

KENT COUNTY COUNCIL –RECORD OF DECISION

DECISION TAKEN BY

Neil Baker, Cabinet Member for Highways and Transportation

DECISION NO:

23/00111

For publication

Key decision*

Yes

Subject: Lower Thames Crossing - Agreements

Decision:

As Cabinet Member for Highways and Transport, I agree to

- (i) Approve KCC entering into the required agreements with National Highways to facilitate delivery of the Lower Thames Crossing.
- (ii) Delegate to the Corporate Director of Growth, Environment and Transport, in consultation with the Cabinet Member for Highways and Transport, to negotiate, finalise and enter into relevant contracts to implement the provisions as set out Side Agreement.
- (iii) Delegate authority to the Director of Infrastructure to, in consultation with the Corporate Director for Growth, Environment & Transport, to finalise and enter into the necessary transfers, land exchanges, contracts or other legal agreements to implement this decision.
- (iv) Delegate authority to the Corporate Director of Growth, Environment and Transport under the Officer Scheme of Delegations to take other actions, including but not limited to entering into contracts or other legal agreements, as required to implement the decision.

Reason(s) for decision:

The Application for the Lower Thames Crossing was submitted by National Highways to the Planning Inspectorate under section 37(2) of the Planning Act (PA) 2008 on 31st October 2022 and accepted for Examination under section 55 of the PA 2008 on 28th November 2022.

The Development Consent Order (DCO) Application proposes the development of a highway connecting the A2/M2 to the east of Gravesend in Kent to the M25 at Junction 29 on the boundary between the London Borough of Havering and Essex. The project constitutes a Nationally Significant Infrastructure Project (NSIP) under Sections 14 and 22 of the Planning Act 2008 and would provide a second strategic road network dual carriageway crossing of the Thames estuary east of Greater London.

As a host authority, Kent County Council (KCC) have a statutory duty to participate in the DCO Process. KCC fully support Lower Thames Crossing as set out in KCC's Local Transport Plan, agreed by County Council in July 2017. Whilst National Highways are the scheme promoter and will deliver the project, KCC is required to enter into multiple contracts with the promoter to enable the works to progress. In addition, KCC has requested a number of additional requirements of National Highways. In order to secure these requested funds, KCC need to enter into a Side Agreement with National Highways.

Reason for Urgency

This decision must be made within the timescales of the Development Consent Order process which will conclude on 20th December 2023. This is to enable Kent County Council (KCC) to receive funding provided by National Highways for mitigations and interventions requested by KCC throughout the examination process. An initial draft Side Agreement was only provided to KCC on

14 November and updated on 28th November 2023.

This timetable did not allow sufficient time to report to Members of the Environment and Transport Cabinet Committee at their meeting on 15 November and it could not be deferred to the next meeting on 11 January 2024 due to the requirement by the Examining Authority for all signed legal agreement to be submitted by the 20th December.

Cabinet Committee recommendations and other consultation:

No Cabinet Committee consultation possible due to urgency process.

The Chair of the Scrutiny Committee, in addition to agreeing that the decision could not be reasonably deferred provided the following comments:

Mr Booth was supportive of the decision.

The Group Spokespeople of the Scrutiny Committee providing the following comments:

Mr Lehmann provided the following comments:

The Green Party councillors and our Swale Independent colleague remain fully opposed to the Lower Thames Crossing. We are very disappointed that despite this having been progressed in mid and late November, it was only brought to our attention on the 13th December. A faster response could have afforded the opportunity for some much needed Scrutiny of this decision.

Dr Sullivan provided the following comments:

I am disappointed that once again we have an urgent decision for a significant project which involves long term effects and financial implications to the county without any scrutiny, openness or transparency. There has been a Scrutiny Committee within this time that this decision could have been brought to, for full public scrutiny and questioning and this report and the DCO process has been in train for some considerable time so this is clearly perceived as again a running down of the clock and avoiding Scrutiny. While a decision has been made by the Conservative Administration to support the Lower Thames Crossing, this paper implies that this project has the whole Council's full support when it does not therefore this report and the decision is not accurate.

There are several items missing or unclear from this report and decision. Firstly, what are the grounds or framework for what is in scope for the Side Agreement. Clearly there were aspects in the request from KCC to LTC that were desired, but without knowledge of these the relevance and significance we cannot be assessed on this decision.

Secondly, this is a Decision to approve an agreement that I have not seen as part of this decision notice and therefore is missing and goes against the principles of openness and transparency when this should have been offered, even if it was by private briefing to me in my role as Leader of the Opposition or to the Shadow Cabinet Member, nor there was no phone call from the Cabinet Member, Corporate Director or Chief Executive, there was no offer of discussion or anything with only 2 days notice to respond.

Given the Kent side of the Lower Thames Crossing falls in Gravesham Borough Council area, I had hoped to see areas of shared requests and evidence of collaboration as Gravesham Borough Council. Gravesham Borough Council remains against the scheme due to multiple reasons including loss of ancient Woodland and green belt, loss of leisure facilities, reduced air quality, increase congestion in Gravesend, Northfleet, and the villages as well as increased use of A227 to cut across to M20, lack of improvement at Blue Bell Hill to access the M20 via the M2 including redesign of the whole junction to stop congestion on the trunk network, traffic modelling, housing impact, health services impact, loss of public land, length of construction and construction traffic problems for

many years amongst other concerns.

Next, I call for this decision and the delegated decisions described here to come to Scrutiny Committee in the future, as soon as practical, to share the Side Agreement in full and with an explanation given how long the inspection process has been going on for why this is an urgent decision.

Also under section 3.5 of the report - it is unclear are what parameters the 'terms' would be acceptable for the Corporate Director of Growth Environment and Transport to choose to accept to enter into the agreement or to refuse to enter into the agreement and indeed 'other actions'. This is unbridled delegated power to a senior officer without any further oversight from non-executive members.

Finally, the manner and behaviour of this Government towards Local Government borders on disrespect at best and contempt at worst. The complete lack of willingness or understanding of local Government Governance procedures including Scrutiny, which are safeguards to ensure the best decisions are taken, is astounding.

However, in response to this behaviour KCC needs to update its own behaviours in favour of openness and transparency, while it does not specify in the Constitution that these decisions can be called into Scrutiny, there should always be willingness to bring Decisions before Scrutiny Committee. This would improve the trust and increase public accountability for these important decisions.

The Chair and Group Spokespeople of the Environment and Transport Cabinet Committee provided the following comments:

No specific comments provided.

Legal:

Full legal review and oversight of the Side Agreement has been undertaken by Pinsent Masons on behalf of KCC Legal.

Any alternatives considered:

In relation to the side agreement the following options were considered:

Recommended option: Receiving authority to enter into the Side Agreement, subject to financial and legal review of the final draft agreement.

Full financial and legal review will be required of the final draft once received to minimise the risk to KCC and ensure that the final agreement is in line with the financial requirements of KCC.

Alternative option: Not entering into the Side Agreement

By not entering into an agreement, KCC requests, as put forward within the examination process will not be secured. This means that some KCC concerns will not be addressed by National Highways and as a result the scheme will not realise the full benefits to Kent residents, as such the alternative option is not being recommended.

Any interest declared when the decision was taken and any dispensation granted by the Proper Officer:

None

Signed:



Date : 19/12/2023