

INDICATIVE MITIGATION

Introduction and Purpose

1. Paragraph 7.5.2 of the HS2 (West Midlands – Crewe) Planning Memorandum (the Planning Memorandum) requires that when making certain requests for approval the nominated undertaker shall, where reasonably necessary for the proper consideration of the design proposed, provide the planning authority with an indication or outline of any mitigation measures it proposes to seek approval for subsequently.
2. For this indicative information to be of most benefit to the planning authorities and nominated undertaker in design development and consenting of HS2, it is necessary that qualifying authorities comment on it. This will allow the mitigation design to be considered in light of authorities' comments and will reduce the risk of costly late design changes. This is particularly necessary as mitigation works will be delivered over time by different contractors who may not be responsible for all requests for approval related to it. For example early environmental works contractors may be responsible for habitat creation but the bringing into use approval to which it is connected may not be sought until after they have been demobilised.
3. This note sets out:
 - The form of the indicative mitigation information that will be provided
 - Purpose of indicative mitigation
 - Effectiveness of works submitted for approval as mitigation
 - Qualifying Authority Feedback on Indicative Mitigation Submitted with Requests for Approval Under Paragraph 2 or 3
 - Qualifying Authority Feedback on Indicative Mitigation not associated with Paragraph 2 or 3 requests for approval

The form of the indicative mitigation information that will be provided

4. Where required, indicative mitigation information will be provided for the following topics:
 - Ecology
 - Landscape (including the setting of heritage assets)
 - Community (where new or altered facilities are provided)
 - Operational noise from the railway or new roads
5. For ecology the indicative mitigation information supplied is likely to be:
 - A plan(s) showing areas (m²) of habitat creation
 - The plan(s) will be annotated to indicate the habitats to be created, with information on species selection, to be derived from site survey information to ensure applicability to the location and the habitat to be created. Trees and shrubs shall be supplied through the HS2 Supply Contract. Seed types are based upon proprietary or bespoke mixes
 - Outline programme of habitat establishment including management durations
 - A brief written description of the mitigation setting out the effects it seeks to mitigate and how it would achieve this

6. For landscape the indicative mitigation information supplied is likely to be:
 - A plan(s) showing areas (ha) of landscape mitigation earthworks and planting. For landscape planting, the plan(s) will be annotated to show the proposed species
 - Section plan/plans for earthworks
 - A brief written description of the mitigation setting out the effects it seeks to mitigate and how it would achieve this
 - The likely fence line where the mitigation will include a fence
7. For community effects where mitigation will be provided through the provision of new facilities or the improvement of existing facilities the indicative mitigation information supplied is likely to be:
 - A plan(s) showing the new facilities
 - The plan(s) will be annotated to indicate the purpose and use of the mitigation works
 - A brief written description of the mitigation setting out the effects it seeks to mitigate and how it would achieve this
8. For works which have a mitigating effect in relation to the operational noise from the railway or new road, a report will be provided demonstrating as far as is reasonably practicable how the works are expected to perform in mitigating the noise and vibration impact of the Phase 2a scheme. The information contained in this report will generally include the following:
 - a) A description of the works
 - b) Plans showing the location of the works, the surrounding environment and receptor positions
 - c) Details of the methodology used in predicting noise and vibration levels
 - d) Assumptions relating to the acoustic performance of rolling stock and track
 - e) Assumptions relating to the acoustic performance of the work, such as long term acoustic performance, transmission, sound absorption/reflection, sound diffraction; and
 - f) Tables setting out the predicted levels of noise and vibration and tabulated predictions at all individual receptors where the LOAEL is likely to be exceeded
9. This information will be provided using the letter template appended to this note (Appendix A).

Purpose of indicative mitigation

10. When seeking approval of plans and specifications for works under paragraphs 2 or 3 of Schedule 17 to the High Speed Rail (West Midlands – Crewe) Act, the nominated undertaker is not required to seek approval of associated mitigation works. This is because of the length of the design and construction programme of Phase 2a of HS2. The statutory process for planning approval of such mitigation is under paragraph 9 of Schedule 17, referred to as bringing into use approvals (see Planning Forum Note 7).
11. However, in order to make decisions on certain proposals submitted for approval under paragraph 2 or 3 of Schedule 17 the qualifying authority may need to understand the manner in which the effects of the work are likely to be mitigated and consider the likely effectiveness of that mitigation. In light of this the following paragraph was included in the Planning Memorandum:

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

12. The indicative mitigation information will give the qualifying authority sufficient information to understand how mitigation can be provided. The indicative mitigation information is not submitted for approval. The need for indicative mitigation will be considered on a site-by-site basis by the nominated undertaker and the planning authority.
13. With respect to operational airborne noise it will enable the qualifying authority to understand how the design relates to the commitments set out in HS2 Information Paper E9: Control of Airborne Noise from altered roads and the operational railway, Information Paper E10: Control of Ground-borne Noise and Vibration from the operation of Temporary and Permanent Railways, and Information Paper E11: Control of noise from the operation of stationary systems. The level of information provided will be proportionate to the stage of the design process at which the Schedule 17 submission is made.
14. The process of planning authorities providing feedback on indicative mitigation described in this Note will not pre-empt decisions that will be made under paragraph 9 of Schedule 17. However, the advice will inform pre-submission discussions for such approvals and will be submitted with or referred to in requests for approval.
15. Where design change occurs after an authority has provided comments on indicative mitigation such that a new Schedule 17 request for approval is required, then paragraph 7.5.2 of the Planning Memorandum will apply and, where required, a revised indicative mitigation scheme will be provided.

Effectiveness of works submitted for approval as mitigation

16. Some works, such as bunds and new ponds, that will mitigate the effects of HS2 will require approval under paragraph 2 or 3 of Schedule 17. Although it is the design of these works that will be approved under paragraphs 2 or 3, as they will be designed to provide appropriate mitigation, their effectiveness as mitigation is likely to be discussed through pre-submission discussions. Planning authorities should provide feedback on the effectiveness of such works as mitigation using the process set out in paragraphs 4 to 9 and 18 to 19.
17. Similarly where an approval under Schedule 32 relates to mitigation, for example in relation to flood risk, it will be generally assumed that no further mitigation will be required through the Schedule 17 paragraph 9 bringing into use approval process in relation to those works that have been previously approved under Schedule 32.

Qualifying Authority feedback on indicative mitigation submitted in parallel with requests for approval under Paragraph 2 or 3

18. The nominated undertaker will often undertake mitigation works that do not require approval under paragraph 2 or 3 of Schedule 17, prior to approval being sought under paragraph 9, for example tree planting or grassland creation. It is inevitable that certain mitigation must be put in place early in the design and construction programme (for example early habitat creation to allow the translocation of protected species prior to the start of construction), while approval under paragraph 9 of Schedule 17 generally must be sought later in the design and construction programme. This is because it is only towards the end of the programme when all the mitigation relevant to a bringing into use request will have been designed.
19. There is therefore a risk that mitigation which is required to be put in place early in the construction programme may need to be modified through the bringing into use approval process. This could cause delay and/or require late changes to HS2 works at considerable cost to a public project. To mitigate this risk this Planning Forum Note puts in place a process for qualifying authorities to provide their comments on the indicative mitigation schemes.
20. Where indicative mitigation measures have been provided in parallel with requests for approval under paragraphs 2 or 3 of Schedule 17, qualifying authorities should, on the basis of that information and associated discussions, provide feedback to the nominated undertaker using the letter template appended to this note (Appendix B). In order to be of most assistance, this feedback should comment (with a justification) on:
 - The general scope of the indicative mitigation.
 - Any additional mitigation that could be reasonably required.
 - Comments on the design of the proposed mitigation.
21. While it is not obligatory for an authority to respond to the consultation request, it is important that the authority makes its views known in order to avoid dispute or costly modification at a later date. As is made clear by the letter template in Appendix B, comments are without prejudice to the Council's determination of any future request for approval to the mitigation scheme for scheduled work. The nominated undertaker will consider these comments in the preparation of mitigation works and requests for approval under paragraph 9 of Schedule 17.
22. Providing feedback on indicative mitigation is separate to the statutory process of determining Schedule 17 requests for approval. It should not delay the process of determining a request for approval. Feedback may be provided after the determination period for the request for approval and the determination of the request for approval will be the priority.

Qualifying Authority feedback on indicative mitigation not associated with requests for approval under Paragraph 2 or 3

There will be some instances in which mitigation proposed is not directly linked to a request for approval of plans and specifications and therefore the requirements of paragraph 7.5.2 of the Planning Memorandum will not apply to it. An example of this is off-site habitat creation in the form

of tree planting or grassland habitat creation, which would not require approval under paragraph 2 or 3. These mitigation works will nonetheless need to be considered as part of the bringing to use process. In order to reduce risk with the paragraph 9 of Schedule 17 approval, the nominated undertaker may seek qualifying authority feedback on such mitigation. Where this is the case, the process set out above in paragraphs 4 to 9 and 18 to 19 will also apply.

APPENDIX A

[Date]

Our Ref: []

[Insert address]

For the attention of: [Insert Name]

Dear [Insert Name],

HIGH SPEED RAIL (WEST MIDLANDS – CREWE) ACT 2021

SUBMISSION No xx [insert planning authority name and location of mitigation] CONSULTATION ON INDICATIVE MITIGATION [insert type/s of mitigation e.g. noise, ecology] PROPOSALS

Further to our request for the approval of plans and specification for **[insert description of works subject to the relevant request for approval]** under Schedule 17 to the High Speed Rail (West Midlands – Crewe) Act 2021 **[Insert request reference number]**, HS2 Ltd is writing to you regarding indicative mitigation information plans which were provided to the authority with the request.

The indicative mitigation shown does not require approval to plans and specifications under paragraphs 2 or 3 to Schedule 17 and does not form part of the request for approval Ref **[Insert request reference number]**.

However, the mitigation planting shown on drawing[s] **[Insert plan number/s]** will comprise part of the overall mitigation scheme in relation to the following scheduled works:

- **[Insert list of relevant Scheduled works]**

Further mitigation works will be brought forward by HS2's main works contractor, where necessary, and a request for approval to the overall mitigation scheme for the above scheduled works will be submitted prior to the request to bring into use the scheduled work, in accordance with paragraph 9(4)(b) to Schedule 17. Further information is provided in Planning Forum Note 10.

We wish to consult the Council on mitigation proposals on a progressive basis, to ensure its views are taken into account prior to the bringing into use request. We therefore request that you review the planting proposals shown on **[Insert plan number/s]** and provide any comments in writing.

[Insert text briefly describing the purpose of the mitigation and why it is proposed in the way it is. If a longer technical explanation is needed, e.g. operational noise modelling, this should be appended to the letter.]

Should you have no objections to the mitigation planting proposals, please would you indicate this in your response. Any comments made at this stage on the mitigation proposal will be without prejudice to the Council's determination of the future request for approval to the mitigation scheme for the above scheduled works. However, the advice will inform pre-submission discussions for such approvals and will be submitted with or referred to in requests for approval.

Should you wish to discuss this matter further, please contact **[Insert name of agent and email/phone number]**.

Yours faithfully,

[Insert name of agent].

cc.

[Relevant HS2 Ltd Town Planner] (HS2 Ltd)

[Relevant HS2 Ltd Environment Team Member] (HS2 Ltd)

APPENDIX B

[Insert Date]

Our Ref: **[Insert Document Reference]**

[Insert Address]

For the attention of: **[Insert Name]**

Dear **[Insert Name]**,

HIGH SPEED RAIL (WEST MIDLANDS – CREWE) ACT 2021

SUBMISSION No XXX/XXX/XXX – [INSERT DESCRIPTION OF REQUEST FOR APPROVAL]: SKXXX, LOCATION

CONSULTATION ON INDICATIVE MITIGATION [INSERT RELEVANT INDICATIVE MITIGATION] PROPOSALS

The Council has reviewed the mitigation planting proposals shown on drawing **[insert drawing number]** and described in the letter dated **[insert date]** and has no **[objection/ has the following comments]**:

- **[Insert comments. Where suggesting changes or additional mitigation the Planning Authority should set out its rationale for the mitigation requiring change].**

These comments are without prejudice to the Council’s determination of any future request for approval to the mitigation scheme for scheduled work **[insert Scheduled work numbers]** submitted in accordance with paragraph 9(4)(b) to Schedule 17. They are made on the basis of assumptions and information provided by the nominated undertaker.

Yours faithfully,

[Insert Name]

[Insert Job Title]

enc.

cc