

Lower Thames Crossing

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

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1.0	18 July 2023	Deadline 1
2.0	3 October 2023	Deadline 5
3.0	5 December 2023	Deadline 8

Status of the Statement of Common Ground

This is the Final Agreed Statement of Common Ground between (1) National Highways (the Applicant) and (2) North Kent Marshes Internal Drainage Board.

Both parties have reached agreement on the position on the status of all seven matters. Of the seven matters contained within, all seven matters are agreed, leaving no matters outstanding.

On behalf of the Applicant

Name	[REDACTED]
Position	[REDACTED]
Organisation	National Highways
Signature	[REDACTED]

On behalf of North Kent Marshes Internal Drainage Board

Name	[REDACTED]
Position	[REDACTED]
Organisation	North Kent Marshes Internal Drainage Board
Signature	[REDACTED]

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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 (the Applicant) 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 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).
- 1.1.3 The SoCG has been produced to confirm to the Examining Authority where agreement has been reached between the Applicant and North Kent Marshes Internal Drainage Board.
- 1.1.4 This final version of the SoCG has been submitted at Examination Deadline 8.

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 SoCG was a request set out in the notification of Preliminary Meeting (Rule 6 Letter) [[PD-013](#)] which came after the initial request from the ExA for PADS trackers. Given the small number of matters within this SoCG, the North Kent Marshes Internal Drainage Board elected to not produce a PADS tracker, indicating to the Applicant that the number of outstanding matters within the SoCG was insufficient to warrant the exercise.

2 Matters

2.1 Final position on matters

- 2.1.1 A summary of engagement undertaken between the Applicant and North Kent Marshes Internal Drainage Board is summarised in Appendix A.
- 2.1.2 The outcomes of discussions to date are presented in Table 2.1 which details and presents the matters which have all now been agreed between (1) the Applicant and (2) North Kent Marshes Internal Drainage Board.
- 2.1.3 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’.
- 2.1.4 Since version 2 of this SoCG was submitted at Deadline 5 the following matter has moved from ‘Matter Under Discussion’ to ‘Matter Agreed’:
- a. 2.1.3 DCO and consents, Compensation, right to apply surface water drainage charge
- 2.1.5 At Examination Deadline 8 all seven matters are now agreed.
- 2.1.6 This is the final Statement of Common Ground between the Applicant and North Kent Marshes Internal Drainage Board.

Table 2.1 Final Position of Matters

Topic	Item No.	North Kent Marshes Internal Drainage Board Comment	The Applicant’s Response	Application Document Reference	Status
DCO and consents					
Environment Flood risk from surface water	2.1.1	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	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	ES Chapter 14: Road Drainage and the Water Environment [APP-152]	Matter Agreed

Topic	Item No.	North Kent Marshes Internal Drainage Board Comment	The Applicant's Response	Application Document Reference	Status
		<p>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.</p>	<p>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 North Kent Marshes Internal Drainage Board).</p> <p>The Applicant acknowledges the request for the consultation on the construction phase drainage plan and the 21-day consultation period and is engaging with the North Kent Marshes Internal Drainage Board on a side agreement with respect of this matter.</p>	<p>ES Appendix 2.2: Code of Construction Practice [Document Reference 6.3 ES Appendix 2.2 (8)]</p>	

Topic	Item No.	North Kent Marshes Internal Drainage Board Comment	The Applicant's Response	Application Document Reference	Status
			<p>A SoCG meeting was held on 22 August 2023 to further discuss this side agreement between the Applicant and North Kent Marshes Internal Drainage Board. The outcome of this meeting was to mark this SoCG matter as agreed on the basis of progression of that side agreement.</p>		
Environment Consent for works to Board watercourses	2.1.2	<p>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.</p>	<p>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 disapplies 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 the REAC within the Code of Construction Practice.</p> <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</p>	<p>Draft DCO [Document Reference 3.1 (10)] ES Appendix 2.2: Code of Construction Practice [Document Reference 6.3 ES Appendix 2.2 (8)]</p>	Matter Agreed

Topic	Item No.	North Kent Marshes Internal Drainage Board Comment	The Applicant's Response	Application Document Reference	Status
			<p>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 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</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 in favour of North Kent Marshes Internal Drainage Board, whereby the Applicant: <i>“must make reasonable compensation to the drainage authority from all claims, demands, proceedings, costs, damages, expenses or loss, which</i></p>	Draft DCO [Document Reference 3.1 (10)]	Matter Agreed

Topic	Item No.	North Kent Marshes Internal Drainage Board Comment	The Applicant’s Response	Application Document Reference	Status
		<p>move 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><i>may be made or taken against, recovered from, or incurred by, the drainage authority by reason of—</i></p> <p><i>(a) any damage to any drainage work;</i></p> <p><i>(b) any raising or lowering of the water table in land adjoining the authorised project or any sewers, drains and watercourses; or</i></p> <p><i>(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.”</i></p> <p>The Applicant acknowledges North Kent Marshes Internal Drainage Board’s additional comment and is engaging with the North Kent Marshes Internal Drainage Board on a side agreement with respect to this matter.</p> <p>The outcome of continued engagement between the Applicant and North Kent Marshes Internal Drainage Board was to mark this SoCG matter as agreed on the basis of progression of that side agreement.</p>		
Road drainage and the water environment					
Project design and mitigation	2.1.4	North Kent Marshes Internal Drainage Board have comments regarding the ‘main	Under the protective provisions for the protection of local drainage authorities set	Draft DCO [Document	Matter Agreed

Topic	Item No.	North Kent Marshes Internal Drainage Board Comment	The Applicant's Response	Application Document Reference	Status
Access for maintenance		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.	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.	Reference 3.1 (10)]	
Project design and mitigation Exceedance flows and stockpiling	2.1.5	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 Construction Practice [Document	Matter Agreed

Topic	Item No.	North Kent Marshes Internal Drainage Board Comment	The Applicant's Response	Application Document Reference	Status
			<p>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.</p> <p>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.</p>	<p>Reference 6.3 ES Appendix 2.2 (8)]</p>	
<p>Project design and mitigation Wetland habitat creation area north of Thames Medway Canal</p>	<p>2.1.6</p>	<p>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.</p>	<p>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.</p>	<p>ES Appendix 2.2: Code of Construction Practice [Document Reference 6.3 ES Appendix 2.2 (8)]</p>	<p>Matter Agreed</p>

Topic	Item No.	North Kent Marshes Internal Drainage Board Comment	The Applicant's Response	Application Document Reference	Status
			<p>The land will be reinstated to create additional slow flowing ditch, pond and grassland and scrub habitats.</p> <p>The outline design has been agreed with RSPB for the application, but discussions are continuing to develop this further.</p> <p>This matter has been discussed by the Applicant and North Kent Marshes Internal Drainage Board.</p>		
Project design and mitigation Impacts on the Thames Estuary and Marshes Ramsar site	2.1.7	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.	<p>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.</p> <p>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.</p> <p>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.</p>	ES Appendix 14.5: Hydrogeological Risk Assessment [APP-458 and APP-459]	Matter Agreed

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 Marshes Internal Drainage Board
1 June 2023	Emailed timetable for SoCG submission at Examination Deadline 1
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	Email from the Applicant with draft version of Examination Deadline 5 SoCG for final comments
27 September 2023	Emailed draft version of Examination Deadline 5 SoCG for endorsement
13 November 2023	Emailed draft side agreement for review and comment and raised SoCG next steps
27 November 2023	Emailed draft version of Examination Deadline 8 SoCG for final 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.

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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