

## RHS comments to HE's response REP8-045.

### Introduction

1. This document responds to the Highways England REP8-045 document.
2. RHS does not seek to reply to each point made by HE.
3. The usual caveat applies i.e. where RHS has chosen not to seek to reply to a point made by HE, this does not mean that RHS agrees with the point being made.
4. This document follows the format used by HE's REP8-045.

No	RHS	HE response	RHS response
3.1.2	It is irrelevant for HRA purposes that guidance documents do not require a focus on NOx levels. As set out in Freeths LLP's Annex (REP6-024, paragraphs 11 and 51), the Court of Justice of the European Union HRA caselaw clearly requires this. Freeths LLP's Annex has also explained why it is wrong for HE to focus only on air quality impacts on the land within the SPA which is >150m from the roads.	An SiAA for HRA is not prescriptive, but "should be appropriate to the task in hand" (Champion v North Norfolk DC [2015], quoted in NEA001 paragraph 5.8 [REP3-021]). Natural England were consulted on the HRA and did not request consideration of NOx concentrations (see Comments on Royal Horticultural Society's Deadline 5 Submission [REP6-010], paragraph 3.1.2, and Applicant's Response to Examining Authority's Second Written Questions [REP5-014], 2.3.1). An appropriate assessment should consider the likely effects on the qualifying features, and in the case of SPAs, on the supporting habitats, which in this case are over 150 metres from the road (see Applicant's comments on RHS's Deadline 3 submission [REP4-005], chapter 2, reference 11, and Applicant's Response to Examining Authority's Second Written Questions [REP5-014], 2.3.1). Paragraphs 11 and 51	RHS has consistently made the point that HE has failed to provide adequate NOx data. The fact that NE has not requested consideration of NOx concentrations is not a sufficient answer. NE's advice in this case has been deficient in a number of respects. For example NE also failed to note that there is a potential pathway of impact on integrity of the SPA between air quality and the SPA woodland <150m from the roads. NE even signed off the SiAA without any information addressing this point. Yet, once this omission had been pointed out by RHS (see Freeths LLP's Annex in REP6-024), HE and NE have both accepted that this pathway must be addressed, as is evidenced by the new paragraph now inserted in the HE / NE SoCG REP8-022 para 3.2.7 on this point, albeit that their conclusions remain incorrect).

		<p>of the Freeths Annex at REP6-024 do not mention the requirement for NOx concentrations to be reported in an HRA and to imply that they do is misleading.</p>	<p>The statement here that the SPA “supporting habitats” are &gt;150m from the road is incorrect. The woodland within 150m of the roads <i>is</i> supporting habitat for the SPA birds. HE and NE have already acknowledged this, see for example the SIAA (REP4-018) at paragraph 7.4.6 where it is stated <i>‘Therefore it is not possible to ascertain that this habitat loss of land [i.e. woodland within 150m of the roads] would have no effect on the integrity of the Thames Basin Heaths SPA ‘alone’ as a result of reductions in the extent and/or distribution of supporting habitat of the three qualifying species (i.e. habitat that support foraging [for] qualifying species by providing an invertebrate resource) and a potential reduction in food resource’</i>. HE is now seeking to argue the exact opposite. Further, HE and NE have concluded that <u>land-take</u> from the SPA woodland &lt;150m from the roads amounts to land take of SPA “supporting habitat” (see 7.4.6 SIAA and also 4.3.1 (below) in this Table ) leading to a conclusion of “adverse effect on SPA integrity”. Yet, extraordinarily, HE continues to maintain here that woodland</p>
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<p>4.1.2. and 4.1.8</p>	<p>The RHS remains of the view that HE / NE’s position, that the woodland is merely a buffer and need not be restored, is incorrect.</p> <p>14. The RHS refers to its previous submissions on this point (REP6-024).</p> <p>15. In addition, HE’s compensatory habitat measures directly contradict NE’s and HE’s approach that the buffer must be retained. The suite of compensatory measures presented by HE (see AS- 012 Additional Submission - Applicant’s Response to Rule 6 - 5.3 Habitats Regulations Assessment Figures (Revision 2) - Accepted at the discretion of the Examining Authority figures 15) include clear felling of woodland within the SPA ‘in order to allow heathland restoration’ (paragraph 4.2.1 of REP4-014),</p>	<p>RHS’s Deadline 6 submission [REP6-024] has been responded to by Highways England [REP7-008]. As Natural England has explained in response 2.4.7d within Natural England’s response to the ExA’s second written questions [REP5-032], the achievement of favourable condition for the Ockham and Wisley Commons SSSI component part of Thames Basin Heaths SPA is dependent upon improvement of the condition of the existing heathland resource, not expansion of heathland through large-scale felling of woodland.</p> <p>As explained in 3.8.2 of Highways England’s response to ExQ3 [REP7-004], this is not to say that the clearance of some areas of this woodland would conflict with the conservation objectives of the SPA, but rather, that the management of the Ockham and Wisley Commons SSSI component of the Thames Basin Heaths SPA does not require the removal of additional woodland in order to achieve favourable condition for the site.</p> <p>The clearance of some areas of woodland within SPA enhancement areas is part of the suite of compensatory measures, which (as explained in</p>	<p>It is not correct to say that “<i>the only location where woodland is cleared alongside the A3 or M25 as part of the suite of compensatory measures is at the replacement Cockcrow bridge (areas E1 and E2 as shown in Figure 13 of the HRA figures [AS-006])</i>”. Figure 13 of the HRA figures (AS-012 which superseded AS-006)) shows that there will be large areas of clearance of the woodland buffer &lt;150m from the roads for the SPA enhancement areas.</p> <p>HE is again seeking to adopt two mutually exclusive positions in relation to a critical aspect of this case. On the one hand HE maintains, incorrectly (eg see point 3.2.1 in this Table), that the woodland within 150m of the roads is a buffer required between the roads and the heathland (in relation to which “<i>NE has consistently advised against removal</i>” (quote taken from the column to the left)) and plays no “supporting habitat” role for the SPA. This is wrong for the reason set out in the response to para 3.1.2 above. At the same time, HE also maintains the contradictory position that large swathes of this “buffer” woodland within 150m</p>

	<p>thereby demonstrating that NE and HE see clear felling of this woodland within the SPA as advantageous to the SPA.</p>	<p>3.8.2 of Highways England’s response to ExQ3 [REP7-004]), fall outside ‘normal practice’ and would not have occurred as part of the existing management of the SPA.</p> <p>The suite of compensatory measures do not contradict Natural England’s view as stated in response 2.4.7d within Natural England’s response to the ExA’s second written questions [REP5-032], that <i>‘Natural England has consistently advised against the removal of the woodland ‘buffer’ in areas of the site alongside the A3 and M25’</i>. As explained in response to question 3.8.2 in Highways England’s response to ExQ3 [REP7-004], the only location where woodland is cleared alongside the A3 or M25 as part of the suite of compensatory measures is at the replacement Cockcrow bridge (areas E1 and E2 as shown in Figure 13 of the HRA figures [AS-006]). This was a well-considered decision in order to maximise the effectiveness of the proposed green bridge by providing a continuous heathland link either side of the green bridge, and was agreed with Natural England, Forestry Commission, RSPB, Surrey Wildlife Trust and Surrey County Council. This is an exceptional and unique opportunity, and to claim that it contradicts Natural England’s consistent approach is unfounded.</p>	<p>of the roads can be felled either to make way for the green bridge or as part of the compensatory SPA enhancement areas (see for example Figure 13 of the HRA figures (AS-012 which superseded AS-006)). This is not logical. If the buffer can be lost to compensation, it is patently not required to be retained in the way that NE advises. The buffer function (whatever that may be) is therefore lost in respect of the felled areas.</p> <p>HE has failed to assess adequately the impacts of changes of air quality within the SPA woodland &lt;150m from the roads. It has failed to assess either the impacts upon invertebrates within the woodland as it is now (which provides supporting habitat for the SPA birds by virtue of the invertebrate resource it provides). It has also failed to assess the impacts of changes in air quality on the future SPA enhancement area heathland habitats.</p>
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<p>4.4.3</p>	<p>HE accepts that there is an in-combination increase in nitrogen deposition, even at distances beyond 150m from the roads. RHS document REP6-024 para 54.7 (on pdf page 25) shows that these in combination increases in nitrogen deposition are in fact up to 6% of the critical load when ammonia is taken into account. This is well above the 1% criterion below which the impacts are usually considered to be insignificant and this is the position at distances beyond 150m from the roads. HE has not evaluated the ecological effects of these substantial increases even beyond 150m from the roads, let alone &lt;150m from the roads, so cannot conclude that there is no reasonable scientific doubt as to the absence of adverse effects to the integrity of the SPA.</p>	<p>Highways England does not accept that there is an in-combination increase in nitrogen deposition at distances beyond 150 metres from the roads. The calculated nitrogen deposition rates are provided in Revised Nitrogen deposition rates within the Thames Basin Heath SPA [REP5-024], and show either a decrease or no change at the transect points located at 150 or 200 metres away from the road. The in combination assessment for the HRA was undertaken correctly as stated in Applicant's comments on RHS's Deadline 3 submission [REP4-005] response to Highways England point 2.9 (page 56). As noted in REP5-003 the results in Table 4 simply show the results of a highly conservative sensitivity test and should not be used in the HRA. At the locations of the supporting habitats for the qualifying features of the SPA, the contribution from ammonia emissions from road vehicles to nitrogen deposition will not be discernible (see paragraph 2.2.48 of Applicants Comments on Royal Horticulture Society's Deadline 6 submission [REP7-008]).</p>	<p>HE wrongly states that the in-combination assessment for the HRA was undertaken correctly.</p> <p>The fundamental problems remain that HE has:</p> <ul style="list-style-type: none"> <li>(i) not provided evidence on the changes in nitrogen deposition taking account of ammonia;</li> <li>(ii) not set out the changes due to the scheme in-combination with other plans or projects (the nitrogen deposition rates "Table 8" at REP5-024 referred to by HE provides the changes only for the Scheme alone); and</li> <li>(iii) not provided the information needed for the SPA 0m-150m from the roads. Whilst Table 4 of Appendix B of the REP5-003 provides a little more information, it fails to do so for the 0m-150m part of the SPA.</li> </ul> <p>All this information is essential to allow a proper Appropriate Assessment to be carried out.</p>

<p>It is also irrelevant in terms of the “in combination” HRA legal requirement that (as HE states in paragraph 4.4.3) “the Scheme makes no material contribution to this in-combination increase at the distance that the heathland occurs” (this is a reference to the increase of &lt;0.01 kgN/ha/yr cited in paragraph 4.4.3, which is taken from Table 4, page 164 of REP5-003, but note that this increase is underestimated, as it does not include the ammonia contribution from road traffic). HE has clearly conceded (by undertaking an in-combination assessment, see section B.5 starting on page 162 of REP5-003, called a sensitivity test) that an in-combination assessment is appropriate and required in this case. On that basis the combined impacts of the Scheme with other plans or projects must be regarded as relevant and be taken into account as is required under Regulation 63(1) of the</p>		<p>Furthermore the SIAA is reported in REP4-018, which predates the results of the in-combination “sensitivity test” provided by HE in Table 4 of Appendix B in REP5-003 (and again in REP8-022). Aside from these results being deficient in not covering all receptors and not including ammonia, it is clear that they were not considered in the SIAA (as they post-dated it), so the in-combination impacts have not formed part of the SIAA assessment. The in-combination assessment presented in the SIAA for the HRA has therefore not been undertaken correctly.</p> <p>Furthermore, after presenting some (incomplete) in-combination changes in Table 4, HE now says these in-combination results should not be used in the HRA. This is contradictory. HE has said that the HRA in-combination assessment was undertaken correctly even though it does not address the gaps (i) –(iii) above; and having provided in-combination impacts for the 150m-200m zone in Table 4 now states they should not be used in the HRA. In any event, Table 4 is presented under a HE heading “In combination assessment”.</p> <p>Further response on this matter is provided in the section in RHS REP9-xxx responding to the</p>
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	<p>Conservation of Habitats and Species Regulations 2017.</p>		<p>new paragraph 3.2.7 in the HE / NE SoCG (REP8-022).</p>
<p>4.5.2. and 4.5.4 - bullet point 2</p>	<p>HE states that the RHS Alternative would be worse in terms of the “land take within the SPA” impact pathway than the DCO Scheme. There will in fact be no additional impact on the integrity of the SPA from the RHS Alternative Scheme through SPA land impacts compared to the DCO Scheme. The DCO Scheme will have a permanent land take from the SPA of 5.9 ha (see paragraph 3.3.21 of REP4-018). The DCO Scheme will have a temporary impact on the SPA of 8.7ha (see paragraph 3.3.21 of REP4-018). The RHS Alternative Scheme will, by contrast, require an additional, permanent land take from the SPA of 3.63m2 and an additional, temporary land impact within the SPA of 28.0m2. Thus the total additional SPA land impact (temporary plus permanent) of</p>	<p>The additional SPA land required by the RHS Alternative design assumes a that a number of departures from standard would be approved for the geometry of their connector road, for details please see Appendix A in - Draft Statement of Common Ground with Royal Horticultural Society - Highways and Traffic [REP5-050]. Furthermore, the width of the connector road linking Wisley Lane with the northbound A3 does not allow for a 3.3m hard shoulder, 0.7m offside hard strip, and the land take does not allow for the visibility requirements around the 56m radius curve. As explained in the response to 4.5.1 above, the SiAA has identified an adverse effect with regards to the physical loss of woodland habitat and has determined that the Scheme will not lead to an adverse effect on the SPA as a result of changes in air quality. Therefore, the RHS alternative scheme would not reduce impacts on the SPA when compared to the Scheme as it increases, not decreases land take from the SPA. In addition, if the necessary departures from standard for the geometry of the RHS Alternative design were not approved, then the land take from the SPA would be considerably greater than RHS are proposing, leading to an even larger adverse effect on the SPA.</p>	<p>The response from HE has been superseded as HE has now accepted that the RHS alternative scheme will require two departures from standard (see REP8-031 SoCG Proposition 4.4, particularly under the RHS heading):</p> <p><b><i>The parties agree that with regard to drawings M16114-A-076A and 077:</i></b></p> <p><b><i>(1) Departures from Standard would relate to ‘horizontal curvature’ and ‘near straight’ components.</i></b></p> <p><b><i>(2) Weaving length could (HE)/would (RHS) comply with the 1km standard.</i></b></p> <p>The geometry of the proposed left turn from Wisley Lane of the RHS Alternative and the calculated tiny additional loss of SPA land that would be required stands.</p>

<p>the RHS Alternative Scheme at Wisley Lane (by contrast to the DCO Scheme) is 31.63m<sup>2</sup>. This additional SPA land impact is shown in Figure 1.</p> <p>3.63m<sup>2</sup> of SPA permanent land take amounts to an additional 0.00615% when compared to the 5.9ha (59,000m<sup>2</sup>) of SPA land take that is to be permanently lost to the DCO Scheme.</p> <p>28m<sup>2</sup> of temporary land take amounts to an additional 0.032% when compared to the 8.7ha (87,000m<sup>2</sup>) SPA land take that is to be temporarily taken by the DCO Scheme. The overall total additional land take (both permanent and temporary) from the SPA as a result of the RHS Alternative Scheme is 31.63m<sup>2</sup>. This amounts to an additional 0.02% of the SPA when compared to the 87000 + 59000 = 146,000m<sup>2</sup> to be taken under the DCO Scheme. This cannot be considered material in any way.</p>		
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	<p>Notwithstanding the tiny scale of the additional SPA land impact of the RHS Alternative Scheme by comparison to the DCO Scheme, the RHS Alternative Scheme will have no additional impact on the integrity of the SPA through the land impact pathway. This is because:</p> <p>(i) The additional 31.63m<sup>2</sup> area of SPA land to be affected under the RHS Alternative Scheme consists of the road verge which is already occupied by street furniture.</p> <p>See the photos in Figures 2 and 3 below.</p> <p>(ii) This area is therefore part of the SPA “site fabric” as defined by Natural England as “land and/or permanent structures present within a designated site boundary which are not, and never have been, part of the special interest of a site, nor do they contribute towards supporting a special interest feature of a site in any way, but which have been unavoidably included within a</p>		
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	<p>boundary for convenience or practical reasons. Areas of site-fabric will be deliberately excluded from condition assessment and will not be expected to make a contribution to the achievement of conservation objectives” (taken from NE’s Internal Guidance – Approach to advising competent authorities on Road Traffic Emissions and HRAs V1.4 Final – June 2018, page 16).</p> <p>(iii) As such the works in this area under the RHS Alternative Scheme have no impact at all on the integrity of the SPA and must be disregarded.</p>		
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