

Our ref: A417
Your ref: TR010056

Mike Goddard
National Highways
Project Director
[REDACTED]

The Examining Authority
The Planning Inspectorate
National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

[REDACTED]
2 February 2022

Dear Examining Authority

**A417 Missing Link Development Consent Order
Notification of intention to submit a non-material change request**

At the recent Compulsory Acquisition Hearing (CAH) on 26 January 2022 (CAH1) in connection with the A417 Missing Link (the “scheme”), the Applicant indicated that it would be submitting a non-material change request to provide for the reinstatement of an existing car park at FlyUp Limited’s downhill bike centre post construction and the realignment of the customer access route.

This change is proposed to accommodate concerns raised by FlyUp Limited, who, as an affected landowner, considers that the permanent relocation of their access track behind their house would lead to a detrimental effect as it would be used by vehicles travelling to the existing car park after the construction phase is complete as well as vehicles travelling to the house and uplift busses.

The Applicant maintains that the application has due regard to predicted impacts on FlyUp Limited’s business, and provides all necessary mitigation. The Applicant’s position on that matter is outlined in Appendix B – Impacts on FlyUp Limited, to its Summary of Oral Representations made at the CAH, and submitted to the Examination at Deadline 3 on 2 February 2022.

However, in response to the issues raised by FlyUp Limited in its Written Representation, the Applicant is seeking a non-material change to the scheme in order to provide a solution to some of those matters raised by the affected person FlyUp Limited.

Non-material change sought

The change proposed by National Highways would involve:

- Changes to the proposed access track to include a revised ‘customer access’ which runs between the A417 and the house with residential access retained along the proposed access which remains necessary for construction.

- Car parking returned to current arrangement through engineering changes to the slope gradient in the area.
- Temporary car park removed following construction.

A solution such as that proposed was referred to within Flyup's Written Representation and National Highways have attempted to refine the proposed design in order to meet the suggestions from the business. This would see the business operation returned largely to its current form, with the exception of access changes to include a 'residential access' which follows the access to be constructed as part of the scheme, and a 'customer access' which would route to the north of the outdoor jump field and in front of the residential property.

The extent of the change is shown on the following drawings enclosed with this letter:

- Alternative Access to Flyup 417 Bike Park Temporary VS Permanent
HE551505-ARP-HSR-X_AX_FLY_Z-SK-D-000001

- Alternative Access to Flyup 417 Bike Park DCO Design VS Proposed
HE551505-ARP-HSR-X_AX_FLY_Z-SK-D-000002

Impact on land interests

Delivery of the proposed change would also require amendments to the compulsory acquisition powers sought by the Applicant. As explained at the CAH, no extension of the scheme redline is required to accommodate the change. However, some land plots would need to be subject to a different type of compulsory acquisition or temporary possession to that currently envisaged by the scheme.

The relevant plots are 1/19m, 1/19b, 1/19e, 1/19d, 1/19h and 1/19k. All of these plots are currently included in the Book of Reference as being subject to compulsory acquisition or temporary possession. The Applicant has therefore already notified the affected landowners, including FlyUp Limited as freehold owner and occupier, that it is seeking compulsory acquisition or temporary possession powers over their interests and given them the opportunity to make representations and/or attend the Compulsory Acquisition Hearing.

Based on the initial design proposals within the plans attached to this letter, there would be some decreases and some increases in land take category as shown in the table below. Design refinements in the affected area have also enable the Applicant to identify significant reductions in land take as a consequence of the design changes. Overall, there would be a reduction in land acquisition rights for the affected person.

	Description	Total Area (sqm)
Decreased Land Take arising from the change (Shown hatched blue on the drawing)	Permanent to Temporary with Permanent Rights	740
	Permanent to Temporary	2,550
	Temporary with Permanent Rights to Temporary	550
Increased Land Take arising from the change (Shown hatched red on the drawing)	Temporary to Temporary with Permanent Rights	480
	Temporary to Permanent	2,880
Consequential reduction in land acquisition extents	Reduction of land to be compulsorily acquired or temporarily possessed through design refinement.	8,830

Infrastructure Planning (Compulsory Acquisition) Regulations 2010

The Applicant acknowledges that the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the “Regulations”) must be considered in connection with the proposed change to the application.

In accordance with s.123 of the Planning Act 2008 and Regulation 4, the prescribed procedure set out in Regulations 5 to 19 applies where an applicant proposes to include in a DCO a provision authorising the compulsory acquisition of additional land and where a person with an interest in the additional land does not consent.

As indicated at the CAH, the Applicant has explained the proposed changes in the land requirements of the scheme to FlyUp Limited and sought its agreement to the changes, which to date has not been forthcoming.

In any event, there are other persons with an interest in the relevant plots, including a mortgagee, a statutory undertaker, and the holder of an easement. The easement relates to a conveyance dated 13th November 1926 for Kate Sophia Witcombe the resident of the nearby Witcombe Court and relates to the supply of spring water taken from a spring and reservoir located on land at Crickley Hill Farm. This right is historic with the local water supply being superseded by a mains supply connection. The conveyance relates to land edged yellow on Title plan GR382246.

The statutory undertaker interests relate to existing rights for Western Power Distribution apparatus. As part of the scheme a permanent right is being sought for the diversion of an overhead powerline.

The Applicant considers that obtaining consent from each of these parties not achievable within the timescales of the examination. As such, the Applicant is proceeding on the basis that all persons with an interest in the relevant land will not have consented to the proposed changes prior to the close of examination.

Additional land

For the purposes of the Regulations, “additional land” means land that is proposed to be subject to compulsory acquisition and that was not identified in the book of reference submitted with the application as land (Regulation 2).

“Land” is defined by reference to section 159 of the Planning Act 2008, which states that “land includes any interest in or right over land”. Therefore, the Applicant’s view is that land would only be “additional land” if it had not been identified in the Book of Reference as being subject to compulsory acquisition of either land or rights over land, or temporary possession powers. However, we understand that the Planning Inspectorate’s view in similar circumstances on other schemes is that any change which increases the level of interference over that previously anticipated, including from temporary possession to acquisition of land (or rights over land) would constitute the compulsory acquisition of additional land, triggering the Regulations.

Accordingly, the Applicant has approached the proposed change on the basis that the prescribed procedure set out in the Regulations will apply for additional land.

Procedure for introducing additional land

The key elements of the prescribed procedure are as follows:

- The proposed provision must be set out in an updated book of reference with an accompanying land plan, statement of reasons and funding statement (Regulation 5).
- The Examining Authority must decide whether or not to accept the proposed provision within 28 days beginning with the day after the day on which it receives the details set out in Regulation 5 (Regulation 6).
- The applicant must give notice and publicise the proposed provision for a period of at least 28 days (Regulations 7 and 8).
- The Examining Authority must make an initial assessment of the issues arising in connection of the proposed provision within 21 days of the end of the statutory consultation and set a timetable for examination of the proposed provision as soon as practicable (Regulations 11 and 12).
- The Examining Authority must give affected persons and interested parties a period of at least 21 days in which to make a written representation about the proposed provision (Regulation 13).
- The Examining Authority must give affected persons and interested parties an opportunity to attend a hearing on specific issues, an open floor hearing and a compulsory acquisition hearing, ensuring that at least 21 days’ notice is given (Regulations 14 to 16).

Assessment of change sought

The proposed design amendments involve an additional private means of access to the FlyUp premises (the “customer access”), and adjustments to the engineering for the embankment between the existing FlyUp car park and the A417 mainline to avoid permanent impacts on that car park.

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 (ES) chapters (Document 6.2, APP-032 to APP-049) and Environmental Statement - Updates and Errata (Rev 1) (Document 6.7, REP2-010). Having reviewed the ES, the main potential area for change relates to the revised mitigation planting which would be relocated from an area adjacent to the A417 to an area to the south of the proposed access road. This mitigation planting is proposed to screen the mainline from key views. Given this mitigation would be relocated as part of the change, no material change to likely significant effects presented in the Landscape and Visual Assessment is expected (Document Reference 6.2, Chapter 7, APP-038).

All of the identified amendments to the design are minor and set within the red line boundary for the scheme. Given the nature of the proposed design changes, for all of the environmental topics there would be no change (adverse or beneficial) to the assessment presented in the ES. Consequently no further environmental information is required to be submitted in connection to this change.

Consultation

It is the Planning Inspectorate’s recommendation that consultation is carried out prior to a potential material change is made to an application. That is set out at part 3 of PINS Advice Note 16 (Advice Note 16). The Applicant has undertaken extensive consultation and engagement with FlyUp Limited in connection with the scheme and, more recently, the proposed change.

Following the Relevant Representation from FlyUp Limited, National Highways met with FlyUp and their agent on site on 8th December 2021. A Written Representation was received shortly after this meeting (15th December 2021) and National Highways undertook a review of the current design solution on the basis of the Written Representation and discussions at the December meeting. A subsequent meeting was held with FlyUp Limited on 12th January 2022 at which, National Highways presented a potential design alteration for discussion. This revised design responded directly to the Written Representation and the suggestion that the car parking is returned in full post construction, with the access for customers also returned to its current alignment in front of the residential property. Following the meeting a summary of the potential changes was shared with Flyup Limited along with the drawings which were presented at the meeting. Those details were sent to FlyUp Limited, together with a draft Position Statement, on 12 January 2022.

This targeted approach to consultation is considered appropriate because the other persons with an interest in the relevant land are not considered to be affected by the proposed change, which is not considered to be a material change from the current proposals. No other person with an interest in the land, either easements or statutory undertakers have raised concerns with the current scheme or made representation to attend the Compulsory Acquisition Hearings. It is not considered that there would be any impacts on other highway users on account of the proposed amendment affecting only private means of access, rather than the wider local highway network.

The Applicant can also confirm that there are no newly prescribed persons with an interest in land because of the change.

The 28 day period recommended in paragraph 3.3 of Advice Note 16 has commenced and will have expired by the time the Applicant intends to make its change request on 14 February (see further below under timings). The Applicant therefore considers that no further consultation is required prior to the making of a change request pursuant to the Regulations.

Timing

The Examining Authority has asked the Applicant to provide an explanation as to how the examination timetable could accommodate the proposed change request.

The Applicant suggests that the following example timetable could be achieved, if the Examining Authority is able to exercise its discretion within the time periods being suggested below:

- 1. FlyUp Limited were notified of and consulted on the proposed change on 12 January 2022.**
- 2. Change request made by the Applicant on 14 February 2022 (Deadline 4).** This ensures that FlyUp Limited are given at least 28 days to comment on the change prior to the request being made, in accordance with PINS Advice Note 16.
- 3. Acceptance decision made by the Examining Authority by 21 February 2022.** We have allowed 7 days for this, which is fewer than the 28 days allowed to the Examining Authority under Regulation 6).
- 4. CA Regulations notification and publication carried out by the Applicant between 24 February to 1 April 2022.** The notice must be published for two successive weeks in a local newspaper, once in the London Gazette and once in a national newspaper in accordance with Regulation 8. The deadline for receipt of representations must not be earlier than the end of a period of at least 28 days beginning with the day after the day on which the notice is last published. The Applicant has identified a local newspaper that will publish on Thursday 24 February and Thursday 3 March. As the London Gazette and national newspapers

publish daily, the Applicant can provide for the 28 day period for representations to begin on 4 March and end on 1 April 2022.

5. **Certificates of compliance with Regulations 7 and 8 (notices and publication) submitted by the Applicant on 4 April 2022.**
6. **Examining Authority to determine initial issues and confirm the procedure for examining the request, including the dates for written representations and additional hearings, no later than 11 April 2022.**
We have allowed 7 days for this, which is fewer than the 21 days from the date that certificates of compliance are provided allowed to the Examining Authority under Regulation 11. Regulation 12 provides that the timetable must include a deadline for the submission of written representations. Regulations 14 to 16 provide that additional affected persons must be given an opportunity to attend a hearing about specific issues, an open floor hearing and a compulsory acquisition hearing, with at least 21 days' notice of the date, time and place of those hearings. There are no additional affected persons, but the Applicant has allowed for a programme (below) as if there were.
7. **Notice of hearings issued on 14 April 2022.** In accordance with Rule 13 of the Infrastructure Planning (Examination Procedure) Rules 2010, the Applicant must, not later than 21 days before a hearing, post and maintain notices of the hearing, including by local advertisement. The Applicant has identified a local newspaper that will publish on Thursday 14 April 2021.
8. **Written representations on the change to be submitted by 4 May 2022 (Deadline 8).** This provides for a period of not less than 21 days for the receipt of written representations following receipt of the timetable set by the Examining Authority by 11 April 2022, in accordance with Regulation 13.
9. **Open Floor, Compulsory Acquisition and Issue Specific Hearings to be held on or after Monday 9 May.** This provides for at least 21 days' notice from publication on 14 April 2022, in accordance with the CA Regulations and Rule 13.
10. **Comments on written representations and summaries of oral submissions to be submitted by 13 May 2022 (Deadline 9).**
11. **Examination closes 16 May 2022.**

While the Examining Authority has a maximum of 28 days to consider whether to accept a formal request under Regulation 6, the Applicant would hope that, given the very limited scope of the request and the level of detail provided in the enclosed, the full period for consideration of acceptance would not be necessary. It also hopes that the 21 day period for the determination of initial issues and confirmation of procedure under Regulation 11 could be shortened. It can also be noted that allowing the minimum 21 days' notice of the hearing

would not prejudice any parties, on account of the limited number of affected parties, the limited scope of change, the likelihood that there will be very limited (if any) wider public interest in the proposed change, and the narrow scope of issues arising from the change.

The Applicant anticipates that any questions that the Examining Authority may have following statutory consultation under the Regulations and the submission of written representations could be satisfactorily addressed during the hearings and subsequent written summaries. As such, the Applicant has not provided for any further written questions within its proposed timetable.

For completeness, in the event that the Examining Authority considers that the Regulations are not engaged in these circumstances, no statutory consultation would be required and the procedure for examination of the change would be at the Examining Authority's discretion.

Notice of intent to submit a change request

This letter constitutes a notification of intent to request a change, in accordance with PINS Advice Note 16.

It is our view that the proposed changes can be dealt with as non-material changes, subject to compliance with the Regulations (if applicable).

The Applicant will submit the following documents alongside a change request:

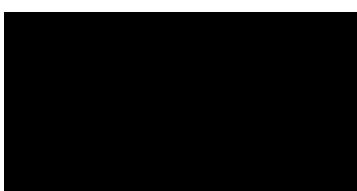
- an updated Book of Reference
- updated Land Plans
- updated Statement of Reasons
- updated Funding Statement
- updated works plans
- updated general arrangement plans
- updated dDCO to reflect change within the description of works

It is not considered that there are any further material impacts on the remainder of the Application documents as a result of this proposed non-material change.

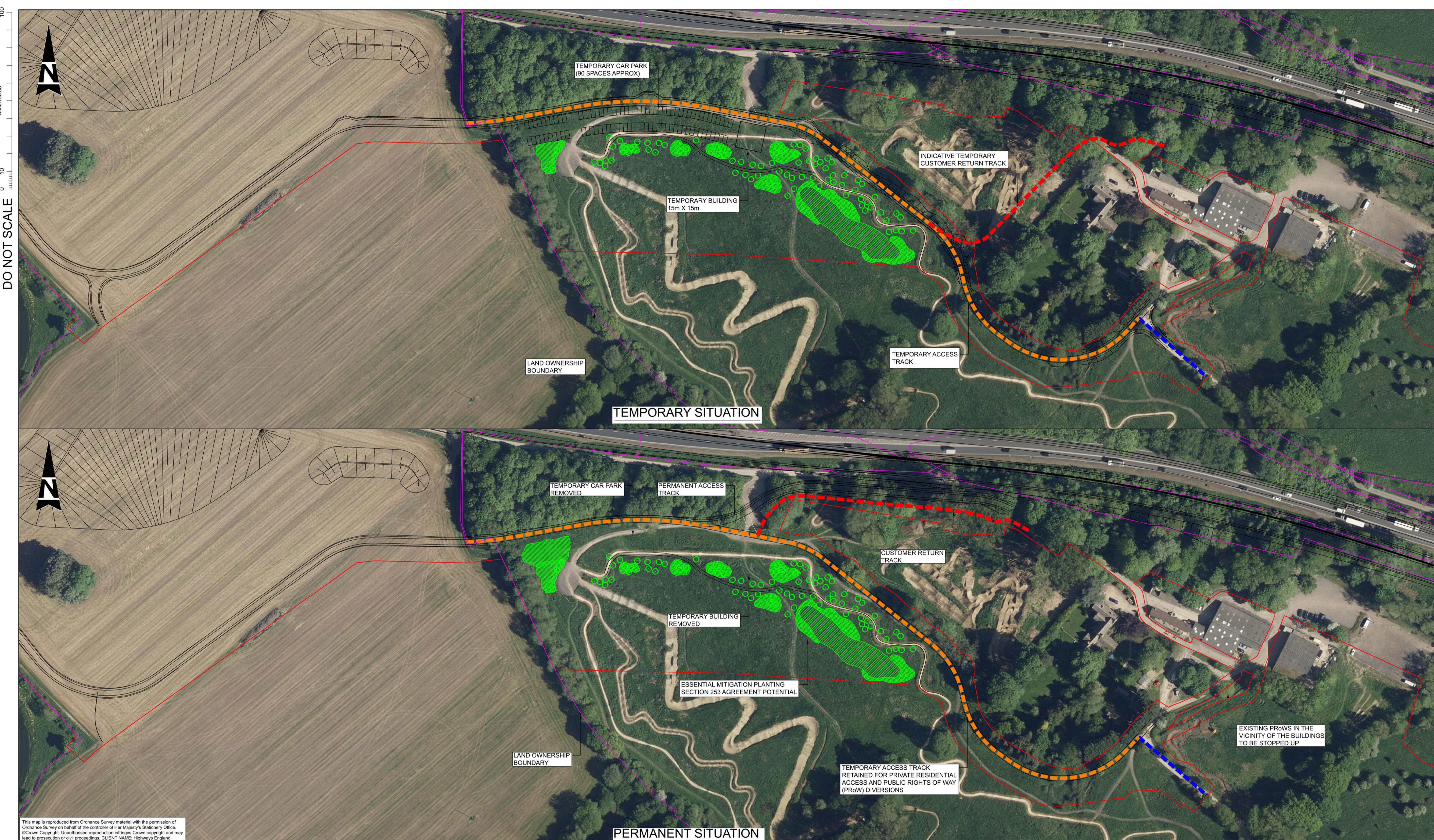
The Applicant invites the Examining Authority to provide any advice that it has on the Applicant's proposals, as anticipated by Advice Note 16.

We look forward to hearing from you.

Yours sincerely



Mike Goddard
National Highways
Project Director



This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office. ©Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to criminal prosecution or civil proceedings. CLIENT NAME: Highways England LICENCE NUMBER: 100030549 [2019]

NOTES
1. ALL DIMENSIONS ARE IN METRES UNLESS NOTED OTHERWISE.
2. ONLY WRITTEN DIMENSIONS SHALL BE USED, DO NOT SCALE.

LEGEND
— PROPOSED SCHEME BOUNDARY
— LAND OWNERSHIP BOUNDARY
— EXISTING PRoW
— DIVERTED PRoW

SAFETY, HEALTH AND ENVIRONMENTAL INFORMATION

IN ADDITION TO THE HAZARDS/RISKS NORMALLY ASSOCIATED WITH THE TYPES OF WORK DETAILED ON THIS DRAWING, NOTE THE FOLLOWING SIGNIFICANT RESIDUAL RISKS (REFERENCE SHALL ALSO BE MADE TO THE DESIGN HAZARD LOG).

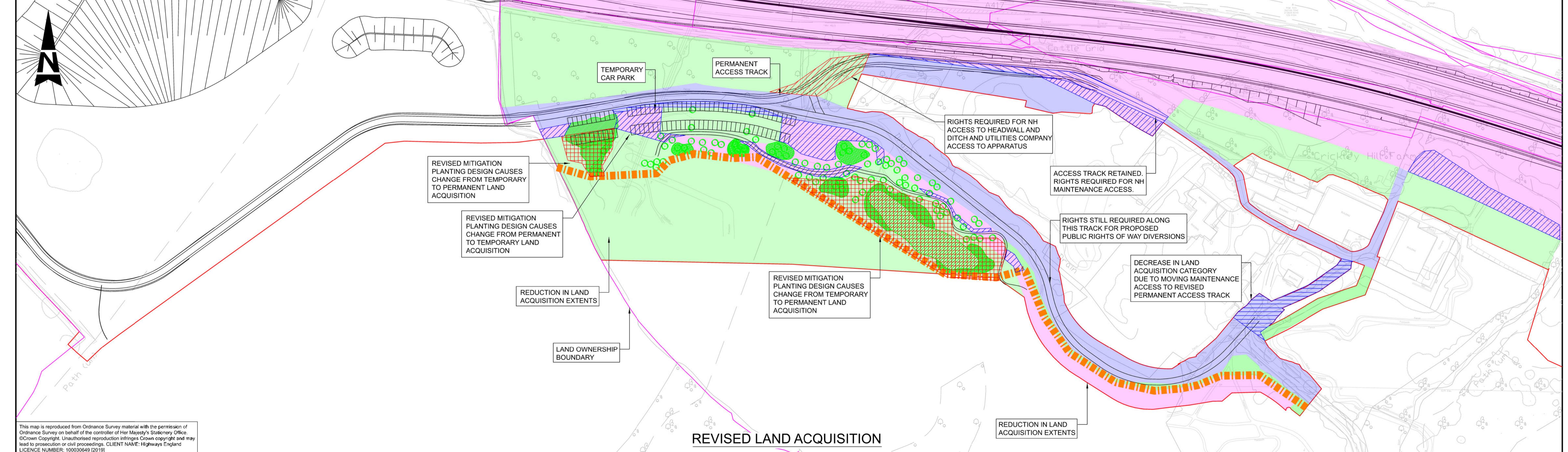
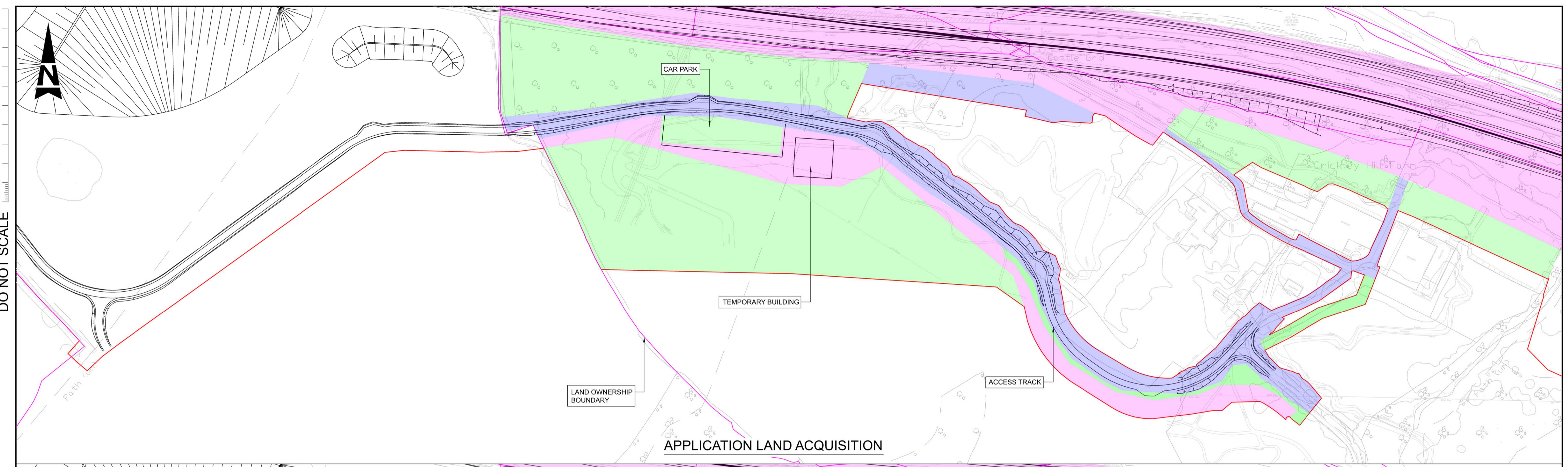
CONSTRUCTION (ENTER "NONE" IF APPLICABLE)	---	---	---	---	---	---	---	---	---	---	---	---
Maintenance / Cleaning (ENTER "NONE" IF APPLICABLE)	---	---	---	---	---	---	---	---	---	---	---	---
USE (ENTER "NONE" IF APPLICABLE)	P01	13/01/22	FOR DISCUSSION	SC	DA	CT	CT	---	---	---	---	---
DECOMMISSIONING / DEMOLITION (ENTER "NONE" IF APPLICABLE)	P02	14/01/22	INTERNAL REVIEW	ES	CT	JP	---	---	---	---	---	---
	P03	14/01/22	FOR LANDOWNER APPROVAL	ES	CT	JP	RP	---	---	---	---	---

Rev. Date Description By Chkd Appd Authd

Suitability	Drawing Status	Project Title									
S2	SUITABLE FOR INFORMATION	A417 MISSING LINK									
		Drawing Title	ALTERNATIVE ACCESS TO FLYUP 417 BIKE PARK TEMPORARY VS PERMANENT								
		Scale	N/A	By	ES	Checked	CT	Approved	JP	Authorised	RP
		Original Size	A1	Date	14/01/22	Date	14/01/22	Date	14/01/22	Date	14/01/22
		Drawing Number	HE PIN	Originator		Volume					Revision
			HE551505 - ARP	- HSR							
			X_AX_FLY_Z	- SK - D - 000001							
		Location	Type	Role	Number						

ARUP

highways
england



This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office. ©Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to legal action or civil proceedings. CLIENT NAME: Highways England LICENCE NUMBER: 100030549 [2019]

NOTES
1. ALL DIMENSIONS ARE IN METRES UNLESS NOTED OTHERWISE.
2. ONLY WRITTEN DIMENSIONS SHALL BE USED, DO NOT SCALE.
3. THE LAND ACQUISITION SHOWN ON THIS PLAN IS INDICATIVE.

LEGEND	
PROPOSED SCHEME BOUNDARY	
REvised RED LINE	
LAND OWNERSHIP BOUNDARY	
TEMPORARY ACQUISITION	
PERMANENT ACQUISITION	
TEMPORARY ACQUISITION WITH PERMANENT RIGHTS	
DECREASED LAND TAKE CATEGORY	INCREASED LAND TAKE CATEGORY
PINK TO BLUE	GREEN TO BLUE
PINK TO GREEN	GREEN TO PINK
BLUE TO GREEN	

SAFETY, HEALTH AND ENVIRONMENTAL INFORMATION

IN ADDITION TO THE HAZARDS/RISKS NORMALLY ASSOCIATED WITH THE TYPES OF WORK DETAILED ON THIS DRAWING, NOTE THE FOLLOWING SIGNIFICANT RESIDUAL RISKS (REFERENCE SHALL ALSO BE MADE TO THE DESIGN HAZARD LOG).

CONSTRUCTION (ENTER "NONE" IF APPLICABLE)

Maintenance / Cleaning (ENTER "NONE" IF APPLICABLE)

USE (ENTER "NONE" IF APPLICABLE)

DECOMMISSIONING / DEMOLITION (ENTER "NONE" IF APPLICABLE)

Suitability	Drawing Status	Project Title	
S2	SUITABLE FOR INFORMATION	A417 MISSING LINK	
Drawing Title		ALTERNATIVE ACCESS TO FLYUP 417 BIKE PARK DCO DESIGN VS PROPOSED	
Scale	N/A	By	ES
Original Size	A1	Checked	CT
Date	14/01/22	Date	14/01/22
Date	14/01/22	Date	14/01/22
Drawing Number	HE PIN	Originator	Volume
HE551505 -	ARP	- HSR	Revision
X_AX_FLY_Z	- SK - D - 000002	Location	Type Role Number

ARUP

highways
england