

What is a Development Consent Order (DCO)?



How we will seek the powers to build the Teddington Direct River Abstraction project

The Planning Act 2008 (the 2008 Act) established the legal framework for applying for, examining and determining applications for Nationally Significant Infrastructure Projects (NSIPs).

Under the 2008 Act, a Development Consent Order (DCO) is the means of obtaining permission to construct and maintain developments categorised as NSIPs. This includes energy, transport, water and waste projects.

Applications for development consent for NSIPs are submitted to the Planning Inspectorate, a government agency responsible for advice and decisions on a range of land use planning-related issues. The Planning Inspectorate will make a recommendation on the application and the decision will be made by the Secretary of State for the Environment, Food and Rural Affairs.

If granted, the DCO will confer the necessary consents/powers to enable the project to proceed, including planning permission, compulsory acquisition powers and authority for highway and street works.

What is a National Policy Statement (NPS)?

Applications for DCOs are decided in accordance with National Policy Statements (NPSs). They provide the legal and policy framework for decisions by the Secretary of State on NSIPs.

The Water Resources Infrastructure NPS was published in April 2023 and will apply to Thames Water's DCO projects. It states that if an NSIP is included in a published final water resources management plan, the 'need' for that scheme will have been demonstrated in line with government policy. Therefore 'need' would not be expected to be revisited as part of the application for development consent. The scheme would instead be tested against specific criteria in the NPS (as well as relevant legislation) including its environmental impacts.



Under the Act, a Section 35 Direction from the Secretary of State (SoS) establishes whether or not a project should be treated as being a Nationally Significant Infrastructure Project. In November 2023, we submitted an application to the SoS for a Section 35 Direction in relation to the project. Confirmation was received from the SoS in December 2023 that the project should be treated as a development of national significance for which a DCO is required.

Pre-application

Prior to formally submitting an application for a DCO, Thames Water is required to carry out extensive public consultation on their proposals.

Thames Water has a duty to consider all consultation responses at the pre-application stage and to summarise these into a consultation report to be submitted with the DCO application. Local authorities will also be asked to provide an opinion on the adequacy of the pre-application consultation before the application can be accepted.

Acceptance

Following submission of the formal DCO application, the Planning Inspectorate has 28 days in which to formally accept the application or not and will consider whether the proposal meets the standard required to be examined and whether sufficient information has been provided.

Pre-Examination

Once an application has been accepted, an Examining Inspector (or panel of Inspectors) will be appointed by the Planning Inspectorate as Examining Authority. The DCO application will be formally advertised, and copies of the application documents will be published on the Planning Inspectorate website.

Relevant local authorities automatically become Interested Parties. Members of the public/interest groups can formally register as an Interested Party within a 28-day minimum registration period, which gives them the right to submit written representations and to request the right to speak at any hearing.

A Preliminary Meeting will take place to consider procedural matters as to how the application will be examined and an examination timetable will be set. There is no statutory timetable for this pre-examination stage, but it usually lasts around three months.

Examination

Examination starts the day after the close of the Preliminary Meeting and must be completed within six months. The Examining Authority will invite interested parties to submit their views, hold hearings and will carefully consider all the evidence submitted. It is focused on written representations rather than a public inquiry, with hearings on issues only being held where necessary.

Recommendation and Decision

The Examining Authority must prepare a report including a recommendation about whether to grant or refuse development consent within three months of the close of the Examination. The Secretary of State then has a further three-month period in which to consider the recommendation and make a decision.

Post Decision

A six-week period follows the decision of the Secretary of State during which any decision may be challenged in the High Court by way of judicial review.



Six stages of the DCO process

