

A417 Missing Link
TR010056

7.2 Consents and Agreements Position Statement (Rev 2)

Planning Act 2008

APFP Regulation 5(2)(q)
Infrastructure Planning (Applications: Prescribed Forms and
Procedure) Regulations 2009

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A417 Missing Link

Development Consent Order 202[x]

Consents and Agreements Position Statement (Rev 2)

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1 Introduction

1.1 Purpose of this document

- 1.1.1 This Consents and Agreements Position Statement sets out ~~Highways England's~~ National Highways' intended strategy for obtaining the consents and associated agreements needed to implement the A417 Missing Link project (the "scheme").
- 1.1.2 The purpose and objective of this document is to identify what consents and agreements are expected to be needed for the scheme outside of the Development Consent Order (DCO), and how these will be obtained in line with Regulation 5(2)(q) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (The APFP Regulations).
- 1.1.3 For further information on the scheme please refer to ES Chapter 2 The Project (Document Reference 6.2, APP-033).
- 1.1.4 This document has been updated at Deadline 86 of the Examination (~~630 March~~ May 2022) ~~and is considered to in order to~~ presents the final latest position ~~in relation to~~ on other consents and agreements required for the scheme.

2 Strategy

2.1 Qualification as a National Significant Infrastructure Project

- 2.1.1 The scheme is a Nationally Significant Infrastructure Project (NSIP) under sections 14(1)(h) and 22(1)(a) of the Planning Act 2008 (the Act).
- 2.1.2 Section 14(1)(h) of the Act defines an NSIP as highway-related development subject to falling within the criteria set out in section 22 of the Act.
- 2.1.3 Under section 22(1) of the Act, an NSIP for highway-related development must fall within one of three specified categories; construction, improvement or alteration of a highway.
- 2.1.4 The scheme is a new offline section of dual carriageway and therefore constitutes the “construction” of a highway within the meaning of section 22(1)(a) and meets the requirements of this definition under section (22)(2) and 22(4) as follows:
- The highway will (when constructed) be wholly in England (section 22(2)(a));
 - ~~Highways England~~[National Highways](#) (as the strategic highways company), will be the highway authority for the highway (section 22(2)(b)); and
 - The speed limit on the section of the A417 in the DCO boundary exceeds 50 mph and the area of development within the DCO boundary is 198.2 hectares, which is greater than 12.5 hectares (sections 22(2)(c) and 22(4)(b)).
- 2.1.5 As the scheme is an NSIP, development consent must be obtained from the Secretary of State to authorise it, and an application for a DCO must be made to the Planning Inspectorate who administer the DCO process on behalf of the Secretary of State for Transport, under section 37 of the Act.

2.2 Consents strategy

- 2.1.6 Although the DCO will allow the scheme to be constructed and operated, there will inevitably be wider consents and licences which are required outside of the DCO, recognising the level of detail and information available at the point at which the application is submitted and consented.
- 2.1.7 The basis of ~~Highways England's~~[National Highways'](#) consents strategy is therefore:
- a DCO must be sought as the principal consent for the works (under the Act) including to provide the necessary land acquisition and temporary possession powers;
 - the intent of the Act and Government policy is to enable development and construction-related consents to be included within the DCO; therefore, where possible and practicable, additional consents have been included within the DCO;
 - the scheme benefits from the intent of the Act and Government policy as most of the consents required for the construction of the scheme will be in place at the point of the making of the DCO, this minimises the need for any further approvals before the works covered by the DCO can commence; and
 - the proposed scheme has and will be developed based on strong collaboration between the key stakeholders, and any additional consents and agreements will be secured at key stages of project development as necessary. The progress on these items will be reported to the Examining

Authority through Statements of Common Ground (SoCG) with the key statutory bodies, with a summary of the current situation reported in section 3 of this document and at Appendix A.

3 Consents and agreements

3.1 Consents

- 3.1.1 The principal consent for the proposed scheme will be a DCO. The DCO provides development consent for the works and enables land acquisition and temporary possession, along with many consents and powers to be dealt with at the same time.
- 3.1.2 However, the DCO application may need to be supplemented by other applications because:
- a specific consent cannot be contained in the DCO;
 - a consenting authority declines to allow a consent to be contained within the DCO (where they have the power to do so); or
 - it is not desirable, or it is inappropriate, to include a consent within a DCO due to the stage of design development meaning the detail required is unavailable.
- 3.1.3 At this point (~~the submission of the DCO application~~[Deadline 8 of the Examination, 6 May 2022](#)) most of the consents and all the powers required have been included, or addressed, within the DCO as permitted by various provisions of the Act. These fall into the following categories:
- Authorisation of all permanent and temporary works;
 - Compulsory acquisition of land and/or rights over land such as easements, restrictive covenants and the temporary possession of land;
 - Powers to compulsorily acquire Common Land and provide replacement land;
 - Consent to undertake works within a SSSI;
 - Consent to carry out street works and to stop up highways permanently or temporarily;
 - Highways matters (including classification of roads; temporary stopping up and restriction of use of streets and private means of access);
 - Traffic regulation matters (including speed limits, clearways and restrictions on use);
 - Consent to stop and divert public and private rights of way;
 - Consent to carry out tree works;
 - Consent to remove hedgerows including any 'important hedgerows' (consent for which is not required under the Hedgerow Regulations 1997 as [Highways England](#)[National Highways](#) benefits from the permission in regulation 6(1)(h) of those regulations);
 - Powers to carry out utility diversions (subject to protective provisions);
 - Consent to abstract and/or discharge water from/to the sub-soil;
 - Consent to carry out flood risk and water discharge activities;
 - Consent to obstruct ordinary watercourses;
 - Consent or approval for the carrying out of the works required under any relevant bylaws made under the Water Resources Act 1991 or the Land Drainage Act 1991; and
 - Consent to remove buried human remains.
- 3.1.4 A number of the above consents are prescribed in the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 (a "Prescribed Consent"). As a result, under section 150 of the Act, the relevant consenting body must agree to the inclusion of these consents within the DCO.

Where a consent is prescribed but the relevant consenting body has not provided agreement, National Highways are no longer seeking disapplication through the DCO. Please see Appendix A for further details on the consents and agreements included within the draft DCO (Document Reference 3.1 (Rev 4) and those which will be required to be sought separately, should the Order be granted.

- 3.1.5 ~~Highways England~~National Highways remains is-confident that the necessary agreements have been will be obtained and are included within the draft DCO, with the agreement of the relevant consenting body where required. These agreements are supported by ~~before or during the Examination of its application, in exchange for Highways England proposing to include in the DCO~~ appropriate protective provisions, drafts of which have been included in the draft DCO (Document Reference 3.1 (Rev 42), ~~REP4-014~~). Although some prescribed consents are no longer included for disapplication within the draft DCO (Document Reference 3.1 (Rev 4), ~~Highways England~~National Highways are in ongoing dialogue with the relevant consenting bodies and are confident that the necessary agreements and consents can be sought separately in the normal way.
- 3.1.6 The extent of permits, consents and agreements that may need to be sought separately from the DCO are identified in Appendix A. The consents listed in Appendix A are largely dependent on finalisation of the detailed design, the detailed construction site set up and working methodologies, and discussions with the consenting authorities in light of the detailed design. These are not sufficiently developed at this stage to confirm the requirements and therefore it is not practicable to include them within the DCO.
- 3.1.7 Paragraph 4.56 of the National Policy Statement for National Networks (NPSNN) states that the Secretary of State should not refuse development consent on the basis of regulated impacts unless there is good reason to believe that any relevant necessary operational pollution control permits, licences or other consents will not subsequently be granted. ~~Highways England~~National Highways is unaware of any such reason.

3.2 Agreements

- 3.2.1 Agreements with relevant stakeholders may be required in parallel to the DCO process and may take a variety of forms.
- 3.2.2 A fundamental part of the DCO process is the preparation and agreement of SoCG with a variety of relevant stakeholders to identify the matters on which parties agree and disagree. This helps narrow the focus for examining the application concerned and to make the examination process more efficient. SoCGs have been prepared with the following organisations:
- Walking, cycling and horse-riding organisations
 - Environment Agency
 - Natural England
 - Joint Councils
 - Historic England
 - National Trust
 - Cotswold~~s~~ Conservation Board
 - Gloucestershire Wildlife Trust

3.2.3 Progress of [Highways England](#) the on SoCGs can be found in the Statement of Commonality (Document Reference 7.3 (Rev 32), REP53-005) and this progress will be updated further, with a final position provided at Deadline 9 (16 May 2022).

~~3.2.4 Progress on finalising any SoCG or other forms of agreement, along with updated/final documents, will be reported to the Examining Authority before the close of the examination.~~

~~3.2.5~~ 3.2.4 Other forms of agreement are also likely to be required alongside SoCGs, for example, legal agreements regulating land and works powers, undertakings, memoranda of understanding, and letters of no impediment. A number of these are being progressed by the Applicant, for example:

- Agreements with statutory undertakers where these are required in addition to the protective provisions within the DCO;
- In principle agreements with organisations where mitigation measures are required outside of the DCO boundary (e.g. discretionary noise insulation scheme for certain properties effected by operational changes to the local road network); and
- Letters of no impediment from Natural England in relation to draft European Protected Species licences.

Appendices

Appendix A Consents and agreements table

Table A-1 Consents and agreements that may be required separately to the DCO.

Issue:	Consent / Licence / Agreement & Legislation:	Relevant authority:	Description	Status	Relationship to the draft DCO
Nature conservation	Badgers – A licence under section 10 of the Protection of Badgers Act 1992	Natural England	<p>Required in relation to the disturbance and destruction of known badger setts within the Order Limits prior to and during construction of the scheme.</p> <p>To ensure badgers are not disturbed and ensure legal compliance with the Protection of Badgers Act 1992.</p>	<p>Engagement with Natural England is ongoing. Since submission of the application, a draft licence application has been shared with Natural England. Following review of this information a letter of no impediment has been provided, confirming that based on the draft application, Natural England sees no impediment to a license being issued, should the DCO be granted. A copy of this letter was provided into the Examination at Deadline 1 (Document Reference 8.7, REP1-012).</p> <p>A final licence will be formally submitted following finalisation of the construction design and schedule, and once the DCO has been granted.</p>	Highways England National Highways is not seeking to disapply this in the draft DCO.
	Bats – European Protected Species Licence under the Conservation of Habitats and Species Regulations 2017; section 16 of the Wildlife and Countryside Act 1981	Natural England	<p>Required in relation to the disturbance and destruction of known bat roosts within the Order Limits prior to and during construction of the scheme.</p> <p>To comply with conservation legislation and protect roosting bat species.</p>	<p>Engagement with Natural England is ongoing. Since submission of the application, a draft licence application has been shared with Natural England. Following review of this information a letter of no impediment has been provided, confirming that based on the draft application, Natural England sees no impediment to a license being issued, should the DCO be granted. A copy of this letter was provided into the Examination at Deadline 1 (Document Reference 8.7, REP1-012).</p>	National Highways Highways England is not seeking to disapply this in the draft DCO.

Issue:	Consent / Licence / Agreement & Legislation:	Relevant authority:	Description	Status	Relationship to the draft DCO
				A final Protected Species Licence will be formally submitted following finalisation of the construction design and schedule, and once the DCO has been granted.	
	Great Crested Newts – Conservation of Habitats and Species Regulations 2017; a licence under section 16 of the Wildlife and Countryside Act 1981	Natural England	May be required in relation to the disturbance or removal/translocation of great crested newts within the Order Limits prior to and during construction of the scheme. To ensure Great Crested Newts are not disturbed and ensure legal compliance with the Wildlife and Countryside Act 1981.	Engagement with Natural England is ongoing regarding the potential impacts of the scheme on great crested newts and the potential requirement for an EPS licence post DCO consent. Updated great crested newt surveys are being undertaken between April and June 2022 to include several ponds within 500m of the Order Limits. Should a license be required following these updated surveys or any changes to detailed design, a Protected Species Licence will be formally submitted following finalisation of the construction design and schedule, and once the DCO has been granted.	National Highways Highways England is not seeking to disapply this in the draft DCO.
	Roman Snails – section 16 of the Wildlife and Countryside Act 1981	Natural England	Required in relation to the translocation of Roman snails within the Order Limits prior to the commencement of construction of the scheme. To ensure legal compliance with the Wildlife and Countryside Act 1981.	Discussions with Natural England have taken place on the potential impacts of the scheme on Roman snail and the potential requirement for a Conservation licence post DCO consent. Since submission of the application, a draft Protected Species Licence has been shared with Natural England. Following review of this information a letter of no impediment has been provided, confirming that based on the draft application, Natural England sees no impediment to a license being issued, should the DCO be granted. A copy of this letter was provided into the Examination at Deadline 1 (Document Reference 8.7, REP1-012).	National Highways Highways England is not seeking to disapply this in the draft DCO.

Issue:	Consent / Licence / Agreement & Legislation:	Relevant authority:	Description	Status	Relationship to the draft DCO
				A final Protected Species Licence will be submitted following finalisation of the construction design and schedule, and once the DCO has been granted.	
	Natural England Assent – Consent to carry out works within a SSSI under section 28E and section 28H of the Wildlife and Countryside Act 1981	Natural England	Required for works within the Crickley Hill and Barrow Wake SSSI.	<p>National Highways has held numerous discussions with Natural England and exchanged information in relation to the works required within the SSSI.</p> <p>National Highways have outlined that method statements can be shared with Natural England in advance of any works commencing, however, Natural England do not agree to the principle of these sections of the Act being disapplied through the DCO.</p> <p>These are not Prescribed Consents and given that agreement from Natural England is not expressly required, National Highways continue to seek the disapplication of section 28E and 28H through the draft DCO as submitted (Document Reference 3.1 (Rev 4)).</p> <p>National Highways position on SSSI consents remains as set out in its Document Reference 8.17 Summary of the Applicant's Oral Submissions at Issue Specific Hearing 1 and the legal advice note attached to that document at Appendix A (REP3-009). A further position on the matter was also submitted by National Highways at Deadline 7 at Section 2.10 of our Comments on Submissions received by Deadline 6 (Document Reference 8.31, REP7-005).</p>	National Highways Highways England is seeking to disapply section 28E and section 28H in the draft DCO.

Issue:	Consent / Licence / Agreement & Legislation:	Relevant authority:	Description	Status	Relationship to the draft DCO
	Translocation of fish – Authorisation to translocate fish prior to realignment of Norman's Brook under section 27a exception permit under The Salmon and Freshwater Fisheries Act 1975 (Form FR2)	Environment Agency	Required for the realignment of Norman's Brook, to ensure that the fish assemblage in the receiving environment are protected during works.	Engagement is ongoing with the Environment Agency (EA) and will continue should the DCO be granted.	National Highways Highways England is not seeking to disapply section 27a in the draft DCO.
Water	Water Discharge Activities – Permit to discharge to surface water and/or groundwater under Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016	Environment Agency	Required following treatment of waters arising from construction activity or for the discharge of treated contaminated waters to ground, via re-injection (or possible soakaway) or a watercourse.	<p><u>Numerous discussions have taken place with the Environment Agency in relation to potential agreement to disapply Regulation 12 in respect of the carrying out of a flood risk activity or water discharge activity in the draft DCO. The Environmental Agency have confirmed that they cannot agree to the disapplication at this stage of the project and therefore National Highways is no longer seeking to disapply these agreements through the final draft DCO (Document Reference 3.1 (Rev 4)).</u></p> <p>Requirement for permit will be determined based on construction method and sequencing. <u>Engagement will therefore continue with the EA as the detailed design of the scheme progresses.</u></p> <p><u>Despite the above position, the Environment Agency have confirmed through submissions into the Examination (see their response to ExQ1, 1.4.22 and their response to ExQ2, 2.5.3) (REP1-058 and REP6-027), that based on the information they have seen, they have confidence that it will be possible to secure the</u></p>	<u>This is a Prescribed Consent which</u> National Highways Highways England is <u>not</u> seeking to disapply <u>Regulation 12</u> in the draft DCO.

Issue:	Consent / Licence / Agreement & Legislation:	Relevant authority:	Description	Status	Relationship to the draft DCO
				<u>necessary Permits and Licenses when the detail required to fully consider these is made available.</u>	
	Water Abstraction Licence – Abstraction of water under sections 24 and 25 of the Water Resources Act 1991	Environment Agency	Required for de-watering operations on site during construction.	<p><u>Numerous discussions have taken place with the Environment Agency in relation to potential agreement to disapply sections 24 and 25 of the Water Resources Act in respect of the water abstraction licenses in the draft DCO. The Environment Agency have confirmed that they cannot agree to the disapplication at this stage of the project and therefore National Highways is no longer seeking to disapply these agreements through the final draft DCO (Document Reference 3.1 (Rev 4).</u></p> <p><u>Discussions with the Environment Agency have taken place on the potential impact of the scheme.</u></p> <p><u>Engagement is ongoing with the EA.</u></p> <p>Requirement for licence will be determined based on construction methods and sequencing. <u>Engagement will therefore continue with the Environment Agency as the detailed design of the scheme progresses.</u></p> <p><u>Despite the above position, the Environment Agency have confirmed through submissions into the Examination (see their response to ExQ1, 1.4.22 and their response to ExQ2, 2.5.3) (REP1-058 and REP6-027), that based on the information they have seen, they have confidence that it will be possible to secure the necessary Permits and Licenses when the</u></p>	<u>This is a Prescribed Consent which National Highways Highways England is not seeking to disapply sections 24 and 25 in the draft DCO.</u>

Issue:	Consent / Licence / Agreement & Legislation:	Relevant authority:	Description	Status	Relationship to the draft DCO
				detail required to fully consider these is made available.	
	Flood Defence Byelaws – Consent or approval for the carrying out of works required under any relevant bylaws made under the Water Resources Act 1991	Environment Agency	Required in the event that any relevant byelaws require consent or approval for the authorised development.	Discussions with the Environment Agency have taken place on the potential impact of the scheme. The EA provided an update into the Examination at Deadline 4 which outlined agreement to disapply Flood Consent Byelaws through the DCO. However, following legal advice, the Environment Agency position at Deadline 6 (REP6-027) outlined that 'given that no Flood Risk Activity Permits are expected to be needed for the project we do not consider it is necessary to disapply the legislation for these Permits. On the basis of this submission, National Highways is no longer seeking to disapply the appropriate byelaws through the draft DCO (Document Reference 3.1 (Rev 4).	This is a Prescribed Consent which National Highways Highways England is not seeking to disapply these byelaws in the draft DCO.
	Land Drainage Consent – Ordinary Watercourse Land Drainage Consent: under section 23 of The Land Drainage Act 1991	Tewkesbury Borough Council, Gotswood District Council and Gloucestershire County Council	Required for all works over, under or near ordinary watercourses. Required for all culvert or structures likely to affect flow in ordinary watercourses. This would include all ordinary watercourses crossed by the scheme.	Discussions with the relevant authorities have taken place in relation to the scheme and agreement to disapply section 23 in the draft DCO. National Highways understands that GCC are content with the disapplication of section 23 of the Land Drainage Act 1991.	This is a Prescribed Consent which National Highways Highways England is seeking to disapply in the draft DCO.
	Trade Effluent Consent – under the Water Industry Act 1991	Local water undertaker	For the purposes of discharging trade effluent from welfare facilities.	Should a trade effluent consent be required to discharge any trade effluent into a public sewer, then a consent would be applied for in advance of the works commencing.	National Highways Highways England is not seeking to disapply this

Issue:	Consent / Licence / Agreement & Legislation:	Relevant authority:	Description	Status	Relationship to the draft DCO
				The requirement for a Trade Effluent Consent will be discussed with the relevant local water undertaker should it be required during the construction phase.	consent in the draft DCO.
Materials and Waste	Waste – Management and disposal of waste under the Environmental Permitting (England and Wales) Regulations 2016	Environment Agency	Required for the management and disposal of waste from site, to protect the environment against contamination.	Engagement is ongoing with the Environment Agency . Full extent and details of required permits and licences is to be determined.	National Highways Highways England is not seeking to disapply this consent in the draft DCO.
	Materials – Pollution Prevention and Control Act 1999, Environmental Permitting (England and Wales) Regulations 2016	Environment Agency	A mobile plant permit for crushing operations or site permits will be required if a subcontractor within a mobile plant permit is used for construction of the scheme.	If required, discussions will take place post DCO consent with the Environment Agency in advance of construction works.	National Highways Highways England is not seeking to disapply this in the draft DCO.
	Asbestos – Control of Asbestos Regulations 2012	HSE	Required for any works where asbestos is present.	It is possible that asbestos may be present in some of the buildings to be demolished as part of the scheme and as such a licence may be needed. If required, a licence will be sought by the contractor prior to demolition works taking place.	National Highways Highways England is not seeking to disapply this in the draft DCO.
Building Demolition	Demolition – Section 80 notice under the Building Act 1984	Local Authority Notice	Written notice is required to be submitted to the Local Authority in relation to the demolition of buildings (and is applicable, an occupier of any adjacent building, public gas supplier and public electricity supplier) setting out	Discussions with the Local Authorities where demolition is required have taken place. Notice of demolition will be provided post DCO consent once details in relation to methodology and timing of works are known.	National Highways Highways England is seeking to disapply section 80 in the draft DCO.

Issue:	Consent / Licence / Agreement & Legislation:	Relevant authority:	Description	Status	Relationship to the draft DCO
			the building and the related demolition works.		
Noise	Section 61 agreement – under Section 61 of the Control of Pollution Act 1974	Relevant local authority	Required to avoid significant construction noise and vibration effects.	Applications for consent to be made to the relevant local authority at least 28 days before the relevant work is due to start, or earlier if reasonably practicable.	National Highways Highways England is not seeking to disapply this in the draft DCO.
National Trail	National Trail Diversion – Section 55 of the National Parks and Access to the Countryside Act 1949.	Natural England	The National Trail must be varied in accordance with the statutory mechanism set out in section 55.	<p>National Highways has sought to engage with Natural England on this matter following submission of our response to the ExA's request for further information under Rule 17 at Deadline 3 (Document Reference 8.20, REP3-012).</p> <p><u>At Deadline 3, and through their response to the same Rule 17 request (REP3-058), Natural England outlined an initial view that disapplication of s55(2) of the 1949 Act would be acceptable.</u></p> <p><u>However, at Deadline 6 Natural England outlined a slightly different view having gained legal advice (REP6-036).</u></p> <p><u>National Highways, through their submission at Deadline 7, Comments on Submissions received by Deadline 6 (Document Reference 8.31, REP7-005) provided a further update on the proposed diversion and outlined that the controls being sought by Natural England within their Deadline 6 submission are already committed through the draft DCO and therefore National Highways continues to seek the disapplication of s.55.</u></p>	National Highways Highways England is seeking to disapply section 55 of the 1949 Act in the draft DCO.

Issue:	Consent / Licence / Agreement & Legislation:	Relevant authority:	Description	Status	Relationship to the draft DCO
				<p><u>Following initial contact with DEFRA via email, a call was held on 5 May with the Policy Advisor responsible for the matter. Having explained the current position and options available, the Advisor confirmed DEFRA have no comment at this stage.</u></p> <p><u>An updated Cotswold Way National Trail Diversion Report (Document 7.11 (Rev 1) has been prepared to confirm that the diversion would be secured by way of the DCO provisions, rather than under s.55, and this has been submitted at Deadline 8 (6 May 2022).</u></p> <p>To date National Highways have not had a response from Natural England on the matter, although section 55 of the 1949 Act is not a Prescribed Consent for the purposes of section 150 of the Planning Act 2008, meaning that consent to disapply the provision is not required from any regulatory body.</p>	