

Date: 28 May 2019  
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Your ref: TR010016  
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**By Recorded Delivery & By Email to [A63castlestreet@pins.gsi.gov.uk](mailto:A63castlestreet@pins.gsi.gov.uk)**

Dear Sir/Madam

**A63 Castle Street Improvement, Hull (TR010016)  
Further Written Representation on behalf of HIN Hull Limited and HICP Limited**

**1 Introduction**

- 1.1 This Further Written Representation is made on behalf of HIN Hull Limited and HICP Limited ("**Holiday Inn**"), for whom we act in respect of the proposed A63 (Castle Street Improvement, Hull) Development Consent Order (the "**Proposed Order**").
- 1.2 It is made further to the Relevant Representation dated 29 November 2018 and Written Representation dated 23 April 2019 submitted on behalf of Holiday Inn. Copies of these representations are appended to this Further Written Representation (at Appendix 1 and Appendix 2 respectively) for ease of reference.
- 1.3 This Further Written Representation:
- a) updates the Examining Authority on the progress of the Option and Mitigation Deed;
  - b) appends a set of protective provisions in favour of Holiday Inn in respect of which Holiday Inn will have no choice but to make representations at the upcoming draft DCO Issue Specific Hearing and Compulsory Acquisition Hearing, in the event that the Option and Mitigation Deed is not completed by then; and
  - c) sets out wording proposed to be placed on the face of the DCO regardless of whether the Option and Mitigation Deed is completed, so as to ensure that statutory undertakers cannot obviate the requirements imposed on the DCO or the terms of the Option and Mitigation Deed.

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## 2 Progress of the Option and Mitigation Deed

- 2.1 There has been substantial recent progress over recent weeks in Highways England agreeing the form of the draft Option and Mitigation Deed which we provided to it in December 2018 so as to:
- a) minimise land take associated with the Proposed Order;
  - b) provide for the voluntary acquisition of land and other interests required by Highways England in lieu of the exercise of powers of compulsory purchase;
  - c) secure appropriate protection for Holiday Inn's existing and future operations; and
  - d) mitigate the adverse impacts anticipated to arise from the carrying out of works associated with the Proposed Order.
- 2.2 Highways England's solicitors returned comments on the Option and Mitigation Deed which we provided to them on 8 May 2019 on 21 May 2019, and we provided a response on 24 May 2019. Notwithstanding that we now consider the few outstanding points between the parties to be easily capable of resolution, and have made proposals in that respect, the fact remains that the Option and Mitigation Deed has not yet been agreed and completed.
- 2.3 It was entirely realistic for the Option and Mitigation Deed to have been completed by this point, but through no fault of Holiday Inn, this has not occurred. Holiday Inn has been (and remains) keen to avoid the unnecessary wasting of resources for both parties and burdening of the Examining Authority with written and oral submissions which a completed Option and Mitigation Deed would avoid, and which would enable Holiday Inn to withdraw its objection to the Proposed Order (subject to inclusion of the wording on the face of the DCO described in Section 3 of this Further Representation).
- 2.4 Holiday Inn is mindful that a draft DCO Issue Specific Hearing is occurring on 6 June 2019 and a Compulsory Acquisition Hearing on 7 June 2019.
- 2.5 Holiday Inn still hopes that the Option and Mitigation Deed will be completed before then. However, if it is not, so as to avoid prejudice to its interests, Holiday Inn will have to be represented to make submissions in favour of inclusion of protective provisions on the face of the DCO so as to mitigate the impacts of the Proposed Order on Holiday Inn, as more particularly described in the Relevant Representation.
- 2.6 To provide the Examining Authority with adequate time to consider the protective provisions proposed by Holiday Inn in advance of the hearings, we provide them at Appendix 3 to this Further Written Representation.
- 2.7 Holiday Inn wishes to stress, however, that if the Option and Mitigation Deed can be completed in advance of the hearings, it would not then consider it necessary for the protective provisions to be included on the face of the DCO, or for the Examining Authority to be troubled with them further. The matters which they address are considered to be adequately provided for in the agreed Option and Mitigation Deed.

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### 3 Applying DCO protections to statutory undertakers

- 3.1 Article 8 of the draft DCO provides that the benefit of the DCO may be transferred to a range of statutory undertakers, including (but not limited to):
- a) British Telecommunications PLC;
  - b) KCOM Group PLC;
  - c) Northern Gas Networks Limited;
  - d) Northern Powergrid Limited; or
  - e) Yorkshire Water Services Limited ("**Yorkshire Water**").
- 3.2 Substantial works comprised in the authorised development could be carried out on Holiday Inn's land by any of these statutory undertakers (or others) rather than Highways England.
- 3.3 In particular, Yorkshire Water is to divert the main flood relief sewer running between Waterhouse Lane to the northeast of the Mytongate junction (on the northern side of the A63) to Commercial Road (Work No. 23) through the Hotel's car park, necessitating alterations to the Hotel's car park, access, internal roads and amendments to the existing drainage arrangements (Work No. 26), all which will cause major disruption and loss of parking during construction. Yorkshire Water will also construct a new pumping station and Northern Powergrid a substation (Work No. 24) on the Holiday Inn's land.
- 3.4 Article 3 of the draft DCO grants development consent for the authorised development subject strictly to the other provisions of the DCO, particularly the requirements in Schedule 2 imposed to mitigate the adverse effects of the development.
- 3.5 Further, and as set out previously, Holiday Inn is in the process of agreeing with Highways England the Option and Mitigation Deed which sets out the terms on which the powers of the DCO can be exercised in a manner which appropriately mitigates the impacts of the authorised development whilst enabling it to proceed.
- 3.6 Under the Deed, Highways England would be required to ensure that any party upon which it confers the benefit of the DCO pursuant to Article 8 enters into those same terms in favour of Holiday Inn. Alternatively, Holiday Inn will be inviting the Examining Authority to impose the protections set out in Appendix 3 to this Further Representation on the face of the Order. In either case, the proposal is for the works on Holiday Inn's land to be strictly controlled in order to avoid unacceptable harm to their interests.
- 3.7 As it stands, however, the statutory undertakers listed above (and others) could instead elect to carry out the authorised development and use or acquire interests in land under their own statutory powers, meaning that they would not need to comply with the terms of the DCO; and nor could they be required to comply with the terms on which Highways England has agreed the powers of the DCO will be exercised under the Option and Mitigation Deed. This would be notwithstanding the fact that such works:

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- a) are regarded by Highways England as being directly connected to their Nationally Significant Infrastructure Project (hence their status as 'associated development');
- b) would not be required 'but for' Highways England's scheme; and
- c) are not, therefore, ones that there would otherwise be likely to be undertaken by the other undertakers for their own purposes.

3.8 To avoid the risk of the carefully considered protections being circumvented by statutory undertakers using alternative powers to carry out works intended to form part of the Authorised Development, Holiday Inn respectfully requests the Examining Authority and Secretary of State to include the wording set out below in the DCO. The effect of this wording is to require Highways England and other statutory undertakers to carry out the authorised development on Holiday Inn land and the Trinity Burial Ground only under the DCO. It does however make it abundantly clear that this does not affect activities to be carried out in the ordinary course of each statutory undertaker's statutory duties for their own purposes.

*“31(3) Subject to article 31(4), neither the undertaker nor any statutory undertaker may—*

- (a) carry out any part of the authorised development on; or*
- (b) for the purposes of carrying out, maintaining and operating any part of the authorised development enter upon, use or acquire any interest in,*

*the land to which this paragraph (3) applies pursuant to any Act or enactment, or any instrument or subordinate legislation made under any Act or enactment, other than this Order.*

*31(4) Nothing in article 31(3) applies to a statutory undertaker—*

- (a) carrying out any activity in relation to its apparatus existing on the date of this Order on the land to which paragraph (3) applies in the ordinary course of its statutory duties necessary absent the proposals for the authorised development; or*
- (b) after the authorised development on the land to which paragraph (3) applies has been completed and opened for use for the purposes for which it was designed and any interest in the land required for the retention of that part of the authorised development has been acquired in accordance with that paragraph.*

*31(5) The land to which article 31(4)(b) applies comprises Plots 3/1bd, 3/1bh, 3/1bi, 3/1bp, 3/1ca, 3/1cd, 3/1ce, 3/1cf, 3/1cg, 3/1ch, 3/1be, 3/1bf, 3/1bg3/1c, 3/1cb, 5/2a, 5/2i 5/2f, 5/2g and 5/2j as set out in the book of reference and on the land plans and the land to which article 31(4)(a) applies comprises those Plots and Plots 3/1bv, 3/1by, 3/1cc, 3/2g, 3/9a and 3/9d; and in articles 31(3) and 31(4) “statutory undertaker” includes the persons listed in article 8(4) of this Order and any utility undertaker or operator (which have the meanings given in Schedule 9 (protective provisions)).”*

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- 3.9 This wording is necessary (indeed, critical) because without it there is a very real possibility that the protections contained within the Order and/or in the Option and Mitigation Deed, in respect of which Holiday Inn and Highways England have expended substantial time, funds and goodwill, will be rendered worthless.
- 3.10 We are informed by Highways England that it is content for this wording to be included in the DCO and we consider it uncontroversial for any other party, unless they propose to carry out the authorised development in a manner which obviates the requirements imposed on the DCO and the Option and Mitigation Deed.
- 3.11 For the avoidance of any doubt, the Secretary of State has the necessary statutory powers for the wording above to be included in the DCO pursuant to the following:
- a) Sections 120(3) and (4) of the Planning Act 2008 provide that a DCO *may "make provision relating to, or to matters ancillary to, the development for which consent is granted" including "in particular provision for or relating to any of the matters listed in Part 1 of Schedule 5", which at paragraph 10 includes "The protection of the property or interests of any person."* This is self-evidently the case here.
  - b) Sections 120(1) and (2) of the Planning Act 2008 provide that a DCO may impose requirements in connection with the development for which consent is granted, which *"may in particular include"* (but are not limited to) *"requirements corresponding to conditions which could have been imposed on the grant of any permission"*. Permissions commonly include where necessary (as is the case here) conditions prohibiting the use of permitted development rights, for example, where this undermines protections provided for in other conditions.
  - c) To the extent that this is the effect of the proposed wording above, Section 120(5) PA 2008 further states that a DCO may *"apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order"*.

#### 4 **Next Steps**

- 4.1 Holiday Inn very much hopes that it will not have to engage substantively any further in the Examination of the Proposed Order (other than in support of the wording at Paragraph 3 of this Further Representation), and looks forward to Highways England engaging with it over the coming fortnight so as to swiftly complete the Option and Mitigation Deed, and enable Holiday Inn to withdraw its objection subject to the inclusion of the wording at Paragraph 3 of this Further Representation.

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4.2 Please let Sheridan Treger or Tom White of this office know if you have any queries in relation to this Further Written Representation.

Yours faithfully



**Bryan Cave Leighton Paisner LLP**

**CC (By Email):** [A63CastleStreet.Hull@highwaysengland.co.uk](mailto:A63CastleStreet.Hull@highwaysengland.co.uk)

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## **Appendix 1**

### **Relevant Representation of Holiday Inn (29 November 2018)**

Date: 29 November 2018  
Our ref: SFIT/STRE/37086.00020  
Your ref: TR010016  
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**By Recorded Delivery & By Email to [A63castlestreet@pins.gsi.gov.uk](mailto:A63castlestreet@pins.gsi.gov.uk)**

Dear Sir/Madam

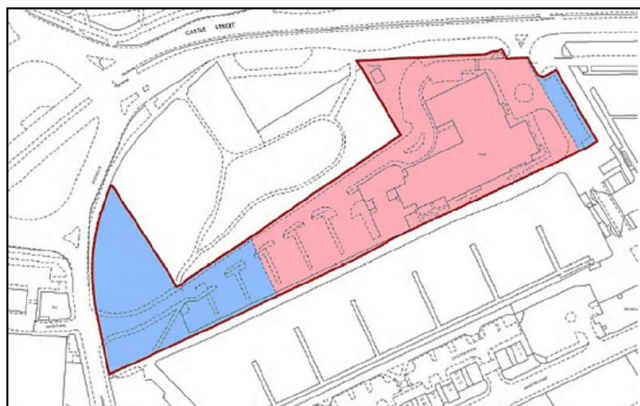
**A63 Castle Street Improvement, Hull (TR010016)  
Relevant Representation on behalf of HIN Hull Limited and HICP Limited**

**1 OBJECTION**

- 1.1 Please accept this letter as the response of HIN Hull Limited and HICP Limited ("**Holiday Inn**"), for whom we act, to the notice issued to the latter on 5 November 2018 by Highways England pursuant to Section 56 of the Planning Act 2008 in respect of the proposed A63 (Castle Street Improvement, Hull) Development Consent Order (the "**proposed Order**").
- 1.2 **Holiday Inn objects to the proposed Order** subject to satisfactory mitigation being secured by way of an appropriate agreement between Highways England and the Holiday Inn, as further described in this response.

**2 HOLIDAY INN'S INTEREST IN LAND SUBJECT TO THE PROPOSED ORDER**

HIN Hull Limited holds a 125-year leasehold interest in the whole of the land edged red<sup>1</sup> below and granted a 20-year under-lease of all that land on 27 July 2015 to HICP Limited (with effect from 2 April 2015)<sup>2</sup> (the "**Hotel Land**"):



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<sup>1</sup> Title No. HS148908  
<sup>2</sup> Title No. HS380678



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### 3 THE HOLIDAY INN

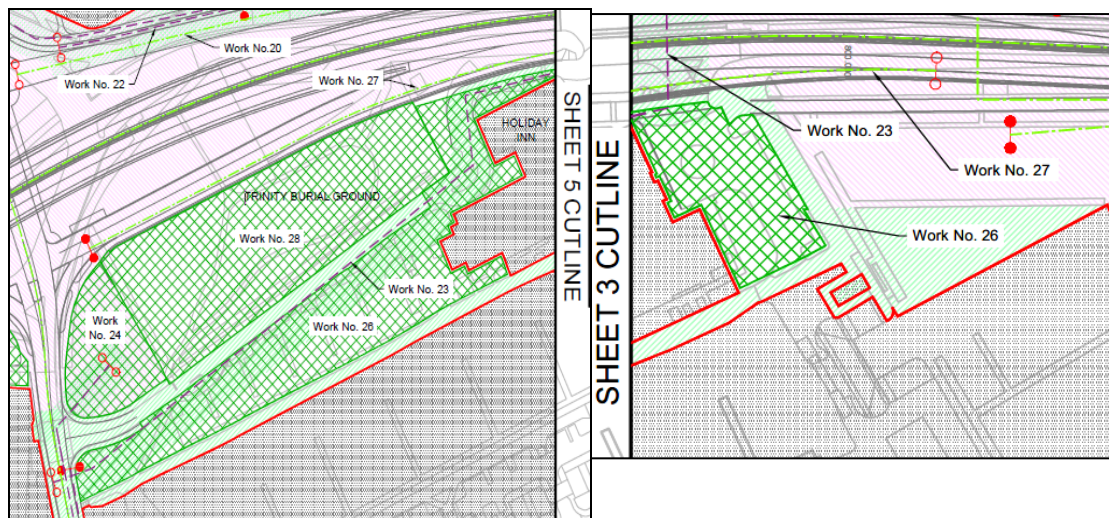
3.1 The Holiday Inn owns and operates a three-storey, 100 bedroom hotel on the Hotel Land (the "Hotel").

### 4 POWERS IN THE PROPOSED ORDER OVER THE HOTEL LAND

4.1 The powers comprised in the proposed Order which relate to the Hotel Land are substantial and very broadly drafted. Highways England asserts that these are "*not considered to affect the ability of the hotel to do business and should not substantially impact the user experience*". This is an untenable position for Highways England to take. If exercised on their terms, it is clear that the powers will cause immense disruption to the trade and operation of the Hotel for several years and are highly likely to necessitate its closure.

4.2 A main flood relief sewer running between Waterhouse Lane to the northeast of the Mytongate junction (on the northern side of the A63) to Commercial Road (Work No. 23) is proposed to be diverted through the Hotel car park. There are to be alterations to the Hotel's car park, access, internal roads and amendments to the existing drainage arrangements (Work No. 26), all which will cause major disruption and loss of parking during construction.

4.3 The following extracts from the Works Plans submitted with the proposed Order highlight the geographical extent of the Hotel Land identified by Highways England as being required for works relating to the authorised development, and denote, by reference to Works Numbers, the works proposed.<sup>3</sup>

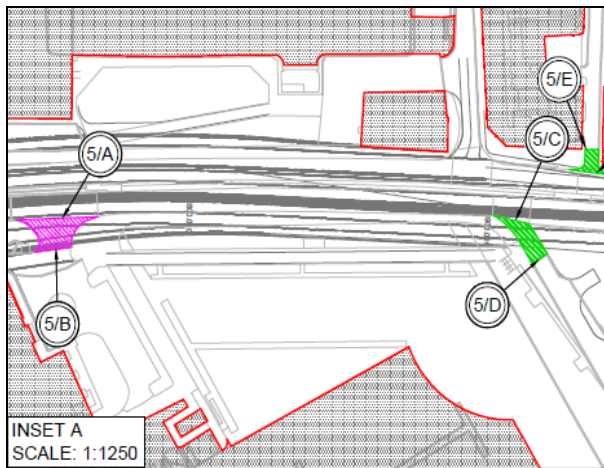


<sup>3</sup> Areas hatched pale green on the Works Plans are proposed to be used for minor utilities diversions and other 'minor' works. Areas cross-hatched green and shaded pale green on the Works Plans are proposed to be used as a work area and for minor utilities diversions and other 'minor' works. Purple dashed line denote proposed utilities diversion works.

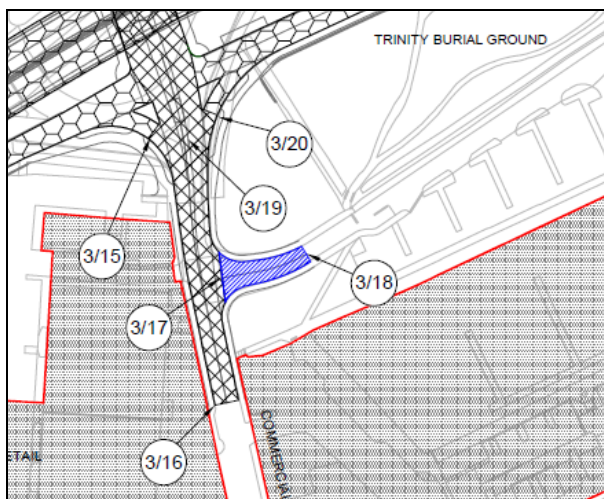
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4.4 Work No. 24 (Works Plans - Option A, Sheet 3 of 6) would necessitate a loss of amenity land at the Commercial Road entrance to the Hotel Land in order to facilitate construction of a new pumping station and Northern Powergrid substation.

4.5 Highways England will be permanently stopping up the private access road to the Hotel from the A63 (Castle Street).<sup>4</sup> This is the primary vehicular access route to the Hotel.



4.6 Highways England is to carry out works to another private access road, a secondary access to the Hotel off Commercial Road<sup>5</sup>:

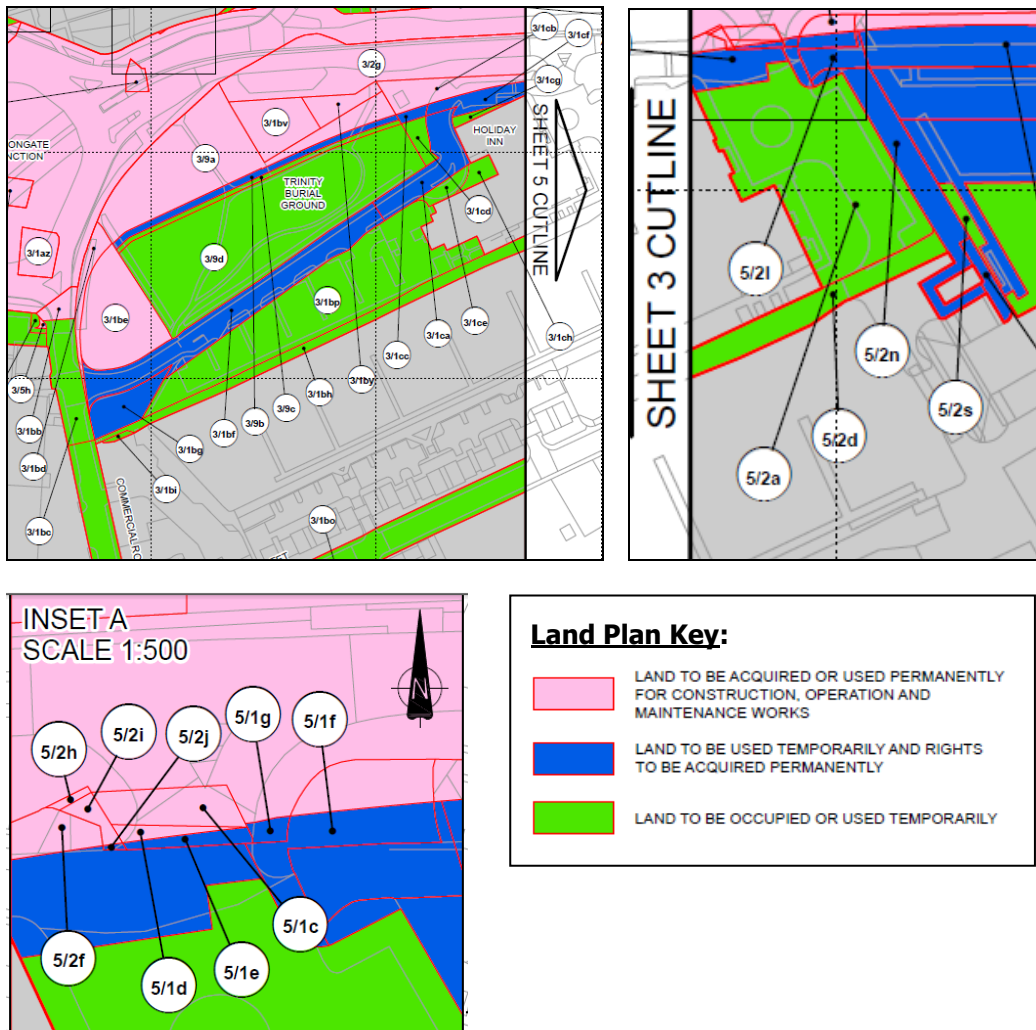


4.7 The proposed Order seeks extensive powers of compulsory acquisition and temporary possession over the Hotel Land as illustrated on the following extracts from Sheets 3 and 5 of the draft Land Plans:

<sup>4</sup> Hatched pink between Points 5/A and 5/B on Sheet 5 (Inset A) of the Streets, Rights of Way & Access Plans.

<sup>5</sup> Shaded blue between Points 3/17 and 3/18 on Sheet 3 of the Streets, Rights of Way & Access Plans.

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- 4.8 Highways England proposes the compulsory acquisition of all interests in **Plots 3/1bd, 3/1be, 3/1cb, 5/2i** and **5/2f** which Holiday Inn owns, for construction, operation and maintenance works (shown pink in the Land Plan extracts above).
- 4.9 The proposed Order seeks the temporary use of the following Plots owned by Holiday Inn, to be followed by the acquisition of permanent rights over the same Plots (shown blue in the extracts above):

Plot	Powers
3/1bf, 3/1bg, 3/1ca, 5/2g, 5/2j	A right to construct, use and maintain a Yorkshire Water sewer diversion.
3/1cc, 3/1cf	A right to construct, use and maintain a retaining wall over soft landscaping and private car parking to Holiday Inn situated south of the A63 Castle Street, Hull.

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- 4.10 The proposed Order seeks the temporary use, for an indeterminate period of time, of Plots 3/1bh, 3/1bi, 3/1bp, 3/1cd, 3/1ce, 3/1cg, 3/1ch and 5/2a owned by Holiday Inn (being soft landscaping, car parking and access road on the Hotel Land) (shown green in the Land Plan extracts above).
- 4.11 The proposed temporary possession and use powers extend over the full extent of the Hotel Land (excluding the Hotel itself). As a consequence, all of the Hotel's current parking facilities, vehicular and pedestrian access routes, internal roads, servicing areas and outdoor seating areas may be used by Highways England for an indeterminate period of time.
- 4.12 In addition to the above, Highways England may enter onto any land within the Order limits or, indeed, other land which may be affected by the authorised development, for survey and investigation purposes. As drafted this potentially includes not only the Hotel Land but the Hotel itself (even though the latter is technically outside of the Order limits). Highways England may remove soil core samples, carry out archaeological or ecological investigations and, critically, retain apparatus on the land concerned.
- 4.13 The proposed Order<sup>6</sup> authorises unspecified, generic works which are 'associated' with the principal development anywhere within the Order limits, including street layout alteration works, diversion, interference or installation of apparatus, site preparation works, establishment of site construction compounds and other works of any nature which are necessary for, or related to, the construction, operation and/or maintenance of the authorised development. On the current drafting of the Proposed Order the Holiday Inn can only prudently proceed on the basis that these wide powers will be exercised without limitation, which further increases the likelihood that the Hotel will have to close.
- 4.14 Highways England's environmental statement acknowledges that acquisition of land in front of the Hotel adjacent to A63 Castle Street means that car parking spaces will be lost and the area in front of the Hotel will become unsuitable for coaches and buses. The Hotel car park will need to be reconfigured and private roads in front of the Hotel will need to be modified to allow coaches and buses to access the front of the building using the Commercial Road access.
- 4.15 The existing Holiday Inn substation is to be demolished and there is uncertainty surrounding the provision, location, capacity and operational suitability of a replacement facility. Holiday Inn is concerned to ensure that any physical switchover to the replacement facility does not lead to a consequent loss or interruption to electricity supplies to the Hotel.
- 4.16 There are no secured or agreed arrangements for maintaining adequate access to the Hotel throughout the construction phase, from Commercial Road or otherwise.
- 4.17 The Hotel Land will need to be reconfigured for the construction of a 2.2m+ high retaining wall between the westbound A63 slip road and the grounds of the Holiday Inn and Trinity Burial Ground to the south, with construction and finish details undefined.

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<sup>6</sup> Art. 3 and Schedule 1.

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- 4.18 Highways England's environmental statement acknowledges that congestion and lane closures as a result of construction will disrupt the Hotel's customer, staff and supplier access, particularly during busy or event periods. There will be noisy and disruptive night time and weekend working which will impact on the commercial operation of the Hotel.

## 5 **IMPACTS ON THE HOTEL IN THEIR STATUTORY AND POLICY CONTEXT**

### *Conflict with national policy on impacts*

- 5.1 The National Policy Statement for National Networks ("**NPS**"), to which the Secretary of State must have regard in determining Highways England's application for the proposed Order, provides as follows:
- 5.2 "The Government recognises that for development of the national road and rail networks to be sustainable **these should be designed to minimise social and environmental impacts and improve quality of life.**
- 5.3 In delivering new schemes, **the Government expects applicants to avoid and mitigate environmental and social impacts** in line with the principles set out in the NPPF and the Government's planning guidance." (emphasis added)
- 5.4 As it stands, for the reasons described above, the scheme for which the proposed Order seeks powers is not in accordance with the NPS for the purposes of Section 104(3) so far as the Hotel and the Hotel Land is concerned.
- 5.5 It is appreciated that Highways England is currently promoting or preparing to promote a very significant number of development consent orders in circumstances constrained by available human and capital resources, and that Holiday Inn is only one affected party in respect of the proposals to the A63.
- 5.6 Even so, the powers sought in the proposed Order in respect of the Hotel Land are inappropriately "broad brush" and insufficiently considered – they do not provide for obvious and entirely reasonable secured mitigation for the social and environmental impacts on the Hotel, which Holiday Inn has identified to Highways England throughout consultation.
- 5.7 The environmental assessment which accompanies the proposed Order is inadequate. It has diminished or dismissed impacts on the Hotel either without evidence or on the basis of assumed mitigation which is neither detailed nor secured.

### *Conflict with statutory and policy requirements on compulsory acquisition*

- 5.8 In conflict with Section 122 of the Planning Act 2008, there is no engineering evidence that all the land owned by Holiday Inn and comprised in the Book of Reference/Land Plans is required for the development to which the proposed Order relates, or is required to facilitate, or is incidental to, that development. Or indeed that all such powers are required all of the time and for indeterminate periods of time as sought in the proposed Order.

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- 5.9 It is clear that, in conflict with applicable Guidance,<sup>7</sup> all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have not been explored in this case. Highways England has not demonstrated that interfering with the rights of Holiday Inn is necessary and proportionate.
- 5.10 The proposed Order as drafted indicates that Highways England does not have a clear idea of how it intends to use the Hotel Land which it is proposed to acquire or use "temporarily", or has considered an appropriate extent of that use, and has thus sought very wide powers in this location. The fact alone that temporary possession and use powers are currently sought over the full extent of the Hotel Land (excluding the Hotel itself) is sufficient to demonstrate this.
- 5.11 In the event that Highways England were to exercise temporary possession and use powers in the manner contemplated, neither Hotel staff nor guests could actually access the Hotel from the public highway. No clear explanation has, to-date, been provided to explain why such an extensive use of land is necessary to deliver the project or, indeed, why it is proportionate in the public interest.
- 5.12 This is a matter which will need to be vigorously interrogated during the course of the Examination of the proposed Order and at its compulsory acquisition hearing. Irrespective of the merits of whether development consent should be granted for the proposals, it remains to be demonstrated that the tests for the granting of all of the compulsory acquisition and temporary possession powers sought by the proposed Order have been met, or whether the book of reference should be amended for the purposes of any finally made Order in respect of the Hotel Land.
- 5.13 The quantum of compensation payable pursuant to the exercise of compulsory acquisition powers is not a matter for the examining authority. But it must prudently be a matter for Highways England. The current "broad brush" approach taken to powers sought over the Hotel Land is likely to result in the Upper Tribunal awarding very substantial compensation to Holiday Inn under the head of "disturbance". This is because the Hotel, operated by Holiday Inn, is highly successful, and the broad powers which Highways England is entitled to exercise are likely to result in the Hotel having to cease totally its operation.<sup>8</sup> This is highly likely to necessitate a compensation payment on the basis of extinguishment value.
- 5.14 Secretary of State Guidance requires Highways England to seek to acquire land by negotiation wherever practicable - compulsorily acquisition should only be sought as part of the proposed Order if attempts to acquire by agreement fail. Agreement to acquire the necessary rights and interests in the Hotel Land is clearly practicable. Holiday Inn has informed Highways England consistently throughout the evolution of its proposals that Holiday Inn is amenable to meaningful negotiations concluding in an agreement in respect of required rights, interests and mitigation measures. That Highways England is pursuing

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<sup>7</sup> Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land - September 2013 - Department for Communities and Local Government

<sup>8</sup> Whilst the Hotel itself is outwith the current Order limits, it is clear that if adequate vehicular or pedestrian access cannot be made available, the Hotel will be unable to trade.

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multiple development consent orders for projects with linear routes and many affected parties is no reason for Guidance on compulsory acquisition to be ignored.

## 6 A WAY FORWARD

6.1 It is entirely open to Highways England in this location to acquire necessary rights by negotiation and to minimise appropriately the impacts of the Project (and compensation liability) in compliance with national policy by entering into an agreement with Holiday Inn on the use of the powers sought and reasonable mitigation prior to the start of the Examination (an “**Option and Impact Mitigation Deed**”). Holiday Inn is keen to work with Highways England to achieve this on reasonable terms to the satisfaction of both parties, and has indicated this throughout consultation.

6.2 Whilst the details would be for negotiation, Holiday Inn are looking to the Option and Impact Mitigation Deed to secure the following:

### MATTERS FOR THE OPTION & IMPACT MITIGATION DEED

<b>1</b>	Agreement as to the extent of temporary land use and permanent land take. (Where the design of works comprised in the proposed Order is not sufficiently progressed to secure an appropriate minimisation of temporary land use and permanent land take, Holiday Inn and Highways England will need to agree minimum matters to be safeguarded in the course of that design).
<b>2</b>	An appropriate compensation and works package for any necessary internal and external re-configuration of the Hotel as a result of the works.
<b>3</b>	Provision of adequate parking for staff and visitors and loss of car parking revenue throughout the works, including agreeing and defining any off-site parking arrangements and management processes.
<b>4</b>	Maintenance of vehicular and pedestrian access for staff, visitors, coaches and servicing vehicles throughout the works (including the provision of adequate and suitable pedestrian access during the Princess Quay footbridge works).
<b>5</b>	Agreeing and defining the works associated with the closure of the Hotel’s existing A63 access and alterations to the Commercial Street access throughout the works.
<b>6</b>	The details of mitigating construction impacts in this location, e.g. noise, dust, vibration and working hours.
<b>7</b>	Agreement regarding daytime and night time DB levels and protocols for exceedances.
<b>8</b>	Specific temporary signage for the Hotel during the works, along with new signage (including both direction and main signage) for the Hotel post-construction.
<b>9</b>	Visual impact mitigation (e.g. bespoke construction shrouds).
<b>10</b>	A mechanism for agreeing dates for a minimum number of non-construction periods to avoid commercially-critical times for the Hotel (e.g. wedding receptions).
<b>11</b>	A detailed construction phasing programme and plans specific to works on the

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#### MATTERS FOR THE OPTON & IMPACT MITIGATION DEED

	<p>Hotel Land, including the duration of Highways England's presence on the Hotel Land and the duration and phasing of the sewer diversion works.</p> <p>(This will also need to encompass a procedure for identifying and agreeing upon a maximum level of disruption above which it will not be safe or commercially viable to operate the Hotel).</p>
<b>12</b>	<p>Parking and movement of contractor vehicles, the location of any site compounds and welfare facilities and the stockpiling of materials affecting the Hotel Land and access to Hotel Land.</p>
<b>13</b>	<p>A strategy to enable the implementation and completion of Holiday Inn's planning permission (reference 16/00893/FULL) for a lounge and bedroom extension which expires in March 2020, and an appropriate approach to compensation where it is deemed necessary for Holiday Inn to submit a new application (either due to the expiry of the current permission, or due to the cost or practical impossibility of implementing it in the context of the works).</p>
<b>14</b>	<p>The detailed design and finish of the proposed retaining wall to the Hotel Land.</p>
<b>15</b>	<p>The boundary treatment and landscaping replacement strategy affecting the Hotel Land, including appropriate boundary lighting, and the removal of the existing hedgerow along the internal car park access road adjacent to Trinity Grounds to better facilitate access by coaches.</p>
<b>16</b>	<p>Re-provision of the current quantity of car parking spaces post-construction and reinstatement to an agreed quality level of all surfaces, kerbing, drainage, soft landscaping and lighting.</p> <p>(This will include provision of electronic controls for coaches at the Commercial Street access, a narrowed road section, works to the current reception car parking area, and all necessary works to infrastructure).</p>
<b>17</b>	<p>Agreeing and defining the impact on the Hotel's services and utilities, surface water and foul drainage throughout the works, including interruption and disruption periods, and emergency procedures.</p>
<b>18</b>	<p>The approach to use of the Hotel's utilities, services and facilities by Highways England contractors, where this could mitigate impacts (e.g. the avoidance of noisy generators), including appropriate compensation charges.</p>
<b>19</b>	<p>Safeguards for staff and visitors against construction vehicle movements during construction, including the potential use of a banksman for appropriate vehicular circulation routes.</p>
<b>20</b>	<p>Highways England compliance with all appropriate statutory health and safety, CDM and Hull County Council construction requirements.</p>
<b>21</b>	<p>Security measures for works within the Hotel Land.</p>
<b>22</b>	<p>Appropriate screening and acoustic attenuation of the pumping station site.</p>
<b>23</b>	<p>Agreement relating to permanent access for maintenance, inspection, repair and renewal of the proposed Yorkshire Water sewer whilst minimising disruption to the</p>



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<b>MATTERS FOR THE OPTION &amp; IMPACT MITIGATION DEED</b>	
	Hotel's access, parking and servicing.
<b>24</b>	A dedicated construction liaison officer on behalf of Highways England (or its contractor) with appropriately regular meetings.
<b>25</b>	A suitable procedure through which Highways England will provide Holiday Inn with advance notice of works.
<b>26</b>	Allocation of responsibility for boundary structures (e.g. retaining wall and other boundaries).
<b>27</b>	Holiday Inn's right to claim compensation pursuant to the compensation code in respect of heads of compensation (which will be more appropriately considered following construction) along with reimbursement for its reasonable professional costs incurred during negotiation of the Impact Mitigation Agreement, and in respect of appropriate matters required in relation to the proposed Order more generally.
<b>28</b>	Demolition and reprovision of the electricity substation situated on the Hotel Land. (This will need to encompass provision, location, capacity and operational suitability of a replacement facility, along with a mechanism for agreeing a physical switchover of supply which minimises or, indeed, avoids interference with the existing electrical supply to the Hotel).

- 6.3 We are mindful that Highways England has not yet provided any draft terms in respect of the impacts of its works or the rights required for it. Commencement of the preliminary hearing of the examination of the proposed Order is likely at the end of February or the start of March 2019. It is clearly possible for an Option and Impact Mitigation Deed to be concluded between Highways England and Holiday Inn in respect of the matters above before then.
- 6.4 This would avoid Holiday Inn incurring unnecessary or wasted expense during the examination because it need not be necessary for the matters described in this response to be examined and/or determined if an appropriate Option and Impact Mitigation Deed is concluded.
- 6.5 We will in due course be providing a draft Option and Impact Mitigation Deed for Highways England's consideration and would urge Highways England to negotiate in good faith towards a speedy completion of it in advance of the examination of the proposed Order.
- 6.6 If a draft Option and Impact Mitigation Deed is not agreed before then, Holiday Inn will be in a position where it will have to revise terms relating to mitigation into protective provisions and request that the examining authority place these on the face of the Order, which would render them subject to section 161 of the Planning Act 2008.
- 6.7 Please let us know if you have any queries in relation to this response. We look forward to working with Highways England and its legal advisers on the Option and Impact Mitigation Deed over coming weeks and months.

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Yours faithfully



**Bryan Cave Leighton Paisner LLP**

**CC (By First Class Post):** A63 Castle Street Improvement, Hull Project Team, Regional Investment Programme, Major Projects, Highways England, Lateral, 6 City Walk, Leeds, LS11 9AT.

**CC (By Email):** [A63CastleStreet.Hull@highwaysengland.gov.uk](mailto:A63CastleStreet.Hull@highwaysengland.gov.uk).

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## **Appendix 2**

### **Written Representation of Holiday Inn (23 April 2019)**

Date: 23 April 2019  
Our ref: STRE/TWHI/2037086.000020  
Your ref: TR010016  
DDI: 020 3400 3642 / 020 3400 4618  
e-mail: [Sheridan.Treger@bcplaw.com](mailto:Sheridan.Treger@bcplaw.com) / [Thomas.White@bcplaw.com](mailto:Thomas.White@bcplaw.com)

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Major Applications & Plans  
3D  
Temple Quay House  
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**By Recorded Delivery & By Email to [A63castlestreet@pins.gsi.gov.uk](mailto:A63castlestreet@pins.gsi.gov.uk)**

Dear Sir/Madam

**A63 Castle Street Improvement, Hull (TR010016)  
Written Representation on behalf of HIN Hull Limited and HICP Limited**

**1 Introduction**

- 1.1 This Written Representation is made on behalf of HIN Hull Limited and HICP Limited ("**Holiday Inn**"), for whom we act in respect of the proposed A63 (Castle Street Improvement, Hull) Development Consent Order (the "**Proposed Order**").
- 1.2 We refer to the Relevant Representation dated 29 November 2018 submitted on behalf of Holiday Inn (the "**Relevant Representation**"). A copy of the Relevant Representation is appended to this Written Representation for ease of reference.
- 1.3 For the reasons set out in the Relevant Representation, and pursuant to Regulation 10(4) of The Infrastructure Planning (Examination Procedure) Rules 2010, Holiday Inn restates its **objection** to the Proposed Order (in particular the proposed compulsory acquisition and temporary use powers and the terms on which it is proposed these will be exercised). However, Holiday Inn hopes to be in a position to withdraw this objection as soon as Highways England ("**HI**") agrees and completes the necessary Option and Mitigation Deed (the "**Option Deed**") which we are endeavouring to progress with it.

**2 Current Position**

- 2.1 Paragraph 6 of the Relevant Representation contains the outline terms of a settlement proposal put forward by Holiday Inn which sought *inter alia*, in accordance with the principles of national policy, to: (i) minimise land take associated with the Proposed Order, (ii) provide for the voluntary acquisition of land and other interests required by HE in lieu of the exercise of powers of compulsory purchase, (iii) secure appropriate protection for Holiday Inn's existing and future operations, and (iv) mitigate the adverse impacts anticipated to arise from the carrying out of works associated with the Proposed Order.
- 2.2 Following an all-parties meeting, a draft Option Deed was provided to BDB Pitmans, who act for HE, on 20 December 2018.
- 2.3 Whilst the process of negotiation of the Option Deed has been somewhat lengthier than Holiday Inn had originally anticipated, particularly given its proactivity in preparing and

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issuing drafts of the documents, a substantial measure of 'in principle' agreement now exists between Holiday Inn and HE.

2.4 Certain matters pertaining to the Option Deed do, however, remain outstanding between the parties, particularly in relation to ensuring that the documented mitigation measures will be binding on any party exercising powers under the Proposed Order.

2.5 As at the date of this Written Representation, a substantive response is awaited from HE in respect of the outstanding points.

### 3 **Next Steps**

3.1 As both the Examining Authority and HE will be aware, the confirmed timetable for Examination of the Proposed Order necessitates the further detailed involvement of all Interested Parties (including Holiday Inn) at a number of stages in the coming weeks and months.

3.2 In the short-term, this is likely to include responding in detail to the Examining Authority's First Written Questions and requests for further information (each by 10 May 2019), and preparation for, and attendance at, compulsory purchase and other issue-specific hearings relating to the Proposed Order (during the week commencing 3 June 2019).

3.3 **In accordance with the Examination Timetable included at Annex A to the Rule 8 Letter of 1 April 2019, this letter constitutes written notice that we may wish to attend and speak at the compulsory purchase and other issue-specific hearings on behalf of Holiday Inn. However, we await written confirmation from the Examining Authority as to the exact dates on which these hearings are to be scheduled.**

3.4 Cognisant of these deadlines, and the substantial resources, time and cost required to be expended in preparing for them, it is Holiday Inn's strong preference for the Option Deed to be agreed by **Wednesday 8 May**, being two clear working days before Deadline 2 of the Examination (10 May 2019). It is anticipated that completion of the Option Deed will follow shortly after Wednesday 8 May, depending on the availability of Holiday Inn's and HE's authorised signatories.

3.5 We consider that it is entirely realistic to expect the Option Deed to be agreed by this deadline, although Holiday Inn wishes to place on record at this juncture its disappointment that, through no fault of its own, the Option Deed was not agreed before the Preliminary Meeting as had been originally and reasonably requested.

3.6 In the event that the Option Deed cannot be completed before the revised deadline of Wednesday 8 May, Holiday Inn will have little choice but to provide the Examining Authority with a supplementary written representation outlining the nature of its continued concerns regarding the Proposed Order.

3.7 We hope that the proposed course of action will be acceptable to the Examining Authority, and would invite it to make early contact with the writers of this letter if it is not. Whilst we are cognisant of the need to ensure the efficient progression of the Examination, we remain keen to avoid both the unnecessary wasting of resources, and burdening the Examining

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Authority with detailed written material that should, in the event of appropriate engagement by HE as promoter, ultimately prove unnecessary.

- 3.8 Further, and as stated in Paragraph 6.6 of the Relevant Representation, Holiday Inn will also be left in a position whereby it will have to revise terms relating to mitigation into protective provisions and request that the Examining Authority place these on the face of the Proposed Order, which would then render them subject to Section 161 of the Planning Act 2008. Doing so would also ensure that they are binding on parties other than HE which are authorised to exercise powers under the Proposed Order.
- 3.9 However, Holiday Inn very much hopes that it will not have to engage substantively in the Examination of the Proposed Order, and looks forward to HE engaging with it so as to swiftly complete the Option Deed.
- 3.10 Please let Sheridan Treger or Tom White of this office know if you have any queries in relation to this Written Representation.

Yours faithfully



**Bryan Cave Leighton Paisner LLP**

**CC (By Email):** [A63CastleStreet.Hull@highwaysengland.gov.uk](mailto:A63CastleStreet.Hull@highwaysengland.gov.uk).

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## **Appendix 1**

### **Relevant Representation of Holiday Inn (29 November 2018)**

Date: 29 November 2018  
Our ref: SFIT/STRE/37086.00020  
Your ref: TR010016  
DDI: 020 3400 2605 / 020 3400 3642  
e-mail: [Sarah.Fitzpatrick@bcplaw.com](mailto:Sarah.Fitzpatrick@bcplaw.com) / [Sheridan.Treger@bcplaw.com](mailto:Sheridan.Treger@bcplaw.com)

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**By Recorded Delivery & By Email to [A63castlestreet@pins.gsi.gov.uk](mailto:A63castlestreet@pins.gsi.gov.uk)**

Dear Sir/Madam

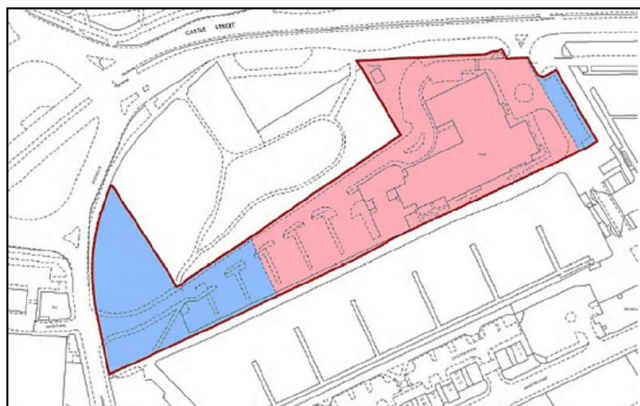
**A63 Castle Street Improvement, Hull (TR010016)  
Relevant Representation on behalf of HIN Hull Limited and HICP Limited**

**1 OBJECTION**

- 1.1 Please accept this letter as the response of HIN Hull Limited and HICP Limited ("**Holiday Inn**"), for whom we act, to the notice issued to the latter on 5 November 2018 by Highways England pursuant to Section 56 of the Planning Act 2008 in respect of the proposed A63 (Castle Street Improvement, Hull) Development Consent Order (the "**proposed Order**").
- 1.2 **Holiday Inn objects to the proposed Order** subject to satisfactory mitigation being secured by way of an appropriate agreement between Highways England and the Holiday Inn, as further described in this response.

**2 HOLIDAY INN'S INTEREST IN LAND SUBJECT TO THE PROPOSED ORDER**

HIN Hull Limited holds a 125-year leasehold interest in the whole of the land edged red<sup>1</sup> below and granted a 20-year under-lease of all that land on 27 July 2015 to HICP Limited (with effect from 2 April 2015)<sup>2</sup> (the "**Hotel Land**"):



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<sup>1</sup> Title No. HS148908  
<sup>2</sup> Title No. HS380678



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### 3 THE HOLIDAY INN

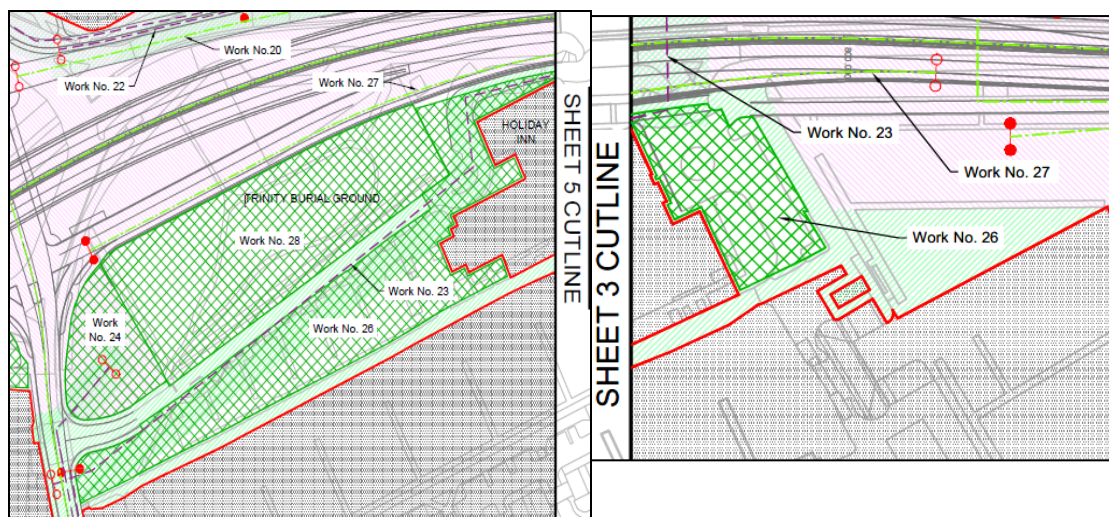
3.1 The Holiday Inn owns and operates a three-storey, 100 bedroom hotel on the Hotel Land (the "Hotel").

### 4 POWERS IN THE PROPOSED ORDER OVER THE HOTEL LAND

4.1 The powers comprised in the proposed Order which relate to the Hotel Land are substantial and very broadly drafted. Highways England asserts that these are "*not considered to affect the ability of the hotel to do business and should not substantially impact the user experience*". This is an untenable position for Highways England to take. If exercised on their terms, it is clear that the powers will cause immense disruption to the trade and operation of the Hotel for several years and are highly likely to necessitate its closure.

4.2 A main flood relief sewer running between Waterhouse Lane to the northeast of the Mytongate junction (on the northern side of the A63) to Commercial Road (Work No. 23) is proposed to be diverted through the Hotel car park. There are to be alterations to the Hotel's car park, access, internal roads and amendments to the existing drainage arrangements (Work No. 26), all which will cause major disruption and loss of parking during construction.

4.3 The following extracts from the Works Plans submitted with the proposed Order highlight the geographical extent of the Hotel Land identified by Highways England as being required for works relating to the authorised development, and denote, by reference to Works Numbers, the works proposed.<sup>3</sup>

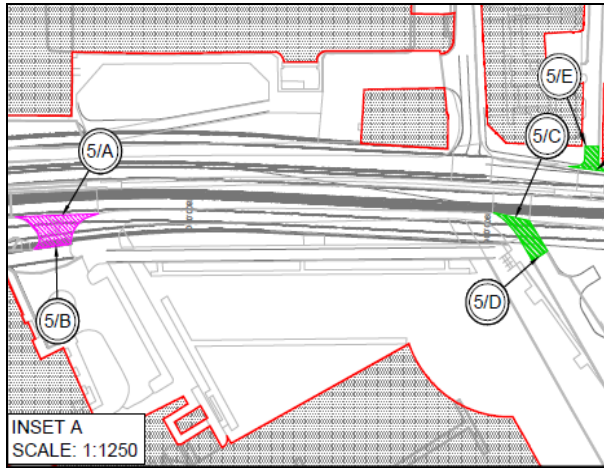


<sup>3</sup> Areas hatched pale green on the Works Plans are proposed to be used for minor utilities diversions and other 'minor' works. Areas cross-hatched green and shaded pale green on the Works Plans are proposed to be used as a work area and for minor utilities diversions and other 'minor' works. Purple dashed line denote proposed utilities diversion works.

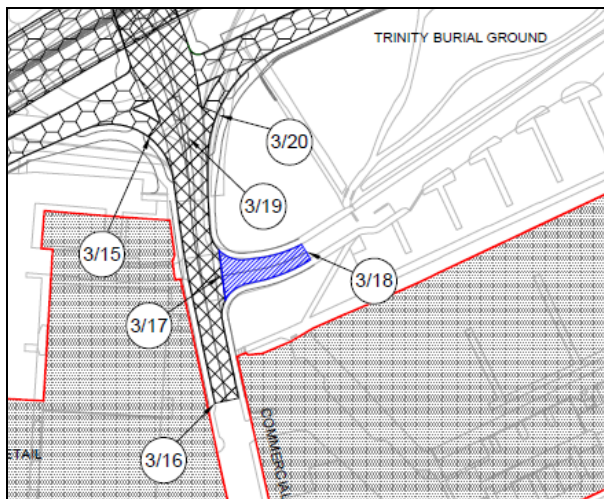
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4.4 Work No. 24 (Works Plans - Option A, Sheet 3 of 6) would necessitate a loss of amenity land at the Commercial Road entrance to the Hotel Land in order to facilitate construction of a new pumping station and Northern Powergrid substation.

4.5 Highways England will be permanently stopping up the private access road to the Hotel from the A63 (Castle Street).<sup>4</sup> This is the primary vehicular access route to the Hotel.



4.6 Highways England is to carry out works to another private access road, a secondary access to the Hotel off Commercial Road<sup>5</sup>:

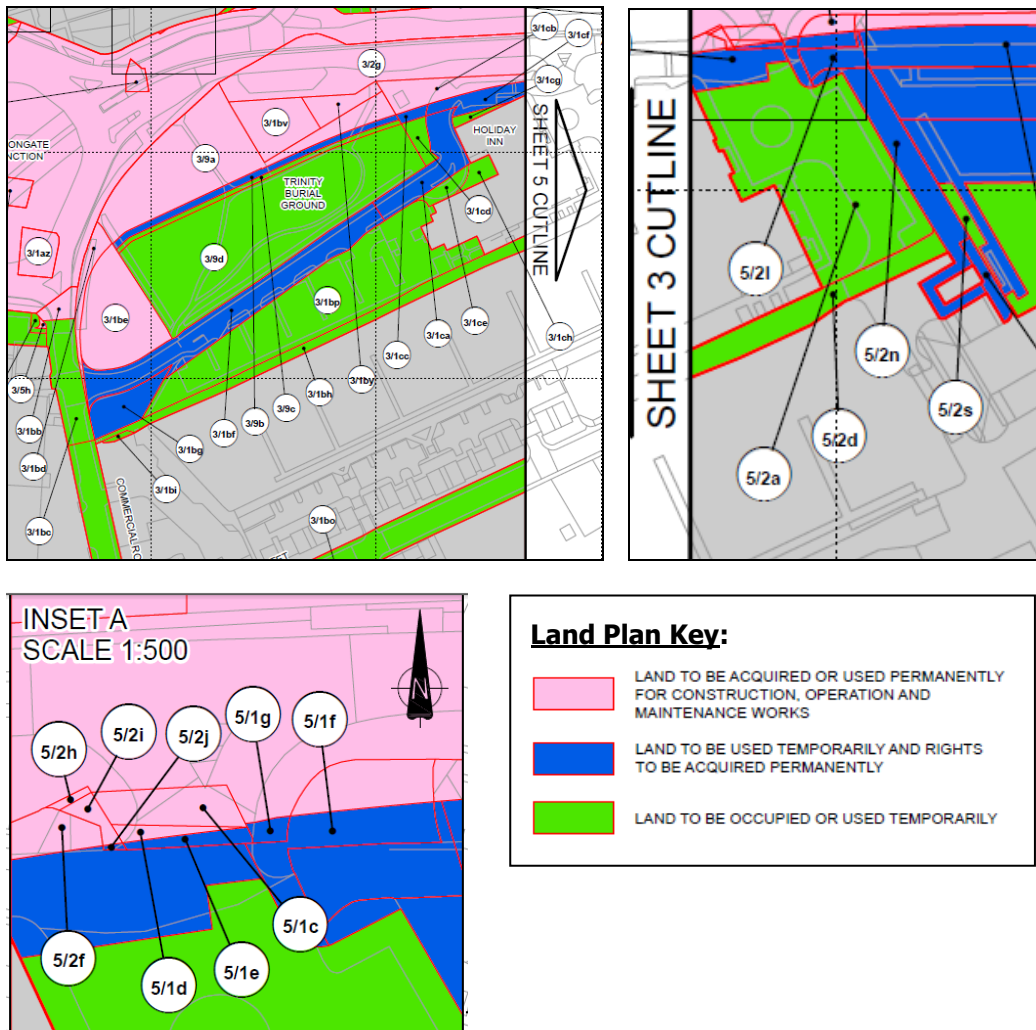


4.7 The proposed Order seeks extensive powers of compulsory acquisition and temporary possession over the Hotel Land as illustrated on the following extracts from Sheets 3 and 5 of the draft Land Plans:

<sup>4</sup> Hatched pink between Points 5/A and 5/B on Sheet 5 (Inset A) of the Streets, Rights of Way & Access Plans.

<sup>5</sup> Shaded blue between Points 3/17 and 3/18 on Sheet 3 of the Streets, Rights of Way & Access Plans.

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- 4.8 Highways England proposes the compulsory acquisition of all interests in **Plots 3/1bd, 3/1be, 3/1cb, 5/2i** and **5/2f** which Holiday Inn owns, for construction, operation and maintenance works (shown pink in the Land Plan extracts above).
- 4.9 The proposed Order seeks the temporary use of the following Plots owned by Holiday Inn, to be followed by the acquisition of permanent rights over the same Plots (shown blue in the extracts above):

Plot	Powers
3/1bf, 3/1bg, 3/1ca, 5/2g, 5/2j	A right to construct, use and maintain a Yorkshire Water sewer diversion.
3/1cc, 3/1cf	A right to construct, use and maintain a retaining wall over soft landscaping and private car parking to Holiday Inn situated south of the A63 Castle Street, Hull.

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- 4.10 The proposed Order seeks the temporary use, for an indeterminate period of time, of Plots 3/1bh, 3/1bi, 3/1bp, 3/1cd, 3/1ce, 3/1cg, 3/1ch and 5/2a owned by Holiday Inn (being soft landscaping, car parking and access road on the Hotel Land) (shown green in the Land Plan extracts above).
- 4.11 The proposed temporary possession and use powers extend over the full extent of the Hotel Land (excluding the Hotel itself). As a consequence, all of the Hotel's current parking facilities, vehicular and pedestrian access routes, internal roads, servicing areas and outdoor seating areas may be used by Highways England for an indeterminate period of time.
- 4.12 In addition to the above, Highways England may enter onto any land within the Order limits or, indeed, other land which may be affected by the authorised development, for survey and investigation purposes. As drafted this potentially includes not only the Hotel Land but the Hotel itself (even though the latter is technically outside of the Order limits). Highways England may remove soil core samples, carry out archaeological or ecological investigations and, critically, retain apparatus on the land concerned.
- 4.13 The proposed Order<sup>6</sup> authorises unspecified, generic works which are 'associated' with the principal development anywhere within the Order limits, including street layout alteration works, diversion, interference or installation of apparatus, site preparation works, establishment of site construction compounds and other works of any nature which are necessary for, or related to, the construction, operation and/or maintenance of the authorised development. On the current drafting of the Proposed Order the Holiday Inn can only prudently proceed on the basis that these wide powers will be exercised without limitation, which further increases the likelihood that the Hotel will have to close.
- 4.14 Highways England's environmental statement acknowledges that acquisition of land in front of the Hotel adjacent to A63 Castle Street means that car parking spaces will be lost and the area in front of the Hotel will become unsuitable for coaches and buses. The Hotel car park will need to be reconfigured and private roads in front of the Hotel will need to be modified to allow coaches and buses to access the front of the building using the Commercial Road access.
- 4.15 The existing Holiday Inn substation is to be demolished and there is uncertainty surrounding the provision, location, capacity and operational suitability of a replacement facility. Holiday Inn is concerned to ensure that any physical switchover to the replacement facility does not lead to a consequent loss or interruption to electricity supplies to the Hotel.
- 4.16 There are no secured or agreed arrangements for maintaining adequate access to the Hotel throughout the construction phase, from Commercial Road or otherwise.
- 4.17 The Hotel Land will need to be reconfigured for the construction of a 2.2m+ high retaining wall between the westbound A63 slip road and the grounds of the Holiday Inn and Trinity Burial Ground to the south, with construction and finish details undefined.

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<sup>6</sup> Art. 3 and Schedule 1.

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4.18 Highways England's environmental statement acknowledges that congestion and lane closures as a result of construction will disrupt the Hotel's customer, staff and supplier access, particularly during busy or event periods. There will be noisy and disruptive night time and weekend working which will impact on the commercial operation of the Hotel.

## 5 **IMPACTS ON THE HOTEL IN THEIR STATUTORY AND POLICY CONTEXT**

### *Conflict with national policy on impacts*

5.1 The National Policy Statement for National Networks ("**NPS**"), to which the Secretary of State must have regard in determining Highways England's application for the proposed Order, provides as follows:

5.2 "The Government recognises that for development of the national road and rail networks to be sustainable **these should be designed to minimise social and environmental impacts and improve quality of life.**

5.3 In delivering new schemes, **the Government expects applicants to avoid and mitigate environmental and social impacts** in line with the principles set out in the NPPF and the Government's planning guidance." (emphasis added)

5.4 As it stands, for the reasons described above, the scheme for which the proposed Order seeks powers is not in accordance with the NPS for the purposes of Section 104(3) so far as the Hotel and the Hotel Land is concerned.

5.5 It is appreciated that Highways England is currently promoting or preparing to promote a very significant number of development consent orders in circumstances constrained by available human and capital resources, and that Holiday Inn is only one affected party in respect of the proposals to the A63.

5.6 Even so, the powers sought in the proposed Order in respect of the Hotel Land are inappropriately "broad brush" and insufficiently considered – they do not provide for obvious and entirely reasonable secured mitigation for the social and environmental impacts on the Hotel, which Holiday Inn has identified to Highways England throughout consultation.

5.7 The environmental assessment which accompanies the proposed Order is inadequate. It has diminished or dismissed impacts on the Hotel either without evidence or on the basis of assumed mitigation which is neither detailed nor secured.

### *Conflict with statutory and policy requirements on compulsory acquisition*

5.8 In conflict with Section 122 of the Planning Act 2008, there is no engineering evidence that all the land owned by Holiday Inn and comprised in the Book of Reference/Land Plans is required for the development to which the proposed Order relates, or is required to facilitate, or is incidental to, that development. Or indeed that all such powers are required all of the time and for indeterminate periods of time as sought in the proposed Order.

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- 5.9 It is clear that, in conflict with applicable Guidance,<sup>7</sup> all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have not been explored in this case. Highways England has not demonstrated that interfering with the rights of Holiday Inn is necessary and proportionate.
- 5.10 The proposed Order as drafted indicates that Highways England does not have a clear idea of how it intends to use the Hotel Land which it is proposed to acquire or use "temporarily", or has considered an appropriate extent of that use, and has thus sought very wide powers in this location. The fact alone that temporary possession and use powers are currently sought over the full extent of the Hotel Land (excluding the Hotel itself) is sufficient to demonstrate this.
- 5.11 In the event that Highways England were to exercise temporary possession and use powers in the manner contemplated, neither Hotel staff nor guests could actually access the Hotel from the public highway. No clear explanation has, to-date, been provided to explain why such an extensive use of land is necessary to deliver the project or, indeed, why it is proportionate in the public interest.
- 5.12 This is a matter which will need to be vigorously interrogated during the course of the Examination of the proposed Order and at its compulsory acquisition hearing. Irrespective of the merits of whether development consent should be granted for the proposals, it remains to be demonstrated that the tests for the granting of all of the compulsory acquisition and temporary possession powers sought by the proposed Order have been met, or whether the book of reference should be amended for the purposes of any finally made Order in respect of the Hotel Land.
- 5.13 The quantum of compensation payable pursuant to the exercise of compulsory acquisition powers is not a matter for the examining authority. But it must prudently be a matter for Highways England. The current "broad brush" approach taken to powers sought over the Hotel Land is likely to result in the Upper Tribunal awarding very substantial compensation to Holiday Inn under the head of "disturbance". This is because the Hotel, operated by Holiday Inn, is highly successful, and the broad powers which Highways England is entitled to exercise are likely to result in the Hotel having to cease totally its operation.<sup>8</sup> This is highly likely to necessitate a compensation payment on the basis of extinguishment value.
- 5.14 Secretary of State Guidance requires Highways England to seek to acquire land by negotiation wherever practicable - compulsorily acquisition should only be sought as part of the proposed Order if attempts to acquire by agreement fail. Agreement to acquire the necessary rights and interests in the Hotel Land is clearly practicable. Holiday Inn has informed Highways England consistently throughout the evolution of its proposals that Holiday Inn is amenable to meaningful negotiations concluding in an agreement in respect of required rights, interests and mitigation measures. That Highways England is pursuing

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<sup>7</sup> Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land - September 2013 - Department for Communities and Local Government

<sup>8</sup> Whilst the Hotel itself is outwith the current Order limits, it is clear that if adequate vehicular or pedestrian access cannot be made available, the Hotel will be unable to trade.

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multiple development consent orders for projects with linear routes and many affected parties is no reason for Guidance on compulsory acquisition to be ignored.

## 6 A WAY FORWARD

6.1 It is entirely open to Highways England in this location to acquire necessary rights by negotiation and to minimise appropriately the impacts of the Project (and compensation liability) in compliance with national policy by entering into an agreement with Holiday Inn on the use of the powers sought and reasonable mitigation prior to the start of the Examination (an “**Option and Impact Mitigation Deed**”). Holiday Inn is keen to work with Highways England to achieve this on reasonable terms to the satisfaction of both parties, and has indicated this throughout consultation.

6.2 Whilst the details would be for negotiation, Holiday Inn are looking to the Option and Impact Mitigation Deed to secure the following:

### MATTERS FOR THE OPTION & IMPACT MITIGATION DEED

<b>1</b>	Agreement as to the extent of temporary land use and permanent land take. (Where the design of works comprised in the proposed Order is not sufficiently progressed to secure an appropriate minimisation of temporary land use and permanent land take, Holiday Inn and Highways England will need to agree minimum matters to be safeguarded in the course of that design).
<b>2</b>	An appropriate compensation and works package for any necessary internal and external re-configuration of the Hotel as a result of the works.
<b>3</b>	Provision of adequate parking for staff and visitors and loss of car parking revenue throughout the works, including agreeing and defining any off-site parking arrangements and management processes.
<b>4</b>	Maintenance of vehicular and pedestrian access for staff, visitors, coaches and servicing vehicles throughout the works (including the provision of adequate and suitable pedestrian access during the Princess Quay footbridge works).
<b>5</b>	Agreeing and defining the works associated with the closure of the Hotel’s existing A63 access and alterations to the Commercial Street access throughout the works.
<b>6</b>	The details of mitigating construction impacts in this location, e.g. noise, dust, vibration and working hours.
<b>7</b>	Agreement regarding daytime and night time DB levels and protocols for exceedances.
<b>8</b>	Specific temporary signage for the Hotel during the works, along with new signage (including both direction and main signage) for the Hotel post-construction.
<b>9</b>	Visual impact mitigation (e.g. bespoke construction shrouds).
<b>10</b>	A mechanism for agreeing dates for a minimum number of non-construction periods to avoid commercially-critical times for the Hotel (e.g. wedding receptions).
<b>11</b>	A detailed construction phasing programme and plans specific to works on the

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#### MATTERS FOR THE OPTON & IMPACT MITIGATION DEED

	<p>Hotel Land, including the duration of Highways England's presence on the Hotel Land and the duration and phasing of the sewer diversion works.</p> <p>(This will also need to encompass a procedure for identifying and agreeing upon a maximum level of disruption above which it will not be safe or commercially viable to operate the Hotel).</p>
<b>12</b>	<p>Parking and movement of contractor vehicles, the location of any site compounds and welfare facilities and the stockpiling of materials affecting the Hotel Land and access to Hotel Land.</p>
<b>13</b>	<p>A strategy to enable the implementation and completion of Holiday Inn's planning permission (reference 16/00893/FULL) for a lounge and bedroom extension which expires in March 2020, and an appropriate approach to compensation where it is deemed necessary for Holiday Inn to submit a new application (either due to the expiry of the current permission, or due to the cost or practical impossibility of implementing it in the context of the works).</p>
<b>14</b>	<p>The detailed design and finish of the proposed retaining wall to the Hotel Land.</p>
<b>15</b>	<p>The boundary treatment and landscaping replacement strategy affecting the Hotel Land, including appropriate boundary lighting, and the removal of the existing hedgerow along the internal car park access road adjacent to Trinity Grounds to better facilitate access by coaches.</p>
<b>16</b>	<p>Re-provision of the current quantity of car parking spaces post-construction and reinstatement to an agreed quality level of all surfaces, kerbing, drainage, soft landscaping and lighting.</p> <p>(This will include provision of electronic controls for coaches at the Commercial Street access, a narrowed road section, works to the current reception car parking area, and all necessary works to infrastructure).</p>
<b>17</b>	<p>Agreeing and defining the impact on the Hotel's services and utilities, surface water and foul drainage throughout the works, including interruption and disruption periods, and emergency procedures.</p>
<b>18</b>	<p>The approach to use of the Hotel's utilities, services and facilities by Highways England contractors, where this could mitigate impacts (e.g. the avoidance of noisy generators), including appropriate compensation charges.</p>
<b>19</b>	<p>Safeguards for staff and visitors against construction vehicle movements during construction, including the potential use of a banksman for appropriate vehicular circulation routes.</p>
<b>20</b>	<p>Highways England compliance with all appropriate statutory health and safety, CDM and Hull County Council construction requirements.</p>
<b>21</b>	<p>Security measures for works within the Hotel Land.</p>
<b>22</b>	<p>Appropriate screening and acoustic attenuation of the pumping station site.</p>
<b>23</b>	<p>Agreement relating to permanent access for maintenance, inspection, repair and renewal of the proposed Yorkshire Water sewer whilst minimising disruption to the</p>



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<b>MATTERS FOR THE OPTION &amp; IMPACT MITIGATION DEED</b>	
	Hotel's access, parking and servicing.
<b>24</b>	A dedicated construction liaison officer on behalf of Highways England (or its contractor) with appropriately regular meetings.
<b>25</b>	A suitable procedure through which Highways England will provide Holiday Inn with advance notice of works.
<b>26</b>	Allocation of responsibility for boundary structures (e.g. retaining wall and other boundaries).
<b>27</b>	Holiday Inn's right to claim compensation pursuant to the compensation code in respect of heads of compensation (which will be more appropriately considered following construction) along with reimbursement for its reasonable professional costs incurred during negotiation of the Impact Mitigation Agreement, and in respect of appropriate matters required in relation to the proposed Order more generally.
<b>28</b>	Demolition and reprovision of the electricity substation situated on the Hotel Land. (This will need to encompass provision, location, capacity and operational suitability of a replacement facility, along with a mechanism for agreeing a physical switchover of supply which minimises or, indeed, avoids interference with the existing electrical supply to the Hotel).

- 6.3 We are mindful that Highways England has not yet provided any draft terms in respect of the impacts of its works or the rights required for it. Commencement of the preliminary hearing of the examination of the proposed Order is likely at the end of February or the start of March 2019. It is clearly possible for an Option and Impact Mitigation Deed to be concluded between Highways England and Holiday Inn in respect of the matters above before then.
- 6.4 This would avoid Holiday Inn incurring unnecessary or wasted expense during the examination because it need not be necessary for the matters described in this response to be examined and/or determined if an appropriate Option and Impact Mitigation Deed is concluded.
- 6.5 We will in due course be providing a draft Option and Impact Mitigation Deed for Highways England's consideration and would urge Highways England to negotiate in good faith towards a speedy completion of it in advance of the examination of the proposed Order.
- 6.6 If a draft Option and Impact Mitigation Deed is not agreed before then, Holiday Inn will be in a position where it will have to revise terms relating to mitigation into protective provisions and request that the examining authority place these on the face of the Order, which would render them subject to section 161 of the Planning Act 2008.
- 6.7 Please let us know if you have any queries in relation to this response. We look forward to working with Highways England and its legal advisers on the Option and Impact Mitigation Deed over coming weeks and months.

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Yours faithfully



**Bryan Cave Leighton Paisner LLP**

**CC (By First Class Post):** A63 Castle Street Improvement, Hull Project Team, Regional Investment Programme, Major Projects, Highways England, Lateral, 6 City Walk, Leeds, LS11 9AT.

**CC (By Email):** [A63CastleStreet.Hull@highwaysengland.gov.uk](mailto:A63CastleStreet.Hull@highwaysengland.gov.uk).

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**Appendix 3**  
**Protective Provisions**

## SCHEDULE 8

Articles 31 and 40

### PROTECTIVE PROVISIONS

#### PART 3

#### FOR THE PROTECTION OF HIN HULL LIMITED AND HICP LIMITED

##### Application

1. For the protection of Holiday Inn the following provisions, unless otherwise agreed in writing at any time between the undertaker and Holiday Inn, have effect.

##### Interpretation

2. In this Part of this Schedule—

“2017 planning permission” means the planning permission granted by Hull City Council on 21 March 2017 with reference number 16/00893/FULL for the erection of a three storey extension to the hotel to form additional bedrooms and an extension to form an enlarged lounge

“commence” means beginning to carry out any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised development;

“Holiday Inn” means—

- (a) HIN Hull Limited, a company incorporated and registered in England and Wales with company registration number 09451322 and having its registered office at 35 Great St Helen's, London, EC3A 6AP; and
- (b) HICP Limited, a company incorporated and registered in England and Wales with company registration number 09450061 and having its registered office at 35 Great St Helen's, London, EC3A 6AP;

“Holiday Inn land” means the land edged red on the Holiday Inn land plan;

“Holiday Inn land plan” means the drawing dated [18 February 2019] and given drawing reference [HE514508-DR-107 Rev P02] certified as the Holiday Inn land plan by the Secretary of State for the purposes of this Order;

“hotel” means—

- (a) the hotel located on the Holiday Inn land and edged green on the Holiday Inn land plan; and
- (b) the land currently benefitting from the 2017 planning permission and edged blue on the Holiday Inn land plan;

“undertaker” means any of the following—

- (a) Highways England Company Limited (Company No. 09346363) of Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ;
- (b) any person to whom the benefit of any or all of the provisions of the Order is transferred or granted pursuant to Article 8 (*consent to transfer benefit of Order*) of the Order (whether the consent of the Secretary of State is required or not) including—
  - (i) British Telecommunications PLC (Company No. 01800000) of 81 Newgate Street, London, EC1A 7AJ;
  - (ii) KCOM Group PLC (Company No. 02150618) of, 37 Carr Lane, Hull, HU1 3RE;
  - (iii) Northern Gas Networks Limited (Company No. 05167070) of 1100 Century Way, Thorpe Park Business Park, Colton, Leeds, LS15 8TU;

- (iv) Northern Powergrid Limited (Company No. 03271033) of Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE6 6AP; and
- (v) Yorkshire Water Services Limited (Company No. 02366682) of Western House, Halifax Road, Bradford, BD6 2SZ,

and, for the avoidance of doubt, includes any agents, contractors or subcontractors acting on behalf of Highways England Company Limited or any such person;

“pumping station” means the pumping station comprised in Work No. 24 of Schedule 1 (*authorised development*);

“retaining wall” means the retaining wall comprised in the authorised development on the Holiday Inn land or on land adjacent to it;

“sensitive day” means any day on which the carrying out of any part of the authorised development by the undertaker or its appointed contractors is considered in Holiday Inn’s sole discretion likely to impact adversely upon the operational or commercial viability of the hotel;

“sub-station” means the sub-station comprised in Work No. 24 of Schedule 1 (*authorised development*);

“Trinity Burial Ground” means the land edged [pink] on the Holiday Inn land plan;

“working day” means any day other than a Saturday, Sunday or English bank or public holiday.

### **The hotel**

3. The undertaker may not carry out any of the authorised development or exercise any powers pursuant to this Order within the hotel.

### **Notice of works**

4. The undertaker must not commence the authorised development on the Holiday Inn land or Trinity Burial Ground until it has proposed and agreed a date for such commencement with Holiday Inn (such agreement not to be unreasonably withheld or delayed and it will not be reasonable for Holiday Inn to require a commencement date later than 20 working days after one proposed by the undertaker but the undertaker may not propose a commencement date which would occur earlier than 60 working days after the date on which that commencement date is first proposed for agreement); and the undertaker may not commence the authorised development on the Holiday Inn land or Trinity Burial Ground prior to the agreed commencement date.

### **Car parking**

5.—(1) At no stage during the carrying out of the authorised development may the number of existing car parking spaces available for use (or allocation for use) by Holiday Inn on the Holiday Inn land be reduced as a result of its carrying out of the authorised development to fewer than—

- (a) 8 for use by staff of the hotel;
- (b) 2 for use by disabled customers or disabled staff of the hotel;
- (c) 2 for use as drop-off spaces for taxis.

(2) The undertaker must during the carrying out of the authorised development use reasonable endeavours to prevent the number of existing car parking spaces available for use (or allocation for use) by Holiday Inn on the Holiday Inn land being reduced as a result of its carrying out of the authorised development to (excluding those spaces referred to in sub-paragraph (1)) fewer than 75 on any sensitive day or 50 on any other day for use by customers of the hotel; and where notwithstanding the reasonable endeavours used the number of such existing car parking spaces still needs to be reduced to fewer than (as applicable) 75 or 50 car parking spaces sub-paragraph (3) applies.

(3) Where this sub-paragraph (3) applies the undertaker must (save in the event of emergency) provide Holiday Inn with no less than 20 working days’ advance written notice of the extent to

which the number of car parking spaces is to be reduced below 75 or 50 (as applicable) pursuant to sub-paragraph (3) and the duration of such reduction.

(4) Where a customer of the hotel wishes to use any of the 120 car parking spaces which existed on the Holiday Inn land prior to the carrying out of the authorised development but the space is not available for use as a result of the authorised development, Holiday Inn may direct the customer to use another car park within reasonable walking or driving distance of the hotel, reimburse the customer for using it and, where required by the customer, collect the customer from the other car park (including by taxi); and the undertaker must pay Holiday Inn's costs of reimbursing customers and the reasonable costs of collecting them pursuant to this sub-paragraph no later than 30 working days after Holiday Inn has made a written request for such costs to be reimbursed; and such a request—

- (a) must include reasonable written details of the costs actually incurred; and
- (b) may not be made more frequently than once in any calendar month.

(5) Following completion of the authorised development on the Holiday Inn land and prior to the opening for use of the authorised development there shall be no fewer than—

- (a) 98 car parking spaces for use by customers of the hotel;
- (b) 10 car parking spaces for use by staff of the hotel;
- (c) 6 car parking spaces for use by disabled customers or disabled staff of the hotel,

on the Holiday Inn land provided by the undertaker or (at the undertaker's cost) by Holiday Inn in accordance with a standard and layout for the car park on the Holiday Inn land agreed in advance with Holiday Inn (including in respect of signing, lining, quality level of all surfaces, kerbing, drainage, soft landscaping, the relocation or re-provision of existing electric vehicle charging points, lighting, hard and soft landscaping, provision of reasonable new electronic communication and traffic control systems (including controls for coaches at the Commercial Street access), the permanent relocation or re-provision of equipment (including cameras and number plate recognition technology) used by any car park management services company on the Holiday Inn land, narrowed road section and current reception car parking area and all necessary works to associated infrastructure); and for the avoidance of doubt Holiday Inn is entitled to compensation for any loss or damage to the extent that the number of such car parking spaces is less than the number of car parking spaces on the Holiday Inn land existing on the making and bringing into force of this Order.

## **Security**

6. The undertaker must before the authorised development on the Holiday Inn land has been opened for use at its own cost install or reinstate security measures at any entrances or exits to the hotel car park equivalent to or the same as those existing prior to the carrying out of that part of the authorised development.

## **Access and safety**

7.—(1) The undertaker must maintain reasonable pedestrian and vehicular access (including by coach and taxi) to the hotel (including for staff, guests, visitors and servicing) throughout the carrying out of the authorised development on the Holiday Inn land.

(2) The undertaker must not carry out any part of the authorised development until it has submitted an access safety protocol in accordance with sub-paragraph (3) to Holiday Inn for its approval and the protocol has been approved by Holiday Inn (such approval not to be unreasonably withheld or delayed); and the undertaker must at all times comply with the approved protocol.

(3) The access safety protocol must include details of—

- (a) proposed safe pedestrian and vehicular routes (including shown on drawings) during each phase of the carrying out of the authorised development on the Holiday Inn land

- (including during the Princess Quay footbridge works comprised in the authorised development);
- (b) measures to ensure the safety of pedestrians, including the management of vehicle manoeuvres;
- (c) measures to ensure the safety of vehicles, including provision of banksmen where necessitated by vehicles constrained during turning manoeuvres;
- (d) the parking and movement of the undertaker's and the undertaker's contractor's vehicles and of any building and construction materials and other site equipment and infrastructure associated with the authorised development; and
- (e) a statement on how the Trinity Burial Ground will be accessed by vehicles for the purposes of carrying out, operating and maintaining the authorised development.

**Sensitive days**

8.—(1) The undertaker must notify Holiday Inn in writing of any calendar year in which the authorised development is proposed to be carried out no later than 60 working days prior to that calendar year.

(2) In each relevant calendar year, Holiday Inn must provide the undertaker with a list of sensitive days for the ensuing four month period no later than—

- (a) 1st December in respect of the period from 1st January to 30th April;
- (b) 1st April in respect of the period from 1st May to 31st August; and
- (c) 1st August in respect of the period from 1st September to 31st December.

(3) Holiday Inn may amend the dates of sensitive days in the list for each period referred to in paragraphs (2)(a) to (2)(c) with no fewer than 30 working days' written notice to the undertaker.

(4) In each calendar year Holiday Inn may not include more than the following number of sensitive days in each period referred to in paragraphs (2)(a) to (2)(c)—

- (a) 4 calendar days in respect of the period from 1st January to 30th April;
- (b) 8 calendar days in respect of the period from 1st May to 31st August; and
- (c) 6 calendar days in respect of the period from 1st September to 31st December.

(5) No part of the authorised development may be carried out nor may any other powers pursuant to this Order be exercised on the Holiday Inn land or on the Trinity Burial Ground (which includes there being no on-site presence by any personnel of the undertaker except for the purposes of security) on any sensitive days included on a list provided to the undertaker (as amended from time to time by notice in accordance with sub-paragraph (3)).

**Construction hours**

9.—(1) No part of the authorised development may be carried out on, or within 100 metres of, the Holiday Inn Land nor may any other powers pursuant to this Order be exercised in these locations—

- (a) other than between the hours of—
  - (i) 07:30 and 18:00 on Mondays to Fridays;
  - (ii) 08:00 and 13:00 on Saturdays;
- (b) on Sundays and public holidays.

(2) Sub-paragraph (1) does not apply in relation to:

- (a) night-time closures for bridge demolition and installation works;
- (b) oversize deliveries or deliveries where daytime working would be disruptive to normal traffic operation;
- (c) junction tie-in works;
- (d) removal of overhead power lines;

- (e) overnight traffic management measures;
- (f) cases of emergency; and
- (g) activities otherwise agreed by the undertaker with Holiday Inn in advance (such agreement not to be unreasonably withheld or delayed),

provided that in respect of paragraphs (a) - (e) the undertaker has provided Holiday Inn with no less than 10 working days written notice and in respect of paragraph (g) the undertaker's request has been made in writing no less than 10 working days in advance.

### **Information**

**10.** The undertaker must to the reasonable satisfaction of Holiday Inn during the carrying out of the authorised development provide in the hotel's reception area information setting out for the benefit of users of the hotel—

- (a) what is to be comprised in the authorised development on the Holiday Inn land and Trinity Burial Ground and in their vicinity;
- (b) the likely impacts and mitigation measures to be in place during and after completion of construction,

and such materials must include fully accessible printed visual materials and a three-dimensional computer-animated simulation of what would be seen whilst driving through the authorised development once completed.

### **Signage**

**11.—(1)** The undertaker must not commence the authorised development on the Holiday Inn land or Trinity Burial Ground until it has submitted written details of a proposed signage strategy for the periods during and after the carrying out of that authorised development in accordance with sub-paragraph (2) and the strategy has been approved by Holiday Inn (such approval not to be unreasonably withheld or delayed); and the undertaker must comply with the approved strategy.

(2) The signage strategy must include—

- (a) details of specific directional and main signage on the A63, Commercial Road, any other highway relevant to any road diversion works affecting access to and from the hotel and on the Holiday Inn land during the carrying out of the authorised development directing hotel staff and guests (in vehicles) to and from the entrance to the hotel and, where appropriate, separate directional and main signage for construction traffic associated with the carrying out of the authorised development;
- (b) details of specific signage on the approaches to the Holiday Inn land during the carrying out of the authorised development directing hotel staff and guests (on foot) to and from both the A63 and Commercial Road entrances to the hotel;
- (c) details of specific permanent directional and main signage (including on the A63 and Commercial Road) directing vehicles and pedestrians to and from the hotel;
- (d) replacement corporate Holiday Inn signs as reasonably necessitated by the authorised development,

and such details must include the design, size, location of each sign.

### **Construction liaison**

**12.—(1)** The undertaker must procure that a dedicated construction liaison officer will throughout the carrying out of the authorised development—

- (a) respond to telephone calls and emails from Holiday Inn between 07:00 and 18:00 hours Mondays to Sundays (and at any time in case of emergencies) in respect of the carrying out of the authorised development;



- (b) arrange and hold meetings in the first week of every month with Holiday Inn in respect of the carrying out of the authorised development on the Holiday Inn land or Trinity Burial Ground throughout the carrying out of the authorised development until that part of the authorised development has been opened for use; and the officer must issue minutes of each meeting to Holiday Inn no later than 5 working days after each meeting;
- (c) resolve on behalf of the undertaker reasonable concerns raised by Holiday Inn promptly in respect of the carrying out of the authorised development,

and the undertaker must not commence the authorised development on the Holiday Inn land or Trinity Burial Ground until it has provided Holiday Inn in writing with the contact details of the officer.

(2) If Holiday Inn does not consider that the undertaker (or dedicated construction liaison officer on its behalf) has resolved its reasonable concerns in respect of the carrying out of the authorised development pursuant to this paragraph 12 it may require the matter to be settled in accordance with article 44 (*arbitration*).

### **Construction method, management and phasing etc.**

**13.—**(1) The undertaker must not commence the authorised development on the Holiday Inn land or Trinity Burial Ground until it has submitted a detailed construction method, management and phasing scheme in respect of that part of the authorised development and the scheme has been approved by Holiday Inn (such approval not to be unreasonably withheld or delayed); and the undertaker must comply with the approved scheme.

(2) The construction method, management and phasing scheme must include details in respect of—

- (a) the date on which the pedestrian crossing on the A63 adjacent to the hotel shown on the Holiday Inn land plan will be removed;
- (b) the date on which access to the hotel from the A63 shown on the Holiday Inn land plan will be stopped up pursuant to this Order and the works associated with that stopping up and alterations proposed to the Commercial Street access shown on the Holiday Inn land plan throughout the carrying out of the authorised development;
- (c) a construction phasing programme and plans specific to authorised development on the Holiday Inn land and Trinity Burial Ground;
- (d) a level of disruption arising from the authorised development during identified periods at which it is not considered safe or commercially viable to operate the hotel;
- (e) the duration and extent of Highways England’s presence on the Holiday Inn land;
- (f) detailed plans showing the extent of any part of the Holiday Inn land to be used at any time for the purposes of constructing the retaining wall and closure of the A63 access to the Holiday Inn land including working areas;
- (g) detailed plans showing the extent of any part of the Holiday Inn land to be used at any time for the purposes of constructing the flood relief sewer including working areas;
- (h) detailed plans showing the extent of any part of the Holiday Inn land to be used at any time for the purposes of constructing new utility apparatus and supplies including working areas;
- (i) the storage of plant and materials;
- (j) the location and height of cranes, tunnel boring machines and scaffolding;
- (k) the location and size of compounds and welfare facilities;
- (l) the management and mitigation of dust emissions and odour;
- (m) the disposal of waste and other materials arising from the construction programme;
- (n) security measures during the carrying out of the authorised development including fencing and hoardings, a 24-hour contact number for emergencies, CCTV (including the

location of cameras), security lighting and a physical security presence where appropriate;

- (o) the lighting of works;
- (p) road cleaning and wheel washing facilities;
- (q) impacts on the hotel's services and utilities (including surface water and foul drainage) throughout the carrying out of the authorised development (including interruption and disruption periods and emergency procedures) and appropriate management and mitigation measures;
- (r) emergency protocols;
- (s) so far as necessitated by the carrying out of the authorised development, the temporary relocation or re-provision of equipment (including cameras and number plate recognition technology) used by any car park management services company on the Holiday Inn land (which may be carried out by or on behalf of Holiday Inn by the relevant car park management services company and the undertaker must reimburse the reasonable costs of such re-relocation or re-provision no later than 30 working days after Holiday Inn has made a written request for such costs to be reimbursed; and such a request must include reasonable written details of the costs actually incurred); and
- (t) any other matters relevant to Holiday Inn land and to the operation of the hotel,

and where the area to which Work Nos. 24 and 28 relate is to be used as a construction compound for works which are to take place outside of the Holiday Inn land a specific section detailing the matters listed in paragraphs (a) to (r) in respect of that compound including temporary screening, access and hours of operation.

(3) The undertaker must not burn waste on the Holiday Inn land or Trinity Burial Ground at any time.

### **Electricity Substation**

**14.—**(1) The undertaker must not undertake any demolition or other decommissioning works in respect of the existing electricity sub-station situated on the Holiday Inn land until it has submitted to Holiday Inn a written programme for the demolition of the electricity sub-station and for the construction of a suitable replacement facility and the programme for such works has been approved by Holiday Inn (such approval not to be unreasonably withheld or delayed); and the undertaker must at all times comply with the approved programme.

(2) The electricity sub-station demolition and reprovision programme must include—

- (a) the location, layout and access arrangements of the proposed replacement electricity sub-station;
- (b) details regarding the operational capacity and design of the replacement electricity sub-station and suitability to service the hotel;
- (c) a timetable for all demolition, construction and enabling works;
- (d) a method statement for ensuring that there is no consequent loss of or interruption in electricity supply to the hotel during the switchover process, including the provision of temporary electricity generators to the extent that these are necessary;
- (e) details of all boundary treatments, security measures and other landscaping features proposed to be installed or implemented in order to appropriately and securely screen the electricity sub-station from the hotel.

(3) For the avoidance of doubt, no part of the existing electricity sub-station may be demolished or decommissioned until the replacement facility has been—

- (a) practically completed;
- (b) certified as being fully compliant with all applicable statutory and other regulatory requirements; and
- (c) certified by Holiday Inn as being fully operational to its reasonable satisfaction.

## **Noise and vibration**

**15.**—(1) The undertaker must not commence the authorised development on the Holiday Inn land or Trinity Burial Ground until it has submitted a detailed noise and vibration management scheme in respect of that part of the authorised development and the scheme has been approved by Holiday Inn (such approval not to be unreasonably withheld or delayed); and the undertaker must comply with the approved scheme.

(2) The noise and vibration management scheme must include—

- (a) identification of base line noise and vibration levels on the Holiday Inn land or Trinity Burial Ground;
- (b) predicted maximum noise and vibration levels during the carrying out of the authorised development on the Holiday Inn land or Trinity Burial Ground at agreed receptor sites, which the undertaker must not exceed;
- (c) attenuation measures which the undertaker must take to minimise noise and vibration resulting from the carrying out of the authorised development including any equipment in use during out-of-hours working in the event of emergency;
- (d) steps for monitoring noise and vibration levels during the carrying out of the authorised development to ensure that the predicted maximum noise and vibration levels referred to in paragraph (b) are not exceeded and that the attenuation measures referred to in paragraph (c) are effective; and
- (e) permanent measures for the acoustic attenuation of the pumping station and sub-station.

## **Design**

**16.**—(1) The undertaker must not commence the authorised development on the Holiday Inn land or Trinity Burial Ground until it has submitted design details in respect of that part of the authorised development and the design details have been approved by Holiday Inn (such approval not to be unreasonably withheld or delayed); and the undertaker must comply with the approved design details.

(2) The design details must include—

- (a) visualisation materials sufficient to inform Holiday Inn (acting reasonably) of the visual impact of the authorised development on the Holiday Inn land and Trinity Burial Ground during the carrying out of the authorised development and following its completion and facilitate the agreement of appropriate mitigation;
- (b) design of the pumping station and sub-station enclosures; and
- (c) the proposed layout and location of the authorised development on the Holiday Inn land.

(3) The design details for the retaining wall must include—

- (a) footings, drainage and structural approval certification from the undertaker;
- (b) materials and finish of the front and rear aspects of the wall (including sample panels);
- (c) the design, height and finish of the railings atop it; and
- (d) reasonable evidence of the undertaker's cost allowance for the matters described in paragraphs (a), (b) and (c).

(4) The undertaker must prior to the authorised development on the Holiday Inn land being opened for use undertake in such form as Holiday Inn reasonably requires to be responsible in perpetuity for the retaining wall and its railings, including their maintenance and any claims, losses, costs, expenses, proceedings and liabilities incurred by Holiday Inn in respect of them.

(5) The undertaker must complete the retaining wall and its railings to a design and specification of a higher standard than the undertaker originally proposed if—

- (a) Holiday Inn proposes an alternative suitable design and specification; and
- (b) Holiday Inn meets the reasonable costs for the undertaker completing the retaining wall and its railings to such a design and specification to the extent that such costs exceed the

evidenced undertaker's cost allowance for the undertaker's originally proposed design and specification.

### **Boundary treatment and landscaping**

17.—(1) The undertaker must not commence the authorised development on the Holiday Inn land or Trinity Burial Ground until it has submitted a detailed boundary treatment and landscaping strategy in respect of the Holiday Inn land and the strategy has been approved by Holiday Inn (such approval not to be unreasonably withheld or delayed); and the undertaker must comply with the approved strategy.

(2) The strategy must include—

- (a) the location, number, species, size and planting density of any proposed planting (including an arboricultural report);
- (b) the cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) hard surfacing materials;
- (e) vehicular and pedestrian access, parking and circulation areas;
- (f) minor structures, such as furniture, refuse or other storage units and signs;
- (g) proposed lighting (including whether existing exterior boundary lighting is to be retained, replaced or moved);
- (h) proposed and existing functional services above and below ground, including drainage, power and communications cables and pipelines, manholes and supports;
- (i) details of existing trees to be retained, with measures for their protection during the carrying out of the authorised development; and
- (j) any trees proposed to be lost on the Commercial Road frontage;
- (k) a programme and implementation timetable for all boundary treatment and landscaping works;
- (l) temporary and permanent screening of the pumping station and sub-station (including by way of boundary treatment and landscaping);
- (m) removal of the existing hedgerow along the internal car park access road adjacent to the Trinity Burial Ground indicated on the Holiday Inn land plan to better facilitate access by coaches;
- (n) reasonable evidence of the undertaker's cost allowance for boundary treatment and landscaping on the Holiday Inn land and Trinity Burial Ground;
- (o) who is to retain responsibility for each boundary structure or feature on the Holiday Inn land or whether the undertaker and Holiday Inn are to consider it a party wall for the purposes of the Party Wall etc. Act 1996.

(3) The undertaker must minimise the loss of trees in designing the pumping station comprised in the authorised development and must not commence the authorised development until Holiday Inn has approved that design (such approval not to be unreasonably withheld or delayed); and the undertaker must comply with the approved design.

(4) The undertaker must amend the landscaping and boundary treatment strategy to comprise a design and specification in respect of any matter (including those listed in sub-paragraph (2)) of a higher standard than the undertaker originally proposed if—

- (a) Holiday Inn proposes such a design and specification; and
- (b) Holiday Inn meets the reasonable costs for the undertaker completing the matter to such a design and specification to the extent that such costs exceed the evidenced undertaker's cost allowance for the undertaker's originally proposed design and specification.

### **Hotel reconfiguration**

**18.**—(1) The undertaker must not commence the authorised development on the Holiday Inn land until it has agreed a detailed hotel reconfiguration strategy with Holiday Inn (such agreement not to be unreasonably withheld or delayed by Holiday Inn or the undertaker); and Holiday Inn must within 60 working days of prior written request by the undertaker provide a first draft strategy for consideration by the undertaker.

(2) The strategy must include—

(a) any internal and external reorganisation of the hotel required as a result of this Order (including relocating the front reception desk to the rear of the hotel and any consequential internal reconfiguration); and

(b) anticipated costs of such reorganisation (including the costs of any necessary consents), and the undertaker must pay the costs agreed in the strategy in advance of commencement of the internal and external reorganisation works.

### **Health and safety**

**19.** The undertaker must make the health and safety file maintained in respect of the authorised development on the Holiday Inn land or Trinity Burial Ground pursuant to The Construction (Design and Management) Regulations 2007 available for inspection by Holiday Inn at reasonable prior written notice.

### **Expenses**

**20.**—(1) The undertaker must pay Holiday Inn the reasonable expenses reasonably incurred by it (including by its solicitors, surveyors or other relevant consultants) for, or in connection with, the carrying out of the authorised development and any action required of Holiday Inn in this Part of this Schedule including—

(a) considering and giving any agreement or approval pursuant to this Part of this Schedule or otherwise required by the undertaker;

(b) attending meetings with the undertaker during the carrying out of the authorised development,

and it shall be reasonable for Holiday Inn to withhold its agreement or approval pursuant to the relevant provision of this Part of this Schedule if the undertaker does not in advance pay such expenses or provide a solicitor's undertaking (from a firm of reasonably sufficient covenant strength) in respect of them.

(2) Holiday Inn must use its reasonable endeavours to mitigate in whole or in part and in any event to minimise any expenses capable of being claimed under sub-paragraph (1) and Holiday Inn must if requested by the undertaker in writing provide the undertaker with—

(a) a breakdown of the expenses Holiday Inn expects to incur pursuant to an activity which could give rise to a claim for expenses under this Part of this Schedule provided that reasonably sufficient information has been given to provide the breakdown; and

(b) a breakdown of any expenses actually incurred,

within 20 working days of the date of the request.

### **Use of the hotel etc.**

**21.** The undertaker (including its contractors) may not use any of the hotel's facilities (including its power supply, rest rooms, meeting rooms or accommodation) other than on such terms as the undertaker and Holiday Inn agree in advance from time to time.

**Reasonableness**

22. The undertaker and Holiday Inn must act reasonably in respect of any given term of this Part of this Schedule and, in particular, (without prejudice to generality) where any consent, approval or expression of satisfaction is required by this Part of this Schedule it must not be unreasonably withheld or delayed.