

From: Simon Jones – Director of Growth Environment and Transport

To: Neil Baker – Member for Highways and Transport

Subject: **Lower Thames Crossing – Agreements**
Decision Number:

Key decision 23/00111

Classification: **Unrestricted**

Past Pathway of report: N/A

Future Pathway of report: For Cabinet Member Decision

Electoral Division: Nationally Significant Infrastructure Project – Potential to impact all electoral divisions within Kent. The Project is within the electoral divisions of Gravesend East and Gravesham Rural.

Summary: This report seeks Member approval to enter into the relevant Side Agreement, contracts, consents and approvals as required in order to support National Highways in the delivery of Lower Thames Crossing.

The Development Consent Order (DCO) 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 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) has a statutory duty to participate in the Development Consent Order (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 is 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. KCC is not providing any funding to deliver the scheme.

KCC has requested several additional requirements of National Highways throughout the DCO process in order that a number of the Council's concerns about the proposals are met. To secure these requested requirements, KCC need to enter into a Side Agreement with National Highways.

Recommendation(s):

The Cabinet Member for Highways and Transport is asked to agree to the following:

- (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 and 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 as shown at Appendix A.

1. Introduction

- 1.1 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.
- 1.2 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.
- 1.3 As a host authority Kent County Council (KCC) has a statutory duty to participate in the Development Consent Order (DCO) process. KCC fully support Lower Thames Crossing as set out in KCC's Local Transport Plan, agreed by County Council in July 2017.
- 1.4 KCC has fully contributed to the examination process to date. In the context of supporting the scheme, KCC has worked with National Highways to reduce concerns regarding the scheme proposals, and where mitigation is required, requesting additions to the Section 106 (s106) Agreement. Where a request is, in the opinion of National Highways, not meeting the threshold to be required under planning for a s106, agreements to provide additional funding, resource or other measures must be secured by a Side Agreement. This has become commonplace practice for DCOs. KCC Officers do not have delegated authority to enter into a Side Agreement without a Key Decision. As such, this report seeks Member approval to enter into the relevant Side Agreement.

- 1.5 Further agreements, contracts or decisions may be required throughout the detailed design and construction period of the Lower Thames Crossing, should consent be granted, for which this report also requests delegated authority.

2. Lower Thames Crossing – Agreements

2.1 Side Agreement

- 2.1.1 In the case of Nationally Significant Infrastructure Projects (NSIP), mitigation measures identified in the Environmental Statement and associated documents can be enforced through several mechanisms specified in a DCO as well as other consent regimes such as Section 106 Agreements and other Side Agreements.
- 2.1.2 A Side Agreement may be used to agree to financial and non-financial actions in order to mitigate concerns that KCC (or another Interested Party) may have with the project as set out within the planning process. These are requirements not necessitated by planning but are beneficial to KCC.
- 2.1.3 The most recent draft Side Agreement was only provided to KCC on 28 November 2023. KCC was disappointed that this did not contain several of the requests previously made to National Highways. The outcome of this is that there are still multiple clauses that could be added between now and the end of the examination period.
- 2.1.4 The Side Agreement, as currently drafted, puts requirements on both National Highways and KCC. This allows KCC a greater level of input into the Lower Thames Crossing benefits and design process. Without such input, KCC would not be able to adequately influence the impact of the scheme on the Local Road Network (LRN), environment and other local impacts.
- 2.1.5 Other requirements of National Highways are detailed within the agreement. There are currently no financial contributions to KCC to mitigate the impact of the scheme, despite asks by KCC Officers.
- 2.1.6 The key additional requirement to be added to the Side Agreement relates to compensation for loss of income during the construction phase at Shorne Woods Country Park. The terms of this addition are subject to ongoing discussions between KCC and National Highways. The wording has received legal oversight and will be approved by KCC Finance before inclusion, if agreed by National Highways.

2.2 Further contracts, consents, and agreements

- 2.2.1 Should consent for the scheme be granted, the DCO would enable National Highways to acquire rights, land, and to construct various works and exercise powers for the purposes of constructing Lower Thames Crossing. Further to this, should recommendation 'i' of this report be accepted, the Side Agreement will allow for a number of other consents including the requirement for National Highways to execute and complete a transfer to KCC of any land and rights within the Local Highway compulsorily acquired by National Highways for the construction and maintenance of the Local Highway at nil consideration.

- 2.2.2 Whilst the DCO, Section 106 and Side Agreement (if approval is given) will provide authority for much of the foreseeable future contracts, consents, and agreements required for Lower Thames Crossing; given the scale of the project, it is deemed prudent to consider the possibility that future agreements between National Highways and KCC will be required.
- 2.2.3 The DCO, as currently drafted, requires KCC to make decisions and provide approvals and consents within 28 working days. Many of these consents fall within already delegated powers and established processes; however, where this is not the case, this is not long enough to make additional Decisions. As such, this report recommends delegated authority is provided to the Corporate Director of GET (or other Corporate Director as appropriate).

2.3 Risk

- 2.3.1 Failure to agree to enter into a Side Agreement will leave KCC vulnerable and unable to further negotiate additional terms which could be added to the agreement.
- 2.3.2 It will result in KCC's requests, as put forward within the examination process not being secured. This means that some of KCC's concerns will not be addressed by National Highways and as a result the scheme will not realise the full benefits to Kent residents. This may have future financial implications for KCC, who may need to fund additional works associated with the impacts of the project which otherwise would have been externally funded through the Side Agreement.
- 2.3.3 As currently presented, there is minimal risk to KCC entering into the draft Side Agreement. The KCC obligations would likely be required of the Council regardless of the Side Agreement as part of the Business-as-Usual processes within GET. The Side Agreement will allow KCC some additional influence throughout the project lifecycle benefiting Kent residents and allowing additional collaboration between National Highways and KCC throughout the construction period.

3. Financial Implications

- 3.1 This scheme is promoted by National Highways. Should the Secretary of State consent to the scheme, the funding for the scheme will be provided by National Highways. KCC is not providing any funding to deliver the scheme.
- 3.2 As a host authority KCC has a statutory duty to participate in the DCO Process. The resource associated with Statutory duties has not been considered in this report. Additional KCC resource required for the extra officer workload associated with design approvals will be secured through a Section 106 agreement, for which a decision is not required as the authority to enter into Section 106 agreements is already part of the Officer Scheme of Delegations.
- 3.3 The Side Agreement, as currently drafted, will continue to be amended with additions from National Highways, as requested by KCC. National Highways has yet to agree to several of KCC's requests, including financial compensation for Shorne Woods Country Park. KCC note that it is possible that this clause will be added.

- 3.4 No clauses recommended for addition will require KCC to contribute financially to the scheme. Some clauses may include KCC receiving a financial grant to cover the costs of interventions and mitigations within the local area.
- 3.5 All added clauses with financial payments to KCC will be reviewed by KCC Finance. However, given the likely timescales of last-minute additions, a decision to provide authority to enter into a Side Agreement is required prior to receiving the final draft. As the final terms of the Side Agreement have not yet been provided by National Highways, authority to make the decision enter into the decision is recommended. This will allow for KCC to enter into the Agreement within the required timescales, following full financial and legal review of the final draft. Should the terms presented not be acceptable to KCC, the Corporate Director of Growth Environment and Transport will choose not to enter into the agreement.

4. Legal implications

- 4.1 Full legal review and oversight of the Side Agreement has been undertaken. KCC has appointed Pinsent Masons to support with the S106 Agreement and Side Agreement. A Decision is not required for the S106 Agreement pursuant to the Town and Country Planning Act 1990.

5. Equalities implications

- 5.1 A full Health and Equalities Impact Assessment has been produced by National Highways for this project. This assessment is published on the Planning Inspectorate Website ([Application Document Ref: TR010032/APP/7.10](#)).
- 5.2 There are no additional adverse impacts identified through KCC directly entering into the required contracts and agreements associated with the project. It is possible that by not entering into the Side Agreement as outlined in Section 3, the Communications and Customer care arrangements will not be fully agreed to KCC standard, potentially negatively impacting vulnerable individuals impacted by the scheme. This further supports the need for KCC to proactively enter into a Side Agreement with National Highways.

6. Corporate implications and policy framework

- 6.1 The Lower Thames Crossing fully supports the priorities of Framing Kent's Future, namely Levelling up Kent and providing infrastructure for communities. KCC's support for the project is also stated in its statutory Local Transport Plan 4 (LTP4) as adopted by County Council in July 2017, where the new Crossing is also part of the long-term transport policy aim of bifurcation. This splitting of traffic to/from the Channel portals along the M20/A20 and M2/A2 corridors will help to release capacity and therefore relieve pressure on the M20, especially in times of disruption to cross-Channel services.
- 6.2 KCC, through consultation responses and the DCO process have continued to reiterative our position as outlined below:

'It is clear the need for a new Lower Thames Crossing (LTC) is now urgent: demand to cross the Thames at Dartford exceeds the available capacity and having a single point of failure on the network leads to journey time delays, increased costs for businesses and individuals, and ultimately restricts economic growth both regionally and nationally. It is time for a significant change to our Strategic Road Network (SRN) to make it fit for purpose now and into the future. KCC therefore continues to support the proposed LTC and the investment in additional road capacity that will unlock new opportunities for Kent, the South East and the wider UK.

With increased crossing capacity and greater journey time reliability, residents in Kent will have a much greater range of opportunities for work, education and leisure. Currently this market is suppressed by the unreliability of the Dartford Crossing, which constrains productivity in the Lower Thames area. To not proceed with the project would lead to a worsening of the existing unacceptable conditions at Dartford as well as restrict economic growth and miss out on productivity benefits nationally, regionally and locally.' (Excerpt from KCC Written Representation)

- 6.3 This decision recommendation has been taken with Securing Kent's Future in mind. This scheme is promoted by National Highways. Should the Secretary of State consent to the scheme, the funding for the scheme will be provided by National Highways. KCC is not providing any capital funding to deliver the scheme. National Highways are providing additional funding to cover the additional resource burden associated with this project through the S106 Agreement, for which a decision is not required. Any additional clauses to be added will be subject to financial scrutiny and only be net positive financial contributions to KCC.

7. Governance

- 7.1 This report recommends that further decisions required to allow the scheme to proceed through to delivery to be taken by the Corporate Director of GET under the Officer Scheme of Delegations following prior consultation with the Cabinet Member. The Corporate Director of GET is currently Simon Jones.
- 7.2 All changes to the Side Agreement will be fully reviewed and amended by legal representation, KCC Finance and agreed with the Corporate Director of Growth Environment and Transport (and the Corporate Director for Finance as necessary).
- 7.3 All further decisions relating to the transfer of land or rights will be considered and decided by the Corporate Director of Infrastructure or the Corporate Director of Growth Environment and Transport as deemed most appropriate for the land type (i.e., KCC Terrier vs KCC Highway).

8. Conclusions

- 8.1 The Lower Thames Crossing project is currently being considered by the Examining Authority as part of the Development Consent Order (DCO) process. KCC have been actively participating in this process as part of KCC's statutory duty as a host authority.

8.2 KCC has requested several additional requirements of National Highways throughout the DCO process in order that a number of the Council's concerns about the proposals are met. To secure these requested requirements, KCC need to enter into a Side Agreement with National Highways.

8.3 Failure to enter into a Side Agreement will result in KCC requests, as put forward within the examination process not being 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. This may have future financial implications for KCC, who may need to fund additional works associated with the impacts of the project which otherwise would have been funded through the Side Agreement.

9. Recommendation(s):

9.1 The Cabinet Member for Highways and Transport is asked to agree to the following:

- (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 and 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 as shown at Appendix A.

10. Background Documents

Appendix A: Proposed Record of Decision

Appendix B: [Health and Equalities Impact Assessment](#)

10.1 All documents associated with the Lower Thames Crossing DCO may be found on the [Planning Inspectorate Website](#).

11. Contact details

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