

TRANSPORT FOR LONDON

LOWER THAMES CROSSING – WRITTEN SUBMISSION OF ORAL COMMENTS MADE AT ISSUE SPECIFIC HEARINGS 1 AND 2

DEADLINE 1: 18 JULY 2023

1. Introduction

- 1.1 This document summarises the oral submissions made by Transport for London (TfL) at the Issue Specific Hearings (ISHs) held in the week commencing 19 June 2023 in relation to the application for development consent by National Highways (the Applicant) for the Lower Thames Crossing (LTC) project (the Project).
- 1.2 Oral submissions by all parties attending the hearings were made pursuant to the agendas published by the Examining Authority (ExA). In setting out TfL's position on the issues raised in the agenda, as submitted orally at the hearings, the format of this submission follows that of the agendas. TfL has also commented on points raised by interested parties, the Applicant, or the ExA during the hearings on which TfL did not make oral submissions, where these are relevant to TfL's responsibilities.
- 1.3 In addition to covering the agenda items as noted above, this submission also relates to the ExA's list of action points arising from the hearings. Action Point 6 from ISH2 on 22 June 2023 on the draft DCO is relevant to TfL – for authorities to set out their views on whether the consultation arrangements and timescales for the discharge of requirements is appropriate. This is referred to in this submission under the relevant agenda item.

2. Issue Specific Hearing 1: Project definition

Introduction

- 2.1 ISH1 was held on Wednesday 21 and Friday 23 June 2023. TfL was represented by Matthew Rheinberg, Major Projects & Urban Design Manager.
- 2.2 TfL's oral submissions all related to item 4 on the agenda for the hearing, related to the ExA's questions on project definition.

Agenda item 4 (a) (ii) – The need case: Is it anticipated and if so, how swiftly is it anticipated that the proposed LTC alignment might become capacity constrained by traffic demand?

- 2.3 The Applicant set out at the hearing that the Project would provide congestion relief to the Dartford Crossing, and the LTC alignment was not expected to become capacity constrained during the forecast period.
- 2.4 TfL raised the point that while the LTC alignment may not become capacity constrained, the Applicant's forecasts show that the Project causes the M25 to become capacity constrained between Junctions 27 and 29. For example, the Combined Modelling and Appraisal Report Appendix C – Transport Forecasting Package (APP-522) shows that the northbound M25 is forecast to almost reach capacity in the 2037 AM peak as a result of the Project, with volume / capacity increasing substantially from 0.83 in the Do Minimum to 0.97 in the Do Something scenario (Table 8.34).
- 2.5 TfL made the point at the hearing that while the Project may relieve congestion including any knock-on impacts on the local road network in the vicinity of the Dartford Crossing, the traffic generated on the M25 further north, leading the motorway to reach capacity,

may result in new knock-on impacts on the local road network in London and Essex. This demonstrates why there is a need for an approach to mitigation of traffic impacts that arise once the Project has become operational to be included in the Order, with a requirement for the Applicant to secure mitigation for adverse impacts caused by the Project. This issue, including more details on the capacity impacts on the M25, is expanded on in paragraphs 3.2 to 3.8 of TfL's Written Representation submitted at Deadline 1.

- 2.6 The Applicant provided a response at the hearing setting out why it did not consider an approach to mitigating wider network impacts was necessary, but TfL disagrees with its reasoning. The Applicant also did not respond specifically to TfL's comments about the capacity issues further north on the M25 that are directly caused by the Project.

Agenda item 4 (e) – Routing and intersection design

- 2.7 TfL did not make oral submissions on this agenda item, but notes comments made by the ExA, the Applicant and interested parties in relation to modelling of junctions that provide access to the ports. TfL fully agrees with comments made by the ExA that it would expect the Applicant to undertake detailed junction modelling where the strategic modelling shows there to be significant changes in traffic flows. TfL wishes to comment that this is relevant to other junctions in London that are impacted by the Project and not just those providing access to ports. The junctions in question are set out in paragraphs 3.23 to 3.29 of TfL's Written Representation submitted at Deadline 1.
- 2.8 The Applicant also commented that it did not consider the Lower Thames Area Model (LTAM), the strategic traffic model used to assess the impacts of the scheme, to be inappropriate for assessing junction impacts. TfL wishes to point out that it would only be appropriate to use the strategic model to assess junction impacts if the strategic model has been validated at the junction level for the locations in question. TfL's observation is that, at many junctions in London, turning movements are poorly validated against observed data in LTAM. This is not unexpected given a strategic model cannot realistically be validated to this level of detail, but it demonstrates why local junction modelling, using observed survey data to validate the assessments, is necessary to robustly assess the impacts of the Project.

3. Issue Specific Hearing 2: the draft DCO

Introduction

- 3.1 ISH2 was held on Thursday 22 June 2023. TfL was represented by Matthew Rheinberg, Major Projects & Urban Design Manager.
- 3.2 TfL's oral submissions all related to item 4 on the agenda for the hearing, related to the ExA's questions on the draft DCO.

Agenda item 4 (d) – the discharging role of the Secretary of State and other local and public authorities

- 3.3 TfL made the point that while it has no objection to the Secretary of State being the discharging authority for the DCO requirements, it was concerned about the relevant authorities to be consulted on the discharging decisions. As currently drafted, the relevant highway authority is not proposed to be consulted on discharge of requirements that will affect the assets delivered by the Project which the local highway authority will become responsible for. TfL considers it essential that it is consulted on assets it will be responsible for maintaining in future.

3.4 In response, the Applicant stated that it was already set out in the draft DCO that TfL would be consulted on the Code of Construction Practice, the Wider Network Impacts Management and Monitoring Plan and Traffic Management Plans, therefore it did not consider it necessary for TfL to be consulted on the discharge of requirements. TfL does not agree with the Applicant because these management plans do not cover the same issues as the requirements, so TfL being a consultee to these plans does not negate the need for it to be consulted on the discharge of requirements for matters that affect TfL’s current assets or those to be delivered and handed over to TfL by the Project.

3.5 This discussion prompted the ExA to specify an Action Point 6 for ISH2 for relevant authorities to set out their views on whether the consultation arrangement and timescale for the discharge of requirements was appropriate and, if not, to confirm the changes in the process they are seeking and the reasons for those changes. TfL has set out its response to Action Point 6 in Table I below, with reference to the relevant articles and requirements in the draft DCO.

Table I: TfL’s views on proposed arrangements for discharge of requirements (ISH2 Action Point 6)

Article or Requirement	TfL position on consultation arrangement and timescale	Changes sought and reasons
Article 12 – Temporary closure, alteration, diversion and restriction of use of streets	12 (8) – TfL is concerned that 28 days is insufficient for the street authority to make a decision on temporary changes to the use of its streets.	Increase from 28 to 42 days to ensure that the street authority has sufficient time to review the details and make a decision.
Article 17 – Traffic regulation – local roads	17 (II) – TfL is concerned that 28 days is insufficient for the traffic authority to make a decision on traffic regulations affecting its roads given the scope and complexity of the Project.	Increase from 28 to 42 days to ensure that the traffic authority has sufficient time to review the details and make a decision.
Article 19 – Discharge of water	19 (8) – TfL is concerned that 28 days is insufficient for it to consider a request to discharge water into its drainage system.	Increase from 28 to 42 days to ensure there is sufficient time to review the details and make a decision.
Requirement 3 – Detailed design	3 (I) – TfL is concerned that there is no assurance that it will be consulted on whether it is satisfied with the detailed design for works that affect TfL’s assets.	TfL is seeking for the relevant highway authority to be consulted on the detailed design, and any relevant deviations from the DCO plans and drawings, for matters relevant to its functions or that may affect its assets.
Requirement 4 – Construction and handover environmental management plans	4 (2) – TfL is satisfied that highway authorities are to be consulted on discharge of this requirement.	No changes sought.
Requirement 5 – Landscaping and ecology	5 (I) – TfL is concerned that it is not listed as a consultee in Table 2.1 of the outline Landscape and Ecology Management Plan (LEMP).	TfL is seeking for it to be added as a consultee in Table 2.1 of the outline LEMP so that it will be consulted on whether it is satisfied with the landscape and ecology plans for landscaping and planting that it will become responsible for maintaining.

Requirement 6 – Contaminated land and groundwater	6 (1) and (2) – TfL is concerned that there is no assurance that it will be consulted if contaminated land or groundwater is found that is within the area for which TfL is highway authority or that is linked to TfL’s drainage assets.	In relation to 6 (1), TfL is seeking for the relevant highway authority to be consulted if any contaminated land or groundwater is found within its highway boundary, or connected with its drainage assets, to allow it to take any responsible actions that may be necessary. Regarding 6 (2), TfL is seeking for the relevant highway authority to be consulted on any remediation plans, for matters relevant to its functions or that may affect its assets.
Requirement 7 – Protected species	TfL is satisfied with the arrangements for discharging this requirement.	No changes sought.
Requirement 8 – Surface and foul water drainage	8 (1) and (2) – TfL is concerned that there is no assurance that it will be consulted on whether it is satisfied with the arrangements for drainage assets that it will be responsible for.	TfL is seeking for the relevant highway authority to be consulted on the surface and foul water drainage, and any relevant deviations from the details submitted as part of the DCO application, for matters relevant to its functions or that may affect its drainage assets.
Requirement 9 – Historic environment	TfL is satisfied with the arrangements for discharging this requirement.	No changes sought.
Requirement 10 – Traffic management	10 (2) – TfL is satisfied that highway authorities are to be consulted on discharge of this requirement.	TfL is seeking for the word ‘substantially’ to be removed from this requirement, to specify that the traffic management plan for construction must be prepared in accordance with the outline traffic management plan for construction, to remove subjectivity; otherwise it will be difficult to determine whether the plan is sufficiently in accordance with the outline plan.
Requirement 11 – Construction travel plans	11 (1) – TfL is satisfied that highway authorities are to be consulted on discharge of this requirement.	No changes sought.
Requirement 12 - Fencing	12 (1) (b) – TfL is concerned that there is no assurance that it will be consulted on whether it is satisfied with any departures from standards for the fencing assets that it will be responsible for.	TfL is seeking for the relevant highway authority to be consulted on fencing, and any relevant departures from standards, for matters relevant to its functions or that may affect its assets.
Requirement 13 – Travellers’ site in Thurrock	This requirement is not relevant to TfL.	No changes sought.
Requirement 14 – Traffic monitoring	14 (1) – TfL is satisfied that highway authorities are to be consulted on discharge of this requirement.	No changes sought to discharging arrangements, although TfL is seeking wider changes to the approach to monitoring and mitigation as set out in paragraphs 3.2 to 3.17 of its Written Representation submitted at Deadline I.

Requirement 15 – Interaction with Thurrock Flexible Generation Plant	This requirement is not relevant to TfL.	No changes sought.
Requirement 16 – Carbon and energy management plan	TfL is satisfied with the arrangements for discharging this requirement.	No changes sought.
Schedule 2 Paragraph 18 – Applications made to the Secretary of State under Part I	18 (2) and (3) – TfL is concerned that the Secretary of State is deemed to have granted consent for any approval required by requirement if the Secretary of State has not responded within eight weeks, unless there are any materially new or materially different environmental effects. This disregards any consultation responses that may have been received from local highway and planning authorities.	Wording of the DCO to be amended so that deemed consent is not assumed given risk that key representations will be ignored.
Schedule 2 paragraph 20 – Details of consultation	TfL is concerned that given the complex issues associated with the discharge of many of the requirements, 28 days is insufficient for local highway and planning authorities to be able to carefully review the details and consult internally prior to giving their views.	Increase from 28 to 42 days to ensure there is sufficient time to review the details and make a fully informed response.

- 3.6 Regarding the final row in Table I above, TfL endorses the comments made by the London Borough of Havering and Thurrock Council at the hearing that 28 days is insufficient time for authorities to consider the information provided in sufficient detail, consult with relevant colleagues across the organisation as required, and prepare an evidence-based response. TfL therefore considers that the extended consultation period of 42 days that is discussed in paragraph 20 (2) of Schedule 2 of the draft DCO should be adopted as the standard consultation period for all requirements.

Agenda item 4 (h) – protective provisions

- 3.7 TfL explained that protective provisions 72 (costs) and 73 (commuted sum) for TfL were included in the made DCO for the recent M25 Junction 28 Improvements project. The situation in that case was that the Applicant’s project will make changes to the TLRN which will result in substantial costs and expenses for TfL associated with the delivery of the Applicant’s project and with the ongoing maintenance of those assets. In that case, the Secretary of State therefore provided protective provisions for TfL’s costs and a commuted sum to be agreed with the Applicant to cover future maintenance.
- 3.8 The situation is the same with the LTC Project, so TfL is seeking a similar set of protective provisions in this case. The reason why protective provisions for TfL specifically as a local highway authority are needed is because TfL, unlike most other local highway authorities, does not receive any Government funding for the ongoing maintenance of its highway network. Payment of a commuted sum would therefore not result in any double counting or duplication of payments to TfL. TfL submits that the protective provisions for costs and a commuted sum are appropriate and necessary. In the absence of protective provisions, TfL would need to find the additional costs of assisting in delivering the Project and subsequent maintenance from its own budget, which is highly constrained.

- 3.9 TfL would be prepared to consider these matters as part of a side agreement with the Applicant, which would be another way of ensuring that infrastructure delivered by the Project that TfL is to become responsible for can be maintained, but to date the Applicant has been unwilling to consider this. TfL notes that at the hearing, the Applicant stated it reserved its position on this matter.
- 3.10 Paragraphs 4.9 to 4.15 of TfL's Written Representation submitted at Deadline 1 provide a more comprehensive explanation of why protective provisions for TfL are required and appropriate in the DCO.