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To all Interested Parties

Your Ref:

Our Ref: TR010032

Date: 6 April 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 Decision on the Ministerial Statement and on a request to delay the Examination

Provision of Advice on other matters

This letter advises you of a Procedural Decision taken by the Examining Authority (ExA) following our [letter of 21 March 2023](#) and the response to that [letter from the Applicant of 30 March 2023](#).

It also provides advice on the consequences of a digital system error that affected the National Infrastructure Planning website between Monday 13 and Friday 17 March 2023.

12. Procedural Decision on the effects of the Secretary of State for Transport's (SoST) Written Ministerial Statement of 9 March 2023 and Thurrock Council's written request of 13 March 2023¹

The ExA has decided that the commencement of the Examination will be targeted into a window extending from mid-June to early July 2023.

This is a conditional decision, made on the assumption that there are no further changes of circumstances that could affect the timing of the Examination period. Should such changes of circumstances occur, the ExA may amend this decision.

¹ All Procedural Decisions made by the ExA for the Lower Thames Crossing examination can be found in the Procedural Decisions Log [\[PD-007\]](#) and are numbered subsequently.

A statement of reasons for this decision is included at **Annex A** to this letter. The statement of reasons addresses (amongst other matters) the steps to be taken to ensure effective engagement by Thurrock Council and other local authorities in the Examination process. The ExA is also proposing to hold a Programming Meeting on a date to be set, to review local authority participation and the preparation of Local Impact Reports. A draft Agenda for that programming meeting is included at **Annex B** to this letter.

Advice on other matters: National Infrastructure Planning website error

Whilst writing to all Interested Parties, the ExA also wishes to provide procedural advice on a matter arising from the operation of the Planning Inspectorate's digital systems of which it has become aware.

Relevant Representations were published to the National Infrastructure Planning website on Monday 13 March 2023. On Friday 17 March the Planning Inspectorate discovered some anomalies with some of the published representations. A small number of representations, in circumstances where an early submission had been made but then amended through a later submission, had been published in duplicate, in turn causing the number of published documents to exceed the number of representations that had been made. At the point of discovering this error, the Planning Inspectorate was unable to immediately determine the cause or extent of the anomalies. On-line amendments to published data can only be made on an individual record-by-record basis (which makes changes very slow to implement). For these reasons, a decision was taken on Friday 17 March to remove all published Relevant Representations from the website in order to run the necessary tests and checks off-line. This work was completed, and an accurate and complete set of Relevant Representations from which the superseded duplicates had been removed was published on Tuesday 21 March 2023.

Because of this digital system error, it is possible that the Applicant and Interested Parties may have commenced analysis of Relevant Representations using records published between Monday 13 and Friday 17 March 2023. It is important to be aware that only the Relevant Representations as published on Tuesday 21 March 2023 is warranted to be the accurate and complete set. Please only rely on the version of the Relevant Representations as currently published.

The ExA and the Planning Inspectorate apologise for the inconvenience and any confusion that this digital system error may have caused.

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

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Procedural Decision 12: Statement of Reasons

The ExA has decided that the commencement of the Examination will be targeted into a window extending from mid-June to early July 2023.

This is an indicative window for event planning and preparation purposes, rather than a firm date, on the basis that this allows necessary flexibility for the contracting and delivery of a venue and venue support services, which are required for the Preliminary Meeting. This decision should not be read as providing notice for the Preliminary Meeting. A letter providing statutory notice will be prepared under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (the EPR) (the Rule 6 Letter) in due course.

The [SoST's Written Ministerial Statement](#) of 9 March 2023 announced a two year rephasing to the construction funding for capital works in the Proposed Development, and identified that: *'the development consent order process will be an important opportunity to consult further to ensure there is an effective and deliverable plan'*.

In [Thurrock Council's written request](#) of 13 March 2023 [AS-084], for reasons stated in that request and fully considered by the ExA, it sought what amounted to a delay to the commencement of the Examination of at least 3 months, with the Examination commencing no earlier than 1 September 2023.

In making this decision, the ExA has taken matters arising from the [SoST's Written Ministerial Statement](#) of 9 March 2023 and [Thurrock Council's written request](#) of 13 March 2023 [AS-084] carefully into account. [Tonbridge and Malling Borough Council's written request](#) of 4 April 2023 [AS-087] has also been taken carefully into account.

On 21 March 2023, the ExA made procedural decisions 9 [[PD-011-09](#)] and 10 [[PD-011-10](#)] seeking a response from the Applicant on these two matters. The ExA decided to consult the Applicant on these matters before making this decision, as the outcome of this decision had the potential to be substantially influenced by the degree to which the Applicant did or did not propose to carry out possible additional consultation about the design (as opposed to the delivery) of the Proposed Development, before (as opposed to after) the Examination period.

The ExA has also carefully considered the [Applicant's letter in response dated 30 March 2023](#) [AS-086]. As part of its letter in response, the Applicant has reviewed the timing implications of the SoST's statement for project base data and assessment conclusions in relation to the Environmental Statement. It has advised that it does not propose to update any application documents to address this point. It has stated that it is able to operate with an unchanged commencement period of 5 years as proposed in the [draft Development Consent Order](#) [AS-038], notwithstanding the two year re-phasing of capital funding affecting the commencement of construction. The Applicant has also advised that it does not propose any further changes to the Proposed Development, beyond those already notified in its [letter of 16 March 2023](#) [AS-082] and [supporting document](#) [AS-083] as a consequence of the SoST's Written Ministerial Statement.

At this stage the ExA has not reached a conclusion on the Applicant's analysis and reasoning in its response dated 30 March 2023 [AS-086]. The points that the Applicant has made remain rebuttable. However, the ExA considers that the most appropriate means to test their veracity is in an Examination. We therefore propose to reserve the consideration of these matters for the Examination process, where all relevant matters of substance can be fully, fairly and transparently tested.

Consideration has also been given by the ExA to other relevant procedural matters. These include the effects of a delay to the Examination process on other Interested Parties, including Affected Persons with land or rights subject to a Compulsory Acquisition or Temporary Possession request. Practical matters, such as the availability of meeting and hearing venues within relevant time periods, have also been factored into this decision.

Turning then to the principal issue of Examination timing, the ExA accepts that Thurrock Council's circumstances have created substantial difficulty and led to delay in the authority's resourcing and decisions around participation in and preparation for the Examination. Equivalently, the emergence of Tonbridge and Malling Borough Council as a host authority has created some resourcing concerns for that authority which have been taken into account. However, other matters bearing on timing are also both relevant and weighty considerations. Key amongst those are as follows:

- That there is substantial public interest in the maintenance of pace and expedition in decision-making for Nationally Significant Infrastructure Projects (NSIPs) overall, as is demonstrated by current directions in NSIP reform².
- That the SoST's Written Ministerial Statement of 9 March 2023 has not given rise to specific proposals for any changes of substance to the Proposed Development or to the timing of its Examination by the Applicant.
- That there are negative consequences that may flow from any delay in both the delivery of and the prolongation of uncertainty about a major proposed development, including but not limited to the prolongation of adverse effects of existing conditions that the Proposed Development is proposed to mitigate or improve, and the exacerbation of uncertainty affecting decisions around property (including that affected by a Compulsory Acquisition or Temporary Possession request), investment, jobs and the environment within the area affected by the proposed development. It is in the public interest that all such effects be minimised to the extent practicable.
- That in general terms, an application for NSIP development made to the Planning Inspectorate is deemed ready for Examination and that the pre-Examination period should be as short as practicable, ensuring time for the fair and proper organisation of an Examination but no more. A period of two months is cited in relevant guidance as being the normal period from the receipt of Relevant Representations and the commencement of an Examination. Delays may be agreed by an ExA for good reasons but should not normally be for longer than three months³.
- That whilst Thurrock Council area would host a considerable element of the Proposed Development, there are other host authorities and a wide range of other statutory parties, Interested Parties and Affected Persons who have not sought a delay and

² See the Government's [National Infrastructure Strategy: Fairer, faster, greener](#); HM Treasury November 2020 and [Nationally Significant Infrastructure: action plan for reforms to the planning process](#); the Department for Levelling Up, Housing & Communities, February 2023.

³ See [Planning Act 2008: Guidance for the examination of applications for development consent](#); (former) Department for Communities and Local Government, March 2015 at paragraphs 40 – 45.

whose interests in the retention of a procedure close to typical timescales must also be taken into account. Affected Persons subject to a Compulsory Acquisition or Temporary Possession request have a particular interest in limiting the duration to which they are subject to the uncertainty that arises before a decision can be made.

In this case, the registration of Interested Parties closed on Friday 24 February 2023. In normal circumstances, April 2023 would have been the target month for a Preliminary Meeting and the commencement of the Examination. For a broad range of reasons relating to the scale of the project, the complexity of necessary preparations by all Interested Parties, the particular circumstances of Thurrock Council and the need to resolve what (if any) effects a response to the SoST's Written Ministerial Statement might have had on preparation for Examination, an Examination will not commence in April 2023. However, the effect of the matters summarised above indicate that commencement should not be delayed longer than (broadly) July 2023, unless there had been a coalescence of multiple and weighty reasons arising from multiple interests that all indicated a need for a longer delay. That coalescence is not presently evident in the facts that have been put before the ExA. This is not to say that the concerns raised by Thurrock Council may not be addressed through the adaptation of Examination procedure beyond that time. There is in fact scope for the ExA to consider the design of the Examination timetable to this end. However, the ExA does not consider that it has been provided with sufficient reasons to delay the commencement of the Examination beyond a time window broadly set as July 2023.

The circumstances for Thurrock Council have been, are, and will no doubt continue to be difficult. The ExA has already expended considerable effort to ensure that Thurrock Council's fullest reasonable engagement is facilitated. It will continue to do so, commensurate with its ability to deliver against an equally important principle: that facilitating Thurrock Council's engagement must not disproportionately inconvenience or harm a broad range of other interests. Examination procedures must be designed fairly to address the balanced needs of all Interested Parties.

In this respect, the ExA has identified that, in addition to holding a normal Preliminary Meeting, there will be value in holding a Programming Meeting⁴ in due course, the main purpose of which would be to discuss arrangements for the preparation of Local Impact Reports (LIRs) and participation in the Examination by the local authorities referred to under sections 88 and 88A of the Planning Act 2008 (as amended) within the framework of the draft Examination Timetable.

The Programming Meeting will be a place at which questions about the balance to be struck between Examination procedural timing and local authority resourcing can be considered, without subjecting the Preliminary Meeting to additional detail that may not assist effective participation by Interested Parties who are not local authorities. The Programming Meeting will be able to be attended virtually and will be live streamed and recorded; the Applicant and all Interested Parties will be invited to attend but for those who are unable to attend or do not wish to attend, they may wish to watch the recording in advance of the Preliminary Meeting and may refer to it at the Preliminary Meeting as necessary. The Planning Inspectorate will set out detailed arrangements for this meeting in the Rule 6 Letter, but a draft Agenda to assist Interested Parties forms **Annex B** to this letter.

⁴ An 'other meeting' held under Planning Act 2008 section 88(5) and EPR Rule 6(3).

The ExA notes that there is no requirement to consult Interested Parties on the decision made in this letter and supported in the reasoning in this Annex. A Preliminary Meeting will be held in due course, a main purpose of which is to discuss all proposed procedural arrangements for the Examination, and for the ExA to take the outcomes of such decisions into account and make appropriate procedural decisions, before the Examination commences. Questions arising from the decision made in this letter and the previous decisions that it responds to ([PD-011-09] and [PD-011-10]) may be raised at the Preliminary Meeting, which will be the proper place for all remaining views and considerations to be balanced.

Further to the requirement under Planning Act 2008 section 89(4) for the ExA to notify each interested party of any procedural decision, the covering letter to this statement of reasons is directed to all Interested Parties. It provides notice of a concluded decision, taking into account the matters raised in the previous decisions ([PD-011-09] and [PD-011-10]), responses to which contributed to the concluded procedural decision recorded here.

Draft Agenda**A Programming Meeting to be held on a date to be set****Local Authority participation in the Lower Thames Crossing Examination and Local Impact Report (LIR) preparation****Planning Act 2008 section 88(5) and the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) Rule 6(3)**

1. Introductions
2. Local Authority participation in the Lower Thames Crossing Examination
 - Key involvements
 - Resource considerations
 - Timing
3. Local Impact Report preparation
 - Key involvements
 - Resource considerations
 - Timing
4. Any Other Business
 - This item is confined to matters relating to the purposes of the meeting. All other matters should be raised at the Preliminary Meeting in due course.
5. Close

The Programming Meeting will be a statutory meeting: an ‘other meeting’ held under the Planning Act 2008 section 88(5) and EPR Rule 6(3). It will be subject to the provisions of the Planning Act section 95(2)(e) on the conduct of hearings (in relation to disruption, supervision and costs).

The Programming Meeting will be open for attendance by the Applicant and all Interested Parties. The ExA’s questions arising under the agenda items will be limited to questions of Examination procedure and will be directed at the Applicant and at the local authorities referred to under sections 88 and 88A of the Planning Act 2008 (as amended), within the framework provided by of the draft Examination Timetable. The draft Examination Timetable will form part of a letter prepared under EPR Rule 6 (the Rule 6 Letter) to be issued in due course. The Rule 6 Letter will provide formal notice of the Programming Meeting, including of its date, place and time, and may include amendments to this draft Agenda.

The ExA will arrange for the Programming Meeting to be livestreamed and recorded. A recording will be published on the National Infrastructure Planning website page for the Lower Thames Crossing.

Interested Parties who wish to make observations on the matters raised at the Programming Meeting but do not attend it will be offered an opportunity to do so at the Preliminary Meeting.