



Lower Thames Crossing

9.43 Agreed Draft Statement of Common Ground between (1) National Highways and (2) North Kent Marshes Internal Drainage Board (Tracked change version)

Infrastructure Planning (Examination Procedure) Rules 2010

Volume 9

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Revision history

Version	Date	Submitted at
1.0	18 July 2023	Deadline 1
<u>2.0</u>	<u>3 October 2023</u>	<u>Deadline 5</u>

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Status of the Statement of Common Ground

This is an Agreed Draft Statement of Common Ground with matters outstanding.

National Highways and North Kent Marshes Internal Drainage Board agree, that this draft Statement of Common Ground is an accurate description of the matters raise and the current status of each matter.

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█ I am jumping from email to email. I trust this is sufficient.

Please take this email as confirmation that we are happy for this to be submitted in the interim and it is considered to be an agreed draft.



Lower Medway Internal Drainage Board
13 Conqueror Court
Sittingbourne
ME10 5BH



 <https://lowermedwayidb.co.uk/>



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

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List of contents

	Page number
1 Introduction	1
1.1 Purpose of the Statement of Common Ground	1
1.2 Principal Areas of Disagreement	1
1.3 Terminology	1
2 Matters	2
2.1 Movement of outstanding matters	2
Appendix A Engagement activity	10
Appendix B Glossary	11

List of tables

	Page number
Table 2.1 Matters	3
<u>Table A.1 Engagement activities between the Applicant and the North Kent Marshes Internal Drainage Board</u>	<u>10</u>

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 (the Applicant) to the Secretary of State for Transport (Secretary of State) under section 37 of the Planning Act 2008 on 31 October 2022.

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1.1.2 A request for a SoCG between the Applicant and North Kent Marshes Internal Drainage Board was made by the Examining Authority in the notification of Preliminary Meeting (Rule 6 Letter).

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1.1.3 The SoCG has been produced to confirm to the Examining Authority where agreement has been reached, 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.

1.1.4 This version of the SoCG has been submitted at Examination Deadline 5.

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1.2 Principal Areas of Disagreement

1.2.1 On 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). This tracker is known as the PADS Tracker.

1.2.3 The North Kent Marshes Internal Drainage Board have elected not to produce a PADS Tracker, 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 The outcome of discussions to date are presented in Table 2.1 which details and presents the matters which have been agreed, not agreed, or are under discussion between (1) the Applicant and (2) North Kent Marshes Internal Drainage Board.
- 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 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 Since version 1 of this SoCG was submitted at Deadline 1 three following matters have been moved from 'Matter Under Discussion' to 'Matter Agreed':
- a. 2.1.1 DCO and consents, Environment, Flood risk from surface water
 - b. 2.1.2 DCO and consents, Environment, Consent for works to Board watercourses
 - c. 2.1.4 Road drainage and the water environment, Project design and mitigation, Access for maintenance
- 2.1.5 At Examination Deadline 5, there are 7 matters in total, of which 6 matters are agreed, and 1 remains under discussion.
- 2.1.6 Subsequent versions of this SoCG will outline the changes between versions.

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Table 2.1 Matters

Topic	Item No.	North Kent Marshes Internal Drainage Board Comment	<u>The Applicant's Response</u>	Application Document Reference	Status
DCO and consents					
Environment Flood risk from surface water	2.1.1 RRN	As both permanent and temporary works fall within the drainage district of the North Kent Marshes Internal Drainage Board, we would like to make comments regarding flood risk from primarily surface water. We understand that rainfall runoff from the South Portal construction compound will be discharged to a ditch in Filborough Marshes and the Board would like to make representation on this, and any construction phase drainage plan produced by the Contractor. At a meeting on 26 May, North Kent Marshes Internal Drainage Board requested that a construction phase drainage plan is submitted to North Kent Marshes Internal Drainage Board so that the Board is aware of surface water drainage provisions during construction that may impact the Board's District or increase discharge. North Kent Marshes Internal Drainage Board also requested a 21-day consultation period for it to consider the construction phase drainage plan.	Section 14.6 of Environmental Statement (ES) Chapter 14: Road Drainage and the Water Environment reports the assessment of the potential for the Project, during its construction and operation, to cause a change to the existing flood risk from all sources. ES Chapter 14 concluded that there would be no significant residual effects. Measures secured by the Code of Construction Practice include Register of Environmental Actions and Commitments (REAC) Commitment RDWE033, governing discharge of treated surface water runoff from the southern tunnel entrance compound, and REAC Commitment RDWE006, whereby the Contractor is required to develop a construction phase drainage plan. The plan will demonstrate how surface water runoff would be managed across worksites and include details of how off-site impacts would be prevented. The plan would be subject to Secretary of State approval, following consultation with the relevant planning authorities (who may consult NKIDB).	ES Chapter 14: Road Drainage and the Water Environment [APP-152] ES Appendix 2.2: Code of Construction Practice [REP1-157]	Matter Agreed

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Topic	Item No.	North Kent Marshes Internal Drainage Board Comment	The Applicant's Response	Application Document Reference	Status
			<p>The Applicant acknowledges the request for the consultation on the construction phase drainage plan and the 21-day consultation period and will respond directly and update the Examining Authority in a later version of this SoCG.</p> <p>A SoCG meeting was held on 22 August 2023 to further discuss a side agreement between the Applicant and North Kent Marshes Internal Drainage Board. The outcome of this meeting was to mark this matter as agreed subject to final side agreement sign off.</p>		
Environment Consent for works to Board watercourses	2.1.2 RRN	The Board understands that consent to undertake activities requiring drainage to ordinary watercourses; consent required under the Land Drainage Act 1991 byelaws; and consent to obstruct ordinary watercourses are within the DCO and considered permitted by various provisions of the Planning Act 2008. The North Kent Marshes Internal Drainage Board have recently adopted byelaws and we would like to make representation on any works affecting watercourses within the Board's district including comments on culverting, watercourse crossings and outfalls.	All of the powers required to undertake works affecting ordinary watercourses have been included, or addressed, within the draft DCO, as permitted by various provisions of the Planning Act 2008. This means that if the scheme is consented, Article 53(1) of the DCO disappplies any existing byelaws relating to drainage. Schedule 14, Part 3, of the draft DCO includes protective provisions for the protection of local drainage authorities. The details of the construction phase outfall are given in RDWE033 - Discharge from construction of South Portal in Chapter 7 - Register of Environmental Actions and Commitments of the Code of Construction Practice.	draft DCO [REP2-004] , ES Appendix 2.2: Code of Construction Practice [REP1-157] ,	Matter Agreed ,

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Topic	Item No.	North Kent Marshes Internal Drainage Board Comment	The Applicant's Response	Application Document Reference	Status
			<p>It should be noted that there are no proposals for culverting of watercourses, nor for other temporary or permanent new crossings of watercourses within the North Kent Marshes Internal Drainage Board's district. One outfall is proposed to discharge surface water runoff during construction of the Project, associated with discharge of rainfall runoff from the southern tunnel entrance compound.</p> <p>Following the review of the draft DCO by North Kent Marshes Internal Drainage Board, this matter has now been moved to agreed.</p>		
Compensation Right to apply surface water drainage charge	2.1.3	<p>North Kent Marshes Internal Drainage Board seeks clarification on its right to charge. If there is to be a discharge of water, North Kent Marshes Internal Drainage Board would usually apply a surface water drainage charge.</p> <p>In an email of 30 June, North Kent Marshes Internal Drainage Board highlighted its remaining issues with temporary discharge, especially the potential destination of any discharge, load on the system. North Kent Marshes Internal Drainage Board also has a concern about the disapplication of its Byelaws under the DCO that enable it to seek monetary compensation via reasonable condition for example for increased</p>	<p>The Applicant welcomes further discussions on this matter with North Kent Marshes Internal Drainage Board.</p> <p>Article 53 to the draft DCO disapplies existing byelaws which North Kent Marshes Internal Drainage Board may use to authorise its charging.</p> <p>However, under article 19(3) of the draft DCO, the Applicant may not discharge any water into any watercourse, public sewer or drain without the consent of the owner, and such consent may be subject to such terms and conditions as that owner may reasonably impose.</p> <p>The Protective Provisions at Schedule 14, Part 3 of the draft DCO include an indemnity</p>	Draft DCO [REP2-004]	Matter Under Discussion

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Topic	Item No.	North Kent Marshes Internal Drainage Board Comment	The Applicant's Response	Application Document Reference	Status
		<p>maintenance, scour, etc. and notes that the referenced article 19(3) only applies to the owner. To aid discussions, North Kent Marshes Internal Drainage Board would like to better understand the impact of the temporary works to arrive at a more informed position on the suitability of the proposals set out to navigate the DCO process.</p> <p>NKMIDB request the addition of "d) any temporary or permanent increase in surface water discharge" to Schedule 14, Part 3 of the Protective Provisions in the draft DCO.</p>	<p>in favour of North Kent Marshes Internal Drainage Board, whereby the Applicant: "must make reasonable compensation reasonable compensation to the drainage authority from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the drainage authority by reason of—</p> <p>(a) any damage to any drainage work;</p> <p>(b) any raising or lowering of the water table in land adjoining the authorised project or any sewers, drains and watercourses; or</p> <p>(c) any flooding or increased flooding of any such lands, caused by the construction of any specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged on the specified work."</p> <p>The Applicant acknowledges North Kent Marshes Internal Drainage Board's additional comment and will consider a response for inclusion in a subsequent version of this SoCG.</p> <p>The Applicant acknowledges North Kent Marshes Internal Drainage Board's comment and will consider a response for inclusion in a subsequent version of this SoCG.</p>		
Road drainage and the water environment					

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Topic	Item No.	North Kent Marshes Internal Drainage Board Comment	The Applicant's Response	Application Document Reference	Status
Project design and mitigation Access for maintenance	2.1.4 RRN	North Kent Marshes Internal Drainage Board have comments regarding the 'main works access routes' and the 'main works compounds' that are sited within the Board's district. With respect to access for maintenance of Board-maintained watercourses, the Board would like to make representation on the construction site limits and the access we require onto Filborough Marshes to undertake ditch maintenance. We are particularly interested in height and width restrictions, and road closures that may impact on our ability to work in this area.	Under the protective provisions for the protection of local drainage authorities set out in Schedule 14, Part 3, of the draft DCO, the Applicant is required to achieve approval of plans from the drainage board if specified works interfere with relevant assets. The Applicant would therefore make arrangements to ensure continued access to allow ongoing maintenance of watercourses which fall North Kent Marshes Internal Drainage Board's responsibility. In the event of any temporary closures of access roads, the Applicant would arrange special measures to allow ongoing access, for example under escort or similar. A SoCG meeting was held on 22 August 2023 to further discuss access for maintenance. The outcome of this meeting was agreement of this matter between the Applicant and North Kent Marshes Internal Drainage Board.	Draft DCO [REP2-004]	Matter Agreed
Project design and mitigation Exceedance flows and stockpiling	2.1.5 RRN	North Kent Marshes Internal Drainage Board would like to comment on intended routes to manage any exceedance overland flow paths that may come from the retention ponds just upstream of our district and any stockpiling sites in the North Kent Marshes Internal Drainage Board's District.	Consideration of exceedance flow path routes from operational drainage ponds and basins is discussed within Part 6 of ES Appendix 14.6: Flood Risk Assessment. In line with REAC Commitment RDWE034, overland flow paths to manage exceedance flows from infiltration basins would be identified, such that there are no detrimental effects on sensitive downstream receptors.	ES Appendix 14.6: Flood Risk Assessment [REP1-171] ES Appendix 2.2: Code of	Matter Agreed

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Topic	Item No.	North Kent Marshes Internal Drainage Board Comment	The Applicant's Response	Application Document Reference	Status
			The North Kent Marshes Internal Drainage Board would be advised on any overland flow paths that have the potential to affect the Board's interests and the Applicant would enact measures to manage risks to downstream receptors in the unlikely event of infiltration basin capacity exceedance. REAC Commitment GS029 in the Code of Construction Practice details procedures for managing stockpiles of surplus clean chalk soils generated from construction works south of the River Thames. This commits to designs that safeguard the underlying soils and water resource and approval of the designs by the Secretary of State, in consultation with the Environment Agency, prior to stockpiling commencing.	Construction Practice [REP1-157]	
Project design and mitigation Wetland habitat creation area north of Thames Medway Canal	2.1.6 RRN	From the Environmental Masterplan Section 4 Sheet 4 TR010032/APP/6.2, a wetland habitat creation just north of the Thames Medway Canal is shown. North Kent Marshes Internal Drainage Board requested further clarity on this matter.	This area covers the reinstatement of a construction compound and is to be handed back to the Royal Society for the Protection of Birds (RSPB) as landowners, in an enhanced way for the benefit of water vole and great crested newt. There is a REAC commitment to do so (REAC Commitment TB022) in the Code of Construction Practice. The land will be reinstated to create additional slow flowing ditch, pond and grassland and scrub habitats.	ES Appendix 2.2: Code of Construction Practice [REP1-157]	Matter Agreed

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ES Appendix 2.2: Code of Construction Practice [Application Document [APP-336](#)]

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Topic	Item No.	North Kent Marshes Internal Drainage Board Comment	The Applicant's Response	Application Document Reference	Status
			The outline design has been agreed with RSPB for the application, but discussions are continuing to develop this further. This matter has been discussed by the Applicant and NKIDB.		
Project design and mitigation Impacts on the Thames Estuary and Marshes Ramsar site	2.1.7 RRN	The proposed ground protection tunnel, main tunnels and cross-passages also have the potential to cause groundwater lowering of the shallow water system at the Thames Estuary and Marshes Ramsar site, which is assigned very high importance.	An assessment of potential effects on groundwater levels in the shallow water system of the Ramsar site is included in ES Appendix 14.5: Hydrogeological Risk Assessment. The groundwater control approach and measures to reduce groundwater drawdown during the construction and operation of the ground protection tunnel and shafts are described in REAC Commitments RDWE018a and RDWE018b. Worst case modelled groundwater drawdown maps are shown in Annex J of ES Appendix 14.5: Hydrogeological Risk Assessment. These show that groundwater level changes, as a result of the ground protection tunnel, are expected to be imperceptible.	ES Appendix 14.5: Hydrogeological Risk Assessment [APP-458] and [APP-459]	Matter Agreed

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Appendix A Engagement activity

**Table A.1 Engagement activities between the Applicant and the North Kent [Marshes](#)
Internal Drainage Board**

Date	Overview of Engagement Activities
26 May 2023	Initial SoCG meeting held with North Kent Internal Drainage Board
1 June 2023	Emailed timetable for SoCG submission at ED1
27 June 2023	Emailed version for endorsement / final comments
3 July 2023	Emailed version incorporating comments
22 August 2023	Meeting to discuss Matters Under Discussion with North Kent Marshes Internal Drainage Board
30 August 2023	Emailed draft version of Examination Deadline 5 SoCG for final comments
27 September 2023	Emailed draft version of Examination Deadline 5 SoCG for endorsement

Appendix B Glossary

Term	Abbreviation	Explanation
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.
Code of Construction Practice	CoCP	Contains control measures and standards to be implemented by the Project, including those to avoid or reduce environmental effects.
Construction	-	Activity on and/or offsite required to implement the Project. The construction phase is considered to commence with the first activity on site (e.g. creation of site access), and ends with demobilisation.
Development Consent Order	DCO	Means of obtaining permission for developments categorised as Nationally Significant Infrastructure Projects (NSIP) under the Planning Act 2008.
Development Consent Order application	DCO application	The Project Application Documents, collectively known as the 'DCO application'.
Environmental Statement	ES	A document produced to support an application for development consent that is subject to Environmental Impact Assessment (EIA), which sets out the likely impacts on the environment arising from the proposed development.
Habitat	-	The natural home or environment of an animal, plant, or other organism.
National Highways		A UK government-owned company with responsibility for managing the motorways and major roads in England. Formerly known as Highways England.
Operation		Describes the operational phase of a completed development and is considered to commence at the end of the construction phase, after demobilisation.
Ramsar site	-	A wetland of international importance, designated under the Ramsar Convention.
Receptor	-	A component of the natural or built environment (such as a human being, water, air, a building or a plant) affected by an impact of the construction and/or operation of a development.
Register of Environmental Actions and Commitments	REAC	The REAC identifies the environmental commitments that would be implemented during the construction and operational phases of the Project if the Development Consent Order is granted, and forms part of the Code of Construction Practice.

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Term	Abbreviation	Explanation
Royal Society for the Protection of Birds	RSPB	A charitable organisation that works to promote conservation and protection of birds and the wider environment through public awareness campaigns, petitions and through the operation of nature reserves in the UK.
Runoff	-	The flow of water over the ground surface.

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