

CABINET

10 JANUARY 2023

LOWER THAMES CROSSING UPDATE AND DELEGATED AUTHORITY (PLANNING SERVICE)

Portfolio Holder: Councillor Jane Chitty, Portfolio Holder for Planning, Economic Growth and Regulation

Report from: Richard Hicks, Director of Place and Deputy Chief Executive

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Summary

The purpose of this report is to seek approval to update the scheme of delegations for the Planning Service. The updated delegations will cover the Lower Thames Crossing (LTC) Examination and other examinations, such as an examination of a local plan produced by another local planning authority.

1. Budget and policy framework

- 1.1. The LTC aligns with the Medway Council Strategy 2022 to 2023 to maximise regeneration and economic growth. The Council has supported the LTC in principle.
- 1.2. A Planning Performance Agreement (PPA) between National Highways and Medway Council has ensured officer time leading up to the Planning Inspectorate accepting the application for examination and the cost of a technical report has been met by National Highways. Council officers are seeking another PPA to cover the post-acceptance period.
- 1.3. The report proposes changes to the Employee Delegation Scheme to enable officers to carry out the related tasks in response to the examination process. As these relate to responding to consultations and to applications made and determined by other local authorities and organisations, these are executive functions and are therefore a matter for Cabinet.

2. Background

- 2.1. The proposed LTC is for a road and bored tunnel beneath the River Thames to provide a new highway connection between Kent and Essex.

- 2.2. To get permission to build and operate the LTC, National Highways need a Development Consent Order (DCO) following an examination held by the Government's independent planning authority, the Planning Inspectorate.
- 2.3. The seven stages of the Planning Act 2008 process for a DCO are set out below:

Stage	Duration	Description
Pre-application	No time limit	Applicant develops proposal and carries out pre-application consultation.
Acceptance	Up to 28 days	Secretary of State has 28 days to review the application and decide whether to accept or reject it.
Pre-examination	2 to 3 months	Examining Authority appointed to assess issues and hold preliminary meeting.
Examination	Up to 6 months	Carry out the examination (written representations and public hearings).
Report and recommendation	Up to 3 months	Examining Authority issue report and recommendation to Secretary of State.
Decision	Up to 3 months	Secretary of State issue decision and statement of reasons.
Post-decision	6 weeks	Window for legal challenge.

- 2.4. On 28 November 2022, the Planning Inspectorate accepted the LTC application for examination. This means that the application has progressed to the pre-examination stage, which will take two to three months.
- 2.5. During the pre-examination, the Council will be invited to register as an Interested Party and to submit a Relevant Representation, i.e. a summary of the aspects of the application the Council agrees and/or disagrees with and the reasons why. The Examination timetable will be set following the Preliminary Meeting, including the deadline for submitting a Local Impact Report, i.e. the likely local impacts (i.e. positive, neutral and negative).
- 2.6. Similarly, an examination of a local plan produced by another local planning authority may require representations by the Planning Service.

- 2.7. The existing delegation (at 8.1 of the Employee Delegation Scheme) includes: “To submit observations upon proposals outside the Medway area upon which the Council has been consulted subject to prior consultation with members representing the wards adjoining the proposed development.” However, emerging evidence shows that the LTC will have potential adverse impacts on other areas in Medway that will require mitigation. The Planning Service will need to represent the Council during the Examination.

3. Consultation

- 3.1. The request to amend the scheme of delegation has been informed by current work on the LTC Examination. There is no need to consult on the proposed amendments to the scheme of delegation, and the consultation process on the LTC is outlined for context in this report.
- 3.2. Following a 2009 Department for Transport commissioned study on potential options for a new River Thames crossing, National Highways held a statutory consultation in 2018 and a further four rounds of non-statutory consultation. The Council has responded to each consultation to express support in principle.
- 3.3. In July 2020, National Highways held a briefing with Members, while Council officers have been engaged in regular technical meetings.
- 3.4. In October 2022, the Council agreed an initial Statement of Common Ground (SoCG), which will help the Examining Authority to prepare for the Examination. The SoCG sets out 20 issues which will need to be updated if new issues arise. The status of most issues is ‘Matter under discussion’ because the final assessments, such as the air quality assessment, were unavailable prior to their submission. The SoCG is presented at Appendix 1.
- 3.5. In November 2022, the Council submitted an Adequacy of Consultation Representation to the Planning Inspectorate, stating that the applicant had complied with the relevant duties in the pre-application stage. The Adequacy of Consultation Representation is presented at Appendix 2.
- 3.6. Other local planning authorities prepare respective local plans and the Council may need to make representations – particularly concerning neighbouring areas – during examinations held by an independent planning inspector. This has recently been the case with representations to the Examination of the Maidstone Local Plan Review.

4. Options

- 4.1. There are two options for consideration:
 - A. Cabinet approves the proposed updated scheme of delegations for the Planning Service.
 - B. Cabinet rejects the proposed updated scheme of delegations for the Planning Service.

4.2. Under Option A, the Council would be represented by the Planning Service in examinations under an updated scheme of delegations, which is proposed to be updated as follows (the full change to the existing delegation is shown as tracked changes at Appendix 3):

- To submit observations and representations upon proposals and plans outside of Medway upon which the Council has been consulted or which it is considered could impact on Medway, following prior consultation with the Portfolio Holder for Planning, Economic Growth and Regulation or, in the case of consultation on planning applications submitted to neighbouring authorities, prior consultation with Members representing the wards adjoining the proposed development.
- To attend any hearing, inquiry or examination to provide evidence/statements to substantiate the observations/representations submitted, negotiate any Section 106 agreements that may be required for those hearings/inquiries/examinations and then to discharge the requirements that may flow from any consent issued.

4.3. Under Option B, the Planning Service may not be able to effectively represent the Council in examinations in a timely manner or ensure due governance.

4.4. In addition to the above, in relation to the LTC matters specifically, officers will also informally liaise with the Portfolio Holder for Front Line Services in relation to traffic management and strategy issues.

5. Advice and analysis

5.1. The Planning Inspectorate recommend that the appropriate internal governance processes are in place to keep up with the Examination timetable. New information may be presented during an examination, with limited time provided for representations.

5.2. The Planning Service would provide evidence-based representations during examinations, which is unlikely to allow for detailed consideration by Members through Cabinet and/or committees. Officers would consult with key members in making representations and ensure wider briefings where appropriate on important or sensitive matters.

5.3. The DCO examination process allows for anyone, including businesses or individuals, to register as an Interested Party. Interested parties can submit a written representation or attend a public hearing.

6. Risk management

6.1. The following risks have been identified:

Risk	Description	Action to avoid or mitigate risk	Risk rating
Cabinet rejects the proposed updated scheme of delegations for the Planning Service	Failure to keep up with examination timetables could result in mitigations not being secured or undesirable outcomes.	Officers provide clear advice on how the Council's interests are best served through the proposed approach and Cabinet approves the proposed updated scheme of delegations for the Planning Service.	D2
LTC Examination demands significant officer time	Council officers commit significant time to the LTC Examination, which could impact on other work commitments.	Council officers are seeking another PPA to cover the post-acceptance period. Following the LTC preliminary meeting, work programmes are agreed with line managers.	C2

Likelihood	Impact:
A Very high	1 Catastrophic (Showstopper)
B High	2 Critical
C Significant	3 Marginal
D Low	4 Negligible
E Very low	
F Almost impossible	

7. Climate change implications

- 7.1. This report is not concerned with the impacts of the proposed LTC or any other examination.

8. Financial implications

- 8.1. Council officers are seeking another PPA to cover the post-acceptance period. A project team of Council officers will be identified with charges agreed at individual officer hourly rates.
- 8.2. If another PPA to cover the post-acceptance period is not in place, representations by the Planning Service would be delivered within existing budgets.

9. Legal implications

- 9.1. Cabinet can arrange for the discharge of its functions under the Local Government Act 2000. This is currently dealt with by way of delegations within the employee scheme of delegation contained in the constitution.
- 9.2. Any decisions made without delegated authority will automatically be ultra vires and therefore unlawful. If the decision is challenged, then the Council will be unable to defend such a decision and will be liable to pay legal costs.
- 9.3. Without any delegated authority the Council is unlikely to be able to effectively participate in the examination process and may find that it is unable to defend its position or obtain effective mitigation.

10. Recommendation

- 10.1. It is recommended that the Cabinet agrees to the proposed change to 8.1 of the Employee Delegation Scheme, as set out at Appendix 3 to the report.

11. Suggested reasons for decision

- 11.1. By agreeing the amendments to the Employee Delegation Scheme, the Planning Service will be able to effectively represent the Council in examinations in a timely manner.

Lead officer contact

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Appendices

Appendix 1 – Statement of Common Ground

Appendix 2 – Adequacy of Consultation Representation

Appendix 3 – Proposed changes to the Employee Delegation Scheme

Background papers

None