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31 May 2018

Dear Mr Lewis

**HIGH SPEED RAIL (WEST MIDLANDS – CREWE) BILL – HOUSE OF COMMONS SELECT COMMITTEE:
PETITION P2A-000107 – THE NATIONAL FARMERS UNION**

I am writing to you in my capacity as the Director of Hybrid Bill Delivery at HS2 Ltd, which is acting on behalf of the Promoter of the High Speed Rail (West Midlands-Crewe) Bill ('the Bill') currently before Parliament. I understand that your clients have a number of concerns about the impact of Phase 2A of HS2 (known as 'the Proposed Scheme') and have submitted a petition on that basis against the Bill in the House of Commons.

As you are aware, we have already provided a number of assurances to the NFU and to the CLA. Following constructive discussions, I am writing to you now, on behalf of the Secretary of State for Transport, to formally offer your client revised assurances, including a new assurance (Assurance No. 2) on land acquisition in cases where agricultural land is acquired for the purposes of the permanent railway corridor.

The revised assurances are attached as Annex A to this letter, and replace all previous versions. In these assurances, "the Nominated Undertaker" refers to the body or bodies appointed by the Secretary of State to carry out the powers conferred under the Bill to construct and maintain the scheme. The Nominated Undertaker may be HS2 Ltd, or it may be another body or bodies appointed to oversee the construction and operation of Phase 2A.

If accepted, the assurances will be included in the Register of Undertakings and Assurances, which is held by the Department for Transport. Drafts of the Register will be published regularly during the passage of the Bill and it will be finalised after Royal Assent. A Nominated Undertaker will be contractually obliged to comply with all relevant undertakings and assurances set out in the Register. Further information on how the Secretary of State will ensure compliance with assurances made by HS2 Ltd is set out in HS2 Phase 2A Information Paper B5: Compliance with Undertakings and Assurances¹.

If you or your clients have any queries please don't hesitate to contact Stephen McFarlane on 020 7944 6206 and stephen.mcfarlane@HS2.org.uk.

¹ A copy can be found at <https://www.gov.uk/government/publications/understanding-the-hybrid-bill-hs2-phase-2a-information-papers>

Yours sincerely

A handwritten signature in black ink, appearing to read 'O Bayne', written in a cursive style.

Oliver Bayne

Director, Hybrid Bill Delivery
High Speed Two (HS2) Limited

HIGH SPEED RAIL (WEST MIDLANDS – CREWE) BILL – HOUSE OF COMMONS SELECT COMMITTEE: THE NATIONAL FARMERS UNION

Part A – Specific assurances to the NFU

1. Assurance No.1 – Agricultural liaison service

1.1 The Secretary of State will require the Nominated Undertaker to ensure that there is an agricultural liaison service providing individuals experienced in agricultural matters in place and contactable by telephone 24 hours a day, 7 days per week, during the construction of HS2 works on agricultural land.

1.2 The Secretary of State will require that the Nominated Undertaker will:

1.2.1 Provide the name and contact details of the agricultural liaison service provider(s) (and any replacement) to the NFU before he or she takes up his or her post;

1.2.2 Arrange meetings between the agricultural liaison service provider(s) and the NFU on a regular basis, and at least every three months to discuss the activities of the agricultural liaison service provider.

2. Assurance No.2 – Land acquisition – Agricultural land acquired for the purposes of the permanent railway corridor

2.1 Where -

2.1.1 detailed design plans of the proposed railway works are sufficiently advanced to enable the Secretary of State to assess, in his reasonable opinion, the extent of relevant land required permanently for the construction, operation and maintenance of the permanent railway corridor comprised within the Scheduled works for the Bill, and

2.1.2 the exercise of such powers is in his reasonable opinion required for the timely and economic delivery of HS2 Phase 2a works,

the Secretary of State will exercise acquisition powers over relevant land rather than exercise temporary possession powers over relevant land.

2.2 In advance of the exercise by the Secretary of State of acquisition powers over relevant land pursuant to paragraph 2.1, the Nominated Undertaker shall not, save where otherwise agreed with the relevant landowner, or where subject to paragraph 2.3, exercise temporary possession powers over relevant land.

2.3 Pursuant to paragraph 2.2, the Nominated Undertaker may exercise temporary possession powers over relevant land in advance of acquisition powers where in the reasonable opinion of the Nominated Undertaker, the relevant land is required to be occupied temporarily for the purpose of –

- 2.3.1 programme critical construction works including but not limited to, works to establish construction access routes,
- 2.3.2 environmental mitigation works,
- 2.3.3 utility works; or
- 2.3.4 highway works,

which cannot be undertaken pursuant to the exercise of acquisition powers whilst also being consistent with the timely and economic delivery of HS2 Phase 2a works.

2.4 In these assurances-

“acquisition powers” means the power of compulsory acquisition of land to be conferred on the Secretary of State under clause 4 of the Bill;

“agricultural land” means land classified as agricultural land as described in the Agricultural Land Classification of England and Wales, published by the Ministry of Agriculture, Fisheries and Food in October 1988;

“relevant landowner” means the freehold owner and occupier of agricultural land;

“relevant land” means the whole or part of agricultural land belonging to the relevant landowner which is subject to the exercise by the Secretary of State of acquisition powers for the purposes of the construction, operation and maintenance of the permanent railway corridor comprised within the Scheduled works for the Bill;

“temporary possession powers” means the power of temporary occupation of land to be conferred on the Nominated Undertaker under paragraph 1(2) of schedule 15 to the Bill.

3. **Assurance No.3 – Prompt payment of compensation**

- 3.1 The Secretary of State will, in line with wider Government policies, require the Nominated Undertaker to pay promptly compensation that has been agreed or determined by the Upper Tribunal of the Lands Chamber to be payable to a claimant under the Bill in respect of the compulsory acquisition of agricultural land/rural businesses.

4. **Assurance No.4 – Estimated claims for compensation**

- 4.1 Where a farmer/rural business owner submits to the Promoter detailed particulars of an estimated claim for compensation arising from the compulsory acquisition of agricultural land/a rural business (a “detailed request”), the Promoter will provide in writing within three months of receipt of the detailed request the Nominated Undertaker's estimate of the compensation (including for disturbance) payable in respect of the compulsory purchase of that agricultural land/rural business.
- 4.2 Where possession of land is taken by the Nominated Undertaker under Schedule 15 of the Bill and an owner occupier or agricultural tenant submits to the Promoter a particularised and evidenced claim for compensation based upon agricultural losses

arising from the temporary occupation of agricultural land pursuant to paragraph 1 of Part 1 of Schedule 15 to the Bill (a "compensation request"), the Promoter will make interim payments of compensation as appropriate on a case by case basis. For example, payments could be made on a three monthly, six monthly or (as a minimum) annual basis taking account of the particular characteristics of the agricultural business in question. Before making the interim payments, the Nominated Undertaker may require the owner occupier or agricultural tenant to enter into a Temporary Possession Agreement in advance of the exercise of powers.

5. **Assurance No.5 - Relocation matters**

5.1 In respect of farmers/rural business owners, the Promoter will use reasonable endeavours to reach an agreement with that farmer/rural business owner, where a business case is approved and where it relates to a relocation necessary for a particular business in consequence of permanent acquisition by the Promoter of land required for that business, such agreement to provide that compensation will be paid in advance of entry after Royal Assent, subject to the Promoter being satisfied there is no subsisting mortgage over the land in question and that suitable security for any advanced payment can be adequately secured.

6. **Assurance No.6 - Liability and claims**

6.1 The Secretary of State confirms that the Nominated Undertaker will be liable to farmers and rural business owners for the actionable acts and omissions of the Nominated Undertaker's contractors and sub-contractors in constructing the works authorised by the Bill, and as a consequence the Secretary of State will require the Nominated Undertaker to:

6.1.1 Set in place arrangements to deal promptly with any claims made by farmers and rural business owners arising as a consequence of the construction of the works authorised by the Bill (including as a consequence of the acts or omissions of the Nominated Undertaker's contractors and sub-contractors).

6.2 The Secretary of State will require the Nominated Undertaker to implement contractual monitoring, reporting and enforcement procedures to ensure that third party claims against the Nominated Undertaker arising out of the execution of HS2 works on the farmer/rural business owner's land are being dealt with promptly and effectively.

7. **Assurance No.7 - Water supply**

7.1 Where an existing private water supply to a farm is adversely and directly, affected by the construction of the Proposed Works, the Nominated Undertaker will, if requested by the farmer or landowner to do so, provide or procure or meet the reasonable cost of the provision of an alternative supply of water where reasonably practicable to do so and if there is no other practicable alternative means of supply available.

7.2 Where the supply is so affected temporarily by the construction of the Proposed Works, then the alternative supply need only be supplied for the period during which it is so affected.

7.3 Where a request is made by the farmer or landowner under 7.1 for a permanent supply due to permanent severance of the existing supply caused by the construction of the

Proposed Works the Nominated Undertaker will where provision of an alternative means of supply can be demonstrated by the land owner/farmer to be reasonably required for his business, provide or procure or meet the reasonable cost of a permanent means of alternative supply of water.

8. **Assurance No.8 – Borrow Pits**

- 8.1 Following the completion of preliminary Ground Investigation of the sites proposed under the Bill for development of Borrow Pits but prior to the termination of proceedings on the Bill before the House of Commons Select Committee, the Promoter will publish a review of the extent of land likely to be required and in preparing the report the Promoter will consult with the NFU and those landowners on whose land the Borrow Pits are proposed to be developed.

Part B – Generic assurances to be offered to farmers or rural business owner petitioners on a case-by-case basis

9. Assurance No.9 – Provision of information

9.1 The Promoter will keep the Petitioner informed of the progress of the Bill and of likely target dates for implementation of Phase 2A of the HS2 project.

10. Assurance No.10 – Notices of entry and taking possession

10.1 Notwithstanding the requirements under the Bill to give 3 months' notice of entry in relation to the outright acquisition of land, where reasonably practicable, the Nominated Undertaker will provide a longer period of notice to the Petitioner in respect of any of the Petitioner's land to be acquired outright under the Bill.

10.2 Notwithstanding the requirements under the Bill to give 28 days' notice of entry under Part 1 of Schedule 15 in relation to the temporary occupation of land the Nominated Undertaker will use reasonable endeavours, and in advance of any formal notification required under the Bill, to notify the Petitioner of the expected quarter of the calendar year in which the Petitioner's land is planned to be occupied temporarily under the Bill.

10.3 Following the receipt by the Nominated Undertaker of the programme of works from the relevant works contractor in relation to the Petitioner's land, the Promoter will provide to, and discuss with, the Petitioner an estimate of the likely period of occupation of the Petitioner's land and shall from time to time update the Petitioner with further information as to the likely extent of the period of temporary occupation.

11. Assurance No.11 – Relocation of agricultural buildings

11.1 The Promoter will require the Nominated Undertaker to offer appropriate assistance to the Petitioner in respect of the relocation of any agricultural buildings displaced for the purposes of the project where the replacement is either:

11.1.1 to be provided for under a deemed planning consent granted by the Town and Country Planning (General Permitted Development) (England) Order 2015; or

11.1.2 the subject of a separate application for planning consent.

11.2 The assistance referred to in paragraph 11.1. shall (if requested by the Petitioner) include the provision of a statement of impact and timing for the Petitioner in respect of the need for relocation of an agricultural building.

11.3 Paragraph 11.4. applies where notwithstanding any assistance provided in paragraph 11.1., a Petitioner provides to the Promoter evidence to the reasonable satisfaction of the Promoter that consent referred to in paragraph 11.1. and required to give effect to the relocation of an agricultural building, is unlikely to be obtained and requests the Secretary of State to take steps to authorise the relocation of the displaced building by the exercise of the powers of clause 46 of the Bill.

11.4 Any request to the Secretary of State by the Petitioner under paragraph 11.3. shall be considered by the Secretary of State in accordance with the policy relating to

reinstatement of undertakings set out in section 7 of HS2 Information Paper C7, Business Relocation.

- 11.5 In this assurance, “agricultural building” includes a residential building occupied as part of an agricultural building.
- 11.6 In this assurance, a “statement of impact and timing” means a statement describing the impact of the work proposed to be undertaken in relation to the agricultural building(s) in question and the timescales in which those impacts are intended to be implemented.

12. **Assurance No.12 – Identification of land for the relocation of agricultural buildings**

12.1 If prior to the giving of notice of entry or prior to the notice of vesting under a general vesting declaration to acquire land permanently (whether or not before Royal Assent) the Petitioner identifies suitable land for the relocation of an agricultural building (whether within or outside the Petitioner’s ownership) and the Petitioner provides to the Secretary of State a detailed course of action substantiating the relocation, the Secretary of State will confirm whether or not he accepts that the land identified and evidence supporting the course of action provides a reasonable basis for the Petitioner’s claim for compensation in the event that the Bill receives Royal Assent and the Secretary of State exercises his powers of compulsory acquisition.

12.2 In this assurance, “agricultural building” includes a residential building occupied as part of an agricultural building.

13. **Assurance No.13 – Professional costs and fees**

13.1 The Promoter acknowledges that proper professional costs and fees reasonably incurred by the Petitioner for the purposes of seeking to identify suitable alternative premises at which to relocate an agricultural building which is subject to the power of compulsory acquisition under the Bill, will form a Head of Claim as part of any disturbance claim arising from the acquisition of that land under the Bill.

14. **Assurance No.14 – Land acquisition - Where land can be identified at this stage as not being required for permanent works and is not materially changed**

14.1 The Secretary of State shall not exercise the powers of compulsory acquisition conferred by the Bill in relation to the Property [describe] but instead the Nominated Undertaker may exercise the powers of Schedule 15 to the Bill to enter and take temporary possession of the Property.

15. **Assurance No.15 – Land acquisition - Where land cannot be identified at this stage, but it may be possible to do so following detailed design**

15.1 If at the date when it is proposed to implement the powers of the Bill in relation to the Property [describe] the Secretary of State is satisfied, in the light of detailed design of the project, that any part of the property will not be required for the accommodation of any permanent works authorised by the Bill the Secretary of State shall not exercise the powers of compulsory acquisition conferred by the Bill in relation to that part of the Property but instead the Nominated Undertaker may exercise the powers of Schedule 15 to the Bill to enter and take temporary possession of the Property.

16. **Assurance No.16 – Land acquisition - Where land is materially changed but there is no need for maintenance of that change**

16.1 Subject to the Petitioner entering an agreement in a form satisfactory to the Secretary of State which provides that the Property [describe] need not be restored to its former condition following completion of construction activity on the land, the Secretary of State shall not exercise the powers of compulsory acquisition conferred by the Bill in relation to the Property [describe] but instead the Nominated Undertaker may exercise the powers of Schedule 15 to the Bill to enter and take temporary possession of the Property.

16.2 In this assurance "Petitioner" means a Petitioner who is the freehold owner and occupier of land which is the proposed subject of an agreement referred to in this assurance.

17. **Assurance No.17 – Land acquisition - Where land is materially changed and there is a need for an obligation to maintain**

17.1 Provided that-

17.1.1 the Petitioner enters into an agreement in a form satisfactory to the Secretary of State which-

17.1.1.1 provides that the Property [describe] need not be restored to its former condition following completion of construction activity on the land; and

17.1.1.2 restricts removal or interference with land or works adjoining the railway which are to provide support or protection to the railway; and

17.1.1.3 provides for the maintenance of the environmental mitigation to be provided on that land; [and

17.1.2 the Secretary of State is satisfied that the Petitioner is an appropriate person, having regard to the nature and objectives of the mitigation required to be provided, to be responsible for securing the maintenance of that mitigation;]
[N.B. only relevant where this is a site identified for ecological mitigation]

the Secretary of State shall not exercise the powers of compulsory acquisition conferred by the Bill in relation to the Property but instead the Nominated Undertaker may exercise the powers of Schedule 15 to the Bill to enter and take temporary possession of the Property.

17.2 In this assurance "Petitioner" means a Petitioner who is the freehold owner and occupier of land which is the proposed subject of an agreement referred to in this assurance.

18. **Assurance No.18 – Land acquisition – Where land is occupied temporarily but the Petitioner requests the Secretary of State to acquire**

18.1 Where the Nominated Undertaker exercises powers of temporary occupation over land under the Bill which is subject to compulsory acquisition and the Nominated Undertaker proposes to the Petitioner that the Petitioner enters into an agreement with the Secretary of State for the purposes of assurances 16.1 and 17.1, the Petitioner may at any time prior to entry into an agreement under assurances 16.1 and 17.1, make a written request to the Nominated Undertaker to request that the Secretary of State exercises the powers of compulsory acquisition conferred by the Bill in relation to the Property.

18.2 On receipt of a request pursuant to paragraph 18.1 the Secretary of State will review the need to acquire the land in question and where he is satisfied that it is required for permanent works for Phase 2a purposes he will give notice of acquisition as soon as is reasonably practicable.

18.3 In reaching a decision pursuant to paragraph 18.2 the Secretary of State will need to be satisfied that necessary rights of access can be secured to the land in question.

18.4 In this assurance “Petitioner” means a Petitioner who is the freehold owner and occupier of land which is the proposed subject of an agreement referred to in this assurance.

19. **Assurance No.19 – Land acquisition - Where land is required for the acquisition of rights**

19.1 The Secretary of State [or any statutory undertaker authorised by the Secretary of State] may exercise the powers of the Bill so as to acquire permanent rights over the Property in respect of [installing, maintaining, renewing, replacing or upgrading cable, pipes, ducts and other services and to have access to the Property in order to maintain, renew, replace or upgrade such cable, pipes, ducts or other services] or [access over the Property as required in connection with the construction, implementation, renewal, operation or maintenance of the work authorised by the Bill].

19.2 Subject to paragraph 19.1 the Secretary of State shall not exercise the powers of compulsory acquisition conferred by the Bill in relation to the Property [describe] but instead the Nominated Undertaker may exercise the powers of Schedule 15 to the Bill to enter and take temporary possession of the Property.

[N.B.1 All these assurances assume that the economic criteria for exercising temporary rather than permanent powers has been satisfied. In cases where there is some concern about the amount of compensation that may be payable on temporary occupation of the land it may be necessary to add the following qualification to each of the assurances:

“This assurance is subject to agreement, in a form acceptable to the Secretary of State, as to the level of compensation payable in respect of the exercise of the temporary powers of the Bill in advance of the Nominated Undertaker taking temporary possession of the Property.”

N.B.2 The description of the Property in assurances 15, 16, 17 and 18 should make clear that the precise area to which the assurance applies can only be determined following detailed design.]

20. Assurance No.20 – Use of private roads

20.1 The Nominated Undertaker will engage with the owner and occupier of the land with respect to the particular purpose(s) he expects to exercise the powers under clause 14 of the Bill, the type of vehicle(s) to be used, the purpose of the use and the expected frequency and period of use.

21. Assurance No.21 – Drainage

21.1 The Nominated Undertaker will identify with the farmer existing drainage arrangements on the holding. This will include the carrying out, where reasonable, of inspections of the site and of any existing plans.

21.2 The location of drains cut or disturbed by the construction works will be recorded by the Nominated Undertaker.

21.3 The Nominated Undertaker will utilise appropriate drainage consultants to advise on drainage works and will engage with the farmer in respect of the pre and post drainage schemes that are required. The Nominated Undertaker will use reasonable endeavours to engage drainage consultants with working knowledge of the local conditions.

21.4 Prior to the commencement of significant construction works, land drains affected by the HS2 works will, where practicable, be intercepted in a manner which maintains their efficiency. Work will be carried out to an appropriate specification after discussion with the farmer which may include the design (e.g. layout, falls, pipe sizes and types, outfall arrangements) and timing of any land drainage works required.

21.5 As-built plans of modifications to existing land drainage and of any new drainage works will be provided to the farmer or the Landowner as appropriate by the Nominated Undertaker.

21.6 Where natural drainage patterns are adversely affected by the HS2 works, the provision of supplementary drainage or irrigation works will be considered having regard to an assessment of compensation and the commercial justification by the farmer.

22. Assurance No.22 – Detailed design

22.1 Prior to the completion of the detailed design of the works authorised by the High Speed Rail (West Midlands - Crewe) Bill (“the Bill”), the Secretary of State will require the Nominated Undertaker to consult an owner/tenant of an agricultural holding regarding the detailed design of works proposed to be constructed upon any part of that holding under the powers of the Bill and the use of land for the provision of ecological and any other mitigation that does not involve the construction of works.

22.2 The Nominated Undertaker shall have regard to the responses received to the consultation undertaken under paragraph 22.1 and in so far as reasonably practicable, after taking into account all other relevant factors, including other relevant Undertaking

and Assurances, associated with the design, construction, maintenance and operation of those works and other ecological or other mitigation,

22.2.1 seek to minimise the loss of Grade 1, 2 and 3a agricultural land as described in the Agricultural Land Classification of England and Wales, published by the Ministry of Agriculture, Fisheries and Food in October 1988; and

22.2.2 seek to accommodate reasonable proposals from the relevant owner/tenant to modify the detailed design of the works or provision of other ecological mitigation for the purposes of facilitating the efficient management of the agricultural holding in question following the completion of construction of the works.

22.3 In this assurance, “works” means the construction within Bill limits of accommodation works, landscaping and other mitigation works, drainage works and the construction of balancing ponds, embankments, bunds and made-up ground required for Phase 2A purposes.

22.4 Nothing in this assurance shall require any modification to the works which gives rise to any significant impact on the environment which has not been addressed in the Environmental Statement for the HS2 Project but that does not preclude consideration being given to any proposals for such modifications.

23. **Assurance No.23 – Agricultural soils**

23.1 The Secretary of State will require the Nominated Undertaker to work with landowners and farmers whose productive agricultural soils are temporarily affected by the construction of the HS2 works and/or are affected temporarily as a result of land-raising, with the intention to bring agricultural soils back to enable their former use before construction of the HS2 works on the relevant land and shall prepare in consultation with the relevant landowner and relevant planning authority an agricultural soils plan in advance of construction that shall include:-

- a pre-disturbance record of the soil physical characteristics;
- a target specification, set by the Nominated Undertaker and informed by a suitably qualified agricultural soils scientist or practitioner, for agricultural soils being restored to agriculture after temporary use;
- a method of assessing the suitability of handling soils based on plastic limit (i.e. to avoid moving soils when wet and plastic so that they would not compact when replaced);
- advice on stripping topsoil and subsoil to the correct depth;
- recommendations of the most suitable equipment for soil handling;
- advice on soil storage (e.g. heights and management of soil stores);
- advice on alleviating compaction after replacement;
- a schedule of aftercare maintenance, to include soil testing, appropriate to the target specification for a period of up to five years (subject to paragraph 23.2) following completion of the relevant construction work; and
- a final report to determine the final handover condition of the agricultural soil.

23.2 Should the target specification not be met by the expiry of the period of five years for aftercare maintenance mentioned in paragraph 23.1 (“the initial period”), then, if the landowner has fully complied with a schedule of aftercare, the Nominated Undertaker,

informed by a suitably qualified agricultural soils scientist or practitioner, has reasonable grounds to believe that the target specification could be met within a further period (being no longer than a further period of five years), and the initial period shall be extended by that period.

- 23.3 The reasonable cost of compliance by the relevant landowner with the schedule of aftercare shall be borne by the Nominated Undertaker save where such cost has been compensated under the compensation code.
- 23.4 The agricultural soils plan will be incorporated in and prepared as part of the Code of Construction Practice to form part of the Environmental Minimum Requirements undertaking given by the Secretary of State before Parliament.