

November 2021



# **Nationally Significant Infrastructure Projects Regime Campaigner guide**

## About this guide

This guide introduces the process for taking decisions on major infrastructure of national importance (known as Nationally Significant Infrastructure Projects (NSIPs)) in England and Wales<sup>1</sup>. These national schemes are determined via a Development Consent Order (DCO) process, rather than the planning application process (under the Town and Country Planning Act 1990), which is used to determine local level development by your local planning authority.

This guidance is designed to help you understand what NSIP projects are and how best to participate and engage in the DCO process. The guide is divided into different sections and aims to:

- Set the wider context for NSIPs and DCOs, including an overview of the national policy framework and the role of National Policy Statements (NPSs),
- Summarise the DCO process for NSIPs,
- Help you to compare and contrast the NSIP and Town and Country Planning application regimes,
- Empower you so you can engage with and get involved in the development of the NSIP proposal and its determination,
- Advise on how to make a good representation, where to submit your representation and the purpose of the NSIP examination process.

### Important jargon to know:

NSIP – a Nationally Significant Infrastructure Project

PINS – the Planning Inspectorate

DCO – Development Consent Order

NPS – National Policy Statement

SoS – Secretary of State

EIA - Environmental Impact Assessment

EA – the Examining Authority

**Please note:** There is a separate process for dealing with and responding to locally determined planning applications under the Town and Country Planning Act 1990. Please see the separate briefing for more detail.

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<sup>1</sup> This guidance does not review the process of consent for [developments of national significance](#) (DNS) which were introduced in 2016 by the Planning (Wales) Act 2015 and are dealt with by PINS on behalf of the Welsh Ministers. The Welsh Government have prepared [a guidance note for communities](#).

### **Advice from our experienced campaigners:**

The process and timescales for national infrastructure are different from local development planning decisions and often require significant time and resourcing by communities to engage in the process and determination. These campaigns are tough and difficult to win. Our top tip is to utilise a strong group and support network, who are prepared to be involved over a long-term period (sometimes 4 or 5 years).

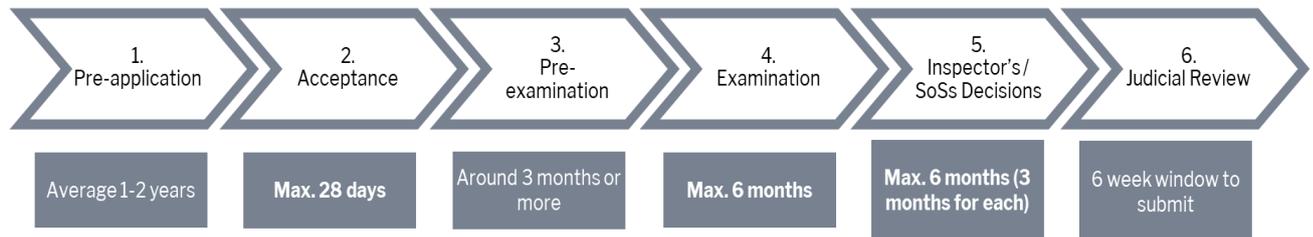
**But** don't let this put you off – influencing change is never easy. If you want to influence the future of nationally significant development proposals to ensure they represent what is best for people and climate change then it is important to be involved in the process and get your voice and the voice of your local community heard. Decision-makers must take note of your views on each case, and this is your opportunity to help them understand why your knowledge and experience is just as valuable as the views of those in the development industry.

## Introduction

### The six main stages for the determining Nationally Significant Infrastructure Projects (NSIPs)

The diagram below shows the process from start (indication of a proposal coming forward) to end (decision on the proposal being made). There are six key stages to understand when considering this guidance. Each stage has a general timescale expectation with those indicated in bold being statutory timescales (i.e., they must be followed). As you can see the process is lengthy and often requires considerable resources and time to fully engage in and influence the process.

Further details of these stages are provided later in this guidance document.



\*Timescales in bold are statutory deadlines

### Setting the scene: National policy framework for NSIPs

#### The 2008 Planning Act

The Planning Act 2008 introduced a new development consent regime for determining major infrastructure projects (“Nationally Significant Infrastructure Projects” or “NSIPs” for short). This is known as the “Development Consent Order” (or DCO) regime - a DCO being a permission which a developer receives if the development proposal is granted. The purpose of the DCO regime is to essentially speed-up decision-making for major energy, transport, water, waste water, and waste infrastructure projects by establishing a framework for decision-making based on the case for a development (i.e., why it is needed) all whilst providing developers with more certainty that a decision will be made within a set period of time. The process was able to be sped up on this basis because ultimately, big issues such as the need for certain types of major infrastructure had been predetermined in national policy and therefore taken out of the decision-making discussion.

The system represented a radical departure from the longstanding Town and Country planning system which governs the process for the majority of planning applications most people are familiar with (such as a two-storey residential extension, a new business unit and some small-scale infrastructure schemes). Many viewed these changes to determining NSIPs and compressing the decision-making process into a rigid timescale laid down in the Act and regulations as curtailing the rights of the public to influence the proposal and participate in the decision-making process.

Since being introduced, the system has undergone further changes.

## The Localism Act 2011

The Localism Act 2011 abolished the Infrastructure Planning Commission (IPC) who were originally responsible for determining (granting or refusing) DCO applications. As a result, power to grant or refuse an NSIP project was handed over to the relevant Secretary of State (SoS) (depending on which departmental sector the development relates). This decision is based on recommendations made by PINS (the Examining Authority comprising a panel of Inspectors) following detailed examination of all the evidence.

## Other relevant legislation

Further changes to the system have also been made via the Growth and Infrastructure Act 2013 which enabled an additional category of business or commercial projects to use the regime. In addition, the Infrastructure Act 2015 aimed at speeding up the planning process, and the Housing and Planning Act 2016 which allows development consent to be obtained for housing which is related to a NSIP. Most recently, in 2020 there have been further updates to publication requirements for NSIP documentation as a result of the Covid pandemic (as set out within the Infrastructure Planning (Publication and Notification of Applications etc.) (Amendment) Regulations 2020 (the 2020 Regulations)).

In 2018 the government [consulted](#) on whether shale gas production projects should be determined via the NSIP regime. This was followed by considerable opposition – the vast majority of respondents were opposed – and strong campaigning by environmental NGOs, including Friends of the Earth, which resulted in the [proposal not being taken forward](#).

## What projects qualify as Nationally Significant Infrastructure Projects (NSIPs) and when is a Development Consent Order (DCO) required?

NSIPs are defined in the 2008 Planning Act and subsequent regulations. Specifically, Section 14 of the Planning Act 2008 establishes the types of development project that qualify as NSIPs. Each project type is then subject to Section 15-30A of the Planning Act which define qualifying thresholds.

Sector	Development Type
Energy	<ul style="list-style-type: none"> <li>• Generating stations (excluding onshore wind)</li> <li>• Electric lines (above ground)</li> <li>• Underground gas storage</li> <li>• Liquid Natural Gas facilities</li> <li>• Gas reception facilities</li> <li>• Gas transporter pipelines</li> <li>• Other pipelines</li> </ul>
Transport	<ul style="list-style-type: none"> <li>• Highways</li> <li>• Airports</li> <li>• Harbour facilities</li> <li>• Railways</li> <li>• Rail Freight interchanges</li> </ul>

Water	<ul style="list-style-type: none"> <li>• Dams and reservoirs</li> <li>• Transfer of water resources</li> </ul>
Waste Water	<ul style="list-style-type: none"> <li>• Waste water treatment plants</li> <li>• Transfer / storage of waste</li> </ul>
Waste	<ul style="list-style-type: none"> <li>• Hazardous waste facilities</li> <li>• Radioactive waste geological disposal facilities</li> </ul>

In addition, the relevant SoS can choose to designate a project as an NSIP which would not otherwise qualify as one (subject to certain criteria<sup>2</sup>).

**WARNING!** It is a criminal offence to build an NSIP without first obtaining a DCO.

### Who determines a DCO for a NSIP proposal?

Due to their national significance, a DCO application is firstly considered by the Planning Inspectorate (PINS). PINS appoint a panel of independent planning inspectors (known collectively as the Examining Authority) who conduct the Examination stage (stage 4), which informs a report of recommendations to the SoS who makes the final decision to grant or refuse development consent. The Examining Authority bases their recommendations on the framework provided by the government's National Policy Statements (NPS).

The Examining Authority may be assisted by an appointed expert assessor where an application raises issues of a specialist nature which are beyond the general remit of a planning professional.

### Does my local planning authority have a role in the process to decision?

Your local planning authority will be formally consulted and asked to input at various stages. They will be involved in conversations with the developer on a Statement of Community Consultation at the outset of the Pre-application (stage 1) of the process. PINS will then ask for their views on whether the local statutory consultation has been adequate and any comments on the developer's Consultation Report at Acceptance (submission) stage.

For the project itself they have the opportunity to submit a [Local Impact Report](#). It is worth liaising with local planning authority planning officers or other officers (such as ecologists) but bear in mind that because your local planning authority does not take the decision, they may not give very high priority to getting involved in a NSIP in their area. However, your local planning authority will likely be involved at a later stage (post-decision) with monitoring and discharging requirements (similar to planning conditions).

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<sup>2</sup> Forms part of a project in the energy, transport, water, waste water, waste sectors, or is a prescribed business or commercial project and is considered by the SoS to be of national significance.

So, it is in their interests to ensure the best possible outcome, which serves their communities and local environment well.

If you find that your local planning authority is not intending to submit a Local Impact Report you can speak to the Leader of the Council (of your relevant local planning authority) or one of the relevant Portfolio Holders (such as the environment, planning or transport). Use our resources on our [Campaigning pages](#) to be active in your local area and encourage your views to be taken seriously by your local planning authority so that your community is fully represented in the Examination stage of the process.

If there is a conflict with the Local Plan then this can be considered as a factor against the project, but the SoS is likely to give more weight to relevant NPSs.

### **What are National Policy Statements (NPS)**

Earlier (under ‘Setting the scene’) we mentioned that the need for certain types of major infrastructure had been predetermined in national policy – these are known as National Policy Statements (NPSs). These are the main strategic policy framework which inform planning decisions by DCO for NSIPs. Although it is important to note that other policies and important matters will also carry weight<sup>3</sup>.

NPSs set out national policy with regard to the different categories of NSIP, for example, transport, energy, water infrastructure and airports (there are 12 in all) – see our ‘Further Information’ section at the end of this document for a full list. Each NPS is assigned its own name, for example the Overarching NPS for Energy is known as EN1. NPSs are also subject to a Strategic Environment Assessment (SEA) – a systematic process for evaluating environmental implications of proposed policy and likely cumulative effects.

A DCO application is normally determined in accordance with the relevant NPS, subject to exceptions listed in Section 104 of the Planning Act 2008. NPSs undergo public consultation and parliamentary scrutiny before being designated (i.e., published). They provide the framework within which Examining Authority make their recommendations on DCO applications to the SoS, and the framework within which the SoS makes the final determination of those applications. For more information we have set out in the summary table on the Inspector and SoSs decision under Stage 5 of the process). For more information we have set out key considerations in Stage 5 (the Inspector and SoSs decision) of the process in the next section.

**Important:** The 2008 Planning Act generally removes the right to question the need for a project. This is assumed to have been established by Ministers (subject to Parliamentary scrutiny and public consultation) within published NPSs. That said, some of the NPSs are quite old and in urgent need of revision and updating to account for changes in evidence, policy and legislation that have taken place. The Energy NPS is now under review and under consultation to reflect current national policy and commitments, such as the target to achieve net zero carbon by 2050 and the Paris Agreement. However, other NPSs, such as the National Networks NPS, which covers road building, fails to reflect similar climate commitments and obligations.

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<sup>3</sup> <https://infrastructure.planninginspectorate.gov.uk/application-process/frequently-asked-questions/#acceptance> (FAQ57)

Tackling the climate and ecological crises needs to be at the heart of major infrastructure decisions. However, this is unlikely to happen without a review and revision of NPSs.

**Case in point:** Following the original Court of Appeal Heathrow ruling in 2020, the Government faced growing calls to do just this, although the subsequent Supreme Court ruling overturning this decision may have reduced any urgency in this regard. This has largely been confirmed by the government's recent announcement that they will **not** be updating the Airport NPS (ANPS), which favours a third runway at Heathrow Airport, until a new Department for Transport (DfT) strategy outlining how the aviation sector will reach net zero emissions is published (i.e., the Jet Zero strategy).

### What NSIPs are currently in progress?

The PINS [National Infrastructure Planning website](#) includes a list of all NSIP projects, (based on geographical location), their stage and relevant submission documents. The website also includes helpful guides and FAQs.

### NSIPs and other consents

Once granted, a DCO is often a 'statutory instrument'<sup>4</sup> (depending upon the powers it contains). It can also contain secondary consents such as compulsory acquisition of rights/land. Other relevant consents might be needed before the development can start, for example an Environmental Permit, any other related planning permission or a marine licence.

In addition to the NSIP regime, the government possesses other means to consent large pieces of infrastructure. For instance, an Act of Parliament can be made for certain works of national importance. Examples include the Channel Tunnel Acts passed in the 1970s and 1980s and the Crossrail Act, passed in 2008, to build a new east to west rail link through central London. High Speed Two (HS2) Phase 1 gained its act of parliament in February 2017.

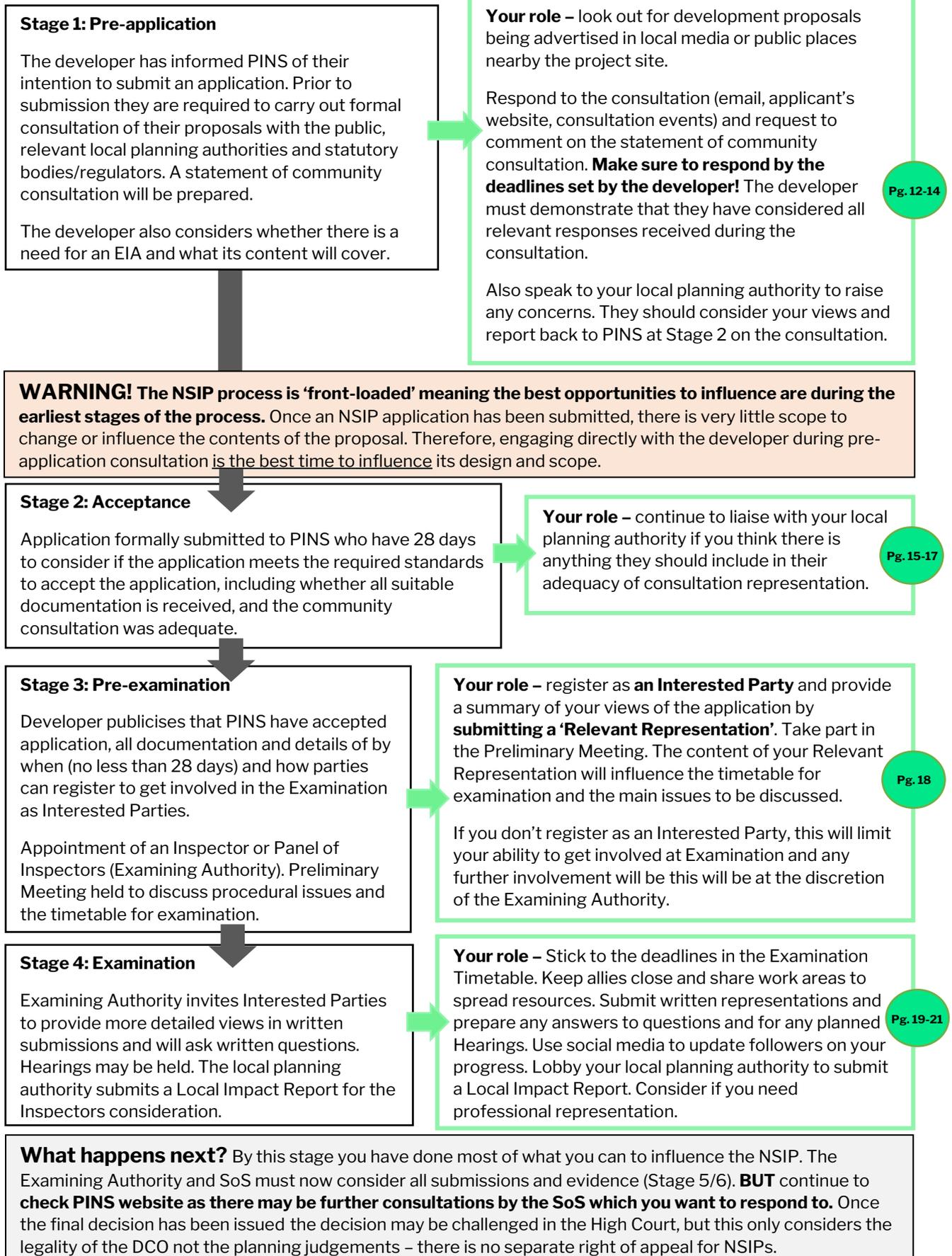
Some major infrastructure is also still authorised by way of a Transport and Works Act Order (TWA), a statutory instrument made under the Transport and Works Act 1992 to authorise the construction and operation of new transport infrastructure projects. Such projects include certain railways, tramways, other guided transport systems, inland waterways and works interfering with the rights of navigation. It applies to projects not defined as NSIPs and which do not require an act of parliament.

**HELP! I'm more familiar with local decision-making for planning applications. Is there an easy way to understand how the process differs?** If you are more familiar with local level planning decisions under the Town and Country Planning Act 1990, you may find Appendix A of this guidance helpful (where we have prepared a compare and contrast of the two processes).

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<sup>4</sup> Statutory Instruments are a form of legislation which allow the provisions of an Act of Parliament to be subsequently brought into force or altered without Parliament having to pass a new Act. They are also referred to as secondary, delegated or subordinate legislation.

## Summary of a campaigner’s route through the process



## Top tips for getting involved from our campaigners

**1. Get involved early.** After a developer has formally notified PINS that they intend to submit a DCO application (at some point), PINS uploads information on the proposed project to their website. Read documents published about the project before the pre-application public consultation starts and well before the DCO application is formally submitted. These will include environmental scoping carried out by the developer setting out their proposed approach to environmental assessment; responses by consultation bodies; any SoS Scoping Opinion; and other useful information. Identify key players and where they stand. Build your group/ alliance around the project and decide as early as you can what your desired outcome is – are you going to support, oppose, or push for key changes that make the project more acceptable?

Information provided by PINS and the developer is likely to be dry and formal. Consider how you want to influence the proposal and suggest ways to best engage with local communities and those most affected. Set up your communications channels and get yourself known, particularly to the developer and your local planning authority.

**2. Respond to the pre-application consultation.** This is run by the developer of the scheme, for example for a major road scheme it will be run by National Highways. If you have concerns about the way the consultation has been, or is being, run, you should let the developer and your local planning authority know. You can also make a comment to PINS (although they do not tend to get involved at such early stages in the process). While your local planning authority is a consultee and does not run the consultation, they may feedback to PINS on how the consultation has gone (this is known as an Adequacy of Consultation Report). If PINS consider that the consultation has been undertaken inadequately, they will reject the application and the process starts again.

**3. Submit your representation on the DCO application once it is submitted to PINS.** Once accepted it is time to check the project webpage on PINS' website for key dates for the next stages of the process and deadlines for responding. Complete a 'Relevant Representation Form' and register as an Interested Party. Remember that aspects of the proposal may have changed since the pre-application consultation, and this is the first opportunity the Examining Authority will have to read your views directly rather than via the consultation report provided by the developer. Make sure key allies are objecting and support each other's positions, even if you are bringing different arguments to the table. A high number of objectors or supporters will sharpen the minds of the Examining Authority and SoS and will raise the temperature of the debate. Therefore, bear in mind that PINS do not make petitions, proforma responses and mass registration easy when submitting representations or applying to be an Interested Party.

**4. Draw on evidence, legislation and policy and cite authoritative sources wherever you can to support and bolster your case.** Remember that you cannot question the national policy set out within NPSs; only whether or not these policy documents have been correctly applied in this specific instance. That said, if you are objecting to a DCO, and if the NPS contains policy which is unhelpful to your position, all is not necessarily lost. **The SoS may depart from the NPS policy if they consider that the adverse impact of the proposed development would outweigh its benefits.** Consider therefore what

evidence and arguments you can submit which would be relevant to this balancing exercise.

**5. Share your concerns with your local planning authority.** Ask them to take your concerns into account in their Local Impact Report (LIR) (they are only “strongly encouraged” to do so and it is not a legal requirement). It is worthwhile getting to know your elected Members, particularly the Leader of the Council and any relevant Portfolio Holders. Encourage them to understand your point of view and lobbying using Friends of the Earth’s campaigning resource pages. Be active in your local area and on social media to put pressure on your local planning authority to submit a representation that is truly reflective of the community it is there to protect.

## **6. Decide on your approach to the Examination**

Full participation in the 6 month process is an exhausting and frustrating experience. The process was never designed to make it easy for communities to play a full part as the process was intended to be front loaded with all issues bottomed out prior to acceptance (Stage 2). There is no “equality of arms” or fair balance between the developer and local communities concerned. Many local groups have found that despite PINS stating they are impartial during the proceedings, they cannot be relied on to act as an impartial referee to ensure fairness through the process. This is largely down to the flexibilities in the Planning Act 2008 allowing Examining Authority discretion in how consultations, amendments to the scheme and communications are conducted.

If you have allies who are independently involved, you should keep close links with them. The Examining Authority will encourage joint submissions, to limit the amount of material from different parties. Consider how you can divide up the workload of reading huge volumes of evidence or consider writing different sections of your submission and dividing this up between different members of your group.

Consider whether or not you want to be legally represented. The drawbacks are that you will need to raise a lot of money and may lose a certain amount of control. You will not save yourself any time since you will collectively need to decide how you want your legal representative to act. On the positive side you may gain a new source of relevant expertise to help bolster your case. Perhaps the biggest argument for legal representation is as a defence against sharp practice by the developer, who may withhold key information, avoid answering questions, and try to tie you in knots by repeatedly requiring you to provide the same information in a slightly different way.

Don’t neglect the wider context of the process. The decision will be taken by the relevant SoS, and you are essentially engaging in a political process. Use key events in the Examination such as the Preliminary Meeting and Hearings to demonstrate the strength of your support in the community. When building a campaign, allies, power and mapping your strategy or route to success make sure you equip yourself with knowledge and power from [our resources](#) or reach out to other organisations<sup>5</sup>.

You can use local media and your own social media channels to update your followers and local communities with progress and relevant stories. This will ensure you make the

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<sup>5</sup> <https://www.seedsforchange.org.uk/strategy>

Examination accessible, and more than a remote process defended by complicated documents and jargon.

**7. Request to speak or attend a hearing (open floor or issue specific).** Open floor hearings tend to have a community focus and are an opportunity for individuals and community groups to speak directly to the Examining Authority. Depending on the scale of the project area more than one hearing may take place. Time limits will be given to ensure everyone has a chance to speak and ask questions. Issue specific hearings are held to explore an issue raised in detail and are more technical and formal.

**8. Respond to consultations on National Policy Statements** (if and when they happen). These establish the underlying acceptance in principle for whether a certain type of infrastructure is needed and guide the SoS's decision. Getting the policies and wording of these right in the first place will make a big difference.

### **Inspiration**

The developer does not always win! See "[Extinguished](#)" – short video about the successful campaign.

## Detailed overview of the six main stages for the determining Nationally Significant Infrastructure Projects (NSIPs)

The following section seeks to help you better understand the purpose of each stage, what to expect and how to best be involved.

### STAGE 1: Pre-Application

<p>Purpose:</p>	<p>The NSIP regime is what is known as a ‘front-loaded process’ where all the necessary consultation and environmental assessments must be carried out <u>prior to submitting the application to PINS</u>. It is a legal requirement to carry out this stage of the process. At this stage the developer must:</p> <ul style="list-style-type: none"> <li>• Refine details of the project and finalise application documents (including a draft version of the DCO)</li> <li>• Undertake mandatory pre-application consultations (they have a statutory duty<sup>6</sup> to consult on their proposals), including consulting the list of statutory consultees<sup>7</sup> and the local community<sup>8</sup> (the developer must set this out in a Statement of Community Consultation)</li> <li>• Give required notice to PINS of the proposal</li> <li>• Prepare necessary assessments (as required) – including the screening and scoping of Environmental Impact Assessments (EIA)<sup>9</sup> and any assessments that may be required under the Habitats Regulations</li> <li>• Publish a notice (can be at any time in stage 1) in a local (for two consecutive weeks) and national newspaper (published once) to describe the project and explain where to view documentation (e.g., plans)</li> <li>• Stipulate a deadline to respond to publicity (at least 28 days following the date when the notice is last published)</li> <li>• Have regard to any responses to the consultation (assuming submitted on time) when deciding whether to make any changes to the proposed application before submitting it to PINS for ‘acceptance’. This is an opportunity for the developer to resolve or reduce impacts during construction and operation and inform the final design and proposal specifications.</li> </ul>
<p>Timescales:</p>	<p>Varied. PINS publish details of advice given to the developer and others under the relevant project page on their website. This may provide an indication of their best understanding of when an application will be submitted (Stage 2) for you to work from.</p>

<sup>6</sup> Under sections 42 and 47 of the Planning Act 2008

<sup>7</sup> Schedule 1 of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and section 42 of the Planning Act 2008.

<sup>8</sup> Including affected persons as a result of any compulsory acquisition of land

<sup>9</sup> For more information see our EIA guidance note or Appendix C of this document

<p>Keeping track of the proposal:</p>	<p>You should keep track of the project on the Planning Inspectorate website, and you can ask to receive email updates from them as the project progresses (note that this is NOT the same as registering as an interested party – see below). Look at any documents that are prepared before the pre-consultation, such as the Environmental Scoping Report.</p>
<p>The important document – Statement of Community Consultation:</p>	<p>This statement is produced by the developer to establish how they will consult with the local community during the pre-application stage in accordance with statutory consultation activities<sup>10</sup>. There are no set templates for this statement to follow.</p> <p>The developer is required to send a draft of the statement to host local planning authorities<sup>11</sup> to comment on for 28 days to help the developer prepare a consultation programme that is tailored to the needs of the communities likely to be affected by the development.</p> <p>If you have ideas on how the consultation with the community should be carried out, you should submit these to both your local planning authority and the developer (if you have their contact details). If not, ask your local planning authority to pass on the information for consideration.</p> <p>Once finalised adverts are published in a local newspaper by the developer explaining where this can be publicly viewed.</p> <p>In terms of timescales, statutory consultations are usually carried out nearer to the submission of the application. Being aware of the development and preparing to be involved ahead of consultation activities will assist you in keeping up to date with the process. We also advise that all parties should use this time to start preparations for the Examination stage (evidence gathering, keeping notes on correspondence and a note of timescales).</p> <p>Developers must carry out their pre-application consultation in line with the final statement. If it is deemed necessary to hold another consultation (in response to the feedback received) then a revised statement may be published, and you can engage in the same way again.</p> <p>If you are not happy with the way a developer has prepared or conducted a pre-application community consultation you should contact the developer in the first instance. Where your concerns are not adequately addressed you should speak to your local planning authority who can consider this as part of their Adequacy of Consultation Representation which is requested by PINS when</p>

<sup>10</sup> Non-statutory consultation activities are optional and usually take place much earlier in the pre-application stage compared to their statutory counterparts. Such early engagement can assist with instilling local knowledge and feedback at the very start of a project’s development

<sup>11</sup> Only the local planning authorities which the development boundary falls within

	<p>the application is submitted. PINS has provided helpful <a href="#">advice on this topic</a>. It is worth keeping a record of what you consider is unsatisfactory to use as evidence.</p>
<p>Making a representation:</p>	<p>Your local planning authority should advise the community on how to find out more about a proposed NSIP application and opportunities to be involved in the decision-making process.</p> <p>To get involved, contact the developer to ask what their process is for community engagement or look out for advertisements detailing events – these are usually on a dedicated project website or the developer’s own company website. If in doubt, reach out to your local planning authority.</p> <p>Make sure you read and familiarise yourself with the documents provided by the developer. They may seem complex, especially in terms of structure and jargon. If you are struggling to find information, speak to the developer as they may help you identify what documents you need to look at.</p> <p>Get your community and allies involved. Submit your representations at this stage directly to the developer via their contact details provided on the publicity or via the <a href="#">NSIP website</a> project page. The developer must show they have had regard to your responses in their Consultation Report<sup>12</sup>.</p>
<p>What to include in your representation?:</p>	<p>Responding to a developer’s Pre-application consultation is the best time to influence a project (e.g., design, layout or location), whether you agree with it, disagree with it, or believe it could be improved. This is because they still haven’t finalised their submission to PINS. It is also the first ‘formal’ opportunity to make your views known.</p> <p>Where an application is EIA development there will also be opportunity to comment on and review Preliminary Environmental Information. PINS will not get involved at this stage. You must therefore direct any concerns or comments to the developer, or your local planning authority. For information on writing a good representation, see the ‘examination’ stage below.</p> <p><b>A note of caution:</b> any consultation material presented is not necessarily a full draft version of the application and some developers may also hold more than one pre-application consultation stage.</p>
<p>More advice:</p>	<p>Read <a href="#">PINS Community Consultation FAQ</a> and <a href="#">Advice Note 8.1: Responding to the developer’s pre-application consultation</a></p>

<sup>12</sup> A report that is submitted with the application to PINS to confirm compliance with statutory pre-application consultation requirements. The report is published once PINS receives the application at the start of Stage 2

## STAGE 2: Acceptance

From this stage onwards the application process runs to a strict timetable.

<p>Purpose:</p>	<p>For PINS to determine whether the application is of a satisfactory standard to be examined or not for the application to be able to proceed to examination, including whether a developer’s pre-application consultation and publicity has been adequate (in line with <a href="#">s42, s47 and s48 of the Planning Act 2008 (PA2008)</a>).</p> <p>This stage does not consider the merits of the project; it is just a matter of whether or not the developer has followed the process correctly and provided all necessary and correct information.</p> <p>PINS will also ask the relevant local planning authorities for their views (Consultation Report).</p> <p>While some developers will publish all relevant documents prior to acceptance, they are not required to do so, so do not be alarmed if information is not readily available at the outset of this stage.</p>
<p>Timescales:</p>	<p>28 days for PINS to decide whether to accept the application.</p> <p>If the application is refused at this stage, PINs submit a report detailing why the application is refused and what the developer must do to resolve the reasons for refusal. There is a 6 week window for the developer to challenge this decision.</p> <p>If accepted, all documents are published on the website ready for pre-examination. Following acceptance, the developer must publish a notice which must include a deadline for statutory consultees, individuals, or groups to register as an Interested Party. This deadline must be at least 28 days (or at least 30 days in certain types of case) from when the notice is last published. It is important to register to be involved in subsequent stages of the process. If you don’t, you lose your rights to submit further evidence or participate in the examination stage (Stage 4) and would need PINS’ permission to take either of these steps.</p>
<p>Benefits of becoming an Interested Party:</p>	<ul style="list-style-type: none"> <li>• Gives you a right to make representations about the application</li> <li>• Ensures you are informed of the progress of the Examination (Stage 4)</li> <li>• Notifies you of the final decision by the SoS</li> <li>• Provides opportunity to attend and speak at the Preliminary Meeting and/or Hearing that takes place during Examination (Stage 4)</li> <li>• Grants you a further opportunity to submit additional written evidence to the appointed Examining Authority</li> </ul>

<p>How to register as an Interested Party:</p>	<p>If the application is accepted, it is time to register with PINS as an Interested Party by making a ‘Relevant Representation’<sup>13</sup>. Registration is not difficult, but you have to do it within the set deadline and on the official form. You can find out about the registration period from:</p> <ul style="list-style-type: none"> <li>• Newspaper advert</li> <li>• Site notice</li> <li>• NSIP project webpage</li> <li>• Social media or email alerts (if you have signed up on the relevant project page – see section on keeping track of the proposal in Stage 1)</li> </ul> <p>You can complete the form online or request one through the post – but you can’t download it or make your own copies – and we advise that you make sure there is sufficient time to return the form by post before the deadline expires.</p> <p>All Interested Parties will be invited to make further Written Representations and can take part in the Examination at hearings.</p> <p>You can choose to cease being an Interested Party at any point during the Examination by emailing or writing to the Planning Inspectorate.</p> <p>The online form will become available on the relevant project webpage of the National Infrastructure Planning website at the start of the registration period. If you have any difficulties, you can speak directly to the case manager at PINS<sup>14</sup>. The electronic form will automatically navigate you to each of the required sections. Towards the end of the form is a box for you to enter your views (make a ‘relevant representation’) which is the first time your views about the application will be put to the Examining Authority.</p> <p><b>Note:</b> each form creates an Interested Party – if you are two or more individuals and you use one form, make sure you register as a group or complete separate forms for each person and their view. If your views are exactly the same, it is worth considering submitting your representation as a group or household (if relevant).</p> <p>Local planning authorities and those bordering the host authority are automatically Interested Parties, however, they can only secure this status if they also submit a Relevant Representation.</p>
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<sup>13</sup> A summary of a person’s views on an application, made in writing (similar to an objection to a planning application).

<sup>14</sup> PINS is impartial. This means that they are able to engage with statutory consultees, local planning authorities and local communities and other interested groups. However, if you do seek advice from them, they are under a duty to publish on the website any notes of advice provided to you.

<p>What to include in your form (Relevant Representation box):</p>	<p>You may have already made your views known at the pre-application consultation stage. These should have been reflected in the Consultation Report. If not, you can reiterate your views here, but bear in mind that this stage is seeking views on the application that has been submitted – the project you previously commented on may have changed in response to the pre-application consultation carried out in Stage 1.</p> <p>Your <b>representation will be made public</b> and should relate to the application only and summarise the points you agree and/or disagree with about the application – highlighting the main issues and impacts.</p> <p>There is no word limit on how much you can write at this stage, and you do not need to be a technical expert to make a representation. However, it is advisable to keep your main points clear and it is recommended that you use bullet points and headings to highlight your main arguments for or against. This is to ensure that the Examining Authority captures the issues in the short period of time they have to consider representations.</p>
<p>What not to include in your form (Relevant Representation box):</p>	<p>PINS provide guidance on matters that will likely be disregarded and not taken further in the examination stage of the application. These include:</p> <ul style="list-style-type: none"> <li>• ‘Vexatious’ or ‘frivolous’ comments</li> <li>• Matters concerning the merits of national policy contained in NPSs<sup>15</sup> (these statements are the strategic policy framework sitting behind NSIP decisions and have been consulted on and are a designated government policy)</li> <li>• An empty box or little information (considered invalid)</li> </ul> <p>It is also important to avoid including personal information about yourself or another person, that you or they would not want to be made public.</p>

<sup>15</sup> National Policy Statements undergo a democratic process of public consultation and parliamentary scrutiny before being designated (i.e., adopted)

### STAGE 3: Pre-examination

After the registration period is over, there will be further communication to announce who will make up the Examining Authority, a timetable, and an invitation to a Preliminary Meeting.

<p>Purpose:</p>	<p>Examining Authority sets out how they will carry out the examination by way of a draft Examination Timetable. A Preliminary Meeting is held (usually at a venue close to the application site) for all Interested Parties to then comment on the draft (sent via letter<sup>16</sup>). This will follow a set agenda which will be sent out along with the Examining Authority’s initial assessment of the principal issues, ahead of the meeting. The meeting is purely procedural. It is not for the discussion of the merits of the application itself.</p> <p>After the meeting takes place, a further letter (known as the Rule 8 letter) will be sent out which will include the decisions the Examining Authority has made about how the application will be Examined. This will contain the final Timetable for the Examination.</p>
<p>Timescales</p>	<p>Invitations<sup>17</sup> will be sent out via email or post to Interested Parties at least 21 days before the Preliminary Meeting is held. A deadline will be set out in the invitation asking for a response on whether you will attend and speak at the meeting.</p> <p>There is no statutory timescale for the pre-examination process, although PINS expects this stage to take approximately 3 months.</p>
<p>How you can influence how the application is Examined in Stage 4:</p>	<p>You can ask the Examining Authority to make sure that the hearings are held at accessible locations, do not clash with other important public or other events due to take place, and express convenient times, for engaging with the community (such as work patterns and travel needs). This is also your opportunity to focus in on your main topics to draw these to the attention of the Examining Authority so that they can be included in the timetable.</p> <p>If you have not notified PINS that you will speak at the meeting, you may be asked what you would like to speak about and whether or not you are an interested party. If you are not an interested party, it may still be possible to speak but this will be at the discretion of the Examining Authority.</p>
<p>More advice:</p>	<p>More information about the day can be found in this <a href="#">guidance note</a>.</p>

<sup>16</sup> Known as the ‘Rule 6 Letter’ (includes a draft Examination Timetable (focus of the Preliminary Meeting)) which includes provisional hearing types and dates and proposed deadlines such as for the receipt of written representations from interested parties.

<sup>17</sup> Your letter will include a unique reference number. Keep this safe and use it when contacting PINS.

## STAGE 4: Examination

<p>Purpose:</p>	<p>The Examining Authority gather evidence and test information about the application from Interested Parties. The Examining Authority takes this time to consider whether the impacts of a development (including construction and operation) on the local community and environment, outweigh the national need for it and any other benefits.</p> <p>This stage is primarily carried out in writing. However, Parties can also make representations at this stage orally at hearings. Opportunities to speak are subject to the discretion of the Examining Authority, but if any Interested Party asks for an Open Floor Hearing, then one must be held by the Examining Authority.</p> <p>Issue Specific Hearings may also be held if the Examining Authority considers it necessary, with the main method of examining an application being by Written Representations.</p> <p>At this stage PINS also invites the relevant local planning authorities to submit a LIR (Local Impact Report) on the likely effects of the Proposed Development on the local area – to which Interested Parties can also comment.</p>
<p>Timescales:</p>	<p>Examination starts the day after the Preliminary Meeting in Stage 3 and can last up to six months.</p> <p>The Examination Timetable will set out what needs to be submitted and when it should be received by the Planning Inspectorate<sup>18</sup>. The timetable will also include dates for a sequence of issues specific hearings.</p> <p>It is important that all representations are received by the specified date, to allow the Examining Authority to progress with the Examination and to give all participants an equal opportunity to read and comment on other Interested Parties’ representations. Late representations will be considered at the discretion of the Examining Authority and may be disregarded.</p>
<p>What happens during this stage?:</p>	<p>The examination is carried out mostly by exchange of written representations. The Examining Authority lays out the questions, you respond and so does the developer and everyone else who wants to so long as they have registered. The Examining Authority sets a series of deadlines for responding to the questions, responding to other parties’ responses, responding to the next round of written questions, and so forth. The overall plan is to narrow down the subject matter of the examination as it proceeds.</p>

<sup>18</sup> Where a date is given without a time, it means that representations must be submitted by 23:59 on that day.

	<p>The Examining Authority should give careful consideration to all important, relevant matters including representations of all Interested Parties, any supporting evidence submitted, and answers provided to the Examining Authority’s questions set out in writing or posed at hearings.</p>
<p>A hearing has been scheduled – what does that mean?</p>	<p>During any issue specific hearings, you have the right to attend, but not to bring expert witnesses to give evidence or to cross-examine witnesses for the other side. You can request these, but it is at the Examining Authority’s discretion whether you can do or not. The hearings consist for the most part of the Examining Authority asking questions of participants. A smart move for influencing the proceedings is to get them to ask the right questions.</p> <p>There are also open floor hearings, which have a more community focus and are an important concession to the public’s right to participate. Anyone who has registered is entitled to take part. But you may have to submit a written statement in advance which the panel may question you on.</p> <p>More information can be found on PINS <a href="#">advice note</a>.</p>
<p>Submitting your representation(s):</p>	<ul style="list-style-type: none"> <li>• By post or email (as long as it arrives before the deadline)</li> <li>• As a Microsoft Word document or PDF</li> <li>• With a summary at the start of the submission if it exceeds 1,500 words</li> <li>• Include your Interested Party reference number</li> <li>• Include a clear title such as “written representation” or “response to the Examining Authority’s first written questions”</li> <li>• State which deadline the representation relates to (as there may be numerous questions you wish to respond to from the Examining Authority)</li> </ul>
<p>Tips for writing a good representation:</p>	<p>Whether you support, object or are neutral on the points being discussed or the application in general and why.</p> <p>The need for an infrastructure development is either set down in a NPS or, in the absence of a NPS, as part of the application documents. It is not the Examining Authority’s role to examine the merits of Government Policy which is set down in NPSs that have been laid in Parliament and designated. If you disagree with the designated NPS policy, then you should write to your MP and not the Examining Authority. However, it is acceptable to comment on how the application complies or conflicts with the designated NPS. Other policies, such as Local Plan policies may also be relevant and important matters, so you can raise these here for the Examining Authority to consider.</p>

	<p>You may also wish to consider our guiding principles for the development of sustainable national infrastructure (Appendix B).</p>
<p>What not to include in your representation:</p>	<p>During the examination the Examining Authority can only consider matters which are important and relevant to planning. You may have heard these being called ‘material planning considerations’ for locally led planning decisions, such as impacts of the proposal on the highway network, public safety, air quality, economic benefits (or impacts), and consistency of the proposal with relevant national planning policy.</p> <p>It is important to avoid basing your argument(s) on matters that are not material to the decision, as these cannot be taken into account by the Examining Authority. Some examples of things that have previously been found to not be material considerations by the Courts include impacts on an individuals’ right to a view from a building and the loss in property value (price) of a house. Also see comments under Stage 2 (above) on what <u>not</u> to state in a representation – particularly regarding NPSs.</p> <p>There is also no benefit in repeating a point made in a previous submission unless there is further information or evidence that you consider significant. The Examining Authority must consider all representations received.</p>
<p>Note of caution regarding petitions and ‘pro forma’ responses</p>	<p>PINS advice states that it is important to note that the Examining Authority and the SoS are guided by the type of issues being raised in objections, rather than the sheer quantity received. Therefore, if your community submit objections stating the same information en masse, or sign the same correspondence, this will not result in more weight being attached to the importance of that particular point.</p> <p><b>Note:</b> If you wish to object to a proposal as a community, consider this before actioning proforma responses or petitions. Make sure you base your objection on why you think the proposal is unacceptable based on the impacts you have identified, how you will be affected and the planning merits. Consider dividing up the workload, specialising in different areas with other allies.</p>
<p>More advice:</p>	<p>For more information speak directly to the case manager at PINS or take a look at their <a href="#">advice note</a>.</p>

## STAGE 5: Recommendation and decisions

<p>Purpose:</p>	<p>To reach a recommendation and decision on the NSIP proposal. If an NPS has effect, the decision must be made in accordance with that NPS unless one of a limited range of exceptions apply. These include where the SoS is satisfied that:</p> <ul style="list-style-type: none"> <li>• the adverse impacts of a proposed development would outweigh its benefits,</li> <li>• it would lead to the UK being in breach of any of its international obligations,</li> <li>• the SoS would be in breach of any duty imposed on the SoS by or under any enactment.</li> </ul> <p>There are certain matters the SoS must take into account, including any local impact report and any other matters the SoS thinks are both important and relevant to the decision<sup>19</sup>.</p> <p>If there is no NPS, the SoS must make the decision having regard to certain matters set out in the legislation<sup>20</sup>.</p> <p>A key purpose of the examination procedure is to determine whether or not the various provisions in the NPS have been correctly applied. Projects can be rejected if the Examining Authority – and ultimately the SoS – consider that the local adverse impacts outweigh the benefits. Unfortunately, this rarely happens! Around 95% of projects accepted for examination by PINS <a href="#">succeed</a> in gaining a DCO<sup>21</sup>. This includes examples where the EA’s recommendation has been to refuse a DCO for a specific project, for the SoS to overrule and give consent. Such instances may be challenged in the courts, however, if it appears there are legal grounds to do so.</p>
<p>Timescales:</p>	<p>In total this stage takes up to six months – up to three months for the Examining Authority to make a recommendation in a prepared report and up to a further three months for the relevant SoS<sup>22</sup> to receive the recommendation and issue a decision to grant or refuse the DCO. The SoS may extend these deadlines.</p>

<sup>19</sup> Planning Act 2008, section 104.

<sup>20</sup> Planning Act, section 105.

<sup>21</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/999405/Christopher\\_Pincher\\_letter\\_to\\_NIPA.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/999405/Christopher_Pincher_letter_to_NIPA.pdf)

<sup>22</sup> The relevant SoS is the minister with responsibility for the area of government business that an application relates to e.g., the SoS for Transport takes the final decision on highway applications.

## STAGE 6: Post-decision

Purpose:	Once a decision has been issued by the relevant SoS, there is window in which the decision may be challenged in the High Court, through a process known as Judicial Review (JR). Through this process you can only challenge the <u>legality</u> of the DCO. Unfortunately, there is no separate right of appeal for NSIPs for challenging the SoS's <u>planning judgements</u> in making his or her decision.
Timescales:	Strict six week period to be able to challenge the decision by JR <sup>23</sup> .
Who is responsible for enforcement if a DCO is granted?:	The relevant local planning authority is responsible for enforcing the provisions and Requirements set out within the DCO. However, any conditions on a deemed Coast Protection Act 1949 consent or Food and Environmental Protection Act 1989 licence (or Deemed Marine Licence) are enforceable by the Marine Management Organisation.

For more detailed guidance on how the process works, including how to take part in hearings, read PINS [advice on the NSIP application process](#).

### Case studies and learning from each other:

If you have knowledge of DCOs or have been involved in a NSIP application process, we would love to hear from you and to hear about your experience to help us shape our advice and to empower the local groups we support<sup>24</sup>.

<sup>23</sup> You should seek your own impartial legal advice before making an application for JR.

<sup>24</sup> Please reach out to your Regional Organiser for your local area or contact us via our webpage: <https://friendsoftheearth.uk/contact>

## APPENDIX A: Comparison between the process of a planning application<sup>25</sup> and DCO application

Town and Country Planning	Major Infrastructure Planning
Town and Country Planning Acts	Planning Act 2008
<p><b>Optional pre-application stage:</b> Pre-application consultation not usually undertaken<sup>26</sup> but is recommended by the local planning authority particularly for major development. The information submitted and comments given back to the developer from the planning officer reflect one officer's opinion of the scheme against planning policy, are confidential (not publicly published) and are not binding. Only elected council Members and statutory consultees (for example the Environment Agency, Highway Authority and Historic England) will be notified of the enquiries being made.</p>	<p><b>Pre-application stage:</b> Statutory requirement for developer to consult before the application is made/submitted, the provisions of which will be set out in their Statement of Community Consultation (SCC) to the local planning authorities before pre-app takes place. The consultation will be checked and considered at the next stage to ensure this has been undertaken adequately. The consultation is run and paid for by the developer, requiring responses by statutory time limits.</p>
Developer applies to local planning authority for planning permission.	Developer applies to PINS (National Infrastructure Planning) for a DCO.
<p><b>Validation stage:</b> Application goes through validation (14 day statutory requirement) to see if all national and local submission requirements have been met. If yes, the application is validated, and determination clock starts.</p>	<p><b>Acceptance stage:</b> PINS decides whether or not to accept the application (this is determined on process - i.e., whether the developer has adhered to the requirements of each preceding stage prior to submission - rather than merits of the application). PINS has 28 days to decide whether to accept the application</p>
<p><b>Public consultation stage:</b> 21 day consultation process undertaken by local planning authority – a written exercise taking into account written representations from statutory consultees and members of the public.</p> <p>Note: Depending on your Council's written constitution the application may be 'called-in' to be considered at a development control planning committee by elected Members of the council.</p>	<p><b>Pre-examination stage:</b> If accepted, the application progresses to a pre-examination stage which is the first opportunity to submit representations directly to the Examining Authority (made up of a panel of Planning Inspectors). Anyone can, at this stage, submit a 'Relevant Representation' in order to apply for 'Interested Party' status during the examination, and for the remainder of the application proceedings.</p>

<sup>25</sup> For example, to build a house, new retail premises and so forth.

<sup>26</sup> Except for applications relating to wind turbine schemes

<p>(The SoS for Levelling Up, Housing and Communities also has power to ‘call in’ the application for his or her own determination, taking it out of the local planning authority’s hands. This will not happen very often.)</p>	<p>Prior to the next stage, the Examining Authority will also set out how they will examine the DCO application. A meeting is held to discuss parameters with all Interested Parties and the applicant – who may be able to speak. The following day, examination stage will commence.</p> <p>Note: There is no automatic right to take part if you have not previously registered (i.e., submitted a Relevant Representation and have become an Interested Party) with PINS. There is only a discretionary right to be heard. No right to bring expert witnesses or cross-examine.</p>
<p><b>Scrutiny stage:</b> Application is tested against Local Plan, NPPF and other material planning considerations (including statutory consultee responses).</p>	<p><b>Examination stage:</b> Application is tested against National Policy Statement - which you can’t challenge – and Local Impact Report from the local planning authority, Local Policy of relevance, any other relevant policies to the permission and any other relevant and important matters. This process takes 6 months. NPS policy <u>can</u> be overruled by site-specific considerations, “where adverse impacts outweigh benefits”.</p> <p>Examination can take place as a hearing (usually issue specific on specific topic matters discussed and chosen at the preliminary meeting) or an open floor hearing (where individuals comments can be heard at the discretion of the Examining Authority).</p>
<p><b>Officer recommendation &amp; decision stage:</b> By this point eight weeks (for small-scale applications) or 13 weeks (for major applications) will have passed. An officer recommendation is published followed either by delegated planning officer or planning committee decision.</p> <p>The permission is not binding until the decision notice is issued.</p>	<p><b>Examining Authority recommendation &amp; SoS decision:</b> Examining Authority has three months to make recommendation which is sent to the relevant SoS<sup>27</sup> to make the final decision.</p> <p>Upon receipt, SoS has a further 3 months to make their decision and can reach a different decision on the application.</p> <p>The DCO permission is not binding until the DCO is formally issued.</p>

<sup>27</sup> This will depend on the type of project, e.g., for a major road it will be the SoS for Transport

<p><b>Appeal stage:</b> If refused, the developer can submit an application to appeal the decision to PINS who will hold either a written appeal, hearing or public inquiry. Planning Inspector makes appeal decision (working on behalf of the SoS for Levelling Up, Housing and Communities) except in instances where the SoS recovers an appeal for their own determination.</p> <p>Timescales for each type of appeal vary and appeals can take between 3-6 months (and in some instances even more depending on the specifics of the development and any backlogs in planning permissions).</p>	<p>There is <b>no right of appeal</b> for NSIP regime.</p>
<p><b>High Court challenge</b> – option to undertake a Judicial Review.</p>	<p><b>High Court challenge</b> – option to undertake a Judicial Review.</p>

## APPENDIX B: Guiding principles for the development of sustainable national infrastructure

A key question is how to ensure that future infrastructure is sustainable and resilient. At present, the UK [National Infrastructure Strategy](#) and NPSs both have significant shortcomings in this regard. Yet these key documents continue to guide investment and planning decisions for major infrastructure.

In order to deliver zero carbon and sustainable infrastructure, the government must firstly empower decision makers and those in the sector who are willing and able to deliver sustainable and resilient infrastructure, not constrain their uptake.

Friends of the Earth believes the following five principles should guide decision-makers on infrastructure projects:

- living within the planet's environmental limits
- ensuring a strong, healthy and just society
- achieving a sustainable economy
- promoting good governance
- using sound science responsibly<sup>28</sup>

Friends of the Earth's five key principles for infrastructure are that it must be:

(1) **Designed to be sustainable, resilient, and future-proof** – bold, zero carbon specifications must become the norm. Whilst the government's recent publication of a Net Zero Strategy has set some high-level proposals which are a positive step forward, strategic gaps remain and without a 'Net Zero Test (as recommended by the Climate Change Committee) policy and planning decisions risk being made that are incompatible with a Net Zero UK, blowing the Net Zero Strategy off course<sup>29</sup>. Conversely, we must rule out projects that increase our carbon, water or other footprints or make us more susceptible to environmental pressures, pollution, flooding, or resource shortages. Resilience will require a range of different scale projects, from community led schemes through to larger national scale projects. To be resilient and future proofed, new infrastructure must consider the likelihood of future stresses (over the next 20-100 years) and reflect the importance of preparing now in terms of adaptation and mitigation to climate change, meeting our international obligations, resource constraints and economic and social change. The NPSs, must be revised to support delivery of zero carbon infrastructure **as a matter of course, not exception**.

(2) **Evidence-based and rooted in sustainable development principles:** Infrastructure should be prioritised based on the UK's best long-term interests (environmental, social and economic), not what generates the biggest short-term growth or satisfies short term political expediency. This requires infrastructure priorities and decisions to be based on science and evidence – with moratoriums imposed on activity that is incompatible with tackling the climate emergency (for example shale gas drilling) and

<sup>28</sup> DEFRA, One Future – Different Paths: The UK's Shared Framework for Sustainable Development (2005), 8.

<sup>29</sup> <https://www.theccc.org.uk/2021/10/26/governments-net-zero-strategy-is-a-major-step-forward-ccc-says/>

which fails to offer solutions based on the precautionary principle<sup>30</sup> and meeting international obligations, such as the Paris Agreement<sup>31</sup>, legally binding carbon budgets<sup>32</sup> and targets, including the amendment in 2019 to the Climate Change Act 2008 committing the UK to 'net zero' by 2050<sup>33</sup>.

**Decisions should:**

(3) **Be integrated and joined up** – wasteful short-term investment decisions could result without a fully integrated spatial planning process – for instance the lack of a regional planning level severely hampers the ability to manage the South East’s water resource scarcity. Planning provides the opportunity to see development as it impacts upon places and take into account social, environmental and economic factors, for example, considering whether new development is connected to sustainable or public transport or services and "green infrastructure"<sup>34</sup>. Planners should work with developers to strategically plan and look for integrated solutions that deliver multiple joined up benefits across the sectors, rather than decisions being taken in isolation to serve narrow sectoral interests and/or profit motives.

(4) **Operate according to ‘subsidiarity’** with decisions decentralised wherever possible, empowering local government (local councils and local planning authorities) is key to sustainable, innovative and locally responsive solutions which deal with waste, pollution, transport, housing and energy proposals on a local scale. At national devolved and strategic levels (where decisions are taken nationally for example with NSIPs/DCOs) there are strong reasons for action on ‘global’ issues (such as climate change or biodiversity loss or financial systems) to be set out clearly in policy and legislation; but where familiarity with local circumstances and communities are essential (for example understanding the local geography, economy, local environmental risks and social impacts to ensure sound decision making), then these decisions must give weight to local impacts, particularly where these impacts are most keenly felt but within this national context.

(5) **Empower communities and enable them to have a powerful say in local development**, including major infrastructure proposals. The Government’s deregulatory planning reforms in England have side-lined local planning authorities and communities: patterns of development should not be governed by where there is the greatest profit to be made. Community ownership of (for example) energy is essential to link local resources to local populations, and to create inherent incentives to safeguard the long-term viability of natural resources and deliver sustainable infrastructure. Tokenistic consultation for otherwise undesirable development must be avoided and replaced by community rights and influence on the decisions that affect them.

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<sup>30</sup> Set out in Article 3 of the United Nations Framework Convention on Climate Change (UNFCCC) - “parties should take precautionary measures to anticipate, prevent, or minimize the causes of climate change and mitigate its adverse effects.”

<sup>31</sup> <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

<sup>32</sup> <https://www.gov.uk/guidance/carbon-budgets>

<sup>33</sup> <https://www.gov.uk/government/news/uk-becomes-first-major-economy-to-pass-net-zero-emissions-law>

<sup>34</sup> <https://www.tcpa.org.uk/green-infrastructure-definition>

## APPENDIX C: Environmental Impact Assessment (EIA)

Environmental Impact Assessment (EIA) describes the process for compiling, evaluating and presenting environmental information about the likely significant environmental effects, both adverse and beneficial, of a proposed scheme.

Regulations specify the type of development project that requires EIA. There are two categories of EIA development: [Schedule 1](#) development (examples include major power plants, chemical works, major road schemes); or [Schedule 2](#) development, likely to have significant effects on the environment by virtue of factors such as its nature, size or location. An EIA is mandatory for Schedule 1 projects. For Schedule 2, further criteria must be met to decide whether an EIA is required.

EIA is an iterative process that should inform the development proposal. The steps are as follows:

**Screening:** to establish whether EIA is required. PINS carries this out and publishes a screening opinion on behalf of the SoS. The screening opinion during the pre-application process is based on currently available information provided by the developer. Consultation bodies are notified.

**Scoping:** those proposing to make a DCO application request in writing the SoS's opinion as to the scope and level of detail of the information to be provided in the Environmental Statement. PINS carries out this process on behalf of the SoS. Before adopting a scoping opinion, PINS must consult the consultation bodies, who have 28 days to respond.

**Pre-application consultation on Preliminary Environmental Information:** Preliminary Environmental Information is information which has been compiled by the developer and which is reasonably required for the consultation bodies to develop an informed view of the likely significant environmental effects of the development (and of any associated development). At the pre-application stage the developer must prepare a Statement of Community Consultation (SoCC) setting out how the local community will be consulted about the proposal (see also relevant sections of PINS Advice Note 8). The SoCC must state whether the Proposed Development is EIA development and, if it is, how the developer intends to publicise and consult on Preliminary Environmental Information.

**Environmental Statement:** submitted with the DCO application, if the development is EIA development. The environmental statement should:

- Describe the likely significant effects on the environment, explaining where results are uncertain;
- Describe the proposal through all phases of the development consistent with the DCO i.e., covering construction, operation and decommissioning phases;
- Explain the processes followed to develop the Environmental Statement including the scope for the assessment;
- Explain reasonable alternatives considered and indicate the main reasons for the chosen option, taking into account the effects of the proposed development on the environment;

- Detail forecasting methods for the assessment and the limitations (as relevant);
- Detail the measures envisaged to prevent, reduce and where possible offset any significant adverse effects, the likely efficacy of such measures and how they are secured;
- Make clear the need for any ongoing monitoring or remediation; and
- Demonstrate that the information is sufficient to enable a reasoned conclusion to be reached on the significant effects of the development on the environment.

For more detailed guidance on EIA requirements for DCO projects read [PINS Advice note 7](#) and for EIA consultation and notification requirements read [Advice note 3](#).

## APPENDIX D

### Further information

#### Legislation and Guidance

There is a lot of helpful guidance on the Planning Inspectorate website – this [video](#) is a useful and illuminating guide to the process

PINS advice notes and guidance for applicants, consultees, the public  
[PINS Advice Notes](#)

Overview of the nationally significant infrastructure planning process for members of the public and others: [Advice Note 8](#).

PINS Advice Note annexes:

[Advice Note 8.1: Responding to the developer’s pre-application consultation](#)

[Advice Note 8.2: How to register to participate in an Examination](#)

[Advice Note 8.3: Influencing how an application is Examined: the Preliminary Meeting](#)

[Advice Note 8.4: The Examination](#)

[Advice Note 8.5: The Examination: hearings and site inspections](#)

[Planning Act 2008](#)

DLUHC (formerly ‘MHCLG’) Guidance for the examination of applications for development consent

[Planning Act 2008: examination of applications for development consent](#)

[The Infrastructure Planning \(Examination Procedure\) Rules 2010](#)

PINS Advice Note register summarises changes made since 2012:

<https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/#register>

#### National Policy Statements

There are 12 National Policy Statements, as follows:

**Energy NPSs.** Produced by the former Department of Energy and Climate Change (DECC), now the Department for Business, Energy and Industrial Strategy (BEIS). The energy NPSs set out the government’s policy for the delivery of energy infrastructure and provide the legal framework for planning decisions. They were first designated and published in 2011. The Energy white paper announced that the government would review the energy NPS to:

- reflect the policies and broader strategic approach set out in the white paper
- ensure that we continue to have a planning policy framework which can support the infrastructure required for the transition to net zero

Current NPSs are:

NPS for Overarching Energy (EN-1)

NPS for Fossil Fuels (EN-2)

NPS for Renewable Energy (EN-3)  
NPS for Oil and Gas Supply and Storage (EN-4)  
NPS for Electricity Networks (EN-5)  
NPS for Nuclear Power (EN-6)

<https://www.gov.uk/government/publications/national-policy-statements-for-energy-infrastructure>

The energy NPSs are currently under review as announced in the recent [consultation \(ending 29<sup>th</sup> November 2021\)](#). The review considers changes to EN-1 to EN-5. The policy statement on Nuclear Power is not being reviewed at this time. EN-2 is also proposed to be renamed as coal no longer features in the proposed policy statement and is not supported (only concerns natural gas electricity generating infrastructure).

**Transport NPSs** produced by the Department for Transport (DfT):

[NPS for Ports](#) designated January 2012.  
[NPS for National Networks](#) designated January 2015.  
[Airport NPS](#) designated June 2018.

**Water, waste water and waste NPSs** produced by the Department for Environment, Food and Rural Affairs (Defra):

[NPS for Hazardous Waste](#) June 2013.  
[NPS for Waste Water](#) published February 2012.  
[Geological Disposal Infrastructure NPS](#) designated October 2019.  
[Draft NPS for water resources](#) consulted on between 29 November 2018 to 31 January 2019.

## Resources

PINS guidance, includes short films and diagram explaining the application process  
<https://infrastructure.planninginspectorate.gov.uk/application-process/the-process/>

National Infrastructure Planning: Planning Inspectorate role  
<https://infrastructure.planninginspectorate.gov.uk/application-process/planning-inspectorate-role/>

<https://policy.friendsoftheearth.uk/insight/getting-department-transport-right-track>

To view DCO applications by project type, stage of the application process and region, visit

<https://infrastructure.planninginspectorate.gov.uk/projects/>

<https://infrastructure.planninginspectorate.gov.uk/projects/east-midlands/>

To search the complete register of applications visit:

<https://infrastructure.planninginspectorate.gov.uk/projects/register-of-applications/>

Calendar for upcoming deadlines, hearings scheduled and other matters (all projects):

<https://infrastructure.planninginspectorate.gov.uk/calendar/>

National Infrastructure Assessment 2018

[https://www.nic.org.uk/wp-content/uploads/CCS001\\_CCS0618917350-001\\_NIC-NIA\\_Accessible.pdf](https://www.nic.org.uk/wp-content/uploads/CCS001_CCS0618917350-001_NIC-NIA_Accessible.pdf)

Government interim response to the National Infrastructure Assessment

<https://www.gov.uk/government/publications/governments-interim-response-to-the-national-infrastructure-assessment>

[National Infrastructure Strategy, November 2020](#)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/938049/NIS\\_final\\_web\\_single\\_page.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938049/NIS_final_web_single_page.pdf)

Planning Act 2008: Guidance on the process for carrying out a review of existing National Policy Statements

<https://www.gov.uk/guidance/planning-act-2008-guidance-on-the-process-for-carrying-out-a-review-of-existing-national-policy-statements>

### **Government departments, agencies and bodies**

Department for, Business, Energy & Industrial Strategy (BEIS)

[www.beis.gov.uk](http://www.beis.gov.uk)

Department for Environment Food & Rural Affairs

[www.defra.gov.uk](http://www.defra.gov.uk)

Department for Transport

[www.dft.gov.uk](http://www.dft.gov.uk)

National Highways

<https://www.gov.uk/government/organisations/highways-england>

National Infrastructure Commission

<https://www.nic.org.uk/>

Planning Inspectorate

<https://www.gov.uk/government/organisations/planning-inspectorate>

Transport Infrastructure Planning Unit: issues decisions on applications under the Transport and Works Act 1992

<https://www.gov.uk/government/groups/transport-and-works-act-team>

### **Miscellaneous reading**

The Nationally Significant Infrastructure Project planning process, Campaign for Better Transport

<https://bettertransport.org.uk/sites/default/files/pdfs/companion-planning-process.pdf>

Campaigners guide to stopping damaging roads, 2016

[https://bettertransport.org.uk/sites/default/files/pdfs/roads\\_campaign\\_guide\\_third\\_edition\\_spring2016.pdf](https://bettertransport.org.uk/sites/default/files/pdfs/roads_campaign_guide_third_edition_spring2016.pdf)

Climate, people, places, value: Design Principles for National Infrastructure, National Infrastructure Commission Design Group 2020

<https://www.nic.org.uk/wp-content/uploads/NIC-Design-Principles-Final.pdf>

EIA for Nationally Significant Projects, Chris Leach, 2017

<https://www.iema.net/assets/uploads/EIA%20Q%20Mark%20Presentations/PBA%20EIA%20for%20NSIPs.pdf>

Guide to offshore wind farms, Crown Estate 2019

<https://www.thecrownestate.co.uk/media/2861/guide-to-offshore-wind-farm-2019.pdf>

National Highways guide

[Development consent for our major road schemes](#)

To search for major road projects in your region

<https://highwaysengland.co.uk/roads>

National Highways consultation hub

<https://highwaysengland.citizenspace.com/>

Nationally Significant Infrastructure projects in the Transport Sector, DFT (lists schemes the Secretary of State has decided)

<http://www.gov.uk/government/publications/nationally-significant-transport-infrastructure-projects/nationally-significant-infrastructure-projects-in-the-transport-sector>

Objections to DCOs, presentation by Landmark Chambers

<https://www.landmarkchambers.co.uk/wp-content/uploads/2019/10/Objectors-do-and-donts-of-objections-to-DCOs.pdf>

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