

A46 Newark Bypass

Scheme Number: TR010065

Statement of Common Ground with Canal & River Trust

APFP Regulation 5(2)(q)

Planning Act 2008

**Infrastructure Planning (Examination Procedure)
Rules 2010**

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(Examination Procedure) Regulations
2010**

**The A46 Newark Bypass
Development Consent Order 202[#]**

**Statement of Common Ground with
Canal & River Trust**

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1 Introduction

1.1 Purpose of this document

- 1.1.1 This Statement of Common Ground (this “SoCG”) has been prepared in respect of the A46 Newark Bypass (the “Scheme”) following the application made by National Highways (the “Applicant”) to the Secretary of State for Transport, via the Planning Inspectorate (the “Inspectorate”) for a Development Consent Order (DCO) under section 37 of the Planning Act (the “2008 Act”). A detailed description of the Scheme can be found in Chapter 2 The Scheme of the Environmental Statement [APP-046].
- 1.1.2 This SoCG does not seek to replicate information which is available elsewhere with the application documents. All application documents will be made available on the Planning Inspectorate website.
- 1.1.3 This SoCG has been produced to confirm to the Examining Authority where agreement has been reached between the parties to it, and where agreement has (not) yet been reached. SoCG’s are an established means in the planning process of allowing all parties to identify and focus on specific issues that may need to be addressed during the examination.

1.2 Parties to this Statement of Common Ground

- 1) This SoCG has been prepared between National Highways as the Applicant and
 - 2) Canal & River Trust
- 1.2.1 National Highways (previously known as Highways England) became the Government-owned Strategic Highways Company on 1 April 2015. It is the highway authority in England for the strategic road network and has the necessary powers and duties to operate, manage, maintain, and enhance the network. Regulatory powers remain with the Secretary of State. The legislation establishing National Highways made provision for all legal rights and obligations, including in respect of the application, to be conferred upon or assumed by National Highways.
- 1.2.2 The Canal & River Trust is a charity set up in 2012 to care for England and Wales’ 200-year-old waterways, holding them in trust for the nation forever. It has responsibility for 2000 miles of navigable canals and rivers, together with bridges, tunnels, aqueducts, docks and reservoirs, along with museums and archive collections. The Trust is a prescribed consultee on NSIP proposals which are likely to have an impact on inland waterways or land adjacent to inland waterways.
- 1.2.3 The Trust is Navigation Authority for the River Trent, and also has land interests of part of the waterspace and neighbouring land within the application boundary

1.3 Terminology

1.3.1 Within the table in [Section 3](#), Issues of this SoCG, the terminology is as follows:

- “Agreed” indicates area(s) of agreement.
- “Under Discussion” indicates area(s) of current disagreement where resolution remains possible, and where parties continue discussing the issue(s) to determine whether they can reach agreement by the end of the examination; and
- “Not Agreed” indicates a final position for area(s) of disagreement where the resolution of the divergent positions will not be possible, and parties agree on this point.

It can be assumed that any matters not specifically referred to in [Section 3](#), Issues of this SoCG are not of material interest or relevant to the Trust and therefore have not been subject of any discussions between the parties. As such, those matters can be read as agreed, only to the extent that they are either not of material interest or relevance to the Trust.

2 Record of Engagement

- 2.1.1 Engagement between National Highways and the Trust has been ongoing throughout. In addition to formally consulting the Trust on the scheme design through the consultation process, a number of technical and strategic working group meetings took place prior to the submission of the DCO application. Topics covered in these meetings include land access to complete ecology surveys, bridge crossing design, surface water discharge, and Land plans for the scheme. These meetings and communications continue to take place post submission of the application and have helped shape this SoCG.
- 2.1.2 A record of pre-application engagement is contained in the Consultation Report [APP-028] accompanying the application. Though protective provisions for the Trust were not included in the application draft DCO, the draft Explanatory Memorandum [APP-3.2] explains that they would be included. A record of engagement, since the application was submitted, is available on request.

Date	Form of Correspondence	Key Topics Discussed and Key Outcomes
24/06/2022	Online Teams Meeting	<ul style="list-style-type: none"> Bat & Otter Surveys Scheme Airspace Requirements
01/09/2022	Meeting – The Applicant / The Trust	<ul style="list-style-type: none"> Clearances required on the River Trent Navigation Authority - Technical approval Engagement (Angling Societies) No official mooring sites within the red line boundary of the submission Navigation impact on the waterways
10/05/2024	The Applicant / The Trust	<ul style="list-style-type: none"> Statement of Common Ground Lands
22/05/2024	The Applicant / The Trust	<ul style="list-style-type: none"> Review of the works around Fiddlers Elbow bridge in association with the A46 Newark Bypass
05/08/2024	email from the applicant to the Trust	<ul style="list-style-type: none"> AiP for Windmill Viaduct submitted for CRT review and comment
09/08/2024	Email from the applicant to the Trust	<ul style="list-style-type: none"> AiP for Netherlock Viaduct submitted for CRT review and comment
23/09/2024	email from the Trust to the Applicant	<ul style="list-style-type: none"> The Trust providing comments on the 2 structures AiP's
17/10/2024 (bi-weekly)	The Applicant / The Trust NH Lawyers / Trust Lawyers	<ul style="list-style-type: none"> Discuss Protected Provisions
06/11/2024	The Applicant / The Trust	<ul style="list-style-type: none"> Review & Update of Statements of common Ground 'SoCG'

3 Protective Provisions

3.1.1 The Trust and the Applicant have agreed draft protective provisions. All references in the table in Section 4 (issues) to protective provisions are in relation to those agreed provisions.

4 Issues

4.1 Issues agreed, not agreed or under discussion

4.1.1 Table 3.1.1 below details the issues which have been agreed, not agreed or are under discussion between 1) National Highways and 2) Canal & River Trust

Table 3.1.1 - Issues

Issue No.	Issue	Document Reference	Canal & River Trust Position	The Applicants Position	Status	Date status confirmed
1.	Navigation impact on the waterways	draft Development Consent Order [REP1-001]	<p>The River Trent is a major river, providing passage for leisure and commercial craft. It is the primary waterway providing access between the Midlands and the River Witham (including Lincoln). No practical diversionary route exists for waterway users. Day time closures with limited notice of that closure could have a significant impact on the passage of vessels, impacting several different types of user, including local pleasure craft, hired holiday boats, commercial vessels and recreational paddle craft. Leisure and commercial vessel users do typically plan routes many months in advance, and appropriate notice is required to ensure that any closure does not inadvertently impact commercial movements on the network. Examples of users that could be affected include Kings Marina in Newark, Torksey Lock Moorings, and touring boats from Newark. Unplanned closures could impact these users and affect traffic and visits in Lincoln and other places downstream.</p> <p>Article 58 of the draft Development Consent Order [REP1-001], as originally submitted, grants a broad power to the Applicant to close the river during periods of construction and maintenance. The Trust had a significant concern that could allow for works to interrupt river traffic or maintenance access with limited co-ordination with the Trust. The proposed powers sought in the DCO for the “temporary suspension of navigation in connection with the authorised development”, as originally worded, could have prevented the Trust from carrying out its duties.</p> <p>The Trust and the applicant have agreed revised wording on the draft Development Consent Order. We observe that revisions to the draft wording of article 58 have been made, which has responded to our original concerns. These should be read with Protective Provisions designed to protect the Trust. These Protective Provisions have yet to be submitted. However, wording has been agreed between the parties, and we understand this is to be submitted at Deadline 5.</p>	The Applicant has been provided with amended drafting under Article 58 of the draft Development Consent Order [REP1-001] to temporarily suspend river traffic during construction being incorporated within the protective provisions and is considering same.	Agreed	24/01/2025
2.	Temporary Bridge Crossing of the River Trent	draft Development Consent Order [REP1-001]	<p>A temporary bridge is proposed to provide access to the work areas.</p> <p>The Trust would need to review full details of the proposed crossing to ensure that the final design will be appropriate to allow for safe boat passage below. This could be secured via Protective Provisions.</p> <p>The Trust and the applicant have agreed wording for these Provisions, which we understand are to be submitted at Deadline 5.</p>	The Applicant agrees and will provide the Approval in Principle and detailed design drawings for the temporary bridge to the Canal & River Trust for their review. This will be secured through the protective provisions.	Agreed	26/04/2024

Issue No.	Issue	Document Reference	Canal & River Trust Position	The Applicants Position	Status	Date status confirmed
3.	Public Access to Riverside Paths	Chapter 12 Population and Human Health of the Environmental Statement [APP-056]	<p>The Trust would welcome further clarity as to a potential discrepancy in the proposed footpath closures described within table 12-12 and 12.15 of chapter 12 (appendix 6) of the Environment Statement.</p> <p>We take no issue with the proposed temporary diversion of BW2 and BW6.</p>	The Applicant can confirm that Bridleway 5 over the Fiddlers Elbow bridge will remain open during the construction phase. The unofficial path between Bridleway 5 and the Nottingham to Lincoln Railway line will not be accessible during the construction phase. This will be corrected in an update to the Chapter 12 Population and Human Health of the Environmental Statement [APP-056]	Agreed	06/11/2024
4.	Impact on Hydro-Electric Plant		<p>The access track to Nether Weir would be crossed by the new road. The Submitted Streets, Rights of Way and Access Plans identify that the existing track (identified as 4A on the plans) will be stopped up, and a new access track (between points P-4B and P-4C) will be created to provide access to the plant. Paragraph 2.6.129 from chapter 2 of the Environmental Statement states that a temporary access to the hydroelectric station will be provided to maintain access.</p> <p>An existing cable exists connecting the Hydroelectric Power Station at Nether Weir to Newark, which travels below the access track between the site and Fiddlers Elbow bridge, continuing under the path to Kings Marina. Works to divert the path and to install a new road viaduct could impact this connection. The promoter should ensure that they undertake the relevant prior investigations to ensure that this cable route is appropriately protected and diverted if necessary.</p> <p>The promoter has agreed protective provisions with the Trust and these will secure protections for the cable on Trust land.</p>	<p>The Applicant confirms that they are aware of the existing cable and that investigatory surveys and trial holes have been undertaken to confirm its location. The cable will be protected during the construction phase.</p> <p>The management and protection of buried services will be controlled through a permit to dig process undertaken by the Principal Contractor. This process will be detailed within the Construction Phase Plan (CPP) produced by the Contractor prior to construction. The Applicant agrees to the Canal & River Trust reviewing the protection proposals contained within the CPP. As built plans for the new access track and alignment of the cable will be provided to the Canal & River Trust upon completion of the scheme.</p>	Agreed	06/11/2024
5.	Impact on Fishing Clubs		<p>There is an existing angling club located in close proximity to the eastern river crossing at Nether Weir. Any closure of access to the riverside area during construction could adversely impact upon the ability of anglers to access this area.</p> <p>Chapter 12 from the Environment Statement confirms that access to fishing pegs on the River Trent will be restricted during the construction phase of the development. Notably, table 12-15 identifies that fishing pegs on the west bank of the River Trent, between Fiddlers Elbow Bridge and Nether Rail BR27 will be inaccessible for a 30-month period as a result of bridge deck construction works. The installation of a temporary bridge crossing at Nether Lock will temporarily disrupt access on the eastern bank.</p> <p>The promoter should ensure that they have liaised fully with Fishing Clubs and organisations who utilise these pegs. The Trust need to fully assess our agreements with the Fishing Clubs and will provide additional comment should we identify any issues that need to be addressed.</p>	<p>The Applicant has engaged with the fishing club who have rights on this section of the River Trent during the statutory consultation.</p> <p>The Applicant looks forward to discussing with the Trust its assessed impacts and appropriate mitigation. Should there be any identified and proven loss the Applicant would look to compensate the Trust in accordance with the Compensation Code.</p>	Agreed	24/01/2025
6.	Pollution Risks	draft Development Consent Order [REP1-001]	<p>Mitigation against risk of contamination to the waterway are discussed in the First Iteration Environmental Management Plan (EMP) [APP-184]. We note that the document confirms that more detail will be provided within the Second Iteration EMP.</p> <p>Any necessary environmental mitigation specific to the Trust's assets not already covered in the Second Iteration EMP should be covered by the use of agreed Protective Provisions. The Trust and the applicant have agreed wording for these Provisions, which we understand are to be submitted at Deadline 5.</p>	The Applicant agrees that specific mitigation to the Trust's assets are to be included in the Protective Provisions within the draft Development Consent Order [REP1-001].	Agreed	24/01/2025

Issue No.	Issue	Document Reference	Canal & River Trust Position	The Applicants Position	Status	Date status confirmed
7.	Protection of Fiddlers Elbow Bridge		<p>Appendix 6.3 of the Environment Statement identifies that grade II* Fiddlers Elbow Bridge (described in the document as 'Concrete Footbridge across River Trent' reference MM038) has the potential to be damaged from the works. Mitigation against this risk identified in the First Iteration Management Plan, where reference CH2 states that structural monitoring will be undertaken.</p> <p>The Trust would wish to review this monitoring plan to ensure that our bridge is appropriately protected. This could be potentially secured through appropriately worded Protective Provisions.</p> <p>The Trust and the applicant have agreed wording for these Provisions, which we understand are to be submitted at Deadline 5.</p>	The Applicant agrees to the Trust undertaking a review of the monitoring plan on the Fiddlers Elbow Bridge and that this is to be included within the Protective Provisions.	Agreed	24/01/2025
8.	Surface Water Drainage	<p>Engineering Plans and Sections Part 5 - Drainage Engineering Plans [AS-012]</p> <p>Appendix 13.4 (Drainage Strategy) of the Environment Statement Appendices [APP-179]</p>	<p>The submitted Drainage Strategy Report (6.3, Appendix 13.4) identifies that the proposals seek to discharge water to the River Trent.</p> <p>The Trust has no record of 3 of the existing outfalls marked.</p> <p>To enable the Trust to assess whether the discharge could impact navigational safety, we would need to understand existing and proposed peak flows and peak velocities from the outfalls affected. The applicant and the Trust have agreed that Protective Provisions could be used to help ensure that the peak velocity will not adversely impact navigational safety. The Trust and the applicant have agreed wording for these Provisions, which we understand are to be submitted at Deadline 5.</p>	<p>Outfall locations are shown on the Engineering Plans and Sections Part 5 - Drainage Engineering Plans [AS-012].</p> <p>The outfall flow rates, as set out in 6.3 Environmental Statement - Appendix 6.3 Assessment of Cultural Heritage Effects During Construction of the Scheme [APP-179], are therefore at existing or limited to 5l/s which will not change the existing safety risk to passing craft or present a high flow if increased to 5l/s.</p> <p>The Applicant agrees that the Canal & River Trust will undertake a review of the detailed design for the outfalls be them existing or new to satisfy that the discharge rates and angle of outfall do not impact navigational safety. This will be detailed in the protective provision agreement.</p>	Agreed	24/01/2025
9.	Potential for Archaeology in Proximity to Nether Weir	6.3 Environmental Statement - Appendix 6.3 Assessment of Cultural Heritage Effects During Construction of the Scheme [APP-179]	<p>The submitted 6.8 Environmental Statement - Archaeological Management Plan [APP-187] which seeks to outline the archaeological potential for archaeological remains within the Order Limits, does not fully explore the potential for Archaeological Assets within the area close to the proposed River Trent Crossing in proximity Nether Weir.</p> <p>This area is not discussed in the Management Plan. We note that, within TR010065 - 6.3 Environmental Statement - Appendix 6.3, table 1-2 identifies that photographic evidence of the construction of the original A46, as well as recent work on the weir itself shown on Google earth imagery demonstrates heavy disturbance in the area of Nether Weir. The document states that it is assumed that potential archaeological remains associated with the original Weir will have been removed or truncated alongside this disturbance.</p> <p>We question whether this statement provides appropriate justification for this area not being considered in the Management Plan and would welcome further evidence for this. Currently, no mitigation for any impact on assets in this area, should they be present, is identified. Should it be considered that there is potential for assets to be present here, an evaluation or watching brief may be appropriate for works in this area to avoid any irretrievable loss to assets associated with the historic use of the river corridor.</p>	<p>As set out in Appendix 6.3 (Assessment of Cultural Heritage Effects During Construction of the Scheme) of the Environmental Statement Appendices [APP-134], this area was assessed as having a Minor Adverse impact due to the level of previous ground disturbance, associated with the construction of the existing A46 bridge and groundworks related to the building of the hydro-electric power plant at Nether Weir.</p> <p>Satellite imagery and photographic evidence show heavy disturbance of the whole area, down to and beyond probable archaeological horizons. While it is not clear whether the culvert itself was disturbed the outflow was altered during these works and it was considered that any archaeological remains which may have been present within this area will have been removed or heavily truncated.</p> <p>The works in the area south of Nether Weir will include the creation of a platform for a large crane and temporary access routes, as detailed on Sheet 4 of the Works Plans [AS-005]. These works will not impact depths lower than the previous disturbance. Piling will be undertaken to create the new bridge columns alongside the existing bridge. The piling will not take place in direct proximity to the weir and struts will avoid any existing service including the culvert as detailed on Sheet 8 of the Engineering Plans and Sections Part 6 - Structures General Arrangements) [APP-014].</p> <p>Consultation with Cultural Heritage Stakeholders as set out within the Statements of Common Grounds with Nottinghamshire County Council, Newark and Sherwood District Council and Historic England have agreed every phase of archaeological works required for the Scheme and the decision to not undertake further archaeological works in this location.</p> <p>This decision is in line with both the 2015 and the 2024 National Policy Statement (designated in May 2024) for National Networks (NPSNN) with guidance on proportionality outlined in Paragraph 5.140 and 5.213 respectively, which states "Where the loss of the whole or part of a heritage asset's significance is justified, the Secretary of State should require the applicant to record</p>	Agreed	06/11/2024

Issue No.	Issue	Document Reference	Canal & River Trust Position	The Applicants Position	Status	Date status confirmed
				and advance understanding of the significance of the heritage asset before it is lost (wholly or in part). The extent of the requirement should be proportionate to the importance and the impact.”		
10.	Lighting		The Trust is satisfied that no additional operation lighting is proposed along the A46 in proximity to the River Trust and takes no issue with the lighting arrangements sought for the scheme.	The Applicant agrees with this position.	Agreed	06/11/2024
11.	Compulsory Purchase / Associated Consents	<p>2.2 Land Plans [APP-005]</p> <p>Chapter 4 of 5.1 Consultation Report [APP-028]</p> <p>Engineering Plans and Sections [APP-009 to APP-014]</p> <p>Appendix 13.4 Drainage Strategy Report [APP-179]</p>	<p>The Trust own land in proximity to Nether Weir. Canal & River Trust also have freeholder interests in parts of the Trent. The proposed new road bridges would cross land in Trust ownership. A Licence and necessary permissions would be required from the Trust in our capacity as both landowner and navigation authority for these works.</p> <p>Please note that the Canal & River Trust is a statutory undertaker which has specific duties to protect the waterways. Accordingly, it is likely that the Trust will resist the use of compulsory purchase powers which may affect our land or undertakings. The Trust reserve the right to seek protections under S16 of the Acquisition of Land Act 1981 should any proposals affect land which has been acquired for the purposes of our undertaking.</p> <p>Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects and should only be made where there is a compelling case in the public interest. We understand that the confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement as opposed to Compulsory purchase.</p> <p>The Trust is willing to engage with National Highways to enter into an agreement in respect of the rights which it requires to deliver the Project. As such National Highways cannot currently demonstrate that compulsory purchase powers are being sought as a matter of last resort and their approach is in conflict with the Planning Act 2008 Guidance related to the Compulsory Acquisition of Land (DCLG September 2013).</p> <p>Discussions with the Applicant on this matter commenced in September 2022. The Trust has emphasised the need to ensure the negotiations are commenced at as early stage as possible. As of 21st May 2024, the Applicant has promised to introduce the Trust’s lead negotiator to their appointed District Valuer. We are still awaiting this and have chased the Applicant on this issue by email on 20th June 2024.</p>	<p>The Trust has been engaged by the Applicant. Continued engagement with relation to specific protections, legal agreements and requirements will occur as necessary throughout the Scheme’s development.</p> <p>Comments on Estates Consents have been noted and the Applicant is currently in discussions with the Consultee on the Land Plans [APP-005], licenses and necessary permissions.</p> <p>As part of ongoing engagement, the Applicant will be reviewing the Land Plans [APP-005], with the Trust and will continue to engage with them regarding the use and acquisition of land as required for the Scheme.</p> <p>Following the statutory consultation, a further targeted consultation took place between March and April 2023 which included consultation with the Consultee. Further information relating to this can be seen in Chapter 4 of 5.1 Consultation Report [APP-028].</p> <p>The Applicant has engaged with the Consultee, including as part of a Flood and Drainage Steering Group, to discuss proposals relating to the discharge of surface water to the River Trent, as a result of the Scheme. Further information regarding this and required consents will continue to be discussed with the Consultee as the Scheme develops.</p> <p>Information relating to the discharge locations for the Scheme can be found within Engineering Plans and Sections [APP-009 to APP-014] and are described in the Appendix 13.4 Drainage Strategy Report [APP-179].</p>	Under Discussion	06/11/2024
12.	Technical Approval		<p>Technical approval will be needed as a navigational authority for the whole of the structure.</p> <p>The Trust has submitted draft Protective Provisions that would secure that proposed works with potential to impact the river as a navigable waterway and/or impact the Trust as navigation authority to be carried out in accordance with the Trust’s Code of Practice for Third Party Works. The Code of Practice is designed to safeguard the Trust’s assets and to deal with the nuances of works affecting navigable waterways.</p>	The Applicant has agreed in principle. The details of the approval process will be determined through discussions between the Applicant and the Canal & River Trust.	Agreed	24/01/2025

Issue No.	Issue	Document Reference	Canal & River Trust Position	The Applicants Position	Status	Date status confirmed
			The Trust and the applicant have agreed wording for these Provisions, which we understand are to be submitted at Deadline 5.			
13.	Book of Reference & Land Ownership	Book of Reference [AS-096]	The Trust is identified as 'occupier' of both plots 7/1a and 7/3a, which is incorrect. We are also identified as landowner and/or occupier of other plots which is correct.	The Trust was identified as an occupier of plots 7/1a and 7/3a as the navigation authority for the River Trent from reviewing title number NT453559 which stated, 'CRT are the navigation authority for the remainder of the river where it adjoins this Title'. After reviewing comments made within the relevant representations for the Canal & River Trust, the Applicant has removed reference to Canal & River Trust as the occupier/navigation authority of the land/river for specified plots 7/1a and 7/3a within the Book of Reference [AS-096].	Agreed	06/11/2024