PLANNING PERFORMANCE AGREEMENT FOR UNITED UTILITIES WEST CUMBRIA PIPELINE PROJECT

1.0 EXECUTIVE SUMMARY

1.1 United Utilities is proposing a significant upgrade of their water supplies from Thirlmere to West Cumbria affecting land within the Lake District National Park, Allerdale Borough Council and Copeland Borough Council.

1.2 Each section of the proposed development is intended to be considered and determined by each of the above relevant Local Planning Authorities through the normal planning application process. The County Council is not the determining Local Planning Authority in this case. The County Council’s role will be as a statutory strategic planning consultee for that part of the scheme that lies within Allerdale Borough Council and Copeland Borough Council only. The County Council will also be the Highways Authority for the whole development.

1.3 All the relevant Local Planning Authorities have agreed there is a need for a PPA to ensure that the planning applications will be determined in a timely and coordinated way, and that sufficient staff resources can be put to responding to the planning applications and to identifying mitigation for the effects of the development. No one Authority involved in this project is taking on the role of the Lead Authority with regard to the PPA, although it is recognised that most of the proposed development will lie within the Lake District National Park. United Utilities will retain a key coordinating role.

1.4 It is considered prudent for the County Council to be a co-signatory, given the statutory need to respond to the consultations and the scale of the likely effects of the development, especially from a Highways Authority perspective.

1.5 This report recommends that the County Council enters into a Planning Performance Agreement with United Utilities in relation to the West Cumbria Pipeline Project.
2.0 STRATEGIC PLANNING AND EQUALITY IMPLICATIONS

2.1 Planning Performance Agreements (PPAs) are a means by which Local Planning Authorities affected by large scale development projects can participate and engage in a positive way with developers, and reach a fully informed view on the local impacts of proposals in a timely way.

2.2 A PPA does not fetter the participating Authorities in the view they take on the merits of a proposal. It does allow them however to be properly resourced to ensure the views and concerns of local communities and the Authority are given voice within the planning process.

2.3 There are no equality implications arising from this report.

3.0 RECOMMENDATION

3.1 It is recommended that Cabinet agrees in principle to the Council being a co-signatory to the Planning Performance Agreement (PPA) with United Utilities, and delegates authority to negotiate the detailed terms of the PPA to the Corporate Director – Resources in consultation with the Cabinet Member for Environment and the Section 151 Officer.

ADVICE OF CORPORATE DIRECTOR – RESOURCES

4.0 BACKGROUND

Introduction

4.1 United Utilities is to cease the abstraction of water from Ennerdale as a source of water from 2025, as the Environment Agency will be withdrawing its licence for abstraction from Ennerdale, and to use Thirlmere instead. An Examination-in-Public was held on the 16/17 September 2014 to examine United Utilities’ draft Water Resources Management Plan for West Cumbria (2013). The Secretary of State for the Department of the Environment, Food and Rural Affairs accepted the Inspector’s conclusions and recommended that the Thirlmere option was the right long-term solution to water supplies to West Cumbria. United Utilities plan to link West Cumbria to the rest of their regional water supplies, via a major new pipeline and significant upgrade of water supplies from Thirlmere to West Cumbria. The proposal includes new pipelines, pumping stations, underground service reservoirs, a valve house and a 90m/l water treatment works, air valves and washout points.

4.2 During Spring and Summer 2014, a number of options were considered by UU for the scheme as part of a public consultation exercise, including:-

a) Option A - a new water treatment works at Bridge End, which would pump treated water to West Cumbria via new pipelines, service reservoirs and pumping stations into the networks at Quarry Hill, Stainburn, Cornhow and Ennerdale;

b) Option B – a new pumping station at Bridge End pumping raw water to a new water treatment works in the Cockermouth area via a new
pipeline. New pumping stations, service reservoirs and pipelines would transfer treated water to the networks of Quarry Hill, Stainburn, Cornhow, and Ennerdale.

c) **Option C** – A new pumping station at Bridge End pumping raw water via a new pipeline to a new water treatment works in the Bothel Moor area. New pumping stations, service reservoirs and pipelines transferring treated water to the networks of Quarry Hill, Stainburn, Cornhow and Ennerdale.

d) **Option C+** - A new Gravity Pipeline from Thirlmere to a new water treatment works in the Bridekirk area. New pumping stations, service reservoirs and pipelines transferring treated water to the networks of Quarry Hill, Stainburn, Cornhow and Summergrove.

4.3 United Utilities intend that there will be a rationalisation and some decommissioning of existing structures, at Quarry Hill, Cornhow and Ennerdale. The abstraction of public water supply will be closed at Quarry Hill/Overwater, Cornhow/Crummock, and Ennerdale/River Ehen, although in the latter case abstraction will continue to facilitate the compensation down to the River Ehen.

4.4 The new water abstraction at Thirlmere will include a new valve house structure adjacent to the existing building, realignment of the compensation flow pipe, a new pumping station building shell, a hydro generation and associated building.

4.5 Following the Phase I public consultation in 2014, United Utilities preferred option is Option C+ (see above) and it has moved forward with a Phase II public consultation starting in January 2015. The expected location of the proposed structures and the preferred line of the new pipelines are shown on the attached plan in Appendix 1. In summary, the Cornhow sections will be sliplined to the Stainburn service reservoir. A tunnel will be required west of Papcastle from the Bridekirk WTW, and UU consider that they may have to go under the River Greta at Keswick. The route to High Leys is still to be determined. The proposed Bridgend WTW to Bridekirk WTW will be a large trunk main. United Utilities is still finalising the exact locations, subject to the above preferred option being refined further. UU envisage that there may be opportunities for electricity generation arising from the scheme.

**How the development will be determined?**

4.6 The proposal does not constitute a Nationally Significant Infrastructure Project (NSIP) under the Planning Act 2008. Instead, although a large-scale planning proposal, each section of the proposed pipeline is intended to be considered and determined by each relevant Local Planning Authority through the normal planning application process. The bulk of the proposed development will lie within the Lake District National Park Authority (approximately 50%), with the rest of the development affecting land within Allerdale Borough Council (approximately 40%) and Copeland Borough Council (approximately 10%) (see Appendix 1 plan).
4.7 The County Council will be a statutory strategic planning consultee for that part of the scheme that lies with Allerdale Borough Council and Copeland Borough Council. The County Council will also be the Highway Authority for the whole of the development that falls within the Lake District National Park, Allerdale Borough and Copeland Borough.

4.8 As the Lake District National Park Authority is a strategic planning authority in its own right under the Planning & Compulsory Purchase Act 2004, it means that the County Council is not a statutory planning consultee on any large-scale developments that affect land within the LDNPA. However, as the Highways Authority for the whole of Cumbria, the County Council will still be a consultee on the highways elements of the proposal within the LDNPA in the normal way.

4.9 The key strategic planning issues for the County Council will relate to: landscape, archaeology, socio-economic, flooding, any minerals and waste implications and highways and transport effects (and mitigation). It is envisaged that a significant amount of work will involve the Highways Authority having to examine the details of the proposed route of the pipeline and how it might affect the road network, both during construction as well as the final implemented scheme. It is likely that there will be some undergrounding of the pipeline beneath the highway network, which will require some temporary road closures and road crossings during the construction leading to some potential disruption during 2017-2022.

4.10 It is likely that the application consultations will be considered through the County Council’s Development Control & Regulation Committee (DC&R) as part of the Category 1 statutory planning consultation process (rather than being delegated to an Officer response under the Constitution). However, the Highways Authority has delegated authority to respond directly Local Planning Authorities on planning applications, and it should be recognised that the bulk of the effects on County Council interests are likely to relate to highways matters. It is expected that a single consultation response from the County Council will be issued for each planning application consultation, incorporating views of the relevant Local Members.

4.11 It is likely that there will be a series of separate enabling works applications submitted to each of Local Planning Authority to deal with simple gate accesses before the main planning applications.

**Timescales**

4.12 It is envisaged that United Utilities will freeze its design by late July 2015, and will complete its Environmental Assessments by late November 2015. It then intends to submit its planning applications to the two Borough Councils and the LDNPA in January 2016, with the expectation that it would hope to achieve planning permissions from each Authority in June 2016. If these planning applications are successful, UU would expect that the first 23% phase of the development would be completed and in the ground by March 2018; the next 26% of the development completed by March 2019; the next 27% by March 2020; the next 12.5% by March 2021; and the final 7.4% of the development completed by March 2022.
4.13 The County Council will be consulted on the planning applications in early February 2016, and it will aim to respond to the planning applications within the statutory deadlines so as to enable the Local Planning Authorities to determine the applications by June 2016 under current timeframes (subject to change). However, the County Council will also need to engage with the applicant and the Local Planning Authorities post-planning application decision stage over the course of the construction phases, in terms of discharging any subsequent planning conditions, Section106 obligations and Section 278 agreement requirements as part of any planning approvals, and also in terms of preparing Traffic Regulation Orders (TROs), and managing the effects of road closures and the disruption to traffic flows they may cause.

4.14 Any community benefit packages that may be negotiated will need to be kept separate from any legal Section106 agreements entered into as part of the planning application decision process. Community benefit packages would not be a material consideration as part of the planning decision process and will be considered outside of the planning process. In this regard it is envisaged that Area Support Managers will be responsible for negotiating any community benefit packages to keep the issues separate.

Local Committee Engagement

4.15 In addition to the above, County Council Officers made arrangements for United Utilities to make formal presentations to both Allerdale and Copeland Local Committees as part of the wider communication process with the local community early on in the process (22 January 2015 (Allerdale) and late March 2015 (Copeland)). Officers are also providing advice on how best to engage with the wider local community, given the scale of the proposal.

4.16 It is intended that Allerdale and Copeland Local Committees will also be engaged later on as the project scope matures, and when Officers seek their views on the development as part of the formal Category 1 planning application consultation process. This part of the engagement with Local Committees would be upon receipt of the formal planning application consultations by Allerdale and Copeland BCs, which is likely to be in November 2015, depending upon progress with submission of the applications.

The need for a Planning Performance Agreement

4.17 Planning Performance Agreements are agreements between Local Planning Authority(s) and an applicant for a specific development proposal. They help to identify a defined shared vision, give greater certainty to key milestones, timescales, costs and requirements, and provide better project management for all parties for the delivery of a planning decision. PPAs also ensure that all the planning work required to be undertaken by Local Authorities is funded by the developer. This enables the Local Authorities to ensure that the skills needed to perform the tasks required of them. Local Authorities will not fetter their discretion by entering into the PPA and will determine the planning application by weighing up the planning merits of the application.
4.18 This United Utilities project will have impacts across four administrative boundaries. All relevant Local Planning Authorities involved in this scheme have agreed there is a need for a PPA to ensure that the planning applications will be determined in a timely way, and that sufficient staff resources can be put to responding to the planning applications and to identifying mitigation for the effects of it.

4.19 The County Council is not the determining Local Planning Authority for these planning applications, although it will be a statutory consultee. With regard to the PPA there is no requirement for there to be a Lead Authority and no one Authority involved in this project is taking on this role. Nonetheless, it is recognised that most of the proposed development would lie within the Lake District National Park and should they choose to, it could be considered appropriate for them to act as Lead Authority.

4.20 United Utilities will retain a key coordinating role to arrange meetings with all the Local Authorities involved, provide updates on the progress of the pre-application work, provide interaction with local communities, and provide relevant information sufficient for each Local Planning Authority to determine the respective planning applications. The project will nonetheless require a substantial level of involvement and co-operation from each of the relevant Local Authorities during the pre-application and planning application determination stage. The two Borough Councils and the LDNPA will have the responsibility for determining the planning applications for those parts of the development that lie within their respective areas.

4.21 From the County Council’s point of view, this will include attendance at regular meetings arranged with United Utilities, responding to the draft proposals as they under-go refinement, engaging the relevant Local Committees, and responding to the detailed proposals as part of the formal planning application consultation stage. If staff resources within the Local Authorities were lacking, it could result in delays in the planning process and the views of the County Council (as a statutory planning consultee and Highways Authority) and local communities not being adequately represented.

Governance Arrangements

4.22 PPAs promote partnership working managed through a single Project Group made up of Officers from the relevant Local Planning Authorities and the County Council affected by the development and United Utilities. This should have significant benefits in terms of avoiding duplication, increase sharing of resources and maximising efficiencies.

4.23 In the case of the PPA with United Utilities, each relevant Authority involved in the process will be responsible for attending meetings arranged by United Utilities and for undertaking the statutory work in order to enable the relevant Local Planning Authorities to determine the planning applications within agreed timescales.

4.24 Within the County Council, an internal Project Team has been created involving Senior officers from Highways & Transport, Archaeology, Landscape, Economic Development, the Lead Local Flood Authority, Legal,
the 2x Area Managers for Copeland & Allerdale and Spatial Planning. The Spatial Planning Team will take the lead in terms of attending meetings with United Utilities, and core Officers from other service areas will be utilised depending upon the issues raised at any one time. This will ensure that appropriate project management is undertaken, ensuring that it deals with all interactions and interfaces between United Utilities, the other relevant Local Authorities and the County Council. It is expected that any Officer time expended by each Authority (including that of the County Council) on the project will be invoiced to United Utilities through the PPA, having agreed an appropriate level of fees for each Authority to carry out necessary statutory work.

4.25 At this stage, United Utilities has not specified a cap on the level of funding they will provide to the Local Authorities in responding to the planning applications. Instead, each Authority has to set out a fee structure identifying the likely costs for their engagement in the project, which will be subject to approval by United Utilities.

4.26 It is considered prudent for the County Council to be a co-signatory, given the statutory need to respond to the consultations and the scale of the likely effects of the development, especially from a Highways Authority point of view, and the need to identify necessary mitigation.

4.27 It is likely that United Utilities will wish to complete preparation of the draft PPA sometime in February/March 2015, and they are currently seeking the County Council’s Legal views on the early draft PPA.

Next Steps

4.28 The proposed steps:

- to continue to engage with UU over the refinement of their project and to understand the likely effects and to identify potential necessary mitigation;
- to engage in discussions along with the other relevant Local Planning Authorities over the detailed wording of the PPA;
- to engage Allerdale & Copeland Local Committees in the run up to public consultation on the planning applications;
- to respond to the formal consultation on the planning applications submitted to Allerdale BC, and Copeland BC as the strategic planning authority via Development Control & Regulation Committee (DC&R) and to respond to the planning applications as the Highways Authority respectively.

5.0 OPTIONS

5.1 The County Council is both a statutory strategic planning consultee on large-scale developments affecting areas within Allerdale and Copeland Borough Councils, as well as being the Highways Authority for the whole of the proposed development.

5.2 Cabinet agree that in principle the County Council should be a co-signatory to this PPA with United Utilities.
5.3 Cabinet could choose not to agree that the County Council should be a co-signatory for this PPA. However, in doing so it would lose out in ensuring that sufficient staff resources are made available to respond to this major project, and that those resources are properly paid for via the PPA. By being outside the PPA, it could put as risk the likelihood of failing to deliver our responses in a sufficiently robust way and on time to effect proper mitigation, which could harm the reputation of the County Council as a credible partner.

6.0 RESOURCE AND VALUE FOR MONEY IMPLICATIONS

6.1 This paper seeks approval from Cabinet to enter into a multi authority PPA with United Utilities. The Council has a statutory need to respond to consultations that are as a result of the proposed United Utilities project and the implications on it especially as the Highway Authority.

6.2 Should Cabinet agree to enter into a PPA then this would enable the Council to recover the cost of officer time and associated costs expended on the project. The Councils project lead will estimate the time to be spent by officers and any associated costs in relation to the project and agree as with United Utilities as part of the PPA the work packages that are covered by it. This will ensure that the Council claims for and is paid for only the work agreed under the PPA. The Council will be responsible for collating and submitting its own claims for reimbursement of costs.

6.3 Should Cabinet choose not to agree to entering into the PPA then the work that Officers would need to carry out as part of the consultations would not be funded, which could result in insufficient resources being available to respond to the consultation in a timely manner.

7.0 LEGAL IMPLICATIONS

7.1 The PPA comprises a framework agreed between the local authorities and the developer for the management of major and complex development proposals within the planning process. The PPA will allow the developer and local authorities to put a project plan and programme in place which will include the appropriate resources necessary to determine the planning application within a strict timetable.

7.2 The power to enter into a PPA is conferred by the general power of competence in section 1 of the Localism Act 2011 and section 93 of the Local Government Act 2003. Both Acts give the Council the ability to charge a developer under a PPA.

7.3 If the Council decides not to enter into the PPA it will still be required to engage in the planning application process as a consultee.

8.0 CONCLUSION

8.1 It is considered prudent to enter into the PPA arrangements for this large scale pipeline project in West Cumbria, given the statutory need to respond to the consultations and the scale of the likely effects of the development,
especially from a Highways Authority point of view, and the need to identify necessary mitigation.

8.2 Being a co-signatory will also help the County Council manage the effectiveness of its response to the consultations, and not be constrained by existing limited resources.

8.3 The existence of the PPA will not prejudice or fetter the views of the planning authorities concerned

Dominic Donnini  
Corporate Director – Resources  
March 2015

APPENDICES

Appendix 1 – Indicative route of the proposed United Utilities West Cumbria Pipeline Project.

Electoral Division(s): Bothel and Wharrels, Cockermouth North, Cockermouth South, Dearham and Broughton, Keswick, St Johns and Great Clifton, Cleator Moor East and Frizington, Cleator Moor West, Hillcrest and Hensingham, Thursby

Executive Decision
Key Decision
If a Key Decision, is the proposal published in the current Forward Plan? No
Is the decision exempt from call-in on grounds of urgency? No
If exempt from call-in, has the agreement of the Chair of the relevant Overview and Scrutiny Committee been sought or obtained? N/A
Has this matter been considered by Overview and Scrutiny? No
Has an environmental or sustainability impact assessment been undertaken? N/A
Has an equality impact assessment been undertaken? N/A

PREVIOUS RELEVANT COUNCIL OR EXECUTIVE DECISIONS [including Local Committees]

12 April 2012 Cabinet Meeting – Planning Performance Agreements for Nationally Significant Infrastructure Projects (NSIPs).

CONSIDERATION BY OVERVIEW AND SCRUTINY

Not considered by Overview and Scrutiny.
BACKGROUND PAPERS

No background papers.

RESPONSIBLE CABINET MEMBER

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