

Our ref: M42J6/DCO\_NMC Your ref: TR010027

The Planning Inspectorate Temple Quay House 2 The Square Bristol BS1 6PN Chris Harris Project Manager Highways England 2 Colmore Square Birmingham B4 6BN

Tel: 0300 123 5000 09 August 2019

By email only

Dear Kate,

# M42 Junction 6 Development Consent Order (TR010027) - Non-material change request

During the course of the Examination, Highways England ('the Applicant') has been progressing discussions with stakeholders in relation to proposed minor design changes to the M42 Junction 6 scheme ('the Scheme').

As a result of those ongoing discussions the Applicant is proposing to incorporate the design changes outlined below within the Scheme and therefore formally makes to the Inspectorate the following change requests.

For the reasons outlined fully below the Applicant is of the opinion that the changes proposed are **not** material changes.

The Applicant would be grateful if this request could be brought to the attention of the Examining Authority (ExA) as a matter of urgency, in order that the ExA can determine, as soon as possible, whether to accept the suggested changes.

#### **Procedure and timescales**

Whilst the Applicant does not consider the proposed changes to be material, it has had regard to the Inspectorate's *Advice Note 16: How to request a change which may be material ('AN16')*. The Applicant has also considered previous applications for material/non-material change requests made to the Inspectorate by other applicants.

Having considered the proposed changes both individually and collectively, in light of the guidance set out in section 2 of AN16, the Applicant does not consider the proposed changes to be material and that they do not change the substance of the Scheme consulted upon and in respect of which the application has been made.



The Applicant notified the Inspectorate of its intention to request a non-material change in an email from Amarjit Doow-Powell dated 26 July 2019 followed up by a telephone call with the Inspectorate on 5 August 2019.

The Applicant is mindful of the time pressures for the Development Consent Order (DCO) Examination process and the need to make any request for proposed changes early enough to allow sufficient time for the ExA to make Procedural Decisions as well as to enable the changes to be accepted into the Examination.

On the basis that none of the proposed changes would be considered material, the Applicant believes that the proposed changes will need to be subject to the 'non material' change request process outlined in the right-hand limb figure 2 of page 4 of AN16.

In relation to changes 1 and 2 set out in this letter the Applicant can confirm that it has notified the landowners to which these changes relate and that discussions are ongoing and that further meetings with all affected landowners have been arranged.

It is hoped that the Applicant will have the landowner's agreement to these proposed changes prior to the Compulsory Acquisition Hearing on 20 August 2019.

#### Need for the proposed changes

The need for the proposed changes set out in this letter has arisen as a result of:

- new design information from Severn Trent Water ('STW') about the aqueduct diversion;
- necessary design development for operational and safety reasons; and
- ongoing discussions with local stakeholders.

The Applicant believes that the proposed changes will better accommodate the needs of those affected by the Scheme.

#### Proposed changes

#### <u>Change 1: Proposed change to the southern extent of the Limit of Deviation for Work</u> <u>No. 63 (Severn Trent Aqueduct)</u>

Design information provided by STW (see **Appendix A**) shows that its preferred route for the aqueduct diversion (Work No. 63) would be further south than that envisaged in the Scheme to allow greater ease of maintenance once the Scheme is operational.



This would necessitate the southern extent of the Limit of Deviation (LoD) for Work No. 63 (see **Appendix B**) to move further south from parcel 4/4w, into parcel 4/4k (see **Appendix C**). Both parcels have the same landowner. Parcel 4/4k is already proposed to be used temporarily for the diversion of Western Power Distribution's apparatus, with permanent rights being sought under the DCO "to construct, operate, access and maintain diversions to existing utilities apparatus and equipment" [APP-018 / Volume 4.1].

Although STW is a statutory utility, and so the diversion is already covered by the wording of Schedule 7, the Applicant proposes to alter this description of this right in the dDCO so that it refers explicitly to Work No. 63 as well.

This proposal would not require additional land take beyond the existing Order limits and, as mentioned above, dialogue has already begun with the land owner in this location about this proposal.

The Applicant is of the view that as it is already proposed to have compulsory rights over this land in relation to the diversion of apparatus, there will be no substantive difference to the landowner that triggers the 'additional land' requirements of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 ('CA Regulations').

Additionally, the Applicant's qualitative environmental appraisal of this change concludes that this proposal would not give rise to new or different environmental effects beyond that reported in the Environmental Statement.

For these reasons above, the Applicant is of the opinion that this represents a nonmaterial change request.

#### Change 2: Attenuation Tank Relocation (Work No. 34)

Following discussions with landowners and the local parish council, it is also proposed to change the location of, Work No. 34 (see **Appendix D**), a highway drainage attenuation tank, from the north western quadrant of Barber's Coppice Roundabout to the south western quadrant (see **Appendix E**).

The proposed attenuation tank will require periodic maintenance in order to ensure that the attenuation tank continues to work at optimum performance. This periodic maintenance shall require a vehicle to park in close proximity to the attenuation tank in order to enable personnel to access, inspect and maintain the tank.

In its existing location, the provision of a layby off the B4438 Realigned Catherine-de-Barnes Lane would be in close proximity to Barber's Coppice Roundabout where vehicles are leaving the roundabout travelling northbound. This location raises the following safety and operational concerns for the positioning of a maintenance layby:

- The lay by would be positioned whereby vehicles leaving the roundabout travelling northbound would be expecting vehicles ahead to be accelerating, not braking and undertaking a slow turning movement into a maintenance layby; and
- The position of the maintenance layby would be in a section of the Realigned Catherine-de-Barnes Lane where two lanes would be merging into one lane for vehicles travelling northbound. Subsequently vehicles merging into a single lane may be interrupted by a maintenance vehicle turning into the maintenance lay by.

As a result, the Applicant has proposed to move the attenuation tank to an area of land (parcel 2/10j and part of 2/71) (see **Appendix F**) which are already proposed to be acquired permanently to create new highway land, although they are outside the current LoD for Work No. 34.

The location has been proposed to mitigate the issues raised above by moving the attenuation tank south of Barber's Coppice Roundabout, where traffic will be decelerating on approach to the roundabout. Furthermore, the northbound lane on approach to the roundabout will be expanding to two lanes, reducing the risk of maintenance vehicles turning into a layby interfering with northbound traffic approaching the roundabout.

Alternative locations to the provision of a maintenance lay by on the Realigned B4438 Catherine-de-Barnes Lane were investigated using the road off Barber's Coppice Roundabout serving Four Winds, Birmingham Dogs Home and the Solihull Music School. However, an additional private means of access positioned close to the roundabout may risk access to these properties and commercial enterprises being temporarily disrupted.

In addition, the owner of Four Winds has raised objections to any maintenance vehicles using and blocking his private means of access and so this change also accords with his request.

This proposal has already been discussed with the adjoining landowner, the Birmingham Dogs Home, who has provisionally indicated that this proposal would not cause them any concerns. Further meetings have already been arranged.

As stated, this proposal has also been discussed with the owner of the land, Solihull Metropolitan Borough Council, which will be confirming its position to the applicant during the week commencing 12 August 2019.

As it is already proposed to acquire this land permanently for use as highways land the additional land requirements of the CA Regulations do not apply.

Additionally, the Applicant's qualitative environmental appraisal of this change concludes that this proposal would not give rise to new or different environmental effects beyond that reported in the Environmental Statement.

For these reasons above, the Applicant is of the opinion that this change also represents a non-material change request.

#### Change 3: Parcels of land to be removed from the Order Limits

The Applicant is also proposing that the following land parcels are removed from the Order as, following further consideration and engagement with stakeholders, we can confirm that they are not required for construction, operation or maintenance of the highway. The land parcels to be removed, as shown on the Land Plans are:

- 3/1d;
- 3/45c;
- 2/32c;
- 2/36; and
- 2/32a.

The Applicant is of the opinion that the removal of these land parcels from the Order Limits represent non-material changes to the DCO.

#### Environmental impacts of the proposed changes

The proposed design amendments would not result in any changes to the overall assessment and conclusions of likely significant effects presented within the Environmental Statement chapters [**APP-051 to APP-061 / Volume 6.1**].

All of the identified amendments to the design are set within the Order Limits boundary for the Scheme. Given the nature of the proposed design changes, there would be no change (adverse or beneficial) for environmental topic assessments as presented in the Environmental Statement. Where required the design changes will (if approved) form part of the scope of works that would be managed by the existing management plans and control measures already presented within the DCO application. Thus, no additional measures or plans are predicted to be required above those already identified.

A review of the amendments has been undertaken and is summarised as follows:

#### <u>Change 1: Proposed change to the southern extent of the LoD for Work No. 63 (Severn</u> <u>Trent Aqueduct)</u>

The proposed design amendment would be located within the respective study areas for each of the assessments already completed and presented in the Environmental Statement for the Scheme. However, the LoD associated with the rerouting of the aqueduct would be extended to include areas not fully captured as part of the archaeological trenching investigation to support the application. The design



amendment has been subject to a proportionate environmental appraisal and the following is a summary of the findings:

- No landscape mitigation is proposed as the aqueduct asset would be located below ground and surface disturbed would be placed back in-situ'
- In the unlikely event that archaeological assets are identified during construction an archaeological investigation associated with the extension of the LoDs can be appropriately managed using the measures defined within the Archaeological Control Plan [APP-172 / Volume 6.1] and in accordance with the Requirements as set out in Schedule 2 of the dDCO, and
- No notable species or habitats are located within immediate proximity of the proposed relocation area. Notwithstanding this, pre-construction surveys will be undertaken in line with those outlined within the Outline Environmental Management Plan (OEMP) to minimise the potential to disturb species or habitat.

Taking the above into consideration and the form and function of the asset, professional judgement has been applied and concluded that the design amendment would not change (adverse or beneficial) pre-existing identified environmental effects or generate new significant environmental effects to those presented within the Environmental Statement for the Scheme.

#### Change 2: Attenuation tank relocation (Work No. 34)

The proposed design amendment would be located within the respective study areas for each of the assessments already completed and presented in the environmental assessment for the Scheme.

However, a small portion (221m<sup>2</sup>) of the relocated tank would be situated outside the LoD for the Scheme but within the Order Limits and an area demarcated for landscape planting (see Figure 8.3 of the Environmental Statement) [**APP-090** / **Volume 6.2**]. The design amendment has been subject to a proportionate environmental appraisal and the following is a summary of the findings:

- There would be no resulting change to the visual screening proposed around the location of the relocated tank; the proposed planting as per Figure 8.3 of the Environmental Statement **[APP-090 / Volume 6.2]**,
- In the unlikely event that archaeological remains are identified where trenching hasn't been undertaken these can be appropriately managed using the measures defined within the Archaeological Control Plan [**APP-172** / **Volume 6.1**] and in accordance with the Requirements as set out in Schedule 2 of the DCO, and



• No notable species or habitats are located within immediate proximity of the proposed relocation area. Notwithstanding this, pre-construction surveys will be undertaken in line with those outlined within the OEMP to minimise the potential to disturb species or habitat.

Taking the above into consideration and the form and function of the asset, professional judgement has been applied and concluded that the relocated portion of the tank to be situated outside the LoD would not change (adverse or beneficial) pre-existing identified environmental effects or generate new significant environmental effects to those presented within the Environmental Statement for the Scheme.

#### Non-materiality of the proposed changes

The Applicant is aware that the question of whether the proposed changes are material or non-material is a matter of planning judgement for the ExA.

As set out above, no further environmental information is required in order to assess the proposed changes as a proportionate environmental appraisal of these changes concludes that the changes would not give rise to any materially new or materially different significant environmental effects to those reported in the Environmental Statement.

The changes either involve the removal of land from the Order limits or, in two cases, represent minor design changes and a small change to the LoD for a particular work. In the latter two cases, no additional land outside of the Order limits is required and the amended LoD would not require any new compulsory acquisition powers.

As such the CA Regulations are not engaged, because no new compulsory acquisition powers are sought.

It is therefore considered that the proposed changes are non-material and the Applicant would ask that the ExA accepts these changes into the Examination.

If these changes are accepted then the Applicant will provide draft revised Work Plans, sheets 3 and 4, which have already been prepared for information, as well as updated versions of documents that are affected by the changes such as the land plans, the statement of reasons and the dDCO.

#### Timetable

With the intention of assisting the Inspectorate, the Applicant has considered how its request for a non-material change could be accommodated within the remaining Examination timetable and two alternative timelines are suggested below.

If the changes are accepted then, depending on the date of any such decision, the Applicant would submit the additional documents required for the change request by Deadline 4 (2 September 2019) or Deadline 5 (16 September 2019) with comments



sought on the non-material changes from interested parties by either Deadline 5 or Deadline 6 (11 October 2019) depending upon the submission date of the documents.

In either case, the Examination timetable allows time for consideration of these issues at hearings (provisional dates for hearings are included on 22 to 24 October 2019 inclusive) if required.

I should be grateful if you could acknowledge safe receipt of this letter and trust that you have sufficient information to be able to take a decision on these matters in a timely way, but should you require further information please do not hesitate to contact me.

Yours sincerely

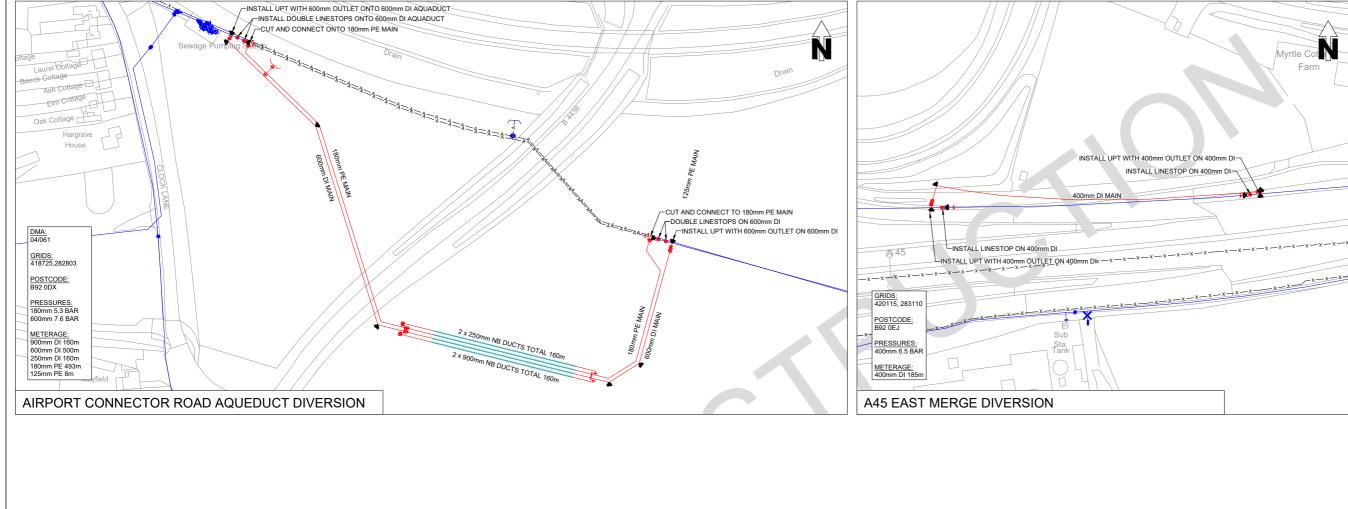
Chris Harris Project Manager Email: chris.harris@highwaysengland.co.uk

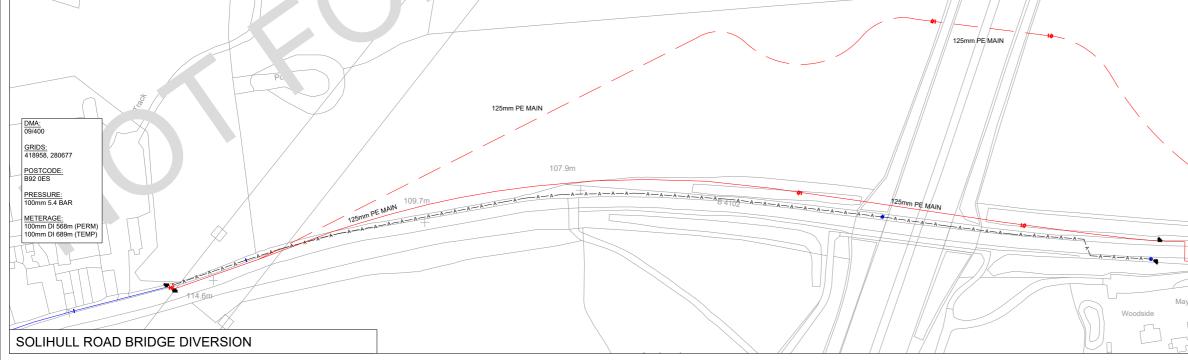
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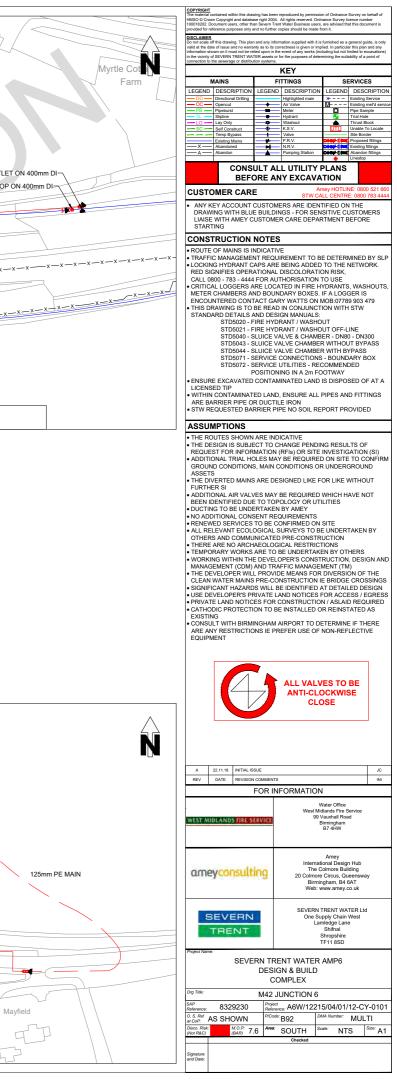
Appendix A – Design Information by Severn Trent Water Appendix B – Revised Works Plan Sheets 3 and 4 Appendix C – Land Plan Sheet 4 Appendix D – Original Works Plan Sheet 2 Appendix E – Revised Works Plan Sheet 2 Appendix F – Land Plan Sheet 2



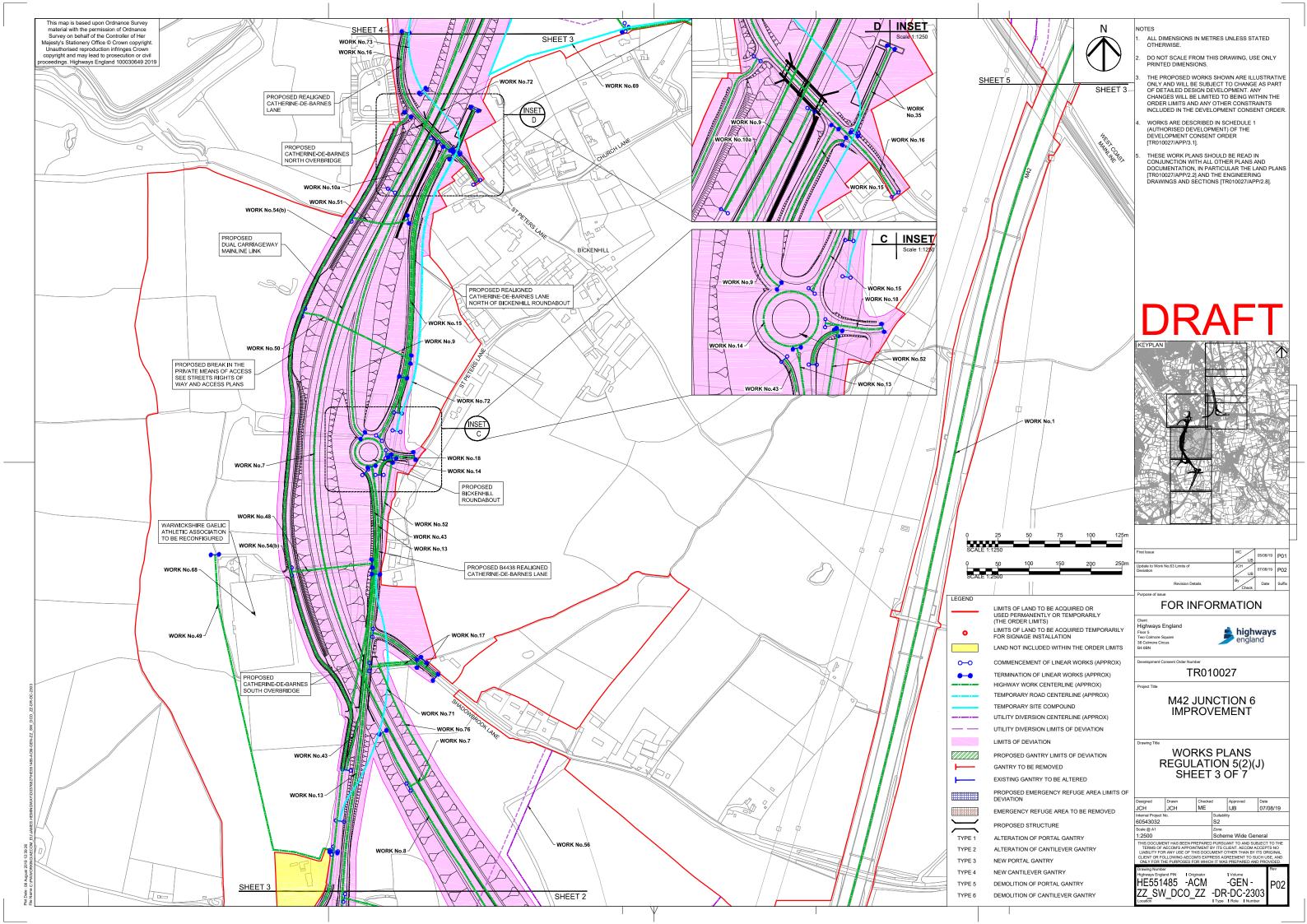
### Appendix A – Design Information by Severn Trent Water

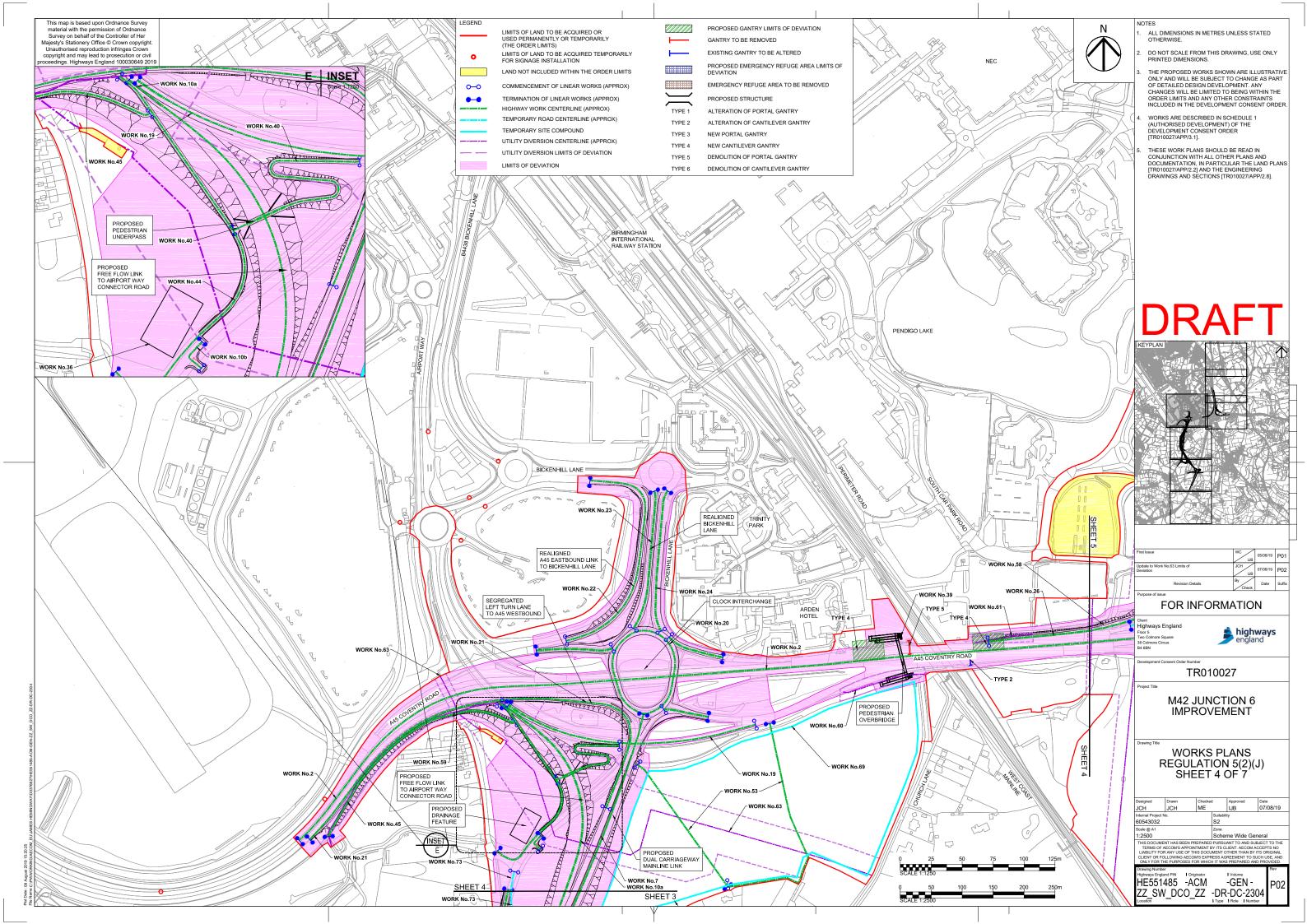




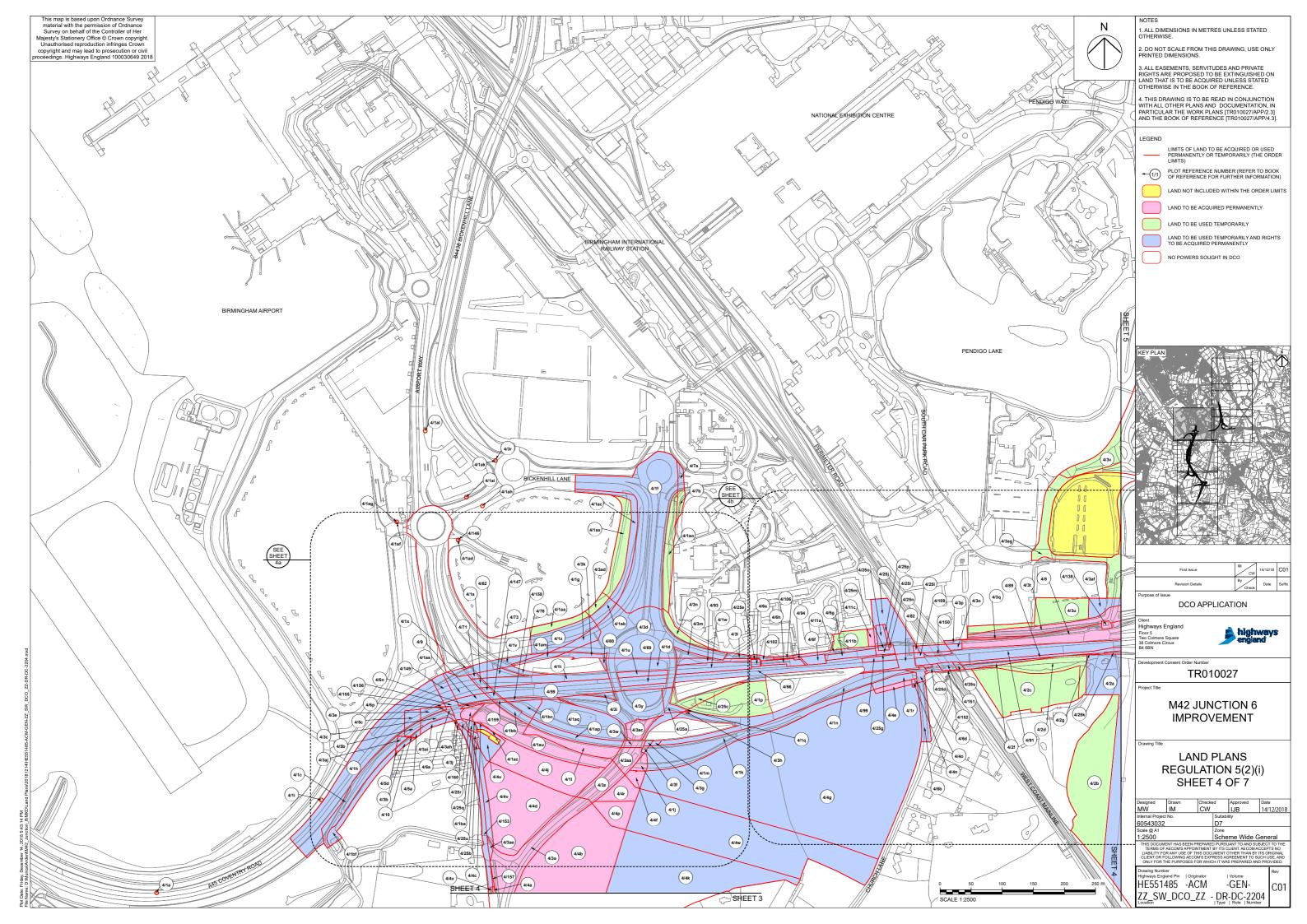


Appendix B – Revised Works Plan Sheets 3 and 4

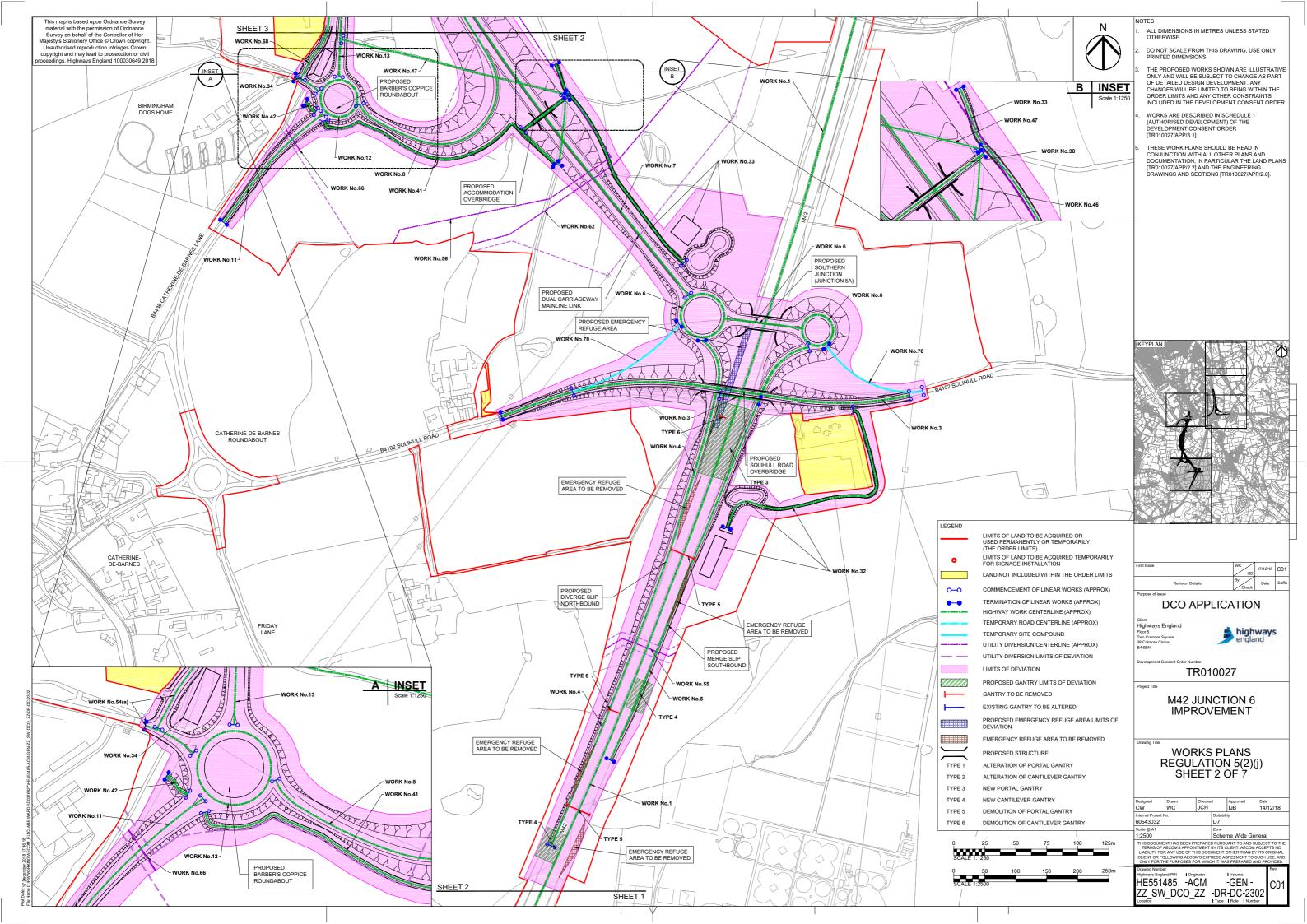




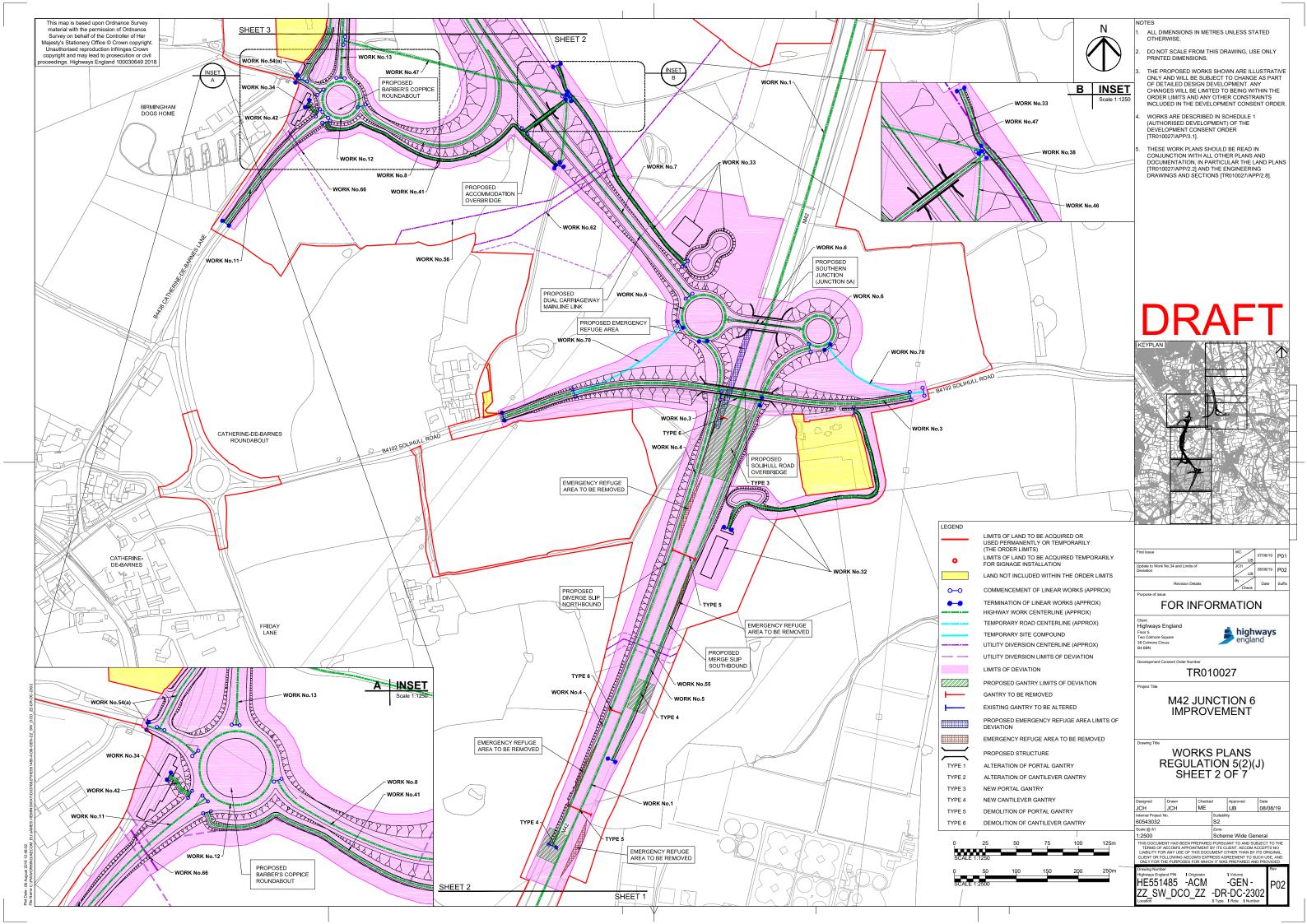
## Appendix C – Land Plan Sheet 4



Appendix D – Original Works Plan Sheet 2



Appendix E – Revised Works Plan Sheet 2



## Appendix F – Land Plan Sheet 2

