

# Lower Thames Crossing

## 8.1 Planning Performance Agreement (PPA) Summary Statement

Infrastructure Planning (Examination  
Procedure) Rules 2010

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## 8.1 Planning Performance Agreement (PPA) Summary Statement

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# 1 Purpose

## 1.1 Procedural Decision

1.1.1 On the 19 December 2022 the Examining Authority for the A122 Lower Thames Crossing (the Project) made an early Procedural Decision to assist National Highways (the Applicant) and potential Interested Parties to prepare for the Examination of the Application.

1.1.2 The item from that Procedural Decision relevant to this summary note is Item 4 and is as set out below:

*Applicants for NSIP and other major development proposals that may impose additional duties and costs on local planning authorities can enter into PPAs with those authorities, in which actions, timescales and funding contributions to cover additional duties and costs are agreed and provided for. To assist the ExA to make later Procedural Decisions and Recommendations that are fair and proportionate, having regard to the resources available to individual local planning authorities, the Applicant is requested to provide a document summarising the following information by no later than two weeks after the closure of the Relevant Representations period.*

- **PPAs in force** - Please identify all PPAs that are in force, their parties, when they were made, when they are due to expire and the matters and any funding for which they provide.
- **Prospective PPAs** - Please identify all PPAs that are in prospect or proposed, who their parties might be, by when they are intended to be made, when they would be due to expire and the matters and any funding that they are intended to provide.

1.1.3 Sections two and three of this document constitutes the Applicant's response to this request.

## 2 Planning Performance Agreements

### 2.1 General Context

- 2.1.1 The Applicant notes that there is no obligation in legislation or statutory guidance to enter into Planning Performance Agreements (PPAs), and in developing the position with regard to PPAs for the Lower Thames Crossing, the Applicant has had regard to Advice Note 2 provided by the Planning Inspectorate, which sets out:
- “Planning Performance Agreements (PPAs) are a matter for the local authority and the developer and may be justified by the impact on the local authority’s resources. The Planning Inspectorate is, in principle, supportive of PPAs but will not get involved in the negotiation of a PPA as it is a legal agreement between two parties. The duration that any PPA is in effect and the scale of support at different stages is a matter for negotiation and is likely to be driven, in part, by the commitments in the DCO in terms of the scale of the local authorities’ ongoing role if the SoS decides to grant development consent.”*
- 2.1.2 The information provided here sets out the PPAs that the Applicant has put in place with local authorities specifically in relation to the Project.
- 2.1.3 The scope and nature of the agreements here should not be construed as a precedent for any other activities being undertaken by the Applicant, either as a promotor of projects or in undertaking its statutory duties.
- 2.1.4 The Applicant, as a public body, must always consider the appropriate use of public funds, and ensure that it is providing value for money. The Applicant has considered and continues to consider PPAs in line with its licence obligations, including those ensuring appropriate use of public funds and providing value for money.
- 2.1.5 The Applicant considers the negotiation of PPAs to be a highly commercially sensitive matter and in accordance with Advice Note 2 considers the negotiation of the scope of any PPA should be a matter for the parties and governmental departments, where appropriate.

## **3 LTC Planning Performance Agreements**

### **3.1 Planning Performance Agreements in Force**

- 3.1.1 The Applicant entered into Planning Performance Agreements with the following local authorities during the pre-application stage of the Project:
- a. Essex County Council (in August 2020)
  - b. Gravesham Borough Council (in August 2020)
  - c. Kent County Council (in August 2020)
  - d. London Borough of Havering (in August 2020)
  - e. Medway Council (in January 2021)
  - f. Thurrock Council (in January 2019)
- 3.1.2 The scope of these agreements provided for the Applicant to reimburse the above for their costs for certain activities which required additional resources to engage with the Applicant as part of the pre-application stage outside of formal consultations.
- 3.1.3 Each agreement included a schedule of works that set out the work packages that could be reimbursed under the agreements. These included meetings and negotiations, technical reviews, provision of information and project management.
- 3.1.4 It would not be appropriate for the Applicant to disclose the sums of money paid to these parties individually as the information is commercially sensitive and contains information contained in private legal agreements between the Applicant and the individual parties, but overall, between January 2019 and October 2022, the Applicant had funded in excess of £3million worth of support to the parties listed in section 3.1.1 in their work to consider and engage with the Applicants proposals.
- 3.1.5 That amount reflects the extensive engagement as well as the detailed and advanced position of the Statements of Common Grounds which were provided with the Project's Development Consent Order (DCO) application, and which are continually being updated following ongoing engagement and negotiation.
- 3.1.6 Although the PPAs listed for the parties in section 3.1.1 terminated at the point of submission of the DCO application in October 2022, the Applicant has committed to honour the scope of these PPAs whilst the variations detailed in section 3.2 are negotiated.

### **3.2 Variations to Planning Performance Agreements**

- 3.2.1 The PPAs for the Lower Thames Crossing terminated at the point of submission of the DCO application in October 2022, however, the Applicant has proposed to offer additional support to the parties listed in section 3.1.1 during the next phase of the DCO process and the Applicant is in active discussion with these parties to offer them variations to their PPAs to cover a range of certain activities post-submission of the DCO application.

- 3.2.2 On the 09 December 2022, following weeks of discussion on the content, the Applicant formally issued draft written copies of the proposed variations to:
- Essex County Council
  - Gravesham Borough Council
  - Kent County Council
  - London Borough of Havering
  - Thurrock Council
- 3.2.3 The Applicant formally issued a draft written copy of the variation to Medway on the 13th January 2023.
- 3.2.4 At the time of writing this position paper the status of each PPA is as follows;
- Essex County Council – under discussion.
  - Gravesham Borough Council - signed and competed
  - Kent County Council - content agreed, execution copy issued for signature.
  - London Borough of Havering – under discussion.
  - Medway Council – signed and completed
  - Thurrock Council – see section 3.3.
- 3.2.5 The cost recoverable activities covered by the proposed variations are provided to help the parties understand the application and includes:
- Attendance at technical working groups, advisory and other Project Team meetings.
  - Review and comment on meeting notes, following each agreed meeting.
  - Engagement with other public bodies including neighbouring Councils and statutory bodies.
  - Negotiation and agreement of a Statement of Common Ground.
  - Negotiation of land access/acquisition by agreement, as necessary and as requested by National Highways.
  - Attendance at any stakeholder group that may have been established.
- 3.2.6 The activities excluded from being cost recoverable include;
- The Council's formal role in the DCO process (e.g. production of their relevant representations, written representations and their Local Impact Report).

- b. The procurement of external legal advisors, including barristers.
- c. Preparation for, and attendance and participation at the Examination, including the preparation of expert witness submissions and responding to written questions raised by the Examining Authority during the Examination.

3.2.7 These variations are intended to be made as soon as they can be agreed and will remain in force until the DCO examination concludes. Without prejudice to the Applicant's position on its wider portfolio of DCO projects, the Applicant emphasises that these steps are considered reasonable and proportionate for the Project and reflects an approach which goes well beyond any legal or policy requirements under the Planning Act 2008.

### **3.3 Thurrock Council and the Section 114 notice**

- 3.3.1 Councils are required by law to have balanced budgets. If a council cannot find a way to finance their budget then a Section 114 (S114) notice must be issued.
- 3.3.2 On the 19 December 2022 Thurrock Council's Interim Director of Finance issued a S114 notice which indicates that the authority will not be able to deliver a balanced budget from within existing resources this year and into next. A S114 notice means the council must stop all but the essential spending needed to provide vital services to residents, pay staff and meet its legal duties.
- 3.3.3 Subsequently to the S114 notice, Thurrock Council asked the Applicant to provide additional funding under the PPA variation to cover all costs they may incur as a result of participating in the DCO process, including costs for all external consultants, legal advisors and barristers.
- 3.3.4 The Applicant provided a revised offer of funding to be included within the scope of the PPA variation. The Applicant, again, made this proposal in the context of the legislative requirements, its licence obligations and an appropriate consideration.
- 3.3.5 In setting out this offer, the Applicant set out control requirements (to ensure effective use of public money) such as requesting Thurrock Council to supply a cost estimate for each of the workstreams identified.
- 3.3.6 Following the request from Thurrock Council, the Applicant re-considered its offer and concluded that its offer was reasonable, proportionate and fell within the confines of the appropriate use of public funds. Thurrock Council has not accepted this approach. The Applicant provided an offer which would enable work by Thurrock Council, covered by the proposed variation, to continue on a 'without prejudice' basis while the wider PPA scope discussion continued, but Thurrock Council declined and at present there is no technical engagement.
- 3.3.7 The Applicant remains open to discuss the PPA variation with Thurrock Council. At the time of writing, no agreement has been reached.

### **3.4 Further Prospective Planning Performance Agreements**

- 3.4.1 In addition to negotiating variations with the parties listed in section 3.1.1, the Applicant has also entered into discussions and offered Planning Performance Agreements to cover certain activities up to the close of examination - for the following Local Authorities;
- a. Brentwood Borough Council
  - b. Tonbridge and Malling Borough Council
- 3.4.2 The Applicant formally issued a draft written copy of the PPA with Brentwood Borough Council on the 12 December 2022.
- 3.4.3 The Applicant formally issued a draft written copy of the PPA with Tonbridge and Malling Borough Council on the 13 January 2023.
- 3.4.4 The cost recoverable activities covered by the Planning Performance Agreements referred to above are identical to the matters set out in section 3.2.2 and the activities excluded from being cost recoverable are as per section 3.2.3.
- 3.4.5 These Planning Performance Agreements are intended to be made as soon as they can be agreed and will remain in force until the DCO examination concludes.
- 3.4.6 For completeness, this summary note does not cover the Service Level Agreements and other funding arrangements which have been made available to Statutory Environmental Bodies.



## Glossary

Term	Abbreviation	Explanation
<b>A122 Lower Thames Crossing</b>	<b>Project</b>	A proposed new crossing of the Thames Estuary linking the county of Kent with the county of Essex, at or east of the existing Dartford Crossing.
<b>Development Consent Order</b>	<b>DCO</b>	Means of obtaining permission for developments categorised as Nationally Significant Infrastructure Projects (NSIP) under the Planning Act 2008.
<b>Development Consent Order application</b>	<b>DCO application</b>	The Project Application Documents, collectively known as the 'DCO application'.
<b>Local Impact Report</b>	<b>LIR</b>	A report giving details of the likely impact of the proposed development on the authority's area (or any part of that area)
<b>National Highways</b>	-	A UK government-owned company with responsibility for managing the motorways and major roads in England. Formerly known as Highways England.
<b>Planning Performance Agreement</b>	<b>PPA</b>	The main purpose of a PPA is to provide a framework, agreed between the party and the applicant about the process for considering a major development proposal.
<b>Section 114 notice</b>	<b>S114</b>	Under section 114 of the Local Government Finance Act 1988, a Chief Finance Officer is required to issue such a notice if it appears to them that the expenditure of the authority in a financial year is "likely to exceed the resources (including sums borrowed) available to it to meet that expenditure.
<b>The Applicant</b>	-	National Highways

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Registered office Bridge House, 1 Walnut Tree Close, Guildford GU1 4LZ

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