

# APPLICANT'S SUMMARY OF ORAL SUBMISSIONS AND COMMENTS MADE AT THE PROGRAMMING MEETING HELD ON 16 MAY 2023

## LOWER THAMES CROSSING

*Please note: this document contains the Applicant's oral summary of evidence and post-hearing comments on submissions made by others at the Programming Meeting held on 16 May 2023. Where the comment is a post-hearing comment submitted by National Highways, this is indicated.*

*This document uses the headings for each item in the agenda published for the Programming Meeting by the Examining Authority in Annex C of the Rule 6 letter dated 25 April 2023.*

### **1 Item 1: Introduction**

1.1 National Highways (the **Applicant**) which is promoting the Lower Thames Crossing (the **Project**) was represented at the Programming Meeting by Andrew Tait KC (**ATKC**) who introduced the following persons to the Examining Authority (**ExA**):

1.1.1 Isabella Tafur (**IT**)

1.1.2 Dr Tim Wright, Lower Thames Crossing, Head of Consents (**TW**)

1.1.3 Annamarie Compton, Lower Thames Crossing, Negotiations Lead (**AMC**)

### **2 Item 2: The Examining Authority's remarks about the Examination process and preparation for the Preliminary Meeting**

2.1 The Applicant did not make any submissions under this Agenda Item.

### **3 Item 3: The Examining Authority's remarks about written submissions received by Procedural Deadline A (5 May 2023)**

3.1 The Applicant did not make any submissions under this Agenda Item.

### **4 Local authority participation in the Project Examination**

4.1 The Applicant welcomed the ExA confirmation that Planning Performance Agreements (**PPAs**) are contractual, private and confidential between a promoter and local authority. This accords with the advice in the Planning Inspectorate's Advice Note 2. The ExA noted that the use of non-disclosure

agreements in that context were also common. The ExA noted that it was not the role of the ExA to ‘lift the curtain’ on PPAs but expressed the importance of ensuring that any PPAs supported the fair and effective examination of the Project and ensured broad fairness between local authorities. The Applicant notes and acknowledges these observations.

- 4.2 The Applicant appreciates and agrees with the ExA’s approach to Written Questions in the proposed programme, which is not structured ‘conventionally’ – namely it does not include a large number of Written Questions at the outset of the examination, on the basis that deferring Written Questions to later in the examination should reduce the number of questions from the ExA following consideration of early representations and responses.

Update on the PPAs with local authorities

- 4.3 ATKC referred to the PPA Position Statement [AS-060] which confirmed that there were six PPAs with local authorities at the time of the application submission. Since then, a number of additional PPAs have been progressed. ATKC provided the following update.

Party	Status
Brentwood Borough Council (BBC)	Signed by BBC on 12 May 2023, and with the Applicant for signature <b>[Post-meeting note: this has now been completed]</b>
Essex County Council	Complete (signed by both parties)
Gravesham Borough Council (GBC)	Complete (signed by both parties)
Kent County Council (KCC)	Complete (signed by both parties)
London Borough of Havering (LBH)	Scope agreed. The Applicant is awaiting confirmation from LBH as to whether it is revising its rates. If so (and assuming the revisions are acceptable) these will be amended in the PPA. It is expected that the PPA will be completed and signed before the start of the examination.
Medway Council	Complete (signed by both parties)
Thurrock Council	– The scope was provided in writing to Thurrock Council on 25 January 2023, and was agreed by Thurrock Council in writing on 26 April 2023. The draft PPA variation was sent to Thurrock Council on 12 May 2023. Further information on this PPA is provided in the Joint Position Statement on the PPA agreed between the Applicant and Thurrock Council submitted at Procedural Decision B.
Transport for London	Complete (signed by both parties)
Tonbridge and Malling Borough Council (TMBC)	Scope agreed but the agreement was put on pause at TMBCs request until after the Preliminary Meeting.

- 4.4 ATKC confirmed that the Applicant has at all times offered to cover certain costs of Thurrock Council following the application submission (see sections 3.2 and 3.3 of the Planning Performance Agreement Position Statement [APP-060]). That position is recorded by the statement by Mr Bradbury in Thurrock Council's submission dated 9 March 2023 [AS-80] (which sets out "*Both National Highways and DfT have confirmed that they will continue to honour the agreement through the remainder of the process.*").
- 4.5 ATKC confirmed that the Applicant would be content to provide by Procedural Deadline B (**PDB**) a joint statement with Thurrock Council on the status of the PPA variation and the anticipated timetable for its completion, should it be the case that the PPA has not been completed or is not imminently due to be completed by PDB. [***Post-meeting note: the ExA is referred to the Joint Position Statement on the PPA agreed between the Applicant and Thurrock Council submitted at Procedural Decision B.***]
- 4.6 ATKC noted that KCC, TMBC and GBC had requested additional resources in their Procedural Deadline A submissions but that KCC and GBC had signed their PPA and TMBC had already agreed the scope.

*Equal treatment of local authorities on PPAs*

- 4.7 In respect to the ExA's commentary that there should be an 'equality of arms' so that no local authority was prejudiced, ATKC confirmed that this principle was and is reflected in the Applicant's approach to PPAs.
- 4.8 ATKC referred to KCC's Procedural Deadline A submission [PDA-002] which sets out that three specified activities were not included in the scope of their PPA, but should be included on the basis that these matters were understood by KCC to be included in the PPA agreed with Thurrock Council. The three activities are:
- 4.8.1 Preparation of the local impact report
  - 4.8.2 Review of the Application Documents unrelated to matters within the Statement of Common Ground
  - 4.8.3 Preparation for, and attendance and participation at the Examination, including the preparation of expert witness submissions and responding to written questions raised by the ExA during the Examination.
- 4.9 ATKC confirmed this was not accurate. Without in any way 'lifting the curtain on the confidentiality and commercial sensitivity of the various PPAs, the Applicant was able to confirm that the scope of the PPA agreed with Thurrock Council does not cover the third element (i.e. paragraph 4.8.3 above).

- 4.10 ATKC also confirmed that the PPAs with local authorities were negotiated on the same basis as that with Thurrock, except insofar as the Thurrock PPA also includes the matters referred to in paragraphs 4.8.1 and 4.8.2 above.
- 4.11 ATKC explained that the Applicant's agreement to include those additional matters in the PPA was a proportionate and fair response to Thurrock Council being placed in special measures under the Local Government Finance Act 1988. ATKC noted that this was a unique financial circumstance which does not apply to any of the other local authorities. Given the unique financial circumstances in Thurrock, a tailored response in the PPA is appropriate and does not justify a deviation. There was therefore no unfairness in the Applicant having recognised this fact in the PPA offered to Thurrock Council. Nor does that special financial circumstance form the basis to deviate from positions and scopes which had already been agreed with other local authorities.
- 4.12 ATKC referred to the Planning Inspectorate's Advice Note 1 which confirms that PPAs are a matter between the Promoter and the local authorities but nonetheless, for the reasons set out above, the principles underpinning the Applicant's position reflected a fair and equitable treatment of local authorities.

#### Processes in approving PPAs

- 4.13 ATKC explained that the governance and assurance procedures in place for authorising payments under PPAs were normal and entirely reasonable in the context of managing public funds properly. The Applicant adopts the same approach and scrutiny to all payments under the PPAs. TW explained that all requests made by the Applicant are proportionate and designed to ensure that all relevant information is provided to ensure fiscal responsibility.
- 4.14 TW noted, in connection with an outstanding invoice issued by Thurrock Council, that works had been undertaken outside of the pre-agreed scope, which meant that the invoice had to go through a number of approvals.
- 4.15 TW further confirmed that the Applicant was awaiting forecasts in connection with the PPA from Thurrock Council; those forecasts could be reasonably varied where circumstances change.

#### Examination timing

- 4.16 In response to the request to delay the start of the examination, ATKC identified that there were five powerful reasons for avoiding any further delay.
- 4.17 **First**, ATKC submitted there had not been a fundamental change in circumstances since the ExA's procedural decision in response to Thurrock Council's first request to delay proceedings [PD12]. The only changes which have occurred since then are that:

- 4.17.1 the scope of the PPA has been agreed in writing by Thurrock Council (on 25 April 2023)
- 4.17.2 Thurrock Council has started the process of re-engagement of its consultant team
- 4.17.3 Thurrock Council has submitted a detailed Relevant Representation and its Principal Areas of Disagreement Summary Statement.

ATKC submitted that these changes militate against deviating from the proposed timetable that has been issued by the ExA. Those changes all indicated improvement in Thurrock Council's readiness to participate in the examination and did not justify departing from the ExA's PD12.

- 4.18 **Second**, ATKC noted that only Thurrock Council was suggesting that the proposed examination deadlines cannot be met. None of the other local authorities suggested that it would not be possible to participate in accordance with the ExA's draft timetable. ATKC noted that in ordinary circumstances, an examination would be expected to start two months after the end of the Relevant Representation period (i.e. in April 2023 or May 2023, at the latest). The examination is not due to commence until 21 June which means that the pre-examination period has already been extended by one to two months. ***[Post-meeting note: as noted under Agenda Item 5, the Applicant shared Application Documents two days following the point of submission of the application, waited to commence the Relevant Representation period until after Christmas, and ran a Relevant Representation period which extended beyond the legally required 28 days; all of these have added additional time for parties to consider the representations and further militate against more delay.]***
- 4.19 ATKC noted there has been a long period of engagement with Thurrock Council (cf. paragraph 5.1.2 of this document below), including following the withdrawal of the Project's first DCO application in 2020. ATKC further noted Thurrock Council had begun reviewing the application documents in November and December 2022 and had invoiced for work carried out in that period. Thurrock Council has now submitted comprehensive Relevant Representation and Principal Areas of Disagreement Statement (PADS) from Thurrock Council which indicated its advanced level of understanding of the issues raised by the application and which was sufficient to enable expeditious progression to the examination. That Relevant Representation and PADS could, in the Applicant's view, be converted and developed to form the basis of a Local Impact Report (LIR) and Written Representation which would be required in late July 2023 under the draft timetable (i.e. allowing a period of some eight months since the application was accepted).

- 4.20 **Third**, ATKC noted that concerns had been raised by the Thames Crossing Action Group and some of the local authorities about the August holidays, but there were no hearing days in that month and, in any event, an extension would lead to the examination running over Christmas and would therefore have a similar impact on holiday periods.
- 4.21 **Fourth**, ATKC noted there had been concerns expressed around the examination timings being adversely affected by the Applicant's consultation on changes to the application. The consultation was minor, and generally reductive and included changes in response to stakeholders' requests. It does not therefore provide a compelling reason to delay the start of the examination. **[Post-meeting note: it should be noted that the consultation commenced on 17 May 2023, and will conclude on 19 June 2023, i.e., very early in the examination programme proposed in the Rule 6 letter].**
- 4.22 **Fifth**, ATKC noted that there was a public interest in proceeding with the examination with expeditious speed, in line with Government policy, and ensuring certainty for landowners and interested parties, as noted in the Applicant's submission [AS-086], and acknowledged by the ExA's Procedural Decision [PD-012].
- 4.23 In response to the ExA's question as to whether Thurrock Council could meet the deadlines, ATKC noted that Thurrock Council has now submitted its Relevant Representation, as well as the PADS. **[Post-meeting note: the Applicant notes that Thurrock Council confirmed that it was able to make these submissions "within three weeks of being reengaged"]**. TW reiterated there had been a long history of engagement with Thurrock Council (cf. paragraph 5.1.2 of this note below). The draft Statement of Common Ground (SoCG) with Thurrock Council [APP-130] demonstrates the advanced level of understanding Thurrock Council has reached at this stage of the process.

## 5 Local Impact Report (LIR) preparation

- 5.1 ATKC noted that he would not repeat the points in relation to timing which were submitted in relation to Agenda Item 4 (see paragraphs 4.16 to 4.23 above) but those were also relevant to the time allowed in the timetable for the production of LIRs. ATKC made the following further submissions which militate against both a delay to the Deadline proposed for the submission of LIRs, and a delay to the start of the examination:
- 5.1.1 There is already an elongated pre-examination period operating in connection with the Project, relative to 'standard' practice. Whilst the application was submitted in October 2022, commencement of the Relevant Representation period was delayed until January 2023 to avoid the Christmas period. Furthermore, the Relevant Representation period was extended beyond the statutory minimum timescales (i.e.,

the Relevant Representation period was 47 days, rather than the statutory required 28 days). Part 1 of the Preliminary Meeting is over three months after the end of the Relevant Representations period and the examination is not scheduled to commence until late June. This equates to a period of some eight months from acceptance of the application to submission of LIRs.

- 5.1.2 Other local authorities confirmed that they would be able to submit LIRs in accordance with the submission date in the draft timetable. In relation to Thurrock Council's position, ATKC noted that the Application Documents were provided to local authorities shortly after submission. Further, as recorded in B.6.2 of the Statement of Engagement [APP-091], there have been 420 engagement meetings with Thurrock Council, 270 of which were held between October 2020 and October 2022. There has therefore been no shortage of engagement.
- 5.1.3 Advice Note 1 encourages local authorities to start preparing their Local Impact Reports in the pre-application period. ***[Post-meeting note: the Applicant notes that in a pre-application tripartite meeting held on 22 September 2022, the Inspectorate advised local authorities to “focus on their Local Impact Reports...should the application be accepted for examination”.]<sup>1</sup>*** ATKC observed that work by Thurrock Council to review the Application Documents had taken place in November and December, as confirmed by invoices submitted to the Applicant for that period.
- 5.1.4 ***[Post-meeting note: for completeness, the Applicant notes GBC's comments at the Programming Meeting that “[GBC] are anticipating progressing [their] local plan intensively later on this year [but...they] haven't planned on that basis. ... So it's a matter of concern [to GBC], if the timetable fundamentally changes.” The Applicant considers this provides an additional reason for not delaying the start of the examination and for not delaying the deadline for the submission of the LIR.]***
- 5.1.5 The Applicant was of the firm view that the proposed deadline for LIR submission allows a reasonable time for its preparation. ATKC further noted that the request for an extension was generalised, and does not provide specified grounds that support the requirement for an extension. ATKC expressed the view that caution should therefore be exercised in response to generalised requests for delay.

---

<sup>1</sup>[https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010032/TR010032-Advice-00077-1-220922-Part\\_One\\_Tripartite\\_Meeting\\_Note%20and%20annexes%20FINAL.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010032/TR010032-Advice-00077-1-220922-Part_One_Tripartite_Meeting_Note%20and%20annexes%20FINAL.pdf)

## **6 Other matters**

6.1 ATKC made the following submissions on behalf of the Applicant in respect of the **SoCG** with the Emergency Services & Safety Partners Steering Group (**ESSPSG**):

6.1.1 It was not correct to state that the Applicant had indicated that it would not be progressing an SoCG with the ESSPSG. Rather, the Applicant's intention was to prioritise the SoCGs identified by the ExA (without excluding the possibility of ongoing updates to the ESSPSG SoCG) but it remained open to progressing a joint SoCG should the individual participants of the group wish to do so.

6.1.2 The Applicant was keen to ensure individual SoCGs were progressed, as with an 'ESSPSG only' approach, there would be a risk of delay in providing updates on matters and agreeing positions. The Applicant's position was that it should not be 'either/or', but that both individual SoCGs *and* an ESSPSG SoCG should be allowed for. The Applicant would liaise with those bodies singled out in the Rule 6 letter to determine whether they would want to pursue individual SoCGs.

## **7 Actions agreed at the Programming Meeting**

7.1 The ExA endorsed the provision of a Joint Statement from Applicant and Thurrock Council on the status of the PPA but noted there is no need to put in such a statement if the PPA is completed or close to completion.