

WISBECH MVV MEDWORTH ENERGY FROM WASTE COMBINED HEAT AND POWER PROPOSAL

To: Environment & Sustainability Committee

Meeting Date: 25th June 2020

From: Steve Cox - Executive Director, Place and Economy

Electoral division(s): Wisbech West

Forward Plan ref: Not applicable **Key decision:** No

Outcome: To seek delegated powers for officers, where there is insufficient time to take the item to Committee, to ensure that the Nationally Significant Infrastructure Project (NSIP) timescales can be met, thus allowing our submissions to be given full weight by the Planning Inspectorate (PINS) in the determination process.

Recommendation: It is recommended that the Executive Director: Place and Economy on behalf of Cambridgeshire County Council as County Planning Authority (CPA) be authorised to:

Submit NSIP related responses to the Planning Inspectorate on behalf of the CPA and other regulatory functions of the Council, in consultation with the Chairman and / or Vice Chairman of the Environment and Sustainability Committee, only on occasions where there is not enough time for a report to be delivered to the E&S Committee.

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1. BACKGROUND

- 1.1 MVV Environment Ltd is proposing to construct an energy from waste combined heat and power facility (EfW CHP), to be built on the existing waste management site on the Algores Way Industrial Estate, under Part 3 Section 14 of the Planning Act 2008 (as amended). The proposed development is considered to be a nationally significant infrastructure project (NSIP) by virtue of the fact that the generating station is located in England and has a generating capacity of over 50 megawatts (see section 15(2) of the 2008 Act); which will therefore require an application to be submitted for a Development Consent Order (DCO)¹.
- 1.2 As an NSIP application (for which a DCO is required) the proposed MVV Medworth EfW CHP Project will not be determined by the County Council. Responsibility for accepting and examining the NSIP applications rests with the Secretary of State (for Business, Energy and Industrial Strategy). However, the Planning Inspectorate carries out certain functions related to national infrastructure planning on behalf of the Secretary of State.
- 1.3 The County Council has a distinct role in this process as one of the four 'host' authorities (with the others being Norfolk County Council, Fenland District Council, and the Borough Council of King's Lynn and West Norfolk). The County Planning Authority (CPA) is the lead for this project within Cambridgeshire County Council, and CPA officers will draw on specialist advice from other key specialist teams, including taking advice from officers acting as the Council's Highway Authority and Lead Local Flood Authority.
- 1.4 Local Authorities are statutory consultees in their own right for any proposed NSIP within their area. Cambridgeshire County Council in its role as CPA is therefore a statutory consultee in the NSIP process. The role of the CPA is not to pass judgement on the merits of the application, but to scrutinise the applicant's assessment of the NSIP application, offer technical advice as part of the consultation process and ensure that adequate public consultation is carried out.
- 1.5 Whilst the NSIP legislation does not specify any differences between 'host' planning authorities, in their role as statutory consultees, there is an understanding or assumption, set out in common practice, that if permission is granted by the Secretary of State the requirements (or effectively planning conditions) in the DCO are discharged, monitored and enforced by the Council(s) that would normally be the determining authority i.e. for this project within Cambridgeshire the County Council. In addition, in the event of a non-material or material changes to the proposal the decision making powers are still retained by the Secretary of State. In the event that the project changes during the early pre-application stages for any reason, to mean that it wouldn't meet the NSIP requirements, at that point the County Council would become the determining authority.
- 1.6 As an NSIP proposal, the MVV Medworth EfW CHP Project has already undertaken part of its pre-application consultation (currently at the non-statutory stage) with the general public, alongside pre-application discussions with key specialisms within the four 'host' authorities, to help inform their proposal prior to the submission of their application to the Planning Inspectorate (PINS). Impacts in relation to the Coronavirus have been considered by MVV

¹ Full details of the MVV Medworth Environmental Impact Assessment (EIA) scoping report and NSIP process are available on the PINS website using the following link
<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/medworth-energy-from-waste-combined-heat-and-power-facility/>

and are discussed further in paragraph 4.3 of this report, which includes reference to a “second phase” by MVV to their pre-application non-statutory consultation to allow the public events to still take place.

- 1.7 The A14 upgrade works project within Cambridgeshire was progressed as an NSIP application, so the process may be familiar to a number of members of this new Committee. However, to set the background for those less familiar with the process, Appendix 1 sets out the six stages involved with a NSIP application and Appendix 2 clarifies the role of the local authority at each of the stages (excluding the decision). PINS guidance is clear that a local authority and the local community are consultees in their own right. Whilst local authorities should have regard to what the community is saying, it is not intended that they necessarily adopt all of those views put to them. In this context, local authorities in particular must conduct themselves in line with the National Policy Statements and the relevant guidance.
- 1.8 Paragraph 6.2 of the PINS Advice Note two: The role of local authorities in the development consent process, states that *“Local authorities should engage proactively with a developer even if they disagree with the proposal in principle. It is important to recognise that a local authority is not the decision maker but will want to contribute towards the development of the emerging proposals with the benefit of their detailed local knowledge. Local authorities are not undermining any ‘in principle’ objections to a scheme by engaging with a developer at the pre-application stage.”*
- 1.9 If the recommendation within this paper is approved, the outcome will be that officers will have the ability to use delegated powers to ensure that consultation timescales set by national legislation are able to be met, where there is not sufficient time for a committee decision to be taken.

2. THE PROPOSAL

- 2.1 The Development set out by MVV is proposed to include a number of principal elements within the Red Line Boundary (the ‘Site’ as set out in the plans in Appendix 3), including the following elements identified in MVV’s Scoping Report submitted to PINS:
 - Energy from Waste CHP facility;
 - CHP Connection;
 - Grid Connection;
 - Access Improvements; and
 - Temporary Construction Compound (including potential additional land for a substation).
- 2.2 The proposed Medworth EfW CHP Facility is being designed by MVV to recover energy in the form of electricity and steam from over half a million tonnes of non-recyclable (residual) municipal waste each year. Generating over 50 megawatts², the electricity is proposed to be sent to the grid or to major industries in the area, offering them alternative energy supplies, subject to approval. Steam is also proposed to be available by MVV if permission is granted, allowing potential users the option to switch off their conventional fossil fuelled boilers.

² MVV’s Scoping Report predicted an annual generating capacity of around 53 MW to be exported to the grid after taking approximately 5 MW to power the facility. The project is based on a maximum generating capacity of 58 MW.

3. PLANNING POLICY

- 3.1 The policy framework for determining an NSIP application is set out in Section 104 of the Planning Act 2008 (as amended), set out below:

In deciding the application the Secretary of State must have regard to:

- (a) any national policy statement which has effect in relation to development of the description to which the application relates (a “relevant national policy statement”);
 - (aa) the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009;
 - (b) any local impact report (within the meaning given by section 60(3)) submitted to the Secretary of State before the deadline specified in a notice under section 60(2);
 - (c) any matters prescribed in relation to development of the description to which the application relates; and
 - (d) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State’s decision.
- 3.2 The CPA considers the relevant documents in relation to this application from the Cambridgeshire perspective are the National Policy Statements for Energy³; the Cambridgeshire and Peterborough Minerals and Waste Core Strategy (July 2011) & the Cambridgeshire and Peterborough Minerals and Waste Site Specific Proposals Plan (February 2012) - or if appropriate as superseded by the emerging Cambridgeshire and Peterborough Local Plan; the Fenland Local Plan (May 2014); and any Local Impact Report submitted during the Examination. The National Planning Policy Framework (NPPF) 2019 is also a material consideration.
- 3.3 The emerging Cambridgeshire and Peterborough Minerals and Waste Local Plan is currently due to be considered by a Planning Inspector at an Examination in Public mid-September 2020, so planning officers have ensured that both adopted and emerging planning policies have been highlighted to MVV for consideration as part of their DCO application, to allow officers an opportunity to fully assess the proposal when it comes forward. Although the CPA officers acknowledge that this will be considered as an energy project, and approved by the Secretary of State (for Business, Energy and Industrial Strategy), rather than the Secretary of State (for Housing, Communities and Local Government) as a waste project, the use of waste as a resource to fuel the facility needs to be properly understood to be able to understand the environmental implications.

4. NSIP PRE-APPLICATION PROCESS

- 4.1 As this report has been brought to the Environment and Sustainability Committee ahead of the formal NSIP application submission, the pre-application process is currently being undertaken i.e. step 1 in Appendix 1. Therefore for the purpose of this report the pre-application stages have been split between those already undertaken by the CPA and those that officers are working towards, as set out below:

³ Overarching National Policy Statement for Energy (EN-1); National Policy Statement for Renewable Energy Infrastructure (EN-3); and National Policy Statement for Electricity Networks Infrastructure (EN-5).

Stages already completed:

- Comments relating to the consultation from the Planning Inspectorate relating to the applicant's Scoping Request (and the level of information required to be provided in the Environmental Statement (ES) for the proposed development); and
- Comments on the initial non-statutory consultation from the applicant relating to the draft Statement of Community Consultation (SOCC).

Stages currently being finalised or anticipated in due course:

- Comments on the statutory consultation from the applicant relating to the draft Statement of Community Consultation (SOCC), and how the applicant proposes to consult the stakeholders on the proposed development;
- Comments on the consultation from the Planning Inspectorate on the final SOCC;
- Under Section 42 of the Planning Act 2008 (as amended) comments to the applicant relating to the Duty to Consult on the scheme proposal and Preliminary Environmental Information Report (PEIR), which predicts the environmental impacts and the required mitigation measures, which should help inform the Local Impact Report at the application stage;
- Comments to the applicant relating to scheme amendments;
- Comments to the applicant's technical consultants Wood Environment & Infrastructure Solutions UK Ltd regarding the preparation of the Environmental Statement (ES); and
- Comments in response to the consultation under Section 55 of the Planning Act 2008 (as amended) from the Planning Inspectorate regarding the Adequacy of Consultation, whether the applicant has met the requirement of the Act regarding how they have consulted on the proposed development.

- 4.2 'Host' authorities are strongly encouraged to use the pre-application period to start their own evaluation of the local impacts of the proposal. 'Host' authorities should then begin to compile the Local Impact Report (LIR) as soon as the application has been accepted formally by the Secretary of State and they have been invited to submit an LIR. This approach will enable the LIR to be produced within the deadlines. PINS advice is that 'Host' authorities should ensure any necessary internal authorisation processes are in place to meet the timetable (which is the basis for this report).

Impact of the Coronavirus restrictions

- 4.3 MVV notified the CPA that they had commenced their non-statutory consultation on Monday 16 March 2020 (setting out the consultation timescale of Monday 16 March to Monday 4 May 2020), highlighting the public exhibition events that had been arranged. However, on Wednesday 18 March 2020 MVV notified the CPA that following Government guidance on Coronavirus they had "*postponed*" their planned public events until "*further notice*". MVV's press notice and website text stated "*Engaging with a wide range of stakeholders remains our priority at this stage of the project, and we will undertake all planned exhibitions at the earliest opportunity. In the meantime, information is still publically available Hard copies are also available at the document inspection locations advertised (whilst these remain open)*". More recent updates from MVV have referred to a "second phase" for their non-statutory consultation process, ahead of any statutory pre-application public consultation. These consultation commitments will lead to the need for an update to their initial overall programme timetable, which is expected from the company imminently.

4.4 At the time of finalising this report, officers are still waiting to hear when the consultation events will take place under a revised timetable and when the “second phase” of the non-statutory consultation period is likely to be undertaken. These non-statutory consultation proposals are anticipated to be in addition to the statutory pre-application consultation exercise which will also be undertaken before a formal DCO application is submitted.

5. NSIP APPLICATION PROCESS

5.1 Once MVV submits their DCO application to PINS for the Medworth EfW CHP Project, currently programmed for Q4 of 2020 (although MVV has acknowledged this is likely to be delayed owing to the Coronavirus measures discussed in paragraph 4.3 above, and the published timeline of Q4 2020 is no longer likely to be achievable given their commitment to further rounds of public consultation), the project will move into the ‘acceptance’ stage as identified in Appendix 1. If their application is accepted for examination by PINS we should be notified of this, including whether the Secretary of State will appoint a single Examining Inspector, or a panel of up to five Examining Inspectors (known as the examining authority (ExA)) to examine the application. The Examination is carried out in public.

5.2 Following notification of the above, the CPA will then be notified of the preliminary meeting to discuss procedural matters. After which an Examination timetable should be set, including tight deadlines for when information needs to be submitted to PINS. At the pre-examination stage, local authorities are encouraged to continue to engage with the developer. Agreement on any remaining issues should be sought and/or negotiations continued. There may also be the need to continue negotiation in respect of any compulsory acquisition affecting the local authority’s land holdings or interests. Reaching agreement on as many issues as possible in advance of the examination is likely to lead to a more focused and expedient examination process for all participants⁴.

5.3 During the Examination, the CPA will:

- Respond to the Examining Authority’s (ExA’s) written questions which are normally based on an initial assessment of the application, (including the principal issues of the proposed scheme), and the representations received from interested parties;
- Prepare and submit to PINS a Local Impact Report (LIR), setting out the likely impacts of the proposed scheme on the County Authority’s area, by using local knowledge and robust evidence, and set out the relevant local planning policy framework and guidance⁵;
- Prepare and submit to the Planning Inspectorate a Statement of Common Ground (SOCG), a joint written statement between the applicant and the CPA and/or other parties or ‘host’ authorities, setting out matters that they agree or are in disagreement on; and
- Represent the County Council as CPA and make oral representation at the issue specific hearing(s) and if necessary the open floor hearing(s). The subject of the hearings is based on specific elements / issues of the application that are raised during the NSIP process.

5.4 There is also provision in the Planning Act 2008 (as amended) for the applicant to apply for other consents, for example Compulsory Purchase Order (CPO) and drainage consents,

⁴ Paragraph 7.1 of PINS Advice Note 2 https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/03/Advice_note_2.pdf

⁵ Consideration will be given to producing a joint LIR. The local authorities are able to submit separate written representations if they wish to express a particular view on whether the application should be granted.

deemed by a DCO.

5.5 To avoid any undue delay to the NSIP process and Examination it is important that the tight deadlines set out in the Examination Timetable are met. The timescale for handling an NSIP application are set out in the legislation. It is noted that PINS as the Examining Authority may disregard late responses, which is why officers are seeking to follow PINS guidance and get delegations set up at the pre-application stage. Irrespective of any delegations passed to officers to meet the necessary timescales set by legislation, the following is proposed to be followed to ensure good practice and ensure an open and transparent decision making process:

- Key documentation and updates to be provided by the CPA to members of E&S Committee and local Wisbech County Councillors by e-mail at the earliest opportunity to ensure that key deadlines are known in advance and any comments on the documentation provided as early as possible, particularly during the 28 day deadlines;
- Responses to PINS to either be circulated to members of E&S Committee and local Wisbech County Councillors by e-mail for their records, or where time is permitting the draft response taken to E&S Committee for endorsement; and
- Where deemed necessary, member briefings or specific topic meetings will be set up to provide guidance on the NSIP process and technical responses provided.

6. ALIGNMENT WITH CORPORATE PRIORITIES

6.1 A good quality of life for everyone

As this is not a County Council proposal there are no specific significant implications identified by officers for this priority. However, any NSIP response provided by the CPA will (where applicable) ensure that the environmental information produced is capable of assessing this priority before a recommendation is provided by PINS and a decision reached by the Secretary of State.

6.2 Thriving places for people to live

As set out in paragraph 6.1.

6.3 The best start for Cambridgeshire's children

As set out in paragraph 6.1.

6.4 Net zero carbon emissions for Cambridgeshire by 2050

As set out in paragraph 6.1. However, this will include specific consideration of a carbon assessment as part of the wider environmental information.

7. SIGNIFICANT IMPLICATIONS

7.1 Resource Implications

The following bullet points set out details of significant implications identified by officers:

- **Finance** – The cost of processing the NSIP application will need to come from the existing revenue budget. As the application is handled by PINS no planning fees are received from the applicant. Officers have negotiated a Planning Performance Agreement for the pre-application advice stage, to try to resource the project and reduce the cost to the public purse, but this is unlikely to cover the true cost of the resource and specialist advice required to assess the DCO application and any discharge requirements (like planning conditions) that would arise from any consent granted. This is in addition to existing pressures already identified as a result of the COVID-19 situation.
- **Staff** – As a statutory consultee in the initial NSIP process and determining authority post NSIP decision if granted, the resources to deal with the application are taken from the County Planning, Minerals and Waste Team staffing resources that are already stretched.
- **Property** – The development has no property implication from the Planning Regulatory perspective, other than the application key timescales have the potential to coincide with the move away from Shire Hall, where officer time may be taken away on prioritising the movement and safekeeping of planning records.
- **IT** - The development has no IT implications from the Planning Regulatory perspective, other than the application key timescales have the potential to coincide with the move away from Shire Hall so it will be essential that access to the IT systems to provide timely responses is prioritised.

7.2 Procurement/Contractual/Council Contract Procedure Rules Implications

The following bullet points set out details of implications identified by officers:

- **Procurement** – Where specialist officer advice does not exist within the Council or at Fenland District Council e.g. Air Quality, Carbon Assessment and Landscape & Visual Impact guidance, relevant specialists have been procured to ensure that the Council has guidance on the key specialist areas. This has been procured on the basis of covering implications across the whole of Cambridgeshire, including joint assessment with Fenland District Council, to ensure that both authorities have the relevant specialist advice to allow officer comments to be provided on technical matters.
- **Contractual / Council Contract Procedures** – Any specialist advice required to inform this project will need to ensure it meets Council procedures, in addition to the financial implications discussed in paragraph 7.1 above.

7.3 Statutory, Legal and Risk Implications

There are no significant implications for this priority, other than the financial and resource implications required to support this project, which has the potential to include significant legal advice.

7.4 Equality and Diversity Implications

There are no significant implications for this priority.

7.5 Engagement and Communications Implications

There are no significant implications for this priority that are not capable of being covered by responses to the applicant's Statement of Community Consultation.

7.6 Localism and Local Member Involvement

The following bullet points set out details of implications identified by officers:

- **Localism** – As this proposal is deemed to be a Nationally Significant Infrastructure Project (NSIP) the decision will not be made by the County Council. It will be essential therefore that the Council as a statutory consultee provides the 'local' knowledge to help inform the Secretary of State's decision.
- **Local Member Involvement** – PINS guidance sets out the role of the local authority, and officers will ensure that local members are kept informed at key stages in the NSIP process. However, it is noted that local members have already voiced their strong concerns about MVV's proposal, alongside the company's public consultation exercise and cancellation of public events, which has been acknowledged by officers.

7.7 Public Health Implications

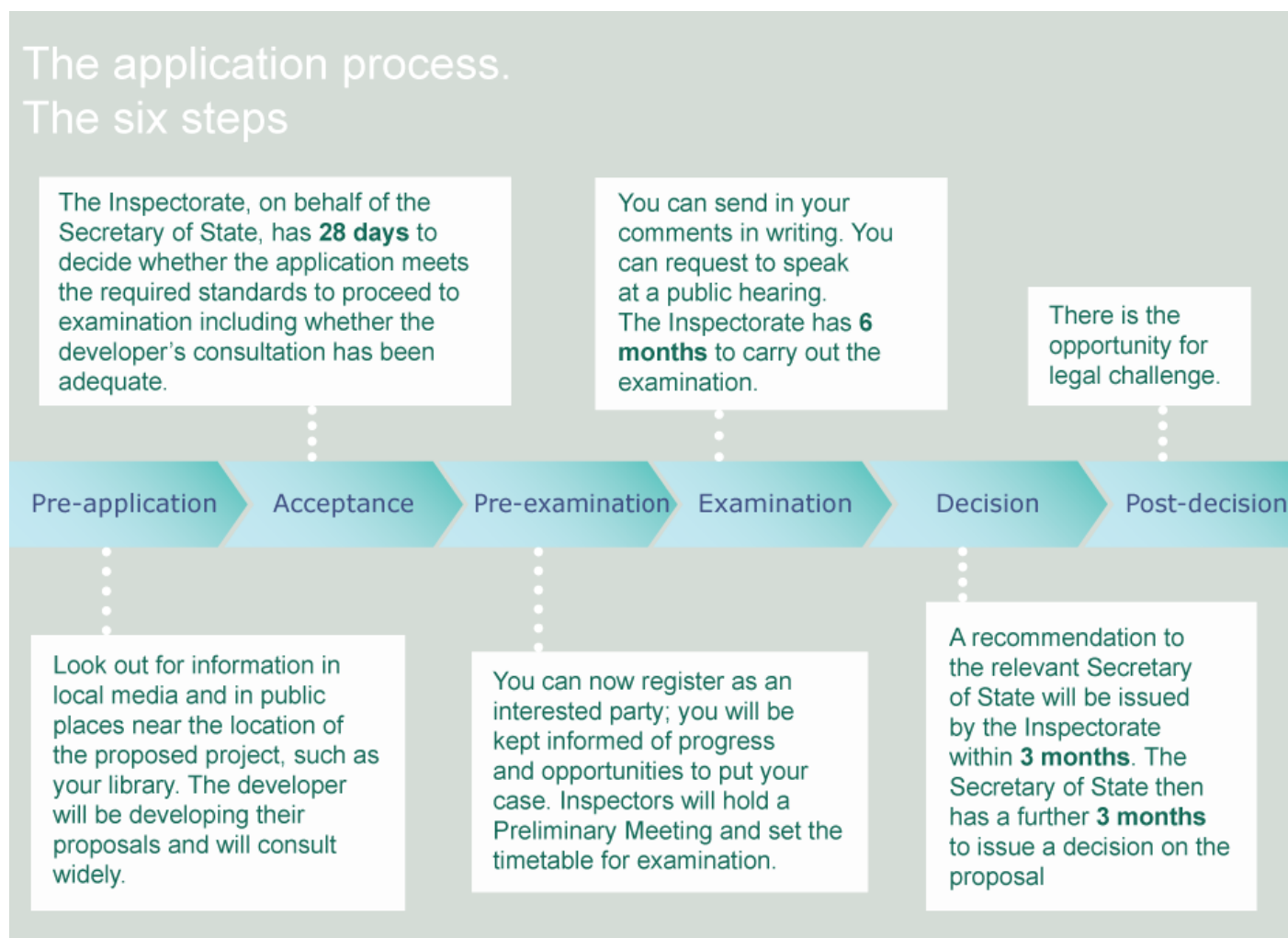
There are no significant implications for this priority that are not capable of being addressed through comment on the applicant's EIA and the DCO application. However, public health colleagues have been involved in early consideration of MVV's proposal and in providing technical guidance on health impact assessment and air quality issues as part of the pre-application advice provided to date, so this key involvement will continue alongside co-ordination with environmental health officers at the District Council and our procured Air Quality Consultant. This is in addition to any liaison with Public Health England colleagues, Environment Agency colleagues or counterpart officers at Norfolk County Council, to ensure a robust professional view is provided on behalf of the Council.

Implications	Officer Clearance
Have the resource implications been cleared by Finance?	Yes Name of Financial Officer: Sarah Heywood
Have the procurement/contractual/ Council Contract Procedure Rules implications been cleared by the LGSS Head of Procurement?	Yes Name of Officer: Gus de Silva
Has the impact on statutory, legal and risk implications been cleared by the Council's Monitoring Officer or LGSS Law?	Yes Name of Legal Officer: Fiona McMillan
Have the equality and diversity implications been cleared by your Service Contact?	Yes Name of Officer: Elsa Evans
Have any engagement and communication implications been cleared by	Yes Name of Officer: Sarah Silk

Communications?	
Have any localism and Local Member involvement issues been cleared by your Service Contact?	Yes Name of Officer: Quinton Carroll
Have any Public Health implications been cleared by Public Health	Yes Name of Officer: Iain Green

Source Documents	Location
Planning Inspectorate (PINS) National Significant Infrastructure Project (NSIP) Guidance and Advice Notes;	https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/
NSIP Energy Policy Statements;	https://www.gov.uk/government/publications/national-policy-statements-for-energy-infrastructure
Planning Act 2008 (as amended);	http://www.legislation.gov.uk/ukpga/2008/29/contents
MVV Medworth EfW CHP Project website;	https://www.mvv-medworthchp.co.uk/
PINS Project Page for MVV Medworth EfW CHP NSIP Project;	https://infrastructure.planninginspectorate.gov.uk/projects/eastern/medworth-energy-from-waste-combined-heat-and-power-facility/
The National Planning Policy Framework (NPPF) (2019)	https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810197/NPPF_Feb_2019_revised.pdf

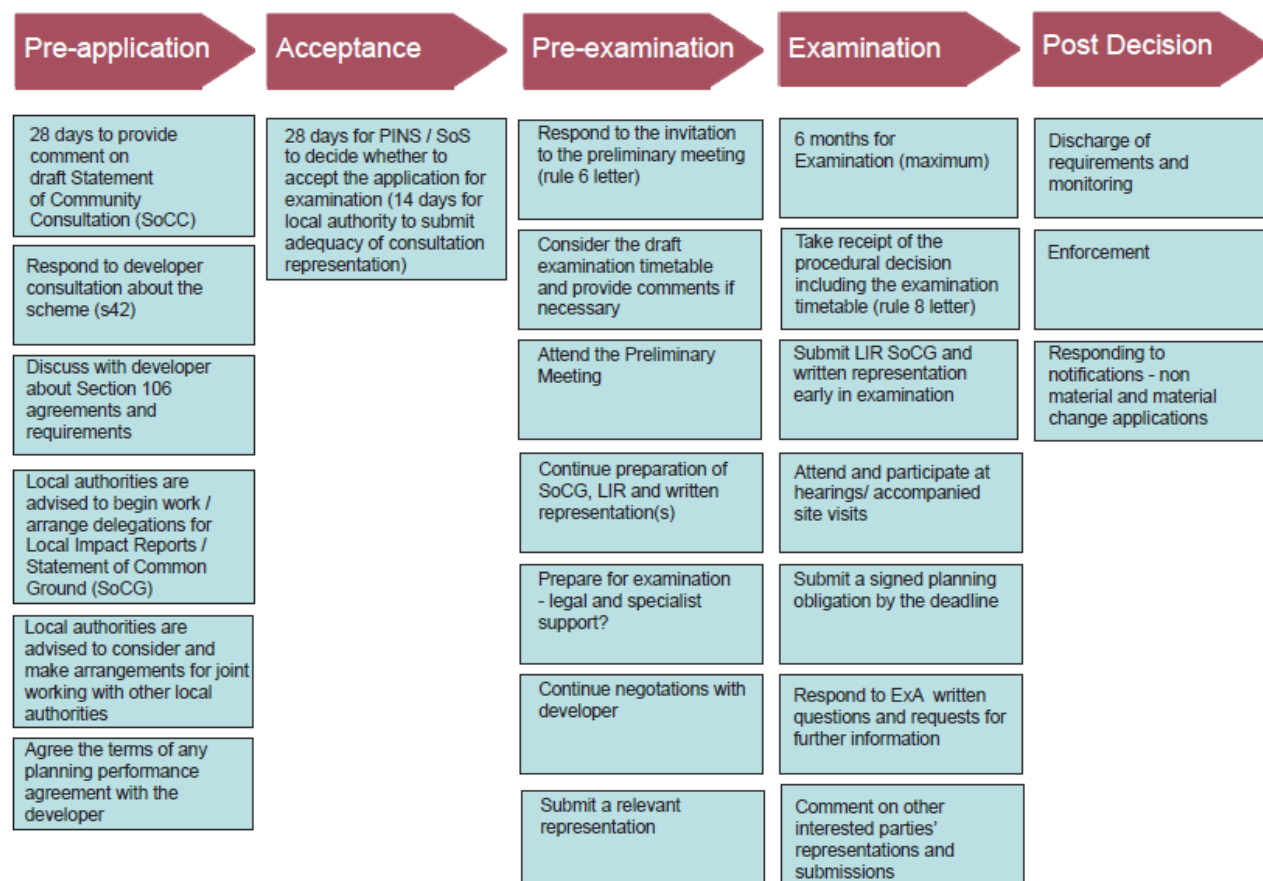
Appendix 1: The six steps of the NSIP DCO process under the 2008 Act⁶



⁶ Source PINS website <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2013/03/Application-process-diagram2.png>

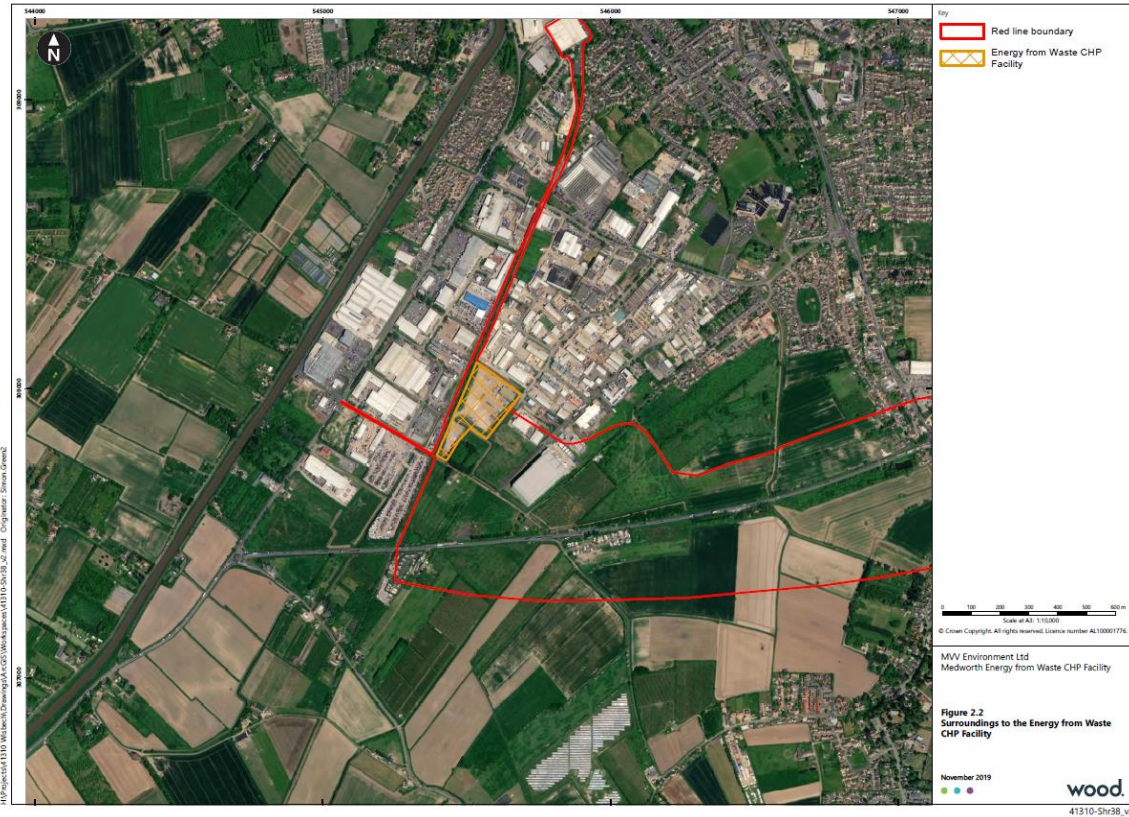
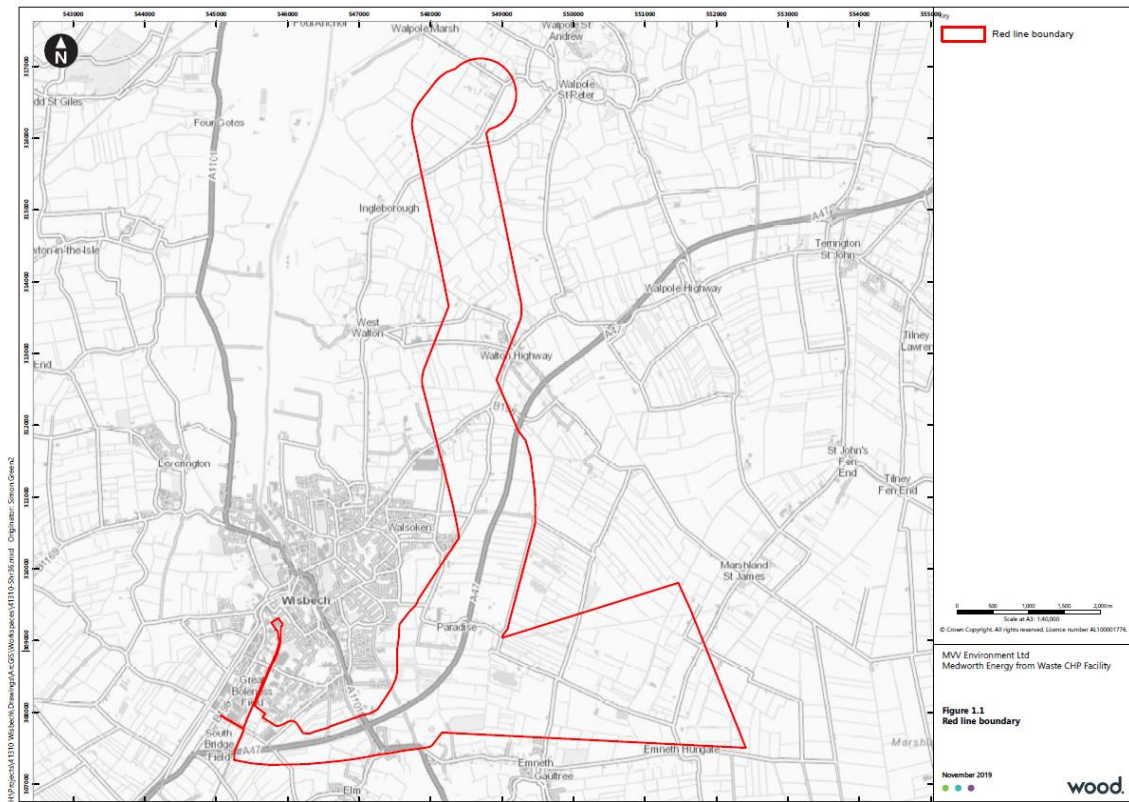
Appendix 2: The role of local authorities⁷

The role of local authorities



⁷ Source PINS Advice Note 2 https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/03/Advice_note_2.pdf

Appendix 3: The red line plans for the MVV proposal ⁸



⁸ Source MVV Scoping Report – Red Line Boundary Plan (Figure 1.1), Surroundings to the Site (Figure 2.2), Construction Compound Options (Figure 2.3), Combined Heat and Power Corridor and Access Improvements (Figure 2.4), and Grid Connection Corridor (Figure 2.5).

