

**M25 junction 10/A3 Wisley interchange  
TR010030**

**9.138 Position statement with SCC on  
the Environmental and Highways Side  
Agreements**

Rule 8(1)(k)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

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# Infrastructure Planning

## Planning Act 2008

### The Infrastructure Planning (Examination Procedure) Rules 2010

## M25 junction 10/A3 Wisley interchange

### Development Consent Order 202 [x ]

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### 9.138 Position statement with SCC on the Environmental and Highways Side Agreements

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# 1. Introduction

- 1.1.1 This document sets out Highways England's position statement with Surrey County Council on the Environmental and Highways Side Agreements.

## 2. Environmental Side Agreements

- 2.1.1 As the ExA will be aware the Scheme involves HE acquiring and/or using special category land ('SCL') and/or land which falls within the Thames Basin Heaths Special Protection Area ('SPA'). In order to ensure that the integrity of the SPA is maintained notwithstanding the Scheme, the draft DCO envisages that enhancement works are carried out on some of the existing SPA land and also that additional land is managed such that it is suitable to become SPA land as compensation for the loss of some existing SPA land. The draft DCO provides that HE will have the necessary rights to enter upon the relevant land to carry out the necessary works (Works Nos. 57 and 58 in the draft DCO) and maintain them. Additionally, the draft DCO provides for replacement SCL to be acquired to recompense for the SCL (or rights over SCL) which is required for the Scheme.
- 2.1.2 HE is proposing to enter into two agreements in order to discharge its obligations under the relevant requirements. In essence the agreements will require the Surrey Wildlife Trust ("SWT") to carry out the relevant works to the extent that HE does not intend to require its contractor for the DCO scheme to do so. As Surrey County Council ("SCC") owns most of the land subject to these arrangements SCC wishes to be party to the agreement that affects its land. Accordingly one agreement will be between Highways England, SCC and SWT. The other agreement, not involving SCC's land, will be between HE and SWT only.
- 2.1.3 Constructive negotiations have continued since deadline 10 about the wording of the documents, but their content is substantially as described at deadline 10 in REP10-008 (paragraphs 2.2.2 to 2.2.12), and is as follows:

### 2.2 Environmental Side Agreement between Highways England, SCC and SWT (for SCC owned land)

- 2.2.1 The land on which the SPA enhancement works are to be carried out is owned by SCC. SCC also owns the SPA compensation land north of Old Lane (Work 57(b)). Likewise, the land to be laid out as replacement SCL and on which further long-term ecological management and monitoring works are to be carried out is for the most part to be vested in SCC (as SCC owns most of the SCL land to be acquired) in accordance with Article 38(5) of the draft DCO.
- 2.2.2 The draft DCO contains requirements that will require HE to carry out and maintain the necessary environmental/ecological works on both the replacement SCL and on the SPA areas. These are set out within requirements 6 ('Landscaping'), 7 ('Design, layout and implementation of Replacement Land'), 8 ('Thames Basin Heaths Special Protection Area (SPA) Compensatory Habitat Creation and Enhancement Measures'), 10 ('Bolder Mere Mitigation and Enhancement Area') and 17 ('Restoration and/or landscaping of land used temporarily for construction') of the draft DCO.
- 2.2.3 SWT currently manages the wildlife conservation at Wisley & Ockham Commons, in which the SPA land falls, under long leases and a long-term contractual arrangement with SCC. HE proposes that its principal contractor would undertake the initial works to, and maintenance of, both the SPA land and the replacement SCL under the construction contract, which would be for a period of up to five years. HE is entering this agreement with SCC and SWT, requiring SWT to carry out (at HE's cost) the long-term management and

monitoring works for up to a further 20 year period (depending on the location) on the SPA land and replacement SCL, insofar as that land is owned by SCC (or, in the case of replacement SCL, will vest in SCC).

2.2.4 The principal terms of the agreement can be summarised as follows:

- The agreement is conditional upon the DCO being made.
- The term of the agreement will be sufficient to cover the longest period of management and monitoring envisaged – currently until 2046.
- HE will consult with SCC and SWT prior to submitting the final landscape and ecology management plan (the ‘Final LEMP’) and any other documents to the Secretary of State for approval in accordance with requirement 7 of the draft DCO.
- HE will consult with SCC and SWT prior to submitting the final SPA management plan (the ‘Final SPAMP’) and any other documents to the Secretary of State for approval in accordance with requirement 8 of the draft DCO.
- HE (or its principal contractor) to carry out the initial works on the SPA enhancement and compensation areas for the initial period of up to 5 years, in accordance with the details approved by the Secretary of State under requirement 8. SCC and SWT grant HE a licence to access/occupy SPA areas for the purpose of carrying out these works. HE reserve the right to exercise powers of compulsory purchase granted to them in the DCO in relation to these areas.
- After the initial period, SWT shall perform the long-term management and monitoring of the SPA enhancement and compensation areas in accordance with the details approved by the Secretary of State under requirement 8 of the draft DCO.
- HE (or its principal contractor) will carry out the initial works to the replacement SCL (after Highways England has acquired it from the relevant parties either by agreement or using powers of compulsory acquisition) for the initial period of up to 5 years, in accordance with the details approved under requirement 7 of the DCO.
- After the initial period, SWT shall perform the long-term management and monitoring of the replacement SCL in accordance with the details approved by the Secretary of State under requirement 7 of the draft DCO. The agreement obliges SCC to ensure access to the SCL for SWT (whether by lease, licence or otherwise), but in any event access to the SCL will be assured under temporary use of land for maintenance article of the DCO (see article 33 of the draft DCO).
- SWT will maintain on behalf of HE any green verge element of the replacement Cockcrow bridge as from the date that the green element has been laid out by Highways England and is ready for use.
- The works are to be carried out to the standard required by the Final LEMP and Final SPAMP, such that any ‘measures of success’ (KPI’s) set out in those documents shall be met or exceeded, and a monitoring party appointed by HE shall monitor and report on whether the measures of success have been met.

- HE will retain step-in rights in the event that SWT becomes unable or unwilling to continue to perform their obligations to manage and monitor the land in accordance with the terms of the agreement.
- HE is to pay for the works performed by SWT on the land in accordance with the terms of the agreement.
- A steering group is to be established in accordance with the Final LEMP and Final SPAMP in order to oversee performance and management of the agreement.

## **2.3 Environmental Side Agreement between Highways England and SWT (for land not owned by SCC)**

- 2.3.1 The draft DCO provides for some land not owned by SCC to be managed such that it is suitable to become SPA land as compensation for the loss of some existing SPA land. This area of land is owned by the Royal Horticultural Society ('RHS'). The draft DCO provides that Highways England will have the necessary rights to enter upon the relevant land to carry out the necessary works (Work no. 57(a) in the draft DCO) and maintain them.
- 2.3.2 Additionally, the draft DCO provides for replacement SCL to be acquired to recompense for the SCL (or rights over SCL) which is required for the Scheme. The land to be laid out as replacement SCL and on which further long-term ecological management and monitoring works are to be carried out is for the most part to be vested in SCC, but there are some areas of replacement land to be vested in others under article 38 of the draft DCO.
- 2.3.3 The draft DCO contains requirements that will require Highways England to carry out and maintain the necessary environmental/ecological works on both the replacement SCL and on the SPA compensation area. These are set out within requirements 6 ('Landscaping'), 7 ('Design, layout and implementation of Replacement Land'), and 8 ('Thames Basin Heaths Special Protection Area (SPA) Compensatory Habitat Creation and Enhancement Measures') of the draft DCO.
- 2.3.4 SWT currently manages the wildlife conservation at Wisley & Ockham Commons and also currently manages the proposed SPA compensation area owned by RHS under what HE understands to be an informal licence arrangement. Highways England proposes that its principal contractor would undertake the initial works to, and maintenance of, both the SPA compensation area and the replacement SCL under the construction contract, which would be for a period of up to five years. Highways England is entering this agreement with SWT, requiring SWT to carry out (at Highways England's cost) the long-term management and monitoring works for up to a further 20 year period (depending on the location) on the SPA compensation area owned by RHS and the replacement SCL, insofar as that land will vest in parties other than SCC.
- 2.3.5 The principal proposed terms of the agreement are almost identical to the agreement covering the SCC-owned land and can be summarised as follows:
- The agreement is conditional upon the DCO being made.
  - The term of the agreement will be sufficient to cover the longest period of management and monitoring envisaged – currently until 2046.

- HE (or its principal contractor) is to carry out the initial works on the SPA compensation area owned by RHS for the initial period of up to 5 years, in accordance with the details approved by the Secretary of State under requirement 8 of the DCO.
- After the initial period, SWT shall perform the long-term management and monitoring of the SPA compensation area in accordance with details approved by the Secretary of State under requirement 8 of the DCO.
- HE will exercise its land powers if no agreement with the land owner is reached for the necessary rights to maintain the SPA compensation area, to ensure continuing access to the land for both itself and SWT (acting as HE's contractor, in effect).
- HE (or its principal contractor) will carry out the initial works to the replacement SCL (after HE has acquired it from the relevant parties either by agreement or using powers of compulsory acquisition) for the initial period of up to 5 years, in accordance with the details approved by the Secretary of State under requirement 7 of the DCO.
- After the initial period, SWT will perform the long-term management and monitoring of the replacement SCL in accordance with details approved by the Secretary of State under requirement 7 of the DCO. SWT's continuing access to the replacement SCL will be guaranteed the powers of temporary possession for maintenance granted by the DCO (see article 33 of the draft DCO – paragraph (11)).
- The works shall be carried out to the standard required by the Final LEMP and Final SPAMP, such that any 'measures of success' (KPI's) set out in those documents shall be met or exceeded and a monitoring party appointed by Highways England will monitor and report on whether the measures of success have been met.
- HE will retain step-in rights in the event that SWT becomes unable or unwilling to continue to perform their obligations to manage and monitor the land in accordance with the terms of the agreement.
- HE will pay for the works performed by SWT on the land in accordance with the terms of the agreement.
- A steering group will be established in accordance with the Final LEMP and Final SPAMP in order to oversee performance and management of the agreement.

### **3. Agreement with Surrey County Council (in respect of highway matters)**

- 3.1.1 Highways England and Surrey County Council have been discussing the terms of an agreement dealing with various matters relevant to Surrey County Council's role as the local highway authority. The wording has been settled with Surrey County Council today (10 July 2020) but unfortunately not in sufficient time to get the agreement executed and so completed. However this is intended to be done as soon as possible next week and as soon as it has been completed



Highways England will inform the Planning Inspectorate in order that the Secretary of State is aware of the position.

3.1.2 It covers the following:

1. Detailed Design – provisions to enable Surrey County Council to have an input into the detailed design of works to or directly affecting the local highway network;
2. Local operating agreement – provisions requiring the parties to use reasonable endeavours to agree a local operating agreement to cover traffic management and other arrangements during works which directly interfere with a local highway;
3. Works to the local highway network – provisions requiring Highways England to ensure the highway is safe for use as a public highway whilst the works are being carried out, such as preventing materials from being carried on to the adjacent operational highway, providing and maintaining temporary ramps and other traffic measures to protect the safety of road traffic;
4. Surveys – provisions to require that Surrey County Council's land will be reinstated if damaged following a survey;
5. Access – provisions to ensure that Surrey County Council has adequate access to inspect and maintain the areas for which it will become responsible for under the DCO;
6. Traffic signals – provisions to ensure co-ordination of the signals and make arrangements for maintenance;
7. Provisions to enable Surrey County Council to inspect the works and to certify that they have been carried out to the appropriate standard;
8. Road safety audits – provisions to require Highways England to consult with Surrey County Council and share the audits with them;
9. Drainage – provisions to require that where Highways England has taken temporary possession of land under the DCO, Highways England becomes for drainage in place of Surrey County Council whilst Highways England is in possession;
10. Toad underpasses – provisions to ensure the two toad underpasses provided for in the DCO application can be repositioned if necessary to better serve their function as well as providing for an additional toad underpass if needs be;
11. Ockham Bites – provisions requiring the parties to use reasonable endeavours to enter into an agreement in relation to the reconfiguration and improvement of the Ockham Bites car park that will be affected by the works;
12. Commuted sums – provisions for the payment of commuted sums to Surrey County Council in relation to parts of the local highway network;
13. Transfer of freehold – provisions to require that Highways England transfers to the Council the freehold interest of any land it has acquired freehold under the DCO for assets that will become the Council's responsibility;
14. Indemnity, costs and dispute resolution provisions; and
15. Potential applications by Highways England for designated funds in relation to certain matters.

- 3.1.3 The scope is largely as it was at deadline 10 and described in REP10-008, paragraph 2.2.1, except it now includes provisions for the transfer of freehold land to Surrey County Council as the local highway authority that has been acquired by Highways England freehold under the Order for the purposes of the local highway network.

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