

Lower Thames Crossing

9.183 Explanatory Note Regarding Changes to Section 106 Obligations

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1 Introduction

1.1 Background and purpose of document

- 1.1.1 Section 106 of the Town and Country Planning Act 1990 (the Act) allows a landowner to enter into a legally-binding arrangement with a local planning authority, whether in the form of an agreement or by way of a unilateral undertaking, to deliver planning obligations. Planning obligations take numerous forms and are generally used as a means of making a development acceptable in planning terms. In view of the constraints of section 106, planning obligations made by agreement are often made under section 106 and other legislation as well.
- 1.1.2 As part of the Lower Thames Crossing project (the Project), National Highways (the Applicant) identified a number of matters to be the subject of planning obligations. These were set out in the Heads of Terms document submitted with the application and updated at Deadline 4 [\[REP4-144\]](#) (the Heads of Terms).
- 1.1.3 The Project traverses a number of local authority areas. The Applicant has been in discussions to enter into section 106 agreements with the following impacted local authorities to secure the planning obligations identified, in so far as they relate to their areas:
- a. Kent County Council
 - b. Essex County Council
 - c. Thurrock Council
 - d. The London Borough of Havering
 - e. Gravesham Borough Council
 - f. Brentwood Borough Council
- 1.1.4 Among the planning obligations identified in the Heads of Terms to be secured by section 106 agreements with the impacted local authorities are the following:
- a. A strategy for skills, education and employment (the SEE Strategy) the purpose of which is to enable skills, education and employment opportunities to be realised from the Project.
 - b. The establishment of a community fund (the Community Funds) to address the residual impacts of the Project; with grants being awarded to eligible community-led initiatives via panels that would be set up to assess applications and award grants.

2 Reasons for removing SEE Strategy and Community Funds from the s106 agreements

- 2.1.1 As negotiations with the impacted local authorities have progressed on the draft of the section 106 agreements and the obligations therein, it became clear to the Applicant that using planning obligations was not the most appropriate method for securing the SEE Strategy and Community Funds.
- 2.1.2 A section 106 agreement has to be drafted in such a way that it complies with the requirements in section 106 (1) of the Act and in particular:
- a. restricts the development or use of the land in any specified way;
 - b. requires specified operations or activities to be carried out in, on, under or over the land;
 - c. requires the land to be used in any specified way; or
 - d. requires a sum or sums to be paid to the local authority on a specified date or dates or periodically.
- 2.1.3 Some of the impacted local authorities expressed concern that the SEE Strategy and Community Funds proposals did not lend themselves to being planning obligations, not being directly related to land, and also not involving payments to the local planning authorities involved. The Applicant understands these concerns.
- 2.1.4 As mentioned above, there is other legislation by which agreements could be entered into with the local authorities to secure commitments, for example s111 of the Local Government Act 1972. However, this assumes that agreement can be reached, which cannot be assumed.
- 2.1.5 In addition, trying to accommodate drafting inconsistencies across different agreements for the SEE Strategy and Community Fund, which will apply across all of the impacted local authorities, is neither desirable nor appropriate.
- 2.1.6 It is therefore considered appropriate by the Applicant that the SEE Strategy and Community Funds obligations should now be removed from the draft section 106 agreements and instead secured through article 61 of the draft DCO and the Stakeholder Actions and Commitments Register (SACR) to which that article relates.

3 The Changes

- 3.1.1 The SEE Strategy and Community Funds provisions have been transferred out of the draft section 106 agreements and put into the SACR [**Document Reference 7.21 (5)**] as (new) Parts 2 and 3 respectively.
- 3.1.2 Article 61 of the draft DCO requires compliance with the SACR. It is an offence to breach the terms of a DCO. Accordingly, the obligation on the Applicant to adhere to the terms of the SACR is of a high order. Further, section 171 of the Planning Act 2008 allows a local authority to apply for an injunction if it considers it necessary or expedient in respect of any actual or apprehended breach of the DCO.
- 3.1.3 Article 61 of the draft DCO has been amended to state that the Applicant must implement the SACR. The revised wording of article 61 has been drafted and will be submitted as part of the Applicant's submissions at Deadline 7 [**Document Reference 3.1 (9)**].

4 Submissions for Deadline 7

- 4.1.1 For Deadline 7 the following draft s106 agreements have been submitted to reflect these changes:
- a. Brentwood Borough Council [**Document Reference 9.164**]
 - b. Essex County Council [**Document Reference 9.165**]
 - c. Gravesham Borough Council [**Document Reference 9.166**]
 - d. Kent County Council [**Document Reference 9.167**]
 - e. London Borough of Havering [**Document Reference 9.168**]
 - f. Thurrock Council [**Document Reference 9.169**]
- 4.1.2 At Deadline 7 the draft section 106 agreements with each of the impacted local authorities have been submitted along with a revised SACR [**Document Reference 7.21 (5)**] including new Parts 2 and 3 and a revised draft DCO included amended wording for article 61 [**Document Reference 3.1 (9)**].
- 4.1.3 There remain in the draft section 106 agreements, provisions dealing with payments being made by the Applicant to the impacted local authorities to assist with their costs in dealing with the Project, to make payments to deal with certain highway severance and other highways issues; and in the case of Kent County Council to make payments for the benefit of the Kent Downs Area of Outstanding Natural Beauty.

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