



## Notice of KEY Executive Decision

<b>Subject Heading:</b>	Delegation of approval of formal Council responses through the Development Consent Order (DCO) process
<b>Cabinet Member:</b>	Councillor Damian White – Leader of the Council
<b>SLT Lead:</b>	Barry Francis – Director of Neighbourhoods
<b>Report Author and contact details:</b>	Daniel Douglas Team Leader Transport Planning Spatial Planning Group Planning Tel: 01708 433220 Email: daniel.douglas@havering.gov.uk
<b>Policy context:</b>	Planning Act 2008 London Plan (2016) Mayor's Transport Strategy (2018) Havering Local Development Framework (2008) Submission Havering Local Plan (2018) Havering Local Implementation Plan (2019)
<b>Financial summary:</b>	Havering is looking to secure Planning Performance Agreements for financial support during the Development Consent Order process for the respective schemes referred to in this report. Technical Support from outside the Council maybe required which will be paid for through monies secured through the DCO.
<b>Reason decision is Key</b>	(c) Significant effect on two or more Wards
<b>Date notice given of intended decision:</b>	16/09/2019

Key Executive Decision

<b>Relevant OSC:</b>	Environment
<b>Is it an urgent decision?</b>	No
<b>Is this decision exempt from being called-in?</b>	No

**The subject matter of this report deals with the following Council Objectives**

Communities making Havering	[x]
Places making Havering	[x]
Opportunities making Havering	[x]
Connections making Havering	[x]

## Part A – Report seeking decision

### DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

The Leader of the Council delegates authority to the Director of Neighbourhoods, in consultation with the Leader and Cabinet Member for Environment, authority to take all necessary action to settle the final form and content of the Council's formal responses to the Development Consent Order applications for Lower Thames Crossing and M25/J28 Improvement Scheme, including all statements of case at examination. Where such formal responses are made, these will be placed on the Calendar Brief.

### AUTHORITY UNDER WHICH DECISION IS MADE

The following elements of the Council's Constitution apply.

Council's Constitution July 2019 Part 2 – Executive Functions

The Leader of the Council is responsible for arranging for the exercise of all executive functions and may by way of written notice delegate Executive Functions to:

1. Cabinet
2. A committee of the Cabinet
3. Individual Cabinet Members
4. Staff
5. Joint Committees

And may exercise any Executive functions personally provided notice is given to the Proper Officer.

### STATEMENT OF THE REASONS FOR THE DECISION

#### Background

1. Members will be aware of two major strategic infrastructure projects being promoted by Highways England for which Havering is the 'host' borough. These are the:
  - Lower Thames Crossing scheme
  - M25/J28 Improvement scheme at the junction of the M25 and A12
2. Havering has been involved in both these projects for several years including responding to earlier non-statutory and statutory consultations.

3. Officers continue to work closely with Highways England on both projects as they continue to be developed. Members have been briefed through updates in Calendar Brief, copies of relevant documents being placed in the Members' Resource Room and by direct briefings by Highways England.
4. The purpose of this report is to:
  - summarise the scope of these projects and their current status
  - explain how the Council has been involved so far
  - set out the specific Development Consent Order planning process and regime involved with the proposals
  - identify how the Council will be involved as the schemes progress

### **The Lower Thames Crossing scheme**

5. The Lower Thames Crossing is a proposed new crossing of the Thames estuary linking Kent and Essex through Thurrock. The specific route and type of crossing (a bored tunnel) was confirmed on 12 April 2017 by the Government following earlier public consultation exercises (most recently in 2016).
6. The new crossing is intended to relieve the 'pressure' on the existing A282 Dartford Crossing between Kent and Essex and to improve the resilience of the wider strategic highway network. It is the largest single road investment project in the UK since the M25 more than 30 years ago.
7. The proposed new crossing and the new connecting network is intended to: provide quicker and more reliable journeys locally, regionally and nationally. It will provide much needed new road capacity across the river Thames east of London. The project is unrelated to any projects that the former Mayor of London indicated that he may take forward for additional river crossings.
8. The project will create a new, three-lane dual carriageway highway to motorway specification connecting the M2 near Rochester and the M25 in Essex between North and South Ockendon. The crossing under the Thames will be the longest road tunnel in the country. It is estimated that the cost of the project will be between £5.3 and £6.8 billion.
9. The key elements of the scheme within Havering include:
  - A new junction with the M25 (including on and off slip roads) at Thames Chase Community Forest in Havering (between junctions 29 and 30) where the new road to / from the tunnel joins the existing M25 motorway
  - New two lane parallel link road northbound linking the new junction at M25 with M25/J29
  - Left turn lanes from the northbound parallel link road to the A127 westbound
  - Two new M25 southbound lanes towards M25/J29
  - M25 southbound to be widened from four lanes to five with a hard shoulder

between junction 29 southbound and the new Lower Thames Crossing road.

- Overhead power cable restructuring
  - New structures and changes to existing ones (including bridges, under bridges, new footbridges, viaducts etc) along the length of the new road including at Ockendon Road and underneath the M25.
10. Following previous consultations, the Council formally responded to a statutory consultation on the proposals in December 2018. The Council's response confirmed that it welcomes any new investment in transport infrastructure in the borough but requested further clarification on a number of matters where the Council had concerns.
11. These concerns focussed on the impact around construction traffic, air quality, biodiversity, ecology and noise. Such discussions continue to take place with Highways England.

### **The M25/J28 capacity improvement scheme**

12. Junction 28 of the M25 (also known as the Brook Street roundabout) is a heavily used roundabout junction which is controlled by traffic lights on several 'arms'. Up to 7,500 vehicles per hour currently use the roundabout at peak times.
13. The M25/J28 junction is often operating at, or close to capacity, resulting in traffic queues and delays. In recent years there have been a number of traffic incidents which create additional delays and disruption to traffic along the M25, A12 and local roads.
14. To address these issues, Highways England is proposing to take northbound M25 traffic heading eastbound along the A12 towards Chelmsford 'out' of the Brook Street roundabout. Instead, this traffic movement would follow a "cloverleaf loop" that would leave the M25 northbound just north of the junction and join the A12 eastbound just west of the Brook Street roundabout within Havering.
15. In summary, the proposals for the junction encompass:
- Creating a new two-lane loop road with a hard shoulder for northbound M25 traffic to leave the motorway enabling traffic leaving the motorway to join the A12 to the west of the current junction before heading east along the A12.
  - a reconfigured slip road exit for east bound traffic on the A12 to join the motorway before heading north
  - Reconfiguration of the lane markings and destination signing on the existing Brook Street roundabout.

16. Havering formally responded to a statutory consultation on the scheme in early 2019 confirming support for it in principle whilst requesting further

understanding on the impact it will have on the local area and the mitigation measures that will be delivered to support this.

17. Highways England formally launched a supplementary consultation in late 2019 to set out some scheme design changes following a review of the earlier consultation responses.

18. Havering's response to the supplementary consultation reiterated its response to the initial consultation. The Council continued to seek reassurances that appropriate mitigation would be provided in relation to potential scheme impacts.

### **The planning process linked to these proposals**

19. The Lower Thames Crossing and M25/J28 Capacity Improvement scheme are both classified as Nationally Significant Infrastructure Projects ("NSIP") under Part 5 of the Planning Act 2008 as amended by the Localism Act 2011.

20. NSIP's range from power plants, airport extensions and major road projects which have their own specific planning processes to determine their acceptability.

21. Highways England as the scheme promoter for the proposals will apply to the Planning Inspectorate ("PINS") for a Development Consent Order ("DCO") in order to deliver each scheme. PINS will consider the applications on behalf of the Secretary of State for Transport ("SoS").

22. A DCO is a planning 'tool' that can take the place of several different consents needed to progress a major infrastructure proposal such as planning permission, listed building consent, conservation area consent and compulsory purchase orders.

23. PINS will make a recommendation to the SoS on each of the proposals following a Public Inquiry. If the applications for these projects are approved, Highways England will be awarded a DCO which will provide permission to deliver the scheme.

### **What is involved in the DCO application process?**

24. In general terms, there are six stages involved in a Development Consent Order application:

- **Pre-application** – Before submitting an application, potential applicants have a statutory duty to carry out consultation on their proposals.
- **Acceptance** – The applicant submits an application for development consent to PINS. PINS has 28 days to decide if the application meets the required standards to proceed to 'examination'.
- **Pre-examination** – Stakeholders will have an opportunity to register as

an “interested party” by making a relevant representation to PINS. This stage also includes the Inspector holding a Preliminary meeting and will set the timetable for examination.

- **Examination** – PINS has up to six months to carry out the examination. Local authorities/Interested parties can submit comments in writing and request to speak at a public hearing.
- **Decision** - A recommendation to the relevant SoS will be issued by the Inspectorate within 3 months of the examination. The SoS has a further 3 months to issue a decision on the proposal.
- **Post- decision** – Once a decision has been issued by the SoS, there is a six week period in which the decision may be challenged in the High Court by Judicial Review.

25. Both the Lower Thames Crossing and M25/J28 Improvement Scheme DCOs are currently at the Pre-Application Stage.

26. Highways England is expected to submit its DCO application for the Lower Thames Crossing in mid-2020 following further supplementary consultation expected in early 2020. It is currently envisaged that it will be submitting a DCO application for the M25/Junction 28 scheme in the first quarter of 2020.

#### **How long does the DCO process take?**

27. Typically the DCO Examination process normally lasts around 6 months. Following the examination, the Planning Inspector(s) is/are required to submit his/her/their recommendation to the SoS within 3 months and the SoS then has a further 3 months in which to reach a decision.

#### **The role and responsibilities of a Local Authority in the Development Consent Order process**

28. A local authority has an important part in the DCO process as it has a specific role and particular responsibilities under the statutory consenting process. These must be fulfilled regardless of whether or not the authority supports the scheme for which consent is sought.

29. A local authority will be engaged with all aspects of the DCO process including:

- Liaising and sharing resources with other affected local authorities
- Consultation on screening/scoping of the environmental impact assessment
- Input into the content and methodology of the developer’s public consultation exercise
- Participating in consultation as a statutory consultee

- Possible submission of an “Adequacy of Consultation” representation
- Preparation and submission of a “Local Impact Report”
- Evidence planning and preparation of Statements of Common Ground;
- Participation in the examination process;
- Monitoring and enforcement of requirements once a DCO has been granted

### **Governance and programme during the DCO process**

30. The overall DCO process and, in particular the Examination stage is subject to very strict timelines in response to the Government wishing to secure and safeguard the timely delivery of important infrastructure and to avoid protracted and prolonged involvement by third parties.
31. Local authorities and other interested parties are required to adhere to strict deadlines to support the DCO process including:
- submitting a Local Impact Report
  - agreeing a Statement of Common Ground
  - responding to written questions or commenting on other representations made by interested parties during the Examination
32. Officers understand that the programme for a DCO Examination is carefully managed to avoid delays. The submission of statements from interested parties (which would include the Council) must meet a specified timetable set by the Inspector(s) and if this is missed, the Inspector(s) may decline to accept the evidence. During the Examination phase, the Council may be required to respond to written questions from the Inspector(s) within a few days of the question being raised.
33. Given these constraints, it will not be possible under the Council’s existing approval procedures to prepare formal responses for the proposals to meet the deadlines.
34. To address this difficulty, officers have explored the most appropriate means to ensure that responses from the Council to these important projects are sufficiently robust and timely. This has included liaising with other boroughs with experience of DCOs and consideration of guidance from PINS on DCOs.
35. In the case of the Silvertown Tunnel DCO (for which both the London Boroughs of Newham and Greenwich were ‘host’ boroughs), Greenwich agreed to delegate authority to officers for preparing and approving responses during the Examination period. Officers at Greenwich have confirmed that having such a procedure in place was invaluable in enabling them to meet the deadlines set by the Inspectors.



36. PINS guidance is quite clear that it will not structure an examination timetable around the approval processes of local authorities involved in DCO Examinations.

37. PINS has also advised that authorities may wish to consider delegating the preparation and approval of responses including:

- those linked to the approval of the Local Impact Report
- written representations during the Examination
- the preparation of Statements of Common Ground

#### **Delegation of approvals**

38. It is essential that effective mechanisms are in place to enable the Council to submit timely and robust responses to PINS for the DCO's to ensure that Havering's concerns can be fully considered through the examination process.

39. Owing to the strict timetables that apply throughout the DCO process, it is recommended that the Leader of the Council delegates approval for submissions relating to both forthcoming Development Consent Orders to the Director of Neighbourhoods, in consultation with the Leader and Cabinet Member for Environment. It is considered likely that topics involved in both DCO's will cover both the Planning and Environment service areas within the Neighbourhoods Directorate.

40. The Director of Neighbourhoods would formally sign off responses through an appropriate mechanism, depending on the nature of the matter at hand. Such responses would then be placed on the Calendar Brief allowing Members to see the responses that have been submitted.

41. The preparation of relevant material including any Executive Decision reports and responses to matters from the Planning Inspector would be undertaken by Officers, primarily within the Planning and Environment Service areas. Broader technical pieces of work such as the Local Impact Report may require external consultancy support where necessary from both a technical expertise and resourcing perspective.

42. Matters that would be delegated could cover a number of topic areas including (but not limited to) general Development Management matters linked with the DCO itself, Planning Enforcement, Scheme Design, Traffic and Transport, Air Quality, Noise and Vibration, Minerals, Waste, Geology, Soils, Ecology, Biodiversity, Heritage and Archaeological matters.

Key Executive Decision

**Next Steps**

43. Following approval of this Executive Decision the Scheme Sponsor will be informed of the agreed sign off procedures that will then be in place for both schemes.

**OTHER OPTIONS CONSIDERED AND REJECTED**

44. The option of not delegating approvals to officers was considered and rejected as it would not allow the Council to submit formal responses during the DCO process in a timely manner, the Council may be unable to keep to the Inspectors timetable for responses which could adversely constrain the Council's influence during examination.

**PRE-DECISION CONSULTATION**

45. The Leader had a meeting with the report author on 15<sup>th</sup> January 2019 and was briefed on the Executive Decision prior to the Decision being signed off.

**NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER**

Name: Daniel Douglas

Designation: Team Leader Transport Planning

Signature:

Date:

## Part B - Assessment of implications and risks

### LEGAL IMPLICATIONS AND RISKS

46. Parts 1 to 8 of the Planning Act 2008 (as amended) ("the Act") introduced a system of development consent for nationally significant infrastructure projects ("NSIP"). The proposed Lower Thames Crossing was confirmed as NSIP by the Secretary of State for Transport on 12 April 2012 while Junction 28 was confirmed as a NSIP on 22 August 2017.
47. Highways England's next step for both projects is to apply to the Secretary of State for a DCO via the Planning Inspectorate as Examining Authority ("PINS") who have six months in which to hear the application. Once heard a three month period is then set aside for PINS to make a recommendation to the Secretary of State for Transport who then has a further three month period to confirm or refuse the order with or without amendments.
48. The timescales that will be involved throughout the DCO process are statutory. If the Council is unable to meet deadlines that are set by the Inspector for any aspect of the Examination, there is no legal obligation on PINS to accept any evidence that the local authority submits at a later date.
49. Delegating approval to an Officer or Officers is considered appropriate mitigation to reduce such an incident occurring.

### FINANCIAL IMPLICATIONS AND RISKS

50. Funding through the Local Plan Reserve has been allocated to support the procurement of technical expertise linked to the Lower Thames Crossing and M25/J28 schemes. LB Havering are in the process of securing a Planning Performance Agreement with Highways England for financial support during the Lower Thames Crossing Project Development Consent Order (DCO) process to reduce the need to utilise the Business Risk Reserve funding.
51. Once secured this will enable LB Havering to receive financial support for a variety of matters linked to the project of between £0.010m and £0.012m per month. Officers are liaising with Highways England to try and secure a similar agreement in relation to the M25/J28 Improvement scheme, however discussions are at a less advanced stage.

### HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

52. The Development Consent Order process is recognised as resource intensive for Local Authorities requiring a range of specialist technical inputs to be prepared and submitted in a constrained programme.

## Key Executive Decision

53. Where technical expertise is required which cannot be sought from within the Council, or where additional resources are needed to support the DCO process, this will be commissioned externally. Funding has been made available through the Council Business Risk Reserve and a Planning Performance Agreement is being negotiated with Highways England, in order to financially support such instances.

54. Agreeing a suitable process for delegating approval for responses will assist Havering to manage its staff resources during this process.

### **EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS**

55. The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

56. The Council will expect the scheme promoter to undertake as full EqHIA ahead of the DCO Submission.

### **BACKGROUND PAPERS**

None

**Part C – Record of decision**

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

**Decision**

Proposal agreed

*Delete as applicable*

Proposal NOT agreed because

**Details of decision maker**

Signed

Name: Councillor Damian White

Cabinet Portfolio held: Leader of the Council

CMT Member title: Barry Francis – Director of Neighbourhoods

Head of Service title – Helen Oakerbee – Assistant Director of Planning

Other manager title: - Martyn Thomas – Head of Spatial Planning

Date:

**Lodging this notice**

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Democratic Services Officer in Democratic Services, in the Town Hall.

**For use by Committee Administration**

This notice was lodged with me on 27/2/26

Signed A.H.M

