

Lower Thames Crossing

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

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1.0	31 October 2022	DCO Application
2.0	18 July 2023	Examination Deadline 1

Status of the Statement of Common Ground

National Highways considers that this draft Statement of Common Ground is an accurate description of the matters raised by Network Rail Infrastructure Limited and the status of each matter, based on the engagement that has taken place to date.

A high-level overview of the engagement undertaken since the DCO application was submitted on 31 October 2022 is summarised in Table A.1 in Appendix A.

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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 on 31 October 2022.
- 1.1.2 The SoCG has been produced to confirm to the Examining Authority where agreement has been reached between National Highways (the Applicant) and Network Rail Infrastructure Limited and where agreement has not been reached. Where matters are yet to be agreed, the parties will continue to work proactively to reach agreement and will update the SoCG to reflect areas of further agreement.
- 1.1.3 This version of the SoCG has been submitted at Examination Deadline 1.

1.2 Principal Areas of Disagreement

- 1.2.1 On the 19 December 2022 the Examination Authority made some early procedural decisions to assist the Applicant, potential Interested Parties and themselves to prepare for the Examination of the DCO application.
- 1.2.2 One of these procedural decisions was to use a tracker recording Principal Areas of Disagreement in Summary (PADS).
- 1.2.3 The PADS Tracker would provide a record of those principal matters of disagreement emerging from the SoCG and should be updated alongside the SoCG as appropriate throughout the examination with the expectation that a revised PADS Tracker should be submitted at every Examination deadline.
- 1.2.4 Network Rail Infrastructure Limited elected not to produce a PADS Tracker, at pre-examination stage, indicating to the Applicant that they were content that the number of outstanding matters within the SoCG was insufficient to warrant the exercise.

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 following significant engagement, and “Matter Under Discussion” where these points will be the subject of ongoing discussion wherever possible to resolve, or refine, the extent of disagreement between the parties. “Matter Agreed” indicates where the issue has now been resolved.

2 Matters

2.1 Movement of outstanding matters

- 2.1.1 Following submission of the previous version of this Draft SoCG between the Applicant and Network Rail Infrastructure Limited, further discussions on the outstanding matters have taken place. These discussions are summarised in Table A.1 in Appendix A and the outcome of these discussions is summarised below.
- 2.1.2 Further to the matters raised in the original SoCG two additional matters have been added;
- a. 2.1.11 (Design – road, tunnels, utilities, technical clearance),
 - b. 2.1.12 (Construction, Use of Network Rail Infrastructure Ltd Level Crossings & Overbridges).
- 2.1.3 Table 2.1 details and presents the matters which have been agreed, not agreed, or are under discussion between (1) the Applicant and (2) Network Rail Infrastructure Limited.
- 2.1.4 In the column 'Item No' in Table 2.1, 'Rule 6' indicates a matter entered in the SoCG as a result of a request in the Rule 6 letter, 'RRN' indicates a matter entered into the SoCG as a result of content in the Relevant Representation, 'RRE' indicates an existing SoCG matter that was also raised in the Relevant Representation and 'DLX' indicates a new matter added during examination at/around that deadline.
- 2.1.5 At Examination Deadline 1 there are twelve matters in total of which seven are agreed, one is not agreed and four remain under discussion.

Table 2.1 Matters

Topic	Item No.	Network Rail Infrastructure Limited Comment	National Highways' Response	Application Document Reference	Status
Land and compulsory acquisition					
Acquisition of interests in Network Rail's land	2.1.1 RRE	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. Network Rail is willing to negotiate agreements with National Highways and considers that, where agreement is reached there is no compelling case in the public interest for the compulsory purchase or acquisition of its land or rights over it.	The Applicant is committed to reaching agreement with Network Rail as to the terms on which it can secure the interests it requires on 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), the Applicant must secure the interests it requires in Network Rail land by means of the DCO. For this reason, the Applicant is seeking compulsory acquisition powers in relation to interests in Network Rail land.	N/A	Matter Under Discussion
Design – road, tunnels, utilities					
Interfaces with Network Rail's railway	2.1.2 RRE	Please describe the interface locations between Network Rail and the Project	There are four interface locations (with two of the locations having more than one interface as listed below) where the Project will interface with Network Rail's railway, as follows: Fenchurch Street and Shoeburyness Line (NR002) 'Franks Farm' The widening of the M25 due to the diverted traffic from the planned Project route will	N/A	Matter Agreed

Topic	Item No.	Network Rail Infrastructure Limited Comment	National Highways' Response	Application Document Reference	Status
			<p>impact the existing M25 bridge over railway tracks south of M25 Junction 30, between Upminster and West Horndon stations. A new bridge over the railway (BRN0000087) just to the west of the existing bridge (BRE0013562) will be constructed.</p> <p>Upminster and Gray's Branch (NR003) 'Ockendon'</p> <p>Existing utilities will be diverted over the overline road bridge.</p> <p>Under Track Crossing (UTX) beneath the railway for the installation of electricity networks will be required either immediately south of Ockendon Road or 200m south of the existing road ('Ockendon UTX 1').</p> <p>Ockendon under bridge - Project Northbound slip road to M25 (north of junction 30): the slip road construction under bridge and associated retaining walls ('Ockendon under bridge'). This includes a UTX crossing required for the diversion of Essex and Suffolk 900mm strategic water main near Ockendon ('Ockendon UTX 2')</p> <p>New NMU Footbridge will be constructed close to M25 bridge over the railway track between Ockendon and Upminster stations ('Ockendon NMU Footbridge')</p> <p>Tilbury Loop Line (NR004)</p>		

Topic	Item No.	Network Rail Infrastructure Limited Comment	National Highways' Response	Application Document Reference	Status
			<p>Three UTX crossings proposed beneath Tilbury Loop Line, planned to be installed by Essex and Suffolk Water and Anglian Water companies. There are two supplies in the Tilbury area, one for the Gun Hill water main which will cross to the west of Station Road ('Gun Hill UTX') and one for the Linford water supply which will cross east of Station Road ('Linford UTX'). The third crossing is for the installation of Anglian Water rising sewer main approximately 300m south-west of Station Road level crossing ('Church Road UTX')</p> <p>Construction of a UTX for the installation of electricity networks approximately 85m east of the viaduct to divert UK Power Networks' overhead line network, underground</p> <p>Overhead powerline modifications</p> <p>UK Power Networks will remove the existing powerline located on pylons west of Coal Road via the undergrounding of the networks. Possessions will be required to erect any temporary networks associated with works further along the powerline over the railway (Over Track Crossing (OTX)) and to remove the existing powerline</p> <p>National Grid Electricity Transmission is to realign the existing powerline over the railway approximately 100m west of the viaduct. Possessions will be required for the erection</p>		

Topic	Item No.	Network Rail Infrastructure Limited Comment	National Highways' Response	Application Document Reference	Status
			<p>and removal of powerlines for the existing, temporary and permanent networks OTX</p> <p>The Project's Tilbury Viaduct and Overhead Line Equipment modifications – Project route will be over the railway tracks between Tilbury Town and East Tilbury stations, east of the existing Station Road level crossing 'Tilbury Loop Line Viaduct')</p> <p>North Kent Railways (NR005)</p> <p>The Project route in tunnel will be crossing under the railway tracks between Gravesend and Higham west of Hoo Junction ('North Kent Railway').</p>		
Asset protection	2.1.3	<p>Asset protection agreements will be required to govern the carrying out of works near the operational railway.</p> <p>See also Protective Provisions section below. Network Rail's Protective Provisions are required for asset protection.</p>	<p>The draft Framework Agreement (FA) proposed to be entered into between the parties commits the Applicant to enter into asset protections agreements.</p>	N/A	<p>Matter Agreed [that asset protection agreements are required and these can be secured via the FA.</p> <p>However, issue will not be resolved until FA has been entered into.]</p>

Topic	Item No.	Network Rail Infrastructure Limited Comment	National Highways' Response	Application Document Reference	Status
Asset protection – continued	2.1.11	Following Network Rail's technical team reviewing the relevant re-submitted Project documents and any relevant clearance conditions being received, additional specific asset protection conditions/requirements (in addition to asset protection agreements) are also likely to be required and should be accommodated for in the FA.	The Applicant submitted the Clearance conditions as required by Network Rail in January 2023.	N/A	Matter Agreed
Construction					
Use of Network Rail Infrastructure Ltd Level Crossings & Overbridges	2.1.12 RRN	Network Rail Infrastructure Limited are concerned additional use of, and therefore damage and increased wear and tear/maintenance issues relating to existing overbridges and level crossings from the use of LTC construction traffic.	The Applicant will continue to engage with Network Rail about the detail of the proposed works on and over the Plots and the intended use of existing NR assets, for Network Rail to analyse.	N/A	Matter Under Discussion
Geology and soil					
Ground movement	2.1.4	Ground movement monitoring to be agreed in advance with Network Rail including settlement trigger levels.	The Applicant will agree this with Network Rail in advance of carrying out any such ground movement works and or monitoring.	N/A	Matter Agreed

Topic	Item No.	Network Rail Infrastructure Limited Comment	National Highways' Response	Application Document Reference	Status
Soil removal	2.1.5	Any use of railway network for soil removal to be agreed with Network Rail and the Freight Operating Company.	The Applicant will agree this with Network Rail in advance of using the railway to remove soil.	N/A	Matter Agreed
Road drainage and the water environment					
Culverts	2.1.6	Plan for use of any Network Rail culverts to be agreed with Network Rail (details over no overflow tolerance, potential of reconstruction or construction of temporary/alternative culverts, if applicable to be agreed with Network Rail	The Applicant will agree this with Network Rail in advance of use of any Network Rail culverts.	N/A	Matter Agreed
Protective Provisions					
Inclusion within the DCO	2.1.7 RRE	The DCO should include a set of protective provisions for the benefit of Network Rail.	Protective Provisions for railway undertakers, including Network Rail, are included within the draft DCO (see Part 14 of Schedule 14).	Draft DCO [Additional Submission AS-038]	Matter Agreed

Topic	Item No.	Network Rail Infrastructure Limited Comment	National Highways' Response	Application Document Reference	Status
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 draft 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>The Applicant therefore considers the protective provisions contained within the DCO to be adequate and appropriate. The Applicant does not consider it necessary to incorporate Network Rail's standard form.</p>	Draft DCO [Additional Submission AS-038]	Matter Under Discussion

Topic	Item No.	Network Rail Infrastructure Limited Comment	National Highways' Response	Application Document Reference	Status
References to asset protection agreements	2.1.9	<p>Network Rail consider that an obligation to enter into asset protection agreements should be set out in the protective provisions. It is important for this requirement and all the requirements set out in the Network Rail protective provisions to be included within the DCO so the details of the relevant protections are publicly accessible to all, whereas the FA is confidential between its parties and would not be made publicly available unless so required by law.</p> <p>Network Rail's standard protective provisions always provide for the parties entering into asset protection agreements.</p>	<p>The Applicant 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 FA being contemplated between the parties (see 2.1.3 above).</p> <p>It is not common practice to include direct reference to asset protection agreements within railway protective provisions and the Applicant is not persuaded that it is appropriate or necessary. This issue remains under discussion while the FA is being negotiated.</p>	Draft DCO [Additional Submission AS-038]	Matter Under Discussion

Topic	Item No.	Network Rail Infrastructure Limited Comment	National Highways' Response	Application Document Reference	Status
Consent to the exercise of DCO powers	2.1.10 RRE	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, for the reasons set out at [2.1.1] and [2.1.9] above.	The Applicant does not agree that it is appropriate, necessary, or proportionate for Network Rail to enjoy authority over the Applicant's ability to exercise statutory powers conferred on it by the Secretary of State. 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.	Draft DCO [Additional Submission AS-038]	Matter Not Agreed

Appendix A Engagement activity

Table A.1 Engagement activities between the Applicant and Network Rail Infrastructure Limited since the DCO Application was submitted on 31 October 2022

Date	Overview of Engagement Activities
31 October 2022 – present	National Highways and Network Rail continue to be engaged in discussions as regards a suite of legal agreements to govern the interface between the Project and the operational railway.
22 November 2022	Engagement with Network Rail Southern Senior leadership team relating to Project updates and key actions
8 December 2022	Engagement with Network Rail Southern clearance conditions for the Project main tunnels
23 January 2023	Engagement with Network Rail Anglia relating to documentation required for ground movement monitoring equipment
03 February 2023	Engagement with Network Rail Land & Property team relating to clearance applications for the four key interface locations
20 April 2023	Engagement with Network Rail Anglia Ground movement workshop
04 May 2023	Engagement with Network Rail Anglia Ground movement workshop
09 May 2023	Engagement with Network Rail Anglia Senior leadership team relating to Project update and key actions
12 May 2023	Engagement with Network Rail Southern Ground movement workshop
18 May 2023	Engagement with Network Rail Anglia Ground movement workshop
31 May 2023	Engagement with Network Rail Anglia Ground movement workshop
6 June 2023	Engagement with Network Rail Anglia Senior leadership team relating to Project update & discussions over Station Road Level Crossing

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	Means of obtaining permission for developments categorised as Nationally Significant Infrastructure Projects (NSIP) under the Planning Act 2008.
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 and to agree any bespoke protections required for the safety of the railway as a result of the Project (which are known at the time the FA is entered into).
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.
A122 Lower Thames Crossing	Project	A proposed new crossing of the Thames Estuary linking the county of Kent with the county of Essex, at or east of the existing Dartford Crossing.
Non-motorised user	NMU	Users of non-motorised vehicles (e.g., 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 Southeast England, the East of England and London.
Under Track Crossing	UTX	A conduit to carry cables, etc. from one side of the line to the other.

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