

Information notice

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Project licence and regulatory guidance for the Thames Tideway Tunnel infrastructure provider

This information notice confirms the award of a project licence to the infrastructure provider (IP) that will deliver the Thames Tideway Tunnel Project (the Project). The project licence came into effect on 24 August 2015.

Background

The Project is of unprecedented scale, size and complexity in the water sector in England and Wales. It will be the first project to be delivered under the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 ([SIP Regulations](#)) which allow for certain large and complex infrastructure projects to be delivered by infrastructure providers that are:

- selected by the incumbent undertaker (in this case Thames Water) following a competitive procurement; and
- regulated by Ofwat under a project licence.

This new framework was introduced by the Flood and Water Management Act 2010 which, among other things, amended the Water Industry Act 1991 ('the Act') by inserting a new part ('Part 2A –

Regulation of Provision of Infrastructure').

The SIP Regulations were made under Part 2A of the Act and came into force on 28 June 2013. The Project is the first to be delivered under this new regulatory framework.

On 4 June 2014, following a public consultation, the Secretary of State [specified](#) the Project under the SIP Regulations. The Project Specification Notice became effective on 5 June 2014. At the same time, the Secretary of State issued a [Preparatory Work Notice](#) in respect of the Project. The effect of these notices was to:

- determine the scope of the Project;
- require Thames Water to procure an IP to deliver the Project; and
- set out preparatory work to be carried out by Thames Water in relation to the Project.

Action taken

In October 2014 we consulted on [draft regulatory documents](#) that set out how we intended to regulate the party that would be appointed to deliver the Project.

On 14 July 2015 Thames Water announced Bazalgette Tunnel Limited (BTL) as the preferred bidder to be appointed as an IP to deliver the Project, and on 14 August 2015 we [designated](#) Bazalgette Tunnel Limited as the IP for the Project. Designation brings the designated company within the regulatory net of the SIP Regulations and enables us to issue it with a project licence.

We [consulted](#) from 17 July to 14 August 2015 on our intention to award a project licence to the preferred bidder, Bazalgette Tunnel Limited.

These two consultations must be seen in the context of previous consultations on the Project. In November 2013 we [consulted on proposed guidance](#) that we would take into account in determining whether to select an infrastructure project as a 'specified infrastructure project', which is required to be put out to competitive tender under the SIP Regulations. In January 2015 we [consulted on a proposal to amend this guidance](#) to include provisions setting out the factors we will take into account before designating a company as an IP

This is a formal document that alerts our stakeholders to a change in the way that we regulate the water sector in England and Wales.

responsible for delivering a specified project.

In October 2014, we [consulted on a first set of modifications](#) to Thames Water's licence necessary to give effect to the Project. Those modifications came into effect on 8 December 2014 and enabled Ofwat to determine a separate Thames Tideway Tunnel price control for those costs that will be incurred by Thames Water in connection with the Project over the next five-year period.

On 16 February 2015 we [consulted on a second set of modifications](#) to Thames Water's licence to enable Thames Water to implement the Project, in particular, by enabling Thames Water to charge customers for the activities of the IP. Most of these modifications came into effect on 1 April 2015 and the balance came into effect on 24 August 2015.

Licence award to IP

We are empowered to issue a project licence to a designated IP under section 17FA of the Act (as applied by the SIP Regulations).

Following a [consultation on our intention to award a project licence](#) to the preferred bidder, we granted Bazalgette Tunnel Limited a project licence to carry out all activities described in the [Project Specification Notice](#) apart from those activities that Thames Water is to carry out under the [Preparatory Work Notice](#). The project licence came into effect on 24 August 2015.

At the same time, we issued Bazalgette Tunnel Limited with a [Waiver Notice](#) that dis-applies the procurement regime in the SIP Regulations in respect of certain specified contracts and categories of contracts.

Regulatory framework that will apply to the IP

Bazalgette Tunnel Limited will be regulated by us in terms of the project licence issued to it on 24 August 2015. In addition, we have issued [other documents](#) to provide clarity on the regulatory framework that will apply to the IP.

- The [Project Licence](#).
- [Explanatory memorandum](#) to the project licence.
- [Guidance](#) on approach to the economic regulation of the IP.
- [Note](#) on enforcement issued jointly with the Environment Agency.

Drafts of all of these documents were included in our October 2014 consultation on the proposed regulatory framework for the IP.

The Project Licence

The Project Licence will be in place from 24 August 2015 and will remain in place in perpetuity unless amended or revoked. However, the regulation of the IP will differ in some respects in the three phases of the Project which are as follows.

- The first is the design, financing and construction of the tunnel.
- The second is a transitional phase, when the tunnel has

been built, but its operation is still being tested, and the first periodic price review for the IP has not yet been carried out.

- The third is when the tunnel is fully operational.

Explanatory memorandum to the Project Licence

The purpose of the explanatory memorandum to the Project Licence is to assist users of the Licence to better understand the provisions of appendix 1 and appendix 2 to the Project Licence. It is not intended to be a substitute for understanding the provisions of those appendices and if the memorandum contradicts any element of the Project Licence, then the Project Licence will take precedence.

Guidance on approach to the economic regulation of the IP

The economic guidance sets out the approach we expect to take in setting the revenue for the IP during the construction and operational phases of the Project. We will regulate the IP in accordance with statute and the Project Licence. We will have regard to this guidance in circumstances where we have discretion on how we regulate.

Note on enforcement issued jointly with the Environment Agency

The explanatory note on enforcement is a statement of how Ofwat and the Environment Agency are likely to apply their existing guidance and statements

of policy in the context of the Project. It is not intended to replace or override the published enforcement policies, statements or guidance issued by Ofwat or the Environment Agency, and it will not override any amendments or updates to any existing policies.

Next steps

We will issue a document summarising the comments we received to our consultation on our intention to award Bazalgette Tunnel Limited a Project Licence.

In that document we will respond to all the comments received. We anticipate publishing this document in early September 2015.

More information

[Bazalgette Tunnel Limited designated as infrastructure provider for the Thames Tideway Tunnel project](#)

The [Project Licence](#)

[Explanatory memorandum](#) to the project licence

[Guidance on approach](#) to the economic regulation of the IP

[Note on enforcement](#) issued jointly with the Environment Agency

[Notice](#) issued under regulation 6(8) of the SIP Regulations dis-applying to a limited extent Bazalgette Tunnel Limited's obligation to apply the procurement provisions set out in the SIP Regulations

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