



***Delegated Decisions by Cabinet Member for
Environment (including Transport)***

***Thursday, 1 September 2016 at 10.00 am
Committee Rooms 1 and 2, County Hall, New Road, Oxford***

Items for Decision

The items for decision under individual Cabinet Members' delegated powers are listed overleaf, with indicative timings, and the related reports are attached. Decisions taken will become effective at the end of the working day on Friday 9 September 2016 unless called in by that date for review by the appropriate Scrutiny Committee.

Copies of the reports are circulated (by e-mail) to all members of the County Council.

These proceedings are open to the public

A handwritten signature in black ink that reads "Peter G. Clark".

Peter G. Clark
County Director

August 2016

Contact Officer: **Graham Warrington**
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graham.warrington@oxfordshire.gov.uk

Note: Date of next meeting: 13 October 2016

If you have any special requirements (such as a large print version of these papers or special access facilities) please contact the officer named on the front page, but please give as much notice as possible before the meeting.

Items for Decision

1. **Declarations of Interest**
2. **Questions from County Councillors**

Any county councillor may, by giving notice to the Proper Officer by 9 am two working days before the meeting, ask a question on any matter in respect of the Cabinet Member's delegated powers.

The number of questions which may be asked by any councillor at any one meeting is limited to two (or one question with notice and a supplementary question at the meeting) and the time for questions will be limited to 30 minutes in total. As with questions at Council, any questions which remain unanswered at the end of this item will receive a written response.

Questions submitted prior to the agenda being despatched are shown below and will be the subject of a response from the appropriate Cabinet Member or such other councillor or officer as is determined by the Cabinet Member, and shall not be the subject of further debate at this meeting. Questions received after the despatch of the agenda, but before the deadline, will be shown on the Schedule of Addenda circulated at the meeting, together with any written response which is available at that time.

3. **Petitions and Public Address**
4. **HS2 - Qualifying Authority Decision** (Pages 1 - 30)

Forward Plan Ref: 2016/066

Contact: Paul Fermer, Service Manager for Major Infrastructure Delivery Tel: (01865) 815764

Report by Interim Deputy Director for Environment & Economy (Commercial **(CMDE4)**).

The report introduces the High Speed 2 Hybrid Bill that will grant planning permission for the construction of Phase 1 of the high speed railway between London and West Midlands. However, this permission will be the subject of a number of conditions requiring the nominated undertaker (the party/parties who will construct the railway) to obtain local authority consent or approval. Local authorities along the route will be responsible for approving matters of detail with regards to the scheduled works in the Bill.

The Bill gives each Authority a choice between having a wide or narrow range of controls over the approval of construction details. Those Authorities opting for a wider range of controls are referred to as "Qualifying Authorities".

The County Council needs to decide whether or not to sign the HS2 Planning Memorandum, the effect of which would mean the County Council becomes a Qualifying Authority for the purposes of the HS2 Bill. To do that the Memorandum must be signed before the end of the House of Lords Select Committee which is not expected to finish before late Autumn 2016.

By signing the memorandum the County Council will commit to working to a planning regime specifically for the delivery of HS2. In effect existing legislation will be disapplied including the *Town Planning Act*, and sections of the *New Roads and Street Works Act 1999*, due to the powers of the HS2 Hybrid Bill being adopted for the delivery of the new railway.

It is RECOMMENDED that the Cabinet Member for Environment:

- (a) agrees to Oxfordshire County Council becoming a Qualifying Authority in relation to the High Speed Rail (London-West Midlands) Bill;***
 - (b) delegates authority to the Director of Environment & Economy in consultation with the Cabinet Member for Environment, to undertake all necessary steps required to become a Qualifying Authority, including the signing of the Planning Memorandum and Service Level Agreement.***
-

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Division(s): main impact within Ploughley and construction traffic in locality of Bicester and Banbury divisions, and Wroxton & Hook Norton,

CABINET MEMBER FOR ENVIRONMENT - 1 SEPTEMBER, 2016

HS2 Bill and Qualifying Authority Status

Report by the Interim Deputy Director Environment & Economy (Commercial)

Introduction

1. The High Speed 2, Phase 1, Hybrid Bill will grant planning permission for the construction of a high speed railway between London and West Midlands. However, this permission will be the subject of a number of conditions requiring the nominated undertaker (the party/parties to construct the railway) to obtain consent or approval for detailed submissions. Local Authorities along the route will be responsible for approving matters of detail with regards to the scheduled works in the Bill.
2. In terms of carrying out the function of approving the detailed HS2 submissions the Bill gives each Authority a choice between having a wide or narrow range of controls over the approval of construction details. Those Authorities opting for a wider range of controls are referred to as "Qualifying Authorities".
3. The county council needs to decide whether or not to sign the HS2 Planning Memorandum, the effect of which would mean the county council becomes a Qualifying Authority, for the purposes of the HS2 Bill and successful delivery of this major infrastructure.
4. In becoming a Qualifying Authority the county council will be expected to sign up to a service level agreement (SLA) with HS2 to ensure that the authority can deliver its' commitments made by signing the Planning Memorandum. In addition, this agreement will set out the terms by which the county council can recover costs associated with the extra burdens as determined on behalf of the Secretary of State of Transport.
5. To become a qualifying authority The Planning Memorandum must be signed before the end of the House of Lords Select. The Select Committee is now not expected to finish before late autumn 2016.

Context

6. Qualifying Authorities will be responsible for issuing consents and approvals in relation to matters such as:
 - buildings (including bridges) and road vehicle parks
 - embankments and other earthworks
 - fences & walls
 - pedestrian access to the railway line
 - artificial lighting
 - waste and spoil disposal
 - traffic routing

CMDE4

The county council will be responsible for issuing consents and approvals for highways, borrow pits, and waste and spoil disposal, as such being similar to the areas of control under the Town & Country Planning Act. Qualifying authorities may refuse approval if the arrangements ought to be modified to prevent or reduce the prejudicial effects on road safety, or on the free flow of traffic in the local area, and are reasonably capable of being so modified.

7. Within Oxfordshire, the 5 km of HS2 route is planned to have 3 new highway overbridges (A421, A4221, and Featherbed Lane) and 5 bridleway overbridges - plus alterations to associated highways and bridleways: See Annex 3. Other infrastructure affected will include water diversion and drainage structures along the route.
8. The county council will also be expected to approve haul routes for construction traffic passing through the county. See Annex 4
9. There are, in broad terms, two main sets of grounds on which works may be refused, or conditioned, by a Qualifying Authority. These are:
 - i. That the design or external appearance of the works ought to be modified:
 - a) to preserve the local environment or local amenity,
 - b) to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area,
 - c) to preserve a site of archaeological or historic interest or nature conservation value, and is reasonably capable of being so modified
 - ii. That the development ought to, and could reasonably, be carried out elsewhere on land within the Act limits
10. In determining district matters under the Bill, the Districts acting as the relevant Qualifying Authority will consult the county council on highways matters for advice in relation to paragraph 9 above.
11. Cherwell District Council and Warwickshire County Council have Executive and Cabinet approval respectively to sign the Planning Memorandum. Warwickshire County Council encourages all affected District and Borough Councils in Warwickshire to become a Qualifying Authority. At the time of writing all affected LA's are expected to sign the Planning Memorandum thus seeking to attain qualifying authority status.
12. The Planning Memorandum sets out rules of conduct and administrative arrangements for both the Local Planning Authorities and the nominated undertaker – see annex 1. Importantly, it requires the Council to commit to dealing with applications for consent in an expedient manner, and they are expected to be sufficiently resourced to achieve this. It is likely that the timescale for determination of applications will be eight weeks, which is in line with the statutory determination period for non-major planning applications.
13. By signing the Planning Memorandum qualifying authorities are committing to put in place the required delegation processes to deal with HS2 matters in accordance with the HS2 Hybrid Bill and the associated planning regime.

14. Under the Bill, non-determination is treated as refusal - with non-determination potentially leading to the Secretary of State removing the Qualifying Authority status from the Local Authority.
15. Non qualifying authorities will only be able to refuse approval under Grounds (i) (a) and (ii), that is if the design or external appearance of the works ought to be modified to preserve the local environment or local amenity, or that the development ought to be carried out elsewhere on land within the Act limits.

HS2 Programme

16. The current programme identifies that detailed design will start from early 2017, with a completion year of 2026. The construction activity is expected to peak around 2019-21.
17. Civils packages are expected to be awarded to contractors early 2017.
18. HS2 will provide 6 month forward plans for all associated work and traffic management requirements - members will be updated regularly accordingly.

Assurances

19. Assurances under a hybrid Bill are not enforceable in law but rather self-enforceable by the Secretary of State. Assurances will be addressed by the nominated undertaker (HS2 in all likelihood, potentially, also Network Rail) and contractually through passing these requirements onto contractors designing and building HS2.
20. A failure to comply with an assurance would therefore be a reputational risk for nominated undertaker and may involve financial penalties for contractors – subject to final contractual arrangements.
21. Assurances from the Secretary of State secured to date of relevance to Oxfordshire are as follows:
 - an assurance to limit the volume of HS2 construction traffic along the A361 to 500 Large Goods Vehicles ("LGVs") in each direction, per day. This assurance is limited to the section of the A361 which links the M40/J11 to Chipping Warden Green Tunnel Main Construction Compound and Roadhead. This limitation of HS2 construction traffic can only be varied with the prior written approval of the relevant planning authority.
 - an assurance to reduce, as far as reasonably practicable, the amount of excavated material that is required to be moved on the A361 between the M40/J11 and Chipping Warden including a review and consideration of the economic and technical feasibility of extending the dedicated haul road along the proposed route from Greatworth and Turweston; and
 - an assurance to consult with Oxfordshire Country Council and Wardington Parish Council to discuss progress and outcomes of work carried out to seek to mitigate construction related traffic effects and to report at appropriate intervals, not exceeding 3 months, demonstrating compliance with the above assurances.

- Further assurances may be provided by the House of Lords Select Committee, following Waddington Parish Council's petition presented on 20th July, 2016.

Financial and Staff Implications

22. It is acknowledged by the Department for Transport that the cost of processing approvals and consents will constitute a new burden on the Council.
23. It is proposed that the additional costs incurred in dealing with HS2 are paid by HS2 under the terms of a Service Level Agreement.
24. The county council by signing the Planning Memorandum will need to ensure suitable resources are in place.
25. HS2 recognise that county council has statutory duties which must be discharged and to this end HS2 concede that their project will not be given a higher priority.

Communications

26. HS2 will be managing the communication with regard to the project, as Network Rail is for the electrification programme. This will include a dedicated call centre, website and key communications personnel such as a Construction Complaints Commissioner.
27. The county council will help ensure that HS2 puts suitable measures in place to ensure County Councillors, Parish Councils and members of the public are kept informed and liaised with as appropriate.
28. There is also an HS2 web page on the County Council Public website which will be used to communicate updates.

Constitution

29. Legal and Democratic Services have reviewed the County Council Constitution and a Cabinet Member Decision has been deemed to be suitable route to resolving the matter of becoming a HS2 Qualifying Authority.

Conclusion

30. There are significant benefits associated with becoming a qualifying authority (QA). A QA will be specified by the Secretary of State in accordance with part 2 of Schedule 17 of The Bill. As a QA the county council may receive guidance from the Secretary of State in relation to the exercise of their functions under the Bill.
31. Although the proposed HS2 scheme by way of The Bill gaining Royal Assent will have deemed planning permission, local planning approval will still be required for detailed design submissions, across the entire route. As a QA the county council will have the maximum level of control when considering plans. This will ensure that the design of permanent structures fits into the local environment.

32. Qualifying authorities will be able to approve the detailed design of permanent structures, such as stations and viaducts, and also have an enforcement and approval role in relation to certain construction matters such as lorry routes. It is therefore recommended that the Oxfordshire County Council signs the planning memorandum to become a Qualifying Authority.

RECOMMENDATION

33. It is RECOMMENDED that the Cabinet Member for Environment:

(a) agrees to Oxfordshire County Council becoming a Qualifying Authority in relation to the High Speed Rail (London-West Midlands) Bill;

(b) delegates authority to the Director of Environment & Economy in consultation with the Cabinet Member for Environment, to undertake all necessary steps required to become a Qualifying Authority, including the signing of the Planning Memorandum and Service Level Agreement.

CHRIS MCCARTHY

Interim Deputy Director for Environment & Economy (Commercial)

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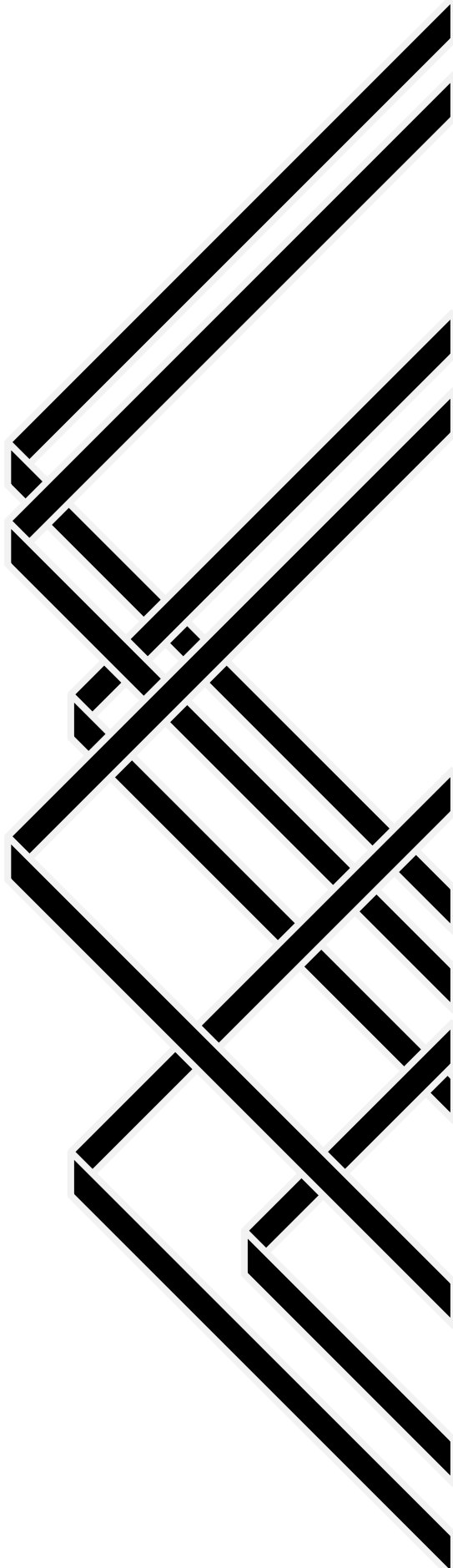
August 2016

Annexes: overleaf

Annex 1: HS2 Planning Memorandum

High Speed Rail
(London-West Midlands)
Draft Environmental
Minimum Requirements

Annex 2: Draft Planning Memorandum



March 2016
CS498C



Department for Transport

High Speed Two (HS2) Limited has been tasked by the Department for Transport (DfT) with managing the delivery of a new national high speed rail network. It is a non-departmental public body wholly owned by the DfT.

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Contents

1	Introduction	1
2	Qualifying authorities	2
3	Aim of the memorandum	3
4	Planning Forum	3
5	Requests for approval	4
	5.1 Determining qualifying authority	4
	5.2 Types of request for approval	4
	5.3 Construction arrangements	5
	5.4 Plans and specifications	5
	5.5 Bringing into use	5
	5.6 Site restoration scheme	5
6	Class approvals	5
7	Expeditious handling of requests for approval	6
	7.1 Dedicated staff	6
	7.2 Importance of expeditious handling of requests for approval	6
	7.3 Timeframes for approval of requests	6
	7.4 Decision-making processes	7
	7.5 Nominated undertaker	7
	7.6 Delays in/refusal to determine	8
	7.7 Justification for decision	8
8	Applications outside the Bill process	8
9	Relationship to other documents	9
	9.1 Environmental Statement and EMRs	9
	9.2 Planning Context Report	9
	9.3 Statutory guidance	9
10	Procedures	9

1 Introduction

- 1.1.1 The Planning Memorandum is one of a suite of documents forming the Phase One of HS2 (Phase One) Environmental Minimum Requirements (EMRs) – the over-arching commitments by the Secretary of State to afford appropriate management and protection of the environment. The components of the EMRs are described in paragraph 3.1.1 of the EMR General Principles document. These include requirements on the nominated undertaker to comply with this document, the Heritage Memorandum and undertakings and assurances concerning the project specified in the Register of Undertakings and Assurances, and to adopt and implement the Code of Construction Practice and the Environmental Memorandum. As mentioned in Section 2, this document also sets out undertakings by relevant local authorities enabling them to become qualifying authorities under Schedule 17 to the High Speed Rail (London - West Midlands) Bill (the Bill).
- 1.1.2 The Bill provides powers for the construction and operation of HS2. It grants a deemed planning permission for the works it authorises, and establishes a planning regime in Schedule 17 under which certain matters and details of the deemed consent are reserved for subsequent local planning authority approval. There will be a considerable number of such submissions under the Planning Conditions Schedule, and this Memorandum seeks to ensure that the process of obtaining these approvals does not unduly hinder construction of HS2. It sets out the arrangements for the processing of submissions, and details the responsibilities of the nominated undertaker and of those local planning authorities who choose to sign up to this memorandum – the qualifying authorities.
- 1.1.3 The nominated undertaker will work with qualifying authorities to support the determination of requests for approval, which will include early and constructive engagement, in accordance with obligations set out in this memorandum.

2 Qualifying authorities

2.1.1 Under the Bill, Schedule 17, Part 2, Paragraph 13, the Secretary of State is obliged to make an order specifying every relevant local authority which has, on or before the relevant day, given him or her undertakings with respect to the handling of planning matters under that Schedule which he or she considers satisfactory.

2.1.2 This memorandum sets out those undertakings. It is binding upon any authority which has chosen to sign it so as to have the additional powers available to qualifying authorities in the Bill, and upon the nominated undertaker. It shall be taken into account in determining matters submitted for approval to qualifying authorities under Schedule 17 – Conditions of Deemed Planning Permission – to the Bill. It is divided into eight principal sections:

- Aim of the Memorandum;
- The Planning Forum;
- Requests for Approval;
- Class Approval;
- Expeditious handling of Requests for Approval;
- Applications outside the Bill process;
- Relationships to other documents; and
- Procedures.

_____ (the authority) hereby undertakes to act in accordance with the terms of this memorandum.

3 Aim of the memorandum

3.1.1 The Bill provides powers for the construction and operation of HS2. Schedule 1 of the Bill describes the scheduled works that the nominated undertaker will be authorised to carry out. A description is provided of the type of work and their location, for example:

"Work No. 3/205 - A railway (5.09 kilometres in length) partly on viaduct commencing by a junction with Work No. 3/203 at its termination, passing south-westwards and terminating at a point 545 metres north-west of the junction of Freeman Street with Park Street."

3.1.2 The Bill provides for these works to be constructed on land within the lateral limits of deviation for the work concerned shown on the deposited plans, and provides for an upward limit of deviation of 3 metres from the levels shown on the deposited sections (subject to any [exceptions within the Bill or] maximum level for any station, depot or shaft shown on the sections). The deposited plans also show a further limit of land to be acquired or used, which may be used for ancillary purposes.

3.1.3 The Bill deems planning permission to be granted for the works authorised by it subject to conditions set out in Schedule 17 (the Planning Conditions Schedule). That Schedule includes conditions requiring various matters to be subject to approval of the relevant local planning authority, and the extent of these depends on whether or not the authority has elected to become a qualifying authority, that is one that has, on or before the day on which the Bill was reported from Select Committee in the House of Lords, given the Secretary of State undertakings with respect to the handling of planning matters arising under the Planning Conditions Schedule which he or she considers satisfactory.

4 Planning Forum

4.1.1 The qualifying authority shall join with other qualifying authorities and the nominated undertaker (together with representatives from the relevant Government departments) in establishing a Planning Forum (the forum) to help co-ordinate and secure the expeditious implementation of the planning provisions in the Bill.

4.1.2 The authority signing this memorandum in order to become a qualifying authority under the Bill's planning regime also becomes a member of the forum and is obliged to take into account its conclusions. Where appropriate, specialist or technical matters relevant to the statutory functions of the qualifying authorities will be referred to the relevant sub-group of the forum.

4.1.3 The forum will meet regularly to assist with the effective implementation of the planning provisions in the Bill. In order to help co-ordinate and secure the expeditious implementation of those planning provisions, the forum will prepare notes on related matters, which will set out standards and practices to be followed by those implementing the Planning Conditions Schedule.

4.1.4 The forum will consider common design items for certain structures associated with the railway (such as bridges, acoustic barriers or retaining walls). Unless there are particular local circumstances relevant to the grounds in Paragraphs 2 and 3 of Schedule 17 to the Bill, there will be a presumption in favour of the approval of such designs when submitted.

4.1.5 In considering the requests for approval, qualifying authorities will have regard to the Planning Conditions Schedule contained in the Bill, the conclusions of the forum, and the forum’s notes. Qualifying authorities will also have regard to any statutory guidance given under paragraph 26 of the Planning Conditions Schedule.

4.1.6 The nominated undertaker will have regard to the conclusions of the forum and its notes in preparing the requests for approval.

5 Requests for approval

5.1 Determining qualifying authority

5.1.1 The determining authority under the Bill provisions is summarised in the table below.

Type of Submission	Determining Qualifying Authority
Unitary Areas	
All planning matters for approval under the Planning Conditions Schedule.	Metropolitan borough councils in West Midlands London borough councils
Non-Unitary Areas	
Plans and specifications and construction arrangements about waste and soil disposal and excavation of bulk materials from borrow pits. Construction arrangements comprising lorry routing.	County Councils
All other planning matters for approval under the Planning Conditions Schedule.	District Councils

5.2 Types of request for approval

5.2.1 The Planning Conditions Schedule in the Bill requires the nominated undertaker to submit requests for approval to qualifying authorities for the following:

- construction arrangements;
- plans and specifications;
- bringing into use; and
- site restoration schemes.

5.2.2 Schedule 17 of the Bill sets out the grounds on which the qualifying authority may impose conditions on approvals, or refuse to approve the requests for approval.

5.3 Construction arrangements

- 5.3.1 The nominated undertaker will submit requests for approval of construction arrangements relating to road transport and construction camps, as these will not be covered by a class approval for generic matters (see section 6), for any other construction arrangements required by the Planning Conditions Schedule for which class approvals are not given, and for any case where the nominated undertaker wishes to depart from a class approval given.

5.4 Plans and specifications

- 5.4.1 The nominated undertaker will submit to the authority plans and specifications for certain permanent above ground building works, in accordance with paragraphs 2 and 3 of the Planning Conditions Schedule.

5.5 Bringing into use

- 5.5.1 The nominated undertaker will submit to the qualifying authority a bringing into use request under paragraph 9 of the Planning Conditions Schedule, for most scheduled works, apart from any which are below ground, and maintenance depots. The purpose of bringing into use requests is to ensure that appropriate mitigation has been incorporated, and no such work can be brought into use without such approval.

5.6 Site restoration scheme

- 5.6.1 The nominated undertaker will be required in the circumstances specified in paragraph 12 of the Planning Conditions Schedule to implement a site restoration scheme as agreed with or approved by the authority, or failing agreement, as determined by the relevant Secretaries of State.

6 Class approvals

- 6.1.1 A class approval may be made by the Secretary of State for the following generic construction arrangement matters:

- the handling of re-usable spoil and topsoil;
- storage sites;
- site screening;
- artificial lighting;
- suppression of dust; and
- mud on the highway.

- 6.1.2 The Secretary of State will consult the relevant authorities concerned on the content of the class approval. A class approval may be made subject to conditions which the nominated undertaker would be required to adhere to. Generic measures approved under a class approval will be subject to the same planning authority enforcement processes as would apply to construction arrangements approved under paragraph 4 of Schedule 17.

7 Expeditious handling of requests for approval

7.1 Dedicated staff

7.1.1 The qualifying authority must ensure that sufficient planning staff (and other relevant disciplines which may be required such as heritage, traffic or environmental health) resources are made available in order to process requests for approval in a timely manner, undertake pre-application discussions and attend meetings. Resources should be made available to provide sufficiently for any potential peaks in submissions from HS2, to cover for annual leave and any other absences.

7.2 Importance of expeditious handling of requests for approval

7.2.1 HS2 is an infrastructure project of national importance. The qualifying authority shall accordingly have regard to construction, cost and programme implications, and shall not seek to impose any unreasonably stringent requirements on the requests for approval of any construction arrangement, plans or specifications, mitigation scheme or site restoration scheme, which might frustrate or delay the project, or unreasonably add to its cost. In particular, the qualifying authority shall not seek to impose unreasonably stringent requirements or standards in respects of land use, planning, design or environmental matters. In this context, the qualifying authority shall give due weight to any conclusions reached by the Select Committee (subject to any modifications made by Parliament) which are relevant to matters submitted for approval (or agreement).

7.3 Timeframes for approval of requests

7.3.1 In recognition of the tight construction programme, the qualifying authority shall use reasonable endeavours, subject to its obligations under statute and statutory guidance from the Secretary of State, to determine any request for a relevant approval within the timetable referred to in paragraph 22(4) of the Planning Conditions Schedule (i.e. eight weeks) or, whenever possible, a lesser period. Where practicable, the nominated undertaker will respond quickly to requests for information or clarification to assist the local authority in the timely processing of requests.

7.3.2 If the content of a request for approval, as set out in the relevant planning forum note, is not provided, an extended determination period will be agreed between the qualifying authority and the nominated undertaker in accordance with Schedule 17, section 22(4).

7.3.3 Where additional details of a request for approval are submitted under paragraph 2(3), 3(4), 7(4) (as appropriate) of the Planning Conditions Schedule, the authority shall use its reasonable endeavours to make its decision on the approval expeditiously, and in any event within eight weeks after the date of submission of the additional details.

7.3.4 The qualifying authority shall not require the nominated undertaker to vary the extent or content of a request for approval to include matters which could reasonably be included in a subsequent request (unless it is necessary for the determination of the first request).

- 7.3.5 When a qualifying authority wishes to agree conditions with the nominated undertaker, it shall propose them at least seven days prior to the determination date of the request for approval, which will assist in determination within the eight-week period.

7.4 Decision-making processes

- 7.4.1 When necessary, the qualifying authority shall put in place appropriate internal decision-making arrangements to ensure that this timetable for determining requests is achieved. If adherence to the normal committee cycle would make it difficult to reach decisions in accordance with the timetable, consideration should be given to authorising greater delegated powers for officers and/or the formation of a dedicated sub-committee.

- 7.4.2 Where only part of a request can be determined within this timetable, the qualifying authority shall not seek unreasonably to delay determination of the remainder. In consultation with the nominated undertaker, the qualifying authority may grant approval for those aspects or subsidiary packages of works which they have been able to determine.

7.5 Nominated undertaker

- 7.5.1 To facilitate effective consultation and ensure that requests for approval are determined within the timetable referred to above, the nominated undertaker shall engage in proportionate forward discussions about prospective requests for approval with the qualifying authority and statutory consultees. Forward discussions will, as relevant, include design development, submission dates and planning committee cycles.

- 7.5.2 When designs of HS2 works are submitted for approval, the nominated undertaker shall, where reasonably necessary for the proper consideration of the design proposed, provide an indication or outline of the appropriate mitigation measures (if any) that it intends to submit subsequently under paragraphs 9 or 12 of the Planning Conditions Schedule. Where the works for approval will have mitigating effect in relation to operational noise from the railway or new roads the nominated undertaker will provide information to show, so far as is reasonably practicable at that stage in the design process, how the noise mitigation performs and the expected conditions. While not material to approvals under paragraph 2 or 3 this information will provide reassurance in advance of the request for approval under paragraph 9 that the mitigation is appropriate and present an opportunity to raise concerns.

- 7.5.3 In order to assist qualifying authorities with their resource planning, the nominated undertaker will, every quarter, provide a forward plan of requests for approval anticipated in the next six months. The nominated undertaker will notify the relevant qualify authority if there is a significant change to the forward plan. The nominated undertaker will provide information to the Planning Forum, prior to Royal Assent, on the programming of submissions, so far as reasonably practicable.

- 7.5.4 The nominated undertaker will use reasonable endeavours to submit a site restoration scheme, for the agreement of the qualifying authority, prior to the discontinuation of the use of any site for carrying out operations ancillary to the construction of any of the scheduled works.

CMDE4

- 7.5.5 In order to assist with the expeditious handing of submissions, where a request for approval is made by the nominated undertaker under the Planning Conditions Schedule, then for information purposes:

- if the site to which the request relates is on or close to an authority boundary, and is likely to impact upon it, a copy will be sent to the adjacent authority;
- if the request relates to lorry routes which pass through the areas of adjoining authorities, a copy will be sent to those adjoining authorities;
- in non-unitary areas, a copy will be sent to the non-determining authority; and
- and in the areas subject to Opportunity Area Planning Frameworks, a copy will be sent to the Greater London Authority.

7.6 Delays in/refusal to determine

7.6.1 If the qualifying authority repeatedly fails to expedite requests for approval, or seriously fails to expedite a request in line with the timescale set out in paragraph 22(4) of the Planning Conditions Schedule, or repeatedly or seriously fails to act in accordance with all the requirements of this memorandum, the Secretary of State may have sufficient grounds to order that the authority shall cease to have the powers of a qualifying authority under the Bill provisions. Prior to an authority being disqualified, the nominated undertaker and the Secretary of State will discuss with the qualifying authority concerns regarding its performance and the performance of the nominated undertaker.

7.6.2 The approval of requests for approval by qualifying authorities will be monitored through the planning forum.

7.7 Justification for decision

7.7.1 Where an authority refuses approval of a request for approval, in addition to specifying the grounds under the Planning Conditions Schedule for its decision, it shall state clearly and precisely the full reasons for its decision.

7.7.2 Where the authority's decision in relation to the determination of plans and specifications has been reached on the grounds that some aspect of the operation or work ought to be modified and is reasonably capable of being modified, or that the development ought to be (and could reasonably be) carried out elsewhere within the relevant limits, the authority shall include an explanation of why and how it considers the modifications should be made.

7.7.3 Where the authority's decision in relation to the determination of construction arrangements has been reached on the grounds that the arrangements ought to be modified and are reasonably capable of being modified, the authority shall include an explanation of why and how it considers modification should be made, and where.

8 Applications outside the Bill process

8.1.1 There may be instances when it will be necessary to obtain permission for works which are not the subject of deemed consent granted by the Bill. Should the nominated undertaker seek permission through the normal planning process, the qualifying authority shall consider and determine the application expeditiously under normal planning procedures.

CMDE4

- 8.1.2 This memorandum does not relate to applications for permission to construct over-site development - namely certain non-rail-related development over operational structures such as stations and vent shafts. These will be taken forward under the normal planning process.

9 Relationship to other documents

9.1 Environmental Statement and EMRs

9.1.1 In determining requests for approval, the qualifying authority shall take into account the assessments in the Environmental Statement, the arrangements in the Code of Construction Practice, the Heritage Memorandum, the Environmental Memorandum, and any relevant undertakings and assurances concerning the project specified in the Register of Undertakings and Assurances.

9.2 Planning Context Report

9.2.1 The qualifying authority shall have regard to the Planning Context Report under paragraph 16 of the Planning Conditions Schedule and to the nominated undertaker's explanation of how an individual request for approval fits into the overall scheme of the works authorised by the Bill. This report is to include an indication of the location of scheduled and non-scheduled works to which requests for approval are expected to relate.

9.3 Statutory guidance

9.3.1 The qualifying authority must have regard to statutory guidance issued by the Secretary of State in accordance with paragraph 26 of Schedule 17 to the Bill.

10 Procedures

10.1.1 The nominated undertaker shall submit requests for approval of construction arrangements, plans and specifications, and mitigation schemes in compliance with guidelines on standardised pro forma to be drawn up by the Planning Forum.

10.1.2 The HS2 Bill makes provisions for putting in place regulations for fees for applications for approval under Schedule 17. The regulations may provide that where fees are agreed directly with a qualifying authority, the fees prescribed by the regulations will not apply.

Where the nominated undertaker is aggrieved by a decision of a planning authority on a request for approval they may appeal the decision to the appropriate Ministers. Appeals can also be made if requests for approval are not determined within the time period set out in the Bill. Unless the appropriate Minister/s direct otherwise, their functions in relation to the determination of appeals will be carried out by the Planning Inspectorate. Appeals will be dealt with on the basis of written representations unless the person deciding the appeal directs otherwise.



HIGH SPEED TWO INFORMATION PAPER

B1: THE MAIN PROVISIONS OF THE PLANNING REGIME

This paper outlines the main provisions of the planning regime proposed for Phase One of the HS2 project.

It will be of particular interest to those potentially affected by the Government's proposals for high speed rail.

This paper will be updated as required. 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.

The Helpdesk can be reached at:

**High Speed Two (HS2) Limited
One Canada Square London
E14 5AB**

by email: HS2enquiries@hs2.org.uk

or by phone: 020 7944 4908 (lines are open 24 hours)

Version 1.5

Last updated 21 March 2016

B1: THE MAIN PROVISIONS OF THE PLANNING REGIME

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. This information paper outlines the main provisions of the planning regime proposed for Phase One of HS2. The provisions vary depending on whether the local planning authority has opted to become a qualifying authority or a non-qualifying authority.
- 2.2. The design of the Proposed Scheme to date provides the level of detail necessary for the purposes of the Bill and the requirements of the Environmental Impact Assessment Regulations. The level of detailed design necessary to enable the Proposed Scheme to be constructed has yet to be carried out, and will not be completed until after the Bill has secured Royal Assent. Once complete the nominated undertaker will need to apply for approval of the detailed design of a range of parts of the Proposed Scheme from local planning authorities along the route. This will ensure that although planning permission for the Proposed Scheme is granted by Parliament, local planning authorities will be able to ensure that the design of permanent structures fits into the local environment. Local planning authorities will also be able to input into the approval of certain construction matters and have a level of control over their enforcement.

3. Qualifying and non-qualifying authorities

- 3.1. The Bill gives each local planning authority a choice between having a wide or narrow range of controls over details. Local planning authorities opting for a wide range of controls are referred to as qualifying authorities. They will be required to sign the Planning Memorandum, which is currently in draft form. This sets out rules of conduct and administrative arrangements for them and the nominated undertaker. Qualifying authorities will be specified by the Secretary of State in accordance with part 2 of Schedule 17. Qualifying authorities will be able to approve the detailed design of permanent structures such as stations and viaducts, and also have an enforcement and approval role in relation to certain construction matters.
- 3.2. Those choosing to not sign the Planning Memorandum are referred to in the Bill as non-qualifying authorities and will be able to approve the detailed design of permanent structures, and have a more restricted role in the approval of construction matters.

4. Approval of detail design

- 4.1. A local planning authority that becomes a qualifying authority under Part 2 of Schedule 17 will be required to approve plans and specifications for matters such as buildings and road vehicle parks, terracing, cuttings, embankments and other earthworks, fences, walls or other barriers, transformers, telecommunication masts, pedestrian access to the railway line, artificial lighting, waste and spoil disposal and borrow pits. These provisions do not apply to works of a temporary

nature, to anything underground except any part of a station available for use without a ticket, nor to any tunnel or railway track bed.

- 4.2. The planning authority can only refuse to approve (or impose conditions in respect of) the plans and specifications on the grounds specified in Schedule 17. There are, in broad terms, two main sets of grounds on which the work may be refused or conditioned by a qualifying authority:
- a) The design or external appearance of the works ought to be modified:
 - I. to preserve the local environment or local amenity;
 - II. to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area;
 - III. to preserve a site of archaeological or historic interest or nature conservation value; and
 - IV. is reasonably capable of being so modified; or
 - b) The development ought to, and could reasonably, be carried out elsewhere on land within the Act limits.
- 4.3. In determining whether or not to grant approval to a request or to impose conditions upon an approval, a local planning authority should consider, amongst other things, whether the proposals are consistent with the EMRs, including the draft Environmental Memorandum. These set out principles that the nominated undertaker should follow in developing the detailed design and that may be taken into account by planning authorities when considering requests for approvals of the plans and specifications. They will also need to consider the statutory guidance produced by the Secretary of State for Transport under paragraph 26 of Schedule 17.
- 4.4. A non-qualifying local planning authority will be required to approve plans and specifications for buildings. Non-qualifying authorities will only be able to refuse approval if the design or external appearance of the works ought to be modified to preserve the local environment or local amenity, and is reasonably capable of being so modified, or the development ought to, and could reasonably, be carried out elsewhere on land within the Act limits.

5. Construction controls

- 5.1. The nominated undertaker will be bound, through the EMRs, to adopt and implement the HS2 Code of Construction Practice (CoCP). Several drafts of the CoCP have already been consulted on with the relevant local planning authorities and statutory bodies. Other commitments in the EMRs will govern construction, including a commitment that the nominated undertaker's contractors will obtain consents under section 61 of the Control of Pollution Act 1974 in relation to noise generating activities and hours of working.

- 5.2.** In addition qualifying authorities will be able to enforce construction arrangements relating to:
- handling of re-useable spoil or topsoil;
 - road transport;
 - storage sites for construction materials, spoil or topsoil;
 - construction camps;
 - works screening;
 - artificial lighting;
 - dust suppression; and
 - road mud control measures.
- 5.3.** Construction arrangements relating to handling of re-useable spoil or topsoil; storage sites for construction materials, spoil or topsoil; works screening; artificial lighting; dust suppression; and road mud control measures are likely to be generic. These may be subject to a class approval by the Secretary of State without the need for approval by the relevant qualifying authority.
- 5.4.** The Secretary of State when making a class approval may attach conditions to it and, must consult the local planning authorities before making the class approval. Should the Secretary of State not make a class approval, these arrangements are subject to approval by the relevant qualifying authority.
- 5.5.** Construction arrangements relating to construction camps, which provide temporary residential accommodation for construction staff, and road transport (i.e. lorry routes with more than 24 lorry movements per day on roads other than trunk roads and motorways) are site specific and so require individual approval from the relevant qualifying planning authority.
- 5.6.** Qualifying authorities may refuse approval if the arrangements ought to be modified to preserve the local environment or local amenity, or to prevent or reduce the prejudicial effects on road safety, or on the free flow of traffic in the local area, and are reasonably capable of being so modified.
- 5.7.** Other parts of the Bill also offer control over related construction arrangements. Paragraph 1 of Schedule 4 requires highway authority approval of plans and specifications of any design of a new access onto, or the alteration of, a highway used by vehicular traffic as a result of the construction or operation of the Proposed Scheme, if the location is shown on the deposited plans. If the location is not shown on the deposited plan consent for this access or alteration is required from the highway authority.
- 5.8.** Under the provisions of the CoCP, the nominated undertaker will have to prepare a Traffic Management Plan which will outline the traffic control measures and routes on public highways that will be used during construction.

These plans will take account of the requirements and advice of the highway authority and other authorities, and will provide a framework for the preparation of submissions under Schedule 17.

6. Restoration of construction sites

- 6.1. Where a site is used for construction purposes, the site must be restored in accordance with a scheme submitted to the local planning authority within four months of the discontinuation of works at the site. Where no such scheme is agreed, the site must be restored in accordance with a scheme determined by the appropriate Ministers.

7. Bringing works into use

- 7.1. The bringing into use of any scheduled work or depot, except to the extent that the work is underground, is subject to prior approval by the qualifying local planning authority. The qualifying local planning authority must grant prior approval if it considers that there are no reasonably practicable measures which need to be taken for the purposes of mitigating the impacts of the work, or its operation, or if it has approved a mitigation scheme for that purpose submitted by the nominated undertaker. The qualifying local planning authority can only refuse or impose conditions upon such a scheme if it is satisfied that it is expedient to do so on the grounds that the scheme ought to be modified, and is reasonably capable of being so modified, in order to preserve the local environment, local amenity, a site of archaeological or historic interest, or in the interests of nature conservation.

8. Context Report

- 8.1. Paragraph 16 of Schedule 17 to the Bill requires the nominated undertaker to deposit with a relevant local planning authority a document setting out its proposed programme of requests for approval. It also requires that the requests themselves be accompanied by a document which explains how the matters to which the request relates fit into the overall scheme of the works. It is intended that these requirements will be met by the nominated undertaker producing a document which contains this information for each local planning authority, and these documents will be referred to as context reports. These documents should be submitted to the local planning authority prior to any request for approval being made to that authority.

9. Consultation

- 9.1. The nominated undertaker will be required under the Planning Memorandum to engage in forward discussions with local planning authorities about prospective requests for approval. This facilitates effective consultation and helps to ensure that requests for approval of the plans and specifications and construction arrangements are determined within the timetables referred to in Schedule 17.

10. Determining planning authority

- 10.1.** In unitary authority areas the determining for all submissions under Schedule 17 is the unitary council. In area with two tiers of local government (ie district and county councils) the district planning authority is the determining authority for all approval except for any required approvals relating to the following are determined by the county planning authority:
- approvals in relation to development consisting of the disposal of waste or spoil and the excavation of bulk materials for borrow pits; and
 - approvals of the routing of large goods vehicles.

11. Non-material changes to approvals

- 11.1.** Schedule 17 enables local planning authorities to make, at the request of the nominated undertaker, non-material changes to approvals that they have already made under the Schedule without the need for the nominated undertaker to submit a whole new approval request. These would be amendments of a minor kind, which would not affect the substance or impact of the approvals subject to the changes.

12. Appeals

- 12.1.** Under part 3 of Schedule 17, the nominated undertaker has the right of appeal to the appropriate Ministers against any local planning authority decision to refuse a request for relevant approval or against the conditions which an authority has imposed in granting approval. For this purpose, references to the appropriate Ministers are to the Secretary of State for Communities and Local Government and the Secretary of State for Transport, acting jointly. The nominated undertaker can also appeal if no decision has been made within eight weeks of the receipt of the request by the authority or such extended period as may be agreed between the parties. Under the Bill non-determination is treated as refusal. Notice of the appeal must be given within 42 days of the decision or of the last day of the appropriate period. Part 3 of Schedule 17 provides for the handling and determination of such an appeal. The appropriate Ministers may allow or dismiss the appeal or vary the decision of the local planning authority, but may only make a determination involving the refusal of or imposition of conditions on an approval on grounds which were open to the authority itself under Schedule 17.

13. Compliance and enforcement

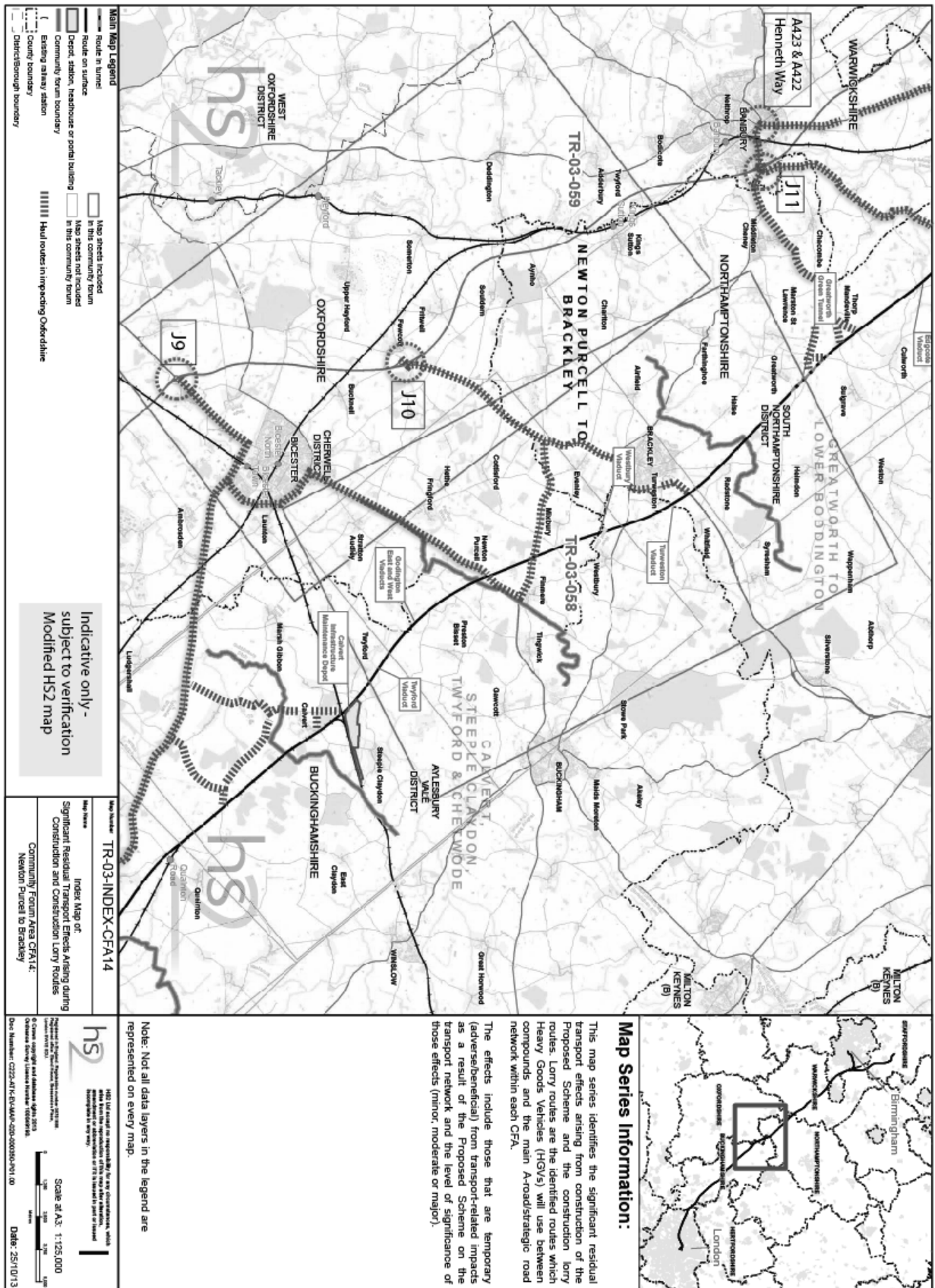
- 13.1.** Overseeing compliance with approvals and planning conditions falls to the local planning authority as an integral part of its planning responsibilities. Approvals under the planning regime in the Bill will be enforceable under the Town and Country Planning Act 1990. It will be for the local planning authorities to decide whether and to what extent it is expedient to take action to enforce planning

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control in relation to a breach of condition or approval which they consider has taken place within their area.

- 13.2.** Compliance with the planning regime will be achieved through supervision by the nominated undertaker, monitoring by the local planning authority and observation by the public.

Annex 3: HS2 Haul routes through Oxfordshire



Annex 4: HS2 major new infrastructure in Oxfordshire

3 new highway railway overbridges, 3 new brideway over bridges, and 3 existing brideways under new or reinstated viaducts

