

PINS ref: TR010032

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30 March 2023

Dear Mr Smith

## **A122 Lower Thames Crossing (Application Reference TR010032)**

### **Response to Procedural Decisions of 21 March 2023**

The Applicant is writing to respond to the Procedural Decisions seeking comments on the Ministerial Statement [[PD-011-9](#)] and on a request from Thurrock Council to delay the examination [[PD-011-10](#)], issued by the Examining Authority on 21 March 2023.

### **Procedural Decision [[PD-011-9](#)]: Request for the Applicant's initial comments on the Secretary of State for Transport's Written Ministerial Statement of 09 March 2023**

On 9 March 2023, a [Written Ministerial Statement](#) was made by the Secretary of State for Transport. This statement made reference to the Lower Thames Crossing:

*'To date we have spent over £800 million on planning the Lower Thames Crossing. It is one of the largest planning applications ever, and it is important we get this right. We remain committed to the Lower Thames Crossing, and the development consent order process will be an important opportunity to consult further to ensure there is an effective and deliverable plan. In order to allow time for this process and given wider pressures on [Road Investment Strategy] RIS, we will look to rephase construction by two years.'*

The Applicant would like to emphasise that there is no impact on the current statutory process being undertaken in accordance with the Planning Act 2008 as a result of the Witten Ministerial Statement, and that the A122 Lower Thames Crossing (the Project) retains the full support of the Department for Transport (DfT). The Government reaffirmed its commitment to the Lower Thames Crossing in a [statement](#) by the Chief Secretary to the Treasury in the House of Commons on 21 March 2023 where he stated:

*'I am grateful to my honourable friend who has met me on a number of occasions to make a case for the Dartford Crossing. Obviously, in the current difficult circumstances with inflationary pressures, we have had to make some tough choices, but I want to be very clear with my hon. Friend: we remain committed to delivering it. This is a two-year delay on construction, not a cancellation, and I will update him in due course.'*

## Further consultation as set out in the Written Ministerial Statement

As was recognised in the Written Ministerial Statement, the Lower Thames Crossing Development Consent Order (DCO) is one of the largest Nationally Significant Infrastructure Project (NSIP) applications ever submitted and has been developed through the most comprehensive programme of consultation and engagement ever undertaken for a road in the UK. This level of engagement and consultation has allowed the development of a robust preliminary design, as set out in the Application documents, and the Ministerial Statement does not lead to the need make further changes.

The Written Ministerial Statement makes reference to the opportunity to consult further. Consultation can take many forms, such as informal discussions with officers of statutory bodies and local residents, more formal written consultations, exhibitions and meetings. The DCO process is inclusive and will allow further consultation of stakeholders. This statement acknowledges both the current statutory process, and refers to the period where, should development consent be granted, the Applicant would be preparing for construction.

Prior to the start of works, the Applicant would develop detailed designs and prepare construction plans. It is the Applicant's intention to undertake this work during the two year rephase, and in this period to continue to consult with relevant bodies through a process of ongoing engagement. Schedule 2 of the draft Development Consent Order [\[AS-038\]](#) sets out a series of Requirements, a number of which are required to be discharged prior to commencement, and include obligations to consult specific authorities or statutory bodies. It is the Applicant's intention to engage more extensively with stakeholders prior to the discharge of the construction related Requirements during the two year rephase, thereby allowing a further opportunity for consultation as anticipated by the Written Ministerial Statement.

In light of the above, and given the extensive engagement to date, the Applicant does not intend to undertake any further public consultation at this stage, other than that in relation to the proposed changes to the Application, notified to the Examining Authority on the 16 March 2023 [\[AS-083\]](#). The Applicant considers that the decision of 31 October 2022 [\[PD-001\]](#) to accept the application for Examination confirmed that the pre-application consultations were sufficient to comply with the requirements of the Planning Act 2008.

## Implications of the Written Ministerial Statement on the Lower Thames Crossing

The Lower Thames Crossing DCO application has been developed in line with standard practice. The draft Development Consent Order [\[AS-038\]](#) sets a time limit on the start of works (article 2) as follows:

*'The authorised development must begin no later than the expiration of 5 years beginning with the date that this Order comes into force.'*

A two year rephasing sits within this five year time limit. That five year period is heavily precedented in DCOs across all sectors and is intended to accommodate circumstances such as this type of delay. DCO applications typically do not provide any sensitivity assessments associated with that five year period of commencement flexibility, but instead reflect a reasonable worst-case scenario to provide adequate information for the Examining Authority and Secretary of State to reach conclusions on likely significant

effects. Consequently, the DCO, if granted as drafted, would allow for this two year rephrase without any need for change in the Application documents, including the submitted assessments and the proposed powers sought within the draft Development Consent Order [[AS-038](#)].

The Applicant considers that it is typical for there to be a level of uncertainty about the start date of construction works. Whilst each project is different, no DCO binds the applicant to a precise construction programme or assumed completion date. Many NSIPs are delayed in starting, and it has not been previously argued that their development has become unlawful or inconsistent with the programme assumptions set out in the environmental impact assessment. Those assumptions are indicative to enable a representative assessment of likely significant effects, and they are not a guaranteed programme of construction.

### **Implications of the Written Ministerial Statement on the Application documents**

The Applicant does not propose to update any Application documents as a consequence of the Written Ministerial Statement.

The Application documents are based on a proposed construction programme and opening year, summarised in 6.1 Environmental Statement Chapter 2 – Project Description [[APP-140](#)].

*‘2.5.39 Following the DCO Grant there would be preparatory works, referred to in the draft DCO (Application Document 3.1) as preliminary works taking place in 2024. The main construction period for the Project would start in early 2025, with the road being open for traffic in late 2030.’*

Importantly, the Application documents also make clear that

*‘as with all large projects there is a level of uncertainty over the construction programme, which will be refined once contractors are appointed’. It is then made clear that ‘The 2030 opening year has been selected as the basis for the assessments and is representative of the reasonable worst-case scenario’.*

This information is provided in 6.1 Environmental Statement - Chapter 4 - EIA Methodology [[APP-142](#)], as well as within other Application documents where appropriate.

The position of the Applicant is, therefore, that the Written Ministerial Statement has no material impact on the Application documents, and, should have no impact on the timing of the Examination.

In response to the Examining Authority’s questions on the Written Ministerial Statement, the Applicant has undertaken a review of the Application documents. The Applicant can confirm that:

- Rephrasing of the commencement of construction does not impact the design of the proposed development. The Applicant is not, therefore, proposing to change the Application documents that set out the design.
- Rephrasing of the commencement of construction does not change the requirements for temporary possession or permanent acquisition of land. The Applicant is not, therefore, proposing to change the Application documents that set out the Compulsory

Acquisition or Temporary Possession requirements, including 2.2 Land Plans [[APP-007](#) and [APP-008](#)], 4.1 Statement of Reasons [[APP-060](#)], 4.2 Book of Reference [[APP-062](#)], and Part 5 of 3.1 draft Development Consent Order [[AS-038](#)] relating to Powers of Acquisition and Possession of Land.

As set out above, the government has reaffirmed that the delivery of the Lower Thames Crossing reflects Government policy. Application document 4.3 Funding Statement [[APP-063](#)], sets out the funding position with regard to delivery of the Project, indicating that:

*'3.1.8 Funding for the next 5 years beyond RIS 2, during which a significant part of the total funding will be required, is currently being agreed with the DfT, however, there is continued strong government support.'*

This position remains unchanged, and so the rephrasing of the commencement of construction does not impact any security either for the proposed development or any other agreements or obligations.

### **Implications of the Written Ministerial Statement on the assessments**

The Applicant has also undertaken a review of time-sensitive information and assumptions that have been used in the development of the Environmental Statement [[APP-138](#) to [APP-486](#)] and the Habitats Regulations Assessment [[APP-487](#) and [APP-488](#)].

The baseline data that has informed the Environmental Statement was valid at the time of application and remains valid for the Examination. The application sets out the validity of the baseline data<sup>1</sup>. As it is not anticipated that there will be any change to the timing of the statutory process, the data on which the assessment has been undertaken remains valid for decision making.

Where the rephrasing in construction could have led to a reliance on time sensitive data, 3.1 draft Development Consent Order [[AS-038](#)] and other documents in the suite of control plans (as set out in Plate 1.2 of the 6.3 Environmental Statement Appendix 2.2 – Code of Construction Practice, First Iteration of Environmental Management Plan [[APP-336](#)]) provide requirements for the collection of further baseline data prior to construction. Examples of this provision include:

- Requirement 7 Protected Species in Schedule 2 of 3.1 draft Development Consent Order [[AS-038](#)] states that:  
*'(1) No part of the authorised development is to begin until for that part final pre-construction survey work has been carried out to establish whether European or nationally protected species are present on any of the land affected or likely to be affected by that part of the authorised development, or in any of the trees and shrubs to be lopped or felled as part of the relevant works.'*
- A number of measures included in the Register of Environmental Actions and Commitments within 6.3 Environmental Statement Appendix 2.2 – Code of Construction Practice, First Iteration of Environmental Management Plan [[APP-336](#)] including:

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<sup>1</sup> The current baseline is set out in each of the technical chapters of the Environmental Statement, e.g. Chapter 5 Air Quality, Section 5.4 [[App-143](#)].

- NV005 Baseline noise levels:  
*'Pre-construction baseline noise levels would be submitted to the relevant planning authorities to establish a pre-construction baseline for monitoring compliance with construction noise limits.'*
- AQ007 Baseline Dust Monitoring  
*'Should dust monitoring be required in accordance with the requirements of AQ006, it would begin at least three months prior to the commencement of the construction works to allow a suitable pre-construction baseline to be established unless otherwise agreed by National Highways following consultation with the relevant local authorities.'*
- GS023 gas monitoring in advance of construction of the North Portal  
*'[...] Gas monitoring will be undertaken during the construction phase for the launch and use of tunnel boring machinery to detect changes in the gas regime as a safeguard to protect construction workers'*
- GS025 gas monitoring in advance of construction of accommodation  
*'[...] Prior to the accommodation being constructed, a gas assessment (investigation and monitoring) would be undertaken in the area to determine the need for appropriate gas protection measures.'*
- RDWE007 baseline monitoring of flood defences.  
*'[...] flood defences would be monitored to establish a pre-construction baseline'*

The assessments presented in the application have been prepared taking into account the uncertainty over the exact timing of construction. To enable this, a reasonably likely scenario has been used to underpin the assessments set out in the Transport Assessment (7.9 Transport Assessment [[APP-529](#)]) and the Environmental Statement [[APP-138](#) to [APP-486](#)], based on an opening year of 2030. With a change in the opening year, the effects reported within the Environmental Statement are therefore sufficiently robust to support the examination of the application.

The Applicant can confirm that the transport model used for the construction assessment uses a future year of 2030 for traffic not related to the construction of the Project (as set out in 7.9 Transport Assessment [[APP-529](#)]). This means that, notwithstanding a two year rephasing, the model is sufficiently representative to provide a reliable basis for the assessment of the construction period. For this reason, the construction assessment presented in the Environmental Statement is robust.

A rephasing of the start of construction by two years is likely to affect the opening year by two years. External factors that would affect the forecasts and projections during this period, principally:

- Two years of additional growth in the population
- The timing of the construction and operation of the Project alongside that of other developments
- Changes in the vehicle fleet, with an increase in the proportion of the electric fleet



As they are common to all road developments, the national methodologies used in the assessments take account of these matters. Uncertainty arising from such matters has been proportionately considered in the assessments provided in the DCO application as set out in the Design Manual for Roads and Bridges, within paragraphs 2.5 and 2.6 of [LA104 – Environmental assessment and monitoring](#).

The DCO assessments, including the conclusions recorded in the Environmental Statement, are suitable for the Examination of a project opening in 2030 and thereby operating in 2032, and therefore by implication, for a project opening in any year after 2030 within the time limits set out in article 2 of 3.1 draft Development Consent Order [\[AS-038\]](#). Where the conditions are forecast to change over time, the design year (2045) has also been considered in the assessment. For example, the traffic assessments (7.9 Transport Assessment [\[APP-529\]](#)), and a number of environmental factors as set out in the relevant chapters.

It is standard practice, and in accordance with guidance, to select a representative opening year to assess the effects of a scheme. As set out by [TAG Unit M1-1](#) (paragraph 5.2.1), a scheme should be assessed in its opening year and one other forecast year (known as the final forecast year). Paragraph 5.2.2 states that the final forecast year should be as far into the future as forecasting datasets allow (the Applicant has selected 2051 which is the final year of the TEMPro 7.2 forecasts) and that other forecast years should be assessed where appropriate. It sets out examples of where a need may arise for such additional forecast years, such as:

*'before and after major step changes in demand or supply that will significantly affect the profile of benefits'*.

The Applicant does not consider that such a need arises within the period for scheme opening, that is set out in article 2 of 3.1 draft Development Consent Order [\[AS-038\]](#). The change in opening year is relatively limited compared to the long-term considerations addressed through the methodologies. It is not normal practice to undertake a sensitivity analysis of each potential opening year and such a requirement would be overly onerous and costly to undertake, would generate significant additional documentation (in addition to the extensive assessments in the application) and would not be in the public interest.

For the reasons set out above, the Applicant does not consider it necessary to provide an update to the Application documents setting out the environmental and transport assessments.

The Applicant confirms that it considers the Examination period will be adequate to provide responses to specific questions on the robustness of the transport and environmental assessments, where it is considered by the Examining Authority necessary and proportionate to do so.

### **Procedural Decision [\[PD-011-10\]](#): Request for the Applicant's initial comments on Thurrock Council's written request of 13 March 2023**

The Applicant considers that it would be inappropriate to grant the request for an extension as this would have an unacceptable impact on other Interested Parties and the local community as well as the Applicant itself in its capacity as a publicly funded body.

## Implications for Interested Parties

In their submission Request to Delay Examination [[AS-084](#)] Thurrock Council sets out the following justification for delay:

*'[Thurrock Council] and other Interested Parties will not have sufficient time to effectively engage in the Examination process. Significant work on analysing over 550 documents is still outstanding. Further time is required to fully analyse the application documents and effectively engage in the outstanding issues and prepare an adequate PADS Summary and LIR.'*

Notwithstanding a construction rephrase, an extension of the examination process means Interested Parties, including landowners and other statutory bodies, will be subject to continued uncertainty. In particular, the extension to the pre-examination period will have a consequent, knock-on impact on the date of the Secretary of State's decision. This, in turn, means that Interested Parties will continue to live with an undetermined application, and unfairly have continued uncertainty, and potentially anxiety, relating to the implications for them. These implications would include the scope of any compulsory acquisition and land use powers which may be granted.

The Applicant considers that a protracted pre-examination period leads to more complexity and uncertainty, leading potentially to more delay and costs. Fixed timescales in the DCO process serve to minimise the risks of this, and therefore there is a public interest in concluding the process expeditiously. Both Interested Parties and the Applicant have appointed teams of advisors to support them through the process. It is an important consideration to consider the costs to Interested Parties and the Applicant.

In addition, local authorities will have been working to deliver their assessments of the implications of the Lower Thames Crossing in the form of Local Impact Reports. These costs will inevitably and necessarily be increased by a three month delay to the programme. In this context an important consideration is whether the request of one Interested Party should be allowed to place a financial burden on many other Interested Parties.

## Government policy relating to the implementation of the Planning Act 2008

The Applicant has also considered the recent government publications in relation to the Planning Act 2008:

- [National Infrastructure Strategy: Fairer, faster, greener](#) published by HM Treasury in November 2020
- Policy Paper published by the Department for Levelling Up, Housing & Communities on 23 February 2023, titled [Nationally Significant Infrastructure: action plan for reforms to the planning process](#)

These publications set out the Government's position that the NSIP regime is currently not being implemented as efficiently as possible, leading to lower delivery times and more uncertainty, and that the Government expects that decisions should be delivered within 17 months of an application being submitted. Government is actively engaging and consulting on proposals to expedite the regime for all NSIPs. The Applicant considers that a delay to

the start of the Examination would be counter to this clear direction from Government. In this context, the Applicant notes that proposals are being considered for a fast-track where engagement is advanced. Whilst the Applicant acknowledges the scale of the Project, it considers it reasonable, for the benefit of local communities and stakeholders, for the DCO application to be determined as expeditiously as possible, and within the existing statutory timescales, particularly given the extensive engagement in its pre-application period.

### **Relationship of Thurrock Council's request to delay the Examination to the S114 notice**

The Applicant considers that the following statement made by Thurrock Council in their Response to the Procedural Decision published on 16 March 2023 [\[AS-080\]](#) is relevant to this matter:

*'The consultant team has been on standby pending a decision on whether further expenditure by the Council is lawful under S. 114 of the Local Government Finance Act 1988 and therefore we have not been in a position to respond.'*

The Applicant notes that no other Interested Parties have requested a delay to the Examination, and it is, therefore, understood by the Applicant that the primary reason for delay is in relation to the Thurrock Council consultant team having been on standby. That was a decision made solely by Thurrock Council, notwithstanding that funding was available to allow their consultant team to continue working.

The Applicant has a Planning Performance Agreement (PPA) with Thurrock Council, which required variation after the DCO application was submitted. On 27 January 2023 National Highways wrote to Thurrock Council confirming that works undertaken in review of the DCO application documentation would be fully funded. Throughout and at all times during the negotiation of the PPA variation with Thurrock Council, the Applicant maintained that Thurrock Council would be able to draw down funds to cover works undertaken on a without prejudice basis while the wider PPA negotiation was ongoing. Thurrock Council declined this offer. As Thurrock Council have acknowledged in their Response to the Procedural Decision published on 16 March 2023 [\[AS-080\]](#)

*'Both National Highways and DfT have confirmed that they will continue to honour the agreement through the remainder of the process.'*

In addition, the Applicant has actively engaged with Thurrock Council over the last seven years, with extensive sharing of information and draft documentation, including the provision of the entire withdrawn DCO application from 2020. Extensive outputs from the Project's transport model and a cordon of the model for the entire local authority area were provided in advance of the 2020 DCO application, and these were updated in 2022. As a consequence of this, Thurrock Council has an extensive understanding of the Applicant's proposals, and a detailed understanding of the assessments. This is reflected in the well advanced Statement of Common Ground [\[APP-130\]](#) that was prepared in discussion with the Thurrock Council team and submitted in draft with the application, noting the status as set out in Section 1.5 of the document. As a consequence, the Applicant considers that there is sufficient time remaining in the pre-examination phase to prepare for representations to be made into the Examination, and there remains plenty of opportunity



for Thurrock Council (and other Interested Parties) to set out their position into the process.

At this moment, the offer of funding remains in place and there is, therefore, no impediment to Thurrock Council undertaking work to engage with the Applicant now, to prepare for the Examination, and through the Examination itself.

### **The Applicant's position on Thurrock Council's statements regarding traffic modelling**

Thurrock Council also state the following regarding the traffic modelling in the context of requesting a delay:

*'[Thurrock Council] has also identified significant defects in the quality of the traffic modelling relied upon by National Highways and has engaged consultants, so that this can be demonstrated during the Examination.'*

The Applicant disagrees with the position set out by Thurrock Council.

The Applicant has prepared the traffic modelling in accordance with all relevant guidance, as described in 7.7 Combined Modelling and Appraisal Report [APP-518] and the associated appendices. Detailed outputs from the transport model (using a GIS platform so as to be readily accessible), a cordon of the model for Thurrock's entire local authority area, and micro-simulation models for key junctions have been shared in detail with Thurrock Council and the relevant matters are documented in the Statement of Common Ground between (1) National Highways and (2) Thurrock Council [APP-130] as item numbers 2.1.143, 2.1.144, 2.1.146, 2.1.147, 2.1.148 and 2.1.149.

### **Summary of the Applicants' position**

In summary, therefore, in response to Thurrock Council's request for a delay it is the Applicant's position that:

- since the submission, the Applicant has offered funding to support Thurrock Council in the preparation of their response to the DCO application;
- since 27 January 2023 there has been a formal written offer that would allow for a full and thorough review of the DCO application;
- it has been the decision of Thurrock Council to stand down their consultant team;
- that this decision by Thurrock Council is now leading to the request for delay, which, as stated above, would have an unacceptable impact on other Interested Parties and the local community, in relation to both the arising uncertainties, and the potential for additional costs.
- the offer of funding remains in place and there is therefore no current impediment to Thurrock Council undertaking their works;
- there remains sufficient time, without any delay to the examination, for Thurrock Council to participate fairly in the application; and

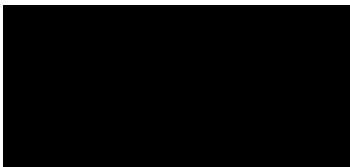
- given the extensive engagement to date, proceeding expeditiously to an examination would align with the current government direction on the need for increased efficiency and faster planning decisions.

For the reasons set out above, the Applicant does not agree with the position set out by Thurrock Council regarding the need for a delay to the Examination and considers that it is not appropriate to grant the request as this would have an unacceptable impact on other Interested Parties and the local community.

### **Concluding statement in response to the Procedural Decisions of 21 March 2023**

In conclusion, the Applicant remains committed to delivering the Lower Thames Crossing in accordance with government policy and it seeks to do this as expeditiously as possible, for the benefit of all Interested Parties. The above responses to Procedural Decisions [\[PD-011-9\]](#) and [\[PD-011-10\]](#) reflect the Applicant's position that the level of engagement and consultation through the pre-application stage has been extensive and led to an application that is sufficient to inform the Examination and decision-making process.

Yours sincerely



Dr Tim Wright  
Head of Consents – Lower Thames Crossing