

REPORT OF Planning Manager
To: Full Council
Subject: XLinks Morocco-UK Power Project
Date: 15th July 2024

PURPOSE OF REPORT: To consider the Council's response to the XLinks statutory pre-application consultation and a proposal for the establishment of a Member Working Group to support the Council's inputs to the Development Consent Order process.

1. INTRODUCTION

- 1.1 The XLinks Project proposes a new electricity generation facility entirely powered by solar and wind energy combined with a battery storage facility. Located in Morocco's region of Guelmim-Oued Noun, it intends to be connected to Great Britain via approximately 4000km (2485 miles) of High Voltage Direct Current (HVDC) sub-sea cables. XLinks indicates the Project would deliver 3.6 gigawatts (GW) of wind and solar energy to Great Britain for 19+ hours a day on average, which is enough to provide power to the equivalent of over 7 million British homes and once complete, the Project would be capable of supplying 8% of Great Britain's electricity needs.
- 1.2 Further details of the Project, including plans of the route, the Consultation Booklet and Presentation Boards, can be accessed via the link provided in the Background Papers set out below. Xlinks provided a dedicated TDC Member Briefing on the 18th of June and a recording of this has been circulated to all Members.
- 1.3 The Planning Act 2008 provides the legislative basis for applications for a Development Consent Order (DCO). It also defines the application process under which a DCO is sought. The Planning Act 2008 states that projects meeting certain criteria are classified as Nationally Significant Infrastructure Projects (NSIPs). Developers wishing to construct, operate and maintain NSIPs must obtain a DCO from the relevant Secretary of State to authorise their project.
- 1.4 Under the definitions of an NSIP set out in sections 14 to 16 of the Planning Act 2008, the XLinks Project does not meet the criteria. However, under Section 35(1) of the Planning Act 2008, '*the Secretary of State may give a direction for development to be treated as development for which development consent is required*' if certain criteria (including the type and location of the development) are met.
- 1.5 In August 2023, XLinks sought direction from the Secretary of State for Energy Security and Net Zero (the 'Secretary of State') under section 35 of the Planning Act 2008 to confirm that elements of the Project should be treated as development for which development consent under the Planning

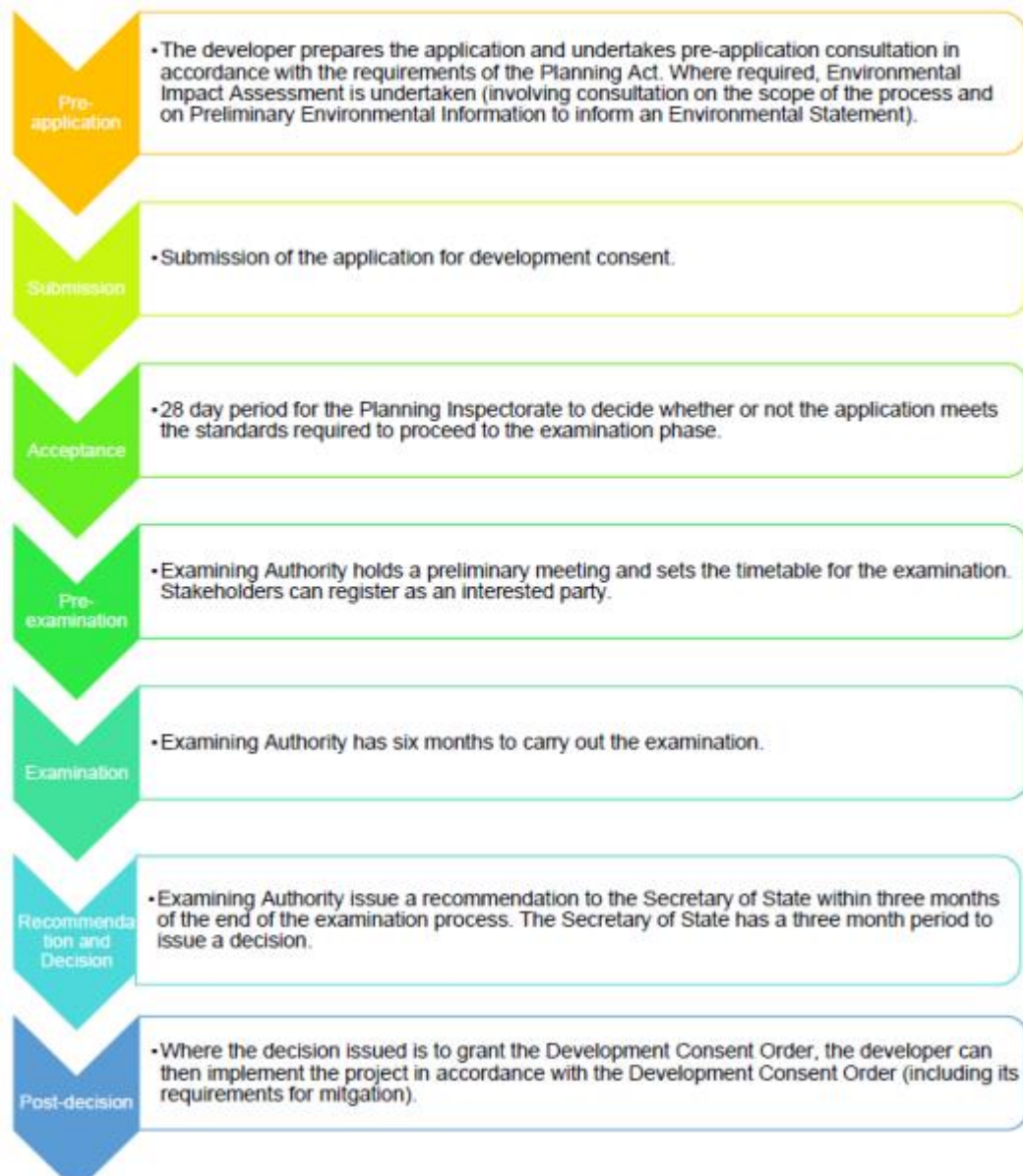
Act 2008 is required. A direction was duly made on 26 September 2023 confirming the Secretary of State's conclusion that the overall Project is nationally significant and directed that development consent is required for the converter stations. The annex of the Secretary of State direction explains that: *'The Proposed Project is of national significance, taking into account that it forms part of a generation project which is comprised of 11.5GW of renewable power in Morocco, which is intended to deliver 3.6 Gigawatts (GW) of low carbon electricity to the UK's grid and could improve the security and diversity of the UK's electricity supply.'*

- 1.6 The Council's Officers have been engaging in pre-application discussions with XLinks since 2021 and have facilitated several Member briefings. The confirmation of the project now being subject to the DCO process means the Council's role has changed, as explained below.
- 1.7 This Agenda Report and associated appendices relate specifically to the Council's representations to the current pre-application consultation together with a proposed basis for future Member engagement in the form of a Member Working Group. This Report also seeks to provide a high-level overview of the DCO process, and stages involved.

2. REPORT

NSIPs, the DCO Process and the Council's Role

- 2.1 An NSIP is a Nationally Significant Infrastructure Project. They are projects of certain types, over a certain size, which are considered by the Government to be so big and nationally important that permission to build them needs to be given at a national level, by the responsible Secretary of State. The thresholds for NSIPs are set out in sections 15 to 30A of the Planning Act 2008. This process is separate from developments under the Town & Country Planning Act 1990, with NSIPs having an emphasis on preapplication work shaping the design of the project.
- 2.2 Instead of applying to the Local Authority for Planning Permission, the developer must apply to the Planning Inspectorate for a different permission called a Development Consent Order (DCO). The Planning Act 2008 process was introduced to streamline the decision-making process for major infrastructure projects. Since then, over 110 NSIPs have been consented in the UK. The Planning Inspectorate (PINS) is responsible for undertaking the DCO examinations and will write a report with recommendations to the Secretary of State Energy Security and Net Zero to help support their decision making.
- 2.3 The illustration below provides an overview of the NSIP process, and the stages involved:



- 2.4 Development consent is required for development if the development is or forms an NSIP. Consent is achieved through a Development Consent Order (DCO), a '*super consent*' that can include:
- Planning permission
 - Power to interfere with highways (e.g., to construct and maintain new streets, alter or divert streets, or stop or restrict the use of streets)
 - Power to take steps to protect buildings and enter on land to survey and investigate it
 - Power to compulsorily acquire land and rights over land and to take temporary possession of land
 - Power to fell or lop trees
 - Power to override usual consents that protect the public from nuisance, etc.
- 2.5 It is important to understand the limitations and opportunities that the role of a Local Authority has in the NSIP DCO process. As set out above, unlike Town and Country Planning Act (TCPA) applications, DCO applications are not determined by the Council but by the relevant Secretary of State. Hence, the

Council is not a decision-maker but a key statutory consultee. While this limits the scale of influence of the Council, it does provide opportunities as well. A Council response can be much wider than when determining a TCPA application, allowing for a greater community leadership role and the opportunity to promote community benefits in their widest sense. It also gives the option to be more nuanced in the response, e.g., by objecting to some elements of the proposals and supporting others.

- 2.6 As the Project is located within Torridge District Council's administrative area, the Council is a '*host authority*' as defined in the Planning Act 2008. The '*host authority*' status is also applicable to Devon County Council. The Council is a statutory consultee in relation to pre-application consultation on the Project and in relation to examination of the DCO Application. Given the joint '*host authority*' status, Officers have been working closely with Devon County Council's Officers with regular meetings and an aligned approach to technical matters. Where there are technical matters that cannot be met by existing Council resource, for example to address landscape and ecology considerations, external specialists have been appointed to advise the Council.
- 2.7 While the Council does not have the power to determine the DCO Application, it will undertake specific functions in relation to the application with the nature and extent of the Project being such that demands will be placed on the Council resources. To avoid under-resourcing or needing to cut services elsewhere in the Council to resource the NSIP, XLinks has agreed to provide funding to the Council for the undertaking of certain activities to support the efficient and effective discharge of its functions in relation to the Project. The scope and mechanism for securing this funding is currently being confirmed via a Planning Performance Agreement and the Council has jointly instructed a specialist solicitor to support on this.
- 2.8 An NSIP is significant for the local area in many ways, and its significance goes beyond considerations within the planning scope and scope of the DCO regime. To do justice to this wider dimension, the Council must maximise wider opportunities (e.g. economic and skills) and plan for wider risks (e.g. on availability of labour or indirect public health impacts). To achieve this wider dimension, it is important to take a project approach that takes a wider perspective than planning, although planning considerations will be at the core.
- 2.9 At this current Pre-Application stage, the Council is engaged in regular meetings with XLinks and their consultant team on various technical matters.

Section 42 Statutory Pre-Application Consultation

- 2.10 The current statutory public consultation is split in to two parts; the Preliminary Environmental Information Report (PEIR), which sets out the findings of the Environmental Impact Assessment (EIA) process undertaken to date to support the DCO, and a set of General Consultation Questions seeking views

on the proposed locations for the cabling and convertor stations, community benefits and environmental enhancements.

- 2.11 Draft Representations are included at Appendix 1 for the PEIR and Appendix 2 for the general consultation questions.
- 2.12 The PEIR Representation concerns technical matters and has been prepared with input from a range of Council Officers covering areas of: Planning, Economic Development, Sustainability, Environmental Protection and Community Engagement. An external consultant has provided input on landscape matters. Officers are liaising with Devon County Council Officers to understand wider technical matters falling within their remit such as highways, drainage and archaeology, however these areas will be covered in the Devon County Council Representation. The General Consultation Questions Representation has been drafted to reflect the current and ongoing nature of Pre-Application engagement and therefore notes the Council's desire to provide further views over the coming months. The draft Representations highlight other relevant Council Strategies and Plans.
- 2.13 Views that have been expressed to date by Members have been summarised and included as appropriate.

Proposal for a NSIP Member Working Group

- 2.14 Article 7 – 'Our Committees' of the Council's Constitution, states at Paragraph 7.2 that '*the Council's Committees may appoint Sub-Committees for particular functions or may appoint Working Groups in order to undertake particular tasks.*'
- 2.15 The Constitution does not include any provisions for the Council's involvement in and response to NSIPs. Given the extensive level of detail and stages involved in the DCO process, it is considered appropriate and beneficial to establish a focused NSIP Member Working Group to provide a forum for Members to be regularly briefed on matters associated with each stage and to seek their views on the content of the required submissions, which include the Adequacy of Consultation Representation, Relevant Representation, Statement of Common Ground, Local Impact Report and Written Representations. The Working Group would also play a key role in developing the Council's position on any community benefit package and ensuring community perspectives and issues are understood.
- 2.16 In practice, Working Groups should be kept small so that they can work effectively to make recommendations. The membership of any Working Group must also be logical and relate to the subject focus of the Group. In this case, given the nature of the XLinks Project, it is recommended that the Working Group be made up of the following:
- Lead Member for Planning
 - Lead Member for Economy
 - Lead Member for Climate Change

- Members of the following Wards within which the XLinks works take place: Monkleigh & Putford (2 Cllrs), Bideford East (3 Cllrs), Two Rivers & Three Moors (2 Cllrs)

2.17 To ensure that the NSIP Working Group functions effectively, it is considered appropriate to establish and agree a series of principles that will manage its operation. Given that the NSIP Working Group will not have formal decision-making power, it is advocated that these are kept as simple and flexible as possible so as to ensure that the group is agile and able to be responsive to circumstances. That being said, for transparency, it is proposed that these are set out in Terms of Reference (ToR) and Operating Procedures (Appendix 3) that are agreed by Full Council.

3. IMPLICATIONS

Legal Implications

The Planning Act 2008 provides the legislative basis for applications for a Development Consent Order (DCO). It also defines the application process under which a DCO is sought. The Planning Act 2008 states that projects meeting certain criteria are classified as Nationally Significant Infrastructure Projects (NSIPs). Developers wishing to construct, operate and maintain NSIPs must obtain a DCO from the relevant Secretary of State to authorise their project.

In August 2023, XLinks sought direction from the Secretary of State for Energy Security and Net Zero (the 'Secretary of State') under section 35 of the Planning Act 2008 to confirm that elements of the Project should be treated as development for which development consent under the Planning Act 2008 is required. A direction was duly made on 26 September 2023 confirming the Secretary of State's conclusion that the overall Project is nationally significant and directed that development consent is required for the converter stations. The annex of the Secretary of State direction explains that: *'The Proposed Project is of national significance, taking into account that it forms part of a generation project which is comprised of 11.5GW of renewable power in Morocco, which is intended to deliver 3.6 Gigawatts (GW) of low carbon electricity to the UK's grid and could improve the security and diversity of the UK's electricity supply.'*

As the Project is located within Torridge District Council's administrative area, the Local Authority is a *'host authority'* as defined in the Planning Act 2008 and a statutory consultee.

The Council has appointed a specialist NSIP solicitor to advise on legal aspects of the process.

Financial Implications

NSIPs are very resource intense for a Council. To avoid under-resourcing or needing to cut services elsewhere in the Council to resource the inputs to the DCO, a Planning Performance Agreement is being negotiated with XLinks to

ensure full cost recovery of any costs related to the Council's engagement in the process.

Human Resources Implications

As indicated above, the DCO process can impact significantly on Council resources. A core officer team has been set up to respond to relevant technical matters throughout the pre-application stage and a Planning Performance Agreement is being negotiated to secure cost recovery. External expert advice is being secured in respect of ecology and landscape matters. The adequacy of existing staff capacity will be regularly reviewed.

Sustainability/Biodiversity Implications

The XLinks Project is subject to an Environmental Impact Assessment process which will consider matters of sustainability and biodiversity.

NSIPs are currently exempt from mandatory biodiversity net gain requirements.

Equality/Diversity

There are no specific equality / diversity issues.

Risk Management

Appropriate project management approaches will be required to be applied to this Project to ensure effective and timely Council engagement and inputs throughout the DCO process.

Compliance with Policies and Strategies

The XLinks Project must be considered against National Policy Statements for Energy, Renewable Energy Infrastructure and Electricity Networks Infrastructure. The North Devon and Torridge Local Plan (NDTLP) does not carry the same weight under the Planning Act 2008 however the NDTLP policies will be considered where relevant.

It will be important for the Council to raise its aspirations and strategic plans through engagement in the DCO process, particularly the Strategic Plan, Economic Strategy, (emerging) Housing Strategy and Growth Strategy.

Data Protection

Appropriate arrangements will be put in place to ensure that all data protection requirements associated with the protection of personal information are adhered to.

Climate Change

The XLinks Project seeks to deliver a new electricity generation facility entirely powered by solar and wind energy combined with a battery storage facility.

Leader Member View

Lead Member for Planning – Cllr Rosemary Lock

“The DCO Process is new to the Council, and it is encouraging to see that clear plans are already being put in place to navigate officers and members through the various stages. It will be important to agree a fair Planning Performance Agreement to enable full cost recovery on officer time as we would not want to see our wider services adversely affected. I am pleased to see that officers are actively involved at this ongoing pre-application stage and welcome proposals for the Member Working Group to enable active and timely member engagement and input.”

4. CONCLUSION

Members are asked to consider the draft representations to the XLinks consultation, as appended to this report, noting the ongoing nature of this Pre-Application Stage. Members are further asked to consider a proposal for a dedicated Member Working Group to support the Council through the DCO process.

5. RECOMMENDATIONS

It is recommended that:

- the Council agrees the submission of Representations to the PEIR (contained in draft at Appendix 1) and General Consultation (contained in Appendix 2), noting that the Council’s engagement in the Pre-Application stage is ongoing;
- the Council agrees to the set-up of a dedicated NSIP Member Working Group in line with the terms set out in Appendix 3.

SUPPORTING INFORMATION

Consultations: Steve Hearse, Chief Executive
Sean Kearney, Head of Communities and Place
Staci Dorey, Head of Legal, Governance and Monitoring

Contact Officer: Helen Smith - Planning Manager

Background Papers:

- a. The Planning Act 2008
- b. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
- c. Marine and Coastal Access Act 2009
- d. Environment Act 2021

- e. The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017
- f. Flood and Water Management Act, 2010
- g. Environmental Permitting (England and Wales) Regulations 2018
- h. The Localism Act 2011
- i. Growth and infrastructure Act 2013
- j. Housing and Planning Act 2016
- k. Levelling Up and Regeneration Act 2023
- l. Planning Inspectorate - Nationally Significant Projects: Advice Notes - <https://www.gov.uk/government/collections/national-infrastructure-planning-advice-notes>
- m. Reference Guide to Nationally Significant Infrastructure Projects (NSIPs) – Version 2.0 12/2023 - Suffolk County Council (NSIP Centre of Excellence)
- n. TDC Member Briefing and Q&A recording – circulated separately to all Members

The following documents / material produced by XLinks form the current public consultation and can be accessed via the Document Library on the XLinks website - <https://xlinks.co/devon/>

- o. Preliminary Environmental Information Report (PEIR) – May 2024
- p. Statutory Public Consultation Booklet – 16 May 2024 to 27 June 2024
- q. XLinks Consultation Boards
- r. Statement of Community Consultation - 16 May 2024 to 27 June 2024
- s. Order Limits Plan – onshore
- t. Order Limits Plan
- u. Land Use Plans
- v. Section 48 Notice