

SITE RESTORATION SCHEMES

Introduction

1. The High Speed Rail (London-West Midlands) Act 2017 (the “Act”) sets out site restoration requirements for the HS2 Phase One project in Schedule 16 and Schedule 17 to the Act. The site restoration provisions in the two schedules are similar, but not identical.
2. The Schedule 16 provisions apply where land has been possessed temporarily. For land subject to Schedule 16, the nominated undertaker should agree a site restoration scheme with the owners of the land and the relevant planning authority. An agreement under paragraph 5(1) of Schedule 16 is required regardless of whether any physical works have been carried out on the site. Schedule 17 paragraph 12(9)(b) states that the requirement to agree a site restoration scheme under paragraph 12(1) does not apply in relation to a site where the nominated undertaker is subject to an obligation under paragraph 5(1) of Schedule 16.
3. Schedule 17 paragraph 12(1) requires the nominated undertaker to agree a site restoration scheme with the relevant planning authority following discontinuation of the use of any site for carrying out operations ancillary to the construction of any of the scheduled works. Thus, where a site has not been used for operations ancillary to the construction of a scheduled work or where a construction site will subsequently be used for any permanent authorised HS2 work (including mitigation works such as planting), then no agreement under paragraph 12(1) of Schedule 17 is required.
4. This note sets out:
 - General provisions relating to site restoration submissions under paragraph 12 of Schedule 17 and paragraph 5 of Schedule 16 of The Act.
 - The content and format of site restoration schemes submitted for agreement.
 - The programme for and timing of submissions.
 - Matters reserved for subsequent agreement.
 - Works where site restoration agreements under paragraph 12 are not required.
5. This note does not deal with site restoration schemes in relation to waste and soil disposal sites and the excavation of bulk materials from borrow pits. The restoration of such sites is required to be approved by the local planning authority separately under paragraph 8 of Schedule 17.

General Provisions Relating to Site Restoration

6. The presumption is that land used temporarily for construction purposes that does not occupy the footprint of the permanent works (including mitigation) will be restored to its former condition. An alternative condition can be agreed, subject to the restriction that the HS2 Act does not allow the carrying out of works other those necessary or expedient for the railway.
7. The landowner or other person with an interest in a site may in some instances intend to implement consented non-HS2 development immediately after the discontinuation of the use of the land for HS2 purposes. It is in the public interest that such development is not delayed and that there is not unnecessary expenditure on restoration works that are immediately removed. In these circumstances the scheme submitted by HS2 Ltd to the local planning authority for agreement, could for example mean only leaving the site in a clean and safe condition.

Agreement of Site Restoration for Mitigation Work

8. HS2 may undertake mitigation works on land that has been possessed temporarily or land acquired permanently.
9. For sites that are possessed temporarily using powers in Schedule 16 (Temporary Possession and Use of Land) of the HS2 Act, a site restoration agreement is required in all cases, regardless of whether any authorised works (including mitigation, for example planting) have been carried out. Where works have been undertaken and constitute mitigation for a Scheduled Work (or any depot), the agreed site restoration scheme may comprise relevant measures to be included in any future bringing into use approvals required by Schedule 17 paragraph 9. HS2 Ltd and its contractors will need to manage the time constraints linked to land possessed temporarily under Schedule 16 in considering whether such land is required for mitigation of Scheduled Works and relevant to bringing into use approvals required under Schedule 17 paragraph 9. There may also be mitigation works not provided for a specific Scheduled Work, agreed as part of a restoration scheme under Schedule 16; this would not require any further approvals under Schedule 17 paragraph 9.
10. For land acquired permanently where the site would accommodate works to mitigate the effects of HS2, no site restoration agreement is required under Schedule 17 paragraph 12 (1), as the site will remain in use for as a permanent authorised work. For sites used for carrying out operations ancillary to the construction of any of the Scheduled Works that will not remain in use for a HS2 purpose, then a site restoration agreement under Schedule 17 paragraph 12(1) is required. This can apply to either the whole or part of a worksite.
11. Appendix A shows when site restoration agreements are required, including those agreed under Schedule 16 and on those sites comprising permanent mitigation work or works.

Content and Format of Site Restoration Schemes Submitted for Agreement

12. Where it is proposed to return a temporary worksite to its former condition, or other condition not comprising permanent mitigation of a scheduled work, the restoration scheme submission will comprise the documents shown in Table 1.

Table 1: Content of site restoration scheme (under Schedule 16 or Schedule 17) for agreement – restoration to former condition or condition not including permanent mitigation

<i>Document</i>	<i>Suggested scale/ content</i>
<i>Restoration to former condition</i>	
Covering letter	To include a description of site restoration scheme, including: <ul style="list-style-type: none"> • a description of the former condition to which the site will be returned, • details of any seeding and fencing proposed.
Other information	Location plan (showing the site to be restored) @ 1:1250 – 1:10,000 as appropriate
<i>Restoration to condition not including permanent mitigation</i>	
Covering letter	To include a description of site restoration scheme, including: <ul style="list-style-type: none"> • a description of the proposed surface treatment (supported by photographs of the pre-construction condition where necessary) • details of any seeding and fencing proposed. • specification of proposed ground surface treatment.
Other information	Location plan (showing the site to be restored) @ 1:1250 – 1:10,000 as appropriate

13. Where the restoration of a temporary worksite or part of a worksite, possessed under Schedule 16, includes proposed permanent mitigation, the restoration scheme submission in relation to that part of the site will comprise the documents shown in Table 2.

Table 2: Content of site restoration scheme for agreement (Under Schedule 16) – where site includes permanent mitigation

<i>Document</i>	<i>Suggested scale/ content</i>
Covering letter	Summary of the documents comprising the restoration scheme for agreement.
Location plan (showing the site to be restored)	1:1250 – 1:10,000 as appropriate

Table 2 (Continued): Content of site restoration scheme for agreement (Under Schedule 16) – where site includes permanent mitigation

<i>Document</i>	<i>Suggested scale/ content</i>
Where permanent ecological mitigation is proposed.	<ul style="list-style-type: none"> • A plan/plans showing areas (m2) of habitat creation, annotated to show habitats to be created and details of species mix. • A written description of the mitigation.
Where permanent landscape mitigation is proposed	<ul style="list-style-type: none"> • A plan/plans showing areas (ha) of landscape mitigation earthworks and planting. For landscape planting the plan will be annotated to show the proposed species and planting schedule. • A written description of the mitigation setting <p>NB. Where permanent landscape mitigation includes earthworks, these will be subject to approval of plans and specifications under paragraph 3 to Schedule 17.</p>
Where permanent community mitigation is proposed	<ul style="list-style-type: none"> • Plan/plans showing the new facilities. • A written description of the mitigation. <p>NB. Where permanent community mitigation includes buildings or other structures, these will be subject to approval of plans and specifications under paragraph 2 to Schedule 17.</p>
For works which have a mitigating effect in relation to the operational noise from the railway or new road	<ul style="list-style-type: none"> • A description of the works. • Plans showing the location of the works, the surrounding environment and receptor positions. <p>NB. Where permanent noise mitigation includes earthworks or noise barriers, these will be subject to approval of plans and specifications under paragraph 3 to Schedule 17.</p>

Programme and Timing of Submissions

14. Schedules 16 and 17 of The Act contain different timeframes relevant to agreeing site restoration works.
15. For sites that are possessed temporarily under Schedule 16 a scheme of restoration should be agreed within 6 months from the date of completion of the work for which temporary possession was taken. If no scheme has been agreed within 6 months, the scheme is to be such as may be determined by the appropriate Ministers after consulting the nominated undertaker, the owners of the land and the relevant planning authority.
16. Paragraph 11 of Schedule 17 requires that where development consists of or includes the carrying out on any site of operations ancillary to the construction of any of the scheduled works, the operations must be discontinued as soon as reasonably practicable after the completion of the scheduled work or works.
17. The Planning Memorandum (paragraph 7.5.4) states that 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.
18. At the latest, a site restoration scheme will need to be submitted for agreement within 4 months of the discontinuation of use of a relevant site, in accordance with paragraph 12(3). If the nominated undertaker does not submit a restoration scheme within this period, or if no scheme has been agreed within 8 weeks of submission (or such longer period as the nominated undertaker and local planning authority may agree) then the scheme is to be such as the appropriate Ministers may determine after consulting the nominated undertaker and the local planning authority.
19. Proportionate pre-application consultation on all site restoration submissions will be undertaken in accordance with the Planning Memorandum. Where the intention is to return the land to its former condition, it may not be necessary to undertake any pre-application engagement with the planning authority.

Matters Reserved for Subsequent Agreement

20. Paragraph 12(6) of Schedule 17 allows for an agreement to a site restoration scheme to reserve particulars for subsequent agreement between the nominated undertaker and the relevant planning authority.
21. Examples of matters that might be reserved for subsequent approval might be details not known at the time of submission, for example:
 - Details of species in relation to planting or seeding

Works Not Subject to Site Restoration Agreements Under Schedule 17

22. For land acquired permanently, the following works will not be subject to a site restoration scheme agreement under paragraph 12(1) of Schedule 17. These works and the justification in relation to each category is set out in table 3 below.

Table 3 Works Not Subject to Paragraph 12 (1) Site Restoration Agreement

<i>Category of Work or Land</i>	<i>Justification</i>
Schedule 16 land	Site restoration scheme required to be agreed with landowner and local authority under paragraph 5(1) to Schedule 16, as noted in paragraph 8 of this note.
Sites to which paragraph 8 (waste & soil disposal, borrow pits) applies	Site restoration schemes in relation to waste and soil disposal site and borrow pits are required to be agreed with local planning authority separately under paragraph 8 to Schedule 17.
Works in a highway	<p>Where temporary works are undertaken within a highway using the temporary interference powers of Schedule 4 Part 2 paragraph 6, the highway will be reinstated to its original condition (or as otherwise agreed with the highway authority) unless the route is to be stopped-up permanently)).</p> <p>It may be the case that the highway authority wishes the temporary work to be retained in situ, in accordance with conditions set out within related undertakings and assurances or the HS2 Phase 1 Route-wide Traffic Management Plan. In this situation, the highway authority would need to accept the temporary works as permanent improvements using its Highways Act 1980 powers as the nominated undertaker cannot use the temporary interference powers of the Phase One Act for this purpose.</p>
Non-intrusive survey of land	No physical land disturbance and/or alteration of use of the land therefore no restoration is required.
Boreholes and intrusive ground investigations.	<p>The diameter of boreholes required for soil sampling or monitoring is minimal (typically <1m²). Therefore it would not be reasonable or necessary to reach separate agreement in relation to each one where the surface layer of boreholes is to be restored to its pre-existing condition.</p> <p>Only where the surface layer is not to be restored to its pre-existing condition will a scheme be submitted for agreement under paragraph 12(1).</p>

Table 3 (Continued): Works Not Subject to Paragraph 12 (1) Site Restoration Agreement

<i>Category of Work or Land</i>	<i>Justification</i>
Sites used by follow-on contractors	<p>Some worksites will be used by more than one contractor during the lifetime of the project. Where a site is vacated by one contractor pending its future occupation by another contractor but the site remains secured and in the possession of HS2, no site restoration scheme will be submitted. A site restoration agreement will only be required on such sites that are last used for operations ancillary to the construction of a Scheduled work and where they will not be retained for an authorised HS2 purpose.</p> <p>This scenario is likely to apply to archaeological trial trenches which are generally at HS2 sites that will be subject to later works, the restoration of which would therefore be the responsibility of the follow-on contractor.</p>

Appendix A – Site Restoration Requirements

Site Restoration Agreements – Explained

