

Lower Thames Crossing

5.4.3.16 Draft Agreed Statement of Common Ground between (1) National Highways and (2) Openreach Limited (Tracked changes version)

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APFP Regulation 5(2)(q)

Infrastructure Planning (Applications:
Prescribed Forms and Procedure)
Regulations 2009

Volume 5

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Volume 5

DATE: July 2023

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<u>1.0</u>	<u>31 October 2022</u>	<u>DCO Application</u>
<u>2.0</u>	<u>18 July 2023</u>	<u>Examination Deadline 1</u>

Status of the Statement of Common Ground

This is an agreed Statement of Common Ground with no matters outstanding.

The Applicant considers that this draft Statement of Common Ground is an accurate description of the matters raised by Openreach Limited and the status of each matter, based on the engagement that has taken place to date.

From: [REDACTED]
Sent: Thursday, June 29, 2023 7:46 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: SoCG Update

Good morning Fortune,

Firstly apologies this has taken some time for me to respond on this matter. Work volumes are still a little hectic in our world.

I can confirm that both myself and Paul are happy with the SoCG document. Do you need anything more from us for you to be able to take this document forward?

Best regards,

[REDACTED]

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

Lower Thames Crossing

5.4.3.16 Draft Agreed Statement of Common Ground between (1) National Highways and (2) Openreach Limited (Clean version)

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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 Openreach 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 Examining 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 ~~Openreach Limited elected not to produce a PADS Tracker at pre-examination stage, indicating to the Applicant that they were no principal areas of disagreement between the parties.~~

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~~

Deleted: <#>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.¶

Deleted: <#>the parties named below

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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 Openreach Limited, further discussions on the outstanding matters have taken place. These discussions are summarised in Appendix A and the outcome of these discussions is summarised below.
- 2.1.2 The following matters have moved from ‘matter under discussion’ to ‘matter agreed’:
- a. Item 2.1.5
 - b. Item 2.1.6
 - c. Item 2.1.10
- 2.1.3 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.
- 2.1.4 In Table 2.1, relevant issues relating to the draft DCO articles and Requirements in Schedule 2 to the draft DCO have been identified under the heading ‘DCO and consents’.
- 2.1.5 Table 2.1 details and presents the matters which have been agreed, not agreed, or are under discussion between (1) the Applicant and (2) Openreach Limited.
- 2.1.6 At Examination Deadline 1, there are 11 matters in total, all of which are agreed.

Deleted: 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.¶
Openreach Limited is an independent division of BT Group. They are responsible for the copper wires and fibre cables that connect homes and businesses to local exchanges. Their customers are the 620+ communications providers who rely on them to deliver phone, broadband, superfast broadband, data and TV services to households and businesses. ¶
It is agreed that any matters not specifically referred to in Section 2 of this SoCG are not of material interest or relevance to Openreach Limited. As such, those matters can be read as agreed, only to the extent that they are either not of material interest or relevance to Openreach Limited. However, if new matters arise Openreach Limited reserves the right to comment on those matters as it considers appropriate.¶

Overview of previous engagement ¶

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

Status of the Statement of Common Ground¶

Openreach Limited 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.¶

National Highways considers that this Statement of Common Ground is an accurate description of the matters raised by the Openreach Limited and the status of each ...

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Table 2.1 Matters

Topic	Item No.	Openreach Limited comment	National Highways' Response	Application Document Reference	Status
DCO and Consents					
Utility land/rights	2.1.1	<p>Openreach apparatus should be returned to public maintainable highway wherever possible on completion of the scheme, therefore any diversions that need to pass through what is, or what was private land prior to the Project, should be returned to an area deemed as Publicly Maintained Highway on completion of the scheme.</p> <p>If there is any land acquired by the Project that isn't going to remain as public maintainable highway on completion of the scheme (e.g. land for site compounds), then Openreach would like information regarding this to ensure that none of our apparatus is left requiring a wayleave or easement.</p>	<p>The draft DCO contains the appropriate powers necessary for the diversion of Openreach's apparatus, including the powers necessary to acquire the land/rights required for that diversion, for any temporary works, and to extinguish rights for existing apparatus.</p> <p>All Openreach apparatus to remain within publicly maintainable highway on completion of the Project.</p>	Draft DCO [Additional Submission AS-038]	Matter Agreed
Construction Contract	2.1.2	Openreach currently understand that the Project may be seeking to work under something other than the New Road and Street Works Act 1991 (NRSWA) model. Agreements for	The works are within the publicly maintainable highway boundary and subject to the provisions of the NRSWA .	Draft DCO [Additional Submission AS-038]	Matter Agreed

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Topic	Item No.	Openreach Limited comment	National Highways' Response	Application Document Reference	Status
		Openreach diversions are usually free from contractual conditions.			
Easements	2.1.3	Please see Openreach comments for item No. 1 (Land Agreements)	Easements for Openreach are not required as all apparatus remains in the publicly maintainable highway and access can be procured under NRSWA.	Draft DCO [Additional Submission AS-038]	Matter Agreed
Order Limits Boundary	2.1.4	Openreach agree that the Order Limits boundary was shared with them.	This has been shared and agreed.	Draft DCO [Additional Submission AS-038]	Matter Agreed
Design – Road, Tunnels, Utilities					
Diversions: Clashes with the Project Permanent Works	2.1.5	Openreach are currently undertaking investigative survey works to enable the production of detailed diversion designs, based on earlier diversion proposals.	The Applicant acknowledges that survey work is being carried out by Openreach and hope to resolve this at the detailed design phase. The Applicant is awaiting the results of the survey work from Openreach.	N/A	Matter Agreed
Operational Outages (constraints)	2.1.6	Openreach's current investigative survey works will help to determine probable lead times for planned outages and these will be fed into the estimated works durations included in the diversion designs.	The outages and any issues around that need to be developed and included in the Applicant's main programme. Contingency Planning during switch over of assets.	N/A	Matter Agreed

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Topic	Item No.	Openreach Limited comment	National Highways' Response	Application Document Reference	Status
			<u>The Applicant's Contractors will manage the programme, including those required outages and ensure adequate time provision is included at the detailed design phase. The programme allows 90 days notification for outages.</u>		
Coordinated Design	2.1.7	Regular design meetings are still ongoing between the Project and Openreach, other utility information has been made available to assist in design decisions.	The Applicant and Openreach have an ongoing dialogue on all aspects of design that have an impact on Openreach assets and designs.	N/A	Matter Agreed
Redundant Assets	2.1.8	<u>Openreach require assurance on how National Highways will treat any redundant assets.</u>	<u>Any redundant assets</u> Will be removed wherever possible and where not feasible will be identified and marked.	N/A	Matter Agreed
Protective provisions					
Maintenance Access	2.1.9	Openreach appreciate that there must be restrictions of access to an active construction site for safety and security purposes, however, Openreach apparatus within site boundaries should be accessible to Openreach engineers as much as is practicable for the purpose of maintenance and repair, so that Openreach are not restricted in carrying out business operations.	<u>The Applicant considers</u> the protective provisions, which incorporate the Electronic Communications Code, adequately protect Openreach's access to apparatus for maintenance. Openreach will receive the same level of maintenance access protection as they currently	<u>Schedule 14 of the draft DCO [Additional Submission AS-038]</u>	Matter Agreed

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 Awaiting the results of the survey work from Openreach expected in Aug/Sept 2022.

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Deleted: Protective Provisions (Schedule 14 of the draft DCO, Application Document 3.1)

Topic	Item No.	Openreach Limited comment	National Highways' Response	Application Document Reference	Status
			receive under NRSWA/Electronic Communications Code as the works all occur within the highway.		
Protection of existing Assets	2.1.10	Openreach will engage with National Highways to share current policies and standards with regard to the protection of any assets that are not set for diversion, alteration, or protection under the design of the diversionary works.	The Applicant consider the protective provisions, which incorporate the Electronic Communications Code, adequately protect Openreach's existing assets.	Schedule 14 of the draft DCO [Additional Submission AS-038]	Matter Agreed
Protective Provisions	2.1.11	Openreach requires Protective Provisions in standard form.	There has been dialogue between the Applicant and Openreach	Schedule 14 of the draft DCO	Matter Agreed
			regarding Protective Provisions. Openreach have agreed to the Applicant's standard Protective Provisions.	[Additional Submission AS-038]	

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 (Schedule 14 of the draft DCO, Application Document 3.1)

Deleted: Dialogue Held

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Deleted: Protective provisions¶
 (Schedule 14 of the draft DCO, Application Document 3.1)

Appendix A Engagement activity

A.1.1 The Applicant and Openreach Limited have had extensive engagement since the inception of the Project. There has been engagement and dialogue through the statutory and non-statutory consultation, the various design iterations and releases. The engagement has been in the form of face-to-face meetings, Microsoft Teams meetings, telephone calls and email correspondence.

The parties are content for their engagement to be captured and presented in the SoCG in this manner.

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The parties are content for their engagement to be captured and presented in the SoCG in this manner.

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Documents considered within this Statement of Common Ground¶
N/A

Appendix B Glossary

Term	Abbreviation	Explanation
Development Consent Order	DCO	Means of obtaining permission for developments categorised as Nationally Significant Infrastructure Projects (NSIP) under the Planning Act 2008.
New Road and Street Works Act 1991	NRSWA	Legislation for the co-ordination of street works, works for road purposes and related matters.
Statement of Common Ground	SoCG	This document detailing the issues agreed, under discussion or not agreed at the time of examination.

B.1.1

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¶ **List of engagement activities** ¶

The Project and Openreach have had extensive engagements since the inception of the Project. There has been engagement and dialogue through the various design iterations and releases.

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