

Dear Ofwat Corporate Finance,

Thank you for cooperating with the court in your disclosures:

‘Consultation on award of a project licence and issue of a waiver notice to the infrastructure provider’ – further information (published 7 August 2015)

This note sets out further information on ‘[Consultation on award of a project licence and issue of a waiver notice to the infrastructure provider](#)’, which we published on 17 July 2015. The deadline for responding to the consultation is 14 August 2015.

In response to a request for information received by Ofwat under the Environmental Information Regulations, we provided the following additional information to the requester.

Costs

The Original Base Case Forecast is a defined term in the project licence. It means “at any time, the sum of the Annual Base Case Forecasts at that time.” The Annual Base Case Forecasts will be set out in Annex A to Appendix 1 of the draft project licence but in the consultation version of the project licence these were left blank – (£[]). We now estimate the sum of the Annual Base Case Forecasts to be £3.144 billion in 2014-15 prices. This relates to the infrastructure provider’s estimated costs.

The Threshold Outturn will be a fixed number set out in the project licence. If the Threshold Outturn is reached, the infrastructure provider can ask Government to invest in the project as the shareholders of the infrastructure provider are only obliged to fund the project up to the Threshold Outturn. The Threshold Outturn will be calculated based on the Original Base Case Forecast at licence award plus 30% (see page 5 of the explanatory note to the draft project licence attached to ‘[Consultation on the regulatory framework for the infrastructure provider that will deliver the Thames Tideway Tunnel Project](#)’, which we published in October 2014.

Thames Water’s costs for delivering those elements of the Project which it is required to deliver are set out in our final determination (which can also be accessed on our [website](#)).

Construction contractual structure

Below we set out a diagram setting out the construction contractual structure for the project.’

To be read with the construction contractual structure for the Thames Tideway Tunnel at : http://www.ofwat.gov.uk/regulating/pap_tec201508tttfurther.pdf

With Ofwat’s attached diagram and reply to Thames Blue Green Economy (**TBGE**) under the Environmental Information Regulations, the Court will be able to draw the following conclusions:

1. Ofwat has been put on notice that any licence issued under the terms described, or as yet undisclosed, for making the Thames Tideway Tunnel is not in the public interest as there is no need.
2. The March 2012 National Policy Statement for Waste Water (**NPSWW**) is a legal fiction based on false information for the purpose of avoiding public consultation on better solutions under the Aarhus Convention and direct effect of the Environmental Impact Assessment (**EIA**) Directive.
3. The Secretaries of State (SsOS) are attempting to impose or dictate unnecessary infrastructure at excessive cost for corporate interests against the public interest.
4. As the provision of unnecessary infrastructure is fiscal fraud, you may feel obliged under your duties to prospective shareholders, to inform them their investment is at risk if, or when, at any

time in the future, it is shown that their contracts were based on false information. Any liability is theirs under due diligence and not UK taxpayers.

5. The legal fiction of need described in the NPSWW of March 2012, on discovery of it being based on false or redundant technical information, is in danger of being seen as policy for the purpose of defrauding the public under the guise of statute, therefore unlawful, null and void:

“Equity will not allow a statute to be used as an instrument of fraud” per Lord Eldon, *Mastaer v Gillespie (1805) 11 Ves 621*.

(The court has been referred to the fiscal fraud arguments in ‘Request for a Preliminary Reference to the Court of Justice of the European Union’, submitted to the Examination Authority, but unanswered except by para 17 of the SsofS’s ‘Statement of Reasons’; that they were ‘unaware of any law’ preventing them making the decision as they did.)

6. The substance of your reply, quoted here in full, gives the same impression as the ExA and SsoS of being ‘unaware of any law’ preventing you issuing a licence:

‘The current consultation is not on the intention to build the tunnel. The decision to build the tunnel was not an Ofwat decision. It is a decision taken by Government and Government gave effect to that decision by issuing the Project Specification Notice in June 2014 (it can be accessed on the [Gov.uk website](http://www.gov.uk)). The Specification Notice set out the parameters of the project and obliged Thames Water to put the specified project out to tender. Our current consultation is on whether the successful tenderer is fit and proper to hold a project licence.

For the record, we have no knowledge of any current proceedings in respect of any aspect of the decision to build the Thames Tideway Tunnel. ‘

7. On your last point. The court proceedings of Blue Green London Plan are now on public record: Case No. CO/ 4943/2014 for the High Court, and CASE No.20150340 for the Court of Appeal, although the judgement has yet to be approved by the court. Arguments for returning to court are currently being considered by the court, but that does not limit the power the court may have to order further disclosure.
8. The main concern of the court, as of the public is that *‘fraud unravels everything’ Lazarus Estates Ltd v Beasley [1956] 1 Q.B. 702 at 712*. Mr Justice Ouseley in his judgement assures me I am wrong to fear corruption of the court. There is, however, concern that Ofwat is being instrumentalised to initiate the fraudulent process in compliance with Government policy but against UK and European law.
9. For that reason, on your ‘fit and proper’ point, *United States ex rel. Schroeder v. CH2M Hill, No. 09-cv-5038 (E.D. Wash.)*, is not helpful: CH2M Hill, the proposed project manager for the whole TTT construction, has agreed its Company “committed federal criminal violations, defrauding the public by engaging in years of widespread time card fraud between 1999 and 2008. “knowingly, willfully, and with intent to defraud, facilitated CHG’s hourly workers routinely getting paid for hours they did not work and combined, conspired, and agreed with CHG hourly workers to accomplish the same, all at the sole expense of the citizens of the United States.” To be found at: <http://www.justice.gov/opa/pr/ch2m-hill-hanford-group-inc-admits-criminal-conduct-parent-company-agrees-cooperate-ongoing>

10. The court, as with and the public and your respondent expert, Martin Blaiklock, will no doubt require significantly more convincing evidence that the project would not be one of immense fiscal fraud. As he puts it in his (edited) intervention:

‘(a) correction: the Specification Notice required TW to put the Specified project out to “competitive” tender and that “competitive tension” be achieved. With only two bidders, that does not meet normal standards of competition.

(b) Under its Regulatory regime, OFWAT must act in a manner which OFWAT considers is best calculated “to protect the interests of consumers”.

With respect to TTT, neither OFWAT, nor TW/DEFRA on OFWAT’s behalf, have sought to find out “the interests of consumers”.

If TW customers do not know about TTT, how can OFWAT act in their interests?’

11. Your disclosure on costs, with its diagram, graphically illustrates the fears expressed over ‘who’s paying?’ in the 6 Parliamentary questions asked on 26 June 2015 alone, replied to by Rory Stewart, on 6 July 2015, which now seems less credible.

12. The court will be able to recognize from Ofwat’s consultation diagram that, if the false information of, for example, the Applicant’s EIA, the spurious cost benefit analysis as shown by Prof Chris Binnie, the financial irregularities shown by your respondent, the invalid technical analysis elaborated by Professors Richard Ashley and Cedo Maximovic, the estimated £30 Billion savings estimated by Prof Colin Green using a Blue Green London Plan, and more falsehoods on which it is based are taken into account, it is, in fact, a clearly set out Plan for fiscal fraud.

13. The sum of the ‘Annual Base Case Forecasts’ being £3.144 billion in 2014-15 prices is of no reassurance at all, as if the ‘Threshold Outturn is reached at 30% higher, the infrastructure provider can ask Government to invest in the project’ - to an unlimited liability extent for taxpayers, with added costs of any insurance against such ‘Outturn’. As such, any Ofwat licence to implement the construction contractual structure for the Thames Tideway Tunnel as shown, would be an invitation to commit fiscal fraud, making the licence itself an instrument of fraud.

14. If the need established by the 12 March NPS is fact, arguments would be very different, but it was written by government lawyers overriding leading experts in water management, making it a legal fiction based on self-serving falsehoods and, as such, is an instrument of fraud.

15. The court will no doubt wish to be assured that Ofwat itself understands that no democratic government can order or excuse contravening the Rule of Law, not least as it is against the will of Parliament. (Lord Woolf LCJ’s warnings of ‘elective dictatorship’ having been rehearsed in the pleadings, in relation to imposing infrastructure without proper consultation.)

16. This cannot be circumvented by being ‘unaware of any law’ or, as with the SsoS, simply refusing to acquaint themselves with vital information necessary for meaningful public consultation, ‘whether the SsoS failed to acquaint themselves with the information necessary for the decision to be rational’, per Ouseley J in *R (Badger Trust)*. The court is bound to consider

that to be against the decision-making process under our system of law for maintaining a democracy.

17. Ofwat already has that information, since Blue Green Independent Expert Team (BGIET)'s response on 29 November 2013 to your previous public 'Consultation on draft guidance for selecting specified infrastructure projects', the outline reasons for a 'Blue Green Plan for London' due to '**Circumstances bypassing the need for the Tideway Tunnel**' were given with further references to its website bluegreenuk.com
18. The court is also already aware of previous questions to Parliament and the House of Lords <http://www.bluegreenuk.com/forum.html> and previous Ofwat consultations, leading to Lord Berkeley's open letter to your Chief Executive, Cathryn Ross, on 18 March 2015, with the basic element of fiscal fraud; no need for the Tunnel and the 'regulatory capture' of Ofwat, with its regrettable failure to act in the public interest.
19. The difficulty of one organization to break a conspiracy of many is appreciated, (it took the US Department of Justice 16 years in *CH2M Hill*) but it has now come to you to put the fraud into action with presumed innocent parties. Your responsibilities also require you to acquaint yourself with the EIA significance of the new 'Blue Green' water industries under the Directive, for the regulation of their integration into existing infrastructure, including cooperating with the Department for Energy and Climate Change, with its 80% CO2 reduction target by 2050.
20. In any event, the sums of the 'Annual, or Original Base Case Forecasts' do not begin to match the hard financial evidence now coming from cities across the globe, such as Philadelphia, of the real financial benefits to the public of lower costs, quicker delivery, less loss of amenity, far greater added value, pollution reduction and environmental improvement of a Blue Green London Plan. Rather they confirm again the Tunnel is not in the public interest on costs alone, making it more irrational.
21. The fact that some information in the Applicant's Environmental Impact Assessment may have become false during the long planning process since the (unlawful) government decision of 2007 is no excuse, as the SsOS have the power to recall the 2012 NPSWW on acquainting themselves of new BTKNEEC, so fail in their duty to make a rational decision.
22. This being a response to your disclosure under CPR 31, it is for the court to decide the next legal step, but again, I would remind you that, as the court is a higher authority than the regulator, and, as a constitutional matter where Parliament is higher than its present government, it is inadvisable to take any action that would compromise the court's ability to deal with the case justly, or before it has given its final ruling on the lawfulness of the Thames Tideway Tunnel.

Graham Stevens IP, LIP
Aarhus Convention claimant

August 14 2015