



HIGH SPEED TWO PHASE ONE INFORMATION PAPER

E28: MITIGATION AND COMPENSATION

This paper explains the difference between ecological mitigation and compensation measures.

This paper was prepared in relation to the promotion of the Bill for Phase One of the scheme which is now enacted. Although the contents were maintained and updated as considered appropriate during the passage of the Bill (including shortly prior to the enactment of the Bill in February 2017) the contents are now historic and are no longer maintained.

If you have any queries about this paper or about how it might apply to you, please contact the HS2 Helpdesk in the first instance.

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E28: MITIGATION AND COMPENSATION

1. Introduction

- 1.1. High Speed Two (HS2) is the Government's proposal for a new, high speed north-south railway. The proposal is being taken forward in two phases: Phase One will connect London with Birmingham and the West Midlands and Phase Two will extend the route to Manchester, Leeds and beyond.
- 1.2. HS2 Ltd is the non-departmental public body responsible for developing and promoting these proposals. The company works to a Development Agreement made with the Secretary of State for Transport.
- 1.3. In November 2013, HS2 Ltd deposited a hybrid Bill¹ with Parliament to seek powers for the construction and operation of Phase One of HS2 (sometimes referred to as 'the Proposed Scheme'). The Bill is the culmination of nearly six years of work, including an Environmental Impact Assessment (EIA), the results of which were reported in an Environmental Statement (ES) submitted alongside the Bill. The Secretary of State has also published draft Environmental Minimum Requirements (EMRs), which set out the environmental and sustainability commitments that will be observed in the construction of the Proposed Scheme.
- 1.4. The Bill is being promoted through Parliament by the Secretary of State for Transport (the 'Promoter'). The Secretary of State will also appoint a body responsible for delivering the Proposed Scheme under the powers granted by the Bill.
- 1.5. This body is known as the 'nominated undertaker'. There may well be more than one nominated undertaker – for example, HS2 Ltd could become the nominated undertaker for the main railway works, while Network Rail could become the nominated undertaker for works to an existing station, such as Euston. But whoever they are, all nominated undertakers will be bound by the obligations contained in the Bill and the policies established in the EMRs.
- 1.6. These information papers have been produced to explain the commitments made in the Bill and the EMRs and how they will be applied to the design and construction of the Proposed Scheme. They also provide information about the Proposed Scheme itself, the powers contained in the Bill and how particular decisions about the project have been reached.

¹The High Speed Rail (London - West Midlands) Bill, hereafter 'the Bill'.

2. Overview

- 2.1. Early in 2014 the Environmental Audit Committee (EAC) considered HS2 and the environment². One of the issues considered by the EAC was the application of the mitigation hierarchy to the scheme and reported in the ES.
- 2.2. The EAC report made the following recommendation at paragraph 11 (page 42):

“The HS2 Environmental Statement must be revised to distinguish clearly between 'mitigation' and 'compensation' measures in respect of biodiversity, and to explain the factors determining in which cases these should be applied. If biodiversity loss is genuinely unavoidable and also cannot be mitigated, compensation measures should be applied to the fullest extent possible.”
- 2.3. The Government’s response to this recommendation³ was as follows:

“The Government recognises the important distinction between mitigation and compensation and believes that the ES properly assesses and describes the likely significant effects of the scheme on ecology and in relation to biodiversity. In the ecology chapters of the ES the terms mitigation and compensation are used correctly and properly to reflect the fact that ancient woodland is irreplaceable as regards its biodiversity. The meaning of 'compensation' in the ecological sense is defined in the glossary to the Environmental Statement.

“Other disciplines consider ancient woodland from other perspectives and therefore legitimately use the term mitigation in different ways. For example, in landscape terms the loss of ancient woodland can be mitigated because the asset that is lost is the visual characteristics of the trees.

“HS2 Ltd will consult with Natural England on this and provide further clarification in an information note.”
- 2.4. This Information Paper has been developed in consultation with Natural England in fulfilment of this commitment.

3. The Mitigation hierarchy

- 3.1. The Phase One ES reflects the 'mitigation hierarchy' consistent with the National Planning Policy Framework⁴ and guidance on Environmental Impact Assessment. This requires proposed developments to avoid adverse effects as far as possible, to adequately mitigate any effects that cannot be avoided, and to provide compensatory measures only as a last resort. The Phase One ES

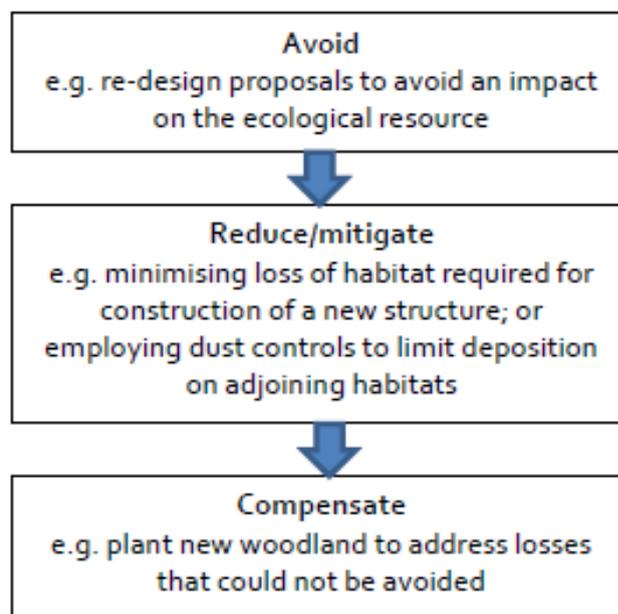
² Environmental Audit Committee 2014 Thirteenth Report of Session 2013-14 – HS2 and the environment. HC 1076. 7th April 2014.

³ Environmental Audit Committee – HS2 and the Environment – Appendix: Government Response. 18th June 2014.

⁴ Department of Communities and Local Government 2012 National Planning Policy Framework, section 118.

clearly distinguishes between 'mitigation' and 'compensation' measures in respect of biodiversity within the Ecology Technical note, *Ecological principles of mitigation*, and explains the factors determining the cases in which these should be applied.

- 3.2. Such measures are described generically in this ES as 'mitigation measures'. The approach to mitigation adopted for the Proposed Scheme has a hierarchy, whereby priority has been given to avoiding or preventing effects; and then (if this is not possible), to reducing or abating them; and then, if necessary, to offsetting them through repair (restoration or reinstatement) or compensation.
- 3.3. This approach, which is consistent with the National Planning Policy Framework, is set out below.



- 3.4. The approach used by HS2 Ltd for ecological mitigation and compensation is set out in an appendix to the ES (Ecological Principles of Mitigation in Volume 5 Appendix, SMR Addendum Section 9: CT-001-000/2).
- 3.5. A clear distinction is made between the use of the terms 'mitigation' and 'compensation' reflecting the habitual use in ecological impact assessment of 'mitigation' to mean 'measures taken to avoid or reduce negative impacts', as separate from 'compensation' meaning 'measures taken to make up for the loss of, or permanent damage to, biological resources through the provision of replacement areas'. Replacement areas should seek to offset as many of the features that were lost as possible.
- 3.6. In order to have a consistent approach throughout the ES, the ecology section uses the same headings as in other topic sections. It was a project convention for the likely residual significant effect to be summarised in the ES after compensatory measures had been considered.

- 3.7. Within the context of the mitigation hierarchy, HS2 Ltd takes 'enhancement' to mean 'restoring habitats not affected by construction – for example, an area of ancient woodland that is in poor condition'. The other, more common meaning of 'enhancement' is 'providing environmental benefits over and above the measures required for mitigation'. Such enhancements do not constitute mitigation or compensation.

4. Effects on sites of high ecological interest

- 4.1. The development of the Proposed Scheme took into account a wide range of environmental issues. These included sites of high ecological value, such as ancient woodland and Sites of Special Scientific Interest (SSSIs), but also the potential environmental effects on other receptors, such as the proximity of settlements. It also took into account engineering, topography and costs. The effects on ancient woodland have been mitigated where it was appropriate and practicable to do so, but where this has not been possible, compensation measures have been incorporated, such as the translocation of woodland soils and creation of new areas of woodland.
- 4.2. Following the convention in the ES, the residual effects on ecology resources/receptors are reported as the 'net effects' that remain following consideration of both mitigation and compensation measures. Losses of habitats that are considered 'irreplaceable' are acknowledged as permanent residual effects. However, where effects can be offset by appropriate compensation provision, then the net effect following the implementation of these measures is reported.
- 4.3. The residual effects on SSSIs are clearly reported and identify the likely end point when all necessary mitigation and compensation measures are provided, managed and maintained in the long term. This does not imply that no permanent adverse effect on these SSSIs would occur.

5. More information

- 5.1. More detail on the Bill and related documents can be found at: www.gov.uk/HS2

