



Lower Thames Crossing

5.4.3.25 Final Statement of Common Ground between (1) National Highways and (2) Zayo Group UK Limited (Tracked changes version)

Deleted: Draft Agreed

APFP Regulation 5(2)(q)

Infrastructure Planning (Applications:
Prescribed Forms and Procedure)
Regulations 2009

Volume 5

DATE: December 2023

DEADLINE: 9A

Deleted: July

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Planning Inspectorate Scheme Ref: TR010032
Application Document Ref: TR010032/APP/5.4.3.25

VERSION: 3.0

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Revision history

Version	Date	Submitted at
1.0	31 October 2022	DCO Application
2.0	18 July 2023	Deadline 1
3.0	15 December 2023	Deadline 9A

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Status of the Statement of Common Ground

This is the Final Statement of Common Ground between (1) National Highways (The Applicant) and (2) Zayo Group UK Limited.

At Examination Deadline 1, the Applicant and Zayo Group UK Limited agreed that the Statement of Common Ground was an accurate description of the matters raised and the status of each.

The Statement of Common Ground was left open during Examination to allow for the addition of new matters, should any arise between Deadline 1 and Deadline 9A.

Of the 9 matters contained within, seven matters are agreed and two remain under discussion. One of the matters that is under discussion will only be progressed at the detailed design stage. The Applicant has tried to engage with Zayo on the other (previously agreed at the DCO application version of the SoCG) outstanding matter since Deadline 1 and over the course of the Examination; however, the Applicant has not received a substantive response on which to amend its position. Nevertheless, the Applicant believes that it does not have to amend its position. Zayo have not made any representations on this outstanding matter to the Examining Authority. The Applicant also considers that this outstanding matter may also be dealt with at the detailed design stage.

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From: [REDACTED]
Sent: Wednesday, July 5, 2023 4:45 PM
To: [REDACTED]
Subject: RE: LTC - Zayo SoCG Update

Hi [REDACTED]
That will be acceptable.

Once your lawyers get in contact, I will put them in contact

Kind regards

Delete

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 (~~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 The SoCG has been produced to confirm to the Examining Authority where agreement has been reached between ~~the Applicant~~ and Zayo Group UK Limited, and where agreement has not been reached.

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1.1.3 This final version of the SoCG has been submitted at Examination Deadline 9A.

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1.2 Principal Areas of Disagreement

1.2.1 On the 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.

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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 final position on matters table in Section 2 of this SoCG, "Matter Agreed" indicates where the issue has now been resolved, and "Matter under Discussion*", where these points will be the subject of discussion during the detailed design or construction stages, of the Project to finalise detail.

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2 Matters

2.1 Final Position of matters

2.1.1 A position statement on engagement undertaken between the Applicant and Zayo Group UK Limited is presented in Appendix A.

2.1.2 The outcomes of discussions are presented in Table 2.1 which details and presents the matters which have been agreed or that remain under discussion between (1) the Applicant and (2) Zayo Group UK Limited.

2.1.3 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'.

2.1.4 At Examination Deadline 9A there are 9 matters in total, of which seven are agreed and two that remain under discussion.

2.1.5 With regards to the matters under discussion, it is acknowledged there are some matters where further discussion may need to take place during the detailed design or construction stages of the Project to finalise detail and as such, there are some matters that will remain 'under discussion' until that time. There are two matters in this SoCG to which this applies, and this is indicated via an asterisk (*).

2.1.6 This is the final Statement of Common Ground between the Applicant and Zayo Group UK Limited.

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Table 2.1

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Deleted: <#>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.¶

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Deleted: <#>The matter which remains under discussion will not change until the detailed design stage (post examination). ¶
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. ¶
If no new matters emerge during the Examination phase, then this SoCG will become the 'Final SoCG' by Deadline 9.¶

Table 2.1 Final Position of Matters

Topic	Item No.	Zayo Group UK Limited Comment	Applicant's 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 [Document Reference 3.1 (11)]	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.	N/A	Matter Agreed

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~~Deleted: Draft DCO [Additional Submission [AS-038](#)]~~

~~Deleted: (issued 1 May 2020).~~

Topic	Item No.	Zayo Group UK Limited Comment	Applicant's 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

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Topic	Item No.	Zayo Group UK Limited Comment	Applicant's 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 which have been previously agreed with Zayo. Whilst The Applicant acknowledges that Zayo are adequately protected under NRSWA 1991 and the Communications Act 2003. those protective provisions contained within Schedule 14, Part 2 suffice for any instance that may arise where they would not be adequately protected during the development of the detailed design, such as a temporary diversion into third party land during the construction of a new highway, which would be discussed with Zayo in advance of that work being undertaken. The Applicant notes that the interested party does not consider protective provisions necessary and has therefore not formally approved the protective provisions in the DCO.	Protective provisions, Schedule 14, draft DCO [Document Reference 3.1 (11)] Statement of Common Ground between National Highways and Zayo Group UK Limited (version 1) [APP-120]	Matter Under Discussion*

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~~Deleted: 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~~

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~~Deleted: to resolve this matter. It is anticipated~~
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~~Deleted: this could be achieved within~~
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Appendix A Engagement activity

- A.1.1 ~~The Applicant~~ and Zayo ~~Group UK Limited~~ 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.

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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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Registered office Bridge House, 1 Walnut Tree Close, Guildford GU1 4LZ

National Highways Limited registered in England and Wales number 09346363