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Dear Rynd,

THE LONDON RESORT – RESPONSE TO EXAMINING AUTHORITY PRE-EXAMINATION QUESTIONS – DECEMBER 2021

This letter provides a response from National Highways (formerly Highways England) to the Examining Authority's (ExA) questions in their letter dated 21 December 2021, addressed to London Resort Company Holdings (the Applicant), all interested parties, and affected persons, relating to the forthcoming examination of The London Resort Development Consent Order (DCO).

National Highways is the government owned company which operates, maintains and improves the Strategic Road Network (SRN) as the strategic highway company appointed under the provisions of the Infrastructure Act 2015¹ and in accordance with the Licence² issued by the Secretary of State for Transport.

National Highways is a statutory consultee to the planning process and Development Consent Order (DCO) applications. It has a specific obligation to deliver economic growth through the provision of a safe and reliable SRN, in line with the provisions set out in the Department for Transport (DfT) Circular 02/2013: The strategic road network and the delivery of sustainable development³. The Circular sets out how National Highways will work with developers to ensure that specific tests in respect of the SRN are met when promoting a development. This includes ensuring that: the transport impact is understood; any necessary mitigation, highway proposal or other infrastructure affecting the SRN is designed in accordance with the relevant standards; environmental impacts are appraised and mitigated accordingly; future-proofing is

¹ [REDACTED]

² [REDACTED]

³ [REDACTED]

adequate and allows National Highways to fulfil its statutory duty, and; other relevant committed schemes have been appropriately considered in terms of traffic, construction and environmental impacts.

National Highways, following the submission of The London Resort DCO to the Planning Inspectorate (PINS) in January 2021, has sought to work with the Applicant, to seek to address outstanding issues in relation to the impacts of the scheme on the SRN, as identified in our submitted Relevant Representations, dated 31st March 2021.

To date, whilst discussions have been mostly bi-weekly up until 24th November, all issues within our Relevant Representations remain outstanding and no agreement has been reached.

As set out in our Relevant Representations the documents submitted with the DCO application contained substantial new material to that which had been discussed at the Pre-application stage. Subsequent to our full review and discussions with the Applicant, additional issues have been raised with the Applicant, relating to: the suitability of the strategic transport model, micro-simulation modelling and local transport modelling.

We have provided responses to the questions posed by the ExA in the letter as follows.

1. Taking the current circumstances into account, can a continued delay in the commencement of the Examination of the Application until June or July 2022 still be justified in the public interest?

National Highways does not have a view on whether a continued delay on the commencement of the Examination is justified in the public interest. However, we have set out below our current position on the DCO application and therefore the impact the timing of the Examination may have on the resolution of our current issues.

As set out above, since the DCO submission, National Highways has met with the Applicant and its technical consultants on a regular basis up until late November 2021, when the Applicant advised they would not be participating in December's scheduled meetings. Prior to December, further information on some of the key issues had been provided by the Applicant. However, agreement has not yet been reached with the Applicant and all issues remain outstanding.

Deferral of the start of the Examination to June or July 2022 would allow the Applicant further time to seek resolution to these matters with National Highways, which may ultimately enable agreements to be reached. However, to achieve this, a concerted effort and refocus on engagement with National Highways will be required from the Applicant.

Whilst National Highways remains committed to working collaboratively with the Applicant, it should be noted that at the time of writing we do not know when the Applicant will be in a place to address the issues we have raised, and our concern is now the limited time available to work on solutions and agreements.

We have set out the most critical issues requiring resolution below, although it is important to note that this is not an exhaustive summary and that this letter does not supersede previous information shared between the Applicant and National Highways, or the Relevant Representations, all of which require resolution.

Swanscombe Peninsula Site of Special Scientific Interest (SSSI)

The designation of the Swanscombe Peninsula as a Site of Special Scientific Interest (SSSI) by Natural England in November 2021 was a notable decision with implications for the London Resort proposals. We appreciate that the Applicant is working to submit formal updated application documents to the ExA in early 2022 to reflect the site's status.

Nevertheless, it is currently unclear what implications the designation of Swanscombe Peninsula as a SSSI will have on the London Resort DCO application and, as a result, the impacts on the SRN from the London Resort proposals. This potentially affects all the outstanding matters highlighted in our Relevant Representations and those set out below. Our key concerns are based on our understanding of the application as submitted prior to the SSSI designation and we currently do not have sufficient information to advise whether or not our position on any matters will change as a result of any updates to the application associated with the SSSI designation. We would therefore welcome as a matter of urgency clarity on what will change in the forthcoming updated DCO application documents, in order to allow us to understand the impacts of the proposal and ensure they are adequately mitigated.

Transport Assessment

Traffic modelling - several matters relating to the traffic modelling for the SRN are yet to be agreed, including the need for the Applicant to demonstrate the appropriateness of the strategic model and the geographical extent of the assessment.

National Highways is aware that the Applicant is also looking to utilise the Kent County Council (KCC) transport model, which could potentially provide further confidence about the modelling of the SRN in and around Kent. We are awaiting further information from the Applicant regarding the methodology for how they will use this model. However, we also need to better understand the impacts on the SRN north of the River Thames that the KCC model does not cover.

In line with the requirements in National Highways' Licence, the Applicant will need to demonstrate that suitable future-proofing provisions that allow for the future growth of

the SRN have been included in the London Resort scheme and the mitigation measures proposed. This includes considerations such as assessing what capacity remains on key links and junctions following the proposed development, which will enable us to confirm future network requirements. Agreeing the traffic modelling is key to being able to assess whether future-proofing needs have been met.

Until an appropriate traffic modelling approach is agreed, National Highways does not have sufficient evidence on which to assess the full impacts of the proposals on the SRN, including notably whether the highway mitigation currently proposed is acceptable and whether further highway mitigation is required.

Trip generation – a significant challenge in relation to agreeing the proposals' trip generation is that much of the predicted visitor number information is informed by data which is currently redacted. Whilst National Highways recognises that this information is commercially confidential, we need the Applicant to demonstrate that the traffic demand forecasts are robust to enable us to fulfil our statutory role. For example, until we can confirm that the full impacts of the proposals have been adequately assessed, we are unable to confirm if the mitigation proposed is sufficient and appropriate. National Highways has proposed to the Applicant two potential ways forward to resolve this matter, which we would urge the Applicant to agree to as soon as possible.

- Agreeing a monitor and manage mechanism, which ensures that the actual travel behaviour and traffic demands of the development do not exceed those assumed in the DCO supporting evidence, or
- Releasing the redacted demand forecast information for National Highways to review and seek clarity on in confidence.

Reaching agreement on this matter is key to being able to progress other key outstanding matters including, but not limited to: the adequacy of the transport and access strategy.

Construction Impacts - National Highways has requested and not yet received the information required to demonstrate that the construction impacts of the scheme will not result in an unacceptable impact on the SRN. The information required relates to matters including, but not limited to: the impacts on the SRN during the hours construction workers are assumed to arrive, particularly 07:00-09:00; the combined impacts of the construction of Gate 2 (Phase 2) together with visitors on opening to Gate 1 (Phase 1); consideration of all vehicle types in the construction phase, and; construction impacts at key junctions on the SRN including the A1089 Asda Roundabout and M25 J30. National Highways has also requested further information relating to the impacts to the construction programme as a result of the delay to the DCO Examination, as this will ultimately affect the construction impact modelling, the

cumulative impacts of the proposals, and the phasing requirements for the proposed highway interventions.

Due to insufficient evidence having been provided to date, as set out above, we have requested that the Applicant undertake a series of sensitivity tests to help inform our understanding of the potential impacts of the proposals on the SRN and to subsequently determine whether the mitigation proposed is adequate.

Highway Mitigation Design

The DCO application proposes SRN mitigation schemes at the A2 Bean & Ebbsfleet junction and the A1089 Asda Roundabout. However, as stated above, until matters in relation to the transport assessment are resolved, we cannot agree the proposed mitigation or assess whether additional mitigation is required. If further mitigation schemes were required outside the DCO Order limits this could have significant implications for the application. In relation to the proposed SRN mitigation schemes, it should also be noted that the Applicant has not yet provided supporting information, such as the interim Road Safety Audit (RSA) and Walking, Cycling and Horse-riding Assessment (WCHAR) which we would ordinarily expect to have reviewed by this stage.

Land Acquisition

The Applicant advised National Highways in November 2021 that they are seeking to alter their land acquisition proposals in relation to the A2 Bean & Ebbsfleet junction. We have asked for further clarification on this matter but are yet to receive this.

We must ensure that the exercise of land acquisition powers, and the terms of any associated transactions and disposals, do not adversely affect National Highways' property rights and its operation and management of the SRN.

Environment

National Highways has submitted its concerns to the Applicant in respect of a number of issues in relation to environmental matters, including (inter alia) ecology, surface water drainage, noise, air quality and landscape and visual impacts. To date, the Applicant has not yet engaged with us on these matters and therefore all the issues remain outstanding. National Highways is keen to arrange meetings between our respective environmental specialists as soon as possible in order to ensure the identified issues are addressed.

Lower Thames Crossing

National Highways has identified some matters that the Applicant is required to address in relation to the relationship between the London Resort proposals and National Highways' Lower Thames Crossing proposed scheme. These include the

need to establish the cumulative impacts of the schemes, including environmental and traffic impacts, during both the construction and operational phases.

The outstanding work on the issues described above in this letter is required to inform this cumulative assessment.

Other Matters

Until the outstanding issues highlighted above have been agreed we are unable to progress other key matters, including DCO wording, commercial agreements and Statement of Common Ground (which is yet to be drafted). Some of these matters take substantial time to agree and are therefore unlikely to be agreed prior to Examination.

Summary

Overall, National Highways considers that a continued delay to Examination until June or July 2022 would make it possible to make meaningful progress on the outstanding issues in advance of Examination. This would potentially reduce the number of issues to be resolved at Examination. However, as set out above, this is dependent on the Applicant reengaging and refocusing their efforts with us. Nevertheless, it should be noted that due to the substantial time required to agree some of these matters, it is unlikely that all matters will be agreed prior to Examination.

2. If a delay is still justified:

a. What steps will or should the applicant take to assure the ExA that the time period of the delay is justified;

We would ask that the Applicant agrees a schedule with National Highways that sets out key dates to close out the aforementioned issues, to include intermediate milestones necessary to achieving these outcomes. National Highways is happy to work with the Applicant to agree this schedule, which could be shared with the ExA, with ongoing monitoring of milestones, to provide further confidence that progress is being made to resolve these prior to Examination.

b. Is a schedule of updated and new documents and a schedule of consultation sufficient to justify ongoing delay; and, if not

A schedule of updated and new documents and a schedule of consultation would be welcomed in principle, but National Highways would highlight the difficulties in judging the merits of these until clarity is provided by the Applicant on the implications to the project as a result of the SSSI designation. Until this is clear, there are challenges in

agreeing the outstanding issues based on the originally submitted application, and a risk of abortive work as a result of the updated application documents.

- c. What regular reports and other information should be provided to the ExA by the applicant and by what dates, to demonstrate that progress is being made and that the extension of time is being put to good use, which in turn might be suggested as being sufficient to offset the harm caused by ongoing delay and is therefore in the public interest; and**

In the interests of ensuring any extension of time prior to the commencement of the Examination is being put to good use, National Highways would recommend that any regular progress reports provided to the ExA should focus on what outcomes have been achieved and what matters have been agreed/not agreed with the relevant interested parties.

Furthermore, as stated in the response to Question 1 above, it is currently unclear exactly what implications the SSSI designation will have on the application and, by extension, the SRN. This potentially affects all the matters highlighted in our Relevant Representations response and the outstanding issues outlined above. National Highways would therefore suggest clarity is provided, as a matter of urgency, to all parties on what will change in the forthcoming updated DCO application documents, in order to facilitate ongoing discussions to resolve matters prior to Examination.

- d. What further steps should the ExA take if commitments to progress continue not to be met?**

National Highways has no comments on this question.

- 3. If, taking account of the changed circumstances, further delay is not justified, would it be appropriate for the ExA to curtail delay and to proceed directly to Examine the application as currently before it, commencing in March 2022?**

Whilst National Highways cannot comment on the overall merits of curtailing delay, we consider that it will not be possible to reach agreement on the key outstanding issues in relation to the SRN by March 2022, which would result in a much more challenging Examination for all parties. National Highways is ready to reengage with the Applicant to seek to resolve the outstanding matters by Summer 2022, but the extent to which agreement can be reached on the key issues is dependent on the Applicant re-establishing and refocusing engagement with us.

We would however also reiterate that our ability to resolve the outstanding matters with a view to the above timeframes is also dependent on the implications to the project from the SSSI designation which, as highlighted above, are still unclear.

4. What other considerations might be relevant to this procedural decision?

National Highways has no comments on this question.

5. What other possible measures might the ExA lawfully and fairly decide to take in the circumstances and recognising the concerns of parties?

National Highways has no comments on this question.

National Highways has identified a number of key issues above, which it is keen to resolve as soon as possible in relation to the London Resort proposals' impact on the SRN. We wish to work with the Applicant in a collaborative way to resolve the outstanding issues prior to Examination.

Yours sincerely



Peter Fisher

Head of Third Party Infrastructure