

Item

Officer Delegations for Infrastructure Projects

To: Councillor Katie Thorburrow, Executive Councillor for Planning Policy, and Infrastructure.

Planning and Transport Scrutiny Committee, 04 October 2022

Report by: Stephen Kelly, Joint Director for Planning and Economic Development.

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Wards affected: All

1. Executive Summary

- 1.1 The Greater Cambridge area is the focus of a number of significant new national and regional infrastructure projects. Whilst the City Council is not responsible for “consenting” these works, it is a participant in the consent processes and will be asked for its formal views at specific stages of the process on administrative and procedural matters as well as commenting on technical elements and providing a view on the impacts/merits. Officers will also be expected to represent the Council at any public inquiry. The processes followed are distinct from those associated with conventional planning applications. Such proposals are not explicitly covered within the terms of reference for the City Planning Committee or Joint Development Control Committee.
- 1.2 The Councils decisions in respect of such proposals therefore rests with the Executive Member for Planning and Transport. Given that the timescales for responding to the process are sometimes very short, this has, to date, required the use of the urgent member decision making process. The Council nevertheless expects that a number of emerging proposals will come forward in the months ahead requiring the Council to quickly set out its position. Given the challenges of managing projects concurrently, this report therefore seeks to delegate authority for providing the City Councils position on specific elements of the statutory process to the Joint Director of Planning and Economic Development.

2. Recommendations

2.1 The Executive Councillor is recommended to:

- i. Delegate to the Joint Director of Planning and Economic Development, authority for providing responses on behalf of the City Council to the stages of the statutory process listed in Para 4.20 and 4.21 for the infrastructure proposals listed in Paras 4.4. and 4.12 below.

3. BackgroundPage: 2

3.1 The Greater Cambridge area is the focus of a number of significant new national and regional infrastructure projects. These projects will have a range of impacts on the communities in the City and as the Local Authority, the City Council is expecting to make contributions to the consent process- albeit that the City Council is not the consenting authority. Participation/representation by the Local Authority involves the submission of representations at key stages of the process and attendance at the “public inquiry.” For Nationally Significant Infrastructure Projects (see below) under the Planning Act 2008, the process prescribes when, and within what time, representations from the LPA should be made – with very limited provision for late or delayed submissions. For infrastructure projects delivered under the Transport and Works Act, participation in the process will also require the Authority to make submissions to a timetable – and to offer comment on matters raised at the inquiry.

3.2 The functions of the planning committee as defined by the constitution do not extend to either process. The matters are not matters reserved for Full Council. Instead, the Constitution assigns decision making responsibility to Executive Councillor. In the case of urgent decisions, the Council has a process for Executive Councillors to make urgent decisions. Officers have previously used this process to help ensure that the City Council is able to respond and to meet statutory timelines. With the anticipated number of decisions being required during the process and for multiple projects, and the resource implications of seeking to do so throughout the infrastructure consenting process, officers are therefore recommending that the Executive Councillor authorises the Joint Director of Planning and Economic Development to

make representations on behalf of the Council and thereby ensure that the City Councils interests can be properly presented, in a timely manner, through the forthcoming statutory processes.

4. Considerations

Development Consent Order – Nationally Significant Infrastructure Projects (NSIP)

- 4.1 The NSIP process is administered by the Planning Inspectorate. The grant or consent of the development through the NSIP process can include both development permission and the Compulsory Acquisition Orders required to deliver the development. It may also be subject to conditions – the discharge of which rests with the Council.
- 4.2 The NSIP process comprises 6 stages:
1. Pre-application
 2. Acceptance
 3. Pre-examination
 4. Examination
 5. Recommendation and Decision
 6. Post decision.
- 4.3 The host “Local Authority” for the area of the development automatically enjoys “interested party” status. A neighbouring authority may also seek “interested party” status. The Host Authority (as a minimum) will be invited to participate in and submit its formal response in accordance with specific timescales set out as part of the process. Different stages of the process have differing timescales for a response – in some cases this is just 14 days - and at the examination itself, officers will be expected to provide immediate feedback on behalf of the Council. Areas for submission/comment throughout the process (with an indication of prescribed time periods for a response) include:

Pre-application

- Comment on Applicants Environmental impact Assessment Scoping Opinions (28 Days)
- Comment on the “Statement of Community Consultation” (28 days)

Acceptance Stage

- Statement on adequacy of applicant's consultation (14 days)

Pre-examination

- Register as interested party (for non-host authority)
- Submit relevant representations on proposals (min 30 days)
- Attend preliminary meeting and agree with inspector procedural issues and timetable (live meeting)

Examination

- Submit Local Impact Report comprising objective assessment of impacts of the scheme and evidence on the characteristics of the area (timescale set by inspector).
- During examination submit written representations, respond to questions and comment on others submissions. (live meeting)
- Agree with the applicant statements of common ground (likely to also include agreement on conditions in the event of approval). (in examination)

Note: No submissions on the proposals will be accepted after the close of the examination.

Post decision

- Legal Challenge of SoS decision (Max 6 weeks)

4.4 The following projects are known/believed to be planned to follow the NSIP route:

1. Cambridge Water Treatment Works relocation (to be submitted 2022/3)
2. E-W Rail (Submission due TBC)

4.5 **Transport and Works Act 1992 (TWA)**

This process is used for the construction of new Railways or Tramway schemes – and is expected to be the route for delivery of Greater Cambridge Partnership (GCP) corridor projects (North, South, West and East)

- 4.6 TWA Orders provide for consent and CPO processes, together with temporary alternative routes and the diversion of footpaths etc. The application is made to the relevant Secretary of State (SoS) by the project promoter. Permission is granted by the SoS and may include conditions. In the case of GCP schemes, where orders are contested, it is anticipated that there will need to be a public inquiry to examine the proposals. The process is governed by Transport and Works (Inquiries procedure) Rules 2004.
- 4.7 The Council will be required to make submissions to either the SoS appointed Inspector or the applicants at the pre-application stage, submission stage and through the examination process. The Council will also be the body responsible for post decision discharge and enforcement of any planning conditions imposed upon the development.
- 4.8 Following publication of notices that an Order has been submitted to the SoS, consultation provides for any party to comment. The Council, along with the community is expected to respond to the Secretary of State at this stage. Representations need to be made in writing within 6 weeks of the notices being published.
- 4.9 Any Local Authority for the area in which the works are proposed is classed as a “statutory objector” if it makes objections to the order. The Act provides for objectors to appear at the hearing/inquiry. If SoS chooses not to hold an enquiry, or hearing, there is scope for the matter to be dealt with by an exchange of representations.
- 4.10 The guidance supporting TWA proposals encourages comprehensive and early pre-submission engagement. To date, this has happened for GCP schemes. Officers have not yet required a “mandate” from members - given the levels of detail to date and the development phases of the projects. There is a statutory pre-application consultation stage at which it is expected that the Council will agree/comment upon, amongst other things, proposed planning conditions – including matters reserved for the Councils subsequent approval post SoS decision.

4.11 Given the level of local interest, officers anticipate that each of the TWA proposals are likely to be the subject of a public inquiry. For a public inquiry the procedures provide for submissions on the following matters:

- Submission of Statement of case (within 6 weeks of date being published)
- Comment on the other parties' statements of case (up to 6 weeks before Inquiry opens)
- Comment on behalf of the Local Authority to the pre-inquiry hearing (at meeting)
- Submission of Proof of Evidence (Timetable tbc)
- Appearance at Public Inquiry (evidence and comment)
- Statement of Common Ground (At Inquiry)
- Comment upon planning conditions (At the inquiry and pre-submission)

4.12 The Following infrastructure projects – are currently expected to progress via TWA route:

1. Cambourne to Cambridge Rapid Transport Route (C2C) Public transport corridor project
2. Cambridge South East Transport Route (CSET) Public transport corridor project
3. Cambridge Eastern Access public transport corridor
4. Waterbeach to Cambridge – public transport corridor
5. Greater Greenways Project (various routes)

Request for officer delegation

4.13 Officers in the Shared Planning Service and from other Council departments, participating in public inquiries/appeals in respect of planning applications, already act on behalf of the Council through delegation arrangements in place. Previously, given the limited number

of major infrastructure projects, explicit officer delegations have not been necessary.

The statutory timelines set out through the respective processes are nevertheless rigorously enforced with advice that the Council should not presume that extensions (even where discretion is provided) will be granted to the authority. For this reason, and given the number of likely infrastructure projects that the Council will need to comment upon, a suitable “officer delegation” at this early stage of the process is considered desirable - in the interests of openness and necessary given the procedural requirements of the urgent member decision process and the practical implications of the compressed timescales for Council responses.

- 4.14 The projects listed above are significant in terms of their impact and implications. For that reason, it is important that the existing decision-making process via Scrutiny and the Executive Councillor is maintained in respect of the Councils submissions on core issues. It is proposed that whilst a delegation be granted to officers to enable the Council position to be effectively represented through the process and examination, the Councils overall position – on whether to support or object to the proposal and the basis for that position, is not delegated to officers. This would suggest that the following submissions continue to require the Executive Councillor’s approval.
- 4.15 Recognising the complexity and scale of a number of these proposals, and the important role that members will want to play in understanding and engaging with officers around the projects and the process, a number of parallel measures are proposed alongside the delegations. Firstly, officers will provide general member training sessions around the TWA and NSIP processes, and the Environmental Impact Assessment Regulations. This will include how the Council approaches the matter of scoping of Environmental Assessments for major infrastructure projects. Secondly, officers will provide an individual project overview to the next Planning and Transport Scrutiny Committee meeting so that members can be familiar with each of the projects and can offer views to officers to consider as they exercise the delegated powers. The briefings will also seek to capture the need for mitigation of key impacts and what this may require in the form of planning conditions/obligations, allowing for member comment prior to officers exercising the proposed delegation on this area. Finally, given the delegation seeks to enable officers to comment upon statements of community consultation, and given the existing commitment to review the Councils adopted Statement of Community Involvement (SCI),

officers will bring forward to the Committee, a programme for the review of the SCI – and provide an early opportunity for members to comment upon expectations for consultation and engagement on planning and infrastructure related matters.

- 4.16 In recognising that the timelines set out by legislation requires the delegations proposed, officers will continue to seek to engage with and consult the Lead member where possible, on each stage of the process and the projects overall.
- 4.17 **NSIP process:**
- Approval of Statement on adequacy of consultation process
 - Approval of Local Impact Statement
 - Decision to mount a legal challenge of decision (if required)
- 4.18 **Transport Works Act**
- Approval of Statement of Case
- 4.19 On that basis, officers propose that the Councils response in respect of the following elements of the process be delegated to The Joint Director of Planning (where appropriate and possible in consultation with the Executive Councillor).
- 4.20 **Proposed Delegations for the NSIP process**
- Registration of the Council as “interested party.”
 - Responding to any consultation on EIA screening/scoping on behalf of Cambridge City Council
 - Attendance at pre-examination preliminary meeting and agreement of procedures and timetable for examination on behalf of Cambridge City Council
 - Instruction of witnesses and legal advisors and approval of all representations and agreements (e.g. Statement of Common Ground, conditions etc) through the Examination Process on behalf of Cambridge City Council

4.21 TWA process

- Agreement of response to EIA consultation on behalf of Cambridge City Council
- Agreement at pre-examination process of procedures for examination, timetable etc on behalf of Cambridge City Council
- Instruction of Witnesses and legal advisor and approval of all submissions including proofs of evidence, statement of common ground on behalf of Cambridge City Council.
- Agreement on conditions and scope of post decision submissions/controls subject to LPA control on behalf of Cambridge City Council

5. Implications

a) Financial Implications

The proposals for delegation are likely to have a positive impact upon costs. The existing process for securing agreement to inputs into the existing infrastructure processes requires considerable additional officer time to deliver. These measures seek to improve the Councils ability to make representations and will give rise to indirect cost benefits.

The costs of appearing at the examination process for these infrastructure projects, including direct (staff) and indirect (consultants, legal advice etc) will vary by project and depend upon the Councils final position. There is currently no dedicated budget within the shared service set aside for these costs. In some cases, the Council has sought to secure “planning performance agreements” to help address the cost implications. This will continue where possible to minimise the impact on the Councils resources.

b) Staffing Implications

The proposals are aimed at reducing the impact upon staff resources in the Planning and Democratic Services Teams, but also potentially in other core Council service areas that may be involved in providing a technical response to a specific proposal at each phase of the NSIP and TWA process through urgent member decision process. In the

event that the proposals are not supported, the continued need to use this process will have adverse impacts upon staff resources within the Council and the Shared Planning Service.

c) Equality and Poverty Implications

No EQIA undertaken – the decision sought focus's only on delegation of authority to comment upon specific elements of the process. It does not currently relate to a decision for or against any infrastructure proposal – upon which the Council expects equalities and poverty implications will have been assessed by the promoter. The proposal is accordingly not considered to give rise to any equality or poverty impacts.

d) Zero Carbon, Climate Change and Environmental Implications

The decision to provide for explicit officer delegation is not considered to have any environmental implications.

e) Procurement Implications

None.

f) Community Safety Implications

None.

6. Consultation and communication considerations

This report relates to matters on the way that the Council responds to proposals for infrastructure. Officers have sought to balance the need for prompt and efficient input into the statutory processes, with the desire to ensure that decisions relating to the Council's formal view on the infrastructure proposals remain as decisions to be taken by the Executive Councillors through the normal process – and with appropriate scrutiny.

7. Background papers

Background papers used in the preparation of this report:

Cambridge City Council Constitution [24.11.20]

[Introduction To Cambridge City Council's Constitution - Cambridge City Council](#)

8. Appendices

None

9. Inspection of papers

To inspect the background papers or if you have a query on the report please contact Stephen Kelly

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