

**Lower Thames Crossing**  
**Application by National Highways for an Order Granting**  
**Development Consent for the Lower Thames Crossing**  
**(Ref. No. TR010032)**

**Submission on Programme for Programming Meeting**  
**Thurrock Council**

**4 May 2023**

On behalf of **Thurrock Council**  **thurrock.gov.uk**

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## Introduction

- 1 This is Thurrock Council's ('the Council's') submission pursuant to Procedural Deadline A (PDA). It focuses upon the changes that the Council considers need to be made to the Examination timetable, as set out in Annex D of the Planning Inspectorate ('PINS') letter dated 25 April 2023.
- 2 Currently the Examination is due to commence after the Preliminary Meeting Part 2 on 20 June 2023. This means that Deadline 1 will be 18 July 2023 and will include the Council needing to complete its Local Impact Report ('LIR') and updated Statements of Common Ground amongst other documents by that deadline.
- 3 It is respectfully submitted that the Examination does not commence until 5 September 2023 to allow the Council sufficient time to analyse the application documents and prepare the documents required for Deadline 1 (including but not limited to the LIR), i.e. a delay of seven weeks for Deadline 1, which may also mean a slight delay to the Preliminary Meeting Part 2.
- 4 The Council's reasons for the delay are set out below.
- 5 The Council requests to be heard orally at the Programming Meeting to raise these concerns and all Council attendees/representatives will submit a completed 'Lower Thames Crossing Event Participation Form' as requested by the Examining Authority (ExA) by 5 May 2023.

## Section 114 Notice – impact on decision making

- 6 On 19 December 2022 the Council issued a Section 114 notice pursuant to the Local Government Finance Act 1988 ('the Section 114 Notice'). The Council has a statutory duty to issue the notice where spending is likely to exceed resource levels.
- 7 The Council, as a result of the Section 114 Notice, has had to set up and implement new processes and procedures to scrutinise all spending to focus on essential expenditure and reduce it substantially. This has meant that all proposed spending must be reviewed on a case-by-case basis by a new formal independent spending review panel, including a detailed Business Case.
- 8 Prior to the issuing of the Section 114 Notice the Council was taking steps to manage its finances and in September 2022 the Secretary of State for Levelling Up, Housing and Communities appointed Essex County Council as Best Value Commissioner for Thurrock.
- 9 The Secretary of State for Levelling Up, Housing and Communities announced on 16 March 2023 a formal expansion of the intervention into Thurrock Council. This included the appointment of a Managing Director Commissioner. This provided further powers, including powers over:
  - a. All functions associated with the governance, scrutiny and transparency of strategic decision making by the Authority to ensure compliance with the Best Value Duty. This includes oversight of an audit of the Council's governance;
  - b. All functions associated with the Council's operating model and redesign of council services to achieve value for money and financial sustainability; and,
  - c. The appointment, suspension, and dismissal of statutory officers, including powers to determine the process for making these appointments and dismissals, and to define a new officer structure for senior positions at the Council.
- 10 The Secretary of State also required the Council to prepare, produce and implement an Enhanced Improvement and Recovery Plan.
- 11 As a result of these interventions the Council was legally required to pause current spending, review its systems and processes, and implement new management systems and approval processes. Due to this new regime, non-statutory expenditure was suspended. Over the last four months this has resulted in spending on the consultant team being suspended and consequently

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work on the Lower Thames Crossing project ceasing. The LTC Team has commenced work again on 17 April 2023 on a graduated basis with the full team not due to recommence work until early May 2023.

- 12 Accordingly, the Council has been unable to progress its analysis of the application, including the work necessary to provide its LIR and update the draft and unsigned Statement of Common Ground (SoCG). The result of this is that the Council requires more time to analyse the relevant documents and produce its LIR and updated draft SoCG.

## Response to National Highways' comments

- 13 National Highways ('NH') notes in its letter to you 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.'*
- 14 This betrays a lack of understanding by NH of how the Section 114 Notice has affected the Council's operations. It is true that no other Interested Parties have requested a delay, but then again, neither has any of the other Parties been subject to a Section 114 Notice.
- 15 A Section 114 Notice is a drastic measure to take. It is not issued lightly and requires very significant changes to be made by the Council. The Council is required to put in place a process that ensures that only essential expenditure is approved. Each case needs to be justified with a specific Business Case. In the case of the consultancy services for Lower Thames Crossing, despite there being confirmation from NH that qualifying costs within the Planning Performance Agreement (PPA) would be reimbursed, this did not cover legal costs (which the Council regard as essential). Nor was there any guarantee that the, recently introduced, increased level of scrutiny to which NH is placing PPA claims would not result in costs being refused. The Council was cognisant that NH does not apply a consistent nor transparent approach to PPA and their management. The absence of a formal PPA offer from NH therefore created concern about the practicalities of recovering funding without clear protocols. This meant that the Council's Independent Scrutiny panel, in light of the financial situation, was unable to approve any non-statutory expenditure likely to be at risk.
- 16 In these circumstances, the Council was of the view that there was a reasonable risk that instructing the consultant team could result in unrecoverable costs, and in any event, there would be a period in which costs would have to be expended and not recovered. The Council is currently in discussion with NH about last year's Q2 and Q3 PPA claims and the unprecedented increase in scrutiny being applied confirms that these concerns are justified. The decision to place the consultant team on hold and to submit a detailed Business Case was therefore a reasonable and necessary response by the Council to its financial situation. NH's subsequent decision to extend the terms of the PPA, (following discussions with Department for Transport (DfT)), were communicated in writing to Mark Bradbury, by then the responsible officer, at the end of February, and this was instrumental in resolving the situation.
- 17 Therefore, the delay in the Council's ability to scrutinise the Development Consent Order (DCO) application documentation, prepare Relevant Reps and the PADs Summary and work towards its LIR, was not something that could simply be avoided by retaining the instructions to its consultant team as suggested by NH. The Council contends that the particular circumstances it finds itself in should not be a reason to ignore justified claims for a three month delay. To date the ExA has based decisions on the targeted window for the commencement of Examination based only upon NH's explanation and interpretation. The Council urges the ExA to amend its decision based on this change of its understanding of the circumstances.
- 18 NH further notes in its letter to you that a three month delay will lead to additional costs for other interested Parties, as well as an extension of anxiety for those impacted by the process. *'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.'*

- 19 The Council notes that NH has not attempted to provide any quantification of the additional costs that may be incurred to substantiate its claim and that it may equally be claimed that the total cost of the project may be reduced if more appropriate time was allowed, as requested by the Council, to prepare for Examination. In the absence of appropriate quantification such statements by NH are merely speculative and can be considered misleading.
- 20 The Council contends that the additional costs associated with the Council not having fully analysed all the documents and prepared its full LIR also need to be considered. As the ExA will see from the Council's PADs Summary Statement, there are 150 remaining Principle Areas of Disagreement between the Council and NH and the last four months of valuable time to narrow these issues has been lost because of the particular circumstances of the Council. By having sufficient time to reengage with NH and fully prepare for the Examination, the Council will be able to focus on key issues and hopefully reduce the points in dispute (saving all parties time and money).
- 21 The Council acknowledges the risk of any additional anxiety faced by local communities in the context of a scheme that has been in the public domain since 2009, but contends that this is small compared with the concerns of a local community faced by a scheme that has had insufficient scrutiny by its elected representatives.
- 22 This would be the situation faced by Thurrock Council's local communities should a delay to the Examination not be agreed. As has been stated many times in consultation responses, the LTC red line affects approximately 10% of the Borough's total land area, and Thurrock's community would be affected by approximately 70% of the scheme impacts. Whilst there are a number of other Interested Parties which NH would argue would experience additional anxiety and cost, the greatest proportion of those affected would be more affected by a decision to proceed without delay. On the basis of natural fairness, the Council contends that a six weeks delay in Deadline 1 is fully justified.

## **Other Benefits of Change to the Programme**

- 23 As currently scheduled, Deadlines 2 and 3 fall within the school summer holiday period. This is going to make it more difficult for all parties, including the Council, to provide the necessary documents and submissions. The delay of 3 months will avoid the Examination being undertaken during the six-week holiday period. Whilst it is acknowledged that other holiday periods will be included, none of these will be as disruptive as the six-week summer break.
- 24 NH is due to commence a further consultation on 17 May, finishing on 16 June with formal responses by 19 June. This spans the same timeframe that the Council is going to be required to prepare its LIR, review and update SoCG and other key documents. Delaying the start of the Examination will allow the Council to engage more fully in the consultation response.
- 25 The Secretary of State for Transport and NH have already confirmed its intention to delay construction of the development by 2 years if consent is granted, and accordingly this should have no negative impact on the delivery timetable. In fact, it potentially releases any pressure on the Examination timetable. In addition, should the DCO be granted, the delay would be beneficial to NH, as its implementation period would commence at a later date with completion in 2032.

## **Conclusions**

- 26 In considering the implications of the Council's request for a delay to the Examination, the Council continues to believe that there is a strong case for at least a three month delay to the Examination in reflection of the disruption to engagement and assessment of the DCO application it has experienced.
- 27 The Council considers that continuing with the current timetable would place the Council at an unfair disadvantage. It would also make the Examination process more time-consuming and difficult as the Council would have less time to fully develop its key documents, such as narrowing

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the unresolved issues in the draft SoCG and production of the LIR. This may impact on the ability of all parties to complete the Examination within 6 months. This would make the role of the ExA more difficult, time consuming and costly.

- 28 No party would suffer significant detriment and accordingly it is respectfully submitted that the Examination and hence Deadline 1 is delayed until 5 September 2023, a delay of just seven weeks, which may also mean a slight delay to the Preliminary Meeting Part 2.