



Mr Larkinson
Chief Executive Officer
Office for Rail and Road

Sent by email

30 September 2024

Dear Mr Larkinson,

Formal Complaint: National Highways' lack of transparency and inappropriate attempts to influence the decision making process for the Lower Thames Crossing

We wish to make a formal complaint to the Office for Rail and Road, as the Highways Monitor, about National Highways and its conduct regarding the controversial £9 billion Lower Thames Crossing.

National Highways has recently undertaken a local and national publicity campaign promoting the Lower Thames Crossing (LTC). Its campaign makes unsubstantiated claims about the purported economic benefits of the LTC which contradicts the evidence submitted to the examination of the scheme's Development Consent Order (DCO). The DCO is currently being considered by the Secretary of State for Transport, with a decision due on 4 October 2024, unless it is further delayed.

The complaints

1. National Highways is attempting to interfere with and undermine the democratic and legal process of deciding the Lower Thames Crossing DCO, and hence interfere with the property rights of those being compulsorily acquired.
2. National Highways is contradicting the evidence it submitted to the Lower Thames Crossing DCO examination.
3. National Highways is making unsubstantiated and unevidenced claims at a very politically and legally sensitive time, misleading industry, the public and the media.

4. National Highways, a Government owned company, is using public funds to lobby Government in pursuit of its own aims. As a result, it is failing to show due diligence and care when spending public money.
5. In making these new, unevidenced claims, National Highways is not following the Department for Transport's Transport Appraisal Guidance (TAG)¹, as required by the National Networks National Policy Statement (NNNPS). It is acting outside of the Department for Transport's and Treasury's frameworks for assessing transport schemes. Instead it is creating its own undisclosed and unorthodox methodology to assign an undisclosed "true value" for freight movements to create the false illusion of 'substance' for its claims.
6. National Highways is not acting in a transparent manner, contrary to its Licence and the conclusions of the recent ORR investigation, by not publishing any substantial analysis of its methodology nor the "true value" for freight it is using. It is attempting to undermine evidence it presented for examination and to circumvent the scrutiny that is meant to be at the heart of that process. This is not the first time that it has behaved in this manner.

Background

The 6-month long examination into the Development Consent Order (DCO) for the Lower Thames Crossing concluded on 20 December 2023, with the Examining Authority's Recommendations Report submitted to the Secretary of State for Transport on 20 March 2024. A decision by the Secretary of State whether to grant the DCO is due on 4 October 2024 after being deferred by the previous government.

There were 1,248 Interested Parties who participated in good faith in the DCO examination over its 6 months duration.

The DCO application contained a huge number of documents including a 472-page Transport Assessment with 9 Appendices (totalling 771 pages), and a 172-page Combined Modelling and Appraisal report and 9 Appendices (totalling 3,044 pages). These documents contained an assessment of the purported transport and economic benefits of the scheme. In its assessment of the Level 2 benefits for the scheme (which included wider economic benefits, journey time reliability, and agglomeration), National Highways estimated the Level 1 and Level 2 benefits would produce £3.3 billion benefits over the 60 year appraisal period (discounted to 2010 prices)². The adjusted Benefit-Cost Ratio (BCR) which included these disputed Level 2 benefits was just 1.22, ranked as "Low" value for money in the DfT's value for money framework.

¹ [TRANSPORT ANALYSIS GUIDANCE: The Transport Appraisal Process](#), Department for Transport, May 2018

² [Combined Modelling and Appraisal Report – Appendix D – Economic Appraisal Package: Economic Appraisal Report](#), Table 9-11, National Highways, October 2022

Many Interested Parties, including Thurrock Council, attempted to engage with these lengthy modelling and appraisal documents. During the examination there was considerable disagreement from Interested Parties with National Highways' evidence in these and other documents in the DCO application. A frequent complaint was that National Highways was refusing to disclose vital information about the way Level 2 benefits of the scheme had been assessed and captured. This undermined proper scrutiny of the scheme.

Other complaints included that:

- National Highways used an unrealistically low rate of inflation to artificially increase the apparent economic benefits of the scheme, and to decrease the costs
- National Highways failed to assess and include the costs of induced HGV and LGV traffic, despite claiming that the LTC would enable many more road freight trips

Thurrock Council concluded that:

“The Council considers that the ExA should find that insufficient evidence has been provided by the applicant and therefore the application is not in compliance with TAG... This is because the applicant has declined to submit evidence on these matters relating to Uncertainty to the Examination. The applicant proposes to do so only as advice to the Secretary of State after the proposed project is approved. This is a deliberate action by the applicant intended to deny the ExA and Interested Parties the opportunity to consider, scrutinise or challenge the evidence. This lack of transparency is wholly inappropriate and has prevented the ability of the Examination process to properly consider the application. It also means that important and relevant considerations are being withheld from the Examination and accordingly, it is not possible for a lawful decision to be taken, since at present these matters are not in Examination evidence.”³

At the end of the examination, considerable conflict and disagreement remained across all the affected local authorities, including 216 disagreements alone between Thurrock Council and National Highways in their Statement of Common Ground. This included the complaint that National Highways had not properly evidenced the purported £3.3 billion benefits of the LTC.

National Highways' unevidenced claims

Now, just nine months after the examination closed, National Highways has produced a brochure entitled 'Road to Growth'⁴ which contains new and unevidenced claims about the purported benefits of the LTC, inflating them from £3.3 billion (2010 prices) to “£40 billion”. National Highways also claims, without evidence, that congestion at Dartford costs £200 million a year. This brochure was launched by National Highways at a Parliamentary event on 5 September 2024, alongside a publicity campaign with YouTube videos and extensive social

³ [Thurrock Council Comments on Applicant's Submissions at Deadline 9 \(D9\)](#), Thurrock Council, 15 December 2023

⁴ [Road to Growth brochure](#), National Highways, September 2024

media. The claims made in this brochure contradict the evidence in the DCO application and in the 6-month examination.

Accompanying this brochure is a short, 3-page 'economic assessment'⁵ that claims the economic benefit of the LTC was underestimated in the DCO examination. National Highways now claim (without providing detailed evidence for how this was calculated) that the LTC will generate £40 billion of economic benefit, inflated by revaluing freight hauliers' time. However no figures are given for this new way to value freight movements. The 'economic assessment' merely says that *"Recent economic estimates that put a greater value on freight movements and other factors show that there would be a return in benefits nearer to 1.7 and add up to £40 billion to the UK economy over the first 60-years of its lifetime."* There is also no detail what these "other factors" are.

However, the £40 billion figure cannot be usefully compared to the scheme costs and as such is a meaningless and inflated figure that has been deliberately used to make the benefits of the scheme appear substantial. If this figure was presented in 2010 figures then it would be only £4.59bn and sound far less impressive.

Similarly, National Highways has only estimated the wider benefits, but not the wider costs, of increasing road freight. The costs to society and the economy of increasing road freight are significant, and are not in accordance with the new Labour Government's missions for modal shift, road safety and decarbonisation. By ignoring these costs, National Highways is further misleading the public.

National Highways has used this brochure and its unevidenced claims to mobilise media coverage and attract industry support. This has the potential to seriously mislead people.

Attempting to circumvent the democratic and lawful scrutiny processes

By its actions, National Highways is attempting to unduly influence the outcome of the DCO process using figures produced in a non-standard way and not subject to any scrutiny. This failure to be open to scrutiny also occurred during the examination, yet has not been held to account for either.

Its avoidance of scrutiny and failure to disclose methodologies, assumptions and figures, is not something new. It is endemic in just about every DCO application yet there appears a reluctance to confront this behaviour either within or without the examination process. As the body charged with overseeing National Highways, this is something the ORR should be aware of and tackling as a priority.

⁵ [Lower Thames Crossing economic assessments](#), National Highways, September 2024

Systemic governance failures

Without proper scrutiny, National Highways is getting away with passing off sub-standard schemes with out of date assessments and poor business cases. Governance structures appear to be failing and lacking transparency. For instance, the Accounting Officer Assessment for the LTC⁶, signed off by the CEO of National Highways and the Permanent Secretary of the DfT in December 2022, included a Benefit Cost Ratio (BCR) of 1.46 (which dates from 2020), when just three months earlier National Highways had included a BCR of 1.22 in the DCO application in October 2022. Meanwhile the Cabinet Office has refused to publish the Infrastructure and Projects Authority (IPA) assurance reviews for the LTC despite being ordered to do so by the Information Commissioner's Office⁷.

In the case of Tier 2 schemes up to £500 million, National Highways is allowed to sign off the Full Business Case itself without any Departmental or ministerial oversight. While that is not the case with a Tier 1 scheme, such as the £9 billion Lower Thames Crossing, the lack of scrutiny of figures provided by National Highways and the lack of inquisitiveness by those signing off large infrastructure projects is worrying. This we suspect is what has emboldened National Highways to behave in the way we have witnessed here.

Conclusion

We believe that National Highways has behaved in inappropriate ways regarding the information it has produced for the examination and since. It has not operated in a transparent manner and as a Government owned publicly run company should not be seeking to affect the outcome of a planning decision outside of the examination process. It is abusing its position and public funding to produce and promote material that has little basis in fact, is unevidenced, unorthodox and circumvents scrutiny. We trust that you will fully investigate these complaints and hold to account those who are abusing their position and public funds.

We look forward to hearing about the progress made in tackling these serious issues.

Yours sincerely,

Chris Todd

Director, Transport Action Network

Cc

Rt Hon Louise Haigh MP, Secretary of State for Transport

Lilian Greenwood MP, Future of Roads Minister

⁶ [LTC Accounting Officer Assessment](#), Department for Transport, December 2022

⁷ [ICO Decision Notice](#), February 2024 (the Cabinet Office is appealing, with a hearing scheduled in October 2024)