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2 May 2024

Dear Mr Bartkowiak

## **A122 Lower Thames Crossing (Reference Number TR010032)**

### **1 Response to Secretary of State letter from the 19 April 2024**

1.1.1 The Applicant is responding to the letter from the Secretary of State published on the 19 April 2024 requesting an update on a number of matters. This submission contains the Applicant's response to Tarmac Building Products Limited's submission in response to Secretary of State letter from 28 March 2024.

1.1.2 It is noted that there were other matters for the Applicant to respond to, but with a deadline of 9 May 2024. The Applicant can confirm it will respond to those matters by that deadline.

### **2 Tarmac Building Products Ltd.**

2.1.1 The [Secretary of State letter from 19 April 2024](#) sets out that:

*12. The Secretary of State notes the post-examination correspondence (Annex A) and consultation response provided by Tarmac Building Products Ltd, which details ongoing discussions between Tarmac Building Products Ltd. and the Applicant.*

*13. The Secretary of State invites the Applicant to respond to the matters raised in these letters in relation to the Permanent Rights for existing utility apparatus, and Temporary Rights for site access to utility apparatus.*

2.1.2 The Applicant notes Tarmac Building Products Limited's (TBPL) position in relation to land required for work to utility apparatus and has been engaging with TBPL since their initial inclusion within the Order Limits in January 2020.

2.1.3 The Applicant has since worked constructively with the relevant statutory utilities, National Grid Electricity Transmission (NGET) and UK Power Networks (UKPN), to progressively refine their land requirements and proposed methodology for undertaking works, in order to seek to mitigate impacts on TBPL as far as reasonably practicable.

- 2.1.4 In total, the Applicant has managed to reduce the extent of land required on TBPL's site by 29.7 acres (12 hectares) since January 2020.
- 2.1.5 The Applicant also notes TBPL's position in relation to the rights sought for works to utility apparatus, which was first submitted to the examination in their Relevant Representation (RR-1045).
- 2.1.6 Following the submission of TBPL's Relevant Representation, the Applicant contacted TBPL on 12 April 2023 explaining its justification for seeking rights as part of its Development Consent Order (DCO) application, and during the examination, this position was further set out at section 2.6 of the Deadline 7 Hearing Actions submission [[REP7-185](#)].
- 2.1.7 A more detailed commentary, explaining why the powers to carry out the works are needed as part of the DCO and why new rights are being sought, was provided in Annex G.4 of Post-event submissions for CAH3 [[REP6-087](#)]. The Applicant is continuing to engage with TBPL and is seeking to reach voluntary agreement.
- 2.1.8 There are two distinct voluntary agreements under consideration and negotiation:

### **Standard Voluntary Agreement**

- 2.1.9 The Applicant has developed a standard voluntary agreement which is available to all landowners who express a willingness to pursue voluntary agreement of land or rights required for the purposes of the Project. The standard voluntary agreement operates on the basis of first agreeing Heads of Terms.
- 2.1.10 Where rights in respect of utility apparatus works are also required, the Heads of Terms include an obligation for the landowner to enter the standard easement in respect of such rights with the relevant statutory undertaker (i.e. such easement is to be on the relevant statutory undertaker's standard terms).
- 2.1.11 Upon completion of utility works, "as laid" drawings will be used to trigger the entering into and subsequent registration of the easement between the landowner and relevant statutory undertaker, and compensation under the compensation code will be payable by the Applicant.
- 2.1.12 At paragraph 2.4 of TBPL's letter, it is stated that powers are being sought in respect of utility operators "without any engagement with Tarmac". That is plainly not the case as the Applicant has engaged with TBPL (as detailed in this letter). Further, paragraph 4.2 of TBPL's post examination correspondence states that the Applicant has not made any endeavours to acquire the land required for the construction of the highway (plot 27-32, 27-35 and 27-43 on Sheet 27 of the Land Plans Volume C [[REP9-012](#)]) by agreement, and that the Applicant has sought to make the consideration conditional on reaching agreement over the NGET easement. The Applicant considers these statements to be a misrepresentation of the position.
- 2.1.13 The Applicant wrote to TBPL on 29 September 2020 and 26 October 2021 outlining its preference to reach voluntary agreements and to invite expression of interest to pursue negotiations.

- 2.1.14 The Applicant also invited TBPL to consider its standard voluntary agreement in its response to TBPL's Relevant Representation, on 12 April 2023, explaining the structure of the voluntary agreement.
- 2.1.15 Following TBPL's appearance at CAH3, on the 3 October 2023, the Applicant met with TBPL's advisors who confirmed TBPL's willingness to progress the Applicant's standard voluntary agreement for the land required by the Applicant for the construction of highway works (plots 27-32, 27-35 and 27-43), but excluding the land plots required for the diversion of utilities (the utility plots) comprising plots (27-69, 27-40, 27-41, 27-44, 27-49, 27-51, 27-52, 27-53, 27-54, 27-55, 27-56, 27-65, 27-66, 27-67, 27-68, 27-70, 27-71 and 27-72).
- 2.1.16 The Applicant duly issued Heads of Terms for its standard voluntary agreement on 24 October 2023 (for plots 27-32, 27-35 and 27-43 only, excluding the utility plots listed above).
- 2.1.17 By way of phone call between TBPL's and the Applicant's surveyors on 7 November 2023, TBPL's surveyor requested a further copy of the Applicant's standard voluntary agreement Heads of Terms, now including the utility plots listed at paragraph 2.1.15 above.
- 2.1.18 Updated Heads of Terms (including utility plots) were duly issued on 9 November for TBPL's consideration.
- 2.1.19 On the 8 January 2024, TBPL responded stating there may be some interest in progressing an agreement including *some* utility plots (i.e. in respect of NGET's land requirements, being plots 27-66, 27-67, 27-68, 27-70 and 27-71), and requested a number of amendments to the standard Heads of Terms for NGET's standard easement. TBPL has informed the Applicant that it is unwilling to progress the Applicant's Standard Voluntary Agreement in relation to UKPN's land requirements (plots 27-69, 27-40, 27-41, 27-44, 27-49, 27-51, 27-52, 27-53, 27-54, 27-55, 27-56, 27-65 and 27-69)).
- 2.1.20 Following engagement with NGET, updated Heads of Terms were issued to TBPL on 21 February and 28 February 2024 removing UKPN land requirements from the scope of the agreement and accommodating TBPL's comments in respect of NGET's terms.
- 2.1.21 Following emails from TBPL's surveyor on 8 and 14 March 2024 requesting further amendments to the Heads of Terms for NGET's standard easement, the Applicant liaised again with NGET and reissued the latest version of its standard voluntary agreement to TBPL on 23 April 2024.
- 2.1.22 The Applicant has remained flexible and has offered various forms of its standard voluntary agreement (as noted above and requested by TBPL) in order to seek to progress negotiations, including acquisition of utility rights by agreement. The Applicant hopes that agreement on the Heads of Terms can be reached with TBPL following the acceptance of TBPL's amendments and reissued Heads of Terms on 23 April 2024.

## Access Agreement

- 2.1.23 The DCO would authorise the Applicant to acquire land and rights to enable access to, and conduct of, certain utility works in the vicinity of TBPL's facility.

During pre-application engagement, the Applicant acknowledged TBPL's concerns in relation to business disruption as a result of its land requirements and (in addition to modifying its methodology and reducing its Order Limits by 29.7 acres as outlined above), the Applicant proposed an Access Agreement to govern access to, and the undertaking of, utility works.

- 2.1.24 The Access Agreement is designed to mitigate, or completely avoid, business disruption during the undertaking of utility works on TBPL's site. Given TBPL's comments on the extent and progress of negotiations on the Access Agreement, the Applicant considers it helpful to set out its detailed record of engagement, as follows.
- 2.1.25 The Applicant first issued draft Access Agreement Heads of Terms on 2 November 2022. TBPL's surveyor responded with initial comments on, and amendments to, the Heads of Terms on 29 June 2023, and followed up with additional comments on 7 July 2023.
- 2.1.26 Following the Applicant's (and NGET's and UKPN's) review of TBPL's comments and proposed amendments, the Applicant returned revised Head of Terms on 3 October 2023 accommodating the majority of amendments proposed by TBPL.
- 2.1.27 TBPL issued amended Heads of Terms to the Applicant for further consideration on 2 November 2023. On 13 November 2023, and following Compulsory Acquisition Hearing 3, TBPL issued to the Applicant Heads of Terms for a separate form of licence agreement for temporary occupation to undertake utilities works, and proposed amendments to existing historic utility agreements.
- 2.1.28 On 29 November 2023, the Applicant responded to TBPL by proposing that provision for a temporary licence to occupy should be added to the existing Access Agreement Heads of Terms (rather than entering into a further separate standalone agreement) and sought TBPL's agreement to that approach. The Applicant advised TBPL that NGET and UKPN would also need to review and accept the approach settled upon.
- 2.1.29 TBPL raised further queries about the temporary licence proposal on 5 December 2023, which the Applicant responded to on 4 January 2024. On 8 January 2024, TBPL requested the Applicant to recirculate final draft Access Agreement Heads of Terms for approval. The parties discussed the matter on 9 January 2024, where the Applicant understood it was agreed that a temporary access licence could be included in the Access Agreement Heads of Terms.
- 2.1.30 The Applicant is therefore not clear why, at paragraph 3.3 of its submission, TBPL states that the Applicant is "trying to introduce further temporary occupation rights into the agreement despite Tarmac stating this is not agreeable". The Applicant is in contact with TBPL to discuss and resolve these points.
- 2.1.31 The Applicant updated the Access Agreement Heads of Terms to include a temporary licence to occupy, and issued to NGET and UKPN for their approval on 24 January 2024.

- 2.1.32 The latest version of the Access Agreement Heads of Terms, as proposed, also includes TBPL's preferred access route and includes the ability for Tarmac to vary the route in case of business need.
- 2.1.33 In summary, the Access Agreement Heads of Terms are now at an advanced stage of progress (subject to UKPN final review, and then TBPL's subsequent final agreement).
- 2.1.34 The Access Agreement by its nature is multi-lateral and includes TBPL, National Highways, NGET and UKPN as signatories. The Applicant does not yet have confirmation who is undertaking the works to the apparatus, which will be determined during detailed design and agreement with the Statutory Undertakers before undertaking the works, therefore it is necessary to include (and bind) NGET and UKPN to the obligations in the Access Agreement Heads of Terms, which are ultimately designed to mitigate disturbance to TBPL's operations.
- 2.1.35 TBPL have proposed certain terms that require careful consideration from National Highways, NGET and UKPN's property, construction and legal departments which inevitably has a bearing on the pace of negotiations.
- 2.1.36 The Applicant is committed to progressing the Access Agreement and is currently facilitating agreement with UKPN, before issuing back to TBPL for their final agreement.
- 2.1.37 For completeness, the Applicant signposts the SoS to its submissions made in respect of Compulsory Acquisition Hearing 3 (CAH3) which address the Project's interface with TBPL's interests [[REP6-087](#)]. The response to CAH3 Action Point 15 also comments further on these matters [[REP7-185](#)].

## Conclusion

- 2.1.38 The Applicant is committed to reaching voluntary agreements with landowners wherever practicable. The Applicant has engaged meaningfully and in good faith with TBPL, and will continue to progress both agreements with TBPL in that spirit.
- 2.1.39 For the reasons set out in post event submissions, linked above, and in this letter, in the event the parties are not able to reach voluntary agreement, the Applicant considers it has fully complied with the *Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land* (DCLG, September 2013), including in relation to seeking acquisition and use of land by agreement. Accordingly the Applicant firmly rejects the suggestions to the contrary made at paragraphs 2.4, 3.5 and 4.3 of TBPL's letter.

Yours sincerely

Dr Tim Wright  
Head of Consents– Lower Thames Crossing