

26 October 2020	ITEM: 5
General Services Committee	
Lower Thames Crossing (LTC) – Governance for application submission and the Examination in Public	
Wards and communities affected: All	Key Decision: Non-key
Report of: Councillor Mark Coxshall, Portfolio Holder for Regeneration & Strategic Planning	
Accountable Assistant Director: Anna Eastgate, Assistant Director Lower Thames Crossing & Project Delivery	
Accountable Director: Andrew Millard, Director of Place	
This report is Public	

Executive Summary

This report sets out the next steps in the Development Consent Order (DCO) process in relation to the Lower Thames Crossing. Highways England has announced its intention of submitting the application for a DCO on 23rd October 2020. In light of this, the scheme is now moving from the pre-application stage to acceptance, and if accepted, the pre-examination and examination in public stages.

On submission of the DCO application, the Planning Inspectorate is the organisation tasked with running the acceptance and examination process. The process is governed by the Planning Act 2008 and Regulations and Rules made under it which set a statutory timetable which the Council will need to comply with.

In light of the need to comply with these statutory deadlines, there are decisions that will need to be made often in a very short space of time. This means that the usual Council committee cycles would not enable effective decision making within the time available. This is recognised in paragraph 12.3 of Advice Note Two published by the Planning Inspectorate in February 2015 where it is stated that local authorities must assume that the examination timetable will not be structured around committee cycles. The table at Appendix One sets out the range of decisions that are likely to be required over the coming months and the anticipated time available to produce them as well as the suggested governance which will need to be in place.

1. Recommendation(s)

- 1.1 That the Committee agrees to delegate authority as set out in the table at paragraph 3.3 of this report**

2. Introduction and Background

- 2.1 The Council has considered a number of reports in relation to the Lower Thames Crossing project since 2012. More recently a report was considered by Council on 10 December 2018 in relation to the Statutory Consultation pursuant to S42 of Planning Act 2008 and more recently at this Committee on 16 March 2020 in relation to the Supplementary Consultation and again on 3 August 2020 in relation to the Design Refinements Consultation.
- 2.2 Under the Council Constitution Chapter 5 Part 3(a) the Council has determined that the Planning Committee has delegated authority for the discharge of the Council's functions which include 'to provide appropriate and timely responses to any statutory NSIP consultation'.
- 2.3 Previous and current DCO proposals have been and will continue to be considered at Planning Committee however the significance and impact of the LTC on the borough, its ambitions and the number of wards affected warranted the LTC scheme to be considered at Council. This is permitted under the Constitution as the delegation to Council Committees emanates from Council under the Constitution. Members will also recall that the consultation responses identified issues and concerns relating to environmental, health and economic impacts as well as the response of the Council as an affected landowner.
- 2.4 The two most recent consultations which were smaller in scale by comparison to the Statutory Consultation, were considered at General Services Committee. A Council report considered on 17 July 2017 identified that the GSC was also an appropriate Committee to consider matters relating to the LTC given the opportunity for cross party working and the cross party support for the Council position with regard to the LTC scheme.
- 2.5 Notwithstanding the Council position in relation to the LTC project, the submission of the DCO application anticipated later this month (23 October 2020) moves the project into a new stage of Acceptance, and if accepted, Pre-Examination and Examination. These next phases of the process are run by the Planning Inspectorate and are governed by the Planning Act 2008 and Regulations and Rules made pursuant to it.
- 2.6 This means that the Planning Inspectorate, and if the application is accepted the Examining authority, will as relevant issue statutory and other timescales for various stages of the acceptance, pre-examination and examination phases, which must be met. There are a number of key submissions that are

required to be made as part of these phases (See Appendix One) with the first submission in relation to the Adequacy of Consultation response required only 14 days after submission, being 6 November 2020, based on the current anticipated application submission date.

3. Issues, Options and Analysis of Options

- 3.1 Whilst the confirmed timetable is awaited and will be published at a future date, it is known that there will be a need to respond to deadlines with all speed and the examination timetable is highly unlikely to take account of Council committee cycles. This is confirmed in Advice Note Two published by the Planning Inspectorate in February 2015, which states at paragraph 12 as follows:

'12. Delegations

12.1 During the examination there will be numerous deadlines for local authorities and other interested parties to submit further representations. These often require swift responses to ensure all matters can be fully explored before the close of examination. In making its recommendation to the relevant SoS, the ExA can only take into account evidence that has been received by the close of the examination.

12.2 Some local authorities may want to seek their members' approval for certain key examination documents such as the LIR, written representation or SoCG, although this is not required. The ExA's main concern is that once the examination timetable is published, interested parties adhere to the deadlines in it. Late submission of an important document such as the LIR or SoCG may prejudice the ability of other interested parties to consider and comment on its content, potentially disrupting the examination timetable and resulting in additional costs for other interested parties.

12.3 A local authority will therefore need to ensure it has adequate delegations in place. There is unlikely to be time to seek committee approval for representations made by a local authority during the examination. In general terms a local authority must assume that it won't be possible for the examination timetable to be structured around its committee cycle.'

- 3.2 In light of the statutory provisions and the guidance set out above, this report seeks to secure delegated authority for the submission of and response to documents issued as part of the next phase of the DCO process. This is to ensure that the Council can comply with the statutory timetables set out by the Planning Inspectorate and the Examining authority assuming acceptance of the DCO application.
- 3.3 Appendix One sets out a comprehensive list of the types of decisions that are likely to be required to comply with the process, the current anticipated

timescale where available and the suggested governance process. This list was discussed at Governance Group in June 2019, when Officers began planning for the submission of the DCO application and the likely timescales and volume of work.

3.4. The table below summarises Appendix one as follows:

Document/Submission	Governance
Adequacy of Consultation response	Delegated Authority to be given to the Director of Place in consultation with the Portfolio Holder for Regeneration
Written representations	Council (potentially Nov/Dec)
Statements of Common Ground (SoCG's)	Delegated Authority to be given to the Director of Place in consultation with the Portfolio Holder for Regeneration
Local Impact Report	Council (Feb/Mar)
Examination Authority Questions (multiple rounds)	Delegated Authority to be given to the Director of Place in consultation with the Portfolio Holder for Regeneration
Relevant Representations (third parties)	Delegated Authority to be given to the Director of Place in consultation with the Portfolio Holder for Regeneration
Third Party Responses to Examination Authority Questions	Director of Place

3.5 It is important to note that the significance of the project and its impacts on the interests of the borough are not negatively impacted by the delegations sought in this report. On the contrary, providing the delegations enables the Council to respond swiftly and effectively to the application and examination processes and maintain credibility with the Planning Inspectorate and Examining authority who are tasked with accepting and examining the application.

3.6 There are two significant documents which the Council will need to submit as part of the examination process. Those documents are the Council's written representation and the Local Impact Report. From the table set out above, a delegation is not being sought as these two key submissions will still be the subject of a report to Council. This is entirely consistent with other DCO's

with which the Council has been engaged in albeit they have been on a more localised level and therefore considered by Planning Committee.

4. Reasons for Recommendation

- 4.1 There is a need for the Council to participate in the statutory application and, if the application is accepted, examination processes and comply with the Examination timetable to be published by the Examining authority, who is appointed by the Planning Inspectorate on behalf of the Secretary of State, as the responsible authority for examining the application. From Advice Note Two issued by the Planning Inspectorate, it is advised that local authorities put delegations in place as it is unlikely that the examination timetable will be able to take account of Council committee cycles.

5. Consultation (including Overview and Scrutiny, if applicable)

N/A

6. Impact on corporate policies, priorities, performance and community impact

N/A

7. Implications

7.1 Financial

Implications verified by: **Laura Last**
**Senior Management Accountant Environment,
Highways & Counter Fraud Directorate and
Place**

Any delays in responding to the DCO Examination process can, in certain situations lead to an application for costs against a local authority. Having delegations in place to be able to respond in an efficient and timely way to the examination process will help to reduce that risk.

7.2 Legal

Implications verified by: **Ian Hunt**
Assistant Director Law and Governance

The key legal implications are set out in the main body of this report and in Appendix one. The LTC project is moving into a new phase with the likely forthcoming submission of the DCO application and if accepted examination of the application. The process of examination is governed by legislation and

is managed by the Planning Inspectorate so to allow the Examining authority to examine the application independently. As set out in Planning Inspectorate Advice Note Two, there is a need for quick and efficient decision making to comply with the statutory process and timetable and as such delegations are the most effective way to achieve this. The Council constitution permits the delegations to be given as set out in this report.

7.3 Diversity and Equality

Implications verified by: **Roxanne Scanlon**
**Community Engagement and Project
Monitoring Officer, Community Development
and Equalities**

There are no direct diversity implications arising from this report. There are no negative impacts as a result of implementing the delegated authority as set out within this report.

7.4 Other implications (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

8. Background papers used in preparing the report (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- Planning Inspectorate Advice Note two: The role of local authorities in the development consent order process

9. Appendices to the report

- Appendix One – Decision Table

Report Author:

Anna Eastgate

Assistant Director Lower Thames Crossing & Project Delivery, Place