the Strategic Director of Place Operations and Sustainability to manage the District Council’s involvement in Nationally Significant Infrastructure Projects in consultation with the Portfolio Holder for Planning and Economy and, depending on the scale and nature of the project, the Leader of the Council as appropriate; andiii. agrees that Planning Performance Agreements be sought from promoters and applicants for each project at the earliest stage to cover the District Council’s costs involved in accordance with the key principles set out in para 37.
Reasons for recommendations	The NSIP process can be time consuming and involving significant resource, even as a host authority. Due to the significant impact that NSIP projects may have on the District, and the amount of officer resource that will be needed to provide the required responses, it is important

	<p>that the council are both resourced and receive appropriate funding to cover this time.</p> <p>The recommendation aligns with priorities across the place, people and prosperity elements of the council's Corporate Plan including:</p> <ul style="list-style-type: none"> • Place Priority 1: Shaping our place now and for future generations. • Place Priority 2: Protecting our climate, cost and natural world. • Place Priority 3: Caring for our facilities, neighbourhoods and open spaces in a modern and response way. • People Priority 2: Empowering our residents to live healthy, connected and fulfilling lives. • Prosperity Priority 2: Supporting our high-quality business base and economic centres to thrive and grow.
Wards	All
Portfolio Holder	Councillor Derek Tipp – Planning and Economy
Strategic Directors	James Carpenter – Place Operations & Sustainability
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Introduction and background

1. A Nationally Significant Infrastructure Project (NSIP) is a large-scale project that falls into one of the following categories:
 - Energy;
 - Waste;
 - Transport;
 - Waste water;
 - Water; or
 - Business and Commercial.
2. The Planning Act 2008 sets out these categories of projects and provides more detail about the types and scale of infrastructure projects within these categories that are deemed to be nationally significant.
3. This legislation was introduced following concerns that approvals for Nationally Significant Infrastructure Projects (NSIPs) were taking

too long in the planning system to reach a resolution. Heathrow Terminal 5 was the longest inquiry in British planning history, held between 1995 and 1999, and it took a further two years before the decision was made in November 2001.

4. The Growth and Infrastructure Act 2013 and Infrastructure Planning (Business or Commercial) Regulations 2013 enable the Secretary of State for Business, Energy and Industrial Strategy to direct 'business or commercial' projects into the NSIP regime. This includes developments of a significant scale (typically over 40,000 sqm) which include offices, industrial, research and development, storage and distribution, conferences, exhibitions, sport, leisure and tourism.
5. In addition, the Secretary of State, at the request of an applicant, can make a Direction under Section 35 of the Act to designate that a project which falls under any of the categories be directed into the NSIP regime, provided the applicant can demonstrate it is nationally significant. In Hampshire (including the unitary authority of Portsmouth), AQUIND was successful in securing a Section 35 Direction to have its interconnector project deemed a NSIP.
6. A project that is deemed to be nationally significant requires a Development Consent Order (DCO) in order to be delivered. A DCO is a Statutory Instrument, a piece of legislation that gives the promoter all the powers needed to construct the project. Consequently, the DCO can disapply other areas of legislation that may normally apply to a project if it is dealt with through the planning process.

Process

7. The NSIP process is managed by the National Infrastructure Planning team at The Planning Inspectorate and involves six stages:



8. The council is deemed a 'host authority' for any eligible project within the District and therefore would be invited to be involved in the process.

9. The pre-application stage is led by the applicant and follows a process that is not dissimilar from that followed for other major planning development proposals made under the 'traditional' planning application route. The importance of this stage in the process is emphasised in [government advice](#) as being the greatest opportunity to influence emerging proposals.
10. There are various stages of public engagement and consultation, but the key stages of consultation during the pre-application process for the District Council are:
 - Statement of Community Consultation – commenting on the statement and ensuring it meets both the requirements of the regulations and the local needs;
 - Environmental Impact Assessment (EIA) scoping – commenting on the scope of the EIA and highlighting any areas missed or scoped out in error; and
 - Preliminary Environmental Information Report (PEIR) statutory consultation – commenting on the proposals (including design and impacts post land restoration (where appropriate)) as presented within the PEIR and feeding back any issues or concerns to the applicant.
11. Following the PEIR consultation, the applicant will consider whether to progress to application, taking account of the issues raised during the consultation. The applicant does not necessarily have to address any concerns the council, or others, may have raised. However, they may seek to modify the proposals in light of consultee responses prior to submitting the application.
12. Any comments made by the council during the pre-application stage are likely to form the basis of its position and representations during the subsequent pre-examination and examination stages. Whilst it is not a statutory requirement for the council to actively engage in this process, it is considered likely to be in the council's best interest to do so at the earliest opportunity in order to influence the scheme and achieve the best outcomes for its communities.
13. Upon the application (for a DCO) being submitted, the Planning Inspectorate has 28 days to decide whether to formally accept it. During that 28-day period it will ask the host authorities to confirm the 'Adequacy of Consultation', which seeks to ensure that the applicant followed the regulations in respect of public engagement and consultation.
14. Once the application has been accepted, and prior to the start of the formal examination, the council and other stakeholders and

members of the public are asked to submit a 'Relevant Representation'. This sets out a summary of the points in the application with which the council agrees and/or disagrees, highlighting what is considered to be the main issues and impacts. This period of time usually takes approximately three months.

15. Once the examination starts the council is responsible for submitting a Local Impact Report (LIR) which goes into more detail about the likely impact of the proposed development on the Hampshire area (or part thereof). The deadline for submitting the LIR is set at the Preliminary Hearing and local authorities are given 28 days' notice of this deadline. However, given the detail expected to be covered in the report, local authorities are strongly encouraged to start drafting the report during the pre-application period, and to ensure that any approval process for the report is built into the timetable. Local authorities are instructed to prioritise preparation of the LIR irrespective of whether they consider the development would have a positive or negative impact on their area.
16. The examination itself takes six months, and this is a very intensive period. The Examining Authority will consider representations made by interested parties (the District Council will automatically be registered as such) through a series of hearings, and deadlines will be set for those involved in the examination to respond to questions and submissions by the applicant as the examination progresses. Alongside this, there will be a need to prepare and agree Statements of Common Ground, Section 106 agreements, and the draft DCO itself. Unlike a planning application, which may take several months of negotiations before a recommendation is made to the Planning Committee, followed by several months of negotiations on the Section 106 agreement, all matters relating to the NSIP must be agreed and finalised within the six-month examination period. Anything that is not agreed between parties will be determined by the Examining Authority.
17. Following the close of the examination, the Examining Authority has three months within which to make a recommendation on the application to the relevant Secretary of State. The Secretary of State then has a further three months to make a decision.
18. Once a decision has been issued by the relevant Secretary of State, there is a six week period in which the decision may be challenged in the High Court. This process of legal challenge is known as Judicial Review.

Nationally Significant Infrastructure Projects in New Forest District

19. As of July 2024, there are 229 projects in England that have been through, or are in the process of going through, the NSIP

procedure. Of these, only Navitus Bay Wind Park (NSIP reference: EN010024) involved land partly in New Forest District (required to connect the wind farm to the National Grid). The application was submitted in April 2014 and refused in September 2015.

20. Whilst there have been no NSIP projects in the District Council's Planning Area since, national government has been encouraging the use of NSIP to speed up the decision-making process for strategic infrastructure projects. In this context, officers have been made aware of two potential projects which may qualify as NSIPs and therefore are likely to require an application for a DCO. These are:
 - i. the development of the strategic land reserve between Marchwood and Dibden to enable the physical expansion of the Port of Southampton; and
 - ii. a project to capture and store CO2 from Fawley Oil Refinery (Solent CO2 Pipeline Project) –
21. Initial discussions have been held with the prospective applicants of both projects who have indicated a keenness to progress these projects, with the Solent CO2 Pipeline project advancing more quickly than the Port of Southampton expansion. There is a likelihood that the timeline of these projects will overlap with consequences in resourcing this for the council.

Role of the District Council

22. Local planning authorities potentially have a number of important roles in the NSIP regime, including as
 - i. a statutory consultee;
 - ii. a determining authority or statutory consultee for ancillary development related to NSIPs; and
 - iii. determining applications to discharge requirements (akin to planning conditions) post-consent.
23. Local planning authorities are recognised to provide an important local perspective in the process, in addition to the views expressed by residents, groups and businesses. Engaging in the process helps to secure appropriate changes to the proposals, concessions and/or community gains on behalf of affected communities. For this reason, the government strongly advises that a host local authority should normally be engaged in all stages of the DCO process.
24. However, participation is not obligatory. Furthermore, the process can be very resource intensive, and the council has no existing capacity to resource these projects, particularly given the compressed nature of the process. Conversely, the designation of

such infrastructure projects as 'nationally significant' is also an indication of their likely complexity and potential impacts arising. Given this, it is considered entirely appropriate that this council engages with the process, subject to resourcing being available to do so.

25. Likely disciplines within the District Council which would be involved in future NSIPs include:
 - Planning (often as lead officer within the council)
 - Landscape Architects
 - Urban Designers
 - Conservation
 - Ecology
 - Environmental Health
 - Legal Services
 - Sustainability
 - Coastal
26. There will also likely be a significant amount of work required in liaising with other key partners (including the National Park Authority and Hampshire County Council) and in engaging with local communities, including town and parish councils, potentially affected.
27. As already explained in section 3, the process requires a lot of work to be undertaken at the pre-application stage. There is a risk that such work may be abortive as there is no guarantee an application will subsequently be made. Ensuring that a Planning Performance Agreement (PPA) is entered into at the earliest opportunity to enable reasonable costs to be recovered must, therefore, be a priority.
28. The urgency of the examination deadlines, and the need to ensure the council's position at examination is protected, is likely to place increasing resourcing demands on officers during the examination period. This raises concerns about the council's capacity to deal with these projects, particularly if there is more than one going through the process concurrently.
29. Once at examination, the NSIP regime requires agility in decision making to ensure the council can meet the examination deadlines and respond to issues raised during hearing sessions. However, it is also acknowledged that these projects have the potential to gain significant local and political interest. As such there is a need to put a process in place to ensure officers and members are aware of the proposals and are fully briefed on the issues.

Proposed approach to managing the council's involvement.

30. At the time of preparing this report, there is little detail available about the NSIPs outlined in section 4, albeit it is reasonable to assume that they will differ in terms of technical issues, scale, community and stakeholder interest and impacts arising. Rather than prescribing an approach to the NSIP process, and reflective of the approach of other councils, a set of principles to oversee the governance of the process is proposed.

Governance

31. The Strategic Director of Place Operations and Sustainability is the corporate lead on strategic developments, supported by the Assistant Director for Place Development. The Strategic Director therefore has overall responsibility for directing and managing planning duties. Given the tight timescales involved at different stages of the process, delegated authority to the Strategic Director will be required to approve responses to consultations and requests for engagement as follows:

Pre-application/acceptance stage

- Environmental Impact Assessment Scoping Response – on the basis that legislation states that host authorities have 28 days from being consulted to respond.
 - Statement of Community Consultation response - on the basis that legislation states that host authorities have 28 days from being consulted to respond.
 - Adequacy of consultation representation - on the basis that legislation states that host authorities have 14 days from being consulted to respond.
32. In addition, the following activities do not have prescribed timescales with the deadlines for response set by the applicant at their discretion. As such delegated authority is also required for approving responses to:
- Responses to non-statutory and statutory consultations including the preliminary environmental information report.
 - Response to principal areas of disagreement summary statement (if required).
 - Response to adequacy of consultation milestone.

Pre-examination and examination stages

33. At the pre-examination and examination stages there are the following activities where delegated authority is also required:

- relevant representation (on the basis that legislation states that host authorities have 30 days from being consulted to respond).
- local impact report (this is required early in the examination stage with exact timescales set by the Examining Authority)
- written representation (this is required early in the examination stage with exact timescales set by the Examining Authority)
- responses to the Examining Authority's written questions and requests for information (this is likely to be required throughout the examination process, often with very tight timescales for responses (e.g. 10 working days))
- statement of common ground (to be agreed, where possible, by the close of examination – a maximum of 6 months, or 4 months for fast-track consent applications)
- DCO obligations (if appropriate) including entering into a Section 106 legal agreement where necessary
- Post Decision – if the Secretary of State grants consent for the project, the local authority are likely to have responsibility for:
 - discharging the requirements of the DCO
 - responding as a consultee about the discharge of requirements
 - monitoring the works as required by the DCO
 - carrying out enforcement actions as necessary – sections 160 to 173 of the Planning Act set out the local authority's powers to enforce a breach of the terms of the DCO
 - storing and enabling access to any certified information as part of the DCO
 - Responses to any requests for advise for applications for non-material and material changes to the DCO

34. Whilst delegated authority is sought for such decisions to be made by the Strategic Director, it is proposed that wherever feasible and appropriate this is done in consultation with the Portfolio Holder for Planning and Economy, following liaison with local ward councillors where relevant. Depending on the scale and nature of the project, it may also be appropriate to consult the Leader of the council and the Chair of the Planning Committee. In certain circumstances, including establishing the council's position on the overall merits of the project, it may be appropriate to seek formal Member direction through the committee process where time allows. Updates to the scheme of delegation, in accordance with the provisions sought above, will be made accordingly.

35. The Executive Management Team (EMT) is considered to be an appropriate forum for officers to feedback updates on NSIP projects from council staff. It is proposed that an officer sub-group be established to track which projects are coming forward, keeping interested service areas updated and report key issues to EMT. At a Member level, it is proposed that regular updates are provided to the Planning Committee, as appropriate.

Cost recovery

36. The Planning Inspectorate Advice Note Two: '[The role of local authorities in the development consent process](#)', makes it clear that local authorities are not obliged to participate in the DCO process, but it is strongly encouraged. As such it is reasonable for the council to seek to cover its costs in engaging in the process and working proactively with the applicant(s) on issues as they arise. The preferred approach to covering this is through a Planning Performance Agreement (PPA).
37. The following key principles are proposed to be utilised in securing a PPA:
- Full cost recovery.
 - Covering all stages, from project inception and initial discussions to discharge of requirements and ongoing monitoring, including the Examination in Public.
 - Commitment to service level agreements.
 - Mutually beneficial "Without prejudice" engagement between the council and promoter.
 - Arrangements that give sufficient certainty and confidence for investment by the council.
 - Simple and unbureaucratic way of recording and recharging levels of engagement, with agreed fixed sum regular payments.
 - Index linked and with Value Added Tax (VAT) charge.

38. Securing a PPA with the applicant(s) in accordance with these principles is expected to provide the funding to enable sufficient resources to be put in place to deal with the application. Further details of these principles will be prepared to inform the preparation of PPAs as appropriate.

Staff resourcing

39. The level of resourcing required is likely to be significant over the course of any NSIP project; both across the technical specialisms and also with regard to the need for a project lead. The capacity of existing staff to undertake this work will need to be ascertained for

each project and a PPA secured at the earliest opportunity to cover these requirements.

40. The resource demands are likely to be most intense during the six months of examination when officers are likely to be required on any one DCO project for a significant proportion of their time. The PPA secured will need to recognise this, as well as the potential for overlap with any other NSIP during this time.

Corporate plan priorities

41. The Corporate Plan 2024-28 was adopted by Cabinet on 3 April 2024. It outlines the vision, values, and priorities for the council over the next four years.
42. The vision of the Corporate Plan is to secure a better future by supporting opportunities for the people and communities we serve, protecting our unique and special place and securing a vibrant and prosperous New Forest. This has been organised into the thematic areas of People, Place and Prosperity. This report aligns with the following priorities:
 - Place Priority 1: Shaping our place now and for future generations.
 - Place Priority 2: Protecting our climate, cost and natural world
 - Place Priority 3: Caring for our facilities, neighbourhoods and open spaces in a modern and response way.
 - People Priority 2: Empowering our residents to live healthy, connected and fulfilling lives.
 - Prosperity Priority 2: Supporting our high-quality business base and economic centres to thrive and grow

Consultation undertaken

43. The proposed approach set out in this paper has been discussed internally with officers and through informal consultation with the Portfolio Holder for Planning and Economy. The approach set out has also been informed by discussions with officers at the National Park Authority and County Council.
44. The proposals were also discussed at the Place and Sustainability Overview and Scrutiny Panel on 12 September. Members of the Panel agreed the contents of the report and requested that Members be engaged whenever possible and wherever time allows during the process of preparing the project.

Financial and resource implications

45. As set out in paragraphs 34 – 38, there are potential financial and resource implications arising from the recommendations, albeit the approach proposed is that the council seeks full cost recovery of its involvement in the NSIP process.

Legal implications

46. The Planning Act 2008 provides the consenting regime for Nationally Significant Infrastructure Projects and confirms the role of this council as a host authority within this process.

Risk assessment

47. No formal risk assessment is required in relation to the recommendations as set out. The council's involvement in the NSIP process helps to ensure that a local perspective is offered on proposed projects which will ensure that the applicant and Examining Authority are provided with relevant information to minimise risks associated with proposed projects.

Environmental / Climate and nature implications

48. Following the declaration of a Climate and Nature Emergency, and the preparation of the Climate Change Action Plans, the council will want to ensure that any NSIP proposals that come forward are consistent with these objectives. Proposals that come forward through the NSIP regime must comply with the National Planning Statements, National Planning Policy Framework and relevant local plan policies, rather than the council's own declaration and action plans. However, planning policies relating to climate change will provide a sufficient hook to enable the council to comment in this regard.

Equalities implications

49. The approach that the council is taking to Nationally Significant Infrastructure Projects is intended to benefit all communities across the New Forest and beyond. It is considered that there will be no additional impact on people with protected characteristics and therefore the strategy has been assessed as having a neutral impact overall.

Crime and disorder implications

50. None.

Data protection / Information governance / ICT implications

51. None.

New Forest National Park / Cranborne Chase National Landscape implications

52. Where individual NSIPs have the potential to affect the land within the National Park area, or the Cranbourne Chase National Landscape, the council's involvement in the process will help to ensure that the project demonstrates how it furthers the interests of the National Park/National Landscape. This includes demonstrating how it would further the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area.

Appendices

None

Background Papers:

None