

M3 Junction 9 Improvement

Scheme Number: TR010055

3.3 Consents and Agreements Position Statement (Rev 2) Clean

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

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3.3 CONSENTS AND AGREEMENTS POSITION STATEMENT

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1 Introduction

1.1 Purpose of this document

- 1.1.1 This Consents and Agreements Position Statement (this Statement) sets out National Highways' intended strategy for obtaining the consents and associated agreements needed to implement the proposed M3 Junction 9 Improvement ('the Scheme').
- 1.1.2 The purpose and objective of this Statement is to identify what consents and agreements are expected to be needed for the Scheme, and how these will be obtained.

1.2 Overview of the Scheme

Scheme description

- 1.2.1 The improvements proposed as part of the Scheme both maintain existing connectivity on the road network, whilst providing enhanced capacity, simplifying routing, improved facilities for walkers, cyclists and horse-riders and landscaping enhancements. The Scheme would provide new free flow links between the M3 and A34, as well as a dedicated new A33 alignment. The Scheme elements are as follows:
- Widening of the M3 from a dual two-lane motorway (two-lane motorway with hard shoulders) to a four-lane motorway (with hard shoulders) between the proposed M3 Junction 9 gyratory north and south slip roads.
 - A new smaller grade separated gyratory roundabout arrangement within the footprint of the existing roundabout, incorporating new connections over the M3 with improved walking, cycling and horse-riding routes.
 - Connector roads from and to the new gyratory roundabout.
 - Improved slip roads to/from the M3.
 - New structures (in the form of gyratory bridges, underpasses, retaining walls, subway and a new cycle and footbridge over the River Itchen).
 - A new surface water runoff system with associated drainage and infiltration features.
 - New signage and gantries.
 - Utility diversions.
 - New lighting (subways, underpasses and gantries).

- Modifications to topography through cuttings and false cuttings as well as re-profiling of existing landform.
 - New walking, cycling and horse-riding provision.
 - Creation of new areas of chalk grassland, woodland, scrub planting and species rich grassland.
- 1.2.2 The Application Boundary covers an area of approximately 109 hectares (ha). This includes the proposed land required for gantries, signage, temporary construction compound areas, areas for environmental mitigation, areas for drainage requirements (some of which would be temporary) and traffic management.
- 1.2.3 The Scheme includes a package of environmental mitigation and enhancement measures to reduce the impacts from the Scheme to the environment where possible. Consideration has also been given to the enhancement of the South Downs National Park where reasonably practicable.
- 1.2.4 Bridleways, footpaths and cycleways have been designed to allow all gradients to be less than 1:20 to comply with Department for Transport's (DfT) inclusive mobility impaired users. Also, the walking, cycling and horse-riding routes are designed for cyclists, and therefore all horizontal radii are suited for cyclists. They are also considered acceptable for mobility impaired users. The range of opportunities and barriers to all forms of movements have been given due consideration in the design of the Scheme.
- 1.2.5 A number of new structures are required to be both constructed and demolished to facilitate the Scheme. Some of the main structures are as follows:
- The existing bridges at the M3 Junction 9 gyratory roundabout are proposed to be demolished and replaced by the two new bridge structures carrying the new gyratory.
 - A new underpass is proposed to carry the A34 southbound under the new A33 link road and the existing M3. The A34 northbound underpass would carry the new A34 northbound over the new A33 link.
 - The existing subways (Winnall Subway East and Winnall Subway West) located under the existing gyratory are proposed to be demolished to facilitate the construction of the reconfigured roundabout. New subways are proposed along the proposed footpath and cycle path route.
 - A new bridge to accommodate the footpath and cycle path over the River Itchen is proposed between the existing Itchen Bridge, (which carries the A34 northbound carriageway), and the existing Kings Worthy Bridge would carry the A33 north and southbound carriageways and the A34 southbound carriageway, respectively.

- 1.2.6 The walking, cycling and horse-riding facilities around and within the Scheme are to be upgraded. This includes an improvement to the National Cycle Network (NCN) Route 23. An additional footpath, cyclepath and bridleway is proposed on the eastern side of the Scheme to link Easton Lane with Long Walk. Such a route would provide a circular leisure path for those using the South Downs National Park with a link to the other paths around Long Walk with their links to local villages. A new combined footpath and cyclepath for the western side of the Scheme is proposed to link the A33 / B3047 Junction to Winnall Industrial Estate situated on Easton Lane.
- 1.2.7 A detailed description of the Scheme is provided in **Chapter 2 (The Scheme and its Surroundings)** of the **Environmental Statement (ES) (Document Reference 6.1)**.

2 Strategy

2.1 Qualification as a Nationally Significant Infrastructure Project

2.1.1 The Scheme is a Nationally Significant Infrastructure Project (NSIP) within Sections 14(1)(h) and 22(1)(b) of the Planning Act 2008 (as amended). Under Section 22 an NSIP must fall within one of the three categories specified, which are expressly stated to be alternatives. This Scheme is the alteration of a highway within the meaning of Section 22(1)(b). The alteration is to the M3 motorway by the creation of a new Junction 9, which will form part of the motorway, and will include related highway works necessary to allow the M3 Junction 9 to be integrated into the surrounding trunk and classified road network.

2.1.2 The Scheme satisfies Section 22(3) and 22(4) as follows:

- a. The highway is wholly in England,
- b. The Applicant, as the strategic highways company, will be the highway authority for the highway, and
- c. The area of development within the Application Boundary is greater than the relevant limit set out in subsection (4), which in this case is 15 hectares (Sections 22(3)(c) and 22(4)(a)).

2.1.3 As the Scheme is an NSIP, development consent must be obtained from the Secretary of State to authorise it, and an application for a development consent order must be made to the Secretary of State, care of the Planning Inspectorate under Section 37 of the Planning Act 2008.

2.2 National Highways' Consents Strategy

2.2.1 The basis of National Highways' consents strategy is that:

- A Development Consent Order (DCO) must be sought as the principal consent for the works (under the Planning Act 2008) including to provide the necessary land acquisition and temporary possession powers;
- The intent of the Planning Act 2008 and Government policy is to enable development and construction-related consents to be included within the DCO; therefore, where possible and practicable, additional consents have been included within the DCO;
- The Scheme benefits from the intent of the Planning Act 2008 and Government policy as most of the consents required for the construction of the Scheme will be in place at the point of the making of the DCO; this minimises the need for any further approvals before the works covered by the DCO can commence; and

- The Scheme has and will be developed based on strong collaboration between the key stakeholders, and any additional consents and agreements will be secured at key stages of project development as necessary. The progress on these items will be reported to the Examining Authority through the preparation of Statements of Common Ground (SoCG) with the relevant statutory bodies, with a summary of the current situation reported in **Section 3** of this Statement.

3 Consents and Agreements

3.1 Consents

3.1.1 The principal consent for the Scheme will be a DCO. The DCO process provides development consent for the works and enables land acquisition and temporary possession, along with many consents and powers to be dealt with at the same time.

3.1.2 However, the DCO application may need to be supplemented by other applications where:

- a. A specific consent cannot be contained in the DCO;
- b. A consenting authority declines to allow a consent to be contained within the DCO; or
- c. It is not desirable, or it is inappropriate, to include a consent within a DCO due to the stage of design development meaning the detail required is unavailable.

3.1.3 At this point (the submission of the DCO application) most of the consents and all the powers required have been included, or addressed, within the DCO as permitted by various provisions of the Planning Act 2008. These fall into the following categories:

- Authorisation of all permanent and temporary works
- Authority to survey and investigate the land
- Compulsory Acquisition of land and / or rights over land such as easements, restrictive covenants and the temporary possession of land
- Consent to undertake works within a Site of Special Scientific Interest (SSSI)
- Consent to carry out street works and to stop up highways permanently or temporarily
- Highways matters (including classification of roads, temporary stopping up and restriction of use of streets and private means of access)
- Traffic regulation matters (including speed limits, clearways and restrictions on use)
- Consent to stop up and divert public and private rights of way
- Consent to carry out tree works (including works to trees subject to a Tree Preservation Order)
- Consent to remove hedgerows (including any 'important hedgerows')

- Powers to carry out utility diversions (subject to protective provisions)
 - Consent to remove buried human remains
 - Consent or approval for the carrying out of works required under any relevant byelaws made under the Water Resources Act 1991, or the Land Drainage Act 1991, as well as the Southern Water Authority Land Drainage and Sea Defence Byelaws 1981
 - Consent to obstruct ordinary watercourses.
- 3.1.4 A number of the above consents are prescribed in the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 (a Prescribed Consent). As a result, under Section 150 of the Planning Act 2008, the relevant consenting body must agree to the inclusion of these consents within the DCO. Please see **Appendix A** for further details.
- 3.1.5 National Highways is confident that the necessary agreements will be obtained before or during the Examination of its application.
- 3.1.6 The permits, consents and agreements that may need to be sought separately from the DCO are identified in **Appendix A**. The content of **Appendix A** is largely dependent on finalisation of the detailed design, the detailed construction site set up and methodologies, and discussions with the consenting authorities. These are not sufficiently developed at this stage to confirm the requirements and therefore it is not practicable to include them within the **draft DCO (Document Reference 3.1)**.
- 3.1.7 National Highways is confident that the necessary agreements will be obtained before or during the Examination of its application.
- 3.1.8 Paragraph 4.56 of the National Policy Statement for National Networks (NPSNN) states that the Secretary of State should not refuse development consent on the basis of regulated impacts unless there is good reason to believe that any relevant necessary operational pollution control permits, licences or other consents will not subsequently be granted. National Highways is unaware of any such reason.

3.2 Agreements

- 3.2.1 Agreements with relevant stakeholders may be required in parallel to the DCO process and may take a variety of forms.
- 3.2.2 A fundamental part of the DCO process is the preparation and agreement of SoCGs with a variety of relevant stakeholders to identify the matters on which parties agree and disagree, to narrow the focus for examining the application concerned and to make the examination process more efficient. The SoCGs that are being progressed by National Highways are with:
- Hampshire County Council

- South Downs National Park Authority
- Winchester City Council
- The Environment Agency
- Historic England
- Natural England

3.2.3 The document **Progress with Statements of Common Ground (Document Reference 7.12)** provides details of current areas of commonality with the above.

3.2.4 Progress on finalising any SoCGs or other forms of agreement, along with updated / final documents, will be reported to the Examining Authority before the close of the Examination. Other forms of agreement may also be required alongside SoCGs, for example, agreements with statutory undertakers where these are required in addition to the protective provisions within the DCO and a Letter of No Impediment from Natural England in relation to draft Protected Species licences.

4 Summary

- 4.1.1 This Statement provides an overview of National Highways' intended strategy for obtaining the consents and associated agreements, in addition to the DCO, needed to implement the Scheme.

Appendix A Consents and Agreements Table

Issue:	Consent/Licence/Agreement & Legislation:	Consenting Authority:	Requirement:	Status of negotiations:	Relationship to the draft DCO
Nature Conservation	Badgers – A licence under section 10 of the Protection of Badgers Act 1992	Natural England	<p>Required in relation to the disturbance and destruction of known badger setts within the Order Limits prior to and during construction of the Scheme.</p> <p>To ensure legal compliance with the Protection of Badgers Act 1992.</p>	<p>Engagement with Natural England is ongoing regarding the potential impacts of the scheme on badgers and necessary mitigation.</p> <p>Damage of setts and disturbance of badgers on site will be licenced using a Badger Class Licence (CL35) held by a registered badger expert. The site will be registered under the Badger Class Licence following finalisation of the construction design and schedule, and once</p>	National Highways is not seeking to disapply this in the draft DCO.

Issue:	Consent/Licence/Agreement & Legislation:	Consenting Authority:	Requirement:	Status of negotiations:	Relationship to the draft DCO
				the DCO has been granted.	
Nature Conservation	Dormice – A licence under Conservation of Habitats and Species Regulations 2017	Natural England	Required in relation to the damage and destruction of dormice habitat and translocation of dormice within the Order Limits prior to and during construction of the Scheme. To ensure legal compliance with the Conservation of Habitats and Species Regulations 2017.	Engagement with Natural England is ongoing regarding the potential impacts of the scheme on dormice and necessary mitigation. A draft licence will be submitted to Natural England following submission of the application for DCO and the Applicant anticipates a letter of no impediment will be provided by Natural England prior to the close of Examination. A final licence will be formally submitted following finalisation of the construction design and schedule, and once the DCO has been granted.	National Highways is not seeking to disapply this in the draft DCO.

Issue:	Consent/Licence/Agreement & Legislation:	Consenting Authority:	Requirement:	Status of negotiations:	Relationship to the draft DCO
Nature conservation	Translocation of fish – Authorisation to translocate fish prior to undertaking temporary works in the River Itchen under section 27a exception permit under The Salmon and Freshwater Fisheries Act 1975 (Form FR2)	Environment Agency	Required to accommodate temporary works within the River Itchen and to ensure that fish assemblage in the receiving environment are protected during the works.	Engagement is ongoing with the Environment Agency.	National Highways is not seeking to disapply this in the draft DCO.
Nature conservation	Licence to catch and relocate white-clawed crayfish (if present) under the Wildlife and Countryside Act 1981, prior to undertaking temporary works in the River Itchen	Natural England	Required to accommodate temporary works within the River Itchen and to ensure that white-clawed crayfish (if present) are not harmed during the works.	A draft licence will be submitted to Natural England following submission of the application for DCO and the Applicant anticipates a letter of no impediment will be provided by Natural England prior to the close of Examination.	National Highways is not seeking to disapply this in the draft DCO.
Nature conservation	Consent to carry out works within a Site of Special Scientific Interest (SSSI) under section 28E and 28H of	Natural England	To carry out works in the River Itchen SSSI	Natural England has been consulted in relation to the works required within the River Itchen SSSI and were	This is a Prescribed Consent which National Highways is

Issue:	Consent/Licence/Agreement & Legislation:	Consenting Authority:	Requirement:	Status of negotiations:	Relationship to the draft DCO
	the Wildlife and Countryside Act 1981			comfortable that the in-river works would not result in significant effects to the River Itchen SSSI. Method statements for in-river working will be agreed with Natural England in advance of any works commencing.	seeking to disapply in the draft DCO.
Water	Water Discharge Activities – Permit to discharge to surface water and/or groundwater under Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016.	Environment Agency	Required following treatment of waters arising from construction activity or for the discharge of treated contaminated waters to ground, via re-injection (or possible soakaway) or a watercourse. There will be a requirement for Flood Risk Activity permits.	Engagement is ongoing with the Environment Agency. Requirement for permit will be determined based on construction method and sequencing and outcomes of hydrogeological risk assessment.	National Highways is not seeking to disapply this consent in the draft DCO.

Issue:	Consent/Licence/Agreement & Legislation:	Consenting Authority:	Requirement:	Status of negotiations:	Relationship to the draft DCO
Water	Flood Risk Activity Permit, under the Environmental Permitting Regulations (England and Wales) Regulations 2016	Environment Agency	For specified temporary and permanent works in the vicinity of a main river in accordance with the Environmental Permitting Regulations.	<p>Engagement is ongoing with the Environment Agency about whether it may be possible to disapply Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016 is in discussion.</p> <p>The Environment Agency has confirmed that a Flood Risk Activity Permit is the only consent required as regards flood defence.</p>	This is a Prescribed Consent which National Highways is seeking to disapply in the draft DCO.
Water	Flood Defence Byelaws: Consent or approval for the carrying out of works required under any relevant bylaws made under the Water Resources Act 1991 or the Land Drainage Act 1991, including, but not limited to, Southern Water Authority	Environment Agency	Required in the event that any relevant byelaws require consent or approval for the authorised development.	Discussions with the Environment Agency are ongoing regarding this matter.	National Highways is not seeking to disapply this consent in the draft DCO.

Issue:	Consent/Licence/Agreement & Legislation:	Consenting Authority:	Requirement:	Status of negotiations:	Relationship to the draft DCO
	Land Drainage and Sea Defence Byelaws 1981				
Water	Water Abstraction Licence – Abstraction of water under sections 24 and 25 of the Water Resources Act 1991	Environment Agency	Required for de-watering operations on site during construction.	Discussions with the Environment Agency have taken place on the potential impact of the Scheme. Engagement is ongoing with the Environment Agency.	National Highways is not seeking to disapply this consent in the draft DCO.
Water	Trade Effluent Consent under the Water Industry Act 1991	Southern Water	For the purposes of discharging trade effluent from welfare facilities.	Should a trade effluent consent be required to discharge any trade effluent into a public sewer, then a consent would be applied for in advance of the works commencing. The requirement for a Trade Effluent Consent will be discussed with the relevant local water undertaker (Southern Water) should it be	National Highways is not seeking to disapply this consent in the draft DCO.

Issue:	Consent/Licence/Agreement & Legislation:	Consenting Authority:	Requirement:	Status of negotiations:	Relationship to the draft DCO
				required during the construction phase.	
Water	Land Drainage Consent – Ordinary Watercourse Land Drainage Consent: under section 23 of The Land Drainage Act 1991	Hampshire County Council	Required for all culvert or structures likely to affect flow in ordinary watercourses. This would include all ordinary watercourses crossed by this Scheme.	Discussions with the relevant authorities are in progress in relation to the Scheme and will continue in relation to the relevant works to seek to disapply section 23 in the draft DCO.	This is a Prescribed Consent which National Highways is seeking to disapply in the draft DCO.
Materials and waste	Waste – Management and disposal of waste under the Environmental Permitting (England and Wales) Regulations 2016	Environment Agency	Required for the management and disposal of waste from site, to protect the environment against contamination.	Engagement is ongoing with the Environment Agency. Full extent and details of required permits and licences is to be determined.	National Highways is not seeking to disapply this in the draft DCO.
Materials and waste	Materials – Pollution Prevention and Control Act 1999, Environmental Permitting (England and Wales) Regulations 2016	Environment Agency	A mobile plant permit for crushing operations or site permits will be required if a subcontractor within a mobile plant permit is	If required, discussions will take place post DCO consent with the Environment Agency in advance of construction works.	National Highways is not seeking to disapply this in the draft DCO.

Issue:	Consent/Licence/Agreement & Legislation:	Consenting Authority:	Requirement:	Status of negotiations:	Relationship to the draft DCO
			used for construction of the Scheme.		
Materials and waste	Asbestos – Control of Asbestos Regulations 2012	Health and Safety Executive	Required for any works where asbestos is present.	It cannot be confirmed that asbestos is not present within structures to be demolished as part of the Scheme and as such a licence may be needed. If required, a licence will be sought by the contractor prior to demolition works taking place.	National Highways is not seeking to disapply this in the draft DCO.
Noise	Section 61 agreement – under Section 61 of the Control of Pollution Act 1974	Winchester City Council	Required to inform the relevant local authority of construction works resulting in noise and vibration effects.	Applications for consent to be made to the relevant local authority (Winchester City Council) at least 28 days before the relevant work is due to start, or earlier if reasonably practicable.	National Highways is not seeking to disapply this in the draft DCO.