



Department
for Transport

High Speed Rail (London-West Midlands) Act 2017

Government response to the consultation on the draft class approval for matters ancillary to development under Schedule 17

March 2017

Moving Britain Ahead



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consultation on the draft class
approval for matters ancillary to
development under Schedule 17

Presented to Parliament
by the Secretary of State for Transport
by Command of Her Majesty

March 2017



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Introduction

- 1 Section 20 of the High Speed Rail (London – West Midlands) Act 2017 (“the Act”) grants deemed planning permission under Part 3 of the Town and Country Planning Act 1990 (“the TCPA”) for the works authorised by the Act. This permission is subject to the requirement that certain approvals need to be obtained from the relevant planning authorities under the planning regime established by Schedule 17 to the Act. Paragraph 4 of Schedule 17 requires approvals relating to the arrangements for matters that are ancillary to development. These matters are set out in paragraph 4(2) (a) to (g).
- 2 Paragraph 5(1) of Schedule 17 to the Act allows the Secretary of State to make a class approval for six of the matters ancillary to development. These are the matters set out in paragraph 4(2) (a), (b) and (d) to (g). However, before making a class approval the Secretary of State must consult the planning authorities that would be affected by it (paragraph 5(4)).
- 3 This Command Paper details the Secretary of State’s decisions following that consultation.

Overview

- 4 The Act grants deemed planning permission under Part 3 of the TCPA for the works authorised by it. This deemed planning permission is granted subject to the conditions set out in Schedule 17 to the Act. The matters set out in Part 1 of Schedule 17 require approval from the relevant planning authority and the nominated undertaker will submit requests for approval for these matters. Amongst the matters requiring approval from the relevant planning authority is the approval of matters ancillary to development under paragraph 4(2) of Schedule 17. This is the approval of how certain matters (referred to in this document as “construction arrangements”) are managed during the works. These matters are:
 - handling of re-useable spoil or topsoil;
 - storage sites for construction materials, spoil or topsoil;
 - construction camps;
 - works screening;
 - artificial lighting;
 - dust suppression; and
 - road mud control measures.
- 5 The matters set out above, with the exception of construction camps, effectively relate to the approval of environmental control measures regarding the development. The *High Speed Rail (London-West Midlands) Code of Construction Practice* (“the CoCP”) sets out the appropriate measures which have been developed in consultation with planning authorities and negotiated throughout the parliamentary process associated with the Act. The nominated undertaker and its contractors will be bound to apply the measures set out in the CoCP. However, by including these matters in paragraph 4 of Schedule 17, the relevant qualifying authority will have planning enforcement powers over these matters in accordance with the TCPA.
- 6 The approval of construction arrangements was required under Schedule 6 to the Channel Tunnel Rail Link Act 1996 and Schedule 7 to the Crossrail Act 2008. However, these Acts did not provide for a class approval to be made and this meant that numerous individual requests for approval needed to be prepared by the relevant nominated undertaker and considered by the relevant planning authorities.
- 7 On both the Channel Tunnel Rail Link (“CTRL”) and Crossrail projects, the text that was submitted for approval (other than for construction camps) was extracted from the projects’ codes of construction practice. These codes, like the CoCP, were developed with the relevant local authorities and set out the measures which would be implemented during construction to control the effects of the works on communities and the environment, including the control measures relevant to construction arrangements. As a result, hundreds of identical submissions for generic construction arrangements were submitted by the nominated undertakers

and the relevant planning authorities ended up approving identical submissions for the generic matters many times over.

- 8 This process was administratively burdensome and the only purpose it served was to allow the relevant planning authority to have a measure of planning enforcement powers in relation to these matters. Therefore, the Act includes the power to enable the Secretary of State to make a class approval in relation to these construction arrangements, reducing the administrative burden while still allowing enforcement under the TCPA.
- 9 A consultation on the draft class approval for the following matters ancillary to development (paragraph 4(2) (a), (b) and (d) to (g) of Schedule 17) was launched on 20th December 2016 and closed on 13th February 2017:
 - handling of re-usable spoil or topsoil;
 - storage sites for construction materials, spoil or topsoil;
 - works screening;
 - artificial lighting;
 - dust suppression; and
 - road mud control measures.
- 10 While the consultation was open to the general public, it was aimed at the 28 planning authorities that have signed the *High Speed Rail (London-West Midlands) Planning Memorandum* (“the Planning Memorandum”) and become qualifying authorities. Respondents were invited to send their replies to an email address of the Department for Transport.
- 11 The draft class approval was prepared by extracting text from the draft CoCP. The CoCP details the construction approach that the nominated undertaker will take and the environmental controls that will be implemented. As such, it encompasses the matters ancillary to development. The CoCP has been developed through the parliamentary process and is part of the Environmental Minimum Requirements (“EMRs”), which are a commitment by the Secretary of State to Parliament. As such, the approach that the project must take in relation to matters ancillary to development has already been committed to in the CoCP.

Summary of the Secretary of State’s decisions

- 12 The Secretary of State has carefully considered the responses to the consultation and made the following decisions:
 - That a class approval should be made
 - That the class approval should apply to the whole HS2 Phase One route
 - That the following four amendments should be made to the wording of the class approval:
 - *2.3 The requirements stated in Section 6, 7, **11**, and 15 of the CoCP relating to the handling and storage of material, and Section 16 of the CoCP in relation to the control of run-off, insofar as they are applicable to protecting soils **and managing contamination**, will be met.*

- 4.5 *Clear sight lines will be maintained around hoardings and fencing with no hidden corners in order to avoid, where reasonably practicable, opportunities for anti-social behaviour and crime and to ensure safety of vehicles road users.*
- 5.3 *Lighting will comply with the ~~Institution of Lighting Engineers' guidance notes for the reduction of light pollution~~ **Institution of Lighting Professionals' guidance notes for the reduction of obtrusive light** and the provisions of BS 5489: Code of Practice for the Design of Road Lighting, where applicable.*
- 7.2 *For works which are being undertaken on the **public** highway which are not protected by secure temporary type fencing or hoarding then, at the completion of each day's works, the site is to be left in a tidy condition.*
- That the following six conditions should be attached to the class approval:
 - Prior to the creation of stockpiles or mounds for the storage of spoil and topsoil that are planned to be in situ for longer than 12 months, the nominated undertaker will engage with the relevant planning authority on the location of the stockpiles or mounds and have reasonable regard to its comments.
 - Storage areas will be located, where practicable, to avoid affecting the amenity of adjoining residential properties, schools and places of worship.
 - The height of material stores will, where practicable, be limited to avoid affecting the amenity of adjoining residential properties, schools and places of worship.
 - Prior to the installation of hoardings taller than 2.4 metres for purposes other than noise mitigation, the nominated undertaker will engage with the relevant planning authority on the location of the higher hoardings and have reasonable regard to the authority's comments.
 - Where a cycle path is maintained alongside a worksite, site screening will, where reasonably practicable, be located to provide adequate width for the cycle path.
 - Prior to the installation of hoardings on the highway, the nominated undertaker will engage with the relevant highway authority on the location of the hoarding and have reasonable regard to its comments.

Consultation Responses

- 13 16 responses were received to the consultation on the draft class approval. Respondents addressed some or all of the questions set out in the consultation document, offered comments on the text of the draft class approval, in some cases made specific suggestions for revised wording and conditions to be attached, and in some cases raised issues with the content of the consultation document.
- 14 Of the 16 responses received, 13 were from individual planning authorities, two were from national conservation charities and one was from a group comprising of 10 planning authorities. Seven planning authorities responded both individually and as part of the group of planning authorities.
- 15 The summary of responses set out in this document is structured around the questions asked in the consultation document. The Government is grateful for all the responses received, including the general agreement with making a class approval in principle and the suggestions of alternative or additional text which some respondents offered. These have been given full consideration. It should be noted that in evaluating the responses to this consultation, the Government has carefully considered each suggestion put forward, rather than reaching a view based on the total number of respondents suggesting each amendment or addition.

Consultation questions

- 16 The consultation document asked five questions:

Question 1: Do you agree that the Secretary of State should, as proposed, make a class approval under paragraph 5 of Schedule 17 to the High Speed Rail (London-West Midlands) Bill? If no, for what reasons?

Question 2: Are there specific areas or specific descriptions of works for which the class approval should be made? If so, what are these, and why would the control measures be different to those general measures in the draft class approval?

Question 3: Are there any specific locations or works that should not be subject to the class approval? If so, what in the nature of the work or location makes a class approval inappropriate and what control measures would be different?

Question 4: Do you agree that the measures set out in the draft class approval, extracted from the final Code of Construction Practice are appropriate? If not, what specific amendments do you think are needed and why are they are needed?

Question 5: Do you agree that no conditions need to be applied to the class approval? If not, what conditions do you think are needed and why are they needed?

- 17 The responses to each question are summarised and the Government's response is provided in the following sections.

Question 1

Do you agree that the Secretary of State should, as proposed, make a class approval under paragraph 5 of Schedule 17 to the High Speed Rail (London-West Midlands) Bill? If no, for what reasons?

- 18 There were 14 responses to this question. Of these responses, 10 planning authorities and one national conservation charity agreed with the principle of the Secretary of State making a class approval. Notwithstanding general agreement with the principle of a class approval, 10 of the respondents raised a number of concerns with the content of the draft class approval. Three planning authorities disagreed with making a class approval. The concerns raised are summarised below.

Government response

Use of the class approval

- 19 A number of respondents raised concerns with the use of the class approval including that it must be undertaken responsibly, limited to matters germane to HS2 Phase One and not used as a means to circumvent conventional planning permission. A class approval is a route-wide or area-wide approval of general construction arrangements and only relates to works for which planning permission is granted by the Act. It allows the Secretary of State to approve appropriate measures to apply to the HS2 Phase One works and removes the need for repeated individual approvals from qualifying authorities. The making of a class approval does not alter the level of protection for communities or the environment as qualifying authorities will also retain the ability to take planning enforcement action with respect to the arrangements approved by a class approval. The matters to which the arrangements relate are exactly the same under a class approval as would be under an individual application to qualifying authorities.
- 20 There was concern that a class approval is a blanket "one size fits all" approach, which would not be appropriate to all locations. While the environs of the works can vary greatly along the route of HS2 Phase One, experience from previous projects demonstrates that measures in the CoCP are effective in a wide range of different local contexts. For example, on the CTRL project, works undertaken to construct the Hollingbourne green tunnel in Kent were managed by the same measures extracted from the CTRL Code of Construction Practice as were approved by the relevant qualifying authority to manage construction arrangements at St Pancras International Station. As the measures in the CoCP are best practice, it is also not clear what additional measures would be necessary over and above the measures in the class approval and respondents did not propose additional measures.
- 21 One respondent suggested that the principle of forward discussions committed to through the Planning Memorandum should be extended to construction arrangements, with planning authority discussions and community engagement on construction to include matters covered by the class approval. The commitment in the Planning Memorandum for the nominated undertaker to engage in proportionate forward discussions on prospective requests for approval is to facilitate effective

consultation and ensure that Schedule 17 requests for approval are determined within the timetable. The nominated undertaker is required to have regular meetings with local authorities and local community representatives under the provisions of the CoCP (paragraph 5.1.2) to discuss construction issues and the forthcoming programme of works. These discussions will include information on construction activities within the local community and planning authority area, including those measures identified in the class approval that are proposed to be deployed in a particular locality.

Content of the class approval

- 22 One respondent suggested that any class approval should include content on enforcement powers and process. If it deems it necessary, a qualifying authority can take enforcement action against the nominated undertaker in relation to the class approval under the TCPA. Further information can be found in the Planning Practice Guidance *Ensuring Effective Enforcement*¹. As enforcement powers and process are established by the TCPA, described by national policy and are not specific to the class approval, it is felt that it would not be appropriate to set these out in the class approval.
- 23 A number of respondents raised concerns about the enforceability of the class approval due to the generic language and terms used. The principle of applying controls with similar language to the class approval is a well-established practice in granting planning consent for major infrastructure projects. Examples of this include the Transport and Works Act Orders for the Northern Line Extension, Bank Station Capacity Upgrade and East West Rail (Phase 1). The Orders apply planning conditions requiring compliance with codes of construction practice which are similarly worded and are enforceable by the relevant planning authority under the TCPA. Likewise, the A14 Cambridge to Huntington Improvement Scheme and Hinckley Point C Development Consent Orders are subject to requirements to comply with their respective codes of construction practice, which are enforceable through the Planning Act 2008. A further example is Westminster City Council's Code of Construction Practice, compliance with which is secured by the planning authority through planning conditions. The wording of the class approval would not impede the ability of a qualifying authority to take planning enforcement action if it considered that the nominated undertaker was not fulfilling the measures identified in the class approval. If, having raised a concern with the nominated undertaker as to how the class approval was being applied and the nominated undertaker could not justify how its actions were meeting the requirements of the class approval reasonably, planning enforcement action could be taken. The onus would be on the nominated undertaker to demonstrate that it is correctly and reasonably complying with the class approval.
- 24 A number of respondents considered that the draft class approval was not easy to read and that having to refer to other documents could lead to misinterpretation, whereas a decision notice under the TCPA would have to define the required measures within it. Inherently, control measures for such construction activities need to refer to other standards. As set out above, it is an established practice to require compliance with a code of construction practice as a planning condition attached to a TCPA planning permission or Transport and Works Act Order and there is no evidence to suggest that this leads to misinterpretation.

¹ <https://www.gov.uk/guidance/ensuring-effective-enforcement>

Design and the class approval

- 25 A number of respondents considered that it was difficult to take a view on the generic approach set out in the draft class approval until detailed design has been undertaken. The class approval is for general construction arrangements and the measures identified will be applied along the HS2 Phase One route. Detailed design of construction works is not necessary to understand the generic measures proposed in the class approval as it is these measures that will control how contractors undertake construction activities irrespective of the design of the work that is being undertaken. At a similar stage on previous projects, such as Crossrail and CTRL, equivalent text was extracted from their respective codes of construction practice, which was approved by the qualifying authorities. The approval of the general measures to manage construction arrangements was not predicated on detailed design. With regard to the approval of the design of permanent above ground works, the need for design approval is subject to the approval of the relevant planning authority under paragraphs 2 and 3 of Schedule 17 to the Act. The class approval only covers those general construction arrangements identified in paragraph 5(1) of Schedule 17 to the Act.
- 26 One respondent suggested that it should be at a planning authority's discretion to determine whether the class approval should apply. Paragraph 5 of Schedule 17 to the Act provides for the Secretary of State to make a class approval for those matters identified. The Act does not provide for qualifying authorities to apply the class approval at their discretion. Paragraphs 5(6) and 5(7) of Schedule 17 to the Act state that the nominated undertaker may, in the case of any particular arrangements, request approval of an individual submission for a construction arrangement identified under paragraph 4 of Schedule 17. If approved, arrangements would be subject to that approval rather than the class approval.

CoCP and Local Environmental Management Plans

- 27 A number of respondents had concerns about the adequacy of the CoCP and that the implementation of it is 'self-enforcing'. Codes of Construction Practice are a tried and tested tool for managing the impacts of major projects on the environment and local communities. Since their introduction for the Jubilee Line Extension in the 1990s, they have been used successfully on a wide range of major infrastructure schemes. In accordance with the Act, the Secretary of State is bound by the commitments set out in the EMRs, of which the CoCP forms a part. The provisions of the CoCP will be written into all HS2 Phase One construction contracts. Measures will be put in place by the nominated undertaker to monitor the effectiveness of the CoCP and establish a process for handling complaints. Further details can be found in *Information Paper D3: Code of Construction Practice*². The content of the CoCP was the subject of extensive discussions with planning authorities and other stakeholders throughout the parliamentary process associated with the Act.
- 28 One respondent suggested that the consultation on the draft class approval was premature. The content of the class approval is based on the text of the CoCP. The last opportunity for Parliament to amend the CoCP was during the House of Lords Select Committee stage of the parliamentary process. The Select Committee

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/593093/D03_-_Code_of_Construction_Practice_v1.6.pdf

published its report on 15th December 2016 and did not recommend any changes to the CoCP. The consultation on the draft class approval was launched on 20th December 2016. Therefore, the text of the draft class approval was able to reflect all amendments made to the CoCP during the parliamentary process and as such the consultation is not considered to have been premature.

- 29 A number of respondents questioned the relationship between the class approval and Local Environmental Management Plans (“LEMPs”). To clarify, LEMPs describe how the general requirements of the CoCP are relevant to each local authority area. The class approval is comprised of relevant control measures from the CoCP for those matters identified in paragraph 5 of Schedule 17 to the Act. Although both LEMPs and the class approval use and refer to text in the CoCP, they are in place for different purposes. LEMPs articulate the CoCP measures locally, whilst the class approval brings the relevant control measures within the planning process and enables enforcement action to be taken under the TCPA.

Costs

- 30 One respondent requested that enforcement costs be considered as a new burden under the funding arrangements in place for HS2 Phase One activities. *Information Paper C13: Local authority funding and new burdens arising from HS2*³ outlines the position of HS2 Ltd and the Department for Transport on funding for local authorities for carrying out HS2-related activities. The class approval will reduce the overall burden on local authorities by removing the need for planning authorities to consider and approve significant numbers of identical Schedule 17 requests for approval. Enforcement action would be progressed under TCPA legislation and planning authorities do not receive enforcement costs from developers under existing planning and enforcement mechanisms.

Conclusion

- 31 The Secretary of State has reviewed the evidence provided and concluded that is appropriate to make a class approval under Schedule 17 to the Act.

Question 2

Are there specific areas or specific descriptions of works for which the class approval should be made? If so, what are these, and why would the control measures be different to those general measures in the draft class approval?

- 32 There were 11 responses to this question, all from planning authorities. Of these, one planning authority responded that there were no specific areas or specific descriptions of works for which the class approval should be made.
- 33 One respondent stated that neither question 2 nor question 3 could be answered until the control measures are made more robust and defined with regard to enforcement powers.
- 34 None of the respondents answered the second part of the question as to what control

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/593549/C13_-_Local_Authority_Funding_and_New_Burdens_v1.4.pdf

measures would be different for specific areas or descriptions of works.

Government response

- 35 A number of responses to question 2 sought the exclusion of the Chilterns AONB and the Colne Valley Regional Park from the class approval. This is addressed later in this document in the Government's response to question 3.
- 36 One respondent highlighted that the Secretary of State gave a commitment to Aylesbury Vale District Council during the Act's passage through Parliament requiring that an application be made under paragraph 4 of Schedule 17 for the approval of the lighting for the Calvert railhead. Such an application will be made in accordance with the commitment given and, as per paragraph 5(7) of Schedule 17, any approval given will supersede the class approval. The making of a class approval does not negate the assurance.
- 37 A number of respondents suggested that the class approval should define the term 'sensitive receptor'. A sensitive receptor will differ site by site and by not defining the term in the class approval for general construction arrangements, the control measures can be applied and enforced as necessary. To define 'sensitive receptor' in the class approval would unnecessarily restrict what could be considered 'sensitive'. If a planning authority is concerned that a sensitive receptor is not being considered in particular construction arrangements, they should raise this with the nominated undertaker and it is for the nominated undertaker to justify that a receptor is not sensitive. If a qualifying authority is not satisfied with the justification they could commence enforcement action.
- 38 A number of respondents suggested that the class approval should not apply to works in or near to sensitive receptors. These were listed as works within conservation areas, close to listed buildings, residential properties, student accommodation, schools and ecological receptors. However, responses did not suggest how the controls would be different for areas listed as sensitive receptors. Excluding sensitive areas from the class approval would only be required if there were further control measures outside the class approval that would be necessary. In the absence of further necessary control measures, it does not appear that there would be any benefit from excluding such areas from the class approval.
- 39 One respondent suggested that the class approval should be altered as it requires that the qualifying authority defines what is 'reasonably practicable'. It is established practice for environmental controls imposed through the planning system to include phrases such as 'reasonably practicable'. Examples given earlier in this document include codes of construction practice that were made requirements through conditions on Transport and Works Act Orders and planning permissions and which are enforceable through the TCPA. Where the planning authority believes the test of 'reasonably practicable' is not being met, it can raise this with the nominated undertaker and if not satisfied enforcement action could be taken. The onus would be on the nominated undertaker to demonstrate that it is meeting the test of reasonable practicability. This arrangement does not, as suggested, undermine the class approval.
- 40 One respondent suggested that the class approval should not apply in areas in flood zone 3 or critical drainage areas. However, the response did not say why it should not apply in such locations or what controls would be different. The measures set out

in the class approval are considered to work equally well in flood zone 3 areas and critical drainage areas as they are generic measures designed to apply to all locations. Also, the controls in Schedule 17 should be looked at in the context of the other controls on the works authorised by the Act. The relevant control on the effect that HS2 Phase One could have on flood risk and water during construction is Part 5 of Schedule 33 to the Act, relating to work that may affect level, flow or quality of a waterbody, or works which may affect a flood plain. As Schedule 33 puts in place statutory controls to address issues around flood risk, it is not necessary to duplicate the controls in the class approval. The implementation of this part of Schedule 33 has been subject to discussion with the Environment Agency and lead local flood authorities at the Flood Risk and Water Subgroup of the Independent Planning Forum for HS2 ("the Planning Forum"). These discussions have informed the *HS2 Water Resources and Flood Risk Consents and Approvals Strategy* which has been shared with the Environment Agency and lead local flood authorities. The approach that will apply to the consenting of works near watercourses is set out in paragraph 6 of that document.

- 41 One respondent suggested that any storage of earth, spoil or material within 20m of a watercourse or water body should be submitted to the planning authority for approval and that the relevant statutory consultees must be consulted. The response did not give a reason for this, but it is assumed to be due to concern about flood risk. For the reason set out above, this is not necessary as the controls in Part 5 of Schedule 33 are in place.
- 42 Suggestions were made that the mitigation measures contained in the class approval should be reviewed after a period of three years, or should not apply after a period of time, for example, five years, given the long duration of the HS2 Phase One works. While the duration of the construction of HS2 Phase One is longer than most projects, this does not alter the efficacy of the measures in the class approval. Various Crossrail worksites have been operational since shortly after Royal Assent of the Crossrail Act in 2008 and the same control measures have been applied throughout the construction programme (due to be completed in 2018). These measures have been shown to be effective throughout enabling works, demolition, main civil engineering works and systems fit-out. As the measures in the class approval are best practice and were drafted to cover all phases of the construction programme, the class approval already addresses the long duration of the works. Related to this is the potential for best practice to develop during the construction programme. The EMRs *General Principles*⁴ allows for its annexes, such as the CoCP to be updated. If the relevant controls were updated in the CoCP, the Secretary of State could vary the class approval to align it with best practice under paragraph 5(8) of Schedule 17 to the Act.
- 43 One respondent requested that consideration be given to the potential differences between rural and urban settings. The response did not state how rural and urban areas might have different requirements in relation to the matters subject to the class approval or propose any different controls. The controls in the class approval are based on the CoCP, which contains controls appropriate for all HS2 Phase One works and all locations. This approach has been demonstrated to work on previous projects, such as Crossrail, where measures have been applied effectively in central London and in rural locations. The same was true of the generic measures applied to the construction of CTRL.

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/593591/General_principles.pdf

Conclusion

- 44 The Secretary of State has reviewed the evidence provided and concluded that there are no specific areas or specific descriptions of works for which the class approval should be made.

Question 3

Are there any specific locations or works that should not be subject to the class approval? If so, what in the nature of the work or location makes a class approval inappropriate and what control measures would be different?

- 45 11 planning authorities and two national conservation charities responded to this question. One planning authority responded that there were no specific locations or works that should not be subject to the class approval. 13 respondents identified specific locations or works that should not be subject to the class approval.
- 46 None of the respondents answered the second part of the question as to what control measures would be different at the identified locations.

Government response

- 47 The responses that stated that the class approval should not apply in specific areas generally did so on the basis that the areas in question are sensitive. However, responses did not suggest how the controls would be different for areas listed as sensitive. Excluding sensitive areas from the class approval would only be required if there were further control measures outside the class approval that would be necessary. In the absence of further necessary control measures, it does not appear that there would be any benefit from excluding such areas from the class approval.
- 48 It was suggested that, in the Chilterns AONB, the class approval should follow the Environmental Guidelines for Roads in the AONB, as per the assurance offered to Buckinghamshire County Council ("BCC") in January 2016. The Environmental Guidelines for Roads in the AONB relates to the design of permanent roads and related matters. They do not address the matters subject to the class approval and therefore it is not possible to include this requirement within the class approval. The assurance to BCC remains and the nominated undertaker is required *'to have regard to the principles contained within the "Environmental Guidelines for the Management of Highways in the Chiltern AONB (published March 2009)" within HS2 Technical Standard (Roads).'*
- 49 Particular concerns were raised about dust suppression and road mud control measures in Great Missenden in the Chilterns AONB. No suggestions were made as to what additional control measures would be appropriate for this area. As the class approval contains best practice measures for the control of both dust and road mud and no further control measures were proposed, it is not clear what additional benefit would be created by removing this area from the class approval.
- 50 Other locations were suggested for exclusion from the class approval including Wormleighton maintenance loop, Burton Green village tunnel, ancient woodland, Hartwell House and Kingsbury railhead. As above, the control measures in the class

approval are designed to work in all locations. As no suggestions were made as to how the controls could be different in these areas, the benefit of excluding such areas from the class approval is not clear.

- 51 One respondent suggested that the class approval should not apply to storage sites in conservation areas. No suggestion was made as to what additional controls beyond those set out in the class approval would be required for storage sites in conservation areas. Nor was it explained why the control measures in the class approval were not appropriate for a conservation area. In the absence of this evidence it is not clear what benefit would be achieved by excluding these sites from the class approval. The class approval contains measures that will ensure storage is appropriate for conservation areas. There is an obligation in paragraph 3.1 of the class approval to minimise environmental effects and in paragraph 3.2 to keep stockpiles and mounds away from historic features, which will ensure storage sites in conservation areas are laid out with regard to features of historic value.
- 52 One respondent suggested that the class approval for artificial lighting should not apply to night time working in the London Borough of Camden, but did not suggest why the class approval controls are inadequate or how controls would differ if the class approval did not apply. As the controls in the class approval are best practice and are designed to manage night time working, no change has been made to the class approval in this regard.
- 53 One respondent suggested that, as an Air Quality Management Area (“AQMA”) applies to their area, dust suppression proposals should be submitted to the qualifying authority for approval in order to ensure that they contain appropriate measures and do not add to an already polluted environment. No indication was given as to how or what controls would be different in an AQMA. The dust control measures in the class approval reflect the controls set out in the CoCP and are based on industry best practice with similar measures being used on the Olympics and Thames Tideway project. The dust control measures were developed through the parliamentary process, which included negotiations with the lead local authority for air quality which is also an AQMA.
- 54 One respondent suggested that as the LEMP will include details of any worksites which lie within or adjacent to any sensitive areas for air quality or other sensitive receptors, this should be referenced in the class approval. LEMPs will expand upon the local delivery of the controls in the CoCP. Relevant controls in the CoCP are replicated in the class approval. As such, for relevant issues, LEMPs will not have additional controls beyond those in the class approval. LEMPs and the class approval both have important but separate roles in the management of HS2 Phase One works, however there is no reason why LEMPs should be referenced in the class approval.
- 55 One respondent suggested that as hoardings taller than 2.4 metres in height can have effects on local amenity there should be a greater degree of local control over them. Where taller hoardings are provided for the purpose of acoustic mitigation, they will be included as mitigation in applications for consent under Section 61 of the Control of Pollution Act 1974. It will be through this process that authorities will be able to input into the location of taller hoardings. However, there may be instances where the nominated undertaker wishes to install hoardings taller than 2.4 metres for other reasons. To address such instances, the following condition has been attached

to the approval of works screening at Section 4 of the class approval:

Prior to the installation of hoardings taller than 2.4 metres for purposes other than noise mitigation, the nominated undertaker will engage with the relevant planning authority on the location of these hoardings and have reasonable regard to the authority's comments.

- 56 One respondent suggested that where there is an undertaking and/or an assurance associated with a construction matter ancillary to development, the proposals should be taken outside the class approval and submitted to the planning authority for approval. Other than the assurance given to Aylesbury Vale District Council regarding lighting at the Calvert railhead, no undertakings or assurances are associated with the approval of matters ancillary to development. Undertakings and assurances are a crucial part of controlling the effects of constructing HS2 Phase One and the nominated undertaker will ensure that they are complied with. However, given the general matters that are subject to the class approval there is no reason for it not to apply in areas where there are assurances on construction related matters. The relevant engagement between the nominated undertaker and planning authority on matters subject to an assurance and/or undertaking will not be impeded by the class approval. To remove areas subject to undertakings and assurances would effectively remove the majority of the route from the class approval to no clear benefit. It would not assist with the implementation of assurances and would be unnecessary as the measures in the class approval remain appropriate.
- 57 One respondent suggested that the class approval should not apply to works screening in their regeneration area because the class approval does not offer sufficient consideration of local circumstances to ensure the interests of local residents and businesses are protected. The respondent also wishes to have approval of works screening so that they can coordinate screening with other works in the area and believes that pre-application discussions could assist with this process. Paragraph 4.3 of the class approval has the requirement that the design of works screening will have regard for the character of its surroundings. This will include the use of artwork and vegetation where appropriate. This provision is sufficient to ensure that hoarding will be appropriate to the specific regeneration area. While Section 4 of the class approval will be applied to ensure sites are appropriately screened, it is not intended as a process by which HS2 Phase One worksites are integrated with other projects in the area. Discussions on construction matters, in accordance with the CoCP and referred to earlier in this document, could include works screening.
- 58 One respondent suggested that the class approval should give consideration to the provision of safe routes for non-vehicle users affected by lorry routes. While this is recognised as an important issue, the class approval does not relate to lorry routes and so is not an appropriate place to address this issue. Section 14 of the CoCP sets out generic route wide, local area and site specific measures that will be applied to manage traffic and transport.
- 59 One respondent suggested that the text on artificial lighting, stockpiles, mounds, hoardings and fencing should take account of the need to avoid adverse impacts on ecological receptors. Control measures set out at paragraphs 3.2, 4.2 and 5.4 of the class approval take account of ecological receptors to mitigate adverse effects during construction.

Conclusion

- 60 The Secretary of State has reviewed the evidence provided and concluded that there are no specific locations or works that should not be subject to the class approval and that it is appropriate to attach a condition to *Section 4: Works screening* of the class approval.

Question 4

Do you agree that the measures set out in the draft class approval, extracted from the final Code of Construction Practice are appropriate? If not, what specific amendments do you think are needed and why are they are needed?

- 61 13 planning authorities and two national conservation charities responded to this question.

Government response

General

- 62 A number of respondents suggested that terms used in the draft class approval, such as “in the vicinity of”, “kept away”, “reasonably practicable” and “unnecessarily intrude”, are too imprecise to be enforceable. However, such terms are included in enforceable codes of construction practice, for example, those used for the A14 Cambridge to Huntingdon Improvement Scheme and by Westminster City Council. Flexibility in wording is an established and routine part of such documents to ensure that the correct measures are applied as appropriate and the Government is unaware of any evidence that there have been issues with the enforceability of these other codes of construction practice.
- 63 One respondent suggested that the draft class approval text does not meet the tests of the National Planning Policy Framework (“NPPF”) Planning Practice Guidance *Use of Planning Conditions*⁵, as it was their view that the wording of the draft class approval is neither enforceable nor precise. The class approval itself is not a condition as described in the NPPF, as Schedule 17 to the Act sets out the conditions imposed on the deemed planning permission granted by the Act. The nominated undertaker, in complying with the class approval made by the Secretary of State, will meet the requirements of the conditions in paragraphs 4 and 5 of Schedule 17 to the Act. The conditions that have been attached to the class approval are in accordance with the NPPF Planning Practice Guidance *Use of Planning Conditions* as they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
- 64 One respondent requested that, as comments provided by planning authorities on the draft CoCP were relevant to the class approval, the responses should be provided to the Independent Planning Forum for HS2. Planning authorities provided comments on the draft CoCP during its preparation prior to the deposit of the High Speed Rail (London-West Midlands) Bill and through the parliamentary process associated with the Bill. As part of this process, HS2 Ltd responded to all comments

⁵ <https://www.gov.uk/guidance/use-of-planning-conditions>

made and no petitioners raised any outstanding issues during the House of Lords Select Committee hearings. The final CoCP was published at Royal Assent of the Act.

Handling of reusable spoil or topsoil

- 65 A number of respondents suggested that measures should be in place to identify and deal with contaminated topsoil, as appropriate. Section 11 of the CoCP (*Land Quality*), addresses contamination and sets out measures required to assess and control land contamination. These measures include undertaking ground investigations, consulting with the relevant local authorities and the Environment Agency, and the development of a remediation strategy. The class approval has been amended to address this point and paragraph 2.3 of *Section 2: Handling of reusable spoil or topsoil* now reads (new text in bold):

*2.3 The requirements stated in Section 6, 7, **11**, and 15 of the CoCP relating to the handling and storage of material, and Section 16 of the CoCP in relation to the control of run-off, insofar as they are applicable to protecting soils **and managing contamination**, will be met.*

- 66 One respondent raised a concern that the Act makes no provision for the class approval to apply to the actual storage of material and therefore another approval mechanism is necessary. To clarify, paragraph 5(1) of Schedule 17 to the Act allows for a class approval to apply to storage sites for construction materials, spoil or topsoil. Section 3 of the class approval sets out the control measures to be applied.

Storage sites for construction materials, spoil and topsoil

- 67 A number of respondents suggested that planning authorities should be notified of the proposed location of soil storage mounds. The control measures set out in Section 3 of the class approval will manage storage sites for construction materials, spoil and topsoil. The layout of a construction site will change regularly depending on the works and construction programme. It would not be practical to notify planning authorities of the location of every stockpile and mound, as these will change regularly within any particular construction site and the control measures in Section 3 of the class approval provide for this. However, where a stockpile or mound will be in place for longer than 12 months, a requirement to engage with the relevant planning authority on its location would be appropriate. A condition is attached to the class approval to this effect:

Prior to the creation of stockpiles or mounds for the storage of spoil and topsoil that are planned to be in situ for longer than 12 months, the nominated undertaker will engage with the relevant planning authority on the location of the stockpiles or mounds and have reasonable regard to its comments.

- 68 One respondent requested clarification as to whether permanent earthworks would require approval under Schedule 17 to the Act. To clarify, all permanent earthworks will require approval under Schedule 17, either under paragraph 3 or paragraph 7 depending on whether they are an 'other construction work' under paragraph 3(2) of Schedule 17, or for the purposes of waste and spoil disposal or the excavation of bulk material from borrow pits under paragraph 7(2) of Schedule 17. The class approval will apply to those works in so far as they are a construction activity and an

approval under paragraph 3 of Schedule 17 will be required if, following construction, the material, spoil or topsoil will be used to form part of the permanent design.

- 69 One respondent sought clarification regarding the end use of land on material previously stored and managed by the nominated undertaker, and the processes for securing necessary remedies if environmental mitigation does not establish due to the degradation of subsoil during storage. Permanent earthworks will be approved under paragraph 3 of Schedule 17 to the Act. Where earthworks are provided to mitigate a scheduled work, as identified in Schedule 1 to the Act, or depots, having that mitigation in place will be a requirement of the mitigation scheme approved under paragraph 9 of Schedule 17 to the Act.
- 70 A number of respondents suggested there should be locally specific measures to ensure that, where reasonably practicable, the storage of construction materials is kept away from sensitive receptors such as residential properties, schools and places of worship. Paragraph 3.2 of the class approval is a measure to ensure that stockpiles are kept away from sensitive receptors. To ensure the storage of construction materials does not intrude on sensitive receptors such as residential properties, schools and places of worship, two conditions have been attached to Section 3 of the class approval:

Storage areas will be located, where practicable, to avoid affecting the amenity of adjoining residential properties, schools and places of worship.

The height of material stores will, where practicable, be limited to avoid affecting the amenity of adjoining residential properties, schools and places of worship.

- 71 One respondent replied that they would expect the County Historic Environment Record data to be consulted and site locations to be supplied to County Archaeological Officers for comment and mitigation where appropriate, as per the CoCP, the *High Speed Rail (London-West Midlands) Heritage Memorandum*⁶ (“the Heritage Memorandum”) and *Information Paper E8: Archaeology*⁷. The nominated undertaker is bound to comply with the EMRs, which include the CoCP and Heritage Memorandum. The Heritage Memorandum includes detail on engagement and consultation between the nominated undertaker, Historic England and the relevant local authorities. The class approval does not negate these existing controls and commitments.
- 72 One respondent suggested that storage sites in the floodplain and sites over one hectare should require approval from the planning authority. As Schedule 33 to the Act puts in place statutory controls to address issues around flood risk, it is not necessary to duplicate the controls in the class approval. The implementation of this part of the Schedule has been subject to discussion with the Environment Agency and lead local flood authorities at the Flood Risk and Water Subgroup of the Independent Planning Forum for HS2. These discussions have informed the *HS2 Water Resources and Flood Risk Consents and Approvals Strategy* which has been shared with the Environment Agency and lead local flood authorities. The approach that will apply to the consenting of storage in the floodplain is set out in paragraph 6 of the *HS2 Water Resources and Flood Risk Consents and Approvals Strategy*.

⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/593595/Heritage_Memorandum.pdf

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/593561/E08_-_Archaeology_v1.5.pdf

Works screening

- 73 One respondent suggested that works screening should be bespoke to their regeneration area. Paragraph 4.3 of the class approval states that *'the design of hoardings around construction activities shall ensure they are fit for purpose and include a consideration of the character of the surrounding landscape (e.g. use of open mesh fencing where possible and appropriate in rural areas, solid hoarding in rural areas, and use of artwork where appropriate, or use of vegetation on hoardings)'*. This measure will ensure that works screening will take account of local circumstances.
- 74 One respondent suggested that there should be a reference in Section 4 of the class approval to the need to accommodate meanwhile uses and other activities through advertising and enhanced way finding. The class approval sets out generic measures to control construction arrangements in accordance with paragraph 5 of Schedule 17 to the Act. The accommodation of meanwhile uses during construction is not a construction arrangement identified in either paragraph 4 or 5 of Schedule 17 to the Act. Paragraph 4.2 of the class approval provides for works screening to accommodate signage to indicate re-routed pedestrian/cycle paths, information on routes to alternative community facilities, and notices confirming that businesses whose access or view may be affected by construction works remain open with directions for how to access them.
- 75 One respondent suggested that the need to retain cycle lanes of adequate width should be included in Section 4 of the class approval. A condition has been attached to Section 4 to address this:

Where a cycle path is maintained alongside a worksite, site screening will, where reasonably practicable, be located to provide adequate width for the cycle path.

- 76 One respondent raised a concern with the class approval for works screening and the placing of hoardings on the highway. The detailed suggestions are addressed as follows:

- *Clear sightlines will be maintained around hoardings.* Paragraph 4.5 of the class approval provides for clear sightlines to be maintained around hoardings and fencing.
- *The hoarding shall not impede visibility for road users.* Paragraph 4.5 of the class approval has been amended to address this:

4.5 Clear sight lines will be maintained around hoardings and fencing with no hidden corners in order to avoid, where reasonably practicable, opportunities for anti-social behaviour and crime and to ensure safety of ~~vehicles~~ road users.

- *Hoarding should leave adequate width to facilitate two-way vehicle movements.* While this is desirable it may not always be possible, which is when appropriate traffic management measures would be put in place in accordance with the CoCP and Routewide Traffic Management Plan.
- *Hoarding should leave footways of adequate width to facilitate pedestrian*

flows to DDA standard, with signs provided to facilitate safe access around the site boundary. As DDA standards are general standards and paragraph 7.5 of the Routewide Traffic Management Plan sets out design requirements for temporary traffic management, paragraph 4.5 of the class approval has not been amended. The generic control measure in the class approval to provide for adequate footway widths is appropriate.

- 77 One respondent highlighted that Schedule 4 of the Act covers interference with the highway and requires discussions with/approval from the highway authority where works interfere with the highway. However, it is paragraph 12 of Schedule 33 to the Act that requires consent for the location of hoardings on the highway. This consent is not required for works screening that has been approved under Schedule 17 to the Act.
- 78 One respondent noted that they would welcome early discussions with contractors on how they intend to position hoardings, especially in relation to the impact that hoardings can have on the highway and community safety. The Routewide Traffic Management Plan, prepared in accordance with the CoCP, sets out how the project will engage with local highway authorities through Local Traffic Liaison Group meetings and, additionally, sets out a number of requirements related to the design and maintenance of hoardings which will form part of the contractual requirements. To ensure works screening is appropriately located on the highway, the following condition has been attached to the class approval at Section 4:

Prior to the installation of hoardings on the highway, the nominated undertaker will engage with the relevant highway authority on the location of the hoarding and have reasonable regard to its comments.

- 79 One respondent questioned why the measures to provide signage to indicate re-routed pedestrian/cycle paths and information on routes to alternative community facilities are included in the class approval. Generic measures to provide signage to indicate rerouted pedestrian/cycle paths and information on routes to alternative community facilities are included in the class approval as their provision is best practice in managing construction sites and the generic measures will ensure that works screening accommodates appropriate signage and information, as required for each construction site. However, the Act does not disapply the Town and Country Planning (Control of Advertisements) Regulations and so, should any signage on works screening be of a type that would normally require approval under these regulations, the class approval would not negate this.

Artificial lighting

- 80 A number of respondents questioned how guidance in Section 5 of the class approval will be applied, what methodology will be used and whether an approved type of lighting will be used. Contractors managing the construction arrangements will apply the guidance and standards identified in Section 5 of the class approval as necessary, depending on the works being undertaken, their programme and the location of the works. The type of lighting used will also be dependent on these factors.
- 81 One respondent highlighted that the Institution of Lighting Engineers has changed its name to the Institution of Lighting Professionals. The class approval has been

amended accordingly. In addition, the guidance notes referred to in paragraph 5.3 of the class approval has been updated to refer to the Institution of Lighting Professionals “*guidance notes for the reduction of obtrusive light*”.

- 82 One respondent suggested that the class approval should refer to the construction lighting section of the Bat Conservation Trust guidance on ‘Artificial Lighting and Wildlife’. As the content of the Bat Conservation Trust’s interim guidance (June 2014) does not provide any measures beyond those that are included in Section 5 of the class approval, reference to the Bat Conservation Trust’s guidance has not been included in the class approval.
- 83 One respondent suggested that lighting should be designed, positioned and directed so as not to impact negatively on highway safety. Paragraph 5.4 of the class approval provides for lighting to be designed, positioned and directed so as not to interfere with passing motorists.

Dust suppression

- 84 One respondent suggested that contaminated topsoil may require different measures than those identified in Section 6 of the class approval, for example a different method of transport. The measures for the identification, management and monitoring of land contamination are set out in Section 11 of the CoCP. The measures identified in Section 6 of the class approval area are appropriate for the both uncontaminated and contaminated topsoil. For example, paragraph 6.6 of the class approval includes measures such as covering materials, deliveries or loads entering and leaving the construction site for the purposes of preventing materials and dust spillage, and ensuring that materials stockpiles likely to generate dust will be enclosed or securely sheeted, kept watered or stabilised as appropriate.
- 85 One respondent suggested that consideration should be given to wider dust suppression beyond transportation on site and loads leaving the site. Section 6 of the class approval includes general provisions which require Best Practicable Means to be applied and measures to suppress dust associated with a range of construction activities including site management, construction plants, vehicles and equipment, transportation, storage and handling materials, haul routes, demolition activities, excavations and earthworks activities, grouting activities and conveying, processing, crushing, cutting and grinding activities. The measures in the class approval are a comprehensive range of controls, applying best practice that reflect those controls agreed through the parliamentary process associated with the Act.
- 86 One respondent highlighted that chalk dust is a particular concern in Buckinghamshire. The measures set out in Section 6 of the class approval are general measures which will be applied as appropriate and the management of construction arrangements in an area susceptible to chalk dust and measures to control and limit dust during construction works will be in accordance with Best Practicable Means, as stated in paragraph 6.2 of the class approval. This means that measures which are reasonably practicable, having regard to (amongst other things) local conditions and circumstances, the current state of technical knowledge and financial implications, will be applied.
- 87 One respondent was concerned that there is a lack of detail on how haul routes will be kept clear of mud. To clarify, haul roads will be provided for use by construction

vehicles to access the works, and as such road mud control measures for haul roads are not included in the class approval or CoCP. Road mud control measures are included in Section 7 of the class approval, which are measures to be taken on land within Act limits to prevent or reduce the carrying of mud on to any public highway as a result of carrying out the development. Paragraph 6.7 of the class approval sets out measures to suppress dust during the construction and maintenance of haul roads. These measures include that the surfacing and maintenance of haul roads will be designed to control dust emission as far as reasonably practicable, taking into account the contractors intended level of traffic movements, and that they will be inspected regularly and promptly repaired.

- 88 One respondent raised a concern with the processing of results of the monitoring measures referred to in paragraph 6.2 of the class approval. By including this measure in the class approval, planning authorities can take enforcement action if dust and air pollution monitoring measures are not employed during construction. To address the respondent's concern, paragraphs 4.3.3 – 4.3.12 of the CoCP set out monitoring requirements which include:

The nominated undertaker will, for noise, dust and air quality data, provide to the relevant local authority monthly reports that include a summary of the construction activities occurring, any complaints received, the data recorded over the monitoring period broken down into appropriate time periods, any periods in exceedance of the agreed trigger levels and the results of any investigations and identified source; and, where the works have been found to be the source, any action taken to immediately resolve the issue and to prevent a recurrence.

The nominated undertaker will, for noise, dust and air quality data, seek to release data relating to complaints received by the relevant local authority within 48 hours of the request being made by the relevant local authority. Where the nominated undertaker's contractors are monitoring noise, dust and air quality, the full data set will be made available, following the publication of the monthly report referred to in 4.3.5, to other stakeholders, including members of the community, upon request.

The nominated undertaker will, for noise, dust and air quality data following the exceedance of an agreed trigger level, notify the relevant local authority as soon as reasonably practicable after it has been informed by its contractors.

Road mud control measures

- 89 One respondent questioned which tier of local government would be responsible for road mud control measures. The enforcing authority for road mud control measures would be the relevant qualifying authority for approvals under paragraph 4 of Schedule 17 to the Act. This would be the district or borough council in two tier areas or the council in single tier areas.
- 90 One respondent questioned who is responsible for checking the cleanliness of roads and how often this will be undertaken. The nominated undertaker and its contractors are required to ensure the correct mud control measures are in place.
- 91 One respondent questioned whether signs will be in place to warn of the potential for mud on the road. The purpose of the control measures in the CoCP, and their replication in the class approval, is to ensure that measures are in place to prevent or

reduce the carrying of mud onto any public highway. Therefore, it is not expected that there would be a need for signage in relation to mud on the road. The Routewide Traffic Management Plan sets out the circumstances where signage will be provided in relation to construction traffic.

- 92 One respondent suggested examples in Buckinghamshire (which have been discussed at the HS2 Central Buckinghamshire Traffic Liaison Group) which would require locally specific measures. The locally specific measures suggested were a requirement for wheel washing and/or road sweeping, a daily pictorial log, and a HS2 field engineer to assess conditions on site and provide feedback. The nominated undertaker and its contractors are bound by the measures in the CoCP and class approval, including the measures set out in Section 7 of the class approval. Although these measures are generic and will be applied along the HS2 Phase One route, they encompass the locally specific points raised in so far as all reasonably practicable measures will be put in place to avoid/limit and mitigate the deposition of mud and other debris on the highway. These measures include wheel washing and road sweeping (paragraph 7.1 of the class approval) and could include other measures if that is what is required to ensure that all reasonably practicable measures are in place to avoid/limit and mitigate the deposition of mud and other debris on the highway. If all reasonably practicable measures are not put in place, the planning authority could initiate enforcement action.
- 93 One respondent suggested that certain measures in paragraph 7.1 of the class approval could be linked to approved construction lorry routes. Not all lorry routes require approval (lorry route approval is only required for those routes where there are more than 24 lorry movements to/from a construction site) and so this proposed change would have the unintended effect of making such measures not apply to worksites which do not require lorry route approval.
- 94 One respondent suggested specific amendments to paragraph 7.1 and 7.2 of the class approval. Each point is addressed below:
- *Appropriate wheel cleaning measures will be employed **immediately prior to vehicles entering the live highway network** to prevent the transfer and accumulation of mud and other granular deposits **from inside the site out onto the public highway**.* This change would unduly restrict the organisation and set up of worksites. For example, if there was a tarmac road leading to the site entrance it would be preferable to put the wheel washing at the start of the tarmac road, rather than at the site entrance. The second suggestion does not change the measure. As this measure is to prevent the transfer and accumulation of mud on the public highway, it is not necessary to state that this would be from inside the site.
 - *For works which are being undertaken on the **public** highway which are not protected by secure temporary type fencing or hoarding, then at the completion of each day's works, the site is to be left in a tidy condition.* The class approval has been amended accordingly.
- 95 One respondent raised a concern that there is no mention of water run-off from the works to water bodies in the class approval. Paragraph 7.1 of the class approval includes measures to avoid water run-off onto the adjacent highway, as Section 7 of the class approval addresses road mud control measures in accordance with

paragraph 5 of Schedule 17 to the Act. Although controlling run off to water bodies is not a matter under paragraph 5 of Schedule 17 to the Act, Section 16 of the CoCP (*Water resources and flood risk*) requires the contractor to contain and manage surface water run-off from the construction site, in order to prevent deterioration of the water environment. Section 16 lists a number of measures that could be implemented, such as provision of site drainage facilities including settlement or detention basins, or other appropriate measures such as the use of bunds of non-erodible material or silt and sediment fences adjacent to watercourses. In addition, paragraphs 51 and 52 of Part 5 of Schedule 33 to the Act covers the definition of a Category 1 work that requires approval from the Environment Agency.

- 96 One respondent suggested that Section 7 of the class approval should include measures to provide for 50m of hardstanding at all accesses to publically maintained highways and to require sufficient hardstanding for operative vehicles. As Section 7 includes a control measure to have vehicle wash down points to clean vehicle wheels at each exit point onto the highway, this provides a stronger mechanism than the first suggestion to ensure that mud is not transferred to the public highway. The second suggestion would unnecessarily require hardstanding in circumstances where it may not be appropriate. The control measures in Section 7 of the class approval are to ensure that road mud is not transferred to the public highway.

Conclusion

- 97 The Secretary of State has reviewed the evidence provided and concluded that it is appropriate to:
- Make four specific amendments to the class approval at *Section 2: Handling of re-usable spoil and topsoil*, *Section 4: Works Screening*, *Section 5: Artificial Lighting*, and *Section 7: Road mud control measures*; and
 - Attach three conditions to the class approval at *Section 3: Storage sites for construction materials, spoil or topsoil* and two conditions to the class approval at *Section 4: Works screening*.

Question 5

Do you agree that no conditions need to be applied to the class approval? If not, what conditions do you think are needed and why are they needed?

- 98 There were 14 responses to this question. Of these, two respondents replied that no conditions were needed. 11 planning authorities did not agree and their proposed conditions are summarised below. One national conservation charity replied that planning authorities should retain the right to add conditions where appropriate.

Government Response

General

- 99 A number of respondents suggested that the wording of the draft class approval is too vague to be enforceable and that conditions should be included to provide clarity for terms such as “kept away”, and “in the vicinity”. This point was also raised by

respondents in their answers to questions 1, 3 and 4 and the Government has responded to it in its response to these questions. For the reasons outlined earlier in this document, it is not necessary to attach conditions to the class approval in this regard.

- 100 A number of respondents considered that it was difficult to respond to this question as the class approval is based on the CoCP which has already been commented on. As the preparation of the CoCP involved extensive engagement, the control measures in the class approval have also been subject to extensive engagement. However, the consultation on the draft class approval was open to consultees to respond on the content of the class approval within the scope of the matters and grounds in Schedule 17.
- 101 One respondent suggested that conditions should be attached that require the submission of location plans for construction arrangements. Experience from previous construction projects has demonstrated that the submission of location plans for construction arrangements would be impracticable due to the way in which construction takes place, with the layout of sites changing regularly depending on the construction programme and activity at any given time. The text based approach for approving construction arrangements was used on the CTRL and Crossrail projects and developed for this reason.
- 102 One respondent suggested that generic conditions regarding mud on the road, cleaning of internal haul routes, retention of water bowser and road sweepers on site at all times, soil handling periods, stockpiling methodology, root protection zones, haul road construction and reporting on road conditions are required. The measures in the class approval are best practice and include generic measures for road mud control, handling of re-usable spoil and topsoil, and storage of construction materials, spoil and topsoil. Conditions are not necessary to address the list provided by the respondent as these matters are encompassed by the generic measures in the class approval. For example, mud on the road is addressed at *Section 7: Road mud control measures*, which includes a requirement that *“all reasonably practicable measures will be put in place to avoid/limit and mitigate the deposition of mud and other debris on the highway.”* Paragraph 7.1 lists a range of measures which may be appropriate, including wheel washing, use of road sweepers and cleaning of hardstanding, but these measures are not intended to be exhaustive. Similarly, the range of measures included in the class approval and attached conditions for other matters provide the necessary level of control.
- 103 One respondent suggested that conditions should be considered that would seek to reduce any detrimental impact on nearby communities and specifically commit to any measures outlined in the LEMP. LEMPs describe how the general requirements of the CoCP are relevant to each local authority area. The class approval is comprised of relevant control measures from the CoCP for those matters identified in paragraph 5 of Schedule 17 to the Act. Although both LEMPs and the class approval use and refer to text in the CoCP, they are in place for different purposes. LEMPs articulate the CoCP measures locally whilst the class approval brings the relevant control measures within the planning process and enables enforcement action to be taken under the TCPA. Given these differences, it is not appropriate for a condition to be attached to the class approval to commit to the measures outlined in LEMPs.
- 104 One respondent expressed surprise that the draft class approval did not include a

document listing optional standard conditions that may be applied wherever the class approval is relied upon, as it was their view that without this the class approval lacks detail and is likely to be unenforceable. When the class approval is made by the Secretary of State the content of it, including any conditions, will apply to those construction arrangements for which it is made. Paragraph 5 of Schedule 17 to the Act does not provide for circumstances where optional standard conditions could be applied at the discretion of a planning authority.

- 105 One respondent suggested that a condition be applied to the class approval requiring prior notification of the proposed location of soil storage mounds. Such a condition is considered appropriate for stockpiles and mounds for spoil and topsoil in place for longer than 12 months. A condition has been attached to the class approval to this effect (see the Government's response to question 4).
- 106 One respondent considered conditions relating to the assessment and remediation of contaminated land to be necessary. As outlined earlier in this document, Section 11 of the CoCP (*Land Quality*) sets out measures to assess and control contaminated land and the generic measures in the class approval are appropriate to manage the storage and handling of uncontaminated and contaminated topsoil.

Conclusion

- 107 The Secretary of State has reviewed the evidence provided and attached six conditions to the class approval. The six conditions are set out in the Government's response to questions 3 and 4.

Comments on the consultation document accompanying the draft class approval

- 108 In addition to responding to the consultation on the draft class approval, three respondents provided specific comments on the consultation document, which accompanied the draft class approval for consultation. Where points raised have not been responded to in response to questions 1 – 5, these are addressed below.

EMRs and the class approval

- 109 One respondent questioned how a planning authority should proceed if there is a breach of the EMRs that is also a breach of the class approval. The EMRs are enforced through the process described in *Information Paper E1: Control of environmental impacts*⁸. Enforcement of the class approval is set out in the Government's response to question 1.
- 110 A number of respondents considered that the description of previous engagement was misleading as the document setting out the scope of the class approval was only made available after the House of Lords Select Committee stage of the parliamentary process was complete. Prior to the consultation launch on 20th December 2016, a draft class approval was shared with Planning Forum members in July 2014, July 2015 and May 2016. Conditions were not attached to these drafts and each time a draft was shared it was made clear that the content was extracted from the latest draft of the CoCP as it evolved through the parliamentary process. Planning Forum members were invited to comment on the detailed measures in the draft CoCP and on the principle of the class approval. A lead local authority represented local authorities on Schedule 17 planning regime matters throughout the parliamentary process and, as the consultation document stated, the only concern raised on the principle of making a class approval was raised during the House of Commons Select Committee stage. The concern raised was whether enforcement powers would be retained by the relevant planning authority if a class approval was made. To clarify that enforcement powers would be retained, text was included in the Planning Memorandum to this effect. As stated in the consultation document accompanying the draft class approval, no planning authority objected to the principle of the class approval at the Planning Forum. Although two planning authorities petitioned Parliament that the Chilterns AONB and the Colne Valley area needed special treatment, no planning authority petitioned against the principle of the class approval being made.
- 111 Respondents raised a concern that panels/groups have been established to secure

⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/593553/E01_-_Control_of_Environmental_Impacts_v1.7.pdf

the best possible mitigation sensitive to the Chilterns AONB and Colne Valley area and that the outcomes of these could conflict with the class approval. There is no conflict between the work of the panels/groups, which focus on permanent mitigation, and the class approval, which puts in place controls on certain matters during construction. The establishment of the panels/groups therefore does not affect the making of a class approval.

- 112 One respondent considered that the issues raised through engagement on the content of the draft CoCP were not fully answered. Comments on the draft CoCP were collated and responded to as the document evolved through the parliamentary process. The lead local authority on the CoCP (which represented other local authorities) chose not to appear before the House of Lords Select Committee and the House of Lords Select Committee's report did not raise any outstanding issues on the CoCP. The final CoCP was published at Royal Assent of the Act.
- 113 One respondent expressed concern with the role of the lead local authority during the parliamentary process. Drafts of the class approval were shared directly with Planning Forum members rather than through the lead local authority for the CoCP and Schedule 17 planning regime matters. In addition, responses to comments on the draft CoCP text were shared with Planning Forum members.
- 114 One respondent raised a concern that no reply or clarification was provided to their letter of 8th September 2016 on the draft class approval circulated to Planning Forum members in May 2016. These comments were submitted outside of Planning Forum engagement. Meetings were offered to the respondent to discuss the points raised in their letter, however these offers were not accepted. The consultation document, which accompanied the draft class approval for consultation, referred to one planning authority who submitted comments on the draft class approval outside of Planning Forum engagement and confirmed that the comments were considered in the preparation of the draft class approval.

Annex A – List of respondents

115 The following organisations submitted a response to the consultation on the draft class approval:

Birmingham City Council
Buckinghamshire County Council
Chiltern District Council
London Borough of Camden
London Borough of Hammersmith and Fulham
London Borough of Hillingdon
Northamptonshire County Council
Old Oak and Park Royal Development Corporation
South Bucks District Council
South Northamptonshire Council
Stratford on Avon District Council
Three Rivers District Council
Warwickshire County Council

National Trust
Woodland Trust

A group response was submitted by the following organisations:

Chiltern District Council
Hertfordshire County Council
Northamptonshire County Council
Oxfordshire County Council
South Bucks District Council
South Northamptonshire Council
Stratford on Avon District Council
Three Rivers District Council
Warwick District Council
Warwickshire County Council

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