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The Applicant and
those persons potentially interested in
participating in the Examination

Your Ref:

Our Ref: TR010032

Date: 19 December 2022

Dear Sir/Madam,

Application by National Highways for an Order Granting Development Consent for the Lower Thames Crossing

Planning Act 2008 – Section 89(3)

Procedural Decisions and other information following issue of Acceptance decision

The application by National Highways for an Order granting Development Consent for the Lower Thames Crossing has been made under the Planning Act 2008 because the proposed development is a nationally significant infrastructure project (NSIP). The application will be decided in due course by the Secretary of State for Transport (SoST). An Examining Authority (ExA) has been appointed to examine the application and to write a report making a recommendation to the SoST on whether, and if so on what terms, the Order should be made. The Examination will be conducted using a written process, but hearings will also be held. Information about the application can be found on the [project website](#)¹.

Following my appointment as the lead member of the ExA on [02 December 2022](#), my fellow Panel Members Ken Pratt, Ken Taylor, Dominic Young and I have decided to make some early Procedural Decisions to assist the Applicant, potential Interested Parties and ourselves prepare for the Examination of this Application. This letter also includes other information about the ExA and the Pre-examination and Examination processes.

Procedural Decisions

1. Updated Documents to Address Minor Errors and Omissions

The ExA has reviewed the submitted application documents received on [31 October 2022](#), together with advice issued by the Planning Inspectorate under section 51 of the Planning Act 2008 (s51 advice) on [28 November 2022](#). We have considered the minor errors and omissions referred to in that letter and the advice that these should be

¹ <https://infrastructure.planninginspectorate.gov.uk/projects/South%20East/Lower-Thames-Crossing/>

addressed before the commencement of the Relevant Representation period. We now make a formal Decision that the updated documents from the Applicant to address the matters identified in that advice, must be to be submitted to the Planning Inspectorate for publication on the National Infrastructure Planning website **before the start of the Relevant Representations period.**

It is in the public interest that Relevant Representations are made with reference to a document set in which known minor errors and omissions have been corrected, to the extent that this is reasonably practicable. It is also in the interest of efficient working by the Applicant, potential Interested Parties and the ExA that the Examination process should commence with reference to a common base of documents prepared to the best reasonably feasible standard. In an application with a large and complex document set such as this, all reasonable steps should be taken to ensure that the need for corrections and revisions to multiple application documents, to the Relevant Representations, Written Representations and oral submissions made in reliance upon them should be minimised.

The timely receipt of these updated documents and their publication on the National Infrastructure Planning Website is important to ensure all persons with an interest in the application will have the opportunity to make Relevant Representations based on evidence that accurately and comprehensively describes the Proposed Development. If the requested updates are not submitted by the deadline provided there may be implications for the date upon which the Preliminary Meeting can be held.

2. Principal Areas of Disagreement Summary (PADS) and Statements of Common Ground (SoCGs)

The ExA has decided that a tracker recording Principal Areas of Disagreement in Summary (a PADS Tracker) between the Applicant and the parties participating in the Statement of Common Ground (SoCG) process should be used. The PADS Tracker will provide a record of those principal issues of disagreement emerging from SoCGs. It should be updated alongside the SoCGs as appropriate throughout the Examination, with the expectation that a revised PADS Tracker should be submitted at every Examination deadline in due course by the Applicant but in agreement with participating parties.

The ExA considers that preparations for the Examination will benefit from the early identification of the principal areas of disagreement. This need only be a summary position at the Pre-examination stage, and the ExA would anticipate that matters raised at this stage will be expanded upon within each local authority's Local Impact Report and in all relevant parties' Written Representations or oral submissions during Examination. With this in mind, the ExA has decided to request each party currently engaged in the SoCG process to prepare and submit a Principal Areas of Disagreement Summary Statement with the Applicant and for that position to be recorded in a PADS Tracker.

The PADS Tracker should be in a table format (equivalent to a [Scott Schedule](#)²) and should address the following matters:

² <https://www.justice.gov.uk/courts/procedure-rules/civil/standard-directions/general/scott-schedule-note>

- the principal issue in question between the applicant and the particular party;
- the brief concern held by the party (which should be included in a Relevant Representation and reported on in full in a Local Impact Report/ Written Representations or oral submissions);
- what in the view of the party needs to change/ be amended/ included, so as to overcome the disagreement; and
- in the opinion of that party, the likelihood of the concern being addressed during the Examination stage.

To assist with this process, the Planning Inspectorate has prepared an editable outline PADS Tracker, a copy of which is available on request using the contact details at the head of this letter. Practical examples of outputs from of an equivalent process in action can be found in the Examination Library for the A66 Northern Trans-Pennine Project³.

The first iteration of PADS Tracker submissions taking account of matters raised in Relevant Representations is requested to be submitted to the Planning Inspectorate no later than **two weeks after the closure of the Relevant Representations period**. This deadline has been set to ensure that these submissions can be considered by the ExA when making its initial assessment of principal issues.

The ExA has considered the existing SoCGs submitted with the application and is content with the range of issues and parties covered at this stage. However, it is likely that revisions to existing agreements and further SoCGs with additional parties may prove to be necessary to address matters raised during the Relevant Representations period and then as a consequence of matters raised in Written Representations and oral submissions in Examination. The ExA will review the coverage and content of SoCGs after the closure of the Relevant Representations period and continuously thereafter. Further advice may be provided, or decisions made about the inclusion of issues and/ or parties in the SoCG process. If additional issues and/ or parties are included in the SoCG process, then the ExA will request that these are also drawn into the PADS Tracker.

3. Non-disclosure Agreements (NDAs)

The ExA notes that the Applicant and certain persons may propose to enter into legally enforceable agreements to address, clarify and resolve matters in dispute between them as part of the pre-Examination and Examination process. It is generally lawful for such agreements to be drafted and executed between parties. However, the ExA strongly advises that the Applicant should not seek terms within such agreements that purport (amongst other things) to exclude a person from participation in the Examination or prevent a person who might otherwise have raised matters that are important and relevant considerations for the Secretary of State's decision from raising them orally or in writing during the Examination. The ExA must have regard to and is required to report on all important and relevant issues from oral and written submissions and must exercise its inquisitorial powers for that purpose⁴. On that basis, we have decided that the existence or purported existence of heads of terms of or any

³ <https://infrastructure.planninginspectorate.gov.uk/projects/north-west/a66-northern-trans-pennine-project/?ipcsection=docs> – search for 'Principal Areas of Disagreement Summary Statement'.

⁴ See the decision in [R oao SEAS SPV Ltd v SoSBEIS \[2022\] EWHC 2623 \(Admin\) \(06 October 2022\)](#).

executed NDA will not provide a justification for the exclusion of a person from Examination proceedings or of an important and relevant matter from the ExAs or the Secretary of State's deliberations.

4. Planning Performance Agreements (PPAs)

Applicants for NSIP and other major development proposals that may impose additional duties and costs on local planning authorities can enter into PPAs with those authorities, in which actions, timescales and funding contributions to cover additional duties and costs are agreed and provided for. To assist the ExA to make later Procedural Decisions and Recommendations that are fair and proportionate, having regard to the resources available to individual local planning authorities, the Applicant is requested to provide a document summarising the following information by no later than **two weeks after the closure of the Relevant Representations period**.

- **PPAs in force**

Please identify all PPAs that are in force, their parties, when they were made, when they are due to expire and the matters and any funding for which they provide.

- **Prospective PPAs**

Please identify all PPAs that are in prospect or proposed, who their parties might be, by when they are intended to be made, when they would be due to expire and the matters and any funding that they are intended to provide.

5. Submission of Information in the Pre-examination Stage

The Pre-examination stage is to prepare procedurally for the Preliminary Meeting and the Examination. The Applicant will notify persons and communities of the acceptance of the application and of the period within which Relevant Representations can be submitted. The ExA will review information and evidence and prepare procedures, methods and a timetable for the Examination; it will not examine the merits of the proposed development until the Examination stage begins following the Preliminary Meeting.

Unless there is an urgent need for a procedural matter to be raised with the Planning Inspectorate please do not submit any representations (information or evidence pertaining to the merits) outside of the Relevant Representations period in advance of the Examination, unless you have been specifically requested to do so by the ExA. Unsolicited representations will **not** be accepted at the Pre-examination stage. To the extent that any matters addressed remain important and relevant, any such representations will need to be re-submitted at a relevant deadline during the Examination.

Information for those interested in participating in the Examination

Constitution of the ExA

On [02 December 2022](#), the ExA was appointed as a Panel of four Examining Inspectors. The ExA was appointed early to enable early decisions to be taken about the management of the Pre-examination stage. As preparation for Examination progresses, it is anticipated that a fifth Examining Inspector will be appointed to the Panel.

Preparation for the Examination

The ExA has already started to familiarise itself with the Application, the site and its surroundings. The ExA is considering methods for and locations to hold the Preliminary

Meeting and Hearings. We aim to ensure a mix of hearing methods (including physical events that can also be attended virtually, and virtual events) and locations, ensuring also that physical events are accessible to communities both north and south of the River Thames.

Unaccompanied Site Inspection (USI)

Three members of the ExA undertook an unaccompanied site inspection (USI) of the site on [06 and 07 December 2022](#).

Frequently Asked Questions (FAQs)

We understand that a lot of people will want to be involved in this process who have no prior experience of NSIPs and Examinations and have therefore prepared a list of [FAQs](#). These will be updated as necessary throughout the process.

If you have any queries on these matters, please do not hesitate to contact the case team using the contact details at the head of this letter.

Yours faithfully,

Rynd Smith

Rynd Smith
Lead Panel Member for the Examining Authority

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