

Suffolk County Council

NSIP Centre of Excellence



Reference Guide to Nationally Significant Infrastructure Projects (NSIPs)

What officers need to look out for

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Acknowledgement: In drafting this guidance, we have taken advantage of the wealth of information available on the Planning Inspectorate website, to explain processes and documents. Readers are advised to visit the Planning Inspectorate website for its full advice and guidance notes: <https://infrastructure.planninginspectorate.gov.uk>

Please note: This guidance has been written as an internal guidance for Suffolk County Council officers. Suffolk County Council is happy to share this guidance with other local authorities in the region as part of the DLUHC funded Regional NSIP Centre of Excellence hosted by Suffolk County Council, but does not accept any liability for the information provided in this document.

Introduction to this Reference Guide

An NSIP is a Nationally Significant Infrastructure Project. They are projects of certain types, over a certain size, which are considered by the Government to be so big and nationally important that permission to build them needs to be given at a national level, by the responsible Government minister / Secretary of State.

Instead of applying to the local authority for Planning Permission, the developer must apply to the Planning Inspectorate for a different permission called a Development Consent Order (DCO). The Planning Act 2008 process was introduced to streamline the decision-making process for major infrastructure projects.

The Planning Inspectorate (PINS) is responsible for undertaking the DCO examinations, and will write a report with recommendations to the Secretary of State to support his decision making.

This guidance has been written by Suffolk County Council primarily as an internal reference document for any of its officers who are involved in an NSIP. The document can be used both as an introduction to NSIPs, and as a reference guide and reminder of key issues that need to be addressed and process to be undertaken at certain stages.

Suffolk is seeing a very large amount of NSIPs being pursued in its area, with around nineteen NSIPs that have been approved, have submitted applications, or are in the pipeline for future applications. Over the past few years, Suffolk County Council built up a significant amount of knowledge and expertise in the NSIP process, by its involvement in a number of NSIPs, most notably Sizewell C.

Suffolk County Council as an NSIP Centre of Excellence

In recognition of its significant experience and strong expertise in NSIPs, Suffolk County Council secured, in 2022/23, funding from the Department for Levelling Up, Housing and Communities (DLUHC) to host an NSIP Centre of Excellence for the East of England, and run a series of seminars and a conference on NSIPs. As part of this initiative, Suffolk County Council reissued its reference guide to make it available also to other local authorities in the region.

Overview

The document includes:

- Definitions of key documents, stages, procedures within the NSIP process, with advice when to expect this, and what to look out for;
- Advice and lessons learnt for each stage of the process. The lessons are taken from the work Suffolk County Council has undertaken to date on NSIPs, and many have been taken from a Lessons Learnt report on Sizewell C.

To provide a quick overview of core responsibilities for each document/process, we have colour coded the headings:

Activities undertaken predominantly by the local authority's project lead/planning team/NSIP core team

Activities which may usually also involve local authority technical officer/service areas

Activities by PINS or Secretary of state or Applicant

Officers new to NSIPs may wish to first have a look at a short film produced by the Planning Inspectorate to explain the process:

<https://infrastructure.planninginspectorate.gov.uk/application-process/the-process/>

For further information, and if you have any queries arising from this guidance, please contact Suffolk County Council's NSIP team at nsips@suffolk.gov.uk

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Key acronyms:

DCO – Development Consent Order

ExA -Examining Authority (see *below*)

LIR – *Local Impact Report (LIR)*

NSIP – Nationally Significant Infrastructure Programme

PINS – Planning Inspectorate

PPA – *Planning Performance Agreement (PPA)*

SCC – Suffolk County Council

SoCG – Statements of Common Ground*Statements of Common Ground*

SoS – Secretary of State

The roles of local authorities in the NSIP process

Table from [Advice Note two: The role of local authorities in the development consent process](#) / [National Infrastructure Planning \(planninginspectorate.gov.uk\)](#). Highlights added by SCC to indicate local authority focussed activities:

Activities undertaken predominantly by the local authority's project lead/planning team/NSIP core team
 Activities which may usually also involve local authority technical officer/service areas
 Activities by PINS or Secretary of state or Applicant

Pre-application	Acceptance	Pre-examination	Examination	Post Decision
28 days to provide comment on draft Statement of Community Consultation (SoCC)	28 days for PINS / SoS to decide whether to accept the application for examination (14 days for local authority to submit adequacy of consultation representation)	Respond to the invitation to the preliminary meeting (rule 6 letter)	6 months for Examination (maximum)	Discharge of requirements and monitoring
Respond to developer consultation about the scheme (s42)		Consider the draft examination timetable and provide comments if necessary	Take receipt of the procedural decision including the examination timetable (rule 8 letter)	Enforcement
Discuss with developer about Section 106 agreements and requirements		Attend the Preliminary Meeting	Submit LIR SoCG and written representation early in examination	Responding to notifications – non material and material change applications
Local authorities are advised to begin work / arrange delegations for Local Impact Reports / Statement of Common Ground (SoCG)		Continue preparation of SoCG, LIR and written representation(s)	Attend and participate at hearings/ accompanied site visits	
Local authorities are advised to consider and make arrangements for joint working with other local authorities		Prepare for examination – legal and specialist support?	Submit a signed planning obligation by the deadline	
Agree the terms of any planning performance agreement with the developer		Continue negotiations with developer	Respond to ExA written questions and requests for further information	
		Submit a relevant representation	Comment on other interested parties' representations and submissions	

Advice relevant throughout all stages

General advice / lessons learnt

- a. A core team to coordinate all aspects of the NSIP, led by an individual with project / programme management skills, and featuring strong planning expertise, is essential for a professional handling of any NSIP.
- b. A strong understanding within the core team of the political process and political sensitivities is crucial to ensure that a political mandate is maintained.
- c. Throughout the process, aim to drive the issues that matter to the local authority when talking to the developer; take frequently charge of, or influence, the agenda.
- d. Be clear what the key issues/concerns are and how they could be resolved. Always remember to set out clearly and from the start what Suffolk's interests and objectives are, and do not assume automatically that any of these are the same for the developer.
- e. Make sure that you go to key meetings/negotiations with more than one Council representative, to take full note of what has been said and have backup.
- f. Nurture relationship with key partner organisations.
- g. Ensure internal resourcing is planned ahead, and aim to negotiate a *Planning Performance Agreement (PPA)* to cover for this.
- h. Don't underestimate resource requirements.
- i. Aim for continuity of officers dealing with each NSIP if at all possible.

An NSIP is usually in many ways significant for the local area, and its significance goes beyond considerations within the planning scope and scope of the Development Consent Order (DCO) regime. To do justice to this wider dimension, and to maximise wider opportunities (e.g. economic and skills) and plan for wider risks (e.g. on availability of labour or indirect public health impacts), it is important to take a project/programme approach that takes a wider perspective than planning, although planning considerations will be at the core.

With the large amounts of NSIPs proposed in Suffolk, cumulative impacts between NSIPs are important and complex to consider – and may need a wider perspective, and Government involvement, than what the DCO process for an individual NSIP would allow for.

Planning Performance Agreement (PPA)

When: Suffolk County Council is seeking a PPA with the developer throughout all stages – from pre-submission to commencement. Some developers do not wish to enter into a PPA beyond pre-application, which SCC considers is not reasonable. After commencement, our preference is to secure developer funding through legally more robust ways, such as Planning Obligation.

What: A Planning Performance Agreement between a developer and a local authority secures payments for the developer to the local authority in order for the local authority to respond to the proposals. Note that, currently, a developer is under no obligation to enter into a PPA with a local authority.

Advice/Lessons learnt:

NSIPs are very resource intense for a local authority. To avoid under-resourcing, or needing to cut services elsewhere in the Council to resource NSIPs, a fair PPA is crucial for the local authority to undertake its roles to the best effect.

A PPA is essential throughout all stages i.e. from pre-examination until post-examination periods, and needs to give medium-term certainty over funding. Therefore, negotiating a fair PPA on the outset is of highest priority.

A fair PPA will achieve full cost recovery of any costs related to the local authority's engagement in relation to the development proposals. Suffolk County Council's experience from Sizewell C suggests that the best approach for a PPA (both for the local authority and the developer) is to agree on fixed monthly payments based on realistic resource estimates; this gives both local authority and developer certainty on funding/expenditure, allows the local authority to flex resources, and avoids creating an industry of time sheet approval mechanisms.

The PPA needs to charge VAT (HMRC advice), and should be index-linked.

Important: Even a reasonably fair PPA may not cover full costs – e.g. legal costs of examination can be considerable, and some independent consultants advice may in some circumstances not be appropriate to be directly funded by PPA moneys. It is advisable to have a strategy to build up contingency by not always recharging services where extra work can be absorbed – i.e. principally only recharge if new staff/backfill is needed - and retaining corporate on-costs in the budget, with the expectation that corporate services absorb additional costs.

1. Pre-Application

General advice / lessons learnt

It is in the pre-submission stage that opportunities to amend the proposals and address concerns are the greatest. At this stage, you need to set up all the relationships, establish your teams, and do your best to influence the developer. You may wish to start drafting your Local Impact Report already now.

1. Deal with the developer and respond to their proposals:

- a. Agree *Planning Performance Agreement (PPA)* with the developer.
- b. Establish positive and professional relationship with the developer.
- c. Consider with developer escalation routes – establish relationships at different levels (technical, SRO, Chief Exec/Director and Leader/Lead Member as required).
- d. Set out for the developer clearly the issues that need to be addressed, and any additional information required, with clear “asks” of the developer, as soon as the issues arise/you become aware of them.
- e. Try to get a good understanding very earlier on of key modelling approaches (e.g. transport models, gravity models), as much of the documentation and mitigation relies on these.
- f. Discuss with the developer early on monitoring requirements and responsibilities.

2. Set up your team:

- a. Establish programme management approach: Appoint a Senior Responsible Officer (SRO) with sufficient levels of involvement and seniority, a project manager/lead in charge of coordinating the input (this could be the lead planning officer) and define your core team for the project.
- b. Appoint solicitors and KC (mix of solicitor and KC helpful - see *below*).
- c. Establish engagement with/lead officers for all affected services. Estimate staff resources to be required for each service area (to also feed into *Planning Performance Agreement (PPA)* ask), and agree recharging.
- d. Make sure that there are sufficient opportunities for officer meetings across technical areas, as sometimes cross-impacts not recognised otherwise.
- e. Consider if you need to appoint any external advisors e.g. traffic modelling.

3. Involve your Councillors, take them on the journey:

- a. Lead Members need to be already involved at this stage. Understand likely political stance, politically contentious issues/topics and ideal outcomes.
- b. Agree with your political leadership if any pre-submission consultations need to be agreed by Cabinet (Suffolk County Council’s Cabinet usually seeks to approve the statutory consultation response, as well as the Relevant Representation – see below).
- c. Establish regular briefings for all members within the locality - this instils confidence and ensures we are listening to local members and are aware of local community perspectives and issues.

4. Work with partner organisations:

- d. Main focus has to be on robust discussions with the Applicant – don’t get distracted from that.
- e. Agree with affected District Councils (and any neighbouring authorities if applicable) how you work together. Do all you can do to work towards commonality of issues – but accept that you will not always achieve this across the board.
- f. Establish strong links with the key relevant partners organisations, e.g. environmental stakeholders (statutory and NGOs), blue light services, health partners. It is important to work in close partnership, provide support, and, where possible, support each other’s arguments, to strengthen Suffolk’s voice and position.
- g. County Council Highways, Fire, Police and Ambulance often benefit from collaboration to consider road traffic impacts.

(continued)

5. Work with the community / town and parish councils:

- a. Consider how you engage with the local community. Consult your members about this. Do you want to hold briefing events to support the understanding of Parish Councils of the proposals and the process, and for you to understand their concerns? Do you want to set up newsletters? Or is this too resource intense?
- b. Explain clearly the role of the County Council in the process (a consultee who can advise / try to persuade, but cannot force changes upon developer, and not responsible for designing or delivering schemes), to avoid wrong expectations later on.

6. Get organised:

- a. Establish your document management approach – Sharepoint? Do you need to establish shared document arrangements with third parties – e.g. District Council, legal advisors?
- b. Establish audit trail to evidence that you have raised issues with the developer.
- c. Use templates for your responses, that allow for clear representations. Put some formality to your responses. Ensure paragraphs and pages are numbered. When responding to documents, consider either using tables quoting developer’s text and comment, or tracked changes.

Pre-application consultation(s) and engagement

When: During the pre-submission period.

What: Before submitting an application, potential applicants have a statutory duty to carry out consultation on their proposals. The length of time taken to prepare and consult on a project will vary depending upon its scale and complexity. It is also likely that a developer wishes to engage with the local authority directly in pre-submission discussions.

Advice/lessons learnt: Responding to a developer’s Pre-application consultation, and involving in direct discussions with the developer, is the best time to influence a project, whether you agree with it, disagree with it, or believe it could be improved.

Environmental Impact Assessment Screening Opinion

When: During the pre-submission period; 28-day deadline.

What: A screening opinion is the process of determining whether an environmental impact assessment is required as part of a planning application. If the Secretary of State either receives a notification that the applicant proposes to provide an Environmental Statement (ES) (Regulation 6 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017) or adopts a positive screening opinion, the Secretary of State must consult affected local authorities in writing. Local authorities should provide the Planning Inspectorate with any comments they may have on the proposed scope of the Environmental Impact Assessment (EIA) within 28 days.

2. Acceptance

General advice / lessons learnt

The acceptance stage begins when a developer formally submits an application for development consent to the Planning Inspectorate. There then follows a period of up to 28 days (starting with the day after the application is submitted) for the Planning Inspectorate, on behalf of the Secretary of State, to decide whether or not the application meets the standard required to be examined.

The local authority's duties in this period are limited to respond to the Adequacy of Consultation response. For the local authority to make good use of this period, having early sight of the [Development Consent Order \(DCO\)](#) submission documents at the point of submission is important, so prioritise to encourage the Applicant to share all (or at least some) of the documents at the point of submission. This is the stage where you need to have all your structures and approaches set up to be ready for the examination period. Discuss now with the Applicant the timescales for the Relevant Representation.

Development Consent Order (DCO) submission documents

When: Between one month and a week before submission the Planning Inspectorate will normally send a letter to relevant local authorities to advise them of the likely submission date of the application. It is within the Applicant's discretion whether or not the application documents are published on the PINS website, or shared with the local authority, at submission. Only once accepted by PINS is there a requirement for the submission to be published.

What: The DCO submission documents contain a suite of documents including the Draft DCO and the Environmental Statement/Environmental Impact Assessment. During the course of the examination, it is likely that amendments and additions will be submitted by the Applicant, to which the local authority may wish to respond. All documents will be published in the PINS [Examination Library](#).

Adequacy of consultation (AoC) representation

When: As soon as possible after receipt of the application.

What: The Planning Inspectorate will invite the host and neighbouring local authorities to submit an adequacy of consultation representation (AoC). The Planning Inspectorate must have regard to any comments it receives from host and neighbouring authorities in deciding whether or not to accept an application. The AoC is a representation as to whether the applicant has complied, in relation to the proposed application, with:

- its duties under sections 42, 47 and 48 of the PA 2008 relating to consultation and publicity.
- its duty to consult a relevant local authority about the preparation of the SoCC (whether the applicant had regard to the local authority's comments on the draft SoCC),
- the commitments set out in the SoCC in terms of undertaking the pre-application consultation in compliance with the stated consultation methodology.

Advice/Lessons Learnt: The bar is set quite low within the Planning Act as to whether the statutory duties have been met.

Even if the Applicant has met its legal duties, the representation provides an opportunity to the local authority to comment on any shortcomings of the consultations.

3. Pre-examination

General advice / lessons learnt

The Pre-examination phase commences as soon as the DCO application has been accepted by PINS, and takes approximately three months. This is a key stage to establish the Council's position and strategy. If Suffolk County Council considers that an NSIP response requires Cabinet approval, typically it is at this point, and ideally includes approval of the draft *Relevant Representation (RR)*.

1. Establish political position, with clear democratic mandate for examination stage:

- a. At this stage you need to have established the political stance as to what the Administration's key issues and contentious topics are. Pick your battles, with consideration to what is realistically achievable. Discuss with lead councillors where they want to be at the end of the examination – what would be the ideal outcome, what would this mean for the Council's position? What would it mean if we cannot achieve the ideal outcomes?
- b. Involve local members in shaping the *Relevant Representation (RR)*.
- c. A **clear political mandate (where applicable, by a Cabinet decision)** with clarity of delegation to officers is important at this point, for the local authority to become ready for the examination – the democratic mandate needs to enable officers to respond swiftly during the examination. There will not normally be time to go back to Cabinet once the Examination has commenced.

2. Refine your position and set out succinct list of issues to be resolved:

- a. Set out clearly issues and asks that need to be addressed – and how they can be resolved.
- b. Take credible and coherent points of objection (or support) – that way our voice carries more weight with the Examining Authority, developer and Secretary of State.
- c. Set out clearly what Suffolk's interests and objectives are, and do not assume automatically that these are the same for the developer – even in areas where interests seemingly overlap, e.g. supply chain and skills, the developer has different priorities and emphases (to reduce expenditure /maximise deliverability) compared to local authorities (to minimise impacts/maximise local opportunities), even if the headline objectives may sound very similar.

3. Continue working with the developer

- a. Continue maintaining a professional and positive relationship with the developer, even if there are fundamental disagreements.
- b. Agree with developer how to engage during examination, including channels of escalation.
- c. Make sure you have an audit trail of your discussions with and representations to the developer, to be able to evidence in the examination you are not presenting anything that hasn't been raised directly with the developer before.

4. Plan resourcing for the examination:

- a. You need to ensure now that you have appropriate officer resource available throughout examination period in all key topic areas, including e.g. holiday rota.
- b. Consider and book in any support function resources required to do a good job: E.g. robust specialist legal advice (solicitor and KC), Section 106 expertise, a data analyst to verify modelling and estimated impacts, finance support.
- c. Agree how to use your legal advisors – recommendation to have a blend of external expert solicitors and KC. Drafting details of e.g. requirements, section 106, etc. is best dealt with by solicitors with their familiarity in those fields. KC best for marshalling planning arguments for different topic areas and making sure that we can make our arguments clearly heard. KC (or junior KC if appropriate) well placed to lead hearings.

5. Communication

- a. Spell out again to the community what local authority's role is – a consultee who can advise / try to persuade, but cannot force changes upon developer, and not responsible for designing or delivering schemes.

Relevant Representation (RR)

When: Soon after acceptance. Following publication of a statutory notice, the applicant is required to allow at least 28 days, from the day after the notice is last published, for anyone wishing to submit a relevant representation to do so. It is in the Applicant's discretion to extend this period.

What: A Relevant Representation should include a summary of what the local authority agrees and/or disagrees with in the application, what they consider the main issues to be, and their impact. The content of relevant representations is used by the Examining Authority to help inform their initial assessment of principal issues for examination.

Any organisation or individual who wishes to make submissions during the examination needs to submit a Relevant Representation and register as an "Interested Party".

If the Council considers that an NSIP response requires Cabinet approval, it is typically at this point. If timelines allow, the Cabinet Report includes a draft Relevant Representation as an Appendix.

Advice/Lessons Learnt: Within the Relevant Representation, set out a succinct list of concerns and issues (with clear asks/options to address the concern) that need to be addressed. This helps both the Examining Authority to determine principal issues for examination, and the Applicant to be clear about, and be incentivised to resolve, areas of objection/concern. If the Relevant Representation's content is approved by Cabinet, by clearly setting out the key issues, and potential ways to resolve these, the democratic mandate and delegations to officers throughout the examination become more defined.

Note that, even if additional information has been requested, you should, as much as possible, set out what you think are the right responses to impacts that you judge to be likely.

Ensure that any issue (or potential issue) is referenced, even if at a high level, as you do not want to have to introduce new issues during the examination that have not been raised at all.

Please note: The Council is able to develop more fully the points made in the Relevant Representation in the [Local Impact Report \(LIR\)](#) and in a [Written Representation \(WR\)](#), once examination has commenced.

Appointment of the Examining Authority (ExA)

When: Prior to the [Preliminary Meeting](#).

What: The Examining Authority (ExA) is the Inspector or the Panel of Inspectors appointed by PINS to conduct the Examination of the application. This is set out in the Rule 6 letter, in advance of the [Preliminary Meeting](#).

Initial Assessment of Principal Issues

When: Prior to the *Preliminary Meeting*.

What: The Examining Authority decides how to examine an application; however, it must make an initial assessment of the principal issues arising on the application prior to *Preliminary Meeting*. This is usually listed as Appendix C to the Rule 6 letter which gives notice of *Preliminary Meeting*. The list is not comprehensive: The Examining Authority will have regard to all matters raised during examination. The initial assessment of principal issues usually form agenda item at the Preliminary Meeting, allowing parties to comment on the initial list and raise other potential issues. The Local Authority has an opportunity to comment on the list of issues in its submission in advance of the *Preliminary Meeting* (Deadline A).

Preliminary Meeting

When: This is a procedural meeting held after the deadline for making a Relevant Representation has passed and once the Examining Authority has made its

Initial Assessment of Principal Issues after consideration of the application documents and the *Relevant Representation (RR)* received. The Rule 6 letter gives notice of Preliminary Meeting.

What: The purpose of the Preliminary Meeting is to discuss the procedure and timetable to be followed during the examination stage, which will be a maximum of 6 months. The Preliminary Meeting is not the time or place to raise matters related to the merits of the application or for members to make politically motivated speeches. It will cover:

- The draft examination timetable;
- The Examining Authority's initial assessment of the principal issues;
- Any procedural decisions the Examining Authority chooses to make at this stage.

Sometimes, there may be two preliminary meetings.

The 6-month examination period commences at the close of the (second, if two are held) preliminary meeting.

Advice/Lessons Learnt: If the draft timetable presents difficulties to the local authority, there is an opportunity to make these constraints known to the Examining Authority before the timetable is finalised shortly after the Preliminary Meeting.

4. Examination

General advice / lessons learnt

The Examining Authority has a maximum of 6 months to carry out the examination. During this stage, Interested Parties are invited to provide more details of their views in writing and in Hearings.

The examination period is very intense for all involved, with limited advance notice of when topics will be covered. Challenge for teams to respond to volume of documents in short timescales on top of day jobs, particularly during (and even more so towards the end of) the examination.

1. Maintain political mandate and buy-in throughout the examination:

- a. Make sure you plan in regular briefings with the relevant senior Members.
- b. Ensure that any important submissions have been agreed in writing by senior officer and lead member (in accordance with the agreed delegation).
- c. Work with lead members to brief local Members, and seek their local feedback.

2. Make your case to best effect to the Examining Authority:

- a. Be clear in any issue you raise if and how the issue can be resolved within the existing DCO submission, and set out credible alternatives – during the examination and, if still unresolved, at the end of the examination in a *Final Position Statement*. Have narrative that links any mitigation asks back to the impacts.
- b. Aim for “equality of arms” during the examination: A good KC and solicitors will allow Council to be able to confidently respond to the developers’ typically well-resourced legal team.
- c. Stick to your messages throughout – regularly revisit what has been said in our *Relevant Representation (RR)*, *Local Impact Report (LIR)* and other submissions.
- d. Preparation is key - particularly for *Issue Specific Hearings (ISHs)*.

3. Plan in staff resources, be aware of wider service impacts, and utilise team to best effect:

- a. Do not under-estimate the significant amount of time taken up by the examination across all services – even for officers in services with only more limited impacts.
- b. Team resilience in all affected services is key: Have a back-up staff member in case of absence, and so that people can take leave as they will need a break in this intense period.
- c. Strong core team is key to success – the better it is resourced, the more burden it can take from service areas, by providing guidance, summaries of documents, etc.
- d. Be well organised, in project management and time planning, to be alert to deadlines and lead-in times, and in parallel to prioritise and plan for negotiations with developer.
- e. Remind all staff that securing improvements, mitigations, compensation is more important than just feeding Examining Authority’s Deadlines.
- f. Make sure there are sufficient opportunities for officer meetings across technical areas, as sometimes cross-impacts not recognised otherwise.
- g. Be aware that other service functions may suffer as experienced staff are taken out of their day jobs. This cannot be completely avoided, but resource planning will help to alleviate.
- h. Expect a considerable rush of last-minute negotiations, discussions, refinements (particularly obligations, conditions and Statements of Common Ground) – ensure you have key staff fully available for the examination over the last 6-8 weeks of the examination.

4. Continue prioritising engagement with the applicant:

- a. While engaging in and feeding into the examination process set by the Examining Authority (ExA), ensure that you continue to maintain dialogue with the Applicant, and try to resolve issues outside of the Examination where possible.
- b. A well-established relationship at Leader/Chief Executive level (or lead member/director level, dependent on the significance of the NSIP) with the developer, nurtured through regular meetings, helps to allow diffusion for areas of disagreement and to allow escalation. By deferring areas of disagreement to more senior levels, technical meetings can be kept professional and constructive.

Topic specific lessons learnt - examination

1. Natural environment

- a. Follow the mitigation hierarchy: Whilst compensation funds may be necessary and useful to mitigate for residual impacts, the emphasis has to be first on minimising residual impacts and working up with the applicant meaningful mitigation. It is useful for the Council to be proactive by providing a list of desired measures/changes to the scheme.
- b. In particular for environmental mitigation, seeking early implementation of mitigation and compensation measures is important – where possible, request these to be in place before commencement.
- c. The EIA process focusses on HRA (Habitat Regulations Assessment) species and habitats which Natural England will lead on – local authorities have an important role to consider the bigger picture and impacts on non-HRA species.
- d. Consider increased uncertainty in forecasting due to climate change.
- e. Biodiversity net gain considerations.

2. Skills and economic development

- a. As these topics focus on opportunities, remember that the developer is primarily interested in de-risking their project – so whilst it appears that the objectives are the same, there is some difference, and we need to be clear what our specific objectives are, in terms of maximising local opportunities.
- b. Some of the issues and opportunities arising in skills and economic development may be outside of the planning sphere of the examination. Ensure that there is always a close linkage between planning and wider discussions, and consider early on which elements are to be considered as planning asks, and which ones aren't and how those that are not can be secured through other means than planning obligations and conditions.

3. Flood and Water

- a. Experience in NSIPs shows that this topic area is often not sufficiently prioritise by developers. We need to set out very clearly from the start how fundamental suitable drainage solutions are for the DCO, what information is required, and the criteria for acceptable mitigation.

Examination timetable

When: After the preliminary meeting, the Examining Authority will publish a timetable.

What: The timetable will set out a range of *Deadlines (to submit representations)* and other dates–

- The date for making written representations
- The date for the Examining Authority to ask an initial set of *Examining Authority's Questions (ExQs)* in writing about any matter contained in the application, *Relevant Representation (RR)*, *Written Representation (WR)*, or anything else considered relevant.
- The date for applicant and Interest Parties to comment in writing on any *Relevant Representation (RR)*, *Written Representation (WR)*, or responses provided to *Examining Authority's Questions (ExQs)*
- Deadlines throughout the examination - for additional rounds of questions, comments, hearings and written representations

Note: The timetable evolves during examination.

Advice/Lessons Learnt:

As the timetable evolves during the examination and more deadlines and hearing might be added, do not rely on it e.g. to allow the team to all go on holiday during an apparently quiet period.

Deadlines are usually tight. For *Issue Specific Hearings (ISHs)*, plan in preparation time and time to write up post-hearing submission.

Great effort required to deal with multiple (complex) matters of law and evidence arising in the limited time.

Examination Library

When: The Examining Authority will set up an Examination Library at the start of the examination

What: On the PINS website, the Examining Authority publishes all written submissions in its Examination Library. Each document receives (in a PDF document) a unique reference number. The Examination Library will be updated throughout.

Advice/Lessons Learnt: Make sure you're looking at the most recent version of (say) draft DCO.

When referencing other documents published from previous deadlines, ensure to include the reference number from the Examination Library.

Deadlines (to submit representations)

When: The *Examination timetable* publishes a number of deadlines throughout the examination. Typically, there are in the region of 10 deadlines in an examination, the last one being close to the date of the close of examination.

What: A series of stages where further representations are sought by Examining Authority from Interested Parties. An NSIP Examination is primarily a written process. Each deadline sets out what information is required to be submitted.

Advice/Lessons Learnt: When preparing documents, remember that the Examining Authority will have to read hundreds, if not thousands, of documents, so make the Examining Authority's life as easy as possible. Ensure that you make your written representations as user friendly as possible, including:

- Number paragraphs and pages;
- Be as concise as possible; avoid repetition;
- Use short sentences and paragraphs / consider sub-headings ;
- Avoid paper-chases: include links to other published material / documents in Examination Library;
- Be clear as to what you want: explain the problem and what you want done about it;
- Present credible alternatives where applicable, that there is no technical impediment to your solution, and, if you can, indicate the cost of your solution;
- If you want the DCO to be amended, provide amended version of the provision (track changed) and Explanatory Memorandum;
- Likewise, provide preferred text if seeking amendment to one of the control documents.

The project's core team/the NSIP team will need to share templates for submissions with the wider team, and has the responsibility to coordinate and ensure the documents are adequate.

Local Impact Report (LIR)

When: Early on during examination (one of the first deadlines). **It is recommended for preparation to commence well in advance of examination** because scale of task and limited time between notification and expiry of deadline.

What: LIR is a written report by host local authorities giving details of the likely impact of the proposed development on the authority's area (or any part of that area); it must be taken into account by the Examining Authority and the Secretary of State. See also PINS Advice Note 1 which includes helpful list of topics to cover.

As per PINS advice note 1, the LIR should:

- provide local knowledge and experience;
- evidence of local concerns and issues e.g. local evidence of flooding, local social / economic issues or local knowledge of travel patterns to community facilities;
- LIRs are expected to contain appraisal of development's compliance with local policy and guidance;
- Advice note encourages local authorities to give views on relative importance of different social, environmental or economic issues and the scheme's impacts on them;
- The LIR should consider impact of DCO articles, requirements and obligations and any changes the local authority considers are needed;
- The LIR should consist of statements of positive, negative and neutral local impacts
- No need for a balancing exercise between impacts

Advice/Lessons Learnt: The LIR is the most important document the local authority produces during the examination, so the production of a robust and comprehensive document needs to be prioritised. The production of the LIR is often a very time-consuming piece of work, resulting in a several-hundred page document. If producing it jointly with other local authorities (recommended), while some work can be shared, the challenge of bringing together multiple views can be time-consuming and complex.

If the LIR is substantial in volume, make sure it remains user friendly and to the point – for example, by including summary boxes for each section, or for all impacts.

There is no need for the LIR to replicate applicant's Environmental Impact Assessment/Statement.

PINS Advice Note 1 states that the LIR should be distinguished from any representation a Local Authority may choose to make in respect of the application's merits. Please note that further elaboration with regard to the application's merit can be made in the [Written Representation \(WR\)](#). However, from Suffolk County Council's experience, we consider it nevertheless helpful to indicate within the LIR the Council's views on acceptability of individual proposals and specify any asks/desired solutions/improvements/ mitigations to address impacts.

PINS Advice Note 1 states that the LIR does not need to assess against National Planning Statements (NPS) (as this would duplicate the Examining Authority's role). Having said that, we consider that it is still helpful to refer to National Planning Statements and other national policy to strengthen the case and use as a background for our assessment of impacts.

Written Representation (WR)

When: Early on in the examination – often at the same deadline as the *Local Impact Report (LIR)*.

What: Written Representation and *Local Impact Report (LIR)* are distinct documents allowing the local authority to express information differently. The *Local Impact Report (LIR)* is a technical document setting out an evidence-based assessment of all the impacts of a proposal on the communities affected, while a Written Representation is the most appropriate document to set out the authority's view on the application i.e. whether or not it supports the application and its reasons.

Advice/Lessons Learnt: Local authorities will have set out their stance in their *Local Impact Report (LIR)*, and provided detail to issues within the *Local Impact Report (LIR)*. Therefore, a local authority may decide not to submit a Written Representation, if it would only duplicate what has been submitted in other documents.

However, the Written Representation provides an opportunity for the local authority to provide further detail on its overall assessment of the merits of the proposals or aspects of the proposals, where it feels that the *Local Impact Report (LIR)* may not be the right vehicle to pursue these.

Statements of Common Ground (SoCG)

When: The Examining Authority set deadline for submission of SoCG in post Preliminary Meeting letter; however, early submission encouraged. A final SoCG is expected to be submitted at the final Deadline of the examination.

What: A statement agreed between the Applicant and another stakeholder which –

- sets out any matters on which the applicant and another party (parties) agree
- identifies those areas where agreement has not been reached

Possible for local authority to enter more than one; and different SoCG with different parties

The statement should include references to show where those matters are dealt with in the written representations or other documentary evidence.

Advice/Lessons Learnt: A useful document that ensures evidence and examination focuses on the material differences between the parties. To be helpful to the Examining Authority, do not lose focus or get lost in the detail. Explore common ground with other stakeholders (e.g. District Council).

Examining Authority's Questions (ExQs)

When: Usually early in the examination for first set of questions, likely to be followed by around two more rounds of questions.

What: Questions by the Examining Authority, usually directed to the Applicant, local authorities or other key consultees. These can be wide ranging, and are likely to cover strategic, legal as well as technical questions, and may relate to any matter contained in the application, RRs, WRs, or anything else considered relevant.

Advice/Lessons Learnt: Each ExQ tends to be directed to the Applicant and/or specific Interested Parties. If you have something important to say on a question not directed at you, consider if you should do so nevertheless. Note that there is a second opportunity to comment on a question at the following deadline, when you can comment on the responses submitted for each question.

Planning Obligations – Section 106 or Deed of Obligation (Section 111)

When: A signed Planning Obligation (where required) will usually need to be submitted by the final Deadline. Draft Planning Obligations will be requested to be submitted at previous deadlines, to give other Interested Parties the opportunity to comment. Negotiations may carry on until the last minute.

What: Planning Obligations are legally binding provisions to secure mitigations and compensations. Traditionally, these would be secured as Section 106 agreements, but some recent NSIPs secured them as a Deed of Obligation under Section 111. Planning Obligations are signed and executed by both the Applicant and the relevant local authorities.

Note: A signed Planning Obligation cannot be amended by the Secretary of State.

Advice/Lessons Learnt: Planning Obligations are perhaps the most important document to be agreed by the local authority, and need to be prioritized during the examination, as they secure the mitigation and compensation funding, directly for the local authority, for third party organisations, and for the wider Suffolk community (in form of mitigation/compensation funds where applicable).

The advice note rightly states that “Brinkmanship by any party is inappropriate and may backfire within the context of a timetabled examination.” Notwithstanding this, there will be a substantial amount of negotiation with the Applicant around the evidence base and what levels of mitigation are considered appropriate.

Have a clear narrative that any relates mitigation obligation back to impact - ensure no ambiguity

Try to secure any payments/mitigations/appropriate resourcing for discharging etc. through a legally binding document – Deed of Obligation/Section 106 or *Development Consent Order (DCO)*.

A key element within the Obligations should be monitoring arrangements, setting out monitoring responsibilities and reporting arrangements, alongside possible trigger points for mitigation effective Build in, where appropriate, an adaptive impact assessment process (plan, monitor and manage).

When negotiating obligations, aim to build in flexibility on how and when to be allowed to spend money, and make sure money is accessible without undue burdens. Watch out for any conditions how the money can be claimed.

Remember to build in indexation.

Negotiations can carry on until the last minute and beyond – and are likely to intensify in the last few weeks of the examination. Plan in resource (both of chief negotiators and of technical advice) accordingly.

If the developer does not wish to pursue Planning Obligations, consider carefully how mitigation, compensation, staff resources, monitoring arrangements can be legally secured.

Development Consent Order (DCO)

When: A draft DCO will be included within the original *Development Consent Order (DCO) submission documents*. At the last deadline of the examination, a final draft DCO will be submitted by the Applicant. The Secretary of State is able to make amendments to the DCO before adoption.

What: The DCO is a statutory order which provides consent for the project and means that a range of other consents, such as planning permission and listed building consent, will not be required. A DCO can also include provisions authorising the Compulsory Acquisition of land or of interests in or rights over land which is the subject of an application. A draft DCO is submitted by applicants with every application.

Key elements of the DCO of particular relevance to the County Council:

- Highways provisions: Often significant amount of detail related to County Council responsibilities as street authority.
- Requirements: The Planning conditions of a DCO. Generally, requirements will be discharged by a local authority (SCC often discharges transport, rights of way and archaeology requirements but will have an interest in other requirements). Requirements should be precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other respects.
- Protective provisions: it may be appropriate for the County Council to seek Protective Provisions, particularly as Highways Authority.

Advice: Legal/solicitors' advice on the DCO will be important, as this is complex legal territory. Requirements will need to be carefully considered, including resource implications for SCC if SCC is discharging / or has input into discharging of requirements.

If mitigation and compensation funding is not agreed through *Planning Obligations – Section 106 or Deed of Obligation (Section 111)*, try to secure any payments/mitigations/appropriate resourcing for discharging etc. in the DCO.

Open Floor Hearings (OFHs)

When: Typically, one set of OFHs will be held close to the beginning of the examination, but additional ones later on are possible. OFHs can be requested by interested parties and must be held if requested.

What: Typically, OFHs are community focused, with an emphasis on individuals and community representatives putting their views directly to the Examining Authority and, where appropriate, being questioned about them. The PINS Advice Note 2 states: "In this context there may be a limited role for the local authority as a technical / statutory consultee."

Advice/Lessons Learnt: Typically, the responsible Cabinet Member is likely to wish to speak at the OFH to provide a high-level political/corporate perspective from the Council. It is not appropriate at this occasion for the County Council representation to go into detail at the OFH, as the local authority has other opportunities to present its views.

The PINS Advice Note 2 states: "Local councillors may find these hearings are suited to their role as a community representative, but should be clear with the ExA in what capacity they are speaking (on behalf of the local authority / themselves / their constituents)."

Issue Specific Hearings (ISHs)

When: A number of ISHs will be scheduled throughout the examination phase. The Examining Authority will try to issue an agenda a week in advance of an ISH in order to provide interested parties with a guide as to who will need to attend.

What: Issue Specific Hearings (ISHs) are held by the Examining Authority to explore in detail a specific topic or set of topics e.g. DCO / obligations / transport impact but can also be site-specific. These hearings are held only if the Examining Authority considers them necessary for an adequate examination of an issue or for an interested party to have a fair chance to put forward their case.

Issue specific hearings are inquisitorial and the Examining Authority will generally ask questions of the participants. Cross examination is an exception but can be requested by an interested party.

Traditionally, these would have been held as in-person meetings, but COVID restrictions have moved ISHs online, in MSTeams format. It remains to be seen if virtual ISHs will continue after the COVID pandemic.

Advice/Lessons Learnt: If you feel that a topic should be the subject of ISH, and is not proposed, you can raise this at the [Preliminary Meeting](#) in relation to the draft Examination Timetable.

Preparation is key for issue specific hearings. A good KC will be able to lead on our interests throughout the hearing, but to be effective, a comprehensive briefing with the KC is essential.

As the agenda is usually only issues a week in advance of the ISH, there is only limited time to prepare based on the agenda – do not wait for the agenda to commence preparations.

Good practice is to fill in the post-hearing submission template in advance of the hearing with all the detail, so that it is at hand for the LC and technical officers. Make sure you cross-refer to the documents on the PINS library with the correct reference number and page/paragraph.

Keep the following in mind:

- Avoid repetition;
- Don't complain without explaining what remedy is sought;
- Don't pull rabbits out of the hat – make sure your concerns have been raised previously
- Aim for concise delivery of presentation which gets to the point
- If feasible, aim for joint presentations (e.g. joining up with other IPs with similar / same concerns and have joint statements, or agreement that one puts across the agreed argument, and the other endorses this argument)
- It is useful to be concise at the hearings and not to get drawn too much into detail – instead, be ready to cross-refer to already submitted document or offer detailed written information afterwards.

During the hearing, communication is key – for virtual hearings, we have found that Whats App groups between officers and KC worked well. For virtual hearings with many interdependencies across our service, it may be useful to bring officers together in a room in the officer, to be more effective in responding across the topic areas.

After the hearing, you need to provide written summary of oral submissions within the deadline. Note that the written submission can include not just what has been said, but also what you would have liked to say but had no opportunity to do so, as well as any additional information which may have been requested at the ISH.

Compulsary Acquisition Hearings (CAHs)

When: Probably around half way through the examination.

What: CAHs take place at the request of anyone whose interest in land or rights over land are proposed to be compulsorily acquired. A local authority's legal team are likely to play an important role in ensuring that the local authority's interests as a land owner, leaseholder and/or other land interests are properly considered.

Advice: If the local authority does not have land interests, it is still advisable to attend the CAH to be available for comment if requested. Much of the advice for *Issue Specific Hearings (ISHs)* above equally applies to CAHs.

Accompanied site inspection (ASI)

When: Usually in advance of the first *Issue Specific Hearings (ISHs)*.

What: A visit by the ExA to the development site(s). The local authority is invited to attend, to point out specific locations, views etc. At the ASI, it is not appropriate to discuss issues or the merits of the proposals.

Advice/Lessons Learnt: It is recommended for the local authority to send a core team member, and if appropriate specific technical experts, to attend the ASI. This is to be available to point specific locations out to the Examining Authority, as well as to experience what was seen and pointed out during the ASI.

Final Position Statement

When: To be submitted at the final Deadline.

What: This is not a formally required document that is specifically requested by the Examining Authority, but, if set out with clarity, offers an important opportunity to set out succinctly if and how the overall position of the local authority has changed, and whether there are still any outstanding issues that the local authority wishes to see addressed in the Examining Authority's report and as part of the decision by the Secretary of State, and how these could be resolved.

Advice/Lessons Learnt: Whilst not formally required, a clear final position of the host local authority at end of an examination can be helpful, for credibility and impact. Our voice carries more weight both with Examining Authority, developer and Secretary of State if we take credible and coherent points of objection.

The Final Position Statement enables the Council to give a clear view to the Secretary of State of our views as representative of the local community. It is helpful for the Council to have a clear position as to whether a development should or should not happen - or what needs to happen to make it acceptable, with clear pathway how issues can be resolved – so that the Council can pull its weight as statutory consultee and as voice of our communities. Setting out how these concerns could still be resolved at this late stage underlines the credibility of our position.

5. Decision

General advice / lessons learnt

After the close of the examination, the Examining Authority needs to submit a report to the Secretary of State within three months. The Secretary of State then has another three months to make his/her decision (although it is not uncommon that this period is extended).

- b. Consider whether you want to update (or re-iterate) your *Final Position Statement* in a letter to the Secretary of State – updates may be helpful if further work has been undertaken between the Council and the developer after the close of examination.
- c. Be prepared to respond to questions from the Secretary of State.
- d. Agree with the developer if any work is expected to be undertaken between end of examination and commencement.
- e. Consider whether you need an interim *Planning Performance Agreement (PPA)* with the developer, to bridge the period between end of examination and commencement.
- f. Tidy up the examination documentation – prepare guidance as to the legal agreements and what they mean.

6. Post decision

General advice / lessons learnt

Once a Development Consent Order has been granted by the Secretary of State, the developer can commence its project.

- a. Do not underestimate very significant resource requirements post consent – make sure you secure funding for this from the developer within *Planning Obligations – Section 106 or Deed of Obligation (Section 111)*.
- b. Expect there to be changes post consent, and ensure that you are ready to deal with change management. Non-material changes may usually be approved by the local authorities; material changes would go back to the Secretary of State.
- c. Remember to continue to engage with local communities – by being open and reminding communities of the Council’s roles and responsibilities, what had been agreed and how we are progressing in our responsibilities, and keeping communities up to date with any post consent change applications, future conflicts can be reduced/avoided.

Discharge of requirements

When: As defined in the DCO.

What: To discharge requirements - the equivalent to Planning conditions within a *Development Consent Order (DCO)*. Generally, requirements will be discharged by a local authority (in recent DCOs in Suffolk, this has been based on statutory responsibilities – so Suffolk County Council often discharges transport, rights of way and archaeology requirements, and at times surface water drainage requirements, but will have an interest in other requirements).

Advice/Lessons Learnt: Watch out for any “deemed approval” clauses - these mean that if the Council does not respond within a set timeframe to submissions by the developer, this leads to an automatic approval.

Implementing Planning Obligations

When: At/after commencement, as defined in the *Planning Obligations – Section 106 or Deed of Obligation (Section 111)*.

What: Implement the Planning Obligations agreed within a Section 106 or Section 111/Deed of Obligation.

Advice/Lessons Learnt: Each funding and mitigation measure may come with its own conditions – be it approval through a governance group or need to evidence that impacts have occurred and are linked to the development. Make sure you are aware of these, and collect from the start baseline data and set up monitoring arrangements to ensure you have the right evidence if and when it is needed. This is an important role to be shared between core team and service areas.

Again watch out for any “deemed approval” clauses - these mean that if the Council does not respond within a set timeframe to submissions by the developer, this leads to an automatic approval.

Sources of further information

PINS website:

- Legislation, guidance and advice at <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/>
- A short film produced by the Planning Inspectorate explaining the DCO process at <https://infrastructure.planninginspectorate.gov.uk/application-process/the-process/>
- Example documents at <https://infrastructure.planninginspectorate.gov.uk/application-process/example-documents/>

Sign up to updates on PINS website – you can do that on the project front page of any NSIP in the system and listed on the PINS website - <https://infrastructure.planninginspectorate.gov.uk/>

Suffolk County Council website

- Overview of NSIPs in Suffolk: [Nationally Significant Infrastructure Projects \(NSIPs\) | Suffolk County Council](#)
- Information about the Council's energy infrastructure policy and strategic engagement with Government: [Our Energy Infrastructure Policy and Strategic Engagement | Suffolk County Council](#)

Suffolk County Council has for its staff further guidance on its intranet, including guidance on the Sizewell C DCO and Deed of Obligation, at

<https://suffolknet.sharepoint.com/sites/myscc/Pages/Sizewell-C-and-other-Nationally-Significant-Infrastructure-Projects---Key-information-for-officers.aspx> (only available for SCC staff)

Contact

If you have any queries arising from this guidance, please contact Suffolk County Council's NSIP team at nsips@suffolk.gov.uk