

Lower Thames Crossing

5.4.3.14 Final Statement of Common Ground between (1) National Highways and (2) Network Rail Infrastructure Limited (Clean version)

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

Status of the Statement of Common Ground

This is the Final Statement of Common Ground between (1) National Highways (the Applicant) and (2) Network Rail Infrastructure Limited.

The Applicant considers that this Statement of Common Ground is an accurate description of the matters raised by Network Rail Infrastructure and the status of each matter, based on the engagement that has taken place.

Of the 12 matters contained within, the Applicant considers that seven matters are agreed and three matters are not agreed. Two matters relating to a side agreement will remain under discussion.

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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 Proposed Development) 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 The SoCG has been produced to confirm to the Examining Authority where agreement has been reached between the Applicant and Network Rail Infrastructure Limited and where agreement has not been reached.
- 1.1.3 This final version of the SoCG has been submitted at Examination Deadline 9A.

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.
- 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 Network Rail Infrastructure Limited 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 'Final position on 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 Agreed" indicates where the issue has now been resolved. "Matter Under Discussion*" indicates the matters are subject to further discussion in relation to a side agreement (between Network Rail and the Applicant). These matters are indicated by a (*).

2 Matters

2.1 Final position on matters

- 2.1.1 A summary of engagement undertaken between the Applicant and Network Rail is provided in Appendix A.
- 2.1.2 The outcome of this engagement is presented in Table 2.1 which details and presents the matters that are either agreed or not agreed between the Applicant and Network Rail.
- 2.1.3 In the column 'Item No' in Table 2.1, '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.
- 2.1.4 Since v2 of the SoCG was submitted at Deadline 1, the following matters have moved from 'Matter Under Discussion' to 'Matter Not Agreed':
- a. 2.1.1 - Land and compulsory acquisition: Acquisition of interests in Network Rail's land
 - b. 2.1.12 - Construction: Use of Network Rail Infrastructure Ltd Level Crossings & Overbridges
 - c. 2.1.9 – Protective Provisions: References to asset protection agreements
- 2.1.5 Since v2 of the SoCG was submitted at Deadline 1, the following matter has moved from 'Matter Not Agreed' to 'Matter Under Discussion*':
- a. 2.1.10 - Protective Provisions: Consent to the exercise of DCO powers
- 2.1.6 Since v2 of the SoCG was submitted at Deadline 1, the following matter has moved from 'Matter Under Discussion' to 'Matter Under Discussion(*)':
- a. 2.1.8 Protective Provisions: Form of protective provisions
- 2.1.7 At Examination Deadline 9A there are 12 matters in total, of which seven are agreed and three are not agreed. Two matters remain under discussion and are subject to further discussion in relation to a side agreement (between Network Rail and the Applicant). These matters are indicated by a (*).
- 2.1.8 This is the final Statement of Common Ground between the Applicant and Network Rail.

Table 2.1 Final position on matters

Topic	Item No.	Network Rail Infrastructure Limited Comment	The Applicant's Response	Application Document Reference	Status
Land and compulsory acquisition					
Acquisition of interests in Network Rail's land	2.1.1 RRE	All interests in land required by National Highways in respect of which Network Rail enjoys an interest (Network Rail land) should be acquired by agreement rather than through the exercise of compulsory purchase powers. Network Rail is willing to negotiate agreements with National Highways and considers that, where agreement is reached there is no compelling case in the public interest for the compulsory purchase or acquisition of its land or rights over it.	The Applicant is committed to reaching agreement with Network Rail as to the terms on which it can secure the interests it requires on Network Rail land. The parties have been engaged in discussions throughout the Examination period but have not been able to reach agreement in this respect. In the absence of completed legal agreement(s) and in order to avoid any risk of impediment to the delivery of the Proposed Development (if authorised), the Applicant must secure the interests it requires in Network Rail land by means of the DCO. For this reason, the Applicant is seeking compulsory acquisition powers in relation to interests in Network Rail land.	N/A	Matter Not Agreed
Design – road, tunnels, utilities					
Interfaces with Network Rail's railway	2.1.2 RRE	Please describe the interface locations between Network Rail and the Proposed Development.	There are four interface locations (with two of the locations having more than one interface as listed below) where the Proposed Development will interface with Network Rail's railway, as follows: <u>Fenchurch Street and Shoeburyness Line (NR002) 'Franks Farm'</u>	N/A	Matter Agreed

Topic	Item No.	Network Rail Infrastructure Limited Comment	The Applicant's Response	Application Document Reference	Status
			<p>The widening of the M25 due to the diverted traffic from the planned Proposed Development route will impact the existing M25 bridge over railway tracks south of M25 Junction 30, between Upminster and West Horndon stations. A new bridge over the railway (BRN0000087) just to the west of the existing bridge (BRE0013562) will be constructed.</p> <p><u>Upminster and Gray's Branch (NR003) 'Ockendon'</u></p> <p>Existing utilities will be diverted over the overline road bridge.</p> <p>Under Track Crossing (UTX) beneath the railway for the installation of electricity networks will be required either immediately south of Ockendon Road or 200m south of the existing road ('Ockendon UTX 1').</p> <p>Ockendon under bridge – Proposed Development Northbound slip road to M25 (north of junction 30): the slip road construction under bridge and associated retaining walls ('Ockendon under bridge'). This includes a UTX crossing required for the diversion of Essex and Suffolk 900mm strategic water main near Ockendon ('Ockendon UTX 2').</p> <p>New NMU Footbridge will be constructed close to M25 bridge over the railway track</p>		

Topic	Item No.	Network Rail Infrastructure Limited Comment	The Applicant's Response	Application Document Reference	Status
			<p>between Ockendon and Upminster stations ('Ockendon NMU Footbridge').</p> <p><u>Tilbury Loop Line (NR004)</u></p> <p>Three UTX crossings proposed beneath Tilbury Loop Line, planned to be installed by Essex and Suffolk Water and Anglian Water companies. There are two supplies in the Tilbury area, one for the Gun Hill water main which will cross to the west of Station Road ('Gun Hill UTX') and one for the Linford water supply which will cross east of Station Road ('Linford UTX'). The third crossing is for the installation of Anglian Water rising sewer main approximately 300m south-west of Station Road level crossing ('Church Road UTX').</p> <p>Construction of a UTX for the installation of electricity networks approximately 85m east of the viaduct to divert UK Power Networks' overhead line network, underground.</p> <p>Overhead powerline modifications:</p> <p>UK Power Networks will remove the existing powerline located on pylons west of Coal Road via the undergrounding of the networks. Possessions will be required to erect any temporary networks associated with works further along the powerline over the railway (Over Track Crossing (OTX)) and to remove the existing powerline.</p>		

Topic	Item No.	Network Rail Infrastructure Limited Comment	The Applicant's Response	Application Document Reference	Status
			<p>National Grid Electricity Transmission is to realign the existing powerline over the railway approximately 100m west of the viaduct. Possessions will be required for the erection and removal of powerlines for the existing, temporary and permanent networks OTX.</p> <p>The Proposed Development's Tilbury Viaduct and Overhead Line Equipment modifications – Proposed Development route will be over the railway tracks between Tilbury Town and East Tilbury stations, east of the existing Station Road level crossing 'Tilbury Loop Line Viaduct').</p> <p><u>North Kent Railways (NR005)</u></p> <p>The Proposed Development route in tunnel will be crossing under the railway tracks between Gravesend and Higham west of Hoo Junction ('North Kent Railway').</p>		
Asset protection	2.1.3	<p>Asset protection agreements will be required to govern the carrying out of works near the operational railway.</p> <p>See also Protective Provisions section below. Network Rail's Protective Provisions are required for asset protection.</p>	<p>The Applicant had proposed that a Framework Agreement (FA) be entered into between the parties which would commit the Applicant to enter into asset protections agreements. However, it has not been possible to complete the Framework Agreement by the close of Examination.</p>	N/A	Matter Agreed

Topic	Item No.	Network Rail Infrastructure Limited Comment	The Applicant's Response	Application Document Reference	Status
Asset protection – continued	2.1.11	Following Network Rail's technical team reviewing the relevant re-submitted Proposed Development documents and any relevant clearance conditions being received, additional specific asset protection conditions/requirements (in addition to asset protection agreements) are also likely to be required and should be accommodated for in the FA.	The Applicant submitted the Clearance conditions as required by Network Rail in January 2023. No response has been received on this application by the close of Examination despite repeated requests.	N/A	Matter Agreed
Construction					
Use of Network Rail Infrastructure Ltd Level Crossings & Overbridges	2.1.12 RRN	Network Rail are concerned about additional use of, and therefore damage and increased wear and tear/maintenance issues relating to, existing overbridges and level crossings from the use of LTC construction traffic.	The Applicant will continue to engage with Network Rail about the detail of the proposed works on and over the Plots and the intended use of existing NR assets, for Network Rail to analyse.	N/A	Matter Not Agreed
Geology and soil					
Ground movement	2.1.4	Ground movement monitoring to be agreed in advance with Network Rail including settlement trigger levels.	The Applicant will agree this with Network Rail in advance of carrying out any such ground movement works and or monitoring.	N/A	Matter Agreed

Topic	Item No.	Network Rail Infrastructure Limited Comment	The Applicant's Response	Application Document Reference	Status
Soil removal	2.1.5	Any use of railway network for soil removal to be agreed with Network Rail and the Freight Operating Company.	The Applicant will agree this with Network Rail in advance of using the railway to remove soil.	N/A	Matter Agreed
Road drainage and the water environment					
Culverts	2.1.6	Plan for use of any Network Rail culverts to be agreed with Network Rail (details over no overflow tolerance, potential of reconstruction or construction of temporary/alternative culverts, if applicable, to be agreed with Network Rail.	The Applicant will agree this with Network Rail in advance of use of any Network Rail culverts.	N/A	Matter Agreed
Protective Provisions					
Inclusion within the DCO	2.1.7 RRE	The DCO should include a set of protective provisions for the benefit of Network Rail.	Protective Provisions for railway undertakers, including Network Rail, are included within the draft DCO (see Part 14 of Schedule 14).	Draft DCO [Document Reference 3.1 (11)]	Matter Agreed

Topic	Item No.	Network Rail Infrastructure Limited Comment	The Applicant's Response	Application Document Reference	Status
Form of protective provisions	2.1.8	Network Rail's standard form of protective provisions should be included in the DCO as applied for / made by the Secretary of State.	<p>Protective Provisions for the benefit of railway undertakers, including Network Rail, are included within the draft DCO, as noted at 2.1.3 above.</p> <p>However, the Proposed Development also interacts with the High Speed 1 network. As such, the railway Protective Provisions have been drafted to address the requirements of both Network Rail and HS1 Limited.</p> <p>The Protective Provisions have also been drafted having careful regard to other recent, relevant precedents.</p> <p>The Applicant therefore considers the Protective Provisions contained within the DCO to be adequate and appropriate. The Applicant does not consider it necessary to incorporate Network Rail's standard form.</p> <p>The Applicant sets out its position in relation to the inclusion of consent provisions in Network Rail's standard form of protective provisions in 2.1.10 below.</p> <p>The Applicant and Network Rail will continue discussions on this matter, and it is anticipated that the matter can be resolved via a side agreement.</p>	Draft DCO [Document Reference 3.1 (11)]	Matter Under Discussion*

Topic	Item No.	Network Rail Infrastructure Limited Comment	The Applicant's Response	Application Document Reference	Status
References to asset protection agreements	2.1.9	<p>Network Rail consider that an obligation to enter into asset protection agreements should be set out in the protective provisions. It is important for this requirement and all the requirements set out in the Network Rail protective provisions to be included within the DCO so the details of the relevant protections are publicly accessible to all, whereas the FA is confidential between its parties and would not be made publicly available unless so required by law.</p> <p>Network Rail's standard protective provisions always provide for the parties entering into asset protection agreements.</p>	<p>The Applicant considers that it is unnecessary for the Protective Provisions to include a reference to the parties entering into asset protection agreements. Such an obligation was being discussed to be included within the FA but agreement has not been reached on this agreement (see 2.1.3 above).</p> <p>It is not common practice to include direct reference to asset protection agreements within railway Protective Provisions and the Applicant is not persuaded that it is appropriate or necessary.</p>	Draft DCO [Document Reference 3.1 (11)]	Matter Not Agreed
Consent to the exercise of DCO powers	2.1.10 RRE	<p>Network Rail considers that the railway protective provisions should include provision to the effect that the Applicant should not exercise various powers under the DCO without its consent, for the reasons set out at [2.1.1] and [2.1.9] above.</p>	<p>The Proposed Development will interface with the operational railway of Network Rail in a number of locations. As such, the effect of Network Rail's request would be that the Applicant would not be able to acquire the interests it needs to implement the Proposed Development without first securing Network Rail's consent.</p> <p>The Applicant does not agree with Network Rail's request that it must reserve an ability to exercise a right of consent, or veto over the</p>	Draft DCO [Document Reference 3.1 (11)]	Matter Under Discussion*

Topic	Item No.	Network Rail Infrastructure Limited Comment	The Applicant's Response	Application Document Reference	Status
			<p>exercise of compulsory acquisition or temporary possession powers in respect of its land interests. The Applicant does not agree as it considers that such a provision (i) is unnecessary and (ii) would risk compromising the efficient and effective exercise of those powers.</p> <p>The inclusion of the 'consent provision' is unnecessary because the Protective Provisions included at Schedule 14 to the draft DCO [REP5-024] for Network Rail's benefit already provide Network Rail and its undertaking with ample protection.</p> <p>The Applicant is required to secure Network Rail's approval before carrying out any 'specified work' on railway property; this means that Network Rail already have an effective means of controlling those aspects of the authorised development that will interact with its undertaking.</p> <p>Further, the protections being afforded to Network Rail go beyond what is typically offered, with HS1's consent also being required in respect of any 'protective works' being the exercise of a number of DCO powers (as set out in that definition in the Protective Provisions) where exercised in relation to railway property. Through these controls, Network Rail therefore already enjoys adequate control over the construction</p>		

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			<p>of the authorised development and it is not clear why a right of consent over compulsory acquisition powers is considered to be necessary to achieve this – not least given that the Applicant will only be acquiring interests in land that reflect the detailed design of the authorised development as constructed, which in turn Network Rail can already exercise a right of consent over under the provisions of Schedule 14 as proposed.</p> <p>Secondly, the Applicant is concerned to ensure it retains unfettered land powers – having to secure consent to the exercise of those powers could prove protracted if the Applicant and Network Rail are unable to agree commercial matters relating to their exercise. The compulsory acquisition process already allows for any disagreements on commercial matters to be resolved in a tried and tested way, through the referral of compensation disputes to the Upper Tribunal to be determined in accordance with the compensation code. It would not necessarily be unreasonable for Network Rail to take a different view to the Applicant in respect of commercial matters as both parties' interests are not necessarily going to be aligned, however the Applicant is concerned that any dispute on commercial matters could delay or preclude the exercise of the land powers to</p>		

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			<p>the detriment of the timely and efficient delivery of the authorised development.</p> <p>The Applicant is cognisant that there are many DCOs which include a consent provision in respect of land powers. However, what is not clear from examining these precedents alone is the private arrangements that are likely to have been reached – to effectively document the giving of consent in advance such that the risk of commercial matters delaying the development in question has already been resolved.</p> <p>The Applicant's approach to land acquisition is that voluntary acquisition is preferable where possible. However, it has not proved possible to reach agreement with Network Rail. It is on this basis that the Applicant is seeking Order powers to ensure it is able to compulsory acquire land and interests in land where it has not been possible to reach agreements.</p> <p>The Applicant must retain compulsory acquisition powers in respect of land where voluntary agreement has not yet been obtained or in the circumstance where voluntary agreement may later prove to have granted insufficient rights. Moreover, compulsory powers are more readily enforceable so reducing additional risk, cost and delay. The Applicant may consistently and uniformly enforce compulsory powers to</p>		

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			<p>deliver the Proposed Development in a comprehensive manner in relation to all persons with an interest in land. Providing Network Rail with a veto right in respect of compulsory acquisition and temporary possession would put the delivery of the Proposed Development (especially being a linear scheme) at unnecessary risk.</p> <p>There is no provision within the Planning Act 2008 which requires an Applicant to secure Network Rail's consent to the exercise of Order powers (in contrast with for instance, the position of the Crown where such provision has been made in section 135 of the Planning Act 2008) and the Applicant is not persuaded of any basis on which such consent ought to be required. To the contrary, the Applicant is concerned that the inclusion of such a provision will enable Network Rail to dictate not only the nature of the interest in land granted for the Proposed Development but also the commercial terms on which such an interest may be granted. The Applicant's position is that it has submitted its case in support of the land interests it requires through the submission of the DCO and supporting documentation. Network Rail has not objected in principle to the Proposed Development or presented any evidence to suggest that the proposals are incompatible</p>		

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			<p>with the efficient and safe operation of the railway. As Protective Provisions are already provided in the Order there can be no serious detriment to Network Rail's undertaking under section 127 of the Planning Act 2008.</p> <p>Indemnity provisions have also been provided and therefore adequate and appropriate protections are already included.</p> <p>The Applicant and Network Rail will continue discussions on this matter, and it is anticipated that the matter can be resolved via a side agreement.</p>		

Appendix A Engagement activity

Table A.1 Engagement activities between the Applicant and Network Rail Infrastructure Limited since the DCO Application was submitted on 31 October 2022

Date	Overview of Engagement Activities
31 October 2022 – present	The Applicant and Network Rail continue to be engaged in discussions as regards a suite of legal agreements to govern the interface between the Proposed Development and the operational railway.
22 November 2022	Engagement with Network Rail Southern Senior leadership team relating to Proposed Development updates and key actions
8 December 2022	Engagement with Network Rail Southern clearance conditions for the Proposed Development main tunnels
23 January 2023	Engagement with Network Rail Anglia relating to documentation required for ground movement monitoring equipment
03 February 2023	Engagement with Network Rail Land & Property team relating to clearance applications for the four key interface locations
20 April 2023	Engagement with Network Rail Anglia Ground movement workshop
04 May 2023	Engagement with Network Rail Anglia Ground movement workshop
09 May 2023	Engagement with Network Rail Anglia Senior leadership team relating to Proposed Development update and key actions
12 May 2023	Engagement with Network Rail Southern Ground movement workshop
18 May 2023	Engagement with Network Rail Anglia Ground movement workshop
31 May 2023	Engagement with Network Rail Anglia Ground movement workshop
6 June 2023	Engagement with Network Rail Anglia Senior leadership team relating to Proposed Development update & discussions over Station Road Level Crossing
14 June 2023	Engagement with Network Rail Anglia Ground movement workshop
26 September 2023	Engagement with Network Rail Anglia Senior leadership team relating to Proposed Development update & discussions over Station Road Level Crossing
24 October 2023	Engagement with Network Rail Anglia Senior leadership team relating to Proposed Development update & discussions over Station Road Level Crossing
21 November 2023	Engagement with Network Rail Anglia Senior leadership team relating to Proposed Development update & discussions over Station Road Level Crossing

Appendix B Glossary

Term	Abbreviation	Explanation
Asset protection agreement	APA	A form of agreement designed to regulate works carried out on or near to the railway.
Basic Asset Protection Agreement	BAPA	A form of agreement usually designed to regulate early preparations for works to be carried out on or near to the railway.
Development Consent Order	DCO	Means of obtaining permission for developments categorised as Nationally Significant Infrastructure Projects (NSIP) under the Planning Act 2008.
Framework Agreement	FA	A form of agreement proposed to be entered into between the Applicant and Network Rail to make overarching provision for the legal documentation to be agreed between them and to agree any bespoke protections required for the safety of the railway as a result of the Proposed Development (which are known at the time the FA is entered into).
Freight Operating Company	FOC	A company engaged in the transport of goods by rail.
Ground investigation	GI	Several levels of investigation from desk-based research to onsite sampling to evaluate challenges related to soil/ground.
A122 Lower Thames Crossing	Proposed Development	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.
Non-motorised user	NMU	Users of non-motorised vehicles (e.g., cyclists, horse riders) and pedestrians.
Overhead Line Equipment	OLE	Overhead wires and supporting infrastructure that carry electricity at 25,000 volts to power electric trains.
UK Power Networks	UKPN	An energy network operator. Owns and maintains the electricity cables in Southeast England, the East of England and London.
Under Track Crossing	UTX	A conduit to carry cables, etc. from one side of the line to the other.

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