



Lower Thames Crossing

9.3 Status of Negotiations with Statutory Undertakers (Tracked changes Version)

Infrastructure Planning (Examination Procedure) Rules 2010

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List of contents

Page number

1	Introduction	1
1.1	Purpose of this document	1
2	Status of Negotiations	2

List of tables

Page number

	Table 2.1 Status of Negotiations Schedule at Deadline 9	2
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Deleted: 1 Introduction 1¶
1.1 Purpose of this document 1¶
2 Status of Negotiations 2¶

Deleted: Table 2.1 Status of Negotiations Schedule at
Deadline 6 2¶

1 Introduction

1.1 Purpose of this document

- 1.1.1 This document presents the Status of Negotiations with Statutory Undertakers relating to National Highways' application to the Planning Inspectorate under the Planning Act 2008 (the 2008 Act) for the Lower Thames Crossing Development Consent Order 2023 (DCO). If made, the DCO would grant consent for National Highways (the Applicant) to undertake the A122 Lower Thames Crossing (the Project).
- 1.1.2 A detailed description of the Project can be found in the Environmental Statement Chapter 2: Project Description [APP-140].
- 1.1.3 This document has been prepared and submitted in accordance with the Examining Authority's Examination Timetable as outlined in the Rule 6 letter [PD-013] dated 25 April 2023.
- 1.1.4 This document contains Statutory Undertakers as well as other organisations with whom the Applicant maintains a similar relationship. Pertinently, this includes telecommunications operators who retain rights under the Electronic Communications Code. Statutory Undertakers, as defined in s127(8) of the 2008 Act, benefit from the provisions of s127 and s138 of the 2008 Act. Telecommunications operators only benefit from s138 of the 2008 Act.
- ~~1.1.5 This document should be read in conjunction with the Book of Reference [Document Reference 4.2 (8)], Land Plans [Document Reference 2.2 (8)], the Statement of Reasons [Document Reference 4.1 (8)], and the draft Development Consent Order [Document Reference 3.1 (11)].~~
- 1.1.6 ~~The Book of Reference [Document Reference 4.2 (8)],~~ includes details of the interests belonging to the Statutory Undertakers that are within the Order Limits or affected by the Project. Further information on how the Project will impact on interests belonging to Statutory Undertakers is set out in Section 7.4 of the Statement of Reasons [Document Reference 4.1 (8)].

Deleted: This document should be read in conjunction with the Book of Reference [REP5-030], Land Plans [REP5-004 to REP5-008], the Statement of Reasons [REP5-028], and the draft Development Consent Order [REP5-024].¹
The Book of Reference [REP5-030]

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2 Status of Negotiations

Table 2.1 Status of Negotiations Schedule at Deadline 9

No.	Statutory Undertaker or other similar body	Negotiations summary	Status of Negotiations at Deadline 9
1	Airwave Solutions Ltd	Schedule 14, Part 2 of the draft Development Consent Order contains Protective Provisions for the Protection of Operators of Electronic Communications Code Networks. Agreement to the Protective Provisions has been reached with Airwave Solutions Ltd.	Agreement relative to Protective Provisions is complete. No further action.
2	Anglian Water Services Ltd	Schedule 14, Part 1 of the draft Development Consent Order contains Protective Provisions for the Protection of Electricity, Gas, Water and Sewerage Undertakers. Discussions have concluded and the parties have agreed a form of Protective Provisions; an agreement was formally reached in June 2023.	Agreement relative to Protective Provisions is complete. No further action.
3	Cadent Gas Ltd	Schedule 14, Part 5 of the draft Development Consent Order contains Protective Provisions for Cadent Gas Ltd (Cadent). A side agreement between National Highways and Cadent was completed on 17 July 2023. <u>Cadent subsequently sought further commitments and assurances with regard to the process to be adopted by the Applicant in seeking to negotiate the voluntary grant of rights by third parties for Cadent's benefit, prior to acquiring those rights compulsorily.</u>	Agreement relative to Protective Provisions is complete. No further action. <u>Further agreement expected to be concluded within recommendation stage.</u>
4	Cellnex UK Ltd (previously known as Arqiva and sometimes referred to as On Tower in Project documents).	Schedule 14, Part 2 of the draft Development Consent Order contains Protective Provisions for the Protection of Operators of Electronic Communications Code Networks. Agreement in principle to the Protective Provisions has been reached with Cellnex UK Ltd.	Agreement relative to Protective Provisions is complete. No further action.

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No.	Statutory Undertaker or other similar body	Negotiations summary	Status of Negotiations at Deadline <u>9</u>
5	Environment Agency	Schedule 14, Part 9 of the draft Development Consent Order contains Protective Provisions for the Environment Agency. Agreement in principle to the Protective Provisions has been reached with the Environment Agency.	Agreement relative to Protective Provisions is complete. No further action.
6	EU Networks Group Ltd	Schedule 14, Part 2 of the draft Development Consent Order contains Protective Provisions for the Protection of Operators of Electronic Communications Code Networks. EU Networks Group Ltd (EU Networks) have not responded to correspondence issued to them from the Applicant. The Applicant has requested comments/agreement to the Protective Provisions on several occasions with no comments, nor agreement provided on the Protective Provisions by EU Networks. No relevant representations or Principal Areas of Disagreement have been submitted by EU Networks. The Applicant is confident that there are no substantive issues which could arise in future.	No further action is expected with regards to Protective Provisions during Examination.
7	EXA Infrastructure Services UK Ltd (Formerly known as GTT)	Schedule 14, Part 2 of the draft Development Consent Order contains Protective Provisions for the Protection of Operators of Electronic Communications Code Networks. Agreement to the Protective Provisions has been reached previously with GTT (I Squared Capital acquired the Infrastructure Division of GTT Communications in September 2021 and rebranded as EXA Infrastructure).	Agreement relative to Protective Provisions is complete. No further action.
8	High Speed One Ltd	Schedule 14, Part 4 of the draft Development Consent Order contains Protective Provisions for High Speed One (HS1) Ltd. Discussions with High Speed One Ltd are continuing.	<u>The Applicant believes that there are no outstanding substantive issues; however, these agreements will not be concluded prior to 20 December 2023 (end of Examination). The Applicant is confident that these will be agreed during the recommendation stage.</u>

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No.	Statutory Undertaker or other similar body	Negotiations summary	Status of Negotiations at Deadline <u>9</u>
9	ITS Technology Group Ltd	<p>Schedule 14, Part 2 of the draft Development Consent Order contains Protective Provisions for the Protection of Operators of Electronic Communications Code Networks.</p> <p>Agreement to the Protective Provisions has been reached previously with Next Gen Access (ITS Technology Group Ltd acquired Next Gen Access in September 2022).</p>	<p>Agreement relative to Protective Provisions is complete. No further action.</p>
10	Lumen Technologies UK Ltd	<p>Schedule 14, Part 2 of the draft Development Consent Order contains Protective Provisions for the Protection of Operators of Electronic Communications Code Networks.</p> <p>Discussions are ongoing regarding a separate side agreement between the Applicant and Lumen Technologies UK Ltd (Lumen). The latest version of this agreement <u>issued by</u> the Applicant's solicitors <u>remains with Lumen</u>.</p> <p>Correspondence has <u>been exchanged</u> between the Applicant's solicitors and Lumen <u>during November 2023</u> regarding Cost Sharing and Deferment of Renewal and the Applicant has <u>agreed to</u> matters <u>raised by Lumen related to the Project</u>. The offer of an agreement to cover Lumen's other concerns remains open to Lumen <u>with the Applicant awaiting return of the side agreement from Lumen</u>.</p>	<p>It is anticipated that agreement will be reached with Lumen <u>prior to 20 December 2023 (end of Examination)</u>.</p>
11	National Gas Transmission PLC	<p>Schedule 14, Part 6 of the draft Development Consent Order contains Protective Provisions for National Gas Transmission PLC (NGT, formerly National Grid Gas PLC until a rebrand in Feb 2023).</p> <p>Discussions are ongoing regarding a separate side agreement between NGT and the Applicant's solicitors. This side agreement addresses all outstanding issues.</p>	<p><u>The Applicant believes that there are no outstanding substantive issues; however, this agreement may not be concluded prior to 20 December 2023 (end of Examination)</u>. The Applicant is confident that <u>it will be agreed</u> during the <u>recommendation stage</u>.</p>
12	National Grid Electricity Transmission PLC	<p>Schedule 14, Part 7 of the draft Development Consent Order contains Protective Provisions for National Grid Electricity Transmission PLC (NGET).</p>	<p><u>The Applicant believes that there are no outstanding substantive issues; however, this agreement may not be</u></p>

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No.	Statutory Undertaker or other similar body	Negotiations summary	Status of Negotiations at Deadline <u>9</u>
		Discussions are ongoing regarding a separate side agreement between NGET and the Applicant's solicitors. This side agreement addresses all outstanding issues.	concluded prior to 20 December 2023 (end of Examination). The Applicant is confident that it will be agreed during the recommendation stage .
13	Network Rail Infrastructure Ltd	Schedule 14, Part 4 of the draft Development Consent Order contains Protective Provisions for Network Rail Infrastructure Ltd (Network Rail). Discussions with Network Rail Infrastructure Ltd are continuing.	The Applicant believes that there are no outstanding substantive issues; however, these agreements will not be concluded prior to 20 December 2023 (end of Examination). The Applicant is confident that these will be agreed during the recommendation stage.
14	Northumbrian Water Ltd – Trading as Essex and Suffolk Water	Schedule 14, Part 1 of the draft Development Consent Order contains Protective Provisions for the Protection of Electricity, Gas, Water and Sewerage Undertakers. Discussions are ongoing regarding a separate side agreement between the Applicant and Essex and Suffolk Water, to provide further arrangements for the protection of Essex and Suffolk Water's apparatus and statutory undertaking. The latest updated version of this agreement is under discussion between Essex and Suffolk Water's legal representatives following a successful meeting held in early November 2023. It is believed that matters relating to Linford Well, namely: water quality and Linford Well compulsory acquisition (plot 24-133), have reached or are close to reaching agreement.	The Applicant is confident that agreement will be reached prior to 20 December 2023 (end of Examination).
15	Openreach	Schedule 14, Part 2 of the draft Development Consent Order contains Protective Provisions for the Protection of Operators of Electronic Communications Code Networks. Agreement to the Protective Provisions has been reached with Openreach.	Agreement relative to Protective Provisions is complete. No further action.

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No.	Statutory Undertaker or other similar body	Negotiations summary	Status of Negotiations at Deadline <u>9</u>
16	Port of London Authority Ltd	Schedule 14, Part 8 of the draft Development Consent Order contains Protective Provisions for the Port of London Authority Ltd (PLA). The PLA is meaningfully engaged in negotiations regarding Protective Provisions. The Applicant continues discussions with PLA on several draft proposals within the draft Development Consent Order. Of these, an improved number of elements are under negotiation at present.	The Applicant is confident that agreement <u>with regard to Protective Provisions</u> will be reached <u>prior to 20 December 2023 (end of Examination)</u> .
17	Port of Tilbury London Ltd	Schedule 14, Part 10 of the draft Development Consent Order contains Protective Provisions for the Port of Tilbury London Ltd (PoTLL). PoTLL has been meaningfully engaged over a number of months regarding agreement on the Statement of Common Ground (SoCG) and Protective Provisions. The Applicant has been informed that the Protective Provisions will not be concluded until other agreements are concluded. Engagement on the SoCG and relevant side agreements is ongoing. PoTLL have submitted substantial written representations regarding the importance of the port operations and its proposed expansion for the UK economy, and the need to address various practicalities of the Project. This representation has draft protective provisions of their own wording appended to it for discussion.	The Applicant is working with PoTLL to have the Protective Provisions, SoCG and other agreements agreed by the end of Examination.
18	Southern Gas Networks PLC	Schedule 14, Part 5 of the draft Development Consent Order contains Protective Provisions for Southern Gas Networks PLC (SGN). National Highways and SGN concluded a side agreement on 28 July 2023.	Agreement relative to Protective Provisions is complete. No further action.
19	Southern Water Services Ltd	Schedule 14, Part 1 of the draft Development Consent Order contains Protective Provisions for the Protection of Electricity, Gas, Water and Sewerage Undertakers. Discussions are ongoing regarding a separate side agreement between the Applicant and Southern Water Services Ltd (Southern Water) relative to Modified Protective Provisions in favour of Southern Water. The latest version of this side agreement <u>was sent by the Applicant's solicitors to</u> Southern Water legal representatives <u>on 24 November 2023</u> .	The Applicant is confident that agreement will be reached <u>prior to 20 December 2023 (end of Examination)</u> .

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No.	Statutory Undertaker or other similar body	Negotiations summary	Status of Negotiations at Deadline <u>9</u>
20	Thames Water Utilities Ltd	Schedule 14, Part 1 of the draft Development Consent Order contains Protective Provisions for the Protection of Electricity, Gas, Water and Sewerage Undertakers. Discussions have concluded and the parties have agreed a form of Protective Provisions; an agreement was formally reached in February 2023.	Agreement relative to Protective Provisions is complete. No further action.
21	Thurrock Flexible Generation Ltd (formerly known as Thurrock Power Ltd) (part of Statera Energy)	Schedule 14, Part 1 of the draft Development Consent Order contains Protective Provisions which the Applicant has proposed for Thurrock Flexible Generation Ltd. <u>The Applicant and Thurrock Flexible Generation Ltd have been engaged throughout November 2023 to address those concerns raised, which will be resolved via the conclusion of an interface agreement which is in its final stages.</u>	The Applicant is confident that agreement will be reached <u>prior to 20 December 2023 (end of Examination)</u> .
22	UK Power Networks Ltd	Schedule 14, Part 1 of the Development Consent Order contains Protective Provisions for the Protection of Electricity, Gas, Water and Sewerage Undertakers. Agreement to the Protective Provisions has been reached with UK Power Networks Ltd (UKPN). National Highways and UKPN concluded a side agreement on 26 July 2023.	Agreement relative to Protective Provisions is complete. No further action.
23	Verizon UK Ltd	Schedule 14, Part 2 of the draft Development Consent Order contains Protective Provisions for the Protection of Operators of Electronic Communications Code Networks. Agreement to the Protective Provisions has been reached with Verizon UK Ltd.	Agreement relative to Protective Provisions is complete. No further action.
24	Virgin Media Ltd	Schedule 14, Part 2 of the draft Development Consent Order contains Protective Provisions for the Protection of Operators of Electronic Communications Code Networks. Agreement to the Protective Provisions has been reached with Virgin Media Ltd.	Agreement relative to Protective Provisions is complete. No further action.

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25	Vodafone Ltd	Schedule 14, Part 2 of the draft Development Consent Order contains Protective Provisions for the Protection of Operators of Electronic Communications Code Networks. Agreement to the Protective Provisions has been reached with Vodafone.	Agreement relative to Protective Provisions is complete. No further action.
26	Zayo Group UK Ltd	Schedule 14, Part 2 of the draft Development Consent Order contains Protective Provisions for the Protection of Operators of Electronic Communications Code Networks. The Applicant has shared with Zayo Protective Provisions for the Protection of Operators of Electronic Communications Code Networks and Zayo have confirmed agreement to these previously. Zayo have during earlier SoCG dialogue [REP1-091] changed the previously agreed position [APP-120] and do not recognise the necessity for the Protective Provisions, stating that they are protected under NRSWA 1991 and the Communications Act 2003. Zayo have not responded to correspondence issued to them on several occasions from the Applicant requesting comments regarding the change in position with no comments provided by Zayo.	No further action is expected with regard to Protective Provisions during Examination.
Internal Drainage Boards			
27	Essex County Council	Schedule 14, Part 3 of the draft Development Consent Order contains Protective Provisions for the Protection of Drainage Authorities. Essex County Council have confirmed they are content with the drainage Protective Provisions contained in the draft DCO, and this has been documented in the SoCG under item 2.1.33 [REP7-110].	Agreement relative to Protective Provisions is complete. No further action.
28	Kent County Council	Schedule 14, Part 3 of the draft Development Consent Order contains Protective Provisions for the Protection of Drainage Authorities. Kent County Council have confirmed they are content with the drainage Protective Provisions contained in the draft DCO and the modified Protective Provisions agreed via a side agreement. This has been documented in the SoCG under item 2.1.97 [REP7-112].	Agreement relative to Protective Provisions is complete. No further action.

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No.	Statutory Undertaker or other similar body	Negotiations summary	Status of Negotiations at Deadline <u>9</u>
29	North Kent Marshes Internal Drainage Board	<p>Schedule 14, Part 3 of the draft Development Consent Order contains Protective Provisions for the Protection of Drainage Authorities.</p> <p><u>North Kent Marshes Internal Drainage Board have confirmed they are content with the drainage Protective Provisions contained in the draft DCO and the modified Protective Provisions agreed via a side agreement. This has been documented in the SoCG in which all seven matters have now been agreed [Document Reference 9.43 (3)].</u></p>	<p><u>Agreement relative to Protective Provisions is complete. No further action.</u></p>
30	London Borough of Havering	<p>Schedule 14, Part 3 of the draft Development Consent Order contains Protective Provisions for the Protection of Drainage Authorities.</p> <p>The London Borough of Havering have confirmed that they are content with the drainage Protective Provisions contained in the draft DCO, and this has been documented in the SoCG under item 2.1.74 <u>[REP6-028].</u></p>	<p>Agreement relative to Protective Provisions is complete. No further action.</p>
31	Thurrock Council	<p>Schedule 14, Part 3 of the draft Development Consent Order contains Protective Provisions for the Protection of Drainage Authorities.</p> <p>The Applicant does not agree with the Council's position that enforcement action should be carried out at the discretion of the Lead Local Flood Authority in accordance with each drainage authority's Enforcement Policy and Protocol, in place of the provisions in Schedule 14, Part 3 to the draft DCO.</p> <p>This matter is captured and recorded as 'Matter Not Agreed' in the Statement of Common Ground under item 2.1.31 <u>[REP6-030].</u></p>	<p>Agreement relative to drainage Protective Provisions has not been reached.</p>

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