

# Lower Thames Crossing

## 5.4.3.14 Statement of Common Ground between (1) National Highways and (2) Network Rail Infrastructure Limited

APFP Regulation 5(2)(q)

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This is a draft Statement of Common Ground with matters outstanding and is unsigned. The draft Statement of Common Ground has been drafted by the Applicant but the stakeholder has not yet been able to complete their review in line with their governance process. The Applicant considers that this Statement of Common Ground presents an accurate description of the matters raised and the status of each matter, based on the engagement that has taken place to date.

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#### List of contents

	Page number
<b>1 Introduction .....</b>	<b>1</b>
1.1 Purpose of the Statement of Common Ground .....	1
1.2 Parties to this Statement of Common Ground .....	1
1.3 Terminology .....	1
1.4 Overview of previous engagement .....	1
1.5 Status of the Statement of Common Ground .....	2
<b>2 Matters.....</b>	<b>3</b>
2.1 Matters agreed, not agreed or under discussion.....	3
<b>Appendix A Documents considered within this Statement of Common Ground.....</b>	<b>8</b>
<b>Appendix B Glossary.....</b>	<b>9</b>
<b>Appendix C List of engagement activities.....</b>	<b>10</b>

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## List of tables

	<b>Page number</b>
Table 2.1 Matters .....	3
Table C.1 Engagement activities between National Highways and Network Rail .....	10
Table C.2 Engagement activities between National Highways and Network Rail .....	10

# 1 Introduction

## 1.1 Purpose of the Statement of Common Ground

- 1.1.1 This Statement of Common Ground (SoCG) has been prepared in respect of the Development Consent Order (DCO) application for the proposed A122 Lower Thames Crossing (the Project) made by National Highways Limited (National Highways) to the Secretary of State for Transport (Secretary of State) under section 37 of the Planning Act 2008.
- 1.1.2 This SoCG does not seek to replicate information which is available elsewhere within the Application Documents. All documents may be available on the Planning Inspectorate website.
- 1.1.3 The SoCG has been produced to confirm to the Examining Authority where agreement has been reached between the parties named below, and where agreement has not (yet) been reached. SoCGs are an established means in the planning process of allowing all parties to identify and so focus on specific matters that may need to be addressed during the examination.

## 1.2 Parties to this Statement of Common Ground

- 1.2.1 This SoCG has been prepared in respect of the Project by (1) National Highways, and (2) Network Rail Infrastructure Limited (Network Rail).
- 1.2.2 National Highways became the Government-owned Strategic Highways Company on 1 April 2015. It is the highway authority in England for the strategic road network and has the necessary powers and duties to operate, manage, maintain and enhance the network. Regulatory powers remain with the Secretary of State. The legislation establishing National Highways made provision for all legal rights and obligations of the Highways Agency, including in respect of the Project, to be conferred upon or assumed by National Highways.
- 1.2.3 Network Rail is a statutory undertaker and owns, operates and maintains the majority of the rail infrastructure of Great Britain, including the Anglia and Kent & Sussex routes within its Eastern and Southern regions.
- 1.2.4 Network Rail is a Person with an Interest in Land in respect of the application under section 57 of the Planning Act 2008.

## 1.3 Terminology

- 1.3.1 In the matters table in section 2 of this SoCG, “Matter not agreed” indicates agreement on the matter could not be reached, and “Matter under discussion” where these points will be the subject of on-going discussion wherever possible to resolve, or refine, the extent of disagreement between the parties. “Matter agreed” indicates where the issue has been resolved.

## 1.4 Overview of previous engagement

- 1.4.1 A summary of key meetings and correspondence undertaken between the two parties in relation to the Project is outlined in Appendix C.

## 1.5 Status of the Statement of Common Ground

- 1.5.1 Network Rail has not yet been able to complete their review of this Statement of Common Ground in line with their governance process. This Statement of Common Ground is therefore presented as an ‘unsigned’ Statement of Common Ground.
- 1.5.2 National Highways considers that this Statement of Common Ground is an accurate description of the matters raised by the Network Rail and the status of each matter, based on the engagement that has taken place to date, as set out in Appendix C.

## 2 Matters

### 2.1 Matters agreed, not agreed or under discussion

2.1.1 Table 2.1 details the matters which have been agreed, not agreed, or are under discussion between (1) National Highways and (2) Network Rail.

2.1.2 It is acknowledged there are some matters where further discussion may take place during the detailed design stage of the Project to finalise detail, but the matter is agreed in principle.

**Table 2.1 Matters**

Topic	Item number	Network Rail comment	National Highways comment	Document Reference	Status
<b>Land and compulsory acquisition</b>					
Acquisition of interests in NR land	2.1.1	All interests in land required by National Highways in respect of which Network Rail enjoys an interest (Network Rail land) should be acquired by agreement rather than through the exercise of compulsory purchase powers.	National Highways is committed to reaching agreement with Network Rail as to the terms on which it can secure the interests it requires in Network Rail land. The parties are engaged in ongoing discussions in this respect.  However, in the absence of completed legal agreement(s) and in order to avoid any risk of impediment to the delivery of the Project (if authorised), National Highways must secure the interests it requires in Network Rail land by means of the DCO. For this reason, National Highways is seeking compulsory acquisition powers in relation to interests in NR land.	N/A	Matter Under Discussion

Topic	Item number	Network Rail comment	National Highways comment	Document Reference	Status
<b>Design – Road, Tunnels, Utilities</b>					
Interfaces with Network Rail's railway	2.1.2	Please describe the interface locations between Network Rail and the Project	The Project will interface with Network Rail's railway at the following locations: <ul style="list-style-type: none"> <li>Fenchurch Street and Shoeburyness Line (NR002):</li> <li>Upminster and Gray's Branch (NR003)</li> <li>Tilbury Loop Line (NR004)</li> <li>North Kent Railways (NR005)</li> </ul>	N/A	Matter Agreed
Asset Protection	2.1.3	Asset protection agreements will be required to govern the carrying out of works near the operational railway.	The draft Framework Agreement (FA) proposed to be entered into between the parties commits National Highways to enter into asset protections agreements.	N/A	Matter Agreed
<b>Geology and soil</b>					
Ground movement	2.1.4	Ground movement monitoring to be agreed in advance with Network Rail including settlement trigger levels.	National Highways will agree this with Network Rail in advance	N/A	Matter Agreed
Soil removal	2.1.5	Any use of railway network for soil removal to be agreed with Network Rail and the Freight Operating Company (FOC)	National Highways will agree this with Network Rail in advance	N/A	Matter Agreed
<b>Road drainage and the water environment</b>					
Culverts	2.1.6	Plan for use of any Network Rail culverts to be agreed with Network Rail (details over no overflow	National Highways will agree this with Network Rail in advance	N/A	Matter Agreed

Topic	Item number	Network Rail comment	National Highways comment	Document Reference	Status
		tolerance, potential of reconstruction or construction of temporary/alternative culverts, if applicable to be agreed with Network Rail			
<b>Protective Provisions</b>					
Inclusion within the DCO	2.1.7	The DCO should include a set of protective provisions for the benefit of Network Rail on its face.	Protective Provisions for railway undertakers, including Network Rail, are included within the DCO (see Part 14 of Schedule 14).	Draft DCO (Application Document 3.1)	Matter Agreed
Form of protective provisions	2.1.8	Network Rail's standard form of protective provisions should be included in the DCO as applied for / made by the Secretary of State.	<p>Protective provisions for the benefit of railway undertakers, including Network Rail, are included within the DCO, as noted at 2.1.3 above.</p> <p>However, the Project also interacts with the High Speed 1 network. As such, the railway protective provisions have been drafted to address the requirements of both Network Rail and HS1 Limited.</p> <p>The protective provisions have also been drafted having careful regard to other recent, relevant precedents.</p> <p>National Highways therefore considers the protective provisions contained within the DCO to be adequate and appropriate.</p> <p>National Highways does not consider it necessary to incorporate Network Rail's</p>	Draft DCO (Application Document 3.1)	Matter Under Discussion



Topic	Item number	Network Rail comment	National Highways comment	Document Reference	Status
			standard form. However, the parties are engaged in discussions as to the terms of a FA. In this context, any additions or alterations that may be necessary to the protective provisions can be agreed between the parties.		
References to asset protection agreements	2.1.9	Network Rail consider that an obligation to enter into asset protection agreements should be set out in the protective provisions.	National Highways considers that it is unnecessary for the protective provisions to include a reference to the parties entering into asset protection agreements. Such an obligation is already included within the Framework Agreement being contemplated between the parties (see 2.1.3 above). It is not common practice to include direct reference to asset protection agreements within railway protective provisions and we are not persuaded that it is appropriate or necessary. This issue remains under discussion while the Framework Agreement is being negotiated.	Draft DCO (Application Document 3.1)	Matter Under Discussion
Consent to the exercise of DCO powers	2.1.10	Network Rail considers that the railway protective provisions should include provision to the effect that National Highways should not exercise various powers under the DCO without its consent.	National Highways does not agree that it is appropriate, necessary or proportionate for Network Rail to enjoy authority over National Highways' ability to exercise statutory powers conferred on it by the Secretary of State.	Draft DCO (Application Document 3.1)	Matter Not Agreed

Topic	Item number	Network Rail comment	National Highways comment	Document Reference	Status
			<p>The railway protective provisions include appropriate and well precedented provisions to allow Network Rail to review and approve the details of works affecting its railway and to inspect those works as they are undertaken. Indemnity provisions have also been provided and therefore adequate and appropriate protections are already proposed.</p>		

## Appendix A Documents considered within this Statement of Common Ground

- A.1.1 A summary of the documents which have been considered in the development of this SoCG outside of the Development Consent Order (DCO) application documents are provided below, such as emails, meeting notes, etc.
- a. Route Consultation (Opened January 2016, closed March 2016)
  - b. Statutory Consultation (Opened October 2018, closed December 2018)
  - c. Supplementary Consultation (Opened January 2020, closed April 2020)
  - d. Design Refinement Consultation (Opened July 2020, closed August 2020)
  - e. Community Impacts Consultation (Opened July 2021, closed September 2021)
  - f. Local Refinement Consultation (Opened May 2022, closed June 2022)
  - g. Scoping Opinion: Proposed Lower Thames Crossing, 2017

## Appendix B Glossary

Term	Abbreviation	Explanation
Asset Protection Agreement	APA	A form of agreement designed to regulate works carried out on or near to the railway.
Basic Asset Protection Agreement	BAPA	A form of agreement usually designed to regulate early preparations for works to be carried out on or near to the railway.
Development Consent Order	DCO	A statutory order which provides development consent for a project and means that a range of other consents, such as planning permission and listed building consent, will not be required.  It is granted by the relevant Secretary of State under the Planning Act 2008, following examination by the Planning Inspectorate.
Framework Agreement	FA	A form of agreement proposed to be entered into between National Highways and Network Rail to make overarching provision for the legal documentation to be agreed between them.
Freight Operating Company	FOC	A company engaged in the transport of goods by rail.
Ground investigation	GI	Several levels of investigation from desk-based research to onsite sampling to evaluate challenges related to soil/ground.
Lower Thames Crossing	LTC	The proposed A122 Lower Thames Crossing (the Project).
Non-motorised User	NMU	Users of non-motorised vehicles (eg cyclists, horse riders) and pedestrians.
Overhead Line Equipment	OLE	Overhead wires and supporting infrastructure that carry electricity at 25,000 volts to power electric trains.
UK Power Networks	UKPN	An energy network operator. Owns and maintains the electricity cables in South East England, the East of England and London.
Under Track Crossing	UTX	A conduit to carry cables, etc. from one side of the line to another.

## Appendix C List of engagement activities

C.1.1 A summary of engagement activities between the two parties in relation to the Project is outlined in Table C.1 below.

**Table C.1 Engagement activities between National Highways and Network Rail**

Date	Workstream	Key topics discussed and key outcomes
Oct 2018 – June 2022	Pre-application consultations	Network Rail has been invited to take part on all public consultations undertaken by the Project.
June 2018 – present	Legal negotiations	National Highways and Network Rail have been engaged in discussions as regards a suite of legal agreements to govern the interface between the Project and the operational railway.
Oct 2017 - present	Design interface	National Highways and Network Rail have participated in a number of meetings and workshops to discuss and progress matters relating to the design interface as between the operational railway and the Project.

C.1.2 Key engagement activities between (1) National Highways and (2) Network Rail in relation to the matters addressed in this SoCG are outlined in Table C.2 below.

**Table C.2 Engagement activities between National Highways and Network Rail**

Date	Form of contact/ correspondence	Key topics discussed and key outcomes
16 October 2017	Meeting	Initial introduction meeting between the parties.
24 November 2017	Meeting	Another introductory meeting with wider teams within the parties.
12 January 2018	Meeting	The parties met to discuss: LTC update, Basic Asset Protection Agreement (BAPA), NR Process.
20 February 2018	Meeting	National Highways delivered a presentation on the LTC route and interfaces with NR Anglia and NR South East assets.
27 June 2018	Agreement completed	The parties entered into a Basic Services Agreement to enable bilateral engagement as regards the Project to progress.
17 July 2018	Meeting	The parties met to discuss: LTC update, LTC interfaces with NR, required surveys and next steps.
30 July 2018	Meeting	The parties met to discuss: LTC update, LTC tunnel, ground investigation (GI) in Ramsar site.
8 August 2018	Meeting	The parties met to discuss: GI works, pump test, risk assessment.

<b>Date</b>	<b>Form of contact/ correspondence</b>	<b>Key topics discussed and key outcomes</b>
21 August 2018	Meeting	The parties met to discuss: LTC update, surveys and programme of engagement.
25 September 2018	Meeting	The parties met to discuss: LTC update, required asset data, required agreements.
23 October 2018	Meeting	The parties met to discuss: Walkover surveys, Work Package Plan, required GI for Form 001.
24 October 2018	Meeting	The parties met to discuss: GI works, settlement assessment, Track Access, as built data
13 November 2018	Workshop	The parties participated in a statement of common ground workshop.
20 November 2018	Meeting	The parties met to discuss: LTC update, OHL clearance, geotechnical data, Technical and Business Clearance.
20 December 2018	Section 42 Consultation response received from Network Rail	Network Rail aims to protect its railway infrastructure and any proposed development in close proximity to the railway will need to be carefully considered. Specific consideration to be given to ground movement, culverts, property agreements/APA's, use of rail for removal of soil.
18 March 2019	Meeting	The parties met to discuss: the clash between existing OLEs at Tilbury with LTC planned Tilbury Viaduct with NR's renewal team.
21 March 2019	Meeting	The parties met to discuss: LTC Pump tests at vicinity of Network Rail South East assets.
12 April 2019	Meeting	The parties met to discuss: Utilization of Culvert HDR870 at 26m 5ch by LTC GI Contractor Perfect Circle (AECOM).
15 April 2019	Meeting	The parties met to discuss: OLE surveys, Baseline monitoring surveys, Clearance submissions.
13 May 2019	Meeting	The parties met to discuss: Track Possessions booking for main works, BAPA for baseline monitoring, Tilbury Viaduct Form 001/ OLE design/ UKPN.
20 May 2019	Meeting	The parties met to discuss: Asset Protection Agreement (APA).
17 June 2019	Meeting	The parties met to discuss: OLE design at Tilbury Viaduct, Business/ Technical Clearance, new BAPA.
9 July 2019	Email	National Highways emailed Network Rail a Request for Technical & Business Clearance.
16 July 2019	Email correspondence	National Highways' lawyers provided Network Rail's lawyers with a draft set of Protective Provisions, providing established protections for the operational railway.

<b>Date</b>	<b>Form of contact/ correspondence</b>	<b>Key topics discussed and key outcomes</b>
27 July 2019	Meeting	The parties met to discuss: Form A for OLE renewal at Tilbury Viaduct, Clearance update, Form 001s, NR/UKPN re 2 no UTX crossings at Tilbury East and Ockendon.
2 September 2019	Meeting	The parties met to discuss: Form A for OLE renewal at Tilbury Viaduct, Clearance update, Form 001s.
19 September 2019	Email correspondence	National Highways submitted a request for Technical & Business Clearance to Network Rail.
30 September 2019	Meeting	The parties met to discuss: Form A for OLE renewal at Tilbury Viaduct, Clearance update, Form 001s.
15 October 2019	Meeting	The parties met to discuss: LTC tunnel crossing and the Asset Protection Agreement (APA).
18 October 2019	Agreement completed	The parties entered into a Basic Asset Protection Agreement. This related to ongoing engagement between the parties as regards the interface between the operational railway and the Project.
4 November 2019	Meeting	The parties met to discuss: Monitoring, APA/ Work Agreement, Form A for OLE renewal at Tilbury Viaduct, Clearance update, Form 001s.
16 November 2019	Email Correspondence	Network Rail's lawyers were introduced as working for Network Rail.
22 November 2019	Email Correspondence	National Highways submitted a revised Front End Pack (in line with NR South East requirements) to Network Rail.
25 November 2019	Email Correspondence	National Highways submitted a Form 001 to Network Rail.
2 December 2019	Meeting	The parties met to discuss: Form 001, Form A, Clearance, Pump Test, Bridge Agreement, Topo Survey, Main works program.
13 December 2019	Email Correspondence	National Highways submitted a Form A to Network Rail.
2 January 2020	Email Correspondence	National Highways submitted a Form 001 to Network Rail.
6 January 2020	Meeting	The parties met to discuss: Form 001, Form A, Clearance, Pump Test, Bridge Agreement, Topo Survey, UTX, Progress Tracker.
3 February 2020	Meeting	The parties met to discuss: To discuss Baseline monitoring, Form 001/A, Topo survey, Technical/Business Clearances, UKPN's UTXs.

<b>Date</b>	<b>Form of contact/ correspondence</b>	<b>Key topics discussed and key outcomes</b>
20 February 2020	Email Correspondence	National Highways submitted a Technical & Clearance Request to Network Rail.
26 February 2020	Meeting	The parties met to discuss: the maintenance responsibility of LTC's planned NMU footbridge, Coordination of the OLE teams (LTC and NR renewal) and to discuss the comments raised on LTC's submitted OLE Form A.
27 February 2020	Meeting	The parties met to discuss: the contents of SMI forms and program for the planned UTXs for UKPN.
12 March 2020	Email correspondence	National Highways submitted a concept design report as well as option assessment for mitigation document were submitted to Network Rail.
19 March 2020	Meeting	National Highways presented to Network Rail to explain the interfaces as between the Project and the operational railway (Anglia and South East regions) and the proposed approach to the structuring of legal documentation as between the two parties.
30 March 2020	Online conference	The parties met to discuss: Form A (OLE modification), Form 001s, NMU footbridge, SoCG. Note- this meeting was organized via Teleconference due to the outbreak of Covid-19.
31 March 2020	Section 42 response received from Network Rail	No additional comments further to those made on 20 December 2018
25 June 2021	Agreement completed	The parties entered into a further agreement, addressing costs associated with ongoing engagement between the parties and to enable discussions as regards the proposed FA and protective provisions to progress.
8 September 2021	Community impacts consultation response received from Network Rail	Confirms National Highway's team have engaged with Network Rail and that they will need to continue to do so to address the relevant agreements that are required.
27 May 2022	Meeting	National Highways met with Network Rail (Anglian route within the Eastern region) to update them as regards key interfaces as between the Project and the operational railway following further developments. A presentation was given.
17 June 2022	Local refinement consultation response from Network Rail	Confirms National Highway's team have engaged with Network Rail and that they will need to continue to do so to address the relevant agreements that are required.



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