

**PLANNING ACT 2008**

**THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)  
RULES 2010**

**APPLICATION BY NATIONAL HIGHWAYS LIMITED FOR A  
DEVELOPMENT CONSENT ORDER**

**WRITTEN REPRESENTATION**

**ON BEHALF OF**



**HS1 LIMITED**

## Introduction

1. This written representation is made on behalf of HS1 Limited (“**HS1**”) in respect of the Development Consent Order (“**DCO**”) application for the proposed A122 Lower Thames Crossing (the “**Project**”) made by National Highways Limited (“**National Highways**”). This written representation should be read in conjunction with HS1’s relevant representation submitted to the Examining Authority on 23 February 2023.
2. HS1 continues to be supportive of the Project. However, as a critical piece of national infrastructure and pursuant to its obligations under the HS1 Concession Agreement dated 14 August 2009 (and amended and restated on 16 July 2010, 27 March 2015, 18 December 2017 and 5 July 2022 (“**Concession Agreement**”), HS1 must also seek to protect its infrastructure, land and rights from the potential risks that this development poses. Therefore, for the reasons set out in this representation, HS1 will require appropriate protection in the DCO.

## Interface between the Project and HS1

3. HS1 will interface with the Project along the A2 at the southern edge of the Project’s proposed route. The proposed works will impact HS1’s infrastructure between the Singlewell Infrastructure Maintenance Depot at Henhurst Lane and land east of Brewers Road.
4. In this location, new road structures will be located in close proximity to, and in some instances on, HS1 land, and a number of new structures are proposed which may have an interface with HS1 assets.

## Acquisition of HS1 Land and of Rights in HS1 Land

5. HS1 holds land for the purposes of its undertaking under leases granted by the Secretary of State for Transport (“**SOST**”), which holds the immediately superior interests (either as freeholder or head-leaseholder).
6. HS1 objects to National Highways exercising powers of survey, compulsory acquisition or temporary possession (“**compulsory powers**”) in relation to HS1 land under the DCO without HS1’s consent. HS1 submits that protective provisions in the DCO must prevent the exercise of compulsory powers by National Highways unless HS1 agrees to this.
7. As noted in its relevant representation, HS1 is a statutory undertaker within the meaning of section 127(8) of the Planning Act 2008 (“**PA 2008**”), being authorised to carry on a railway undertaking pursuant to the Channel Tunnel Rail Link Act 1996. All the land in respect of which National Highways proposes to secure powers of compulsory acquisition (of interests or rights) or of temporary possession was acquired by HS1 for the purposes of this undertaking. In these circumstances, section 127(2) and (5) provide that any order granting development consent for the Project may only include provision authorising the compulsory acquisition of HS1’s land or rights therein if this can be done without serious detriment to the carrying on of HS1’s undertaking (whether by the provision of replacement land or otherwise) or any detriment in consequence of the acquisition of a right can be made good. National Highways has made no case in this regard. As matters stand, serious detriment to HS1’s undertaking would result from the Project.
8. The land also constitutes Crown Land and section 135 of the PA 2008 is engaged. This provides that any development consent order granted in respect of the Project may include provision authorising the compulsory acquisition of HS1’s interests (or any other rights) only if the appropriate Crown authority consents. The SOST is the appropriate Crown authority for this

purpose. In the absence of any consent from SOST, no provision to authorise the compulsory acquisition of HS1's inferior interests or rights over the relevant land parcels may be included in the proposed DCO in any event.

9. National Highways has been in discussions with both the Department for Transport and HS1 regarding the land required for the Project. The intention is for these discussions to continue and the parties will update the Examining Authority on progress in due course.

#### **Protective provisions and additional requirements**

10. HS1 requires protective provisions to be included within the DCO to ensure its interests are adequately protected and to ensure compliance with relevant safety standards. HS1 is working with National Highways in relation to the protective provisions for inclusion within the DCO, along with any supplementary agreements which may be required.

11. HS1 are particularly concerned about the following issues:

- a. access to HS1 depots;
- b. access and egress measures adjacent to or near HS1's railway or equipment;
- c. protection of and access to critical electrical infrastructure;
- d. ownership and maintenance of under track crossings;
- e. construction activity safety, including control of wind-blow debris;
- f. permanent errant vehicle protection;
- g. permanent fencing and security measures;
- h. surcharging; and
- i. signage.

12. HS1 and National Highways have held detailed discussions in relation to these matters, as set out in the Statement of Common Ground between the parties. HS1's concerns regarding planting and landscaping close to the railway have been resolved, as National Highways have committed to consulting with HS1 on all proposed planting in the vicinity of their assets and boundaries and to ensure that appropriate planting locations are agreed with HS1 to ensure its infrastructure is not impacted. In addition, HS1's concern regarding drainage has been resolved as National Highways have agreed (i) that surface water runoff or drainage discharge will not negatively impact HS1 infrastructure, (ii) to work with HS1 to ensure its design provides satisfactory alternative arrangements if impacts result from the Project's scope and, (iii) commits to the relocation of the balancing pond if required.

13. HS1 has seen the updated draft form of protective provisions. While these they address some of HS1's outstanding concerns, there are still significant issues which need to be resolved before HS1 can be satisfied that its interests are adequately protected. HS1 continues to discuss both the protective provisions and a private agreement with National Highways and the parties will keep the Examining Authority updated in relation to the progress of negotiations.

14. In addition to protective provisions, HS1 should be consulted in appropriate cases where DCO requirements are relevant to its interests. For example, HS1 should be consulted in relation to construction and handover environmental plans, landscaping and ecology, surface and foul water drainage, traffic management, construction travel plans and fencing. In many cases, this can be achieved by HS1 being added to the list of consultees set out in the following documents:
- a. Table 2.1 of the Code of Construction Practice;
  - b. Table 2.1 of the outline landscape and ecology management plan; and
  - c. Table 2.1 of the outline traffic management plan.