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All Interested Parties,
Statutory Parties and any Other Person
invited to the Preliminary Meeting

Your Ref:

Our Ref: TR010032

Date: 15 June 2023

Dear Sir/Madam,

Application by National Highways for an Order Granting Development Consent for the Lower Thames Crossing

Planning Act 2008 – Section 89(2)

Procedural Decision on the resumption of the Preliminary Meeting and the commencement of the Examination

Provision of Advice on other matters

This letter advises you of a Procedural Decision taken by the Examining Authority (ExA) following a discussion of requests to delay the commencement of the Examination that took place during Part 1 of the Preliminary Meeting held up to its adjournment on 6 June 2023 and consideration of related written submissions made at Procedural Deadline C (PDC) on 13 June 2023. It advises you of the date and procedure by which the outstanding business of the Preliminary Meeting will be resolved and hence of the date on which the Examination is intended to commence.

25. Procedural Decision on the date and procedure for the Preliminary Meeting Part 2 and commencement of the Examination ¹

The ExA has considered how to address the matters arising from the Preliminary Meeting Part 1 and the related written Procedural Deadlines A, B and C (PDA, PDB and PDC). There were a small number of requests to be heard orally at Part 2 of the Preliminary Meeting on certain matters made at PDC. However, having reviewed those matters, the ExA has found that they related to matters falling within the Agenda for and fully discussed during Part 1 of the Preliminary Meeting (see the Rule 6 Letter of 25 April 2023 at Annex A page A1 [[PD-013](#)]) or related to matters of planning merit and substance that need to be raised in Written Representations and/ or discussed at a hearing, once the Examination commences.

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 sequentially. The number allocated to this decision takes account of decisions 13 -24 found in the Rule 6 Letter of 25 April 2023 at Annex F [[PD-013](#)].

The Preliminary Meeting Part 2 Agenda (see the Rule 6 Letter of 25 April 2023 at Annex A page A2 [\[PD-013\]](#)) identifies the main business of that part of the meeting as being to consider ‘any procedural representations on matters that could not be raised at Part 1 of the Preliminary Meeting’, providing an opportunity to discuss matters raised in writing at PDC by Interested Parties (IPs) or Other Persons who were invited to but unable to speak in-person or virtually at Part 1 of the Preliminary Meeting. There have been no requests to be heard orally on matters that are relevant to the Part 2 Agenda that justify the meeting being held using an oral procedure. All matters raised are capable of being addressed in writing.

It follows that, as provided for in Annex A to the Rule 6 Letter [\[PD-013\]](#), the ExA will consider all remaining matters arising from the Preliminary Meeting Part 1 and from procedural deadlines up to PDC in writing. It will take its procedural decisions and proposes to close the Preliminary Meeting in writing on the [Lower Thames Crossing landing page](#) of the National Infrastructure Planning website by the end of 20 June 2023. No further oral or written submissions on Examination procedure are sought from Interested Parties at this time.

Subject to the completion and closure of the Preliminary Meeting proceeding as described above, it follows that the Examination would commence following the closure decision, on 20 June 2023.

A statement of reasons for this decision taking full account of relevant oral and written submissions received up to PDC is included at **Annex A** to this letter.

Annex D to the Rule 6 Letter of 25 April 2023 [\[PD-013\]](#) sets out the draft timetable for the Examination. This will be subject to certain modifications to respond to discussions held and written submissions received at Procedural Deadlines during the Preliminary Meeting. However, as a consequence of the decision communicated in this letter, please be aware that the ExA intends to proceed with the early Open Floor (OFH1) and Issue Specific Hearings (ISH1 & ISH2) at items 7 to 10 of the draft timetable. Draft Agendas for ISH1 [\[EV-014\]](#) and ISH2 [\[EV-015\]](#) have already been published, but the contents of these are now confirmed. An Agenda for OFH1 [\[EV-016\]](#) has also been prepared and is published alongside this decision letter. The early hearings referred to above are being held as virtual events.

Noting the desire of certain IPs to be heard in-person at OFHs held in venues both north and south of the River Thames, the ExA has extended the time available for registration at the following events:

Hearing	Date and time	Location	Request to be Heard
Open Floor Hearing 2 (OFH2)	Wednesday 28 June 2023 (and Thursday 29 June if required) 10.00am	Orsett Hall Hotel, Essex and virtually via Microsoft Teams	Via the MS Form by 23:59 Thursday 22 June 2023
Open Floor Hearing 3 (OFH3)	Wednesday 5 July 2023 (and 6 July if required) 10.00am	Dartford Bridge Hilton Hotel, Kent and virtually via Microsoft Teams	Via the MS Form by 23:39 Thursday 29 June 2023

For advice about participation in any of these events, please refer to the Rule 6 Letter [\[PD-013\]](#), to the Frequently Asked Questions (FAQ) v2 [\[PD-014\]](#) and to PINS [Advice Note 8.5](#) to assist those attending hearings and [Advice Note 8.6](#) to support virtual event participants.

If you have any questions on the content of this letter, please 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 25: Statement of Reasons

The ExA has decided that the Examination will commence following the closure of the Preliminary Meeting on 20 June 2023.

In reaching this decision, the ExA has given full and careful consideration to sustained oral and/or written procedural submissions arising from Interested Parties (IPs) including but not limited to Thurrock Council [AS-084], [PDA-007, 008 & 009], [PDB-009] and [PDC-007 & 008], Tonbridge and Malling Borough Council [AS-087 & 088], the Thames Crossing Action Group (TCAG) [PDA-006], [PDB-025] and [PDC-037], and a number of other individuals to the effect that the commencement date for the Examination should be delayed and the pre-Examination period extended^{2 3}. These include Additional Submissions, written Procedural Submissions to PDA, PDB and PDC and oral Submissions at a Programming Meeting held on 16 May 2023 and at Part 1 of the Preliminary Meeting held on 6 June 2023.

Thurrock Council has provided the most comprehensive submissions on this point which are addressed in this statement of reasons. Whilst noting that other IPs do not necessarily adopt all dimensions of Thurrock Council's position, the ExA is content that in addressing that position, this reasoning also addresses the main reasons for a delay and extension as sought by those other IPs making such requests. Thurrock Council's case for a delay and extension can be summarised in the following terms:

- That financial and administrative circumstances affecting Thurrock Council following its inability to set a balanced budget and entry into special financial measures were such that it had had limited capacity to act to prepare for the Examination on the timescales initially anticipated by the ExA.
- That having halted or delayed certain preparatory activities and advisory appointments in response to its financial and administrative circumstances, Thurrock Council was now experiencing practical difficulties with reinstating these and returning work to programme.
- That the effects of the proposed development on the Thurrock area, its economy, communities, landscapes and environment are more than typically substantial and require a fully mobilised response.
- That the work programme required to address the questions raised by the Examination is a very large one requiring specialist advice.
- That Thurrock residents and businesses expect and deserve its Council to be an active participant in the Examination process.
- That a two-year rephasing in the capital funding for the proposed development announced in March by the Secretary of State for Transport reduced the urgent need to proceed with the Examination.

² The ExA refers here to a representative sample of submissions that included or supported requests to extend the pre-Examination period and delay the start of the Examination.

³ Where references to multiple documents are made, please refer to the [Examination Library](#) to obtain links to these.

- That there had been practical difficulties agreeing and executing a Planning Performance Agreement (PPA) under which funding for aspects of Thurrock Council's involvement with the proposed development would be provided by the Applicant. These in turn had inhibited progress.
- Taking all of these matters into account, that the commencement of the Examination should be set back to the first week in September 2023.

The circumstances leading to the original submissions seeking an extension and delay are set out in greater and referenced detail in the statement of reasons for the ExA's initial decision on this point, Procedural Decision 12 taken on 6 April 2023 [PD-012]. They remain relevant and have been considered, but are not repeated here.

Since that time, the ExA has held a **Programming Meeting** on 16 May 2023 [EV-001 – 007] to review questions of resourcing and timing for the Examination with a range of local and public authorities. Thurrock Council made substantial oral submissions to that meeting, in summary strongly sustaining its request for an extension and delay and suggesting at that point that it did not wish to engage with a restructuring of the draft Examination timetable as a means of mitigating its resource concerns. It should however be noted that none of the other local and public authorities making oral submissions at the meeting directly supported Thurrock Council's position. Many referred to the substantial resource burden generated for them by the Examination process, but most were also clear that, despite limited staff, technical and financial resources, they had anticipated an Examination would proceed under the timescales seen as normal for NSIP Examinations. They raised concerns about access to funding under PPAs. However, they had undertaken preparatory work and absorbed costs of their own and Gravesham Council (itself a host for substantial works proposed south of the River Thames) expressed the view that a delay would lead to its own losses and difficulties in sustaining its effort before the Examination [EV-001, 002 & 003].

In terms of other IP invitees to and participants at the Programming Meeting, Tonbridge and Malling Council had shared elements of Thurrock Council's position and was invited to the meeting. It did not take the opportunity to renew or explain its position. Although not a public authority, TCAG made clear that it spoke for Thurrock residents who considered that an extension and delay should be granted to ensure that the Council was better able to represent its residents.

At Part 1 of the **Preliminary Meeting**, Thurrock Council's position was less concretely put than at the Programming Meeting. It re-asserted its submission that an extension and delay were still sought but was able to report substantial progress towards the conclusion of its PPA with the Applicant and in building and operationalising its team to serve the Examination. It sought certain adjustments to the draft Examination timetable. It also demonstrated that it had undertaken certain preparatory work which demonstrated a capacity to act to serve the Examination. It did engage effectively and provided increased confidence that it would be able to do so moving forward.

It should be noted that other local and public authority participants at the Preliminary Meeting did not seek an extension or delay, making clear their preference to proceed directly to Examination on the timescales outline in the draft timetable in Annex D to the

Rule 6 Letter [\[PD-013\]](#). TCAG again spoke in support of Thurrock Council for the same reasons as before.

In this context, at the Preliminary Meeting, the ExA responded to questions on elements of the Examination design, explaining that the early Examination events (including ISHs 1 & 2 and OFHs 1 – 3) have been designed to enable the ExA to open discussions about matters, issues and questions, primarily with the Applicant and with those IPs who are not local and public authorities. The main resource burdens for local and public authorities arising from event participation would emerge from September 2023. Three main written Examination deadlines (D1, D2 and D3) would still take place from mid-July to end August 2023 and the ExA is conscious that these will place a burden on what are still limited resources and a team that is still in the process of assembly at Thurrock Council. However, NSIP Examination is never an easy task for public authorities and in considering the request for an extension and delay, the ExA still has to balance the effects on and benefits for Thurrock Council (and those in support of its position) of a delay against effects on and disbenefits for the Applicant, other Interested Parties, Affected Persons, Government and the public interest in determining whether to grant or deny Thurrock Council's request.

Having given very careful consideration to all the matters raised and also noting a considerable apparent improvement in relevant capacity and capability by Thurrock Council that has occurred between April and June 2023 together with valuable progress on the matter of PPA funding, the ExA has returned to the reasons that it provided for its initial procedural decision to grant a limited extension but to target the commencement of the Examination into a period between 'mid-June to early July 2023' [\[PD-012\]](#). The ExA considers that the reasons for adopting that time window remain important and weighty, to a point where, measured against Thurrock Council's current capability, they continue to outweigh the basis for the requests for an extension and delay.

On that basis, the ExA has decided that the request for an extension and delay should not be granted and that, subject to the completion and closure of the Preliminary Meeting on that day, the Examination should commence on 20 June 2023, as provided for in the draft Timetable.