

# Expectations for Planning Performance Agreements (PPAs) for Nationally Significant Infrastructure Projects (NSIPs)

Guidance for project promoters



This is a supplementary guidance document, to support the Energy and Climate Adaptive Infrastructure Policy, which was adopted by Suffolk County Council's Cabinet, on the 16th of May 2023.

## 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:

1. 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;
2. 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;
3. 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;
4. 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;
5. 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:

1. 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.
2. 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 confirmed<sup>1</sup> that councils must charge VAT at the prevailing rates.

Please contact Suffolk County Council at [nsips@suffolk.gov.uk](mailto:nsips@suffolk.gov.uk) for further information.

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<sup>1</sup> In a letter from HMRC to the CIPFA VAT Committee, dated 15 June 2021



# Appendix 1

## Planning Performance Agreement template

A MS Word version of this template is available at [NSIP information for developers and project promoters - Suffolk County Council](#)

DATED

202[x]

(1) [APPLICANT]  
(2) SUFFOLK COUNTY COUNCIL

[NAME OF DEVELOPMENT CONSENT PROJECT]

PLANNING PERFORMANCE AGREEMENT

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## PLANNING PERFORMANCE AGREEMENT

### DATED

202[X]

### PARTIES

- (1) [APPLICANT] whose registered office is [XXX] and whose Registered Company No. is [XXX] ("the Applicant"), and
- (2) SUFFOLK COUNTY COUNCIL of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX ("the Council").

### BACKGROUND

- A. This Planning Performance Agreement ("PPA") concerns the Project, a nationally significant infrastructure project for the purposes of the 2008 Act and for which Development Consent is required.
- B. The Council is a Local Authority for the purposes of the 2008 Act for the area in which the Project is proposed to be located.
- C. The Applicant is the applicant for the Project.
- D. The Council and the Applicant have entered into this PPA in recognition of their agreement to work collaboratively in respect of the Project and to provide for the Council to recover from the Applicant the full cost of any service it provides in respect of the Development Consent application.
- E. This PPA is entered into by the Council under section 111 of the Local Government Act 1972 and section 93 of the Local Government Act 2003, which allows the Council to charge for providing discretionary services.

### 1. INTERPRETATION

2008 Act	means the Planning Act 2008;
Bank Holiday	means a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England;
Development Consent	means development consent, as defined in section 31 of the 2008 Act;
Examination	means the Examination for the purposes of Chapter 4 of Part 6 of the 2008 Act
Local Authority	means a local authority, as defined in section 43(3)(a) of the 2008 Act;
Local Impact Report	means a local impact report, as defined in section 60(3) of the 2008 Act;
Project	means [insert description of the project e.g. the Sizewell C (Nuclear Generating Station) project];
Working Day	means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.

### 2. DURATION

- 2.1 Subject to paragraph 2.2, this PPA is effective from its date until [[the end of the Examination.]]

### **3. NO FETTER OF DISCRETION**

- 3.1 Nothing in this PPA has the effect of fettering the Council's discretion in respect of any advice, decision, representation, or response given or made by the Council in connection with the Project.

### **4. OBJECTIVES**

- 4.1 The objectives of this PPA are to –
- (a) Set out the Performance Standards for the Applicant and Council (Schedules 1 (the Applicant's Performance Standards) and 2 (the Council's Performance Standards), respectively).
  - (b) Set out the Project Programme, including meetings (Schedule 3 (the Project Programme)).
  - (c) Set out the Applicant's and Council's Project Team (Schedule 4 (the Project Teams)).
  - (d) Set out timeframes for a response from the Applicant and the Council (Schedules 1 and 2).
  - (e) Establish appropriate measures for monitoring compliance with this PPA.
  - (f) Establish regular review mechanisms.

### **5. PERFORMANCE STANDARDS**

- 5.1 The Applicant agrees to use its reasonable endeavours to achieve the performance standards set out in Schedule 1 (the Applicant's Performance Standards).
- 5.2 The Council agrees to use its reasonable endeavours to achieve the performance standards set out in Schedule 2 (the Council's Performance Standards).

### **6. PROJECT PROGRAMME**

- 6.1 The Project Programme (Schedule 3 (the Project Programme)) provides –
- (a) a timeframe for providing advice before the application for Development Consent is submitted;
  - (b) a draft timetable of meetings which may be subject to change, as agreed.
- 6.2 Meetings shall be carried out in accordance with the Performance Standards set out in Schedule 3.

### **7. CHARGING PRINCIPLES**

- 7.1 The Applicant agrees to pay the Council's costs in accordance with the following principles –
- (a) the Council may recover from the Applicant the full cost of any service it is authorised, but not required, by an enactment to provide, in connection with the application for Development Consent;

- (b) the Council's costs in connection with the application for Development Consent include, but are not limited to, its costs in responding to any consultation undertaken by the Applicant in respect of the Project, the preparation of a Local Impact Report, the preparation of any written representation by the Council in respect of the application for Development Consent, and participation in the Examination (including attendance at any issue specific hearing, compulsory acquisition hearing and open floor hearing);
- (c) the cost of any external legal advice, or any other third-party professional advice, provided to the Council in connection with the Project (including, but not limited to, the matters listed in clause 7.1(b));
- (d) taking one financial year with another, the income from charges for the Council's services must not exceed the Council's costs of providing them;
- (e) any costs and disbursements arising from the Project, which are additional to the sum mentioned in clause 8.1, are recoverable by the Council including, but not limited to, travel costs to meetings and site visits, and the cost to the Council of hosting any meeting not held in a Council building;
- (f) no refund will be made on any payment once payment is made.

7.2 Nothing in this PPA shall require the Applicant to pay –

- (a) the Council's costs in respect of entering into an agreement with the Applicant pursuant to section 106 of the Town and Country Planning Act 1990 (which shall be recoverable pursuant to an undertaking provided by the Applicant's solicitors, in the usual way);
- (b) for any work covered by another agreement between the Applicant and the Council;
- (c) any mitigation related to the Project (which shall be committed separately by the Applicant).

## 8. CHARGES

- 8.1 The Applicant agrees to pay to the Council [£XXX] plus VAT to cover the Council's anticipated costs as set out in Schedule 5 (Breakdown of the Council's anticipated costs), in accordance with clause 8.2.]
- 8.2 Unless otherwise agreed in writing by the Applicant and Council, the Applicant agrees to pay the Council the sum mentioned in paragraph 8.1 in [four] equal tranches on the following payment dates –
  - (a) [The first tranche payment date: [XXX]]
  - (b) [The second tranche payment date: [XXX]]
  - (c) [The third tranche payment date: [XXX]]
  - (d) [The fourth tranche payment date: [XXX]]
- 8.3 Within [XXX] Working Days of the Council receiving payment in accordance with a payment date mentioned in clause 8.2, the Council must provide the Applicant with an expenditure report which outlines the expenditure incurred by the Council for the period covered by the payment and which includes the information set out in Schedule 6 (Expenditure Report).

## **9. REVIEW AND AMENDMENT OF PPA**

- 9.1 From the first anniversary of the date of this PPA, the Applicant and Council may review its contents.
- 9.2 Any amendment to this PPA must be agreed in writing between the parties.

## **10. LEGAL STATUS**

- 10.1 Save for clauses 7 (charges) and 8 (charging principles), this PPA is not binding or enforceable under the law of contract.
- 10.2 Clauses 7 (charges) and 8 (charging principles) are expressly agreed by the Council and Applicant to be binding and enforceable under the law of contract and shall be governed by and construed in accordance with English law.
- 10.3 The Contracts (Rights of Third Parties) Act 1999 shall not apply and no person other than the Parties (and any successors in title, assigns or successor bodies) shall have any rights under or be able to enforce the provisions of this PPA.

**[OR]**

- 10.4 This PPA is binding and enforceable under the law of contract and shall be governed by and construed in accordance with English law.
- 10.5 The Contracts (Rights of Third Parties) Act 1999 shall not apply and no person other than the Parties (and any successors in title, assigns or successor bodies) shall have any rights under or be able to enforce the provisions of this PPA.

## **11. COSTS OF PPA**

- 11.1 The Applicant agrees to pay on completion of this PPA the legal costs reasonably and properly incurred by the Council for or in connection with the preparation and negotiation of this PPA.

**EXECUTION PAGE**

The common seal of **SUFFOLK COUNTY COUNCIL**     )  
was hereunto affixed in the presence of                     )

.....  
Authorised Signatory

.....  
Authorised Signatory

**[APPLICANT'S SEAL ETC.]**

## Schedule 1

### The Applicant's Performance Standards

**[Note: it does not follow that each Performance Standard listed below will need to be included in each PPA].**

1. The Applicant agrees to –
  - i. Provide to the Council at least **[[10]]** Working Days before any meeting with all documents relevant to that meeting.
  - ii. Provide to the Council within **[[5]]** Working Days of any meeting (a) the minutes and any action points arising from that meeting and (b) any documents the Applicant agreed to provide at the meeting.
  - iii. Respond substantively to all emails within **[[10]]** Working Days and telephone calls within **[[5]]** Working Days, unless otherwise agreed with the Applicant.
  - iv. Comply with any provisions of the Project Programme (Schedule 3 (the Project Programme)) which relate to the Applicant.
  - v. Provide the Council with such additional information as may be requested by the Applicant within **[[10]]** Working Days of that request.
  - vi. Agree with the Council a timetable for sharing draft application documents on a confidential basis.
  - vii. **Use reasonable endeavours to enter into a communication protocol with the Council which will include, among other things, provision for sharing press releases before publication.**
  - viii. Agree such other Performance Standards as agreed by the Applicant and the Council.
  - ix. Act with good faith towards the Council in all matters relating to this PPA.



## Schedule 2

### The Council's Performance Standards

**[Note: it does not follow that each Performance Standard listed below will need to be included in each PPA].**

1. The Council agrees to –
  - i. Designate a Project Manager for the purposes of the application for Development Consent for the Project.
  - ii. Respond substantively to all emails within **[[10]]** Working Days and telephone calls within **[[5]]** Working Days, unless otherwise agreed with the Applicant.
  - iii. To ensure that the appropriate officer attends each meeting with the Applicant.
  - iv. Review any document provided by the Applicant in accordance with paragraph 1(i) of Schedule 1 (the Applicant's Performance Standards) to this PPA ahead of the meeting in question.
  - v. Comment on any minutes or action points provided by the Applicant within **[[10]]** Working Days of receipt.
  - vi. Provide to the Applicant at least **[[10]]** Working Days before any meeting with all documents relevant to that meeting.
  - vii. Work constructively and professionally with the Applicant throughout the duration of this PPA.
  - viii. Comment on the Applicant's "Statement of Community Consultation".
  - ix. Where requested by the Applicant, to comment on any environmental assessment being prepared by the Applicant for the purposes of the Project, including the provision of any information required by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.
  - x. Submit a Local Impact Report to the Secretary of State.
  - xi. Participate during the Examination.
  - xii. Inform local communities and Council members of the way in which they can participate in the Development Consent process in connection with the Project.
  - x. **Use reasonable endeavours to enter into a communication protocol with the Applicant which will include, among other things, provision for sharing press releases before publication.**
  - xi. Agree such other Performance Standards as agreed by the Applicant and the Council.
  - xii. Act with good faith towards the Applicant in all matters relating to this PPA.

### Schedule 3

#### The Project Programme

The Applicant and Council agree to use their reasonable endeavours to ensure the pre-application stage of the application for Development Consent is advanced in accordance with the following programme and meeting schedule –

#### Project Programme

Month / Year	Project milestone

#### Meeting Schedule

Date	Meeting Topic	Draft Agenda Items	Attendees

**Schedule 4**  
**The Project Teams**

**The Applicant's Project Team**

<b>Role</b>	<b>Organisation</b>	<b>Contact details</b>
Applicant		
Environmental contact		
Highways contact		
Legal contact		
Planning contact		
Etc. etc.		

**The Council's Project Team**

<b>Role</b>	<b>Name and contact details</b>
Project Manager	
Environmental contact	
Highways contact	
Legal contact	
Planning contact	
Etc. etc.	

### Schedule 5

#### Breakdown of the Council's anticipated costs

**[Note: This list is based on services typically involved in NSIPs within a County Council. Amend as required.]**

Person	Hour(s)	Scale	£ per hour	Cost
Senior Management				
Programme Management				
Project Support				
Training for officers how the NSIP process works				
Archaeology				
Ecology				
Economic Development				
Joint Emergency Planning Unit				
Fire & Rescue				
Floods / LLFA				
Highways / Transport Strategy				
Highways Modelling Consultants				
Landscape				
Property				
PROW				
Public Health				
Planning				
Skills				
In-house Solicitors				
External Solicitors				
Counsel				

## Schedule 6

### Expenditure Report

1. The expenditure report mentioned in clause 8.3 (charging principles) must include an outline of expenditure incurred by the Council during the period covered by the payment received in accordance with clause 8.2 (charging principles) and which includes details of –
  - i. Any service provided by the Council to the Applicant;
  - ii. Any costs incurred by the Council in connection with the application for Development Consent;
  - iii. Any third-party costs incurred by the Council;
  - iv. Any meetings attended by the Council (including meetings with the Applicant, meetings with the Applicant's representatives, internal meetings, meetings with the Council's professional advisers); and
  - v. Any additional costs or disbursements incurred by the Council in accordance with clause 7.1(e) (charges).

