

BRINGING INTO USE APPROVALS

Introduction

1. This note sets out the purpose of Schedule 17 paragraph 9 (bringing into use), the types of approvals, the format of submissions and the timing of such approvals.

Scheduled works

2. Schedule 1 to the High Speed Rail (London – West Midlands) Act 2017 sets out the ‘scheduled works’ the nominated undertaker is authorised to construct and maintain for Phase One of High Speed 2. A description is provided of the type of work and their location, for example:

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

Bringing Into Use Approvals

3. Paragraph 9 of Schedule 17 to the Act requires the nominated undertaker to obtain bringing into use approval for most scheduled works and railway depots. Paragraph 9(1) of Schedule 17 states:

“If the relevant planning authority is a qualifying authority, no work to which this paragraph applies may be brought into use without the approval of that authority.”

4. This requirement applies to all scheduled works (except to the extent that the work is underground) and any depots constructed for or in connection with the maintenance of railway vehicles or track (paragraph 9 (2)). Works that are not ‘scheduled works’ or ‘depots’ do not require bringing into use approval under Schedule 17.
5. The purpose of bringing into use approvals is to ensure that the nominated undertaker takes all reasonably practicable measures for the mitigation of the work. ‘Measures’ are set out in the grounds for determination; they should be reasonably practicable and should relate to the mitigation of the effect of the scheduled work/depot or its operation on the local environment or local amenity. Schedule 17 Statutory Guidance paragraph 23 also defines that *“Mitigation schemes to be approved under paragraph 9 of Schedule 17....relate to the physical measure to be carried out”.*

Types of Submission

6. Schedule 17 paragraph 9 provides the potential for two approval types, with the granting of one approval being dependent on the other approval being obtained. The approval types are:
 - Request for approval to bring into use a scheduled work/depot – Schedule 17 paragraph 9(1)
 - Request for approval of a mitigation scheme – Schedule 17 paragraph 9(4)(b)
7. A request for approval to bring into use (Schedule 17 paragraph 9(1)) is to be determined against the grounds for determination set out Schedule 17 paragraph 9(4):

“The relevant planning authority must grant approval for the purposes of this paragraph if -

- a) *it considers that there are no reasonably practicable measures which need to be taken for the purposes of mitigating the effect of the work or its operation on the local environment or local amenity;*
- b) *or it has approved at the request of the nominated undertaker, a scheme consisting of provision with respect to the taking of measures for that purpose.”*

8. If there are mitigation measures proposed, these need to be approved as a mitigation scheme (Schedule 17 9(4)(b)) to allow the planning authority to determine requests to bring into use (Schedule 17 9(1)).

9. Paragraph 9(5) provides the grounds for determination, including the ability to impose conditions, for an application made under paragraph 9(4)(b) seeking approval of a mitigation scheme:

‘The relevant planning authority may not refuse to approve, or impose conditions on the approval of, a scheme submitted for the purposes of subparagraph (4)(b) unless it is satisfied that it is expedient to do so on the ground that the scheme ought to be modified—

- c) *to preserve the local environment or local amenity,*
- d) *to preserve a site of archaeological or historic interest,*
- e) *or in the interests of nature conservation,*

and that the scheme is reasonably capable of being so modified.’

10. Under Schedule 17 paragraph 10, where a mitigation scheme is approved, the nominated undertaker must carry out the scheme and comply with any conditions subject to which the scheme is approved, but implementation of the scheme is not a pre-condition of the bringing of the works into use.

11. Certain mitigation measures may need to be implemented post commencement of the operation of the scheduled work (e.g. where the ongoing construction of other works would not allow implementation of mitigation); this can be explained in the relevant covering letter of the request for approval of the mitigation scheme under Schedule 17 paragraph 9(4)(b).

Approval of Mitigation

12. The design of some mitigation measures may have previously been approved by the planning authority under Schedule 17 paragraphs 2, 3, 7, 8, Schedule 16 paragraph 5 or approved under the protective provisions in Schedule 33. These previous approvals do not consider the works in the context of mitigation as set out by Schedule 17 paragraph 9. There may also be some mitigation measures such as landscape planting and ecological habitat creation that may not require approval elsewhere under Schedule 17 or any other provision in the HS2 Act. However, it is necessary for all proposed mitigation measures to be approved as (or part of) a mitigation scheme in order to satisfy the requirements of Schedule 17 paragraph 9(4)(b). An illustration of how mitigation measures work within Schedule 17 is set out in Schedule 17 BIU Mitigation – Process Map.

13. In approving the plans and specifications submission relating to the scheduled works/depot, the planning authority is approving the design of the works that may include a component of the

mitigation for the scheme. As required by paragraph 7.5.2 of the Planning Memorandum where reasonably necessary for the determination of the request for approval of plans and specifications, an indicative mitigation scheme beyond that subject to the approval of plans and specifications will be provided for information. Whilst not required for determination, this may include some other works authorised by the HS2 Act for contextual information but not subject to Schedule 17 approval, such as landscape planting not required for mitigation of a scheduled work or depot. For example, if earthworks are proposed to provide visual screening to mitigate the effect of a scheduled work, but any planting associated with the earthwork is not mitigating any effect, only the earthworks are subject to approval under Schedule paragraph 9.

14. Planning Forum Note 10 describes the details of indicative mitigation to be submitted to local authorities as required by the Planning Memorandum. Visual sequencing illustrating how mitigation measures may be consulted on and approved within Schedule 17 is set out in Schedule 17 Stages for BIU Mitigation

Format and Content of Submissions

15. In order to enable the planning authority to determine requests for approval made under Schedule 17 paragraph 9, the format and content of submissions should follow that set out in Table 1 and 2 below, depending on the submission type:

Table 1: Request for approval to bring into use – Schedule 17 paragraph 9(1)

<i>Document</i>	<i>Suggested Content</i>
Covering letter	Scheduled work number(s) and description(s)/description of depot to which the request for approval relates to Details of the approved mitigation scheme(s) including planning authority approval reference and list of approved plans (if applicable)
Plans	Plan(s) of scheduled work(s) / depot Consolidated mitigation plan (if required)
Noise Information (if applicable)	Final noise information (where applicable) - consistent with Appendix A of Planning Forum Note 14

Table 2: Request for approval of a mitigation scheme – Schedule 17 paragraph 9(4)(b)

<i>Document</i>	<i>Suggested Content</i>
Covering letter	Scheduled work number(s) and description(s) and/or description of depot to which the request for approval relates to List of plans/material (including mitigation types) forming the mitigation scheme (subject to approval)

	<p>Planning authority approval reference and list of approved plans where mitigation measures have been approved under other parts of the HS2 Act (e.g. Schedule 17 paragraph 2/3)</p> <p>Description of the purpose of the mitigation</p> <p>Details of pre-application engagement/indicative mitigation feedback</p>
Plans	<p>Plans/material forming the mitigation scheme (subject to approval)</p> <p>Plan(s) of scheduled work(s) /depot</p>
Noise information (if applicable)	Noise information - consistent with Appendix A of Planning Forum Note 14

16. Where it is proposed to submit the request for approval to bring into use a scheduled work /depot (Schedule 17 paragraph 9(1)) alongside the request for approval of a mitigation scheme (Schedule 17 paragraph 9(4)(b)), the relevant content set out in Tables 1 and 2 will form the submission, though a single covering letter can be provided covering both submissions where appropriate. The mitigation scheme(s) and relevant list of plans may not have been approved at that point of submission and that should be reflected in the covering letter.
17. To assist planning authorities in determination of requests for approval to bring into use a scheduled work/depot (Schedule 17 paragraph 9(1)), i.e. whether reasonably practicable measures for mitigating the effect on the environment or local amenity need to be taken, it may be necessary for HS2 to provide a consolidated plan(s) showing the approved mitigation scheme(s). Consolidated mitigation plans can be provided where they relate to permanent railway scheduled works that are complex, of a significant scale or where there are multiple approved schemes of mitigation. The need for consolidated mitigation plans should be discussed on a case-by-case basis through pre-application engagement, with the requirement for them to form part of the information to be submitted fully justified.
18. The consolidated mitigation plans will indicate any components of the mitigation scheme that have been previously approved. The consolidated mitigation plans will be at a scale suitable for the request for approval to bring into use being sought, within the range 1:2500 – 1:10,000).
19. Table 2 sets out the format and content for submissions for requests for approval of mitigation scheme(s) – Schedule 17 paragraph 9(4)(b). Depending on the type of mitigation measures proposed, the detailed information in the submissions should follow the guidance set out in paragraphs 19-22 below:
20. For ecology the mitigation information supplied will be:
- A plan/plans showing areas (m2) of habitat creation.

- The plan(s) will be annotated to indicate the habitats to be created, with information on species selection.
 - A description of the mitigation setting out the effects it seeks to mitigate and how it would achieve this.
21. For landscape the mitigation information supplied will be:
- A plan/plans showing areas (ha) of landscape mitigation earthworks and planting. For landscape planting the plan will be annotated to show the proposed species and planting schedule.
 - The plan will include contour lines for mitigation earthworks.
 - A description of the mitigation setting out the effects it seeks to mitigate and how it would achieve this.
22. For community effects where mitigation will be provided through the provision of new facilities or the improvement of existing facilities the mitigation information supplied will be:
- A plan/plans showing the new facilities.
 - The plan will be annotated to indicate the purpose and use of the mitigation works.
 - A description of the mitigation setting out the effects it seeks to mitigate and how it would achieve this.
23. In respect of noise mitigation, the performance of the final noise mitigation scheme relating to a scheduled work/depot will be in the format defined in Planning Forum Note 14.
24. The final mitigation scheme will, as far as reasonably practicable, take into account any comments local planning authorities have made on indicative mitigation details submitted in accordance with paragraph 7.5.2 of the Planning Memorandum. The local authority may wish to refer to previous comments on indicative mitigation proposals when determining the bringing into use request.
25. In order to assist with determination HS2 will have pre-submission discussions on the form and content of any mitigation scheme in line with the requirements of the Planning Memorandum and Planning Forum Note 13: Guidance on Pre-Application Engagement

Temporary Scheduled Works

26. Approval of plans and specifications (Schedule 17 paragraphs 2 and 3) is not required for temporary building or other construction works (Schedule 17, paragraphs 2(8) and 3(8)). Therefore, submissions for bringing into use temporary scheduled works cannot include approved plans, but should include adequate information to demonstrate the design of the work.
27. In most instances all practicable mitigation measures for temporary scheduled works will already have been imposed through the HS2 Phase One Code of Construction Practice. Any mitigation measures relevant to the grounds for determination in Schedule 17 paragraph 9(4) could reference the relevant measures set out in the HS2 Phase One Code of Construction Practice as part of mitigation scheme (Schedule 17 paragraph 9(4)(b)). The nominated undertaker will through the pre-submission process consider with the relevant planning authority whether any further mitigation measures are appropriate.

Timing of Submissions

28. Generally bringing into use approvals under Schedule 17 paragraph 9 will be sought towards the end of construction. Approval for several scheduled works could be sought at once. Subject to programme requirements, HS2 will seek to work with planning authorities in establishing the best approach to packaging of bringing into use requests. Some scheduled works will need to be brought into use before the railway and hence bringing into use approvals will be sought earlier. For such works bringing into use requests for approval may be made prior to, or at the same time as construction.

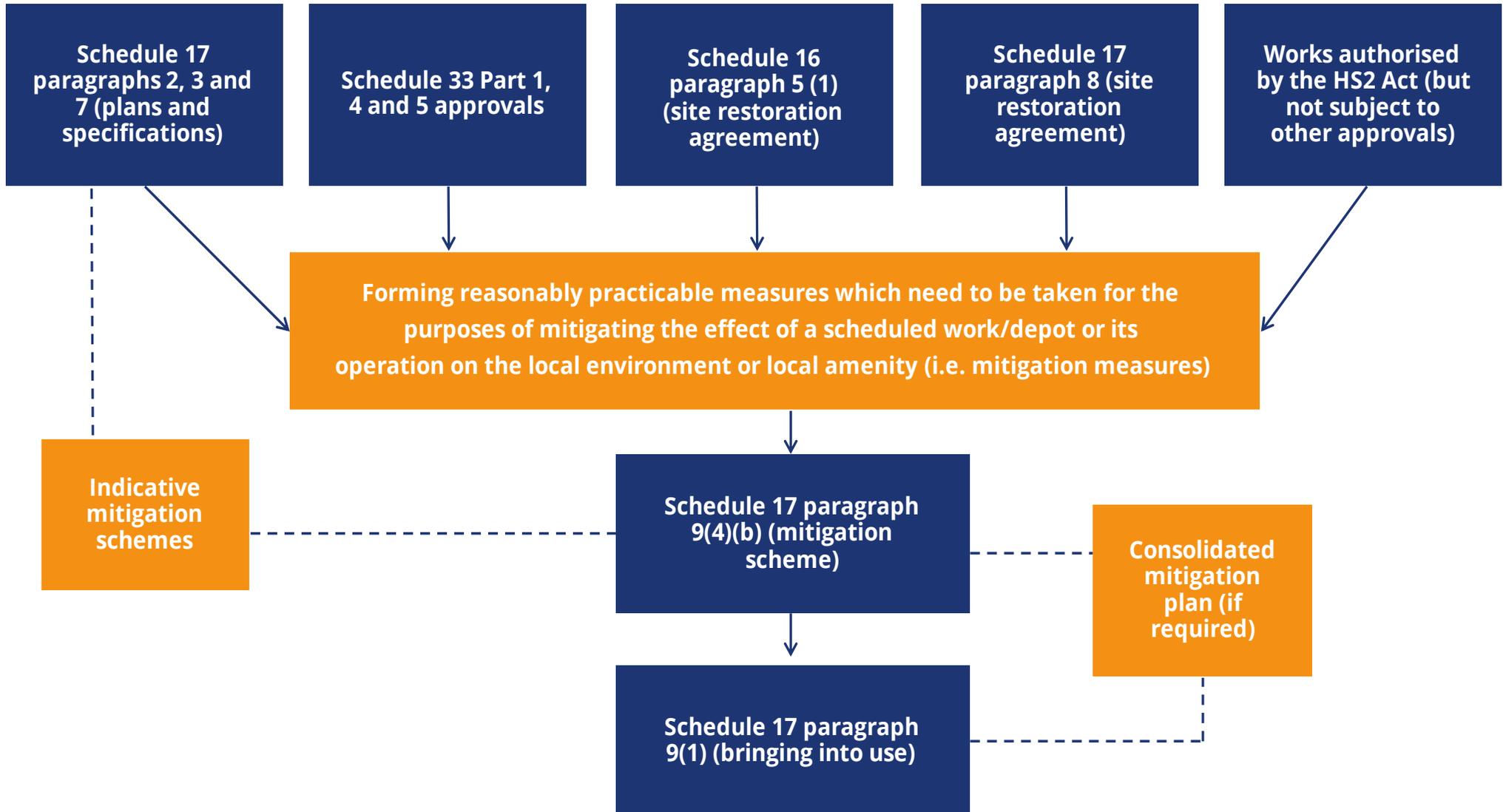
Planning Authority Decisions

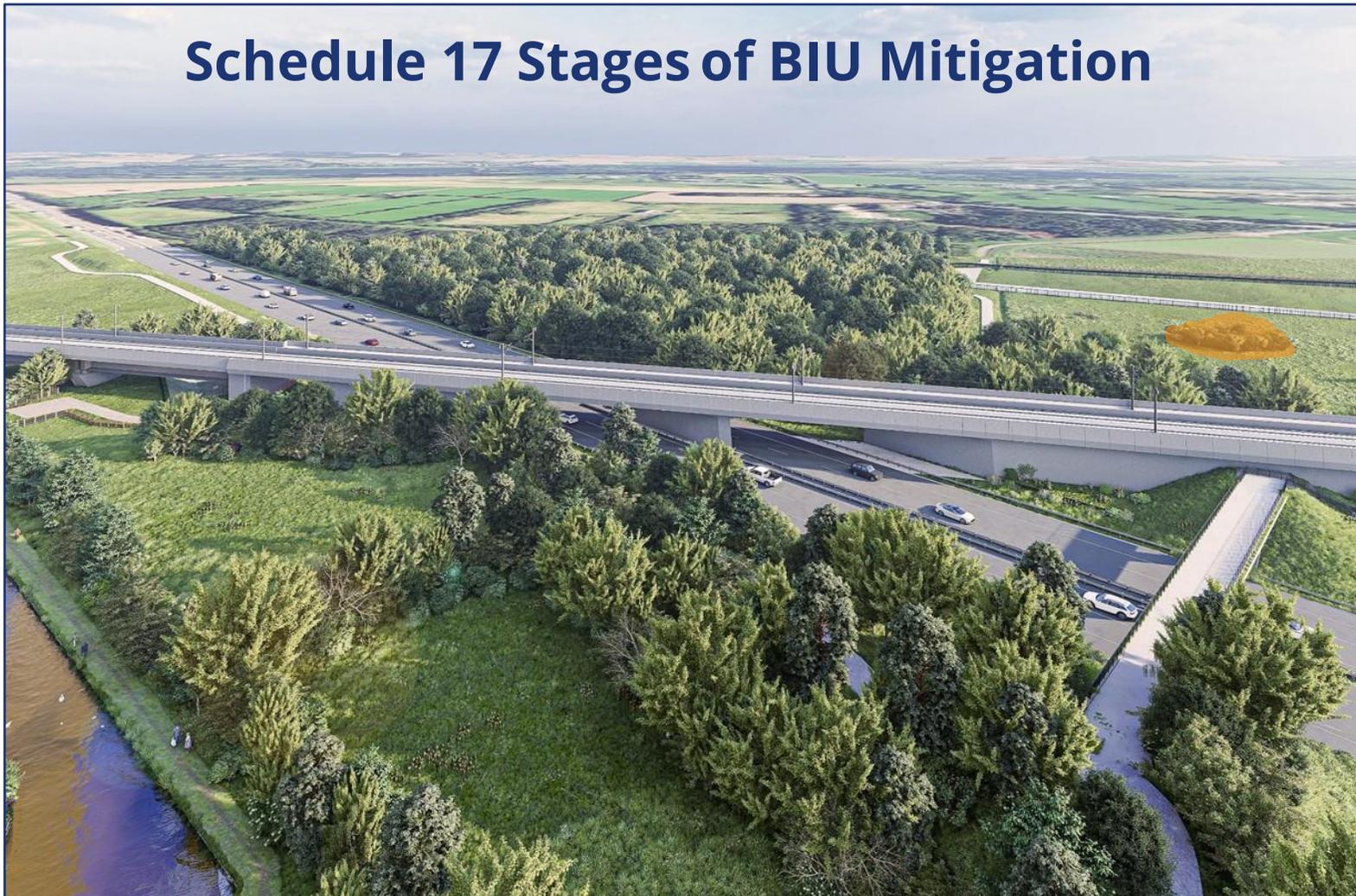
29. Schedule 17 decisions issued by planning authorities should follow the requirements of Planning Forum Note 9 – Decision Notice Guidance. Decisions for bringing into use should be clear whether they relate to request for approval of mitigation schemes – Schedule 17 paragraph 9(4)(b) or to bring into use – Schedule 17 paragraph 9(1) (or both).

Appendix 1 - Schedule 17 BIU Mitigation – Process Map

Appendix 2 - Schedule 17 Stages for BIU Mitigation

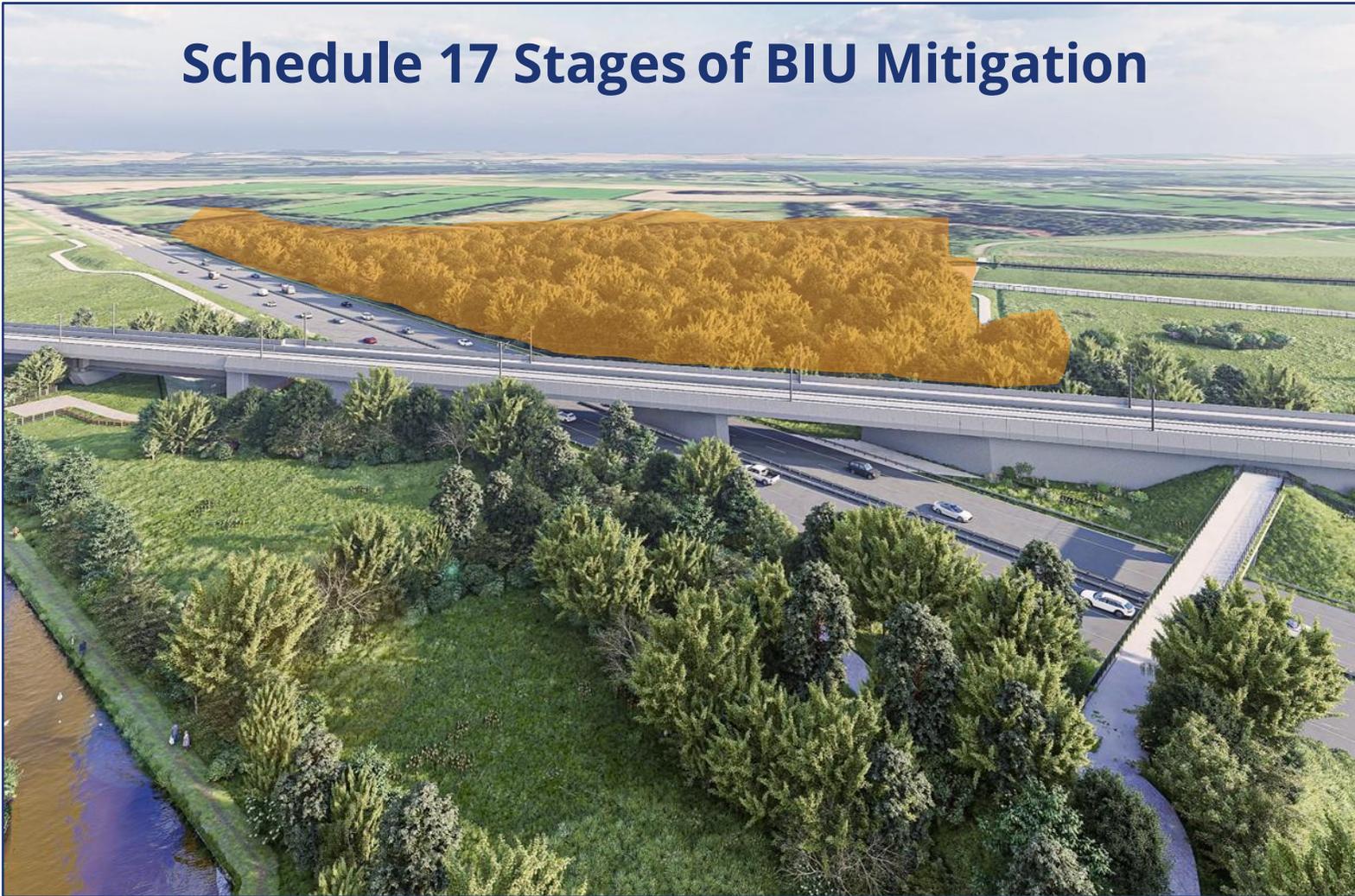
Schedule 17 BIU Mitigation – Process Map





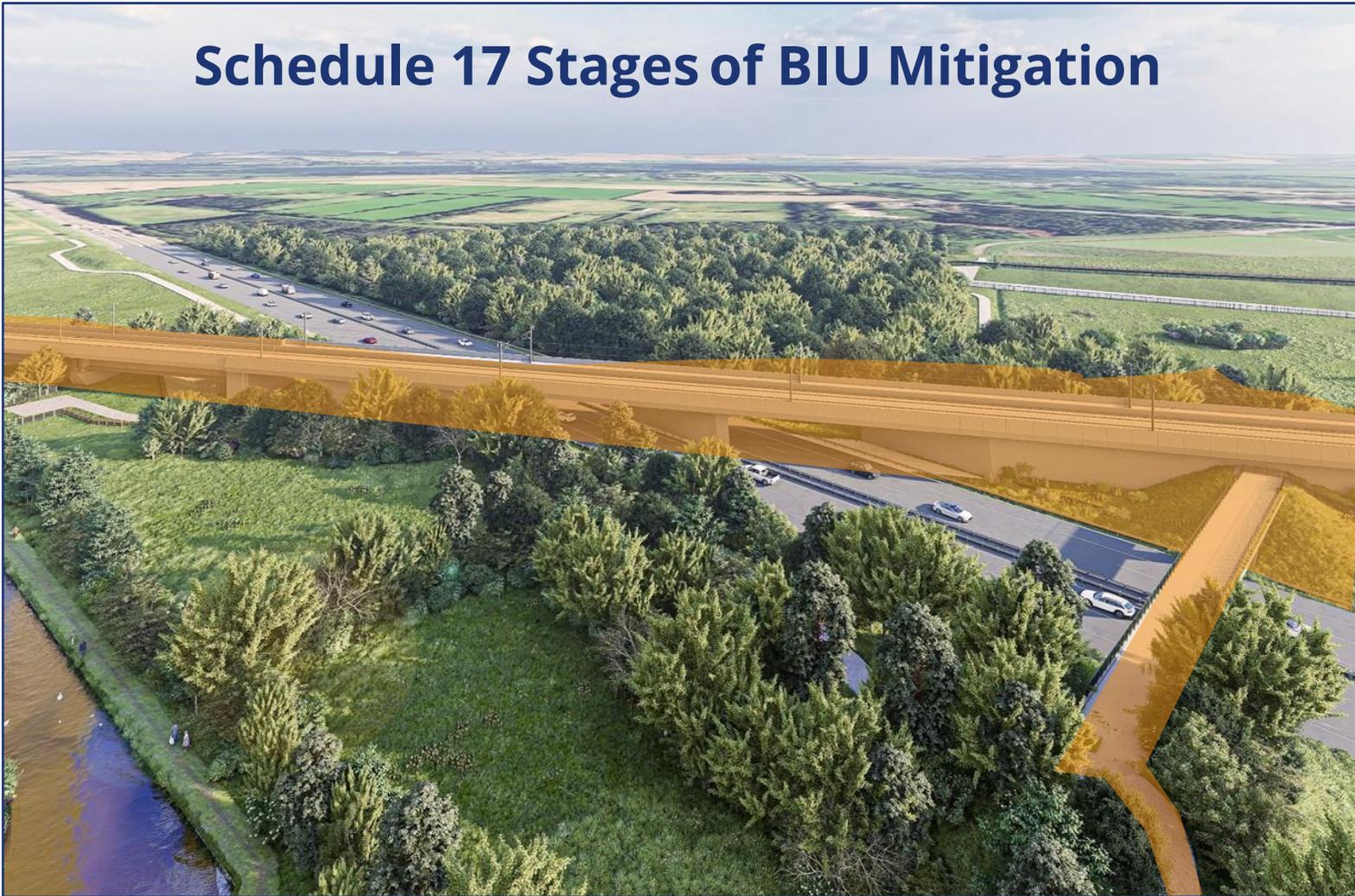
 Enabling Works Contractor- Schedule 17 application (plans & specs) for habitat creation

Schedule 17 Stages of BIU Mitigation



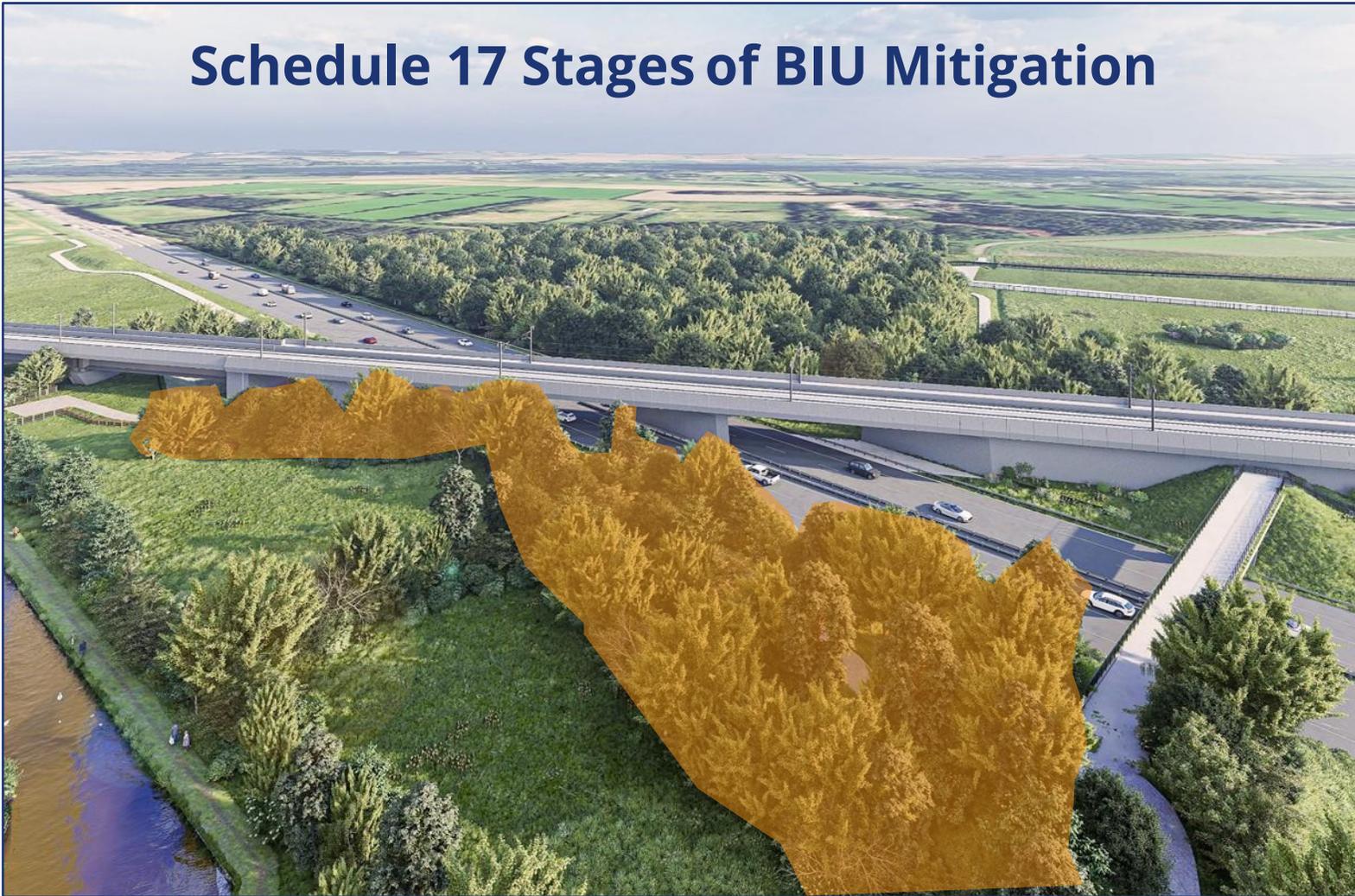
 Enabling Works Contractor– provides indicative mitigation information for habitat creation alongside Schedule 17 application (plans & specs)

Schedule 17 Stages of BIU Mitigation



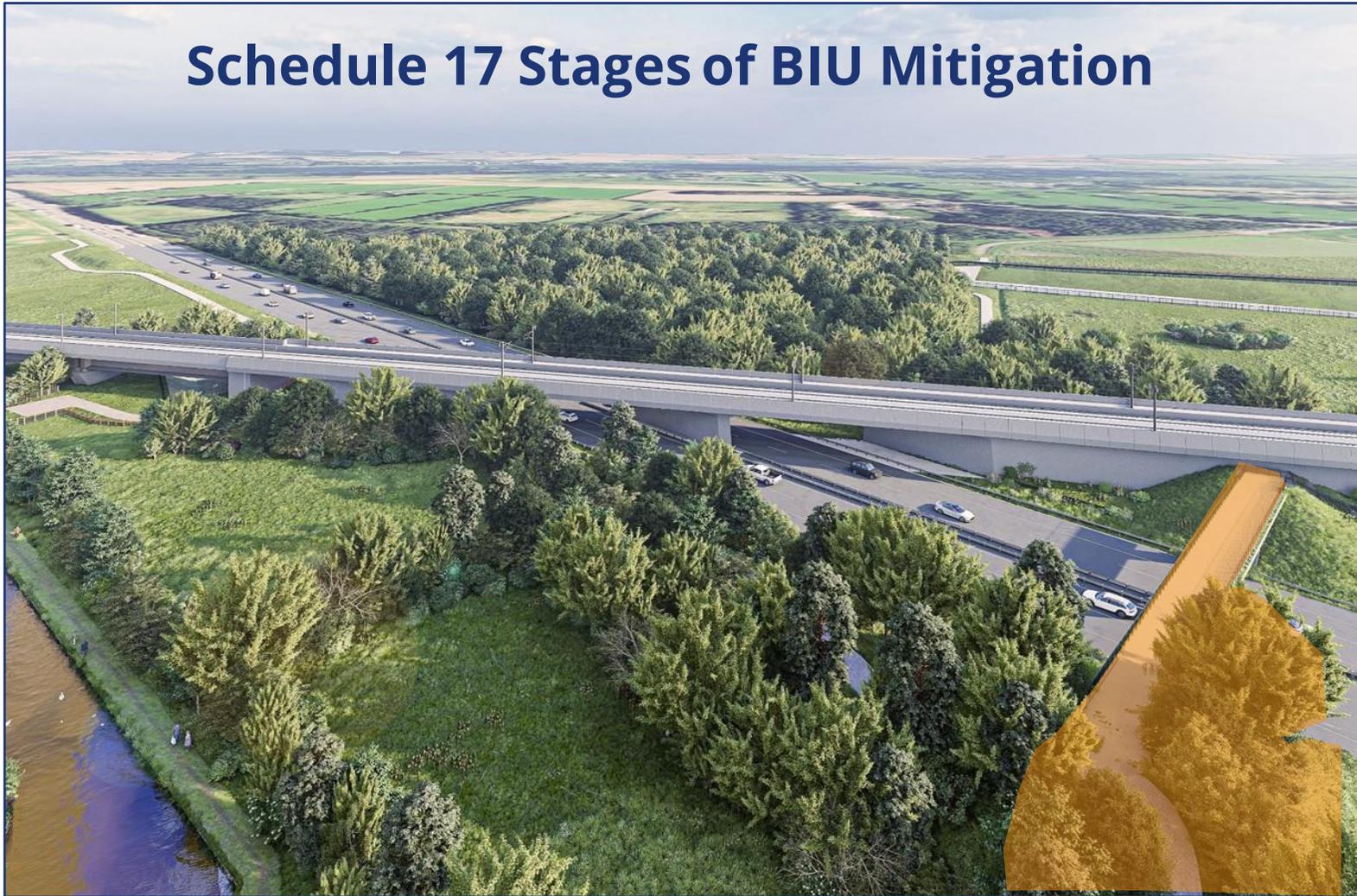
 Main Works Civils Contractor- Schedule 17 application (plans & specs) for building works and earthworks

Schedule 17 Stages of BIU Mitigation



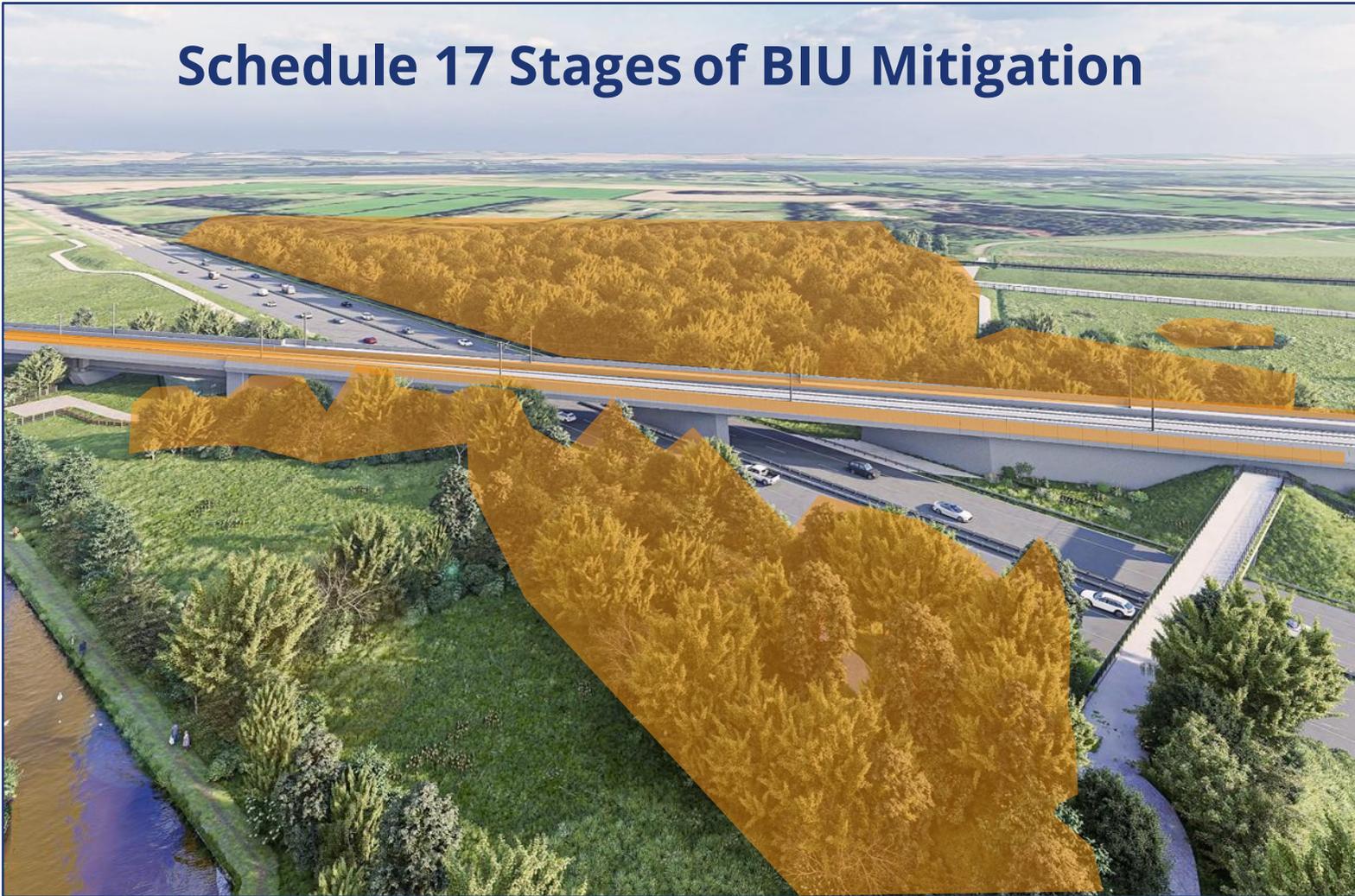
 Main Works Civils Contractor- provides indicative mitigation information for habitat creation alongside Schedule 17 application (plans & specs)

Schedule 17 Stages of BIU Mitigation



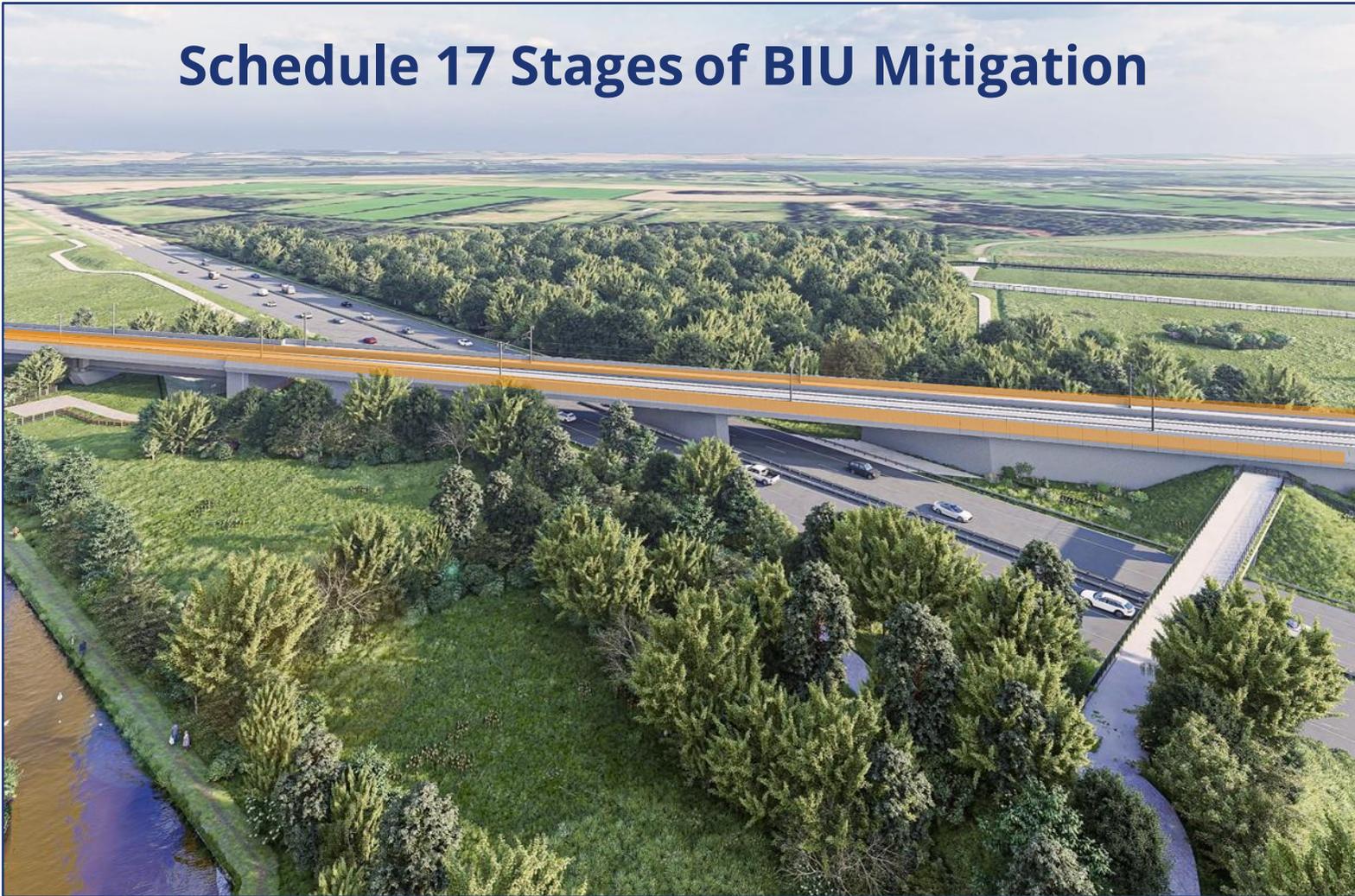
 Main Works Civils Contractor- Schedule 17 applications (mitigation scheme and bringing into use) for non-railway scheduled works

Schedule 17 Stages of BIU Mitigation



 Main Works Civils Contractor- Schedule 17 application (mitigation scheme) for railway scheduled works

Schedule 17 Stages of BIU Mitigation



HS2 – Schedule 17 application (bringing into use) for railway scheduled works