

## Appendix A: Summary of responses to our consultation on the regulatory framework for the infrastructure provider (IP) that will deliver the Thames Tideway Tunnel (TTT) Project

On 7 October 2014 Ofwat published a [consultation on the regulatory framework](#) that will regulate the IP appointed to deliver the TTT Project. The consultation invited comment on three documents including the Project Licence that we will issue to the IP. The consultation ended on 17 November 2014.

Ofwat received four responses to this consultation and none of these responses has resulted in us proposing any material changes to the draft project licence. The table below summarises the main issues in the responses to this consultation.

Respondent	Issue	Response
Private Individual 1	Need for an updated cost-benefit assessment and an affordability analysis.	Defra is currently updating its original 2011 cost-benefit analysis for the TTT Project. An update is likely to be published in the autumn.  Along with other key stakeholders, we have played an active role for a number of years in reviewing and challenging the costs of the TTT Project (whether incurred or to be incurred by either Thames Water or the IP) in order to ensure that customer bills will be kept as low as possible. As the risks of this large complex project are different from those faced by water and sewerage companies, we have required Thames Water to market test the two main drivers of bills — the cost of construction and the cost of finance. This is a different approach to a formal 5-yearly price control but it will demonstrate value for money for customers.
	Suggestion that the IP could be a mutual structure so profits go back to customers	While the draft project licence does not expressly prohibit a mutual-type structure, it is more likely that the scale, complexity and risk profile of the TTT project is more appropriately delivered by an IP that is equity financed..

Respondent	Issue	Response
	Request for clarification on working of IP licence	The IP project licence is based on licences held by water and sewerage undertakers but it has been adapted to deal with construction phase issues. The construction phase provisions in the licence will fall away once construction is complete and during the operational phase the IP will be treated the same as other undertakers.
	Concern that regulatory protections are skewed in favour of the IP	The overall TTT delivery model, including the regulatory adaptations that will apply to the IP during construction, has been developed over a number of years with Government and Thames Water to support financeability of the TTT project during construction; to protect customers; and to drive through competition, value for money. We are satisfied that if the regulatory adaptations had not been available the project would not have attracted the necessary investment. A full perspective on this can only be achieved in the light of the proposed bid WACC.
	The Government Support Package (GSP) should be implemented to benefit customers and not the company	<p>While Thames Water has and will continue to undertake a significant element of the TTT Project for which it is accountable, as reflected in the separate price control for the TTT Project, it cannot access the benefits afforded by the GSP.</p> <p>Only the activities of the IP in delivering the TTT Project will be covered by the protections of the GSP and only in respect of low probability events which would, if they arose, have a very high impact on both the delivery of the TTT Project and on customer bills. The GSP has thus been structured to ensure that customers rather than shareholders benefit from the package.</p>

Respondent	Issue	Response
Private Individual 2	Concern that the scope of IP/Thames Water activities and costs is not clear	<p>The responsibilities of both parties are set out in the Specification Notice and the Preparatory Work Notice as made in June 2014 by the Secretary of State under the SIP Regulations which are public documents.</p> <p>In terms of these Notices, Thames Water is required to deliver the outline design for the Project as well as undertake certain preparatory and interface work, while the IP is required to do the detailed design, and build and finance the TTT.</p> <p>A schedule to the Specification Notice sets out the scope of the TTT project and the IP must comply with this scope.</p> <p>The Preparatory Works Notice limits the scope of work that TWUL can undertake in relation to the TTT.</p>
	Challenges the need for the TTT and Ofwat's role	<p>The decision to build the tunnel was taken by Government in 2007 (and re-confirmed in 2010) as the most appropriate solution for addressing discharges into the river Thames to meet the Urban Waste Water Treatment Directive. The TTT forms part of the overall Thames Tideway Improvement Scheme, alongside the Lee Tunnel and five London sewage treatment works upgrades.</p> <p>Given the Government's decision,, Ofwat's objective has been and is to secure value for money for customers. Ofwat's role has been to exercise an oversight role in respect of the competitive process being run by TWUL for the both the construction and financing of the project. We have also to decide whether or not to licence the successful bidder as an IP.</p>

Respondent	Issue	Response
	<p>A concern that the IP should be charging end user customers rather than charging Thames Water</p>	<p>The IP's right to charge Thames Water (the incumbent undertaker) is set out in the SIP Regulations. During construction, it will be providing infrastructure services to Thames Water and its relationship will therefore be with Thames Water rather than with end user customers. During construction, it will be providing infrastructure services to Thames Water and its relationship will therefore be with Thames Water rather than with end user customers. Although it has a right to charge end user customers once the tunnel is built, it is envisaged that it will continue to charge Thames Water, and Thames Water will charge end user customers, in particular because it is providing an upstream service and it would be duplication for it to have to develop a retail function.</p> <p>The amount the IP can charge Thames Water will be calculated under and regulated by the IP Project Licence and by a contractual agreement that will be entered into between Thames Water and the IP (the Revenue Agreement). The Revenue Agreement which formalises the contractual relationship between Thames Water and the IP may not be amended without our consent.</p>

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	Concern about complexity of the regulatory framework	<p>The separate reporting and monitoring of Thames Water's activities on the TTT, which will be a requirement of having a separate binding price control, will increase transparency in the delivery of Thames Water's TTT activities. In addition, the IP will have to report regularly on its costs and activities to Ofwat directly and to a Liaison Committee on which Ofwat and Government will sit. Further the IP must appoint an Independent Technical Assessor to review all its costs and that assessor will owe a duty of care to Ofwat as well as to Government, Thames Water and the IP.</p> <p>We have sought to make the licence accessible where possible. For example, we have rewritten parts of the main body of the licence to ensure it is more readable. While we acknowledge that the annexes to the licence which deal with revenue are complex, we have also issued an explanatory memorandum to the licence to assist in making these appendices more accessible</p>
Consumer Council for Water (CCWater)	Concerned with how customer complaints will be managed by the IP and Thames	In discussions with CCWater, it has been accepted that the IP is best placed to deal with construction-related complaints at its work sites. All other complaints will remain Thames Water's responsibility. A customer communications protocol will be established between Thames Water and the IP to ensure that all complaints are dealt with in a coordinated manner and with appropriate rights of appeal.
	The cost challenge process during construction	Costs will continue to be regularly challenged during the construction phase by way of the Liaison Committee and the IP (and Thames Water) is subject to financial incentives to keep costs down and completion on schedule..

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The Royal Borough of Kensington and Chelsea	Sought assurance that the incentive regime will not operate to allow contractors to cut corners.	<p>Government and Ofwat have worked with Thames Water over the past four years to develop a contractual and regulatory framework that ensures best value for money for customers and tax payers.</p> <p>We have worked to ensure that the IP is incentivised to complete the tunnel on time for the lowest efficient cost while ensuring that it is held to account for performance standards, including in respect of its engagement and impact with the local community.</p> <p>Under the Alliance Agreement, the contractors are incentivised to outperform the project's target cost and schedule. Any incentive payments due are subject to adjustments of up to +/-20% depending upon the contractor's performance against key performance indicators, which include legacy and community obligations such as minimising transport impacts on local communities and community relations. In addition, under the individual construction contracts, a contractor may lose up to 5% of its fee in any month for failure to achieve the key performance indicators in the construction contracts relating to community impact criteria, which include local community and external liaison meetings.</p>
	Concerned with contractors' obligations in dealing with residents' complaints	We have engaged with CCWater and Thames Water to ensure that satisfactory arrangements are put in place. A customer communications protocol will be established between Thames Water and the IP to ensure that all residents' complaints are dealt with in a coordinated manner and with appropriate rights of appeal, including the appointment of an independent complaints assessor.