Transport and Works Act 1992

The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006

Report on Consultation undertaken for the proposed modification of the River Tyne (Tunnels) Order 2005

REPORT OF NTC PROJECT DIRECTOR

1. Introduction

1.1 This Report has been prepared pursuant to Rule 10(2)(d) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (the Applications Rules) in support of Tyne and Wear Integrated Transport Authority's (TWITA) application for an order under the Transport and Works Act 1992 the effect of which, if made, would be to modify the River Tyne (Tunnels) Order 2005 (2005 Order).

1.2 The effect of the modification would be to extend the time by which TWITA must set the Concession Toll under the 2005 Order by one year to 25 August 2013 instead of 25 August 2012 that the 2005 Order currently specifies.

1.3 This document is divided into five sections and provides:
   1.3.1 an introduction to the purpose and need for the Report;
   1.3.2 a brief description of the proposals for, and objectives of, the proposed modification;
   1.3.3 a description of the consultation process;
   1.3.4 an analysis of the consultation responses; and
   1.3.5 the conclusions drawn.

1.4 A glossary of terms used in this Report can be found at Appendix 1.
2. The proposals and their objectives

2.0 The Tyne Tunnel is a major piece of highway infrastructure in the Tyne and Wear Sub-Region. It was opened to traffic in October 1967 and was funded on the basis of tolls levied at the tunnel. The Tyne Tunnels Act 1998 allowed monies raised at the Tyne Tunnel to be used for the development of the New Tyne Crossing and on 26 August 2005, the 2005 Order came into force. This allowed the construction of a new tunnel, the refurbishment of the existing tunnel and ancillary works to proceed.

2.1 The 2005 Order gives powers for tolls to be charged at the tunnel and for a concession arrangement to be put in place for the design, construction, financing and operation of the New Tyne Crossing.

2.2 The 2005 Order places constraints on the TWITA in terms of how and when the Concession Toll is implemented. If the TWITA wishes to set a Concession Toll it has to be set by the TWITA within 7 years of the 2005 Order coming into force i.e. by 25th August 2012. Further, it also allows for the TWITA to use transitional steps to bring the pre-2005 Order toll up to the level required for the Concession Toll so that tunnel users are not hit by a high, one-off increase in tolls once the New Tyne Crossing is opened for public use. The 2005 Order places constraints on the Transitional Toll process too: the TWITA can only increase the toll by 80p for cars (i.e. to £1.80 from £1.00) and for HGVs by £1.60 (i.e. to £2.80 from £1.20). There is also a general constraint that only one increase in tolls may be applied in any 12 month period.

2.3 The 2005 Order also requires the TWITA to comply with Directive 1999/62/EC. This Directive relates to tolls for heavy goods vehicles (HGV) and requires HGV tolls to reflect the larger costs caused by HGVs compared with cars or light goods vehicles.

2.4 A primary aim of the TWITA in developing the project has been to minimise the tolls to be charged to users. The toll had to be sufficient to meet the objective of the project being entirely self financing without recourse to the resources of the TWITA or its constituent Local Authorities. The procurement process for a concessionaire made it possible for the TWITA to publish its tolling strategy in September 2007. By this time the TWITA had exercised the tolling powers granted by the 2005 Order on two occasions as a means to adjust the 2005 level tolls in the direction of the eventual toll needed. The remaining paragraphs of this section explain these stages.

2.5 The actual level of the toll required to meet the TWITA objectives for the scheme of minimising the toll charged to users and for the project to be self financing could only be determined once procurement of the concession contract was at an advanced stage. This is because the cost of the concessionaire eventually appointed to operate the tunnels would affect the level of Concession Toll.

2.6 The procurement process was delayed because of a challenge in the High Court to the Secretary of State’s decision to make the 2005 Order. Procurement started with the issuing of the Invitation to Negotiate (ITN) documents in February 2006 following the TWITA’s consideration of the details of the challenge. The challenge was subsequently heard in the High Court in April 2006 and the court’s decision to uphold the SoS’s decision was handed down in May 2006.
2.7 Prior to issuing the ITN, the TWITA resolved to use Transitional Toll powers to begin the process of moving the toll up toward that required to fund the New Tyne Crossing concession contract. The tolls were increased on 1/1/2006 to £1.10 for cars and £1.50 for HGVs. A second transitional toll increase was approved and implemented on 1/1/2007 which brought the tolls to £1.20 for cars – HGVs toll remained at £1.50. By August 2007, it became clear that the required toll was £1.60 for cars. Following consultation with major HGV stakeholders and the DfT, a multiplier of 2 for the level of HGV toll to that for cars was considered acceptable – though very much reluctantly by the stakeholders – to satisfy the Directive 1999/62/EC and was approved by the TWITA at its September 2007 meeting.

2.8 The approved toll strategy is set out below. In setting the strategy the TWITA were minded to:

(a) impose no further toll increase before the users received the benefit of the additional capacity that the New Tyne Crossing project would bring.

(b) provide ‘manageable’ increments to the toll for HGVs because of the significant increase required from £1.50 to £3.20 (twice the level for cars).

2.9 The approved toll structure has been posted on the NTC web-site since 2007 as follows:-

<table>
<thead>
<tr>
<th>Date</th>
<th>Cars</th>
<th>HGV</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 January 2012*</td>
<td>£1.40</td>
<td>£2.00</td>
</tr>
<tr>
<td>1 January 2013*</td>
<td>£1.60</td>
<td>£2.50</td>
</tr>
<tr>
<td>1 January 2014*</td>
<td>£1.60</td>
<td>£3.20</td>
</tr>
</tbody>
</table>

* subject to completion date of the New Tyne Crossing and once all facilities are available to traffic.

2.10 At the time this strategy was approved, it was TWITA's view that the 2005 Order permitted the application of a Transitional Toll increase on 1 January 2013 despite this occurring after the TWITA had to make the resolution to set the Concession Toll.

2.11 During the course of subsequent meetings with the DfT this interpretation was questioned and the TWITA accepted the DfT's interpretation, which was that once the Concession Toll had been set, the TWITA was no longer permitted to increase the Transitional Toll.

2.12 As a result of the timing of the construction, the level of the final toll and the requirements of the Order in relation to setting the ‘final or Concession’ toll, the toll strategy announced in September 2007 cannot be delivered.

2.13 This made it necessary for the TWITA to reconsider the toll strategy and ways in which it might be possible to maintain it. The solution to this is either to modify the strategy or to modify the 2005 Order. Both the New Tyne Crossing Project Board and the Tyne Tunnels Working Group in May 2011 endorsed a move to explore modification to the 2005 Order, which the TWITA pursued.

2.14 The remaining sections of this Report set out the consultation process, the results of the consultation and the conclusions from it that TWITA has drawn.
3. **Description of the consultation process**

3.1 The TWITA carried out pre-application consultation on the question of whether the modification to the 2005 Order should be sought. Formal pre-application consultation was carried out between 23 May and 24 June 2011. However, consultation responses received after that date were taken into account by the TWITA in reaching its decision on whether or not to make the application for the proposed Order. This means that all the pre-application consultation responses that TWITA has received on the subject of the proposed Order have been taken into account and considered in this Report.

3.2 Prior to carrying out the consultation, the TWITA carefully considered who the appropriate consultees would be for the purposes of its application. In making its decisions, it has complied with any statutory requirements set out in the Applications Rules and has also had regard to the Department for Transport's Guide to TWA Procedures (June 2006) which contains guidance on the pre-application consultation process.

3.3 In summary it identified its proposed pre-application consultees as:

3.3.1 **the statutory consultees** for the purposes of the proposed Order who would be entitled to receive a copy of the application and associated documents. These were identified as North Tyneside Council and South Tyneside Council. As a result they were each contacted by letter sent by the TWITA on 26 May 2011. The statutory consultees were also consulted on their views on the identity of the major stakeholders;

3.3.2 **major stakeholders** that would represent those having a particular interest in the proposals. These were identified as the Freight Transport Association, the Road Haulage Association and the Tyne and Wear Freight Partnership. The major stakeholders were contacted by letter on 23 May 2011. The NTC Project Director, by invitation, attended a meeting of the Freight Transport Association on 14 June 2011 to explain to their members the reasons for the consultation and its content;

3.3.3 **HGV tunnel users** who are currently liable to pay the toll and so, too, would have a particular interest in the proposals. A letter explaining the reason and purpose of the consultation, a response sheet and pre-paid return envelopes were handed out to 1500 HGV users on 14 and 15 June 2011. This exercise was carried out by TT2 Ltd staff at the new north plaza – which is currently handling toll transactions for north and south bound traffic; and

3.3.4 **the general public** some of whom could also be tunnel users and so may be interested in the proposals. A page explaining the reasons for and purpose of the consultation, with an electronic response form, was installed on the New Tyne Crossing web-site on 10 June 2011. An appropriate message about the consultation was put onto the 'Home' page on 10 June 2011 with a link to the consultation page and form. This was available for access until 22 August 2011.

3.4 Copies of letters sent by TWITA and the web page are to be found in Appendix 2.
4. **Analysis of consultation responses**

4.1 **Statutory Consultees**

North Tyneside Council - supported modification of the 2005 Order.

South Tyneside Council - supported modification of the 2005 Order.

Copies of responses from each statutory consultee are included in Appendix 3.

4.2 **Major Stakeholders**

The **Freight Transport Association** supported modification of the 2005 Order but did seek clarification on the necessity to impose a multiplier of 2. This clarification is outside the scope of the consultation and is therefore not addressed in this Report.

The **Road Hauliers Association** supported the modification of the 2005 Order but with the caveat that the additional time be also used by the TWITA to revise the entire tolling structure.

The **Tyne and Wear Freight Partnership’s** response indicated that as most of the TWFP membership were also members of the FTA and RHA it would defer to the views expressed by these two organisations.

4.3 **Tunnel Users**

1500 letters were given out to HGV drivers at the tolls plaza on 14 and 15 June 2011. A total of 95 returns were received, which constituted a return rate of 6.34%.

The returns were as follows:

1. **For** modifying the 2005 Order 80 or 84.2%.
2. **Against** modifying the 2005 Order 10 or 10.5%.
3. **No preference** 5 or 5.3%.

4.4 **Public consultation through the web-site**

Only 3 returns have been received via the web-site. All 3 or 100% were in favour of modifying the 2005 Order.

4.5 **Combined HGV Users returns and web-site returns.**

1. **For** modifying the 2005 Order 83 of 98 or 84.7%.
2. **Against** modifying the 2005 Order 10 of 98 or 10.2%.
3. **No preference** 5 of 98 or 5.1%. 


5. **Conclusions**

5.1 The consultation results show that the statutory consultees, the major stakeholder organisations affected and the overwhelming majority of (HGV) users would support the TWITA in applying to modify the 2005 Order as proposed.

5.2 The TWITA therefore considered that it was both justified and appropriate to prepare and submit an application for the proposed Order.

5.3 There were a number of comments contained in the returns that were of general interest but not directly related to the substance of the consultation. These will be reported to the TWITA for information.

Contact Officer: P Fenwick, phone: (0191) 211 6058
Appendix 1 -

Glossary of Terms

Concession Toll - the toll set by the TWITA which is used throughout the concession period subject to revision in accordance with the Order.

Transition Toll - toll set by the TWITA based on the 2001 Tyne Tunnel Toll Order but subject to the provisions set out in Schedule 14 of the Order. The 2001 Order set the toll for cars at £1-00, the transition powers allows this to be increased to £1-80. HGV toll may be increased at twice the rate of increase for cars. Only one increase is allowed in any 12 months.
Appendix 2

(All letters sent out and Web Page)
Dear

New Tyne Crossing
Tolling Strategy

The construction of the New Tyne Crossing is making good progress and is still on programme for completion in December 2011. I am sure that your members will be looking forward to the better service – and the removal of the congestion – at the Tyne Tunnel. However, the enhanced service comes with a price to pay and in this case; it is with the need to increase the tolls.

In 2007, I undertook to explain to the logistics industry in the North East Region the need to comply with EU Directive 1999/62/EC and the implications for the Tyne Tunnel toll. The outcome from that exercise was an acceptance, albeit somewhat reluctantly given, that the multiplier for tolls – cars to HGVs – which had been as low as 1.2 at the Tyne Tunnel needed to rise to comply with the Directive and that a figure of 2 was understandable. In coming to this view it was noted that all the other major tolled crossings in the country have multipliers greater than 2. Applying this to the toll required for cars of £1.60 means a toll for HGVs at £3.20. I explained that the TWITA intended to use its transitional tolling powers to effect a stepped change for HGVs. This was considered to be a positive move at the time. The TWPTA (TWITA) considered tolling on 27 September 2007 and set a toll strategy for the Tyne Tunnels as follows:-

<table>
<thead>
<tr>
<th>Date</th>
<th>Cars</th>
<th>HGV</th>
</tr>
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<tbody>
<tr>
<td>1/1/08</td>
<td>£1.20</td>
<td>£1.50</td>
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<tr>
<td>1/1/12*</td>
<td>£1.40</td>
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* Implementation dependent on New Tyne Crossing having been fully opened to traffic. Any delay at the first post opening transitional toll increase is mirrored in subsequent toll increases.

The final toll increase is referred to as the ‘Concession Toll’ and is the one which is used for RPI increases as set out in the River Tyne (Tunnels) Order 2005 (the Order). The structure for the Concession Toll – which includes classification of vehicles as well as toll amount – under the Order, has to be set by 25 August 2012. It will be seen from the above strategy that there is to be a transitional toll increase for HGVs following the Concession Toll having been set. TWITA considered this to be allowable when it set the toll structure in 2007. Following consultation with the Department for Transport, TWITA now consider it to be doubtful as to whether the Order does in fact provide for this situation. Prudence suggests that this is not put to the test but to do one of two things as follows:-

1. Shorten the transitional toll process – and introduce the Concession Toll at 1/1/13 and comply with the Order as it stands today.

2. Amend the Order to provide more time in which the TWITA may set the Concession Toll so as to maintain the above toll increase timetable.

The effect of the former on HGVs would be to introduce the higher toll earlier. For the latter, the TWITA will need to submit a new Order with a specific provision to allow more time in which to set the Concession Toll.

Before these options are put to the TWITA for a decision on how to proceed, I am writing to key stakeholders for their views on the options. I would welcome your Association’s considered response to this matter so that it can be reported to the TWITA prior to a decision being taken. I would be very grateful, therefore, if you could respond to me by Friday 24 June 2011.

If you wish to discuss this matter with me or would like me to attend any meeting then please do not hesitate to contact me.

Yours sincerely

P A Fenwick
New Tyne Crossing Project Director
Dear Graham

New Tyne Crossing Tolling Strategy

The TWPTA (now TWITA) made a decision on 27 September 2007 to set a toll strategy for the Tyne Tunnels as follows:-

1/1/08  £1.20 cars  £1.50 HGV
1/1/12* £1.40 cars  £2.00 HGV
1/1/13* £1.60 cars  £2.50 HGV
1/1/14* £1.60 cars  £3.20 HGV

* Implementation dependent on New Tyne Crossing having been fully opened to traffic. Any delay at the first post opening transitional toll increase is mirrored in subsequent toll increases.

This followed two toll increases at the Tyne Tunnel implemented on 1 January 2006 and 1 January 2007 using the Transitional Tolling powers contained in the River Tyne (Tunnels) Order 2005 (the Order). In September 2007 the TWITA took the view that they did not wish to impose any further increase in tolls on users until the New Tyne Crossing construction works were complete. The above structure reflects that position. It also reflects the TWITA’s desire to raise the HGV toll in ‘more manageable’ steps – particularly because of the scale of the increase needed to satisfy EU Directive 1999/62/EC.
The final toll increase is referred to as the ‘Concession Toll’ and is the one which is used for future RPI increases to the toll as set out in the Order. The structure for the Concession Toll – which includes classification of vehicles as well as toll amount – under the Order, has to be set by 25 August 2012. It will be seen from the above strategy that there is to be a transitional toll increase for HGVs following the Concession Toll having been set. TWITA considered this to be allowable when it set the toll structure in 2007. Following consultation with the Department for Transport, TWITA now consider it to be doubtful as to whether the Order does in fact provide for this situation. Prudence suggests that this is not put to the test but to do one of two things as follows:-

1. Shorten the transitional toll process – and introduce the Concession Toll at 1/1/13 and comply with the Order as it stands today.

2. Amend the Order to provide more time in which the TWITA may set the Concession Toll so as to maintain the above toll increase timetable.

The effect of the former would be to introduce the higher toll on HGVs earlier – there is no effect on tolls paid by cars. For the latter, the TWITA will need to submit a new Order with a specific provision to allow more time in which to set the Concession Toll.

Before these options are put to the TWITA for a decision on how to proceed, I am writing to South and North Tyneside Councils as statutory consultees and to key stakeholders for their views on the options. I would welcome North Tyneside’s considered response to this matter so that it can be reported to the TWITA prior to a decision being taken. I would be very grateful, therefore, if you could respond to me by Friday 24 June 2011. I would also welcome your comments at your earliest convenience, on the need or extent to which the TWITA should consult with the public in North Tyneside on this matter.

If you wish to discuss this matter with me or would like me to attend any meeting then please do not hesitate to contact me.

Yours sincerely

P A Fenwick
New Tyne Crossing Project Director
Dear Martin

**New Tyne Crossing Tolling Strategy**

The TWPTA (now TWITA) made a decision on 27 September 2007 to set a toll strategy for the Tyne Tunnels as follows:-

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<td>£3.20</td>
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</table>

* Implementation dependent on New Tyne Crossing having been fully opened to traffic. Any delay at the first post opening transitional toll increase is mirrored in subsequent toll increases.

This followed two toll increases at the Tyne Tunnel implemented on 1 January 2006 and 1 January 2007 using the Transitional Tolling powers contained in the River Tyne (Tunnels) Order 2005 (the Order). In September 2007 the TWITA took the view that they did not wish to impose any further increase in tolls on users until the New Tyne Crossing construction works were complete. The above structure reflects that position. It also reflects the TWITA’s desire to raise the HGV toll in ‘more manageable’ steps – particularly because of the scale of the increase needed to satisfy EU Directive 1999/62/EC.
The final toll increase is referred to as the ‘Concession Toll’ and is the one which is used for future RPI increases to the toll as set out in the Order. The structure for the Concession Toll – which includes classification of vehicles as well as toll amount – under the Order, has to be set by 25 August 2012. It will be seen from the above strategy that there is to be a transitional toll increase for HGVs following the Concession Toll having been set. TWITA considered this to be allowable when it set the toll structure in 2007. Following consultation with the Department for Transport, TWITA now consider it to be doubtful as to whether the Order does in fact provide for this situation. Prudence suggests that this is not put to the test but to do one of two things as follows:-

1. Shorten the transitional toll process – and introduce the Concession Toll at 1/1/13 and comply with the Order as it stands today.

2. Amend the Order to provide more time in which the TWITA may set the Concession Toll so as to maintain the above toll increase timetable.

The effect of the former would be to introduce the higher toll on HGVs earlier – there is no effect on tolls paid by cars. For the latter, the TWITA will need to submit a new Order with a specific provision to allow more time in which to set the Concession Toll.

Before these options are put to the TWITA for a decision on how to proceed, I am writing to South and North Tyneside Councils as statutory consultees and to key stakeholders for their views on the options. I would welcome South Tyneside’s considered response to this matter so that it can be reported to the TWITA prior to a decision being taken. I would be very grateful, therefore, if you could respond to me by Friday 24 June 2011. I would also welcome your comments at your earliest convenience, on the need or extent to which the TWITA should consult with the public in South Tyneside on this matter.

If you wish to discuss this matter with me or would like me to attend any meeting then please do not hesitate to contact me.

Yours sincerely

P A Fenwick
New Tyne Crossing Project Director
HGV Tolling Consultation

In September 2007, the Tyne & Wear Integrated Transport Authority (TWITA) set the toll strategy needed to fund the New Tyne Crossing project as follows:

- 1/1/12* £1.40 cars £2.00 HGV
- 1/1/13* £1.60 cars £2.50 HGV
- 1/1/14* £1.60 cars £3.20 HGV

* Implementation is dependent on New Tyne Crossing having been fully open to traffic by 01 January 2012. Any delay to the first post-opening toll increase is mirrored in subsequent toll increases.

Following recent consultation with the Department for Transport (DfT), TWITA consider it to be doubtful as to whether the legal powers for the New Tyne Crossing allow this three-step arrangement. TWITA may do one of two things in response. These options are as follows:

Option 1: Remove one step and introduce the £3.20 toll at 1/1/13 - which the DfT have confirmed complies with the legal powers.

Option 2: Obtain powers to allow TWITA to maintain the above toll increase timetable

The effect of Option 1 would be to introduce the higher toll on HGVs earlier.

For Option 2 TWITA will need to amend the existing legal powers in a new Order and submit it to the Secretary of State for Transport.

Before these options are put to Transport Authority for a decision on how to proceed, TWITA has to consult with key stakeholders, including members of the public, for their views on the options before making a decision.

If you wish to express a view, please use the form below:

How to register your comments:

For PC users, open the PDF form below and fill in the details. Hit 'Submit' and your form will send automatically.

Should you experience problems with sending the PDF form, or for MAC users, open the PDF below and fill in your details. Once complete, save in a location of your choice and using an email account, attach the document and send to dfe@newcastle.gov.uk.

Consultation on HGV Tolling Strategy
New Tyne Crossing - HGV Tolling Consultation

Please tick preferred option.

☐ 1. Remove one step and introduce the £3.20 toll at 1/1/13 - which the DfT have confirmed compiles with the legal powers.

☐ 2. Obtain powers to allow the TWITA to maintain the toll increase timetable.

Any further comments:

Name  .........................................................
Address................................................................
...........................................................................
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Please submit the completed form by 24th June 2011.

Many thanks for your participation.

P A Fenwick
New Tyne Crossing Project Director
Appendix 3

(responses N&ST Council)
Dear Paul

New Tyne Crossing Tolling Strategy

Thank you for the opportunity to comment on behalf of North Tyneside Council on the proposed options to resolve the issues regarding the New Tyne Tolling Strategy identified in your letter of 26 May 2011.

North Tyneside Council’s preferred option would be option 2 in your letter, that is, to amend the Order to provide more time for the Tyne and Wear Integrated Transport Authority (TWITA) to set the Concession Toll so as to maintain the toll increase timetable as agreed in 2007.

It is the view of North Tyneside that to raise the HGV toll in ‘more manageable steps’ as per TWITA’s original decision would be more beneficial to the local economy.

In terms of further public consultation in North Tyneside could I suggest that you consult with the local freight haulage industry via the Tyne and Wear Freight Quality Partnership. John Bourn of the Local Transport Plan Team Core Team in Newcastle can provide contact details.

Yours sincerely

Ken Wilson
Head of Regeneration, Development and Regulatory Services
Dear Paul,

Re: New Tyne Crossing Tolling Strategy

Thank you for your letter of the 28 May 2011 regarding the above to our Chief Executive. I have been asked to respond directly on his behalf.

I can confirm that the Council would support the option to amend the Order to provide more time in which TWITA could set the prescribed Concession Toll. This I note is consistent with the agreed approach set out in September 2007.

Please do not hesitate to give me a call on 0191 424 7566 if you wish to discuss this further.

Yours sincerely,

George Mansbridge
Head of Housing Strategy and Regulatory Services

We aim to make letters easy to understand. If you found this letter difficult to understand please let us know. Call 0845 145 0100 or email feedback@southtyneside.gov.uk

Housing Strategy & Regulatory Services,
South Tyneside Council, Town Hall & Civic Offices,
Westoe Road, South Shields, Tyne & Wear. NE33 2RL