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Our Ref T22- 000
Your Ref: 20032138 Rep 119/Rep 120
3 April 2023

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Dear Madam

A66 Trans-Pennine Project Scheme 0102 – M6 Junction 40 to Kemplay Bank

I write further to the Hearings of 1 March and 2 March 2023 and the Applicant's Response to Relevant Representations Part 3, page 403/404 - Document 6.5, the Applicant's Response to Written Representations made by Affected Persons at Deadline 1 - Rev 1 submitted at Deadline 2 (document 7.6), Applicant's Responses to the Examining Authority's Written Questions (document 7.240 and the A66 Northern Trans-Pennine Project Applicant's Response to Deadline 3 Submissions (Document 7.27) on behalf of Penrith Properties Limited, BVI registered company 249033, (PPL) and in relation to Post Hearing submissions of 13 March 2023 in respect of the proposed compulsory acquisition of land at Ghyll Mount, Gillian Way Penrith, identified in Developer's Application Document 5.13 as Plot 0102-01-20.

There is no justification in the information provided to compulsory acquire Plot 0102-01-20 and the information provided to support the acquisition of this plot is either erroneous, mistaken or not provided.

Detailed points are made below:

Mis-labelled Drawings

With regard to the longitudinal section to 0102-3. If Document 5.17 is the same as "Doc App-326 Engineering Section Drawings (Plan and Profiles) as part of the DCO submission" and Sheet 3 of 6 drawing "A592 Northbound to M6 Southbound Diverge" is being identified as the relevant drawing that includes Works No 0102-3, then the labelling is incorrect or it does not show the profile of Work No 0102-3. The description given in the drawing title is for works numbers 0102-4 and 0102-1A – which are for the A592 Northbound and the A66 Westbound from the roundabout.

An accurate longitudinal section for the description of the work packages for M6 Southbound to A592 Northbound should show Works No Works No 0102-3, a short section of Works Nos 0102-1B and 0102-4.

Failure to show the accurate longitudinal sections prevents the Examining Authority from assessing the likely impact on changed carriage way levels on the need to acquire adjoining land. We contend there are only *de minimus* changes in carriage way levels in works packages 1020-3, 0102-1b and 0102-4 and therefore no justification in acquiring the land.

Misrepresentation in drawings

The cross sectional drawings in document 7.30 appendix G, provided by the Applicant misrepresent the existing ground levels of the order land in these locations and are therefore misleading in demonstrating the works being required in the context of land to the extent of order limits which implies the ground raises beyond the Order Limits or the relative elevated positioning of the existing ground level at the Order Limits in relation to the verge land or road surface that are within the National Highways existing ownership.

The nature of the land proposed to be taken is mischaracterised as being as being on relatively level land between the existing highway boundary and the Order Limit whereas the reality is that the Order Limit land take is to the top of the slope which rises from the Existing Boundary to the highway, up to the relatively level land on which Ghyll Mount sits; the top of the slope is the Order Limit per the sketch attached at appendix xx.

For the cross section drawings of works 0102-3 and 0102-1b demonstrate that the minor levels changes required can be accommodated within existing highway verge or verge/observation/shared cycleway of approximately 9.5m and 15m respectively and therefore there is no need to acquire Plot 0102-01-20.

Lack of drawings

The Applicant was asked for cross sectional drawings across 0102-3, 0102-1b and 0102-4 to justify the acquisition of the land in plot 0102-01-20. While the inaccurate drawings for works section 0102-3 and 0102-1b have been provided a cross sectional drawing across Works No 0102-4 has not been provided.

Keir, the selected developer and the A66 project team have been granted access for survey purposes and more accurate cross-sectional drawings have been requested be produced that properly reflect the land levels from the Existing Boundary of the highway to the Order Limit.

By failing to carry out sufficiently detailed surveys and misrepresenting the existing levels the Applicant is asking the Examining Body to rely on inaccurate information to confirm the compulsory acquisition of land.



The request to understand the reasons why the land is required, raised in the representations submitted at Deadline 1 (18 December 2022) and Deadline 3 (23 January 2023) remain outstanding, in spite of the responses provided by the Applicant.

We note that in document 7.27 the Applicant refers to a meeting on the 27th of January. PPL would like to draw the Examining Authority's attention to this being 3 days after Deadline 3 (24 January 2023) the meeting had not taken place.

The Applicant has requested access to the land for relevant surveys, which has been granted, but the Applicant has not carried out any surveys to establish whether the identified land is required or whether less land or alternative rights over land may suffice.

The following comments are made:

Document 7.27. In response to the Applicant's comments at Pages 13 to 15 related to diligent referencing.

The applicant seeks to rely on a test of reasonable assumption (i.e. lack of response and the signing for of registered letters) in lieu of pursuing clearly available information that represent an obvious line of enquiry (which is representative of a diligent approach), including looking at and consideration of Companies House records.

The lack of response to the Land Information Questionnaire and subsequent correspondence and notices should have flagged a greater level of diligent enquiry being required.

Companies House records for the incorrectly identified company identifies the assets pertaining to that business and specifying on the charges register, the address of the property concerned, that does not include property at Ghyll Mount.

A search on Companies House of the officers of the incorrectly identified business also reveals alternative addresses and company details that would have helped inform the referencing exercise, had it been pursued diligently.

It is also noteworthy that a search of entities at 14a Hartness Road, Penrith – also freely available through Companies House searches - identifies Shaun Brown Accountants Ltd and the registered office addresses of some 32 entities including Penrith Properties Ltd at the address. The impact of Covid would not have prevented these online activities being carried out.

During the period 'February 2021 to present' (as at 24 January 2023) there were a number of entries in Companies House for 'Penrith Properties' that flagged potential alternative entities that should have triggered a more circumspect approach as part of diligent inquiries.

It should also be noted that the Section 42 notice is an invitation to consult, the subsequent letter inviting negotiations is just that and the Section 56 Notification similarly invites but do not require responses; therefore a lack of response to these



notices and letters cannot be taken as supporting the Applicant's statement of diligence.

Indeed the need for contacting identified solicitors, while not 'standard land referencing practice' and other enquiries through Companies House information, should have been triggered in light of the lack of responses to served papers, particularly the Land Information Questionnaire.

It is contended that diligent inquiries requires the Applicant to pursue lines of enquiry and assess the information gleaned from available sources, rather than relying on consideration of the initial information gleaned from Land Registry and relying on assumption and the lack of responses arising from that initial assumption.

Purpose for which land required.

The Applicant asserts that the need for acquiring the Land is set out in TR010062, Document 6.5 page 403. This restates the purpose set out in document 5.9 Acquisition Schedule and confirms identification of the relevant land by colour. This response does not give any further explanation setting out the reasoning related to the cited purposes: alterations to the identified road elements (divergent slip road, A592, A66 Circulatory carriageway) or the non-motorised user facilities or landscaping and reprofiling of the land. The specific purposes are being tested through the Examination process and PPL are seeking detailed reasons pertaining to the stated purposes which it reiterates are not being given.

Document 7.24. Applicant's response to the Examining Authority

In written responses to the Examining Authority the Applicant presented the cross section at CH9840 which relates to Works 0102-1C as demonstrating the need for acquiring the land. Contrary to the assertion made by the Applicant these works do not adjoin plot 0102-01-20 (which is adjoined by 0102-1B, 0102-3 and 0102-4) and in presenting CH9840 in this context the Applicant is being misleading.

In relation to the proposed Road alterations:

- 1 The applicant has stated that the land at the southern end of PPL land holding may be needed to accommodate minor changes in level associated with adjoining carriageway works to plot 0102-01-20 – works packages 0102-3, 0102-1B and 0102-4.

The following points are made in respect of these works and the need to take land for that purpose:

- a) The labelling of the sections in document 5.17 Engineering Section drawings (Plan and Profile) are difficult to reconcile because the cross sections on page 4 of the document (sheet 3 of 6, drawing reference 001002) indicate that section 0102-4 is contiguous with sections 0102-1A and section 0102-1C which they are not on the identification plan. Longitudinal Section drawings for 0102-3 are not given.



- b) Assuming the sections are as presented in Doc 5.17, the least change in levels for 0102-1B is noted as being 0.007m (7 mm) and the greatest 0.202m (202 mm). The existing National Highways owned land within which to accommodate this change in levels is between approximately 11 and in excess of 17 metres from kerb of carriageway before any of PPL's land is required. There is no need to acquire additional land to accommodate the minor level changes associated with Works 0102-1B. This is demonstrated in the cross section in Doc 7.30.
- c) Assuming the levels are as presented in Doc 5.17, the least change for works on the A592 (0102-4) are 0m (0 mm) and the greatest 0.390 m (390 mm) the existing verge width with the National Highways ownership is between 11 metres and 20 metres to kerb of carriageway within which to accommodate any levels change before land within plot 0102-01-20 is required. There is no need to acquire additional land to accommodate levels changes.
- d) The longitudinal section of works 0102-3 have not been presented in 5.17. The Applicant has confirmed this will be presented to the Examining Authority at Deadline 5. It is assumed that the existing slip road levels will be broadly maintained or if altered only altered in a minor form and therefore it is anticipated that any minor levels changes can similarly be accommodated within the existing National Highways land which is currently in excess of 11 metres wide to kerb of carriageway. This is demonstrated in the Cross sections in Doc 7.30.

The Plan at attachment 2 sets out the required longitudinal and cross sectional drawings required.

The scale plan attached at attachment 2 shows the depth of existing National Highways land adjoining 0102-01-20.

There is no compelling reason to acquire PPL's land to accommodate the proposed levels changes.

In responses to representations the Applicant makes no specific reference to the land being required for alteration to carriage way widths in these locations.

There is no compelling reason to acquire PPL's land for road widening.

2 Non Motorised user facilities

The Applicant has confirmed that a 6.5m strip containing the hard standing (1.5 m) Footway (2m) and Cycleway (3m) is required for non-motorised users.

As demonstrated in document 7.30 Appendix G the available land within National Highways existing ownership adjoining 0101-01-20 is sufficient to accommodate the non-motorised user facilities without requiring additional land.

There is no need to acquire Plot 0101-01-20 for the purposes of delivering non motorised user facilities.



3 Landscaping and Reprofilling

If narrowly interpreted to support landscaping and reprofilling for the purpose of the delivery and maintenance of the A66 improvements, there is sufficient land within the National Highways existing ownership to accommodate any necessary landscaping and reprofilling for the delivery of the A66 enhancements.

The Applicant confirms that 'the whole area in this location cannot be planted as woodland due to the proximity to the carriageway with safety standards requiring woodland to be 9m from the carriageway. Scrub species can be planted up to 4.5m from the carriageway'. The existing National Highways land adjoining plot 0102-01-20 is wide enough to accommodate planting of both trees and scrub as need be without having to acquire PPL land for that purpose.

No land from plot 0102-01-20 is required for the removal of existing vegetation on the PPL land or to enable additional planting to take place in the context of the Applicant's road safety standards that maintain distance of planting from the proposed road.

No land is required from plot 0102-01-20 to give effect to maintaining safe planting from the proposed road.

There is no compelling reason for the land to be acquired for landscaping and reprofilling.

Assuming a wider interpretation is given to the landscaping purpose to include Environmental Mitigation and biodiversity. The applicant has identified the proposed use of plot 0102-01-20 as being for EFA 'Visual screening' and EFB 'Landscape integration' purposes. Both are elements of the environmental mitigation strategy.

The Applicant is seeking powers to remove the existing trees, shrubs and grass land and only committing to replace the existing planting in the context of Document 2.7, Table 3.2, D-BD-05. This only commits the Applicant to replicating the existing planting with Woodland (LE2.1) and Woodland edge (LE2.2) and Grassland (LE 1.5) as a minimum. In the context of minimum requirements, this would only replicate existing planting on a like for like basis. When taking into account the negative impact due lost habitat during the removal of existing planting, the loss of the benefits of established planting while the proposed new planting becomes equally established the proposed planting will need to be an enhancement to deliver the same benefits to the existing planting.

There is no assessment of the net impact of the removal of the existing planting and reprovision of proposed planting, that takes into account the period of works and regrowth required in relation to plot 0102-01-20 and therefore no assessment of any net benefit that the proposed changes to plot 0102-01-20 would generate towards environmental mitigation.

Any such benefits could be more effectively delivered by additional planting on existing National Highways land, leaving the existing planting in place.



The proposed environmental improvements to plot 0102-01-20 do not generate a sufficient contribution to environmental mitigation that additional planting within National Highways land could not equally achieve and therefore there is no compelling case in the public interest to compulsory acquire plot 0101-01-20 to do so.

Adverse Impact on Retained Land

Document 3.2 Chapter 13 at Table 13-7 identifies Business in Gillian Park as Medium Receptors.

13.10.72 States that no businesses are anticipated to experience permanent or temporary land loss as a result of this scheme.

In 7.27 page 403 The Applicant seeks to now caveat the proposed land take as not having any significant effect. This statement undermines the absolute statement that no land would be taken in relation to Gillian Park in document 3.2.

PPL accepts the Applicants confirmation that Plot 0102-01-20 would not be publicly accessible.

Alternative proposal

The Applicant confirms that land identified as pink – permanent land taken - may not be taken but may be subject to a temporary possession or possession by agreement.


PPL requests that the Applicant clarify what and why land is required given the lack of supporting evidence demonstrating it is necessary for the scheme and engages with PPL to determine a reasonable approach if the land is so required.

For the sake of clarity PPL do not believe the land identifies as plot 0102-10-20 is required to enable the scheme to be delivered or for future maintenance, for the reasons stated however in so far as it is strictly necessary for the scheme PPL would enable access by agreement to the land to carry out identified works on the strict proviso that it is reinstated with an appropriate boundary treatment in its existing location.

The poor presentation of the information and lack of specific response to the reasonably requested information to support the acquisition of land is requiring that PPL to expend professional fees in defending against the CPO for land that is not required for the delivery or future maintenance of the A66 improvement scheme.

Photos are included for ease.

Yours sincerely



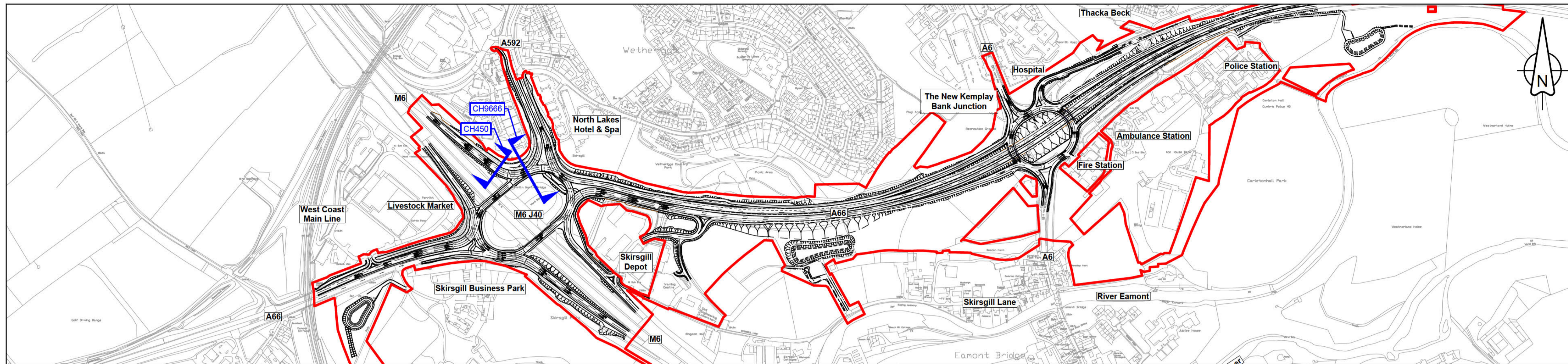


David van der Lande MRICS
Director

Cc Eran Gavish

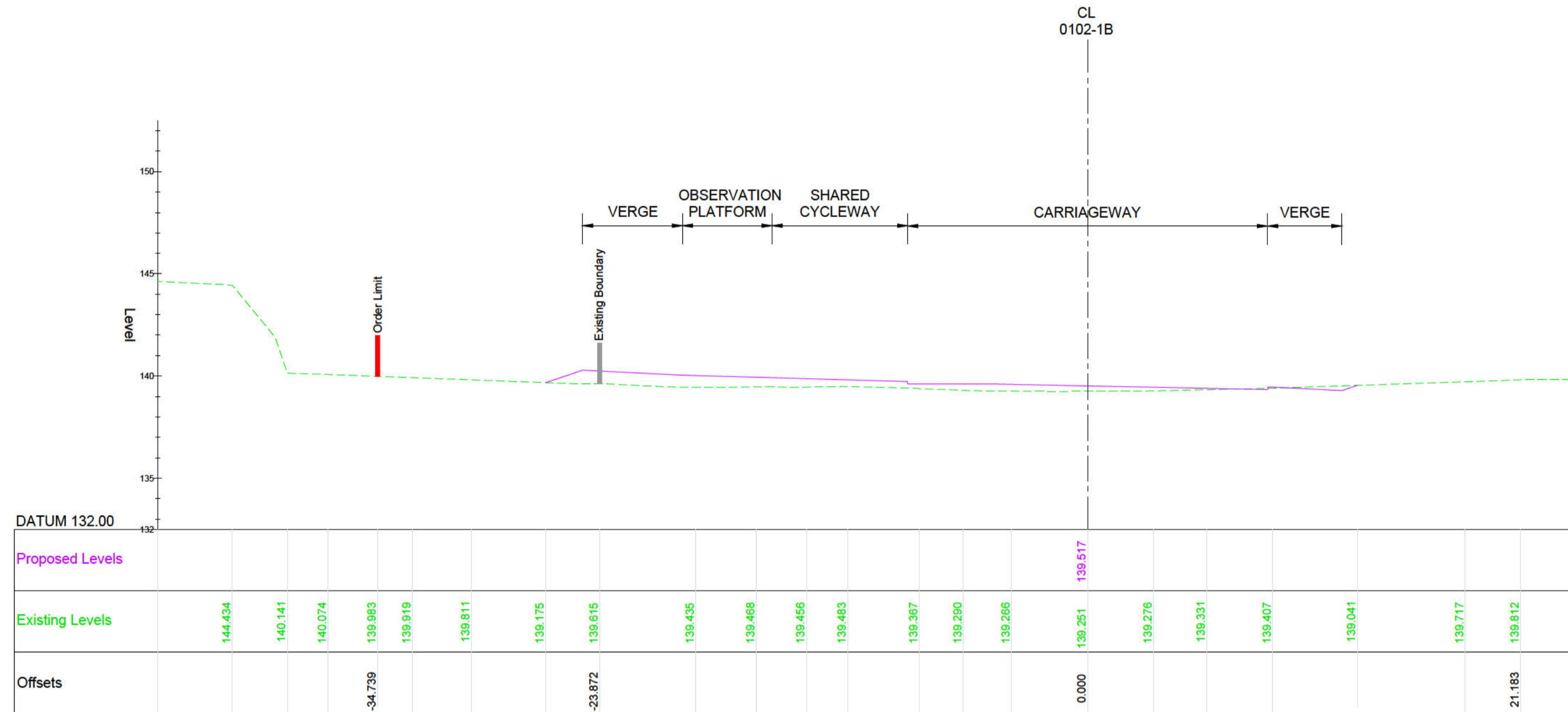
Attachment 1 – 730 Amended
Attachment 2 - Cross Sections Required
Attachment 3 – Width of Highways Land
Attachment 4 – photos March 2023





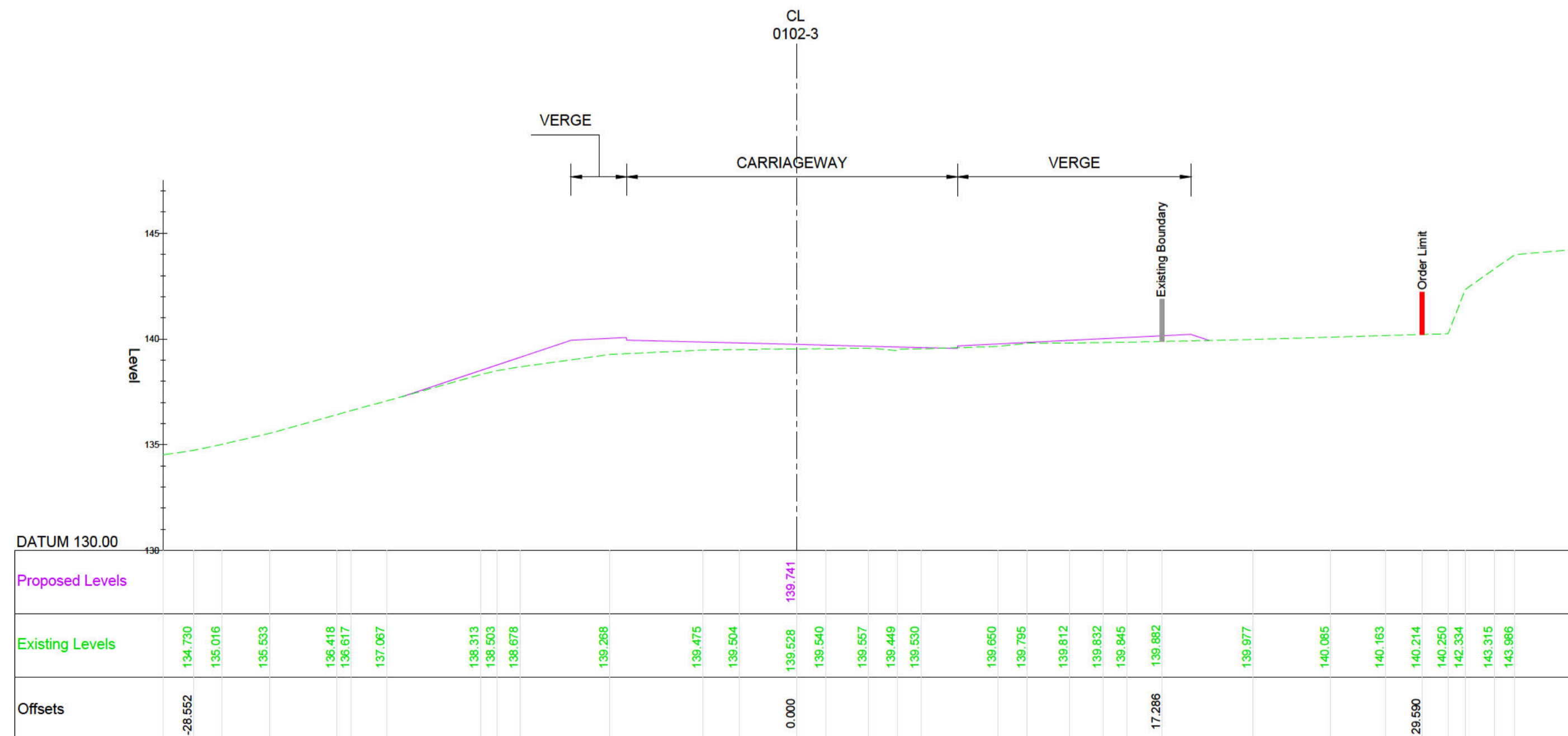
- NOTES**
- ALL DIMENSIONS ARE IN METRES UNLESS NOTED OTHERWISE.
 - THESE ENGINEERING SECTION DRAWINGS SHOULD BE READ IN CONJUNCTION WITH THE KEY PLAN AND ALONGSIDE OTHER PLANS AND DOCUMENTS IN THE DEVELOPMENT CONSENT ORDER APPLICATION, IN PARTICULAR, THE WORKS PLANS AND SCHEDULE 1 (AUTHORISED DEVELOPMENT) TO THE DEVELOPMENT CONSENT ORDER.
 - FOR CHAINAGE PLEASE REFER TO THE ENGINEERING SECTION DRAWINGS (PLAN AND PROFILES).
 - WORK No. REFERENCES ARE DETAILED IN THE SCHEDULE 1 (AUTHORISED DEVELOPMENT) TO THE DEVELOPMENT CONSENT ORDER.
 - THE DESIGN SHOWN ON THESE ENGINEERING SECTION DRAWINGS IS ILLUSTRATIVE AND WILL BE SUBJECT TO THE DETAILED DESIGN DEVELOPMENT. ANY CHANGES WILL BE LIMITED TO BEING WITHIN THE ORDER LIMITS AND ANY OTHER CONSTRAINTS INCLUDED IN THE DEVELOPMENT CONSENT ORDER.

- KEY**
- PROPOSED LEVEL
 - EXISTING LEVEL
 - ORDER LIMITS
 - SECTION MARKER WITH CHAINAGE REFERENCE



TYPICAL SECTION CH. 9666 WORK NO. 0102-1B

Scale 1:200



TYPICAL SECTION CH. 450 WORK NO. 0102-3

Scale 1:200

Revision	Created	Checked	Reviewed	Approved	Authorised
dd/mm/yy	dd/mm/yy	dd/mm/yy	dd/mm/yy	dd/mm/yy	dd/mm/yy

Designer
 Amey OW Limited
 Chancery Exchange
 10 Furnival Street
 London, EC4A 1AB

Client
 3 Piccadilly Place
 Manchester
 M1 3BN

Project Name
A66 Northern Trans-Pennine

Drawing Title
**M6 Junction 40
 Typical Sections
 (CH 450 & CH 9666)
 Sheet 1 of 1**

Project Ref. No.	Stage	Scale	@ A1
---	PCF3	1:5000	
		Dimensions	M

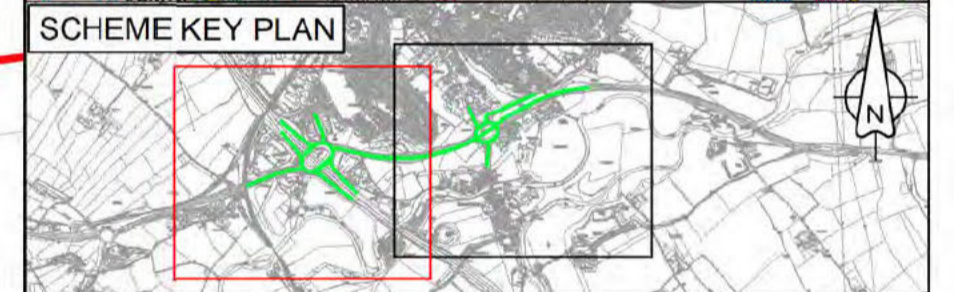
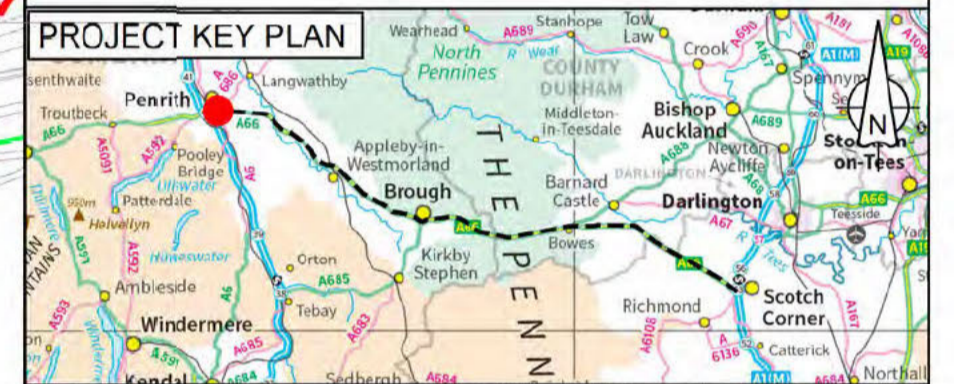
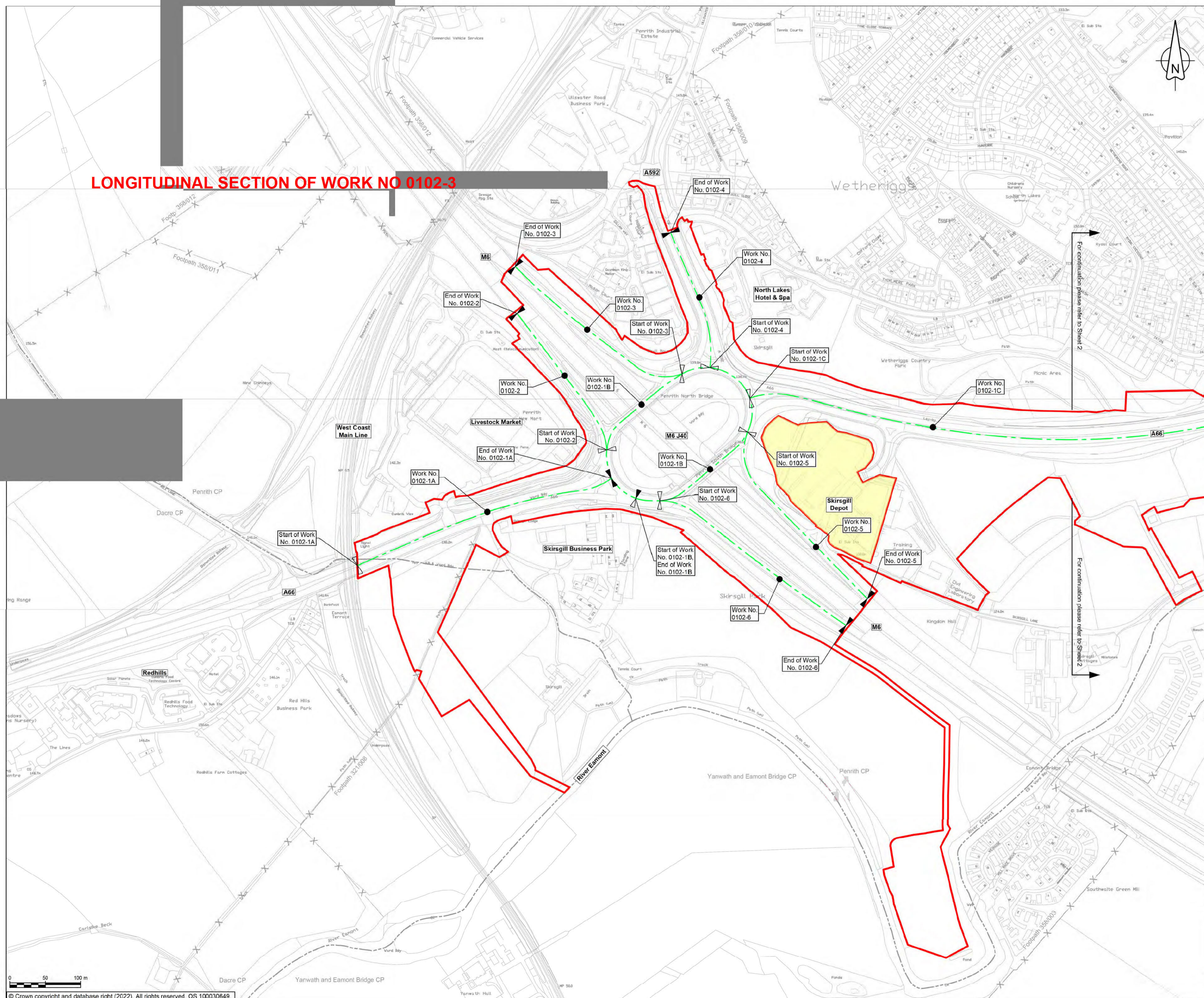
Drawing Number	Project	Originator	Volume
HE565627	- AMY	- HAC	-
S0102	- SK	- CH	- 000011
Location	Type	Role	Number

Suitability	Suitability Description	Revision
S1	Fit for Co-ordination	P02

LONGITUDINAL SECTION OF WORK NO 0102-3

- ### NOTES
- ALL DIMENSIONS ARE IN METRES UNLESS NOTED OTHERWISE.
 - NUMBERED WORKS ARE DESCRIBED IN SCHEDULE 1 (AUTHORISED DEVELOPMENT) TO THE DEVELOPMENT CONSENT ORDER.
 - THE WORKS PLANS SHOULD BE READ IN CONJUNCTION WITH THE DEVELOPMENT CONSENT ORDER AND ENGINEERING SECTION DRAWINGS.

- ### KEY
- ORDER LIMITS
 - AREA EXCLUDED FROM ORDER LIMITS
 - LINEAR WORK CENTERLINE
 - START OF LINEAR WORKS
 - START AND END OF LINEAR WORKS
 - END OF LINEAR WORKS
 - EXISTING PUBLIC RIGHT OF WAY
 - PARISH BOUNDARY
 - EXISTING ORDNANCE SURVEY DATA



For DCO Submission				
ESWA	FBLA	ASCR	DKID	SBAG
06/05/22	06/05/22	09/05/22	09/05/22	10/05/22

Revision details				
Created	Checked	Reviewed	Approved	Authorised
dd/mm/yy	dd/mm/yy	dd/mm/yy	dd/mm/yy	dd/mm/yy

Purpose: DCO APPLICATION

PINS Reference Number: TR010062/APP/5.16

Client: 3 Piccadilly Place, Manchester, M1 3BN

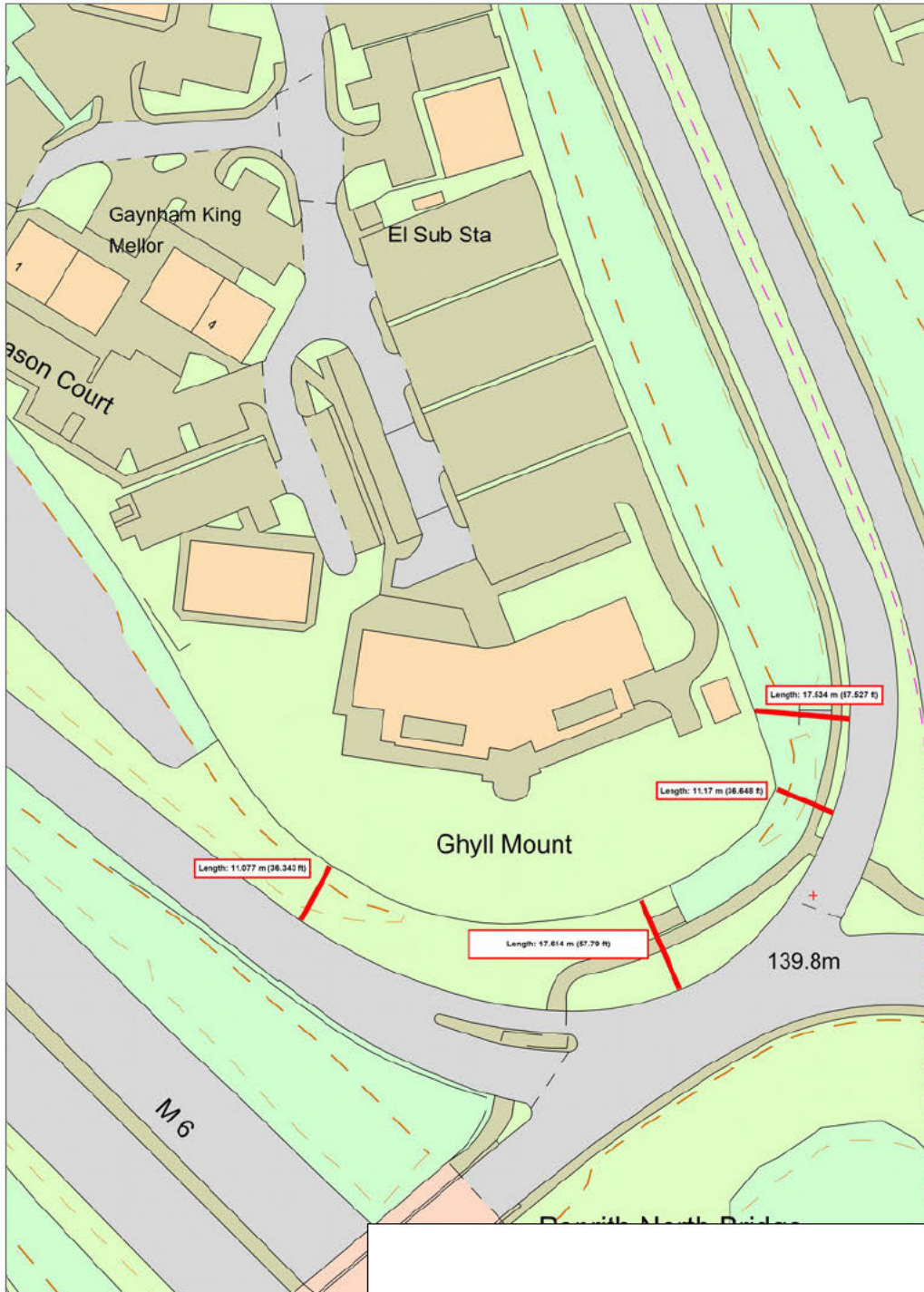
Project Name / Scheme Name: A66 Northern Trans-Pennine Project, Scheme 0102, M6 Junction 40 to Kemplay Bank

Drawing Title: Works Plans, Regulation 5(2)(j), Sheet 1 of 2

Project Ref. No. ---	Stage PCF3	Scale: 1:2500 @ A1
Dimensions: M		

Drawing Number	Project	Originator	Volume
HE565627	- AMY	- HAC	-
S0102	-DR-CH-	001201	
Location	Type	Role	Number

Suitability	Suitability Description	Revision
A	Approved for Stage Complete	C01



Client: **Penrith Properties Limited**
Project: **Ghyll Mount**

Title: **A66 - National Highways Land**
Scale: 1:1250 @A4
Date: 03 Mar 2023
Drawn By: _____
Drawing No: _____

Attachment 4 – Photographs March 2023

Photo 1 - Ghyll Mount, Maturing trees



Photo 2 – existing planting and maturing trees

