

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

**PLANNING ACT 2008 - CONSULTATION ON THE PRE-APPLICATION
CONSULTATION & APPLICATION PROCEDURES FOR NATIONALLY
SIGNIFICANT INFRASTRUCTURE PROJECTS**

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To inform members about the consultation currently taking place on the pre-application and application procedures for nationally significant infrastructure projects
- 1.2 The Planning Act 2008 makes fundamental changes to the system for authorising nationally significant infrastructure projects in the United Kingdom which will come into effect in 2010.
- 1.3 The Government is now asking key stakeholders to comment on a draft of the mandatory procedures for public consultation under the new regime.

2. BACKGROUND INFORMATION

- 2.1 The Planning Act 2008, which was enacted in November 2008, has altered the way in which proposals for nationally significant infrastructure projects (NISPs) will be determined. A range of projects for the development of energy generation facilities, airports, highways, railways, water resources and waste treatment facilities will now be classed as NISPs. Development of these projects will require development consent which can only be granted by an order of the newly created Infrastructure Planning Commission (IPC).
- 2.2 Following the Act, the Department for Communities and Local Government has now published its consultation on the draft regulations that will shape the procedures to be followed during the application for the new, all-encompassing consent. The consultation period ends on 19 June and the draft regulations are expected to come into force in October 2009.

3. OPTIONS FOR CONSIDERATION

3.1 The draft regulations focuses on four key areas:

- Pre-application and application procedures and requirements;
- Model provisions for development consent orders
- Environmental Impact Assessment regulations
- Amendments to Conservation and Natural Habitats Regulations

Pre-Application Procedures

3.2 The draft regulations set out the names of the bodies that an applicant must consult, both prior to making an application and when the application is made to the IPC. Some consultees must be consulted for every application, like the Environment Agency, CABI and the Equality and Human Rights Commission. Other consultees, like the Civil Aviation Authority, the Office of the Rail Regulator and the Water Services Regulation Authority only need to be consulted on an application if it is likely to affect their industry.

3.3 Applications will need to be advertised in local and national papers and the London Gazette.

3.4 As well as pre-application procedures, the regulations also set out what documents have to be submitted with an application. Generally, this means plans of the proposed development, a model order and a book of reference setting out the land ownership in the area. The regulations prescribe a standard application form.

3.5 The draft regulations also include specific requirements for applications for generating stations, highways, harbour facilities, pipelines, hazardous waste facilities and dam or reservoir applications.

Model Provisions

3.6 The purpose of the draft regulations dealing with model provisions is to provide a template for the development consent orders that the IPC will issue. Developers will be required to submit a draft development consent order with their application. The IPC's expectation will be that the draft order submitted with an application will be identical to the model order in the draft regulations. Developers will need to provide an explanation for deviations from the model order.

3.7 At present, there is one model order to cover all IPC developments. Given the wide range of developments covered by the IPC, not all of the model provisions will be relevant for every development. One of the

consultation questions is whether there should be different model provisions for different development types.

Environmental Impact Assessment (EIA) Regulations

3.8 There will be new EIA regulations to apply to major infrastructure projects. As with all the EIA regulations they prevent the IPC issuing a development consent for any EIA application without an environmental statement. The draft regulations also set out the procedures for obtaining a screening and scoping opinion from the IPC, publicity for EIA applications and the powers of the IPC to request further information.

3.9 Where an application is made to the IPC without an environmental statement and the development is one that requires an EIA then the IPC are prohibited from accepting the application.

Habitats amendment

3.10 The consultation includes draft regulations that insert the Planning Act 2008 and the IPC into the existing Habitats regulations, which apply to sites that are protected under European regulations.

Guidance

3.11 In addition to the regulations, the Government intend to publish two guidance documents. One is intended to guide promoters of nationally significant infrastructure projects as to how the requirements of the Planning Act 2008 should be met. The other is intended to provide guidance on associated development, which is defined in the Planning Act 2008 as development that is associated with a nationally significant infrastructure project.

4. ANALYSIS OF OPTIONS

4.1 The publication of the draft regulations represent an important step forward in understanding the workings of the new consent regime for nationally significant infrastructure projects. Of particular interest for local planning authorities is the pre-application consultation stage. The draft regulations proposes three consultations stages - one regarding the consultation itself, one before any application is submitted and one following the submission of an application.

4.2 At the pre-application stage local authorities have three roles:

- promoters of projects will consult them on what should be in their statement of community consultation;

- they are statutory consultees for the any proposals, and are likely to have views on the proposals and their impacts, including the impact on the local plan; and
- they can make representations to the IPC concerning the adequacy of the promoter's consultation.

4.3 Under section 5 of the 2008 Act, applicants to the IPC will have to comply with statutory requirements to engage in pre-application discussion with local communities, local authorities, and those who would be directly affected by the proposals. This duty to involve the local authorities is contained throughout the supporting material and draft guidance notes, but does not appear in schedule 1 of the draft regulations, which sets out those bodies to be consulted. It is considered that this is an oversight by the authors.

5. **RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)**

5.1 Financial - there are no financial implications

5.2 Staffing - will be from existing staffing resources with various teams across the council

5.3 Property - there are no property implications

5.4 IT - there are no IT implications

6. **OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)**

6.1 Statutory - will assist in the delivery of nationally significant infrastructure projects as defined under the Planning Act 2008

6.2 Environmental - will support the delivery of sustainable development.

6.3 Diversity - there are no diversity implications

6.4 Section 17 - Crime & Disorder - there are no s.17 implications.

7. **OUTCOMES OF CONSULTATION**

7.1 All comments from relevant officers have been included in this report.

8. **RECOMMENDATIONS**

8.1 The contents of the report are noted.

8.2 A response be sent to the Department for Communities & Local Government requesting that local planning authorities are included as a

consultee under Schedule 1 of the proposed Infrastructure Planning
(Applications & Procedure) Regulations 2009.

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Background Papers used in the preparation of this report

Planning Act 2008 (The Stationary Office, 2008)

Planning Act 2008 - Consultation on the Pre-Application Consultation and
Application Procedures for Nationally Significant Infrastructure Projects (DCLG,
2009)