

Lower Thames Crossing
5.4.3.8 Draft Agreed Statement of
Common Ground between (1)
National Highways and (2) EXA
Infrastructure
(Tracked changes version)

APFP Regulation 5(2)(q)

Infrastructure Planning (Applications:
Prescribed Forms and Procedure)
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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 Draft Statement of Common Ground with matters outstanding.

National Highways and EXA Infrastructure agree that this draft Statement of Common Ground is an accurate description of the matters raised and the current status of each matter.

From: [REDACTED]

Sent: Tuesday, May 30, 2023 6:48 PM

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: LTC - Exainfra Statement of Common Ground

[REDACTED]

All happy from our side.

Thanks and regards

[REDACTED]



Lower Thames Crossing

5.4.3.8 Draft Agreed Statement of Common Ground between (1) National Highways and (2) EXA Infrastructure (Tracked changes 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 EXA Infrastructure own several UK Telco companies; Interoute, KPN International, Vtesse and Hibernia and provide managed telecommunication services and dark fibre to businesses. The company has a national and international footprint.

1.1.3 Instalcom maintain assets owned by (KPN & Interoute) for EXA Infrastructure that are affected by the Project.

1.1.4 Exa Infrastructure is a successor to GTT-KPN, however, their interests within the Project are held in Interoute Networks Limited, which is a subsidiary of Exa Infrastructure. Their registered address is: Interoute Networks Limited, 5th Floor, Strand, London, WC2N 5RN. Companies House #03773255. Any reference to GTT-KPN within the SoCG refers to discussions or agreements entered into prior to the formation of Exa Infrastructure when the company was still known as GTT-KPN.

1.1.5 The SoCG has been produced to confirm to the Examining Authority where agreement has been reached between National Highways (the Applicant) and EXA Infrastructure, 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.

1.1.6 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 EXA Infrastructure 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.

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.¶

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.¶

Parties to this Statement of Common Ground¶

This SoCG has been prepared in respect of the Project by (1) National Highways, and (2) EXA Infrastructure.¶ 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.¶

1.3 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.

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Matters¶

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 EXA Infrastructure, 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.

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2.1.2 In Table 2.1, relevant issues relating to the dDCO articles and Requirements in Schedule 2 to the dDCO have been identified under the heading 'DCO and Consents'.

2.1.3 The following matters have moved from 'matter under discussion' to 'matter agreed':

Deleted: can be read as agreed, only to the extent that they are either not of material interest or relevance to EXA Infrastructure. However, if new

a. 2.1.3, Design – Roads, Tunnels & Utilities - operational outages

b. 2.1.9, Protective Provisions - protection of existing assets

2.2 The two matters which remains under discussion will not change until the detailed design stage (post examination).

Moved up [1]

Deleted: arise EXA Infrastructure reserves the right to comment on those ...

2.2.1 Discussions with EXA Infrastructure will progress at the detailed design phase when the Applicant expects these matters to be agreed.

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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¶
It is agreed that this statement is an accurate description of the matters raised by EXA Infrastructure, and the current status of each matter. ¶
It is agreed that Appendix C is an accurate record of the key meetings and consultation undertaken between (1) National Highways and (2) EXA Infrastructure in relation to the matters addressed in this Statement of Common Ground.¶
¶

2.2.2 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.

2.2.3 In Table 2.1, relevant issues relating to the dDCO articles and Requirements in Schedule 2 to the dDCO have been identified under the heading 'DCO and Consents'.

2.2.4 If no new matters emerge during the Examination phase, then this SoCG will become the 'Final SoCG' by Deadline 9.

2.2.5 Table 2.1 details and presents the matters which have been agreed, not agreed, or are under discussion between (1) the Applicant and (2) EXA Infrastructure.

Deleted: Matters agreed, not agreed or

Deleted: Table 2.1 details

Deleted: National Highways

2.2.6 At Examination Deadline 1, there are nine matters in total of which seven are agreed, and two remain under discussion.

Table 2.1 Matters

Topic	Item No.	EXA Infrastructure comment	National Highways' Response	Application Document Reference	Status
DCO and Consents					
Order Limits Boundary	2.1.1	EXA Infrastructure assets within the Order Limits should be identified and agreed.	The assets have been identified, shared and agreed (29 March 2020).	<u>Draft DCO [Additional Submission AS-038]</u>	Matter Agreed
Design – Road, Tunnels, Utilities					
Diversions: Clashes with <u>Project Permanent Works</u>	2.1.2	EXA Infrastructure / Instalcom has shared their designs with the Project.	Outline (Single) option diversions have been proposed by EXA Infrastructure and considered by the Project. Further development of these is required at the detailed design stage in conjunction with the Contractor. <u>The Applicant does not consider these matters resolvable at this stage. Instead, they will be dealt with post consent between contractors. In the meantime, EXA Infrastructure receive protection over outages under the protective provisions. The Applicants works will be subject to the procedures set out in the Electronic Communications Code, and paragraph 17 of the protective provisions makes provision for</u>	N/A	Matter Under Discussion

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Deleted: may take place during the detailed design stage of the Project to finalise detail, but the matter is agreed in principle. ...

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Deleted: Highways comment

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Topic	Item No.	EXA Infrastructure comment	National Highways' Response	Application Document Reference	Status
			<u>reasonable compensation in case of interruption to the supply of services. While this point remains "under discussion" the Applicant does not expect any detailed discussions until it is closer to carrying out the works through an appointed contractor.</u>		
Operational Outages (constraints)	2.1.3	EXA Infrastructure cables must remain in working condition at all times, planned outages will be controlled by EXA Infrastructure and its contractors. All planned outages Works to be coordinated across the Project and to be scheduled in parallel.	The protective provisions confirm that <u>the Applicant</u> will continue to comply with the obligations in Part 10 (<i>undertaker's works affecting electronic communications apparatus</i>) to the Electronic Communications Code. <u>The Applicant considers</u> that this should provide EXA <u>Infrastructure</u> with <u>reassurance</u> and resolve any concerns on outages.	Protective Provisions in Schedule 14 of the draft DCO <u>[Additional Submission AS-038]</u> ,	Matter <u>Agreed</u> ,
Coordinated Design	2.1.4	EXA Infrastructure / Instalcom has shared their designs with the Project.	The Project has shared the Draft Coordinated Design to understand GTT-KPN assets in relation to other Statutory Undertakers (issued 1 May 2020). All of the Project design requirements are to be coordinated at the detailed design stage and where relevant, will be discussed with EXA Infrastructure prior to the commencement of works.	N/A	Matter Under Discussion

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Deleted: (Application Document 3.1)¶

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Topic	Item No.	EXA Infrastructure comment	National Highways' Response,	Application Document Reference	Status
			<u>Discussions with EXA will progress at the detailed design phase when the Applicant expects this matter to be agreed.</u>		
Redundant Assets	2.1.5	EXA Infrastructure are not responsible for removing any redundant assets.	The Project will remove any redundant assets wherever possible and where not feasible will be identified and marked for the construction period.	N/A	Matter Agreed
Construction					
Construction Contract	2.1.6	The understanding is that this will be delivered under New <u>Roads</u> and Street Works Act 1991 (NRSWA) using the C3 – C9 process.	The works are to be delivered under NRSWA.	N/A	Matter Agreed
Operation and Maintenance					
Maintenance Access	2.1.7	EXA Infrastructure need to retain access to their network for maintenance throughout the duration of the Project 24*7. EXA infrastructure apparatus should be returned to public highway on completion of the works.	Maintenance access requirements will be developed with the Contractor for both the temporary and permanent scenarios. Any restriction of this access will be on the grounds of safety and the Contractor will liaise with EXA Infrastructure in advance of the restrictions. <u>The Applicant considers</u> the protective provisions, which	Protective Provisions in Schedule 14, of the draft DCO <u>[Additional Submission AS-038]</u>	Matter Agreed

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Topic	Item No.	EXA Infrastructure comment	National Highways' Response,	Application Document Reference	Status
			incorporate the Electronic Communications Code, adequately protect EXA Infrastructure's access to apparatus for maintenance.		
Protective Provisions					
Protective Provisions	2.1.8	The parties continue to discuss the terms of the Protective Provisions. EXA Infrastructure has a statutory function to deliver a service and EXA needs to ensure that there is no detriment to its undertaking as a result of the works.	The Applicant considers , the protective provisions, which incorporate the Electronic Communications Code, adequately protect EXA Infrastructure's existing assets. EXA Infrastructure has agreed to standard National Highways Protective Provisions.	Protective Provisions in Schedule 14, Part 2 of the Draft DCO [Additional Submission AS-038]	Matter Agreed
Protection of existing Assets	2.1.9	EXA Infrastructure recognises that the draft protective provisions provide a mechanism for the protection of EXA's existing apparatus.	The Protective Provisions provide adequate protection for EXA Infrastructure assets. Protection of those assets impacted by the Project will be discussed at the detailed design stage, prior to the commencement of works, where relevant.	Protective Provisions, Schedule 14, Part 2 of the Draft DCO [Additional Submission AS-038]	Matter Agreed

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Appendix A Engagement activity

A.1.1 The Applicant and EXA Infrastructure have had extensive engagement since the inception of the Project.

A.1.2 There has been engagement and dialogue through the statutory and non-statutory consultation, the various design iterations and releases.

A.1.3 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.

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 Roads and Street Works Act 1991	NRSWA	Legislation for the <u>coordination</u> of Street Works and Works for Road <u>Purposes and Related Matters</u> .
Statement of Common Ground	SoCG	A Statement of Common Ground is a written statement containing factual information about the proposal which is the subject of the appeal that the appellant reasonably considers will not be disputed by the local planning authority.

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—Page Break—

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List of engagement activities¶

A summary of the meetings and correspondence undertaken between the two parties in relation to the Project is outlined in Table C.1 below.¶

It is agreed that this is an accurate record of the key meetings and correspondence undertaken between (1) National Highways and (2) EXA Infrastructure in relation to the matters addressed in this SoCG.¶

Engagement activities between National Highways and EXA Infrastructure.¶

Date

...

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