

M42 Junction 6 Development Consent Order Scheme Number TR010027

8.99 Response to the ExA's Commentary on the dDCO

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The Infrastructure Planning (Examination Procedure) Rules 2010

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M42 Junction 6
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Appendix:

1. Indicative Alternative Prioritisation of Catherine-de-Barnes Lane at St Peters Lane

1 Response to the ExA's Commentary on the dDCO

- 1.1.1 This document provides the response from Highways England (the Applicant) to The Examining Authority's draft Development Consent Order (dDCO) commentary schedule of changes - Issued 8 November 2019.
- 1.1.2 This document should be read in conjunction with the Applicant's revised dDCO [Volume 3.1(c)], updated for Deadline 9.

Table 1-1 Commentary, Response Sought and the Applicant's Response

Item Number	Commentary, Response Sought and the Applicant's Response	
1	Article 15 - Classification of roads etc	<p><u>ExA's Commentary:</u></p> <p>Obstruction or severing of existing PROWs is likely to occur well before the authorised development is brought into use, so that if replacement footpaths were to be available before the authorised development was open to traffic, their use would help to restore connectivity and accessibility for pedestrians, cyclists and other non-motorised users. The Applicant should employ a form of words for Art 15(7) to promote that possibility.</p> <p><u>Response sought from:</u> The Applicant, SMBC, WCC, Open Space Society and The Ramblers, Warwickshire Area</p> <p>We propose that the following amendments to Art 15(7):</p> <p>Delete: Unless otherwise agreed by the relevant planning authority.</p> <p>Add to the end of Art 15(7):</p> <p>‘, unless the earlier opening of a public right of way might be achievable and warranted, as may be agreed with the relevant local planning authority.’</p> <p><u>The Applicant's Response:</u></p> <p>This issue was considered at the fourth Issue Specific Hearing on the dDCO (3) held on 21 August 2019.</p> <p>At the hearing Mr Nicholas Evans, on behalf of the Applicant, submitted that the drafting amendments suggested by the ExA to article 15 to provide flexibility for the earlier opening of Public Rights of Way, where appropriate, was not required as the appropriate flexibility was already provided by the existing drafting which provides for the earlier opening of replacement footpaths etc. with the agreement with the relevant planning authority.</p> <p>This point was put to Solihull Metropolitan Borough Council (SMBC) by the ExA at the Issue Specific Hearing where SMBC supported the Applicant's view.</p> <p>Notwithstanding this, the Applicant has amended this article so that it is clear that SMBC and the Applicant can agree an earlier opening date.</p>

Item Number	Commentary, Response Sought and the Applicant's Response	
2	Article 20 - Traffic regulation	<p><u>ExA's Commentary and Response Sought:</u></p> <p>Art 20(2)(b) provides wide powers to introduce parking restrictions for the purposes of this scheme, subject to the consent of the traffic authority. The Applicant is willing to use these powers to deter anti-social parking (including taxis) in the areas identified by local residents and parish councils, particularly in REP6-028 and REP6-040. It is agreed that details are to be devised, in consultation with SMBC, indicating how appropriate restrictions might be imposed while preventing, as far as possible, anti-social parking towards the centre of the village. The ExA welcome this approach and considers that the anti-social parking should be deterred.</p> <p><u>Response sought from:</u> The Applicant, SMBC, Bickenhill and Marston Green Parish Council and Mr Philip O'Reilly</p> <p>The Applicant should, as appropriate, either make changes to this article so that the traffic regulation powers are focussed enough to allow the imposition of restrictions to prevent antisocial parking, or amend R10 (traffic management) to achieve the same.</p> <p><u>The Applicant Response:</u></p> <p>Existing Traffic issues, including anti-social parking (including taxis) are the responsibility of SMBC as local traffic authority which has its own powers to impose traffic restrictions as appropriate.</p> <p>Article 20 does provide the Applicant with wide powers to introduce parking restrictions for the purpose of the scheme, where it is not the traffic authority, where such restrictions are for the purposes of the authorised development.</p> <p>The Applicant has confirmed to the ExA that it is willing to work with SMBC, as the local traffic authority, regarding the introduction of parking restrictions as part of the authorised development to deter anti-social parking. See reference 16 in Actions Arising out of ISH on Living Conditions on 1 October 2019 for Deadline 7 [REP7-011/Volume 8.86].</p> <p>The Applicant does not consider that amending Requirement 10 (Traffic Management) would be appropriate as the Traffic Management Plan relates to the imposition of restrictions on construction traffic.</p> <p>The Applicant has considered this matter further and has amended article 20(2) to make it clear that it may also exercise the article 20(2) for the purposes of preventing the use of roads in a manner which is unsuitable, having regard to the character of the road and adjoining properties, or for preserving or improving the amenities of the area through which the road runs.</p>

Item Number	Commentary, Response Sought and the Applicant's Response	
3	Article 39 - Felling or lopping of trees and removal of hedgerows	<p><u>ExA's Commentary:</u></p> <p>The <i>Ancient Woodland Clarifications and Proposed Additional Measures Technical Note</i> [AS-035] includes several measures to reduce the impact on, and to enhance the management of, ancient woodland. Subject to undertaking reasonable endeavours, those measures are to be incorporated in an updated REAC and made binding through the OEMP. Moreover, it is stated that such measures should bind the Applicant over and above the provisions set out in Art 39 [REP7-009].</p> <p><u>Response sought from:</u> The Applicant, Natural England, Warwickshire Wildlife Trust, the Gooch Estate and SMBC</p> <p>The ExA's preferred dDCO requires this to be explicitly stated in Art 39 for the avoidance of any doubt.</p> <p>Also, it is proposed that Art 39 includes schedules and plans showing the trees and hedgerows likely to be affected by the scheme to comply with good practice point 6 of Advice Note 15. (It is understood that Schedule 9A is to be completed.)</p> <p>The following amendments are suggested: Amend Art 39(1) as follows: 'The undertaker may fell or lop any tree or shrub identified in Schedule 9B...' New Schedule 9B should bring together the information at Appendix 1, Table 1 of APP-128, Table 1-1 of REP6-019 and the plans in Appendix 1 of REP7-089.</p> <p>Amend Art 39(2) as follows:</p> <p>'The undertaker may, for the purposes of carrying out the authorised development but subject to paragraph (3), remove any hedgerow within the Order limits and specified in Schedule 9A (hedgerows to be removed or managed) that is required to be removed.'</p> <p>Amend Art 39(3) to:</p> <p>'In carrying out any activity authorised by paragraphs (1) and (2), the undertaker must do no unnecessary damage to any hedgerow, tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.'</p> <p>Amend Art 39(4) as follows:</p> <p>'Any dispute as to a person's entitlement to compensation under paragraph (3), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.'</p> <p>Schedule 9A should reflect Table B-5-3 of APP-131 and the plans in Figure 1 of REP6-020.</p>

Item Number	Commentary, Response Sought and the Applicant's Response	
		<p><u>The Applicant Response:</u></p> <p>The Applicant has updated the REAC to incorporate the commitments made within the <i>Ancient Woodland Clarifications and Proposed Additional Measures Technical Note [AS-035]</i>. Refer to the OEMP submitted at Deadline 9 [Volume 6.11(a)].</p> <p>The Applicant has revised article 39 to incorporate the requested changes.</p> <p>The Applicant has updated Schedule 9A (now Schedule 11) as requested.</p> <p>Advice Note 15 'Drafting Development Consent Orders' recommends that a DCO should include a Schedule identifying the trees likely to be affected that are protected by TPOs or otherwise protected by virtue of their location within a conservation area, rather than all trees within Order Limits. The Applicant has therefore included the trees within the Bickenhill Conservation Area in Schedule 9A (now Schedule 11) rather than producing a new Schedule 9B setting out all trees within the Order Limits.</p>
4	Work No.76 as shown on Sheet No. 3 of the works plans	<p><u>ExA's Commentary:</u></p> <p>Careful work and consultation between the Applicant, Natural England, Warwickshire Wildlife Trust and SMBC have resulted in an agreed <i>Bickenhill Meadows SSSI Hydrological Investigation Technical Note (v9.1)</i> [REP3-004]. This promotes a 'passive' solution to provide sufficient water to maintain the Shadowbrook Lane (SE) unit of the SSSI rather than the 'pumped' solution currently referred to in Work No.76, unless the required monitoring, together with the commitments given in the REAC, demonstrates the necessity to implement a 'pumped' solution. The required monitoring of the proposed solution is to be contained in the Outline Bickenhill Meadows SSSI Monitoring and Management Plan [REP7-015].</p> <p><u>Response sought from:</u>The Applicant. Natural England, Warwickshire Wildlife Trust and SMBC</p> <p>The Applicant is asked to amend Work No.76 to reflect the proposed solution set out in the <i>Bickenhill Meadows SSSI Hydrological Investigation Technical Note (v9.1)</i> [REP3-004].</p> <p>The following amendment is suggested:</p> <p>Insert after 'as shown on Sheet No.3 of the works plans and being the installation of'</p> <p>'(a) a passive system to mitigate for the loss of surface water catchment area to the Bickenhill Meadows SSSI – Shadowbrook Meadows unit. Works to feature collection drains, ditches and conveyance swales to deliver water to the</p>

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		<p>northern ditch in accordance with the details and the monitoring protocol set out in the Outline Bickenhill Meadows SSSI Monitoring and Management Plan or</p> <p>(b) in the event that the monitoring protocol indicates the provision of insufficient water to maintain the SSSI, the installation of a pumped system...'</p> <p><u>The Applicant Response:</u></p> <p>The Applicant does not consider that it would be helpful to amend the description of Work 76 as proposed, as it would result in Work 76 covering two alternatives. In addition, the Applicant does not consider that the works required to deliver the 'passive' solution are substantial enough to constitute a numbered work.</p> <p>Instead the Applicant suggests that it would be appropriate to amend Requirement 13 by adding a new paragraph 4, which makes it clear that the Applicant may only implement Work 76 if it has been determined, in accordance with the Outline Bickenhill Meadows SSSI Monitoring and Management Plan, that the passive solution has failed.</p> <p>See also the response to item 11 below.</p>
5	<p>Lettered works Further development within the Order limits Works (a)-(o)</p>	<p><u>ExA's Commentary and Response Sought:</u></p> <p>A Detailed Schedule 1 Matrix provided in Appendix C to REP2-008 sets out how the lettered works (a)-(o) relate to the numbered works 1-76. The ExA consider that there would be some value in terms of clarity and certainty to refer to this here and to append the Schedule to the DCO.</p> <p><u>Response sought from: The Applicant</u></p> <p>The following amendment is proposed:</p> <p>Insert after 'the construction of any of those works' 'as listed in the Schedule 1 Matrix provided in Appendix C to REP2-008 and appended to this DCO...'</p>

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		<p><u>The Applicant Response:</u></p> <p>This issue was considered at the fourth Issue Specific Hearing on the dDCO (3) held on 21 August 2019.</p> <p>At the hearing Mr Nicholas Evans, on behalf of the Applicant, confirmed that the Schedule 1 Matrix provided as Appendix C to REP2-008/Volume 8.7 was provided for the purposes of information only. The appendix is indicative only and was not prepared in the expectation that it would be appended to the dDCO as a binding Schedule.</p> <p>As stated previously in the Applicant's response to the first round of questions on the dDCO [REP2-008/ Volume 8.7-question 28] the listing of numbered works against the lettered works in Schedule 1 represents unnecessary duplication which could serve to confuse parties. Further, specifically attributing the lettered works to each numbered work runs the risk of works being accidentally omitted and removes any flexibility that the Applicant may need to deal with unforeseen events at detailed design.</p> <p>The lettered works are ancillary to, and supportive, of the numbered works and dDCO has been amended to make clear that the carrying out of these lettered works are not to give rise to any materially new or materially different environmental effects to those assessed in the environmental statement.</p>
6	Requirements 1, 3, 4,5 & 8	<p><u>ExA's Commentary:</u></p> <p>Discussions are continuing between the Applicant and Birmingham Airport in relation to the Airport safeguarding zone and other matters. The outcome of that discussion is to be provided at D9 and any consequent amendments made to the DCO.</p> <p><u>Response sought from: The Applicant and Birmingham Airport Limited</u></p> <p>The ExA look forward to receiving those amendments to the DCO at D9.</p> <p><u>The Applicant Response:</u></p> <p>The Applicant met with representatives of Birmingham Airport Ltd after the last Issue Specific Hearing on the dDCO (4) held on 23 October 2019 to agree the drafting of these requirements.</p> <p>These changes are included in the final form of the dDCO as the Applicant wishes it to be made and submitted at Deadline 9.</p>

Item Number	Commentary, Response Sought and the Applicant's Response	
7	<p>Requirement 4</p> <p>The CEMP must be written in accordance with ISO14001 and must ...</p> <p>(c) require adherence to working hours etc.</p>	<p><u>ExA's Commentary:</u></p> <p>In agreeing to the working hours proposed, SMBC seek to prevent annoying or disturbing noisy activities taking place between the hours of 07:00 and 08:00, following the approach that they have adopted for the construction works for HS2. Although BS 5228 provides objective thresholds for construction noise in various situations, such noises may well be annoying or disturbing when heard between 07.00 and 08.00 hours. Discussions are underway between the Applicants and SMBC to devise a protocol for addressing such issues.</p> <p><u>Response sought from:</u> The Applicant, SMBC, Bickenhill and Marston Green Parish Council, Mr Philip O'Reilly, Heath Cotterill, Camila Burton and David Cuthbert</p> <p>In those circumstances, the ExA consider that R4(3)(c) should refer to the intended limitations on construction noise levels between 07.00 and 08.00 hours.</p> <p>The following amendment is proposed:</p> <p>Insert after 'working hours of 07:00–18:00 on Mondays to Fridays and 08:00–13:00 on Saturday'</p> <p>' , subject to no annoying or disturbing noise activities [referencing the identified protocol] taking place between the hours of 07:00 and 08:00 on those days except for-... (i)-(xiv) etc.'</p> <p><u>The Applicant Response:</u></p> <p>The Applicant does not support the inclusion of the additional wording proposed by the Examining Authority for into Requirement 4 as the protocol for preventing annoying or disturbing noisy activities is to seek a consent under Section 61 of the Control of Pollution Act 1974. Accordingly, the proposed additional wording would replicate an existing control and the inclusion of this wording is considered not 'necessary' under the policy tests described in Paragraph 15.2 of The Planning Inspectorate's Advice Note 15 'Drafting Development Consent Orders'.</p> <p>Notwithstanding this, the Applicant has provided further assurances in the Register of Environmental Actions and Commitments. These commitments are as follows:</p>

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		<p>G33b Section 61 Consents</p> <p>Where necessary, the PC will seek appropriate Section 61 consents from SMBC during the construction of the scheme. This will include those works that will both fall within and outside of the core working hours set within the DCO, as appropriate</p> <p>G33c Specific Noisy Activities</p> <p>Notwithstanding the provisions of Requirement 4: Outline Environmental Management Plan, the PC will adhere to the following additional operational restrictions as set out within the table below:</p> <table><tr><th>Location</th><th>Activity</th><th>Restricted Working Hours</th></tr><tr><td>B01 Solihull Road Bridge</td><td>Piling operations</td><td>08:00 to 18:00</td></tr><tr><td></td><td>Compaction operations for the earthworks embankment to the bridge approaches.</td><td>08:00 to 18:00</td></tr><tr><td>B03 Catherine-De-Barnes South Bridge</td><td>Piling operations</td><td>08:00 to 18:00</td></tr><tr><td>B04 Catherine-De-Barnes North Bridge</td><td>Piling operations</td><td>08:00 to 18:00</td></tr><tr><td>A45 Pedestrian Overbridge</td><td>Piling operations</td><td>08:00 to 18:00</td></tr></table>		Location	Activity	Restricted Working Hours	B01 Solihull Road Bridge	Piling operations	08:00 to 18:00		Compaction operations for the earthworks embankment to the bridge approaches.	08:00 to 18:00	B03 Catherine-De-Barnes South Bridge	Piling operations	08:00 to 18:00	B04 Catherine-De-Barnes North Bridge	Piling operations	08:00 to 18:00	A45 Pedestrian Overbridge	Piling operations	08:00 to 18:00
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		<p>To ensure compliance with the working hours set out in G33c of the REAC, the Applicant has amended Requirement 4(3)(c) to state:</p> <p style="padding-left: 40px;">“require adherence to <u>any working hours set out in the REAC or, where no such hours are set out</u>, to working hours of 07.00 – 18.00 on Mondays to Fridays and 08.00 – 13.00 on Saturday except for...”</p>
8	Requirement 4 Management Plan for Main Site Compound	<p><u>ExA's Commentary:</u></p> <p>Save for the indicative details of Appendix 1, the ExA welcome the comprehensive approach to the Compound Management Plan [REP8-009].</p> <p><u>Response sought from: The Applicant</u></p> <p>We expect R4(3)d(xvi) to be amended accordingly and we propose that this Management Plan should form part of the updated OEMP/ REAC or be a Certified Document in its own right</p> <hr/> <p><u>The Applicant Response:</u></p> <p>Requirement 4 (3)(d)(xvi) has been updated so as to refer to the “Compound Management Plan”.</p> <p>The outline Compound Management Plan is included as Appendix P to the OEMP. The OEMP and the individual underlying outline management plans that sit beneath it will be certified in accordance with article 44 (Certification of plans and documents, etc.) and Schedule 13 of the dDCO.</p> <p>The Applicant (or its Principal Contractor) must make the CEMP in accordance with OEMP which must include, amongst other things, a Compound Management Plan (Requirement 4 of the dDCO).</p>

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9	<p>Requirement 4</p> <p>Outline Compound Management Plan. Appendix 1: Indicative proposal for Main Compound and Office for the Scheme</p>	<p><u>ExA's Commentary</u></p> <p>The 'Indicative Proposal for Main Compound and Office for the Scheme' replicates the initial arrangement set out at D3A [REP3A-003] rather than the alternative configurations put forward at D6 (REP6-015 – page 13) and D7 (REP7-011 – Appendix 1, Page 2 of 2).</p> <p>It was agreed that an alternative configuration was possible with an entrance and exit onto Catherine-de-Barnes Lane at the northern end of the compound (Figure 1 at Action No.4 of REP6-015). Moreover, a plan at page 13 in the same section of the same document details how the compound could be reconfigured to the north and east to increase the buffer significantly between the compound perimeter and the adjacent properties on Church Lane. Although the laydown areas would then be closer to residents at the north east of Church Lane, they would be screened by existing trees and hedgerows and the proposed stockpile bunds as shown in the cross sections on page 2 of Appendix 1 of REP7-011.</p> <p>The ExA recognise that this configuration might require a right turn from the northern exit to be prohibited and the installation of traffic lights there and additional phases in constructing the main line link road. However, the scale of the embankments and earth moving required for the scheme suggested in EV-040 could be prohibitive.</p> <p><u>Response sought from:</u> The Applicant, SMBC, Bickenhill and Marston Green Parish Council, Mr Philip O'Reilly, Heath Cotterill, Camila Burton and David Cuthbert</p> <p>The following amendment is therefore proposed (see also new R14 below):</p> <p>Substitute the existing Plan at Appendix 1 of the Outline Compound Management Plan [REP8-009] with the plan shown at Action No.4 of REP6-015 (page 13) detailing how the compound could be pushed further to the north and east to increase the buffer and as also shown in the cross sections on page 2 of Appendix 1 of REP7-011.</p> <p><u>The Applicant Response:</u></p> <p>In accordance with the ExA's request, the Applicant has substituted the plan in Appendix 1 of the Outline Compound Management Plan. This is now included in the updated Outline Environmental Management Plan (OEMP) submitted at Deadline 9 [Volume 6.11(a)]. Furthermore, the Applicant has included an additional commitment within the Register of Environmental Actions and Commitments (REAC) within the updated OEMP as follows:</p>

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		<p><i>G4b</i></p> <p><i>So far as reasonably practicable, Highways England and/or the PC will design and layout the main site compound to reduce potential impacts on the residents of Bickenhill. This will include arranging the site in such a way so it is compatible with the layout shown in Appendix 1 to the Outline Compound Management Plan.</i></p>
10	Requirement 9 Archaeological remains	<p><u>ExA's Commentary:</u></p> <p>Discussions are underway with SMBC on the wording that could be added to R9. It is agreed that the Written Scheme of Investigation is the best document to include such detail.</p> <p>The ExA welcome this agreement.</p> <p><u>Response sought from: The Applicant and SMBC</u></p> <p>We look forward to receiving the final Written Scheme of Investigation and any consequent changes to the DCO at D9.</p> <p><u>The Applicant Response:</u></p> <p>The Applicant had not proposed to produce a 'final' Written Scheme of Investigation (WSI) at this stage, as this will be prepared in advance of commencement of works, following consultation with SMBC in accordance with Requirement 9. The Applicant does not intend that the final WSI should be a certified document.</p> <p>The Applicant proposes that the final WSI will be largely based on WSI contained in Appendix 7.1 of the Environmental Statement [APP-123/Volume 7.1]. Having discussed this matter further with SMBC, it is clear that it expects further trial trenching and investigation works to occur beyond that already undertaken. To this extent, and where archaeological remains are discovered the methodology, monitoring, reporting and archiving obligations set out in the WSI in Appendix 7.1 are likely to be replicated in the final WSI.</p> <p>The Applicant and SMBC have also agreed that Requirement 9 should be amended so that it is clear that it applies to areas of <u>potential</u> archaeological interest.</p>

Item Number	Commentary, Response Sought and the Applicant's Response	
11	Requirement 13 Bickenhill Meadows SSSI	<p><u>ExA's Commentary:</u></p> <p>The ExA welcome the preparation of the Bickenhill Meadows SSSI Monitoring and Management Plan.</p> <p><u>Response sought from:</u> The Applicant, Natural England, Warwickshire Wildlife Trust and SMBC</p> <p>Suggested amendments to R13, discussed and agreed at ISH 7 (DCO 4), entails amending the text to R13(1) after relevant local planning authority as follows:</p> <p>'and Natural England on matters related to their function.'</p> <p>And, inserting at the end of R13(2)(b):</p> <p>‘, which must be taken in the event that the trigger points are met or exceeded.’</p> <p><u>The Applicant Response:</u></p> <p>The Applicant has made these changes and the draft wording has been shared with Natural England for comment.</p>
12	New Requirements New R14 Configuration of the main site compound	<p><u>ExA's Commentary:</u></p> <p>The ExA propose the insertion of a new R14 as follows:</p> <p><u>Response sought from:</u> The Applicant, SMBC, Bickenhill and Marston Green Parish Council, Heath Cotterill, Camila Burton and David Cuthbert</p> <p>14(1) Notwithstanding the details shown on any Certified Plan and Document listed in Schedule 11 of this Order, work to construct the main site compound shall not commence until a scheme for its configuration has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.</p> <p>(2) Unless otherwise agreed by the relevant planning authority, the scheme must show how the compound could be configured to the north and east and an entrance and exit onto Catherine-de-Barnes Lane achieved at the northern end of the compound. Those access arrangements may entail prohibiting a right turn at the northern exit, or the provision of traffic lights and the possible re-programming of additional phases in constructing the main line link road.</p>

Item Number	Commentary, Response Sought and the Applicant's Response
	<p><u>The Applicant Response:</u></p> <p>The Applicant has sought to address this matter through an additional commitment within the REAC and by updating the Plan in Appendix 1 of the Outline Compound Management Plan which now forms Appendix P of the Outline Environmental Management Plan (OEMP), as updated and submitted at Deadline 9 [Volume 6.11(a)]. Commitment G4b states:</p> <p style="padding-left: 40px;"><i>So far as reasonably practicable, Highways England and or the Principal Contractor will design and layout the main site compound to reduce potential impacts on the residents of Bickenhill. This will include, arranging the site in such a way so it is compatible with the indicative main site compound layout shown in Appendix 1 to the Outline Compound Management Plan</i></p> <p>The Applicant does not consider that a separate Requirement dealing with the layout of the main site compound would be appropriate for inclusion under the policy tests described in Paragraph 15.2 of The Planning Inspectorate's Advice Note 15 'Drafting Development Consent Orders' because:</p> <ol style="list-style-type: none"> 1) there are no significant effects on the residents of Bickenhill associated with the main site compound reported in the Environmental Statement; 2) the Principal Contractor is likely to change the layout of the compound over time, for instance when work starts on Junction 6 and it is not clear whether they would be expected, or even able, to submit a new scheme showing the revised layout; 3) the requirement as drafted may present issues of enforceability; 4) the management measures set out within the OEMP and, in particular, the Outline Compound Management Plan already require the main site compound to be laid out so as to minimise environmental effects, including visual impact, flood risk, effects on sensitive ecology, overlooking and noise. 5) The approval mechanism for this requirement would differ from all other requirements, with variations to the layout having to be agreed by both the local planning authority and the Secretary of State. <p>The Applicant therefore does not consider that Requirement R14 should be included within the draft DCO.</p>

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13	New R15 Altering the Priority of the Catherine-de-Barnes Lane and St Peters Lane Junction	<p><u>ExA's Commentary:</u></p> <p>The ExA note that the Applicant has previously considered the altered priority for this junction but discounted it due to the need for a departure from standards for the horizontal radius of the bend onto the northern overbridge, for the consequent visibility round the bend and for the visibility to the left at St Peter's Lane: and, the possibility that the 'straight' alignment might encourage vehicles leaving St Peter's Lane to do so without stopping.</p> <p>The ExA acknowledge that the road layout might need to be altered, but they do not agree that land beyond the Order limits would be required, or that necessary road signs and safety features would clutter the roadside scene (similar signs and features would be required by the current proposal) or that the departure from standards would lead to worse or unacceptable road hazards; the opposite would be the case.</p> <p><u>Response sought from:</u> The Applicant, SMBC, Bickenhill and Marston Green Parish Council, Heath Cotterill, Camila Burton and David Cuthbert</p> <p>Hence, the ExA propose the insertion of a new R15 as follows:</p> <p>15(1) Notwithstanding the details shown on any Certified Plan listed in Schedule 11 of this Order, no part of the realignment of Catherine-de-Barnes Lane is to commence until a scheme for the northern junction of St Peter's Lane and Catherine-de-Barnes Lane has been submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.</p> <p>(2) Unless otherwise agreed by the relevant planning authority, the scheme must change the vehicular junction priority from St Peter's Lane to the realigned section of Catherine-de-Barnes Lane.</p> <p><u>The Applicant Response:</u></p> <p>In designing the junction priority within the DCO scheme, the Applicant discussed potential junction arrangements, akin to the submission in [REP7-019] with SMBC as local highway authority. Following this discussion, SMBC concluded that the junction arrangement and priority within the DCO scheme was preferable.</p> <p>Derek Lawlor from SMBC confirmed at the Issue Specific Hearing on the dDCO on 23 October 2019 that the change in junction priority would not be acceptable to the local highway authority. This was because the layout would require departures from standard for forward looking visibility at the intersection with St Peters Lane.</p>

Item Number	Commentary, Response Sought and the Applicant's Response
	<p>Given the local highway authority's concerns, the Applicant has reviewed whether it is possible to provide layouts for the junction, that change the priority as requested by the ExA and comply with the recognised DMRB standards. The Applicant has produced a number of alternative layouts that meet these standards in Appendix 1.</p> <p>Within the time available to respond to the ExA's commentary, the Applicant has not been able to produce a layout that complies with DMRB standards and fits within the Order limits.</p> <p>DMRB guidelines specify the minimum acceptable radii for road alignments for a 30mph road. The options presented in Appendix 1 comply with these guidelines and take into consideration a number of other constraints, including:</p> <ul style="list-style-type: none"> the vertical and horizontal geometry of the new Mainline Link Road which is fixed by other constraints in the area; the Order limits for this DCO application; the new Bickenhill Roundabout, the layout of this roundabout is fixed by the connection with St Peters Lane and the new Mainline Link Road; and connection with the existing Clock Lane, south-west of Clock Interchange roundabout. <p>The options presented in Appendix 1 demonstrate that a DMRB compliant junction with priority for Catherine-de-Barnes Lane traffic would require land outside the Order limits. In addition, it would be necessary to demolish properties adjacent to St Peters Lane, due to the realignment of St Peters Lane and the additional length of road infrastructure required to connect to the geometric standard compliant layout.</p> <p>While the Applicant recognises that the options presented in Appendix 1 are not exhaustive, given the time available, it considers that as it has been unable to produce a DMRB compliant layout that fits within the Order limits, the proposed new Requirement 15 would be contrary to the tests set out in the Planning Inspectorate's Advice Note 15. In particular, given the stated opposition of the relevant planning authority to the reprioritisation, the Applicant considers that paragraph (2) would be ineffective and thus not reasonable, as the planning authority's preference is for a scheme which does not change the junction priority.</p>

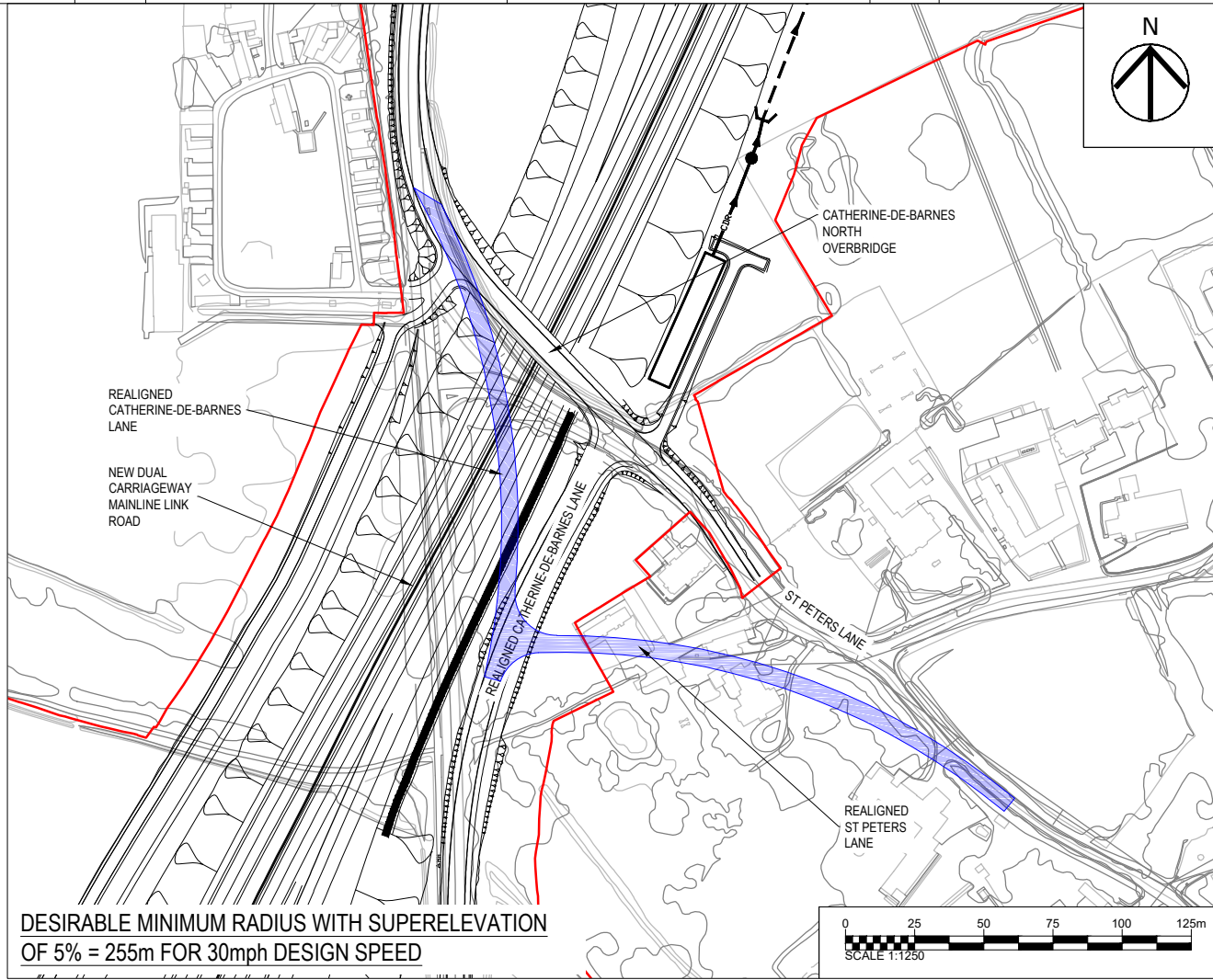
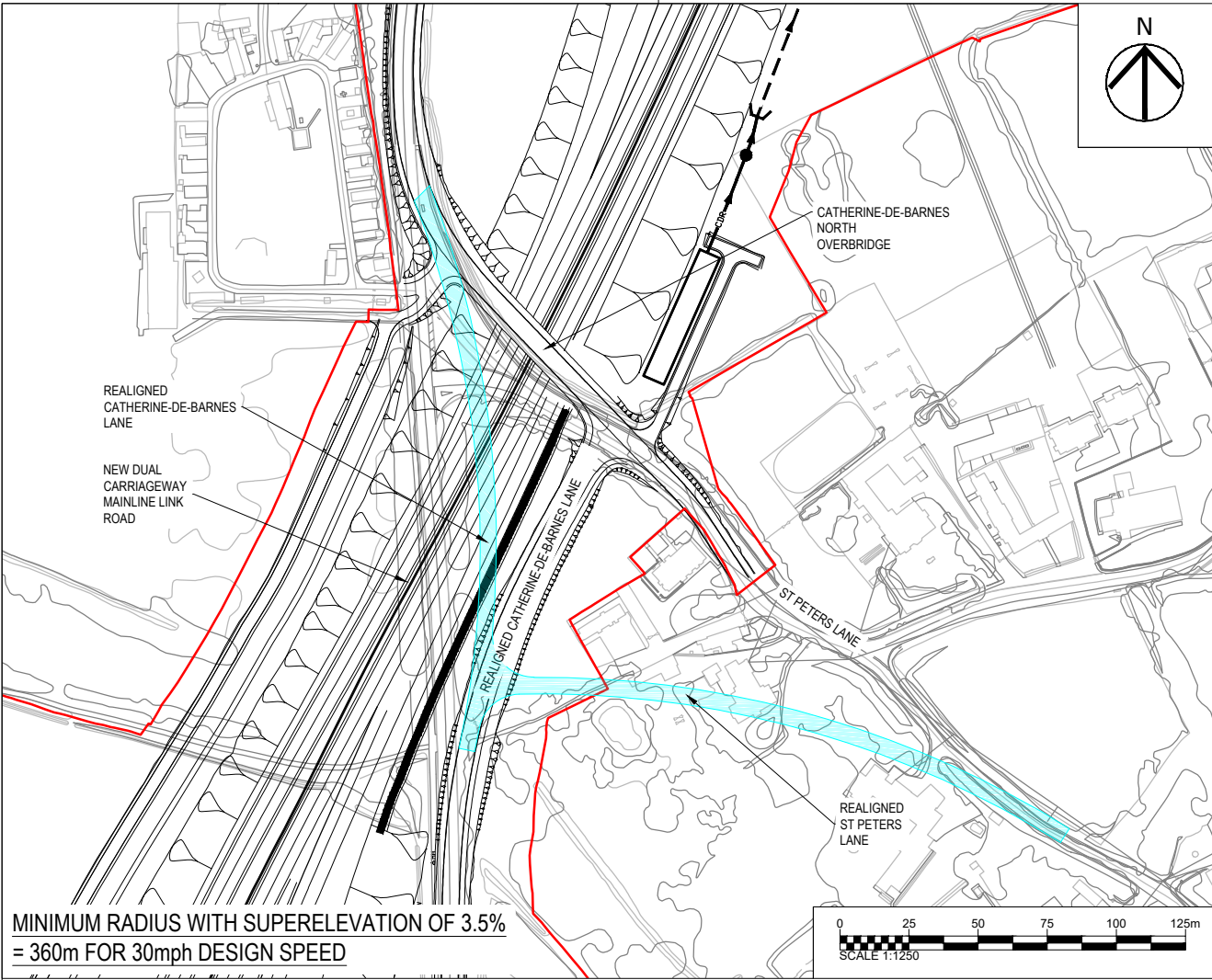
Item Number	Commentary, Response Sought and the Applicant's Response	
14	New R16 Relocation of the underground storage tank and access	<p><u>ExA's Commentary:</u></p> <p>It is agreed that the relocation of the underground storage tank and its access on land to the south of St Peters Lane would not affect the drainage arrangements and that it would be within the Limits of Deviation for Work No.35 [REP6-015]. However, this option is discounted because the access and egress would require a departure from standard and those defects (the provision of a layby off the realigned Catherine-de-Barnes Lane) are deemed to entail an increased risk of fly tipping and unregulated taxi parking. The ExA consider that those impediments could be avoided with measures within the dDCO. Moreover, this option has the advantage of locating the drainage arrangements to a roadside rather than introducing them to an otherwise relatively secluded area; the access to the fields and the aqueduct on the northern side of St Peters Lane need thus only be to an agricultural standard.</p> <p>Response sought from: The Applicant</p> <p>Hence, the ExA propose the insertion of a new R16 as follows:</p> <p>16(1) Notwithstanding the details shown on any Certified Plan listed in Schedule 11 of this Order, no part of the realignment of Catherine-de-Barnes Lane is to commence until an amended scheme for the underground storage tank and associated access (Work No.35) is submitted to and approved in writing by the Secretary of State, following consultation with the relevant planning authority on matters related to its function.</p> <p>(2) Unless otherwise agreed by the relevant planning authority, the amended scheme must relocate the underground storage tank and access from the northern to the southern side of St Peter's Lane.</p> <p><u>The Applicant Response:</u></p> <p>The Applicant does not consider that a Requirement to locate the attenuation tank to the south of St Peters Lane, would be appropriate for inclusion under the policy tests described in Paragraph 15.2 of The Planning Inspectorate's Advice Note 15 'Drafting Development Consent Orders' because:</p> <ol style="list-style-type: none"> 1) there are no significant environmental effects on Church Farm Accommodation, or any other receptor, associated with the location of the attenuation tank to the north of St Peters Lane reported in the Environmental Statement; 2) the Applicant considers that any anti-social effects of locating a tank to the north of St Peters Lane can be avoided through the dDCO in the same way that the ExA consider that any anti-social effects of locating the tank to the south can be, namely through traffic regulation measures;

Item Number	Commentary, Response Sought and the Applicant's Response	
		<p>3) the access that would be required to the attenuation tank would be similar to that which the Applicant would provide for the owner of the land to the north of Church Farm Accommodation in any event;</p> <p>4) the location to the north of St Peters Lane would remain secluded even with the addition of a buried attenuation tank that would not be visible;</p> <p>5) given that there is a need to provide an access to the north of St Peters Lane in any event, if, contrary to the Applicant's expectations, the access arrangements did give rise to anti-social behaviour, this Requirement could potentially lead to anti-social behaviour in two locations in close proximity; and</p> <p>6) the residents to the south of St Peters Lane have not been notified or asked to comment on this proposed change.</p>
15		<u>Note: there was no number 15 in the document</u>
16	<p>Schedule 9A – Hedgerows to be removed or managed</p> <p>Schedule 9A and Article 39</p>	<p><u>ExA's Commentary:</u></p> <p>It is understood that Schedule 9A is to be completed at D9.</p> <p><u>Response sought from:</u> The Applicant Natural England, Warwickshire Wildlife Trust and SMBC</p> <p>The ExA look forward to receiving that information and the updated DCO.</p> <p><u>The Applicant Response:</u></p> <p>The relevant information has been added to Schedule 9A (now Schedule 11) in the final form of the dDCO as the Applicant wishes the DCO to be made and submitted at D9.</p>
17	Schedule 10 – Protective Provisions (Page 15)	<p><u>ExA's Commentary:</u></p> <p>It is understood that the Protective Provisions are to be updated to reflect those agreed with National Grid and Severn Trent Water, as well as those to be agreed with HS2 Ltd and Cadent Gas.</p> <p>The ExA look forward to receiving those updated provisions.</p> <p>Please would the Applicant also confirm whether those provisions are intended to deal with the concerns of the Royal Mail and Esso or whether separate agreements are proposed?</p> <p><u>Response sought from:</u> The Applicant, National Grid, Severn Trent Water, HS2 Ltd Cadent Gas, Royal Mail and Esso</p>

Item Number	Commentary, Response Sought and the Applicant's Response	
		<p><u>The Applicant Response:</u></p> <p>The dDCO has been updated to include protective provisions for National Grid and HS2.</p> <p>The protective provisions for Cadent Gas are agreed, subject to a few outstanding points which both parties will make submissions on by Deadline 10.</p> <p>Separate agreements have been reached with Severn Trent Water and Royal Mail, and are proposed for Esso; these agreements do not require changes to the dDCO.</p>
18	Schedule 11 – Certification of plans and documents etc	<p><u>ExA's Commentary and Response Sought:</u></p> <p>It is understood that the Crown Land Plans are to be amended to include the land incorrectly registered to the SoS, as well as the land within the DCO and within the boundary of operations for HS2 Ltd and which HS2 Ltd could acquire.</p> <p><u>Response sought from:</u> The Applicant and HS2 Ltd</p> <p>The ExA look forward to receiving those updated plans at D9 or D10.</p>
		<p><u>The Applicant Response:</u></p> <p>These Plans will be provided in its Deadline 10 submission.</p>

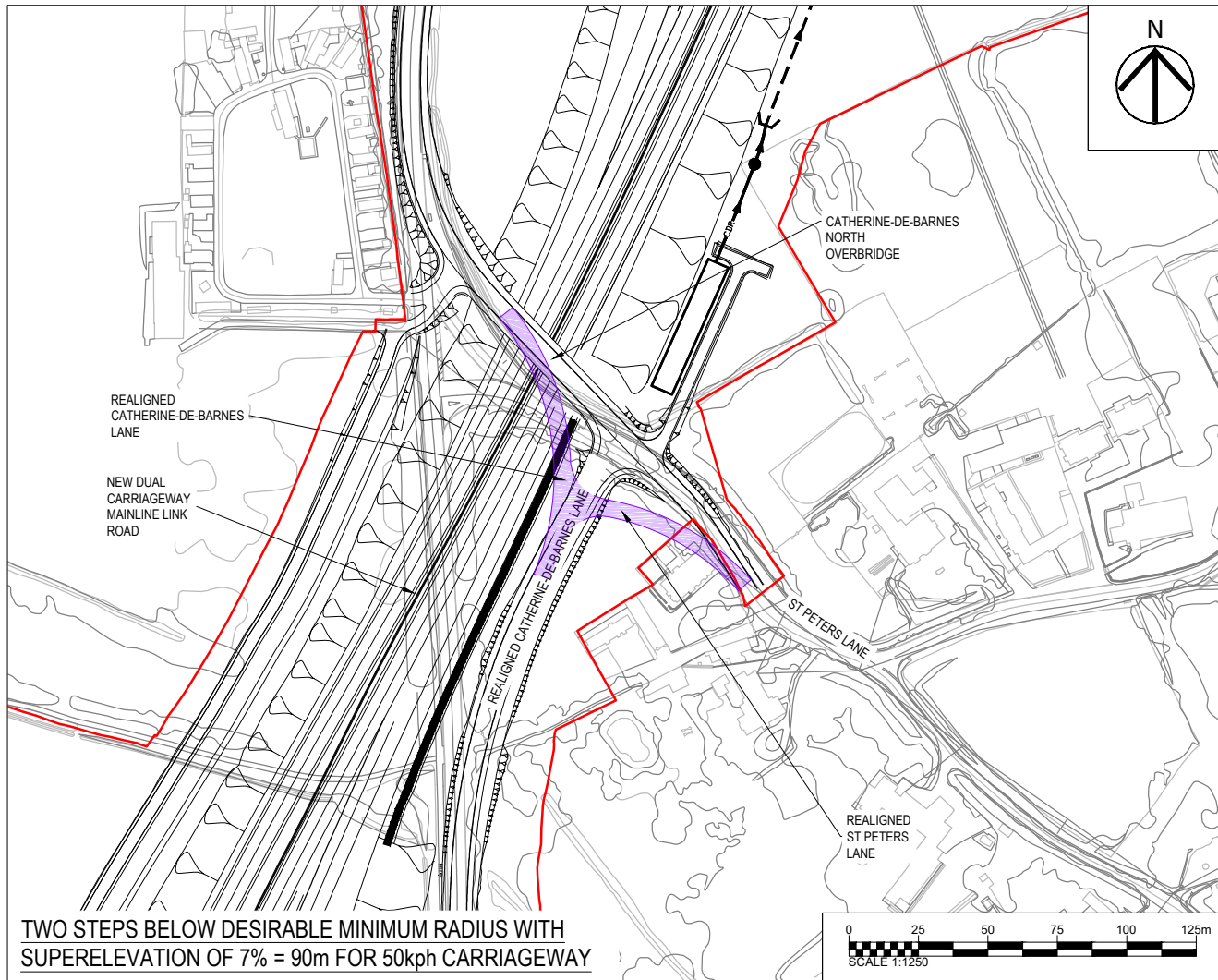
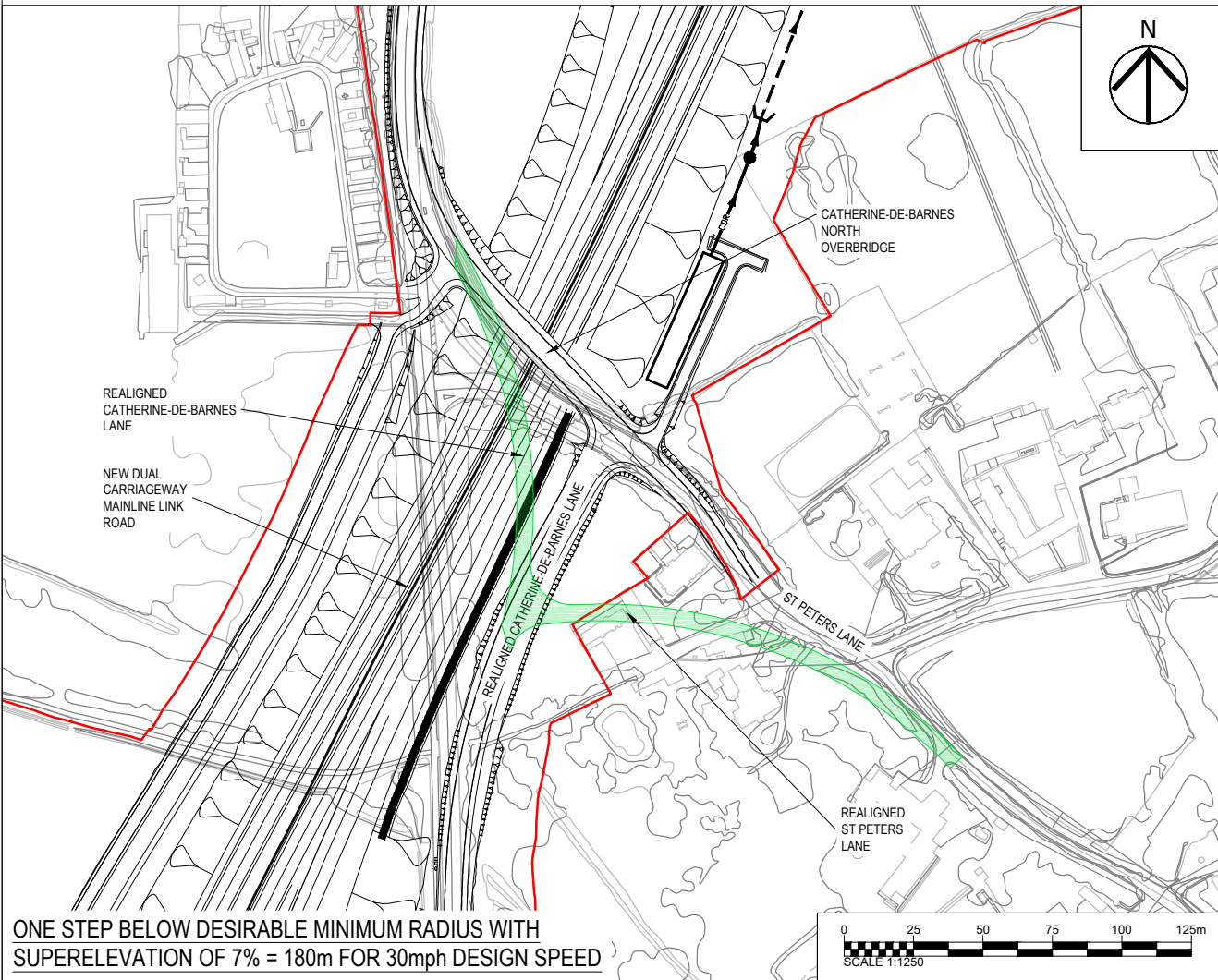
Appendix:

1. Indicative Alternative Prioritisation of Catherine-de-Barnes Lane and St Peters Lane



- NOTES**
1. ALL DIMENSIONS IN METRES UNLESS STATED OTHERWISE.
 2. DO NOT SCALE FROM THIS DRAWING, USE ONLY PRINTED DIMENSIONS.
 3. THE PROPOSED WORKS SHOWN ARE ILLUSTRATIVE ONLY AND WILL BE SUBJECT TO CHANGE AS PART OF DETAILED DESIGN DEVELOPMENT. ANY CHANGES WILL BE LIMITED TO BEING WITHIN THE ORDER LIMITS AND ANY OTHER CONSTRAINTS INCLUDED IN THE DEVELOPMENT CONSENT ORDER.
 4. THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ALL OTHER PLANS AND DOCUMENTATION.
 5. PROPOSALS SHOWN ARE BASED UPON TREATING THE REALIGNED CATHERINE-DE-BARNES ON BOTH SIDES OF THE DUAL CARRIAGEWAY MAINLINE LINK ROAD AS A CONSTRAINT AND THE CONSTRUCTION OF THE INTERSECTION WITH ST PETERS LANE EAST OF THE DUAL CARRIAGEWAY LINK ROAD.

- LEGEND**
- LIMITS OF LAND TO BE ACQUIRED OR USED PERMANENTLY OR TEMPORARILY (THE ORDER LIMITS)
 - LIMITS OF LAND TO BE TEMPORARILY ACQUIRED FOR SIGNAGE INSTALLATION
 - LAND NOT INCLUDED WITHIN THE ORDER LIMITS
 - MINIMUM RADIUS WITH SUPERELEVATION OF 3.5% = 360m FOR 30mph DESIGN SPEED
 - DESIRABLE MINIMUM RADIUS WITH SUPERELEVATION OF 5% = 255m FOR 30mph DESIGN SPEED
 - ONE STEP BELOW DESIRABLE MINIMUM RADIUS WITH SUPERELEVATION OF 7% = 180m FOR 30mph DESIGN SPEED
 - TWO STEPS BELOW DESIRABLE MINIMUM RADIUS WITH SUPERELEVATION OF 7% = 90m FOR 50kph CARRIAGEWAY



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Revision Details	By PJK	Date	Suff
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FOR INFORMATION

Client
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Floor 5
Two Colmore Square
38 Colmore Circus
B4 6BN



Development Consent Order Number
TR010027

Project Title
M42 JUNCTION 6 IMPROVEMENT

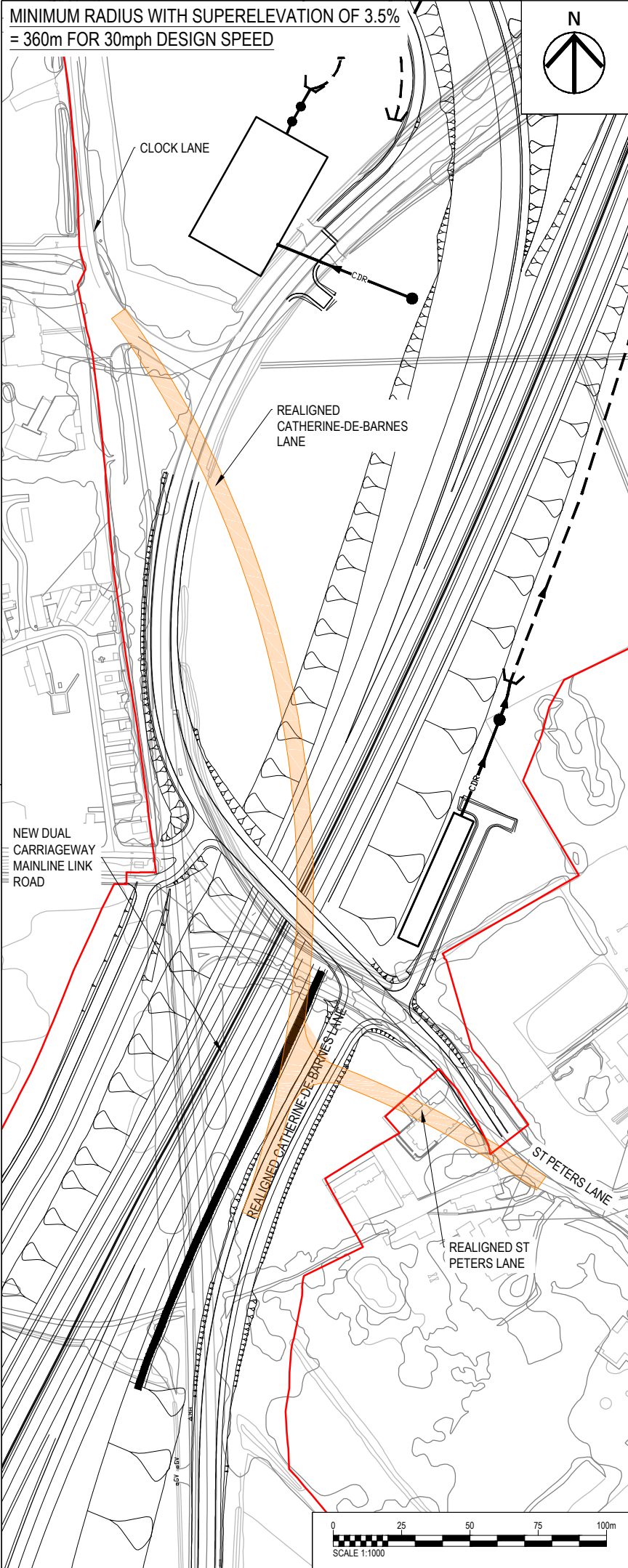
Drawing Title
INDICATIVE ALTERNATE PRIORITISATION OF CATHERINE-DE-BARNES LANE AND ST PETERS LANE

Designed JCH	Drawn ME	Checked ME	Approved PJK	Date 14/11/19
Internal Project No. 60543032	Suitability S2	Scale @ A1 1:1250	Zone Scheme Wide General	

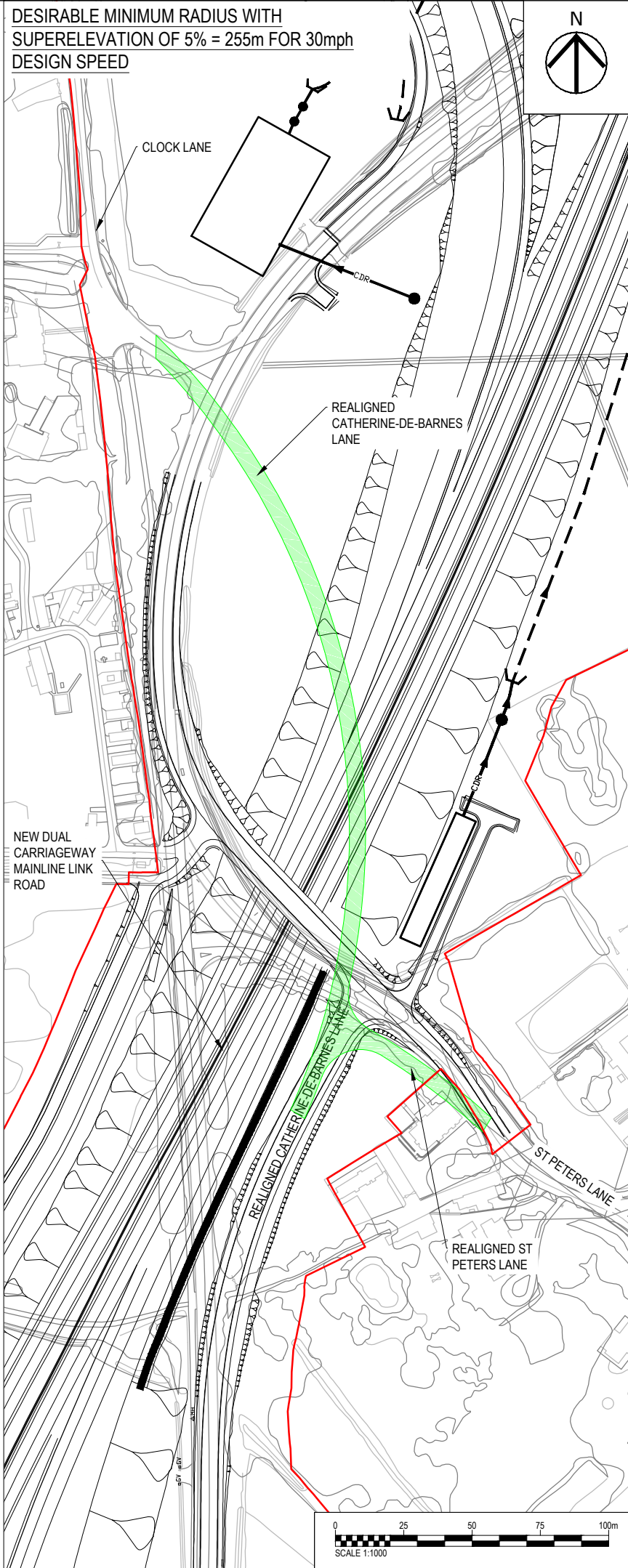
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Location				

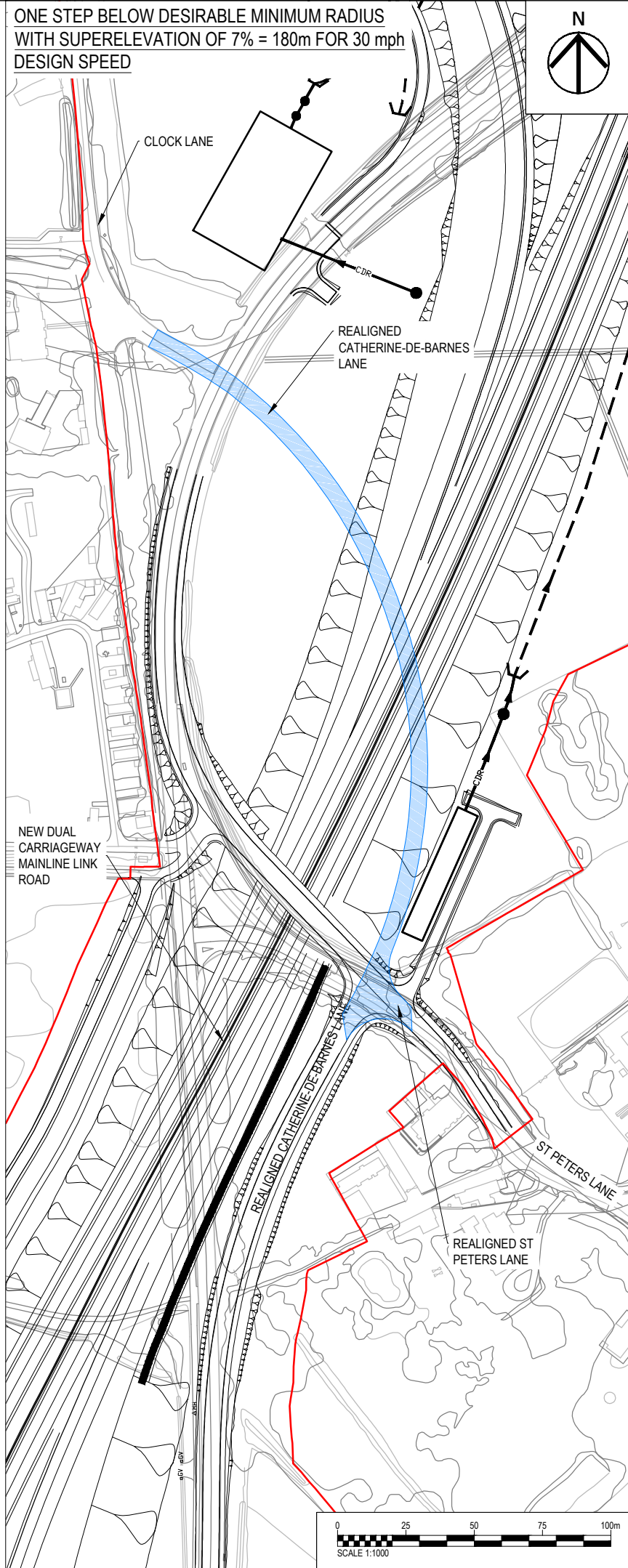
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= 360m FOR 30mph DESIGN SPEED



DESIRABLE MINIMUM RADIUS WITH
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ONE STEP BELOW DESIRABLE MINIMUM RADIUS
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5. PROPOSALS SHOWN ARE BASED UPON TREATING THE JUNCTION OF THE REALIGNED CATHERINE-DE-BARNES LANE AND ST PETERS LANE AS THE CONSTRAINT, WITH WORKS TO TIE DIRECTLY INTO CLOCK LANE.

LEGEND

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Development Consent Order Number
TR010027

Project Title
M42 JUNCTION 6
IMPROVEMENT

Drawing Title
INDICATIVE ALTERNATIVE
PRIORITISATION OF
CATHERINE-DE-BARNES
LANE AND ST PETERS LANE

Designed JCH	Drawn JCH	Checked ME	Approved PJK	Date 14/11/19
Internal Project No. 60543032	Suitability S2	Scale @ A1 1:1000	Zone Scheme Wide General	

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Location ZZ_SW_DCO_ZZ	I Type	I Role	I Number	