

M3 Junction 9 Improvement

Scheme Number: TR010055

7.12.5 Statement of Common Ground with Natural England

APFP Regulations 5(2)(q)

Planning Act 2008

**Infrastructure Planning (Applications: Prescribed Forms and
Procedure) Regulations 2009**

Volume 7

15 June 2023

Infrastructure Planning

Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

M3 Junction 9 Improvement
Development Consent Order 202[x]

7.12.5 STATEMENT OF COMMON GROUND WITH NATURAL ENGLAND

Regulation Number:	Regulation 5(2)(q)
Planning Inspectorate Scheme Reference:	TR010055
Application Document Reference:	7.12.5
BIM Document Reference:	HE551511-VFK-LSI-XXXX_XX-RP-ZL-40005
Author:	M3 Junction 9 Improvement Project Team, National Highways

Version	Date	Status of Version
Rev 0	15 June 2023	Deadline 2 Submission

STATEMENT OF COMMON GROUND

This Statement of Common Ground has been prepared and agreed by (1) National Highways Company Limited and (2) Natural England

Signed.....
Anne-Marie Palmer
Project Manager
on behalf of National Highways
Date:

Signed.....
Mary Bell (née Andrew)
Sustainable Development, Thames
Solent Team
on behalf of Natural England
Date:

Contents

- 1 Introduction 1**
 - 1.1 Purpose of this document 1
 - 1.2 Parties to this Statement of Common Ground..... 1
 - 1.3 Terminology 1
- 2 Record of Engagement..... 3**
- 3 Issues..... 6**

Tables

- Table 2.1: Record of Engagement..... 3
- Table 3.1: Issues Table 6

1 Introduction

1.1 Purpose of this document

- 1.1.1 This Statement of Common Ground (SoCG) has been prepared in respect of the proposed M3 Junction 9 scheme (the Scheme) made by National Highways Company Limited (National Highways) to the Secretary of State for Transport (Secretary of State) for a Development Consent Order (DCO) under section 37 of the Planning Act 2008 (as amended).
- 1.1.2 This SoCG does not seek to replicate information which is available elsewhere within the DCO application documents. All DCO application documents are available on the Planning Inspectorate's website.
- 1.1.3 The 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. SoCGs are an established means in the planning process of allowing all parties to identify and so focus on specific issues that may need to be addressed during the examination.

1.2 Parties to this Statement of Common Ground

- 1.2.1 This SoCG has been prepared by (1) National Highways as the applicant and (2) Natural England.
- 1.2.2 National Highways 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.
- 1.2.3 Natural England is an executive non-departmental public body sponsored by the Department for Environment, Food and Rural Affairs (Defra). Natural England is the government's advisor for the natural environment in England, helping to protect England's nature and landscape for people to enjoy and for the services they provide.

1.3 Terminology

- 1.3.1 In the Table 3.1 in **Section 3** of this SoCG:
- "*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 to determine whether they can reach agreement by the end of the examination
 - "*Not agreed*" – indicates a final position for area(s) of disagreement where the resolution of divergent positions will not be possible, and parties agree on this point

1.3.2 It can be assumed that any matters not specifically referred to in **Table 3.1** in **Section 3** of this SoCG are not of material interest or relevance to Natural England, and therefore have not been the 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 Natural England.

2 Record of Engagement

2.1.1 A summary of the key meetings and correspondence that has taken place between National Highways and Natural England in relation to the Application is outlined in **Table 2.1** below.

Table 2.1: Record of Engagement

Date	Form of correspondence	Key topics discussed and key outcomes
19 January 2021	Meeting with Natural England	Discussed the scope of the Habitats Regulations Assessment (HRA) (7.5, APP-158) including: <ul style="list-style-type: none"> Historical HRA work Baseline data Upcoming HRA work Nutrient Neutrality Water quality (silt) Environmental mitigation and enhancements
18 February 2021	Email from National Highways to Natural England	Project update on delay of consultation.
20 May 2021	Email from National Highways to Natural England	Project update, statutory consultation dates, Stakeholder Briefing Session for Statutory Environmental Bodies to be held on 26 May 2021.
26 May 2021	Letter from National Highways to Natural England	Section 42 letter and Section 48 Notice, electronic link to 2021 Preliminary Environment Information Report (PEIR), PEIR Non-Technical Summary (NTS), PEIR Appendices.
7 July 2021	Letter from Natural England to National Highways	Formal Section 42 response received.
29 July 2021	Meeting with Natural England	Principles for protected species mitigation. Badger/Dormice: Overall mitigation proposals seem appropriate, although Natural England would require further information on detail before acceptance of approach. Reptiles: Natural England directed project to their Standing Advice
28 September 2021	Meeting with Natural England	Environmental Mitigation Design, Biodiversity Net Gain (BNG), and HRA matters.
9 December 2021	Letter from National Highways to Natural England	Project update issued.

Date	Form of correspondence	Key topics discussed and key outcomes
10 May 2022	Email from National Highways to Natural England	Project update - DCO submission delay
26 August 2022	Meeting with Natural England	Project update meeting: <ul style="list-style-type: none"> ▪ Project update ▪ HRA ▪ Drainage ▪ BNG ▪ Protected Species ▪ SoCG
22 September 2022	Email from National Highways to Natural England	Project update including slides from a Members Briefing and a copy of letter to be sent to landowners.
18 November 2022	Meeting with Natural England	Project update meeting: <ul style="list-style-type: none"> ▪ Project update ▪ Review of Appendix J (Stage 3 Temporary (Construction) Drainage Strategy) of the first iteration Environmental Management Plan (fiEMP) (7.3, Rev 2) ▪ SoCG
1 December 2022	Email from National Highways to Natural England	Project update informing that the DCO Application was submitted on 21 November 2022.
15 February 2023	Meeting with Natural England	Project update meeting: <ul style="list-style-type: none"> ▪ Appendix 8.3 (Assessment of Operational Air Quality Impacts on Biodiversity) of the ES (6.3, APP-132) comments ▪ Construction and operation drainage strategy comments ▪ Biodiversity and BNG comments ▪ SoCG review
17 March 2023	Meeting with Natural England	Meeting with species licencing team to discuss the Draft Dormouse Licence Application.
7 June 2023	Meeting with Natural England	Meeting to discuss Natural England's comments on various application documents and the SoCG.
8 June 2023	Meeting with Natural England	Meeting with Natural England's Air Quality specialists to discuss comments on Appendix 8.3 (Assessment of Operational Air Quality

Date	Form of correspondence	Key topics discussed and key outcomes
		Impacts on Biodiversity) of the ES (6.3, APP-132).

2.1.2 It is agreed that this is an accurate record of the key meetings and other forms of consultation and engagement undertaken between (1) National Highways and (2) Natural England in relation to the issues addressed in this SoCG.

3 Issues

Table 3.1: Issues Table

Reference	Issue	Document References (if relevant)	Natural England's Position	National Highways' Position	Status	Date
1. Draft Development Consent Order						
1.1	Articles and Requirements within the draft Development Consent Order (3.1, Rev 2) .	draft Development Consent Order (3.1, Rev 2)	Natural England have confirmed that they have no comments on the draft Development Consent Order (3.1, Rev 2) .	The draft Development Consent Order (3.1, Rev 2) has been agreed with Natural England.	Agreed	12 May 2023
Environmental Statement (ES)						
2. Chapter 8 Biodiversity						
2.1	Scope of the assessment Paragraph 8.4.1 in Chapter 8 (Biodiversity) of the Environmental Statement (ES) (6.1, APP-049) outlines the scope of the assessment. The assessment covers the impacts upon biodiversity receptors (including statutory and non-statutory designated sites, habitats and species) during both the construction and operation of the Scheme.	Chapter 8 (Biodiversity) of the Environmental Statement (ES) (6.1, APP-049)	Natural England agrees with the scope of the assessments in terms of statutory designated sites.	The scope of the assessment has been agreed with Natural England.	Agreed	28 September 2022
2.2	Assessment Methodology Section 8.4 in Chapter 8 (Biodiversity) of the Environmental Statement (ES) (6.1, APP-049) provides the methodology used to undertake the assessment on biodiversity. The methodology used is DMRB LA 108 Biodiversity (National Highways, 2020) and Guidelines for Ecological Impact Assessment in the UK and Ireland (CIEEM, 2018).	Chapter 8 (Biodiversity) of the Environmental Statement (ES) (6.1, APP-049)	Natural England would agree with this assessment methodology, provided that this represents current best practise.	DMRB LA 108 Biodiversity (National Highways, 2020) and Guidelines for Ecological Impact Assessment in the UK and Ireland (CIEEM, 2018) represent current best practice.	Agreed	15 February 2023
2.3	Section 8.5 in Chapter 8 (Biodiversity) of the Environmental Statement (ES) (6.1, APP-049) summarises the selection of study areas used to undertake the assessment. The selection of study area is in accordance with the Guidelines for Ecological Impact Assessment in the UK and Ireland (CIEEM, 2018). The study areas are presented in Figures 8.1 – 8.5 of the ES (6.2, APP-070)	Chapter 8 (Biodiversity) of the Environmental Statement (ES) (6.1, APP-049) and Figures 8.1-8.5 of Chapter 8 (Biodiversity - Figures) of the ES (6.2, APP-070)	Natural England agree with the study areas as described in Chapter 8 (Biodiversity) of the Environmental Statement (ES) (6.1, APP-049)	The study areas have been agreed with Natural England.	Agreed	15 February 2023
2.4	Baseline information	Chapter 8 (Biodiversity) of the Environmental	Natural England's licensing team would also be happy to comment on the appropriateness of the methodologies	National Highways has responded to Natural England's Licencing Team methodology comment on surveys for	Under Discussion	7 June 2023

Reference	Issue	Document References (if relevant)	Natural England's Position	National Highways' Position	Status	Date
	<p>A data gathering exercise has been undertaken to establish the existing baseline conditions including for:</p> <ul style="list-style-type: none"> - Designated sites (SACs, SSSIs, etc) - Habitats, notable plants and invasive plants - Amphibians (including great crested newts) - Aquatic invertebrates - Badgers - Bats (foraging and commuting) - Bats (roosting) - Breeding birds - Hazel dormouse - Otter <p>The methodologies adopted to undertake the data gathering and the results are outlined within Appendices 8.1a – 8.1y of the ES (6.3, APP-104 – APP-128).</p> <p>Section 8.6 Chapter 8 (Biodiversity) of the Environmental Statement (ES) (6.1, APP-049), outlines the existing baseline and future baseline scenario and describes European designations, other statutory designations, non-statutory designations, habitats and species.</p>	<p>Statement (ES) (6.1, APP-049)</p> <p>Appendices 8.1a – 8.1y of the ES (6.3, APP-104 – APP-128)</p>	<p>outlined where they are likely to support a licence application. If this is required by the scheme, please do let us know.</p> <p>Natural England have reviewed the methodology for the draft dormouse licence application. Justification is required for areas not surveyed in the North-West and South of the site; these areas are to either be partially impacted or utilised as a receptor site.</p>	<p>the draft dormouse licence application and awaits a response. National Highways has addressed this comment by explained that survey coverage across the site was very good, and covered the majority of habitats where impacts will occur. Where some parcels of habitat were not surveyed due to access or safety reasons, dormouse presence has been assumed, and data from adjacent similar habitats has provided useful context on population density. At a meeting on 17 March 2023, Natural England's licencing team were happy with this response.</p>		
2.5	<p>Baseline information</p> <p>Due to the mobility of species and potential for changes in habitats, to make certain the ecological baseline is up-to-date and suitable to inform the first iteration Environmental Management Plan (fiEMP) (7.3, Rev 2) and the discharge of Requirements, baseline ecological surveys would be updated prior to construction. The surveys would include, but are not limited to the following:</p> <ul style="list-style-type: none"> ▪ Updated habitat and notable plant survey ▪ Updated bat roost surveys of all trees and buildings affected during construction ▪ Updated badger survey ▪ Updated dormice survey ▪ Updated otter survey ▪ Updated invasive species survey ▪ Updated reptile survey 	<p>Chapter 8 (Biodiversity) of the ES (6.1, APP-049) and first iteration Environmental Management Plan (fiEMP) (7.3, Rev 2)</p>	<p>Natural England agrees with the proposal to update baseline ecological surveys prior to construction. Surveys for white-clawed crayfish should also be updated as necessary as the proposals progress.</p>	<p>The updating of baseline surveys prior to construction are agreed with Natural England.</p>	Agreed	15 February 2023

Reference	Issue	Document References (if relevant)	Natural England's Position	National Highways' Position	Status	Date
2.6	<p>Mitigation</p> <p>Section 8.8 in Chapter 8 (Biodiversity) of the Environmental Statement (ES) (6.1, APP-049), outlines embedded and essential mitigation proposed to be implemented to avoid or reduce environmental effects during construction and operation. Mitigation includes:</p> <p>Embedded mitigation during construction</p> <p>The route of the western (proposed footpath and cycle path) route is located wholly outside the River Itchen Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI), other than the proposed new foot/cycle bridge which spans these designated areas.</p> <p>The proposed new foot/cycle bridge over the River Itchen SAC/SSSI would be a clear span structure, with no piers within the river channel. In addition, the abutments would be set back from the riverbank, outside of the SAC and SSSI.</p>	<p>Chapter 8 (Biodiversity) of the Environmental Statement (ES) (6.1, APP-049)</p>	<p>Natural England agrees with the proposed embedded mitigation.</p> <p>Setting back the abutments will help maintain the connectivity of the river bank.</p>	<p>Embedded mitigation during construction for the proposed foot/cycleway is agreed with Natural England.</p>	Agreed	15 February 2023
2.7	<p>Mitigation</p> <p>Embedded mitigation during operation</p> <p>The operational drainage system has been designed to modern highway standards and is likely to provide an improvement of water treatment compared to the existing situation. The drainage design includes a range of features to treat highway runoff including wetlands, attenuation basins, and swales. The drainage strategy is set out in Appendix 13.1 (Drainage Strategy Report) of the ES (6.3, APP-142, APP-143).</p> <p>The design of the new foot/cycle bridge, with abutments set back from River Itchen would allow passage of wildlife, in particular otter, to be maintained along the riverbank during operation. The bridge deck also follows the same horizontal alignment as the existing adjacent road bridges (Itchen Bridge and Kings Worthy Bridge), to make certain it does not present an additional blockage to animals such as bats commuting along the River Itchen.</p> <p>New areas of woodland and scrub within the landscape design have been located to maintain and enhance connectivity for wildlife (including bats and dormice) within the Scheme and wider landscape during operation. Much of the additional woodland and scrub planting is adjacent to existing woodlands, or provides habitat links, which would</p>	<p>Chapter 8 (Biodiversity) of the Environmental Statement (ES) (6.1, APP-049)</p> <p>Figure 2.3 in Chapter 2 (The Scheme and its Surroundings – Figures) of the ES (6.2, APP-062) and Appendix 13.1 (Drainage Strategy Report) of the ES (6.3, APP-142, APP-143)</p>	<p>The proposals for other embedded mitigation such as the proposed fencing, the enhancement of habitat connectivity and the design of the pedestrian bridge with the abutments set back from the riverbank to avoid impacts on the designated sites are welcome.</p> <p>Post-construction monitoring should be undertaken until all the drainage features are established and are fully operational, and that it can be demonstrated that the works have not resulted in increased sediment loading or pollutants entering the watercourse. This is recommended for a period of 5 years to allow for corrective measures to be applied as necessary; this timeframe will also allow for any vegetated features to have matured and be functioning to their full potential.</p>	<p>National Highways has agreed to include 5 years post construction monitoring, as suggested by Natural England.</p>	Agreed	7 June 2023

Reference	Issue	Document References (if relevant)	Natural England's Position	National Highways' Position	Status	Date
	<p>enhance their ecological function (refer to Figure 2.3 in Chapter 2 (The Scheme and its Surroundings – Figures) of the ES (6.2, APP-062))</p> <p>Fencing would be provided along the footpath/cycleway either side of the River Itchen to prevent pedestrians from entering woodland habitat potentially used by otter.</p> <p>Wildlife fencing to be provided in key locations as part of the Scheme to prevent mammals (e.g. badgers and otters) crossing onto the highway, and to direct animals to alternative suitable habitat. One way return gates would also be provided through the fence to allow animals to exit the highway network.</p> <p>Lighting has only been incorporated into the design of the Scheme within the subways and underpasses, where it is essential for safety reasons. There would be no lighting elsewhere within the Scheme</p>					
2.8	<p>Mitigation</p> <p>Essential mitigation during construction</p> <p>Paragraphs 8.8.12 to 8.8.29 in Chapter 8 (Biodiversity) of the Environmental Statement (ES) (6.1, APP-049) sets out the essential mitigation for the construction phase.</p> <p>Essential mitigation measures are outlined in the fiEMP (7.3, Rev 2) and the Temporary (Construction) Phase Drainage Strategy (which forms an Appendix to the fiEMP), in accordance with LD 120 Environmental management plans (National Highways, 2020). This document includes commitments to when working near watercourses they would be carried out in accordance with CIRIA guidance, in particular C532 Control of water pollution from construction sites, C650 Environmental Good Practice on Site, and CIRIA C648 Control of water pollution from linear construction projects. This includes selecting appropriate probability rainfall events (10-year return period) and overflow contingencies. Due to the sensitivity of the receptors, Factors of Safety would be incorporated, to be agreed with the regulatory bodies (Lead Local Flood Authority and the Environment Agency).</p>	<p>Chapter 8 (Biodiversity) of the Environmental Statement (ES) (6.1, APP-049), first iteration Environmental Management Plan (fiEMP) (7.3, Rev 2) and Appendix J (Stage 3 Temporary (Construction) Drainage Strategy) of the first iteration Environmental Management Plan (fiEMP) (7.3, Rev 2)</p>	<p>National Highways has engaged with Natural England with regard to the Appendix J (Stage 3 Temporary (Construction) Drainage Strategy) of the first iteration Environmental Management Plan (fiEMP) (7.3, Rev 2) and have provided updates and clarification to this document in light of Natural England's advice, which is welcome.</p>	<p>The essential mitigation measures during the construction phase have been agreed with Natural England.</p>	Agreed	7 June 2023
2.9	<p>Mitigation</p> <p>Mitigation also includes a commitment to ensuring the construction of the Scheme would adhere to guidance issued by the Environment Agency on working methods and</p>	<p>Chapter 8 (Biodiversity) of the Environmental Statement (ES) (6.1, APP-049) and first</p>	<p>Natural England agrees with the proposed essential mitigation to minimise impacts to the River Itchen during construction, but note that the</p>	<p>National Highways continues to engage with the Environment Agency. The mitigation relating to fish within the</p>	Agreed	15 February 2023

Reference	Issue	Document References (if relevant)	Natural England's Position	National Highways' Position	Status	Date
	timing restrictions in relation to avoiding impacts to fish within the River Itchen, including the qualifying species of the River Itchen SAC/SSSI. In-river working required for installation of drainage outflows would avoid sensitive periods (1 October to 31 May inclusive for salmonid fish, and 15 March to 15 June inclusive for cyprinid fish). Where dewatering of sections of the river is required to facilitate construction, fish would be removed from these areas using electrofishing, in agreement with the Environment Agency and under any necessary permits. Piling works required for the construction of the new foot/cycle bridge would be carried out using vibro-piling methods, or if percussive piling is used works would adhere to the timing restrictions.	iteration Environmental Management Plan (fiEMP) (7.3, Rev 2)	Environment Agency may wish to comment further on this aspect.	River Itchen is agreed with Natural England.		
2.10	Mitigation Where practicable, construction phase lighting would be designed to reduce light spill and duration of artificial light use on important light-sensitive important biodiversity features, in particular the River Itchen corridor which is known to support bats and otters. Measures would also include reference to measures in Section 10.4 (Temporary Floodlighting) of <i>Dark Skies Technical Advice Note 2</i> , (South Downs National Park, May 2021).	Chapter 8 (Biodiversity) of the Environmental Statement (ES) (6.1, APP-049) and first iteration Environmental Management Plan (fiEMP) (7.3, Rev 2)	The proposals to minimise light pollution during the construction phase are welcome. Should any protected species licences be applied for, these should include greater detail of the baseline light levels prior to construction, along with detail on how light spill/ artificial light design will avoid light-related impacts on these species.	National Highways notes Natural England's comments on light pollution. Currently the only licence National Highways to for is the dormouse licence.	Agreed	15 February 2023
2.11	Other mitigation measures include: Design of the habitat compensation and enhancement package after consultation with stakeholders, including the South Downs National Park Authority. The habitat creation package can be viewed on Figure 2.3 in Chapter 2 (The Scheme and its Surroundings – Figures) of the ES (6.2, APP-062) with further details provided in Appendix 7.6 (Outline Landscape and Ecological Management Plan) of the ES (6.3, APP-102) . Pollution prevention measures including source control, settlement tanks, silt fencing and dust suppression would be provided to avoid accidental pollution events during construction, with particular regard to the River Itchen. Installation of fencing of adjacent designated areas and retained important habitats for protection and avoidance of accidental damage and species mortality. Easton Down	Chapter 8 (Biodiversity) of the Environmental Statement (ES) (6.1, APP-049), first iteration Environmental Management Plan (fiEMP) (7.3, Rev 2) and Appendix 7.6 (Outline Landscape and Ecological Management Plan) of the ES (6.3, APP-102)	Natural England has provided comments on Appendix 7.6 (Outline Landscape and Ecological Management Plan) of the ES (6.3, APP-102) , and these were discussed further in a meeting on 7 June 2023. Natural England has provided comments on Chapter 8 (Biodiversity) of the Environmental Statement (ES) (6.1, APP-049) which National Highways responded to on 3 May 2023.	Comments provided by Natural England on the first iteration Environmental Management Plan (fiEMP) (7.3, Rev 2) and Appendix 7.6 (Outline Landscape and Ecological Management Plan) of the ES (6.3, APP-102) have been incorporated into those documents, or where there comments on the detail these will be included in the siEMP or LEMP, secured through Development Consent Order Requirement. Mitigation set out in the first iteration Environmental Management Plan (fiEMP) (7.3, Rev 2) and Appendix 7.6 (Outline Landscape and Ecological Management Plan) of the ES (6.3, APP-102) have been agreed with Natural England, including the	Agreed	7 June 2023

Reference	Issue	Document References (if relevant)	Natural England's Position	National Highways' Position	Status	Date
	<p>SINC located within the Application boundary to be fenced and protected throughout the construction phase.</p> <p>Provide measures to avoid entrapment of animals during constructions e.g. provide escape ramp, or if not possible, covering of excavation at night.</p> <p>Programming of habitat clearance to avoid sensitive periods for fauna, or if not possible, carry out an ecological watching brief prior construction.</p> <p>Produce and implement a Reptile Mitigation Strategy to allow reptiles to be safeguarded throughout the construction and operational phases.</p> <p>To avoid risk to white-clawed crayfish and other aquatic species from introduction of non-native species or pathogens biosecurity measures, such as disinfecting all equipment, PPE and machinery with a broad-spectrum disinfectant, will be implemented when carrying out works in watercourses. No in-river working activities to the river channel or its banks would be undertaken without prior checks for white-clawed crayfish. If found to be present within the working area, white-clawed crayfish would be moved to an adjacent (unaffected) section of the River Itchen. If required, a licence would be obtained for the works. The timing of in-river works would be scheduled between 1 July and 30 September to avoid the sensitive period for white-clawed crayfish.</p>			<p>implementation of fencing of adjacent designated sites, and the Easton Down SINC.</p>		
2.12	<p>Mitigation</p> <p>To compensate for the loss of a main badger sett, an artificial badger sett would be provided. A licence under the PBA 1992 would be obtained to legally allow closure of the existing sett and would include full details of appropriate mitigation strategies. All works affecting badgers shall be undertaken in accordance with the licencing requirements, and standing advice from Natural England. To compensate for the loss of the main sett, an artificial sett would be constructed and retained in perpetuity. The artificial sett would be located within the Application Boundary as close as possible to the existing main sett, but to avoid disturbance would be outside the area of main works and temporary works. Other setts identified within the Application Boundary would be retained and protected during the construction phase.</p>	<p>Chapter 8 (Biodiversity) of the Environmental Statement (ES) (6.1, APP-049)</p>	<p>Class licences to exclude badgers or destroy setts can only be used between 1 July and 30 November.</p> <p>Before work commences, Natural England will need to approve the site registration (further details here).</p>	<p>National Highways notes the specific comments relating to badger setts and licences and continues to engage with Natural England on this matter. Bait marking surveys were undertaken in 2022 and confirm only 1 clan is present, and that badgers have been recorded in the location of proposed artificial sett. The surveys have been undertaken by a national badger specialist who holds a class licence to close setts. Following grant of the DCO, and construction of the artificial sett, the existing sett will be closed using their class licence once there is evidence of the artificial sett being used by badgers. The use of a class licence means that there will be</p>	<p>Agreed</p>	<p>14 June 2023</p>

Reference	Issue	Document References (if relevant)	Natural England's Position	National Highways' Position	Status	Date
				no application for a badger licence from Natural England.		
2.13	<p>Mitigation</p> <p>To compensate for the loss of hazel dormice habitat (woodland, scrub and hedgerow) within the Application Boundary, the landscape planting has provided compensatory planting to enable a net increase in dormouse habitat within the Application Boundary in the long term, and to maintain connectivity across the wider landscape.</p> <p>Dormice present with retained woodland to the north of the Highways England depot will become isolated from other areas of dormouse habitat by existing and proposed infrastructure. Dormice in this area will likely need to be translocated to a receptor site within retained dormouse habitat to ensure their ongoing survival. Given the likely presence of dormice within suitable habitat in the wider landscape it unlikely that a suitable woodland will be present which does not currently support dormice. Therefore, dormice will be translocated to woodlands, which will have been enhanced for dormice in advance, to increase their carrying capacity through additional planting, provision of dormouse boxes, and habitat management.</p> <p>A European Protected Species licence would be obtained to legally allow clearance of dormouse habitat and translocation of dormice.</p>	<p>Chapter 8 (Biodiversity) of the Environmental Statement (ES) (6.1, APP-049)</p>	<p>As translocation is a non-standard mitigation method for hazel dormice, detailed proposals should be fully explored with Natural England in terms of this approach. As part of this process we will need to consider the specifics of the proposals - including, but not limited to, population estimates of the proposed translocation areas and receptor sites, habitat suitability within receptor sites and the ability of these areas to support additional animals, the logistics of the proposed translocation (including location / setup of holding facilities, how often these will be checked, details of food and water provision) and a disease risk analysis.</p>	<p>National Highways submitted a draft Dormouse Licence application to Natural England on 22 December 2022. Comments were received from Natural England 13 March 2023, and this was followed up with a meeting on 17 March 23. Natural England has requested further supporting information. This additional supporting information is being provided within an update to the draft dormouse licence application, to be submitted to Natural England in June 2023.</p>	<p>Under discussion</p>	<p>15 February 2023</p>
2.14	<p>Mitigation</p> <p>An Ecological Clerk of Works (ECoW) would be present on site during key periods of the construction phase. The ECoW would be required to make certain that all committed mitigation measures are adhered to.</p>	<p>Chapter 8 (Biodiversity) of the Environmental Statement (ES) (6.1, APP-049) and the first iteration Environmental Management Plan (fiEMP) (7.3, Rev 2)</p>	<p>Natural England would expect suitable ecological supervision for works to be in place, in line with best practice guidance.</p>	<p>The presence of an ECoW is agreed with Natural England. A commitment has been made in Table 3.2 Record of Environmental Actions and Commitments (REAC) of the first iteration Environmental Management Plan (fiEMP) (7.3, Rev 2) to ensure an ECoW will be present during key periods of the construction phase.</p>	<p>Agreed</p>	<p>15 February 2023</p>

Reference	Issue	Document References (if relevant)	Natural England's Position	National Highways' Position	Status	Date
2.15	<p>Mitigation</p> <p>Essential Mitigation during operation</p> <p>Paragraphs 8.8.30 to 8.8.31 Chapter 8 (Biodiversity) of the Environmental Statement (ES) (6.1, APP-049), outline the essential mitigation for the operational phase, with further details provided within Appendix 7.6 (Outline Landscape and Ecological Management Plan) of the ES (6.3, APP-102), with a full LEMP secured through a DCO Requirement in agreement with statutory consultees.</p> <p>Monitoring of the badger and dormice populations as part of the licencing agreement would be agreed with Natural England.</p>	<p>Chapter 8 (Biodiversity) of the ES (6.1, APP-049), Appendix 7.6 (Outline Landscape and Ecological Management Plan) of the ES (6.3, APP-102) and first iteration Environmental Management Plan (fiEMP) (7.3, Rev 2)</p>	<p>The ongoing management and monitoring of habitat creation and enhancement measures is welcomed.</p> <p>Natural England welcome the use of native species of local provenance as a key design principle, and the inclusion of appropriate biosecurity measures.</p> <p>Detailed comments, for example relating to the species mix within the habitats proposed, will be incorporated into the landscape design during the detailed design phase. .</p>	<p>The essential mitigation during operation is agreed with Natural England.</p>	Agreed	9 June 2023
2.16	<p>Assessment Of Operational Air Quality Impacts on Biodiversity</p>	<p>Appendix 8.3 of the ES (6.3, APP-132)</p>	<p>National Highways is actively engaging with Natural England in discussions on this matter. Further to a meeting on 8 June 2023, National Highways is undertaking further work regarding aspects of this work, including consideration of in-combination effects beyond the opening year and with non-road plans and projects, and consideration of further types of airborne pollutants (for example acid deposition).</p> <p>Natural England will continue to engage with National Highways on this matter as further documents are produced.</p>	<p>National Highways is engaging with Natural England on this matter.</p>	Under discussion	8 June 2023
2.17	<p>Residual effects and conclusions</p> <p>Section 8.9 of Chapter 8 (Biodiversity) of the Environmental Statement (ES) (6.1, APP-049) outlines the residual effects of the Scheme following the implementation of mitigation.</p> <p>Potential impacts from construction, operation, and maintenance of the Scheme that could relate to important biodiversity receptors include: habitat loss and gain, fragmentation of populations or habitats, disturbance, habitat degradation, and species mortality.</p> <p>The mitigation hierarchy has been embedded within the assessment process, whereby the design has sought to avoid adverse impacts in the first instance through an</p>	<p>Chapter 8 (Biodiversity) of the ES (6.1, APP-049)</p> <p>Figure 2.3 in Chapter 2 (The Scheme and its Surroundings – Figures) of the ES (6.2, APP-062)</p> <p>first iteration Environmental Management Plan (fiEMP) (7.3, Rev 2)</p>	<p>Natural England broadly agrees with the mitigation hierarchy approach.</p> <p>In light of the ongoing work regarding the air quality assessment (please see 2.16 above), final conclusions regarding possible residual effects should also incorporate these findings.</p>	<p>National Highways is engaging with Natural England on this matter.</p>	Under discussion	15 June 2023

Reference	Issue	Document References (if relevant)	Natural England's Position	National Highways' Position	Status	Date
	<p>iterative approach to design, e.g. informing alignment to avoid sensitive receptors where possible. In areas where avoidance is not possible, measures have been included to prevent or reduce potentially significant negative effects. As a last resort, measures to compensate negative effects have also been included, e.g. habitat creation to offset impacts associated with habitat loss and fragmentation where these cannot be avoided. A package of mitigation measures have been provided, including provision of substantial areas of habitats of ecological value which are appropriate to the local area (including chalk grassland, native broadleaved woodland and scrub).</p> <p>The assessment identifies a number of adverse and beneficial impacts to biodiversity receptors, however in all cases the residual effects are not significant.</p>					
3. Chapter 15 Cumulative Effects						
3.1	<p>Chapter 15 (Cumulative Effects) of the Environmental Statement (ES) (6.1, APP-056) considers two types of cumulative effects of the Scheme. These are:</p> <ul style="list-style-type: none"> Cumulative effects – effects that occur as a result of changes caused by other developments acting cumulatively with the effects of the Scheme. Combined effects – effects from the combined effect of several different impacts acting together on a single receptor, such that the combined effect would be more significant than the individual effects. 	<p>Chapter 15 (Cumulative Effects) of the Environmental Statement (ES) (6.1, APP-056)</p>	<p>No cumulative effects have been identified to biodiversity during the construction and operational phases, when mitigation for the M3J9 Scheme have been taken into account. Natural England has no further comments on this aspect of the proposals.</p> <p>Natural England is aware that further work is being undertaken to assess the impacts of any changes in air quality in-combination with other plans and projects. Natural England agrees with the consideration of cumulative effects provided that no updates are required as a result of the air quality updates (which Natural England would be happy to review if required).</p>	<p>The consideration of cumulative effects is agreed with Natural England.</p>	Agreed	4 April 2023
4. Habitats Regulations Assessment						
4.1	<p>Habitats Regulation Assessment (HRA) (7.5, APP-158) has been undertaken for the Scheme. It outlines both the HRA screening and appropriate assessment stages and concludes no significant effects (alone or in-combination) on the integrity of European Sites including the River Itchen</p>	<p>Habitat Regulations Assessment (7.5, APP-158)</p>	<p>Natural England agrees in principle with the HRA screening and much of the proposed mitigation outlined at appropriate assessment.</p> <p>Air quality impacts are still under discussion. Further work is currently</p>	<p>National Highways is engaging with Natural England on this matter.</p>	Under discussion	7 June 2023

Reference	Issue	Document References (if relevant)	Natural England's Position	National Highways' Position	Status	Date
	Special Area of Conservation (SAC), Mottisfont Bats SAC, and Kennet and Lambourne Floodplain SAC.		being undertaken as regards air quality, the findings of these should be incorporated into the HRA (7.5, APP-158) , and any identified Likely Significant Effects taken through to Appropriate Assessment.			
4.2	Scope and mitigation measures	Habitat Regulations Assessment (7.5, APP-158)	<p>Natural England agrees with the scope of this HRA in that it considers the relevant designated sites.</p> <p>Air quality impacts are still under discussion. Further work is currently being undertaken to assess any impacts of the project from changes in air quality, the findings of this work should be incorporated into the Habitat Regulations Assessment (7.5, APP-158) and any identified Likely Significant Effects taken through to Appropriate Assessment.</p> <p>If the mitigation measures need to be changed at a later date for any reason, for example in light of new evidence, or as a result of the updated air quality assessment work, an updated HRA should capture these updates to the Scheme.</p>	<p>It is welcomed that Natural England agree with the scope of the HRA. Mitigation relied upon within HRA is set out in the first iteration Management Plan (fiEMP) (7.3, Rev 2).</p> <p>The application includes a commitment to produce a second iteration Environmental Management Plan (siEMP), which will be secured through a DCO Requirement. The siEMP will be drafted in consultation with statutory regulators, and there will be regular engagement with these parties through the subsequent detailed design and delivery (construction) phases.</p>	Under discussion	7 June 2023
5. Landscape and Visual						
5.1	Regarding landscape and visual Natural England, stated they would like to see direct and indirect effects assessed on the National Park, details of local landscape character areas mapped, assessment of visual effects on the surrounding area / landscape together with physical effects of the development, a full assessment of potential impact of the development using Landscape Character Assessments, consideration of character and distinctiveness of the area, measures taken to build to high standards, details of alternatives and justification for the preferred option, cumulative effects and reference to National Character Areas.	<p>Chapter 7 (Landscape and Visual) of the Environmental Statement (ES) (6.1, Rev 1)</p> <p>Chapter 3 (Assessment of Alternatives) of the ES (6.1, APP-044)</p> <p>Figure 2.3 in Chapter 2 (The Scheme and its Surroundings –</p>	Natural England welcomes the engagement with the South Downs National Park Authority in developing the scheme proposals. Natural England understand there are a number of points under discussion with the South Downs National Park Authority, which may result in updates to the scheme design and we would be happy to review any such updates in due course.	National Highways is engaging with Natural England on this matter.	Under discussion	15 June 2023

Reference	Issue	Document References (if relevant)	Natural England's Position	National Highways' Position	Status	Date
	The points raised by Natural England are included within Chapter 7 (Landscape and Visual) of the ES (6.1, Rev 1) together with Chapter 3 (Assessment of Alternatives) of the ES (6.1, APP-044) . In addition, there has been engagement with the South Downs National Park Authority regarding landscape and visual throughout the design and assessment of the Scheme.	Figures) of the ES (6.2, APP-062) Chapter 15 (Cumulative Effects) of the Environmental Statement (ES) (6.1, APP-056)				
6. Access and Recreation						
6.1	Natural England recommended early engagement with South Downs National Park Authority to discuss incorporating measures to improve access to the National Park and links to the wider footpath network. Engagement has been undertaken with the South Downs National Park Authority throughout the design of the Scheme and the design of the new proposed footway, cycleway and horse-riding route, proposed footway and cycleway and proposed footpath and cycle path - in total, an extra 4.8km of public rights of way will be provided.	Figure 2.3 in Chapter 2 (The Scheme and its Surroundings – Figures) of the ES (6.2, APP-062)	Natural England welcomes the engagement with the South Downs National Park Authority throughout the project design. Natural England understand that the South Downs National Park Authority are broadly satisfied with the proposals and are currently working with National Highways to finalise details on this aspect, which is welcomed.	Access to the South Downs National Park has been discussed and agreed with Natural England. We welcome the ongoing discussions with the South Downs National Park Authority to finalise the details of this element of the scheme.	Agreed	18 November 2022