



Suffolk County Council's expectations for Planning Performance Agreements (PPAs) for Nationally Significant Infrastructure Projects (NSIPs)

Guidance for project promoters

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Context

Nationally Significant Infrastructure Projects (NSIPs) are very resource intensive for a local authority as a statutory consultee in the process, with multiple responsibilities and interests across a wide range of topic areas. The great majority of involvement of a local authority in the NSIP consenting process is discretionary. NSIPs do not generate planning fees for local authorities, nor was the Planning Act 2008 deemed to place any new responsibilities on them, hence the [New Burdens doctrine](#) did not apply.

Therefore, to avoid under-resourcing, and to protect local taxpayers and local services from bearing the burden of these costs, a fair Planning Performance Agreement (PPA) facilitating full recovery of costs incurred is essential for the local authority to undertake its multiple roles as a statutory consultee to the best effect. Whilst applicants are currently under no duty for to enter into a PPA, advice from the Planning Inspectorate (PINS) recommends a PPA (see [Advice Note 2: Planning Performance Agreements, from 2015, Paragraph 10](#)).

Suffolk must manage multiple NSIPs simultaneously. The resourcing challenge arising from this presents a significant financial risk to Suffolk County Council ('the Council'), and the Council is of the firm opinion that local taxpayers and local services should be adequately protected from these risks. For each NSIP, project promoters rely on appropriately resourced Council services for good quality service delivery; however, without appropriate resourcing and funding, promoters would have to compete for the limited resources available.

Therefore, to adequately protect the interests of promoters and the Council, it is essential to ensure a predictable pattern of timely and flexible full cost recovery. This will allow the Council

to plan for and provide the necessary staff, to support engagement with multiple project promoters, and thereby provide timely and effective engagement simultaneously across multiple projects.

Suffolk County Council's PPA guidance for NSIP promoters

This guidance builds on the Council's vast experience of dealing with around 18 NSIPs since 2012, with 15 currently being "live". This experience is reflected in the professionalism and depth of understanding of planning officers and technical experts across the Council, who, given appropriate funding arrangements with the promoter, and without prejudice to the Council's overall position on an individual project, can add real value to the development and delivery of NSIPs.

Suffolk County Council's Cabinet, at its [meeting on 16 May 2023](#), recognised the importance of effective engagement by the Council in all phases of an NSIP, and the need for a coherent PPA approach for NSIPs to allow for full cost recovery. Cabinet instructed officers to prepare and publish guidance for promoters of NSIPs setting out the Council's expectations for PPAs, to allow full cost recovery for the Council's engagement with project promoters.

HM Government, in its policy paper ["Nationally Significant Infrastructure: action plan for reforms to the planning process"](#) (2023) recognises the need for full cost recovery to ensure there is sustainable and scalable capacity and capability in the system. The policy committed to "putting in place measures to support the more effective use of planning performance agreements" for local authorities. This guidance will be reviewed as and when new guidance on cost recovery from NSIPs is available from HM Government.

This guidance provides the key principles that the Council expects to be followed in any PPA with promoters of NSIPs. The Council does not consider it practicable to have a standard planning fee for NSIPs, given the distinctive nature of every single NSIP, where scale (be it geographical footprint or investment volume) does not automatically correlate with the level of required involvement of the Council. However, the principles are the same for all NSIPs.

Benefits of a PPA

As part of the NSIP consenting approach, promoters are expected to engage with local authorities in effective and systematic discussion in all phases of a project, from pre-application through to examination and post-decision. A fair PPA will help all parties to efficiently move the NSIP through the process.

Engagement with promoters throughout the NSIP process places a considerable burden on the Council. Work relating to the consenting of an NSIP, or post consent discharge of requirements, or further monitoring of or engagement with the project, are not clearly defined as statutory duties for local government; therefore, funding is not provided by government under the terms of the [New Burdens doctrine](#). Hence, the Council expects that the full costs of its engagement will be covered by an appropriate PPA. This will protect Council services, and Suffolk's Council taxpayers, from the adverse impacts of consenting costs.

For a project promoter, a fair and sufficiently flexible PPA with the Council secures full engagement of the Council, and hence strengthens their scheme. This will be beneficial to the promoter, as it allows them to:

- Improve the NSIP proposals so that they can become more acceptable to local communities, hence reduce friction and controversy in later phases of the project,
- Tap into the Council's expertise, in terms of both local and technical knowledge, to help refine modelling, assumptions and design, and
- Reduce the areas of disagreement to be considered during the examination.

Project risks to the promoter if a fair PPA is not in place

A promoter does not have a statutory obligation to enter into a PPA. However, without appropriate levels and sufficient certainty of funding through a PPA, the Council may not be able to politically and financially justify re-purposing Council resources towards the NSIP in order to fully engage with the promoter and the DCO process. Lack of a, or an inadequately funded, PPA are detrimental to the promoter and their progressing of the project, as it may force the local authority to, for example:

- a. Scale back its engagement to the minimum, focussing solely on the interests of the local authority and the community it serves. This may result in a focus on areas of concern and of objection, and may restrict the authority's ability to engage with the promoter on how to resolve the areas of objection;
- b. Have much more limited, if any, engagement with the promoter in terms of providing advice, guidance and sharing local knowledge, in order to resolve issues;
- c. Not be able to offer its technical expertise to aid the process, which may result in the promoter's Environmental Assessments and Designs being less accurate, having gaps, or being easier to challenge;
- d. Scale back its participation in the examination – either by not attending at all, or by not having the full technical expertise, at the examination hearings. This may make hearings less effective, also to the detriment of the promoter's interests;
- e. If there is insufficient certainty and flexibility in the PPA, the Council may not be able to recruit additional staff and may have to fall back on more expensive consultants with less local knowledge.

Such reduced engagement would make it difficult to establish in the pre-decision phase a positive working relationship, trust and common “without prejudice” understanding between the promoter and the local authority. This may make implementation of the project and discharging of requirements more difficult for promoters.

Suffolk County Council's Guidance on PPAs for NSIPs

Summary of key principles for NSIP PPAs with Suffolk County Council

1. Full cost recovery.
2. Covering all stages, from project inception and initial discussions to discharge of requirements and ongoing monitoring, including the Examination in Public.
3. Commitment to service level agreements.
4. Mutually beneficial "Without prejudice" engagement between the Council and promoter.
5. Arrangements that give sufficient certainty and confidence for investment by the Council.
6. Simple and unbureaucratic way of recording and recharging levels of engagement, with agreed fixed sum regular payments.
7. Index linked and with Value Added Tax (VAT) charge.

The Council expects that any PPA for NSIPs will adhere to the following principles. The Council will welcome discussions with project promoters how these principles can best be met for individual projects and the service levels the promoter expects in return, recognising that each NSIP and promoter has its own specific requirements, and a level of flexibility is important.

1. "Without prejudice" engagement

The purpose of the PPA is to engage professionally between the Council and the promoter, to reduce areas of disagreement and pursue areas of benefit for the local community; the engagement is aimed at improving the proposals put forward but must be without prejudice with regard to the stance, views and representation that the Council will take at any stage of the process.

2. Commitment to service level agreements

By entering into the PPA, the Council will commit to levels of collaboration, response times and to enter "without prejudice" professional engagement with the promoter about the proposals. In return, the promoter will commit to proactive engagement and timely provision of relevant information.

3. Covering all stages, from pre-examination to post-examination

A PPA needs to cover all stages, i.e., from project inception and initial discussions, through pre-submission consultations and the Examination in Public, to discharge of requirements and ongoing monitoring. Promoters will wish to positively engage with the Council at all stages, including at the very early stages, and during examination when it will be beneficial to the promoter if engagement goes over and above serving the requirements of the Examining Authority.

Note It might be appropriate to establish a separate agreement for the construction period, through a Section 106, Deed of Obligation, PPA, or other means, which secures Council funding for discharging of requirements, implementing the Section 106 or similar agreement, and participating in relevant governance and monitoring. It

is expected for post-decision costs of the Council related to works affecting highways to be covered by Section 278 agreements.

4. **Full cost recovery**

The PPA should secure full cost recovery of any costs related to the Council's engagement in relation to the development proposals. This cost will include officer time, any consultants required, and legal services (solicitors and barristers), and should reflect the wide remit of the Council in the process (e.g. planning/technical, community liaison, and pursuing wider opportunities of mutual interest such as skills). This is essential to secure a wide-ranging engagement of the Council.

Note It is the Council's preference for its legal fees in drafting and negotiating a Section 106 agreement to be outside of the PPA, and secured by a solicitor's undertaking given by the promoter's solicitors to the Council's solicitors before the Council's solicitor starts work on the matter (as is common practice for TCPA applications). The undertaking provides that the Council's full legal fees will be paid, even in the event of the agreement not being completed for whatever reason, or where planning permission (or here, development consent) is refused.

5. **Arrangements that give sufficient certainty and confidence for investment by the Council**

The aim of the PPA is to ensure that the Council's relevant services (planning and technical areas) are resourced to enable an effective and efficient response to the proposals and requests for information by the promoter. Given the scale of NSIPs, both individually and in combination with the number of NSIPs in the area, this is likely to require additional staff resource in several core topic areas. To gain corporate approval to recruit additional staff, the Council's management will need to be assured that there is a regular flow of PPA contributions over the period of the project, with reasonable certainty, and with the flexibility as to investing into additional staff where required. This needs to be reflected in the PPA arrangements (see also principle 6).

Note Promoters need to recognise that, without such a flexible and medium-term funding approach, the Council is unlikely to be able to commit to recruiting additional staff resource. The alternative approach would be for the Council to commission consultants instead of using its own staff; however, this would be as costly (if not more expensive) and would result in the Council, through its consultants, not being able to share the local knowledge that the Council's officers would be able to offer, hence being of less benefit to the promoter.

6. **Simple and unbureaucratic way of recording and recharging levels of engagement, with agreed fixed sum regular payments**

The claiming process should be simple and unbureaucratic, for the benefit of all parties, and provide flexibilities to deal with peaks and troughs in the process and ensuring that the Council's NSIP resourcing can be maintained. To achieve this, the preference is to both:

- a. **Agree fixed regular payments, with review points:** The Council's clear preference is to agree fixed monthly/quarterly payments for the whole period of the PPA, based on realistic resource estimates. Such an approach should be helpful for both the promoter and the Council, as it provides funding/expenditure certainty to parties, allows the Council to flex resources in response to the demands of the promoter (i.e., for the Council to continue offering quality services also during peak periods of demand

for the NSIP), and minimises bureaucracy. The PPA would set out review points to consider if the level of regular payment remains at an appropriate level.

- b. **Use a simple format of recording activity and engagement:** To avoid creating an industry of time recording and to reduce costs and administrative burdens, the Council advocates activity sheets with detail of the Council staff involved and high-level activity information, rather than detailed time sheets, to evidence engagement.

7. Index linked and with Value Added Tax (VAT) charged

PPA rates should be index linked to reflect inflation. Also, HM Revenue & Customs (HMRC) has confirmed¹ that councils must charge VAT at the prevailing rates.

Please contact Suffolk County Council at nsips@suffolk.gov.uk for further information.

¹ In a letter from HMRC to the CIPFA VAT Committee, dated 15 June 2021.

Annex 1: Draft heads of terms for a PPA

1. Principles of the PPA

Based on full cost recovery of Council engagement, including legal services and necessary consultants fees, and securing service levels to the promoter.

2. Scope of activities funded by the PPA

Reflecting the full remit of the demands on the Council.

3. Duration of the PPA

Recommended: First PPA to cover Inception to end of examination and commencement; second PPA (or alternative legal mechanism) to cover construction and discharge of requirements.

4. Expected service levels

To include response times, “without prejudice” engagement and other requirements, to be agreed between the promoter and the Council.

5. Scale of required resources

Monthly/quarterly sums, agreed for whole period of PPA, subject to regular reviews.

6. Charging of VAT

7. Index linked payments

8. Payment schedule

Proposed: Quarterly invoices.

9. Evidence

Unbureaucratic approach of activity sheets rather than timesheets.

10. Review points

Renegotiable, reflecting on practicalities of implementation, changes to project and to the demands on the Council.

11. Sealed by legal departments or signed by senior officers

Dependant on scale and duration of the PPA, to be agreed between promoter and the Council.

Appendices:

A. Cost predictions for each stage of the process

B. Activity sheet template.