

Lower Thames Crossing

5.4.3.25 Draft Agreed Statement of Common Ground between (1) National Highways and (2) Zayo Group UK Limited (Clean version)

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VERSION: 2.0

Revision history

Version	Date	Submitted at
1.0	31 October 2022	DCO Application
2.0	18 July 2023	Examination Deadline 1

Status of the Statement of Common Ground

This is a draft Agreed Statement of Common Ground with matters outstanding.

The Applicant and Zayo Group UK Limited agree that this draft Statement of Common Ground is an accurate description of the matters raised and the current status of each matter.

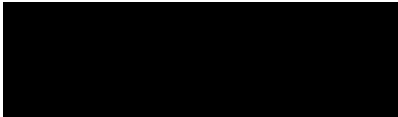
From [REDACTED]
Sent: Wednesday, July 5, 2023 4:45 PM

[REDACTED]
Subject: RE: LTC - Zayo SoCG Update

H [REDACTED]
That will be acceptable.

Once your lawyers get in contact, I will put them in contact with ZAYO's lawyers.

Kind regards



Lower Thames Crossing

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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 Zayo Group UK 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 Zayo Group UK Limited elected not to produce a PADS Tracker at pre-examination stage, indicating to the Applicant that they did not have any principal areas of disagreement and were content that Table 2.1 within this SoCG adequately presented their matters.

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 Zayo Group UK Limited, further discussions on the outstanding matters have taken place.
- 2.1.2 Table 2.1 details and presents the matters which have been agreed, not agreed, or are under discussion between (1) the Applicant and (2) Zayo Group UK Limited.
- 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 At Examination Deadline 1 there are 9 matters in total, of which 8 are agreed and 1 that remains under discussion.
- 2.1.6 The matter which remains under discussion will not change until the detailed design stage (post examination).
- 2.1.7 Discussions with Zayo Group will progress at the detailed design phase when the Applicant expects this matter to be agreed. The Applicant considers that this point will be resolved outside the DCO process once it is closer to carrying out works.
- 2.1.8 If no new matters emerge during the Examination phase, then this SoCG will become the 'Final SoCG' by Deadline 9.

Table 2.1 Matters

Topic	Item No.	Zayo Comment	National Highways' Response	Application Document Reference	Status
DCO and consents					
Order Limits boundary	2.1.1	Zayo assets within the Order Limits should be identified and agreed.	This has been shared and agreed.	Draft DCO [Additional Submission AS-038]	Matter Agreed
Design – road, tunnels, utilities					
Diversions: clashes with Lower Thames Crossing permanent works	2.1.2	Zayo/JSM who are the contractors working on behalf of Zayo have shared their designs with the Project.	Outline (Single) option diversions have been proposed. Further development of these is required.	N/A	Matter Agreed
Operational outages (constraints)	2.1.3	Zayo cables must remain in working condition at all times, planned outages will be controlled by Zayo and its contractors. All planned outages Works to be coordinated across the Project and to be scheduled in parallel.	Adequate Protective Provisions are in place to protect Zayo's interests. The planned outages will be developed and included in the main programme. The Applicant considers that this point will be resolved outside the DCO process once it is closer to carrying out works.	N/A	Matter Under Discussion
Coordinated design	2.1.4	Zayo/JSM has shared their designs with the Project.	Draft Coordinated Design is to be shared by the Applicant to understand JSM Construction Limited and Zayo Group UK Limited assets in relation to other Statutory Undertakers (issued 1 May 2020).	N/A	Matter Agreed

Topic	Item No.	Zayo Comment	National Highways' Response	Application Document Reference	Status
Redundant assets	2.1.5	Zayo are not responsible for removing any redundant assets.	The Applicant can confirm that the redundant assets will be removed wherever possible and where not feasible will be identified and marked during the construction period.	N/A	Matter Agreed
Construction					
Ground Investigation (GI)	2.1.6	Zayo require Ground Investigation information.	The ground investigation works have commenced and liaison with the Utilities Trial Trench Team is on-going. There are no missing assets identified to date.	N/A	Matter Agreed
Construction contract	2.1.7	The understanding is that this will be delivered under New Road and Street Works Act 1991 (NRSWA) using the C3 – C9 process.	The Applicant can confirm that this will be delivered through NRSWA 1991 with confirmation on date and version to be confirmed.	N/A	Matter Agreed
Operation and maintenance					
Maintenance access	2.1.8	Zayo need to retain access to their network for maintenance throughout the duration of the Project 24/7. Zayo apparatus should be returned to public highway on completion of the works.	As set out in the protective provisions, The Applicant will comply with the provisions of the Electronic Communications Code (ECC) which should resolve any concerns from Zayo on access to their assets.	N/A	Matter Agreed

Topic	Item No.	Zayo Comment	National Highways' Response	Application Document Reference	Status
Protective Provisions					
Protective Provisions	2.1.9	Zayo recognises that the draft protective provisions provide a mechanism for the protection of Zayo's existing apparatus. However, ZAYO does not recognise the necessity for the Draft Protective Provisions as they are protected under NRSWA 1991 and the Communications Act 2003	The Applicant has shared draft protective provisions for the protection of operators of the ECC with Zayo. The Applicant note that these provisions have been agreed and believe that the provisions of the ECC sufficiently deal with Zayo's concerns. However, Zayo has raised further concerns about the form of the necessity for the Draft Protective Provisions as they are protected under NRSWA 1991 and the Communications Act 2003. The applicant will engage Zayo to resolve this matter. It is anticipated that this could be achieved within the examinations period.	Protective provisions, Schedule 14, draft DCO [Additional Submission AS-038]	Matter Under Discussion

Appendix A Engagement activity

- A.1.1 National Highways and Zayo 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.
- A.1.4 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	The Project Application Documents, collectively known as the 'DCO application'.
Electronic Communications Code	ECC	The electronic communications code (the Code) is set out in Schedule 3A of the Communications Act 2003. It is a set of rights that are designed to facilitate the installation and maintenance of electronic communications networks.
Ground Investigation	GI	Several levels of investigation from desk-based research to onsite sampling to evaluate challenges related to soil/ground.
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	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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