

Planning and Borough Development

Kensington Town Hall, Hornton Street, LONDON, W8 7NX

Executive Director Planning and Borough Development

Mr Jonathan Bore

Clare Gibbons
Planning Projects Manager
London Tideway Tunnels
The Point (7th floor),
37 North Wharf Road
Paddington, London, W2 1AF

My reference: **Response to Memorandum of Understanding**

Please ask for: Patricia Cuervo

15th March 2011

Dear Ms Gibbons,
Please see enclosed the response of the Royal Borough of Kensington and Chelsea to the Memorandum of Understanding (MOU).

The Royal Borough of Kensington and Chelsea's response to Memorandum of Understanding

Purpose and legal status and duration of this memorandum

- Clause 2.5 - the MOU doesn't cover works and/or applications not included in the Development Consent Order Application (DCO). However, other works related to the Thames Tunnel Project such as survey and enabling works should be included as many of them may have to be carried out at night and will have noise implications.
- Clause 2.6 - the MOU will lapse upon acceptance of the DCO Application by the IPC; however, the requirements of the DCO after the consent order has been granted should also be covered as they could require a large amount of work to be undertaken by the Council and this work should be the subject of the MOU.

General obligations of Thames Water

- Clause 7 (h) - the period established is not long enough in certain cases where the documents need to be circulated internally, commented upon and may have to be formally approved by the Council – such decisions have a long lead time. Do we need to agree specific timings or should each deadline be agreed in due course and stated as such in the memorandum? If the time is kept to 5 working days, formal comments will not be possible.

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General obligations of the authorities

- Clause 8 (g) (j) (k) - same comment as for clause 7 (h). Specifically, at least 20 or more working days should be given prior to any Council, cabinet or committee meeting at which any report of matter relevant to the Project will be considered. Responses to communications associated with this Memorandum will be dealt with promptly but the 10 working days deadline should be increased to 20.
- Clause 8 (h) - we believe this would probably require us to make some arrangements with the other authorities for coordinating press statements but it is not very clear. Could you please clarify?

Review of draft development consent order application documentation and other documentation and other actions

- Clauses 9.4.2-9.4.5 - the periods established are not long enough in cases where the documents need to be circulated internally, commented upon and even approved by Cabinet or full Council. A period of 20 working days is preferable for the three clauses.
- Clause 9.8 - the first line should refer to clause 9.7 (not 9.6);
- Clause 9.6 - would written responses to workshops be required? If not, they should not be included in this clause.
- Clause 9.7 - We understand the value of lead officers as it would make sure consistent standards are applied across the board. However, it may be in our residents' best interests for us to deal with the issues directly and just agree a generic approach between boroughs. We would need to be confident that our views are adequately considered by the officer leading on any given issue. Point (g) may be difficult as our requirements for design and mitigation are very different from some other boroughs. Would the lead authority be able to charge for the extra time incurred in doing so? And would any authority be able to recoup costs or just the lead authority? For contaminated land for example, the approach could be the same across the project, but we have other local issues, specific for this Borough and these issues should be spelt out in this memorandum of understanding.

Reimbursement of costs and other expenses incurred by the authorities

- Clause 10.1.1(b) - what is the amount of working days notice required here? We believe 15 working days may be appropriate.
- In respect to the charges, a detailed schedule of charges will need to be agreed by both parties. This schedule will need to include not only the charges incurred by planning officers but also colleagues in other Council departments such as Environmental Health and Transportation, legal services and external consultants (if required).
- Clause 10.3 - will a list with the authorised expenditure limits for different work packages be included as an appendix? If not, we consider it should be included.
- what does exceed the 'authorised limit'?
- What does clause 10.2.3. (e, iii) mean: 'other'?

Dispute resolution

- Clause 11.3 on dispute resolution contains a numbering error, it says : 11.3 The Parties agree that any agreement reached further to paragraphs 13.1 or 13.2 shall be binding upon them. This must be a reference to 11.1 and 11.2 which is where the parties try to resolve issues by agreement.

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Determination of dispute as to costs

- Clause 12 states that “Such matters [i.e. costs of mitigation] are to be dealt with separately as appropriate.” Could you please explain what the appropriate mechanisms will be?

Termination

- Clause 14.1 - 10 working days notice in writing is required to withdraw from this Memorandum. However, Clause 14.2 explains that if Thames Water wish to withdraw from the Memorandum you will only pay costs approved as at the date of notice of withdrawal. We consider that at least 10 working days are given as a notice and therefore any further costs could be claimed within that time period.

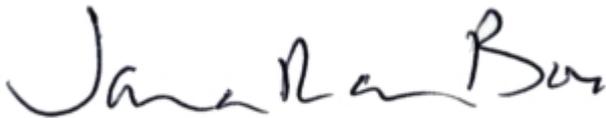
Schedule 3: Information Acts Protocol

- Paragraph 2.1 - It is good practice to consult with third parties in Freedom of Information requests and we shall continue to do so. However, the Council will obviously have the final say in all cases.
- Paragraph 2.2 - The requirement to refuse such requests is not one we can enforce. It is not clear if this means that where we have consulted with Thames Water and we have come to the decision that a relevant exception does apply and that the public interest does not require us to disclose it then, we can refuse. This will have to be spelt out in the final document.

Appendices

The terms of reference in Appendix 1 relating to the approved form of fee estimate in Appendix 2 are not included. These should be sent to us prior to any agreement in relation to this Memorandum.

Please do not hesitate to contact Patricia Cuervo if you have any further queries.
Yours sincerely,



Jonathan Bore
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