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The Chief Executive (for the Thurrock Council
Commissioners)
Essex County Council

Your Ref:

Our Ref: TR010032

The Acting Chief Executive
Thurrock Council

Date: 03 March 2023

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 on engagement between the Examining Authority and Thurrock Council

An application by National Highways for an Order granting Development Consent for the Lower Thames Crossing is being prepared for Examination by an Examining Authority (ExA) appointed under the Planning Act 2008 (as amended). The application will be decided in due course by the Secretary of State for Transport (SoST). Information about the application and the process can be found on the [project website](#)¹.

This letter advises you of Procedural Decisions taken by the ExA. All Procedural Decisions and all replies provided in response to matters raised by such decisions are published on the project website. They are recorded in a log, to which the decisions here have been added starting at number 7 (following on from the previous decisions that are already published). You can see the log here [\[PD-007\]](#).

The period for registration by Interested Parties (IPs) closed on 24 February 2023. Following the closure of that period, the ExA has been reviewing relevant representations, working towards its initial assessment of principal issues and considering whether procedural decisions may be needed to address its information requirements from and relationships with any persons or organisations.

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

In undertaking this process, the ExA has observed that Thurrock Council made a submission during the registration period indicating its intent to register as an IP. The representation was marked as 'to follow' but was not received by the deadline. It follows, therefore, that Thurrock Council has not made a valid relevant representation².

As a statutory party by virtue of being a host authority, Thurrock Council is an IP, whether or not it participated in the registration process. It may elect to participate in the Examination should it so wish. The ExA has a duty to invite it to prepare and submit a Local Impact Report (LIR) under [section 60 of the Planning Act \(2008\)](#) at a deadline to be set during the Examination period in due course. The LIR is an important document, which must be considered by the ExA and by the SoST as part of the processes leading to a recommendation and then a decision on the application. It is also highly likely that the ExA will wish to ask questions of Thurrock Council on matters affecting the locality that arise from the application or during the Examination.

The Planning Inspectorate's "[Advice Note 2: The role of local authorities in the development consent process](#)" sets out additional information on the role of a local authority in pre-Examination and Examination, which also explains the function of an LIR.

[Gov.uk web pages](#)³ managed by the Department for Levelling-up, Housing and Communities (DLUHC) record that on 2 September 2022, the Secretary of State for Levelling-up, Housing and Communities (SoSLUHC) appointed Essex County Council to the roles of 'Commissioner' and 'Best Value Inspector' – investigating, taking certain strategic decisions and managing aspects of the services provided by Thurrock Council. On 24 January 2023, having received initial reports as part of that process, the SoSLUHC indicated that they were minded to amend directions to Thurrock Council in order amongst other purposes, to appoint a 'Managing Director Commissioner' and to draw further matters into the remit of the Commissioners' role. The ExA is conscious that a consultation period on these proposed amendments has now ended and that further decisions about the management of Thurrock Council's services will shortly be taken by or on behalf of the SoSLUHC.

In these circumstances, to ensure that the basis for any engagement between the ExA and Thurrock Council is correct, that any representations about the Lower Thames Crossing project made for or on behalf of Thurrock Council are properly made by the duly appointed person(s) and processes in the Council and are accorded due weight by the ExA in turn, the ExA has decided to seek the following information about the operation of decision-making under the Commissioners from Thurrock Council. This letter has been sent in duplicate to Chief Executive of Essex County Council (for the Commissioners), the Acting Chief Executive of Thurrock Council (for any elements of the Thurrock administration that may not be subject to control by the Commissioners) and copied to the Interim Director of Place at Thurrock Council.

² Regulation 4 of The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 (as amended) requires a person making a relevant representation to provide an outline of the main points they intend to make in relation to the application.

³ <https://www.gov.uk/government/collections/intervention-at-thurrock-council>

Procedural Decisions

7. Request for Confirmation of the Appropriate Person(s) and Processes for Authorised Action by and on behalf of Thurrock Council

The ExA has made a formal Decision to request that the Thurrock Council Commissioners in consultation with any such elected Members or officers of the Council with relevant ongoing powers or duties in relation to the Lower Thames Crossing project write to it, setting out responses to the following questions:

- Does Thurrock Council intend to participate in the pre-Examination stage (making arrangements for the Examination) or in the Examination stage going forward?
- If it does, is the resolution of Thurrock Council's positions in respect of the Lower Thames Crossing application or any part of it for the purposes of the Examination a matter that falls within the remit of Commissioners' duties, or may they do so following decisions by or for the SoSLUHC on the question of whether that remit should be extended?
 - If so, please indicate those functions relevant to the Lower Thames Crossing application that currently are or are intended to become Commissioners' duties. If known, please advise of the date at which any relevant additional powers may commence.
 - If not, please indicate those functions relevant to the Lower Thames Crossing that are being discharged by elected Members of the authority and/or by officers of the authority under delegated powers.
- In respect of either scenario above, please also advise the ExA as follows:
 - To which person(s) at Thurrock Council, Essex County Council or as otherwise authorised by the Commissioners should the ExA appropriately address any requests for contributions of opinions or evidence, or requests for information relating to the Examination of the Lower Thames Crossing Examination?
 - From which person(s) at Thurrock Council, Essex County Council or as otherwise authorised by the Commissioners should the ExA expect to receive duly authorised submissions or responses to its requests?
- Please confirm that you will maintain a watching brief over these matters and, should the remit of the Commissioners change during the pre-Examination or the Examination in a way that bears on the Examination process or on participation by Thurrock Council, please write to the ExA to advise of the change and its effects.
- Please respond to the ExA on these matters by **10 March 2023**. If final decisions have yet to be taken by or for the SoSLUHC on the Commissioners' remit by that date, the ExA requests a holding reply, with a substantive reply to be provided once the remit of the Commissioners has been formally decided.

8. Planning Performance Agreements (PPAs) Relating to Thurrock Council

On 19 December 2022 in Procedural Decision 4 [\[PD-005\]](#), the ExA made a formal Decision to request the Applicant to provide a document summarising the following information by no later than two weeks after the closure of the Relevant Representations period (the due date for which is now **10 March 2023**).

- **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

In addition to this obligation on the Applicant and by the same date (**10 March 2023**), the duly authorised representative of Thurrock Council is requested to write to the ExA to confirm in addition:

- whether in respect of any **PPA in force**, it is currently able to draw down funds and, if it is unable to in whole or part, why it cannot;
- if any **prospective PPA** is or could be under consideration, whether there are any particular issues which appear likely to inhibit conclusion of it or prevent access to funds and, if so, what those issues might be; and
- if there are difficulties accessing existing or prospective PPA funds, what in summary terms are the implications for Thurrock Council's participation in the pre-Examination and/ or Examination?

If you have any questions 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

cc Mr Mark Bradbury, Interim Director of Place, Thurrock Council

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