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Your ref: NSIP Consultation
Our ref: ESC NSIP Con Response
Date: 10 December 2021
Please ask for: Naomi Gould
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Dear Sir/Madam,

Re: Consultation on National Infrastructure Planning Reform Programme – 12 August to 17 December 2021

Thank you for the opportunity to provide views on the Nationally Significant Infrastructure Project (NSIP) process. This letter comprises East Suffolk Council's (ESC) response to the consultation. Prior to addressing the specific questions within the consultation, we would like to take the opportunity to outline some of the key positives of the regime, as experienced from a local authority perspective.

- Clear timelines – The 2008 Planning Act intended to speed up the process for approving major new infrastructure projects and it achieved this. The regime provides clear timeframes for developers and stakeholders to adhere to. This may be challenging, but the clear deadlines allow some degree of forward planning. With a few exceptions, the Planning Inspectorate has generally ensured examinations adhere to the six-month period, if a delay is to occur, it is more often when the project is being considered by the Secretary of State.
- Third Party Participation – The regime allows local communities to voice their concerns up front during the pre-application phase and in writing and orally at Open Floor Hearings during the examination.
- Collaboration - The regime has also resulted in a greater degree of collaborative working and allowed, in some cases, the sharing of resources with other local authorities.
- Robust - There have been some changes to the legislation, for example the abolition of the Infrastructure Planning Commission and a few changes to thresholds for in-scope projects, but overall, the regime remains the same as when it was first introduced. There have also

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been very few successful challenges to decisions given the nature of development being considered and determined.

- Covid Challenge – The hosting of examinations virtually has been a positive step and facilitated wider engagement in the process. Although this has introduced some challenges, the benefits are considered to outweigh any dis-benefits and it is hoped and recommended that the opportunity to use a virtual or hybrid process will continue.

Although still a welcome regime, ESC supports the review of the NSIP process, which has been in place since 2008, to seek improvements and address challenges faced in relation to the timeliness of project consenting. ESC would like for it to be noted from the outset, that it is not entirely clear what has been utilised to identify the start of the pre-application stage. This is particularly important as this information may provide further insight into why some projects spend longer within this phase than others. It is not the Council's experience that developers have suffered significant delays to their project within the pre-application phase due to the requirements imposed by the 2008 Act. Delays to projects have typically been experienced as the developer is not able to progress the project for other reasons. For example, there are some current projects which have not been able to progress at the pace desired due to grid connection issues, either by virtue of the location identified or because a location has not yet been identified. In some circumstances this might be due to the desire to achieve greater coordination, given the vital importance of this, it is essential that this is not prejudiced in the interests of speed.

Notwithstanding the above comments, ESC has provided specific answers to the consultation questions below.

3. What could government, its arms-length bodies and other statutory bodies do to accelerate the speed at which NSIP applications can be prepared and more generally to enhance the quality of submissions?

Pre-application stage - Up until the point of submission, developers are in control of their project and any consultation undertaken. The length of the pre-application phase is therefore largely within the gift of the developer, subject to compliance with the requirements of the 2008 Act, although these requirements are not considered onerous. It may be that some of the projects which have experienced long pre-application phases, have done so by choice.

The pre-application stage provides a vitally important opportunity for stakeholders, but especially local communities to engage with developers and help shape a project. Significantly accelerating the pre-application stage of complex nationally significant infrastructure projects could potentially devalue and undermine the NSIP regime. However, there may be opportunities to accelerate the pre-application process associated with some less complicated, 'simpler' projects. The degree of the pre-application engagement could be proportional to the scale of the project, this must

however take into consideration any in-combination impacts. There would need to be clear guidance associated with this to prevent the value and meaningfulness of the pre-application process being compromised.

Quality of information - The effectiveness of the pre-application phase and engagement undertaken is heavily dependent on the quality of the information provided and nature of the consultation undertaken. Consultation and engagement poorly conducted and/or based on limited, poor-quality information is not effective, productive and can cause unnecessary delays.

Planning Performance Agreements (PPA) – Engagement with developers during the pre-application phase of a project puts a strain on the local authority resources. To help to ensure this engagement is undertaken in an effective and timely manner, the NSIP regime should include the requirement for promoters to agree a PPA or alternative forms of agreement. It would also be useful if a template PPA was provided. Local authorities should be supported during all the stages of the NSIP process from the pre-application phase, during the examination through to the post examination phase. Engaging legal support is often necessary but expensive and places a further burden on local authorities' challenging budgets. Whilst in some cases a reclaim process maybe adequate, in some cases a regular sum could be more beneficial as this allows the local authority to plan and manage resources more effectively, employing additional staff if necessary.

4. Following submission, are there any aspects of the examination and decision process which might be enhanced, and how might these be improved?

Examination

The six-month examination process is very resource intensive for local authorities due to the requirements imposed on them through the 2008 Planning Act. There is a need to draft a Local Impact Report, attend and fully engage with hearings, respond to information requests, submit written responses at deadlines and simultaneously continue dialogue with the applicant and other stakeholders. The requirement for developers to assist local authorities with this via a PPA would help.

As the examination is primarily a written process, it is important that hearings are only scheduled where specific matters cannot be adequately addressed through written exchange, they should not be a default measure. If hearings are held, early notification of hearings accompanied by sufficient details regarding the topics to be discussed would assist resource planning. Topic matters for hearings should be identified in the Rule 8 letter. The hearings should also be managed to ensure that the appropriate technical detail is discussed in an organised manner to ensure they are productive. The legislation requires agendas to be published at least five days prior to the hearing, however there is no specification in relation to the level of detail these need to contain. It can be very difficult to prepare for hearings if the agendas published contain minimal

information. It has also proven to be very challenging when agendas are updated the night before or morning of a hearing. It would also be welcomed if hearing agendas for the entire week could be published simultaneously.

Further consideration needs to be given by the Planning Inspectorate and Examining Authority in ways to support local stakeholders during the examination process. The challenge of resourcing NSIP examinations is only exacerbated when multiple examinations are held simultaneously. ESC however welcomed the innovative approach taken to the East Anglia One North and East Anglia Two examinations with identical Examining Authority panels appointed and joint hearings held facilitating efficiencies and the understanding of in-combination effects.

ESC has experienced three examinations using a virtual platform, although this has introduced some challenges, it is considered that the advantages have significantly outweighed any disadvantages. It is considered that this virtual format or a hybrid version should be continued going forward.

Decision Process

More recently, the Secretary of State has not been able to comply with the three-month period specified for the determination of some applications following the issuing of the Examining Authority's Report. This in several cases, has been because specific issues have not been adequately addressed during the examination. Post-examination questions and consultations place an un-expected burden on local authorities and stakeholders and cause delays. There is a need to ensure applicants provide the information required within the examination period.

5. Where a development consent order has been made, what impediments are there to physically implementing a project which could be removed?

Requirements – Development Consent Orders (DCOs) often contain numerous requirements which need discharging by the local planning authority. This process, dependent on the number of requirements to discharge and the level of the up-front engagement, can put a strain on local authority resources. The local planning authority needs to also monitor compliance with the DCO and requirements. There is no fee in relation to these activities and therefore local authorities can struggle to support developers in progressing their projects post-consent in a timely way. The requirement for applicants to enter a PPA or similar agreement with the local authority, for the post-consent period, would assist local authorities in performing this function in an efficient manner and help to reduce delays.

Compensation – The imposition of a requirement on a DCO which necessitates the applicant to secure further compensation post-consent can comprise a significant risk to developers, cause delays in implementing the project, and place the burden of this compensation on localities and

local authorities not previously involved in the specific DCO examination. In addition to the uncertainty resulting from such requirements, there is also currently a lack of consideration of the cumulative consequences of such an approach if it is continually repeated in relation to a single matter.

As an example, ESC is aware that there are at least three offshore windfarm projects currently seeking to deliver kittiwake compensation measures through the construction of kittiwake structures on the Suffolk coast. There appears to be a lack of coordination between the projects over the delivery of the compensation measures, with different projects attempting to deliver the same types of compensation in the same locations. There is a danger this could all result in an oversupply of artificial nesting structures which are never fully colonised and therefore do not deliver sufficient compensation for the impacts occurring elsewhere. The provision of compensation measures should be appropriately considered and secured prior to the granting of a DCO.

The need to seek compensation post decision, not secured through a requirement, is an example of how the 'one-stop-shop' approach to the NSIP process is not always being achieved. The need to seek further consents outside the DCO process can cause delays to the implementation of a project.

6. How might digitalisation support the wider improvements to the regime, for example are there any specific aspects that you feel could benefit from digital enhancements?

The Environmental Impact Assessment (EIA) process is a fundamental part of the design and consenting process of nationally significant infrastructure projects. This process, although essential, is significantly resource intensive, for not only those undertaking it but also those reviewing the associated documents and information. The Environmental Statements submitted in support of development consent applications are hugely lengthy and contain thousands and thousands of pages of information which needs to be reviewed and assessed. The documents can be difficult to navigate, with cross referencing to different documents, and certain impacts spread across multiple chapters. The documents also often contain a significant amount of unnecessary and repetitive information, which can at times obscure the actual identified impacts. It is recognised that this has resulted from the fear of legal challenge, but it can cause delays.

In addition to the challenges of reviewing the Environmental Statements, there is also little work undertaken post construction assessing the actual impacts of a project or monitoring the mitigation, making it difficult to identify whether the predicted impacts recorded in the Environmental Statement were accurate. This therefore means there is little learning from previous work.

At present digital technology is being underutilised within this process. It is considered that

digitisation could help to deliver more interactive, accessible, efficient, and effective Environmental Statements and could benefit the whole of the EIA process. Incorporating digital processes from the beginning will significantly increase efficiencies. The full benefits of digitisation would however only be realised with standardisation. There are also other documents produced in support of a development consent applications which would benefit from the use of digital data.

The digitisation of documents would ease the burden on local authorities and other stakeholders because of NSIPs and allow an accelerated review process.

The publication of all the documents submitted during the examination on the National Planning Infrastructure is very helpful. The speed at which these documents are uploaded to the website can however, on occasion, be quite slow. Any delays during the uploading process, particularly during examinations, reduces the length of time stakeholders have available to provide comments to the Examining Authority. This can be particularly challenging when the deadlines are only a matter of days in the first place. It is therefore essential that the Planning Inspectorate has all the resource they require.

As previously stated, the Council supports the use of a virtual platform during examinations and considers that this positive step should continue.

7. What issues are affecting current NSIPs that would benefit from enhanced cross-government co-ordination including government departments and arms-length bodies?

A fundamental challenge currently being faced East Anglia and ESC is the lack of coordination being demonstrated by energy NSIPs proposed in the UK but specifically within this region. Critical to the issue of coordination is the process through which grid connections are offered (Connection and Infrastructure Options Note process). The grid connection allocation dictates how schemes are subsequently developed. Several agencies influence the way in which offshore projects connect to the National Grid, but no one agency currently takes an overview. Greater coordination will help to minimise the impacts on the environment, local communities, and businesses and potentially reduce delays in project consenting. Proactive planning and engagement could also create additional opportunities to maximise any benefits. This current lack of coordination is delaying the delivery of energy projects and undermining stakeholder and public confidence in the regime.

The Offshore Transmission Network Review (OTNR) is seeking to address this issue and make recommendations to seek a more holistic and strategic approach to offshore energy development whilst also incorporating consideration of the onshore elements. Although this work is taking place, the NSIP regime and policy documents are not able to respond to the recommendations quickly enough. This is causing there to be conflict between the known, desired, and needed future approach and the current regime and national policy guidance.

The Early Opportunities workstream of the OTNR is specifically aimed at looking at ways to maximise coordination in relation to in flight projects but it is at a developer's discretion as to whether they put their project forward as a pathfinder as part of this workstream. East Suffolk is currently not seeing the benefits of this workstream and therefore the Early Opportunities work alone is not sufficient to address the issues this area faces in relation to the projects looking to construct pre-2030. There is therefore a need for greater Government support and intervention to avoid unnecessary delays during the consenting process.

8. Does the NSIP regime successfully interact with other consenting and regulatory processes and the wider context within which infrastructure projects operate?

As previously highlighted, ESC has been contacted by developers of other NSIP offshore windfarm projects in relation to the need to accommodate compensatory structures for kittiwakes within the district. For at least one of these projects, this would require the delivery of a compensation structure under the Town and Country Planning Act 1990 (as amended). Therefore, this involves consideration of the development against ESC's Local Plan and the National Planning Policy Framework (2021) (NPPF), and not the National Policy Statements against which the main development was primarily assessed and consented. This may lead to conflict between the policies.

In addition, paragraph 181(c) of the NPPF requires that sites provided as compensatory measures for adverse effects on habitats sites (European designated sites) are given the same protection as habitats sites themselves. It is considered that this requirement means that locating kittiwake compensation structures on the Suffolk coast has the potential to significantly constrain other developments, particularly in areas such as Lowestoft. It will also place an additional burden on the local planning authority when considering and consenting new development in the area, including creating additional Habitats Regulations Assessment (HRA) requirements.

9. Are there areas where limits in the capacity or capability of NSIP applicants, interested parties and other participants are resulting in either delays or adversely affecting outcomes?

Cumulative Impacts - The NSIP regime does not currently secure full consideration of the cumulative impacts of multiple projects in a robust way. The cumulative assessment is undertaken on a first come, first served basis, regardless of whether the first project provides the anchor development setting a precedent, making it easier for later projects to gain consent. Cumulative impacts need to be fully and robustly considered from the outset using *all* available information. The lack of credible consideration of cumulative impacts has and will continue to have the potential to cause delay during the consenting process. Greater policy guidance is required in relation to this through the update of NPS EN-1.

Sharing of Information – The unwillingness for developers to share information with each other causes significant duplication and as a result causes delays and increases project costs. It is considered that there should be greater sharing of information in relation to specific constraints within an area.

Resource Capacity – ESC has and continues to fully engage with NSIPs but as indicated previously, this engagement places a significant demand on the local authority's time and resources. ESC also has experience where delays in the NSIP process have been caused by the inability of other stakeholders to fully engage with an NSIP project and developer. This experience has occurred through all the stages of the project, but particularly during the pre-application and examination stages. The inability of key statutory stakeholders, such as those in the DEFRA family, to fully engage with NSIPs can cause direct and indirect delays to others and therefore the overall process. Greater support for all stakeholders through PPA arrangements would help to address this issue.

10. Is there anything else you think we should be investigating or considering as part of our end-to-end operational review of the NSIP process?

Non-Material Changes – There is currently no statutory time period within which the Secretary of State is required to determine an application for a Non-Material Change application. It is considered that this could deter some developers from making amendments using this mechanism, which can lead to the submission of multiple planning applications. The provision of a statutory time period for this process may make it more appealing to developers and reduce the burden on local planning authorities.

Flexibility - There is potential for the option of greater coordination and consolidation of projects post consent with the NSIP process. The 'Rochdale Envelope' in theory provides flexibility for consolidation of related and adjacent projects post consent, providing the impacts and order limits do not exceed that of the consented project or projects. This flexibility is especially important at present, with regulatory and technological change occurring as projects are brought forward and consented. Further advice and clarification is required as to how this apparent flexibility could be used to co-ordinate and consolidate connections post consent.

Community Benefits and Compensation – ESC considers there should be minimum tariffs for community benefit schemes in recognition of the impacts experienced by the local communities. Although it is recognised that community benefits cannot be material to the decision making, this does not mean that they should not form part of the project. Similarly, it is estimated that a considerable proportion of the UK's electricity will be routed via onshore cable connections coming ashore within our district, additionally East Suffolk also hosts nuclear generation and will potentially host the new Sizewell C station. The number and scale of the NSIPs coming forward is of significant concern, such that ESC considers that the district should be recognised for our significant contribution to securing the nation's future clean energy needs. A greater recognition

of the challenges and impacts faced by specific districts who must host significant numbers of NSIPs through strategic compensation and community benefit schemes could help to foster a more positive consenting environment for applicants.

Identifying a Lead Local Authority – Developers may at times find it challenging engaging with two different tiers of local authorities on topic matters, especially if contrary advice is provided. It is considered that efficiencies could be achieved by nominating a local authority to lead on matters for which they are responsible. The local authority leading on the issue would engage with the upper or lower tiered authority as appropriate. This would ensure that the authority with the appropriate technical expertise is leading on that matter and provide a locally coordinated approach helping to facilitate productive and efficient engagement and reduce delays. Where there are over-lapping matters, particularly when it comes to discharge of requirements, ESC considers that the tier with the power of enforcement and the more localised knowledge base, usually the lower tier, is best placed to take the lead in consultation with the upper level authority.

11. Please confirm how you interact with the NSIP regime?

East Suffolk Council interacts with the NSIP regime through its role as the local planning authority and as a statutory consultee.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Philip Ridley', with a long horizontal flourish underneath.

**Philip Ridley BSC (Hons) MRTPI
Head of Planning and Coastal Management
East Suffolk Council**