

**THE COUNTRY LAND AND BUSINESS ASSOCIATION**  
**RESPONSE TO HS2 Phase 1 - LONDON – WEST MIDLANDS**

**Draft Environmental Statement  
and  
Draft code of Construction Practice**

**INTRODUCTION**

The Country Land and Business Association (CLA) is a membership organisation which represents the owners of rural land and businesses. We represent 33,000 individual owners of private property in the countryside, from large to small, many of whom own and manage myriad of rural businesses. Between them they own and manage about half of the rural land in England and Wales.

Our membership includes a significant number of the rural land holdings affected by HS2 and identified in the draft Environmental Statement. Our comments do not deal with property specific issues but concentrate on the issues affecting landownership and business disruption caused by the HS2 project.

The CLA looks forward to its continued working relationship with HS2 Ltd to ensure that if the HS2 project proceeds, it does so fully recognising the special relationship is needed with farmers, landowners and rural business managers who will have to deal with the project in the short, medium and long term.

Our aim is to ensure that all rural landowners are properly and fairly compensated and that mitigation measures for business, social and environmental reasons are proportionate, recognising that the countryside is not only an environmental resource but that businesses within it make a significant contribution to the national economy.

**Draft Environmental Statement**

**Volume 1 – Introduction to the Draft Environmental Statement and Proposed Scheme**

**1. Hybrid Bill Process (1.2)**

The CLA has long argued that the existing compulsory purchase code<sup>1</sup> is not fit for purpose and needs reform to ensure fair, proper and timely compensation to those losing property and business interests.

For landowners, the imposition of a scheme such as HS2 and the forced sale of land at a time not of the owners choosing, go right to the heart of private property rights. The CLA does not believe that governments, past and present take the issue of compulsory purchase seriously enough. The fact that reforms proposed by the Law Commission in the early 2000's have been largely ignored is extremely detrimental to property owners and business operators.

Government must grasp the opportunity to use the Hybrid Bill to make necessary changes to the Compulsory Purchase Code and develop a fairer acquisition process fit for the 21<sup>st</sup> century. The CLA published its ideas for Compulsory Purchase reform in our policy document Fair Play<sup>2</sup>.

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<sup>1</sup> *Land Compensation Act 1961 Section 5*

<sup>2</sup> [http://www.cla.org.uk/Policy\\_Work/Policy\\_Reports/Business/Compulsory\\_Purchase/1012249.htm](http://www.cla.org.uk/Policy_Work/Policy_Reports/Business/Compulsory_Purchase/1012249.htm)

## **2. Property Blight**

The Draft Environmental Statement fails to recognise the significant impact of Blight. Section 5.11 fails to identify the socio-economic affect of a blighted and stalled property market that may last for decades.

The CLA believes that the final ES should quantify this problem and provide solutions such as a Property Bond Scheme.

## **3. Rights of Way and Diversion of Highways (s1.2.6)**

It is difficult to reconcile that despite the significant changes to the public rights of way and highway network that no on-the-ground consultation has taken place with landowners and managers. Our members report that some of the changes pose significant practical difficulties. There are also concerns about the management of unauthorised public access during the construction phase.

There should be an engagement process before the final ES is published to allow land owners and managers to make representations regarding the changes to the network proposed. Failure to fully consult properly over public rights of way changes is likely to force many land managers to petition parliament, leaving them to deal with the cost of individual petitions (costs they cannot recover) which is highly detrimental. Further work on rights of way and highway issues is needed before the final ES.

## **4. Statutory Undertakers**

The same comments as 3 above apply to proper engagement ahead of the final ES on the rerouting of utilities. Opportunities should be sought for improvement such as the burying of electricity lines before the project is presented at the hybrid bill.

## **5. Rail Corridor (3.5.2)**

There may be the need for businesses with severed land to run cables and pipes (etc) under and over the railway, either now, or in the future to service that severed land. HS2 need to facilitate this at the outset.

## **6. Fencing**

The fencing specification should be detailed in the final ES, detailing how the fences will be used to control stock but also to prevent invasive weeds and animals causing agricultural losses in the future. Rabbit and weed problems on existing Network Rail infrastructure causes significant losses to our membership across the country. HS2 should look to mitigate these issues through design to include a strategy for ongoing pest management.

## **7. Earthworks (3.5.5)**

Significant areas of agricultural land will be used for earthworks and bunds. Ongoing responsibility is needed by HS2 to ensure the structural integrity is maintained and that ongoing losses for land returned to agriculture is recognised. More detail is required in the Final ES and Code of Construction Practice.

There needs to be a recognition that reinstated land will need careful management to ensure it gains the best structure, however it will never reach the quality of undisturbed well-managed land.

In many cases such earthworks will stretch out a considerable distance from the route of the track. The final ES needs to show a balance between the interest of the community and the needs of the land-based business suffering the land-loss or the reduction in

quality. This needs to be addressed with individual landowners/farmers as a matter of urgency.

#### **8. Bridges**

Agricultural and other accesses, either over or under the line, are lacking in the description. Such accommodation works must be provided for in the final ES. Specifications for accommodation bridges should allow for modern agricultural practice and give flexibility for the changes in use which will occur in the future, particularly with reference to height, width and weight limits.

#### **9. Power Supply**

The need to connect HS2 to the power grid is clearly essential. HS2 should ensure that the land take needed for such additional infrastructure is minimised to reduce the overall land take of the scheme. Such apparatus needs to be located so to void impact on existing businesses.

#### **10. Construction Land Requirement**

The CLA and its affected members are extremely concerned that the area needed to construct the railway is significant - more than triple the final area needed for the scheme. We feel that land take appears to be excessive and in some cases unnecessary. Before the final ES, HS2 should be prepared to make available a full schedule of land temporally required with a full justification for its use.

The CLA is determined that the land take is minimised both for the final scheme and the temporary requirement. It appears that the outer construction boundaries have been drawn to cover all eventualities. Proper evaluation is needed in the final ES

#### **11. Construction Site Compounds**

The scale of some site compounds at three hectares will be significant to the landowner whose land they occupy. Options for these sites are likely to be limited therefore full compensation based on market value of the sites should be applied.

#### **12. General Principles of Construction Management**

The draft ES lacks any specific engagement method for farmers and landowners. The CLA and NFU have discussed the importance of the role of an agricultural liaison officer between the farmer, HS2 and the contractors. It is disappointing not to see the liaison officer role set out in the draft ES. We would urge that a system is considered and put into the final ES. The CLA for its part would engage in the design of a scheme for farmers and landowners as it did with Union Rail in HS1

#### **13. Contractors Liability**

The CLA believes that HS2 Ltd should bare ultimate responsibility for all its contractors' actions. All landowners and farmers should have a single point of contact with HS2 regarding any wrong doing of HS2's contractors. (further comments in CoCP). The importance of affective farm liaison officers on the ground cannot be underestimated in this regard.

#### **14. Agriculture Forestry and Soils (5.2)**

We agree with the assessment criteria in 5.2.1. However, when reading the detailed assessments in the Community Forum Areas these have not been undertaken to sufficient detail. The final ES must take account of each detailed bullet point in 5.2.1 on a holding by holding basis; again to reduce the requirement on individual land managers to petition parliament to get their individual circumstances recognised. We hope that the final ES will follow proper engagement with land managers to identify all the effects of the scheme following the list in 5.2.1.

We have been made aware by members that despite bilateral meetings, detail reported in the draft ES is incorrect. It is also clear that there is a distinct difference in the detail reported in the draft ES at a farm scale between the northern and southern sections of the report. We urge HS2 to ensure contractor consistency.

The CLA along with the NFU have spent many months persuading HS2 of the benefits of further and formal engagement with farmers and landowners. We are now told that, at last, this work is now in place and it is their intention to roll out a comprehensive engagement program. It is very much hoped that the detail gained in such an exercise will be utilised in refining the design and mitigation measures that are subsequently recorded in the final ES and used as part of the Hybrid Bill. We believe that it is in the interests of all concerned, to work at these information exchange meetings to reduce the need for individual landowners to petition parliament.

### **15. Approach to Mitigation**

It is disappointing to read the description of the proposed mitigation measures which fails to outline any measures specifically to mitigate against the impacts of HS2 on farming and other rural businesses.

The final ES should include the mitigation measures taken to deal with the continuance of farming and rural businesses affected by the scheme.

### **16. Land Acquisition and Disposal**

As far as the CLA is concerned, the acquisition and disposal of land is a fundamental issue affecting all on the route. As previously mentioned, HS2 and the Department for Transport have failed to recognise that the current system of compulsory purchase is detrimental to both landowner and scheme promoter. The inherent unfairness and inequity of bargaining power which comes about through out-of-date statute and common law is a major problem to this scheme.

It is disappointing that land acquisition is occupying very little, if any consideration in this process. The Hybrid Bill should be used to deal with the problems of compulsory purchase and ensure that HS2 is under a "Duty of Care" to act fairly, and compensate properly, all landowners and businesses affected.

The temporary use of land has the potential to be extremely serious for some businesses. We are told that some businesses will effectively be extinguished due to the temporary land take. The return of this land needs to happen as soon as reasonably practicable. Full justification is required for all land used temporarily.

The disposal of surplus land at the end of the scheme should be undertaken on the basis that the land originally acquired permanently be viewed as part of the temporary land take. In other words the surplus land should be returned to the landowner at the same price as at acquisition. An adjustment should then be made for an open market rental figure in line with the temporary use. We would reject any system based upon the difficult principles of Crichel Down. Examples of market value applied in HS1 are still causing problems to former landowners in Kent and Essex. The CLA would welcome the opportunity to work on a suitable scheme using the guiding principles of protecting the public interest but adding the particular interest of the former landowner.

### **17. Ecology (6.9)**

The CLA notes the comments made about the future management of created habitat include the returning to the landowner. We welcome this on the basis that the landowner

is fully remunerated for the ongoing maintenance of that habitat. This means that the landowner must be involved at an early stage to discuss location and objectives. We believe that in most cases this should be the first choice and the land should only be passed onto a third party if the landowner does not want the future management.

#### **18. Landscape and Visual (6.10)**

The CLA notes that early and off-line planting of trees is being considered, but such an approach would need the agreement of those landowners. The CLA suggests that HS2 designs a tree planting scheme which remunerates land owners for planting and maintaining these woodland screens.

#### **19. Socio-economics (6.11)**

The National Compensation Code is not fair. It is iniquitous to suggest such when a raft of legislative changes proposed by the Law Commission over a decade ago, to achieve a fairer system, have not been implemented by successive governments. The National Compensation Code is inadequate for business premises, agricultural businesses and residences.

We do note however that the formal ES will contain policies for assisting businesses. We would urge HS2 to differentiate the farming and land based businesses in any scheme as they are impacted in a very different way.

#### **20. Sound, Noise and Vibration (6.12)**

Noise and vibration is a significant concern to members we have spoken to on the route. No mention has been made about the affect of noise and vibration on agricultural businesses, especially livestock producers.

#### **21. Traffic and Transport (6.13)**

The rural nature of much of the route means many of the roads which could be used for construction traffic are small rural roads. There appears little detail of the use of the working area to transport goods, men and material as happens in pipeline works. The CLA believes that the track route should be used as access to the site to reduce the pressure on rural roads many of which are already unable to take increased traffic volumes.

#### **22. Waste and Material Resources (6.14)**

The CLA notes the re-use of much of the material on site. The CPO should be granted for the construction and operation of a railway, not the quarrying or disposal of minerals and therefore market compensation should be paid in all cases. Any offsite mineral used in construction must be compensated on the basis of the market value of that mineral.

#### **23. Water and Flood Risk (6.15)**

The increase of flood risk is of great concern to landowners. HS2 should design the scheme to minimise the flood risk to agricultural land. Agricultural land should not be utilised as a resource to deal with flood water.

It is noted that a significant number of balancing ponds will be built along the route. Given water resource issues faced by the country in the future through climate change, we believe balancing ponds should be designed in conjunction with adjacent landowners to perform dual functions both for flood attenuation but also as irrigation reservoirs or commercial fishing ponds.

## **Volume 2 -- Report 27: Route-Wide Effects**

### **Agriculture, forestry and soils**

The route-wide effect of the loss of up to 4000 hectares during construction is a significant loss to UK agricultural productive capacity. The CLA will scrutinise both the temporary and permanent land take to ensure that the minimum necessary is compulsorily purchased to both reduce the burden on the individual landowners and that of UK agriculture. The CLA challenged Channel Tunnel Rail Link (HS1) on the same issue, ultimately that challenge was successful in parliament. The CLA urges HS2 to consider carefully and be prepared to justify all the land take for this project.

The impact NVZ regulations on agriculture must be recognised and quantified in the final ES. This impacts on all units, but will be most acutely felt on livestock holding, even if there is only a small change to the area farmed which may necessitate a substantial restructure.

### **Effects during construction**

The effect of dust and debris from construction does not appear to have been considered in relation to crops growing alongside the construction. It is possible that there could be significant crop losses suffered by dust contamination. The CoCP should look in detail at minimising this problem.

### **The Agricultural and Land Based Business Community**

Much is made of the "community" in all the sections in the draft ES. The report did not recognise that part of that community is farmers who make their living from the land which will be acquired.

The CLA believes that HS2 needs to deal with the agricultural and landowning community through a different form of engagement than the community forums. We do not believe that HS2 to date have identified the difference in the people they are affecting. The CLA and NFU have worked hard to ensure that HS2 gives particular consideration to the agricultural community. The promised engagement meeting will be a test of this as far as we are concerned.

### **Socio Economic Effects**

It is incredible that not a single mention of an agricultural business is made in the route-wide effects. This is despite the fact that a number of holdings are identified in chapters 1 -26 as being significantly affected.

The draft ES fails totally to identify the generally small and family nature of agricultural businesses. The family nature of most farming businesses means there is an intergenerational significance and the loss of land can be extremely difficult for those planning the long-term nature of their businesses. There is no doubt that this has an effect on families and individuals. The formal ES should not underestimate the psychological significance that compulsory purchase has on farmers and landowners.

Unlike most other property owners who, once compensated, can move and start again, farmers have to adjust their lives and businesses to work around the scheme. Such effects are not recognised in compensation terms.

## **Draft Code of Construction Practice**

In general terms the CLA supports the draft Code of Construction Practice albeit that in most areas it is short on detail and specific method statements for contractors to follow. Methods of working and good practice are essential to ensure that landowners whose land is used temporarily regains their land in the best possible condition (whatever its future use). The current Code of Construction Practice does not give enough detail for our members to be fully reassured at present. The CLA has offered to work with HS2 on detailed method statements and working practices to ensure that landowner, farmers and rural business owners are pre, during and post- construction. The CLA looks forward to working in greater detail in this regard. Please see commentary below.

In terms of specific comments on the current draft we offer the following:

### **24. The Environmental Minimum Requirements (3.2)**

The CLA believes that the special status of agricultural and other land based businesses require a specific EMR. We believe that to strengthen the CoCP a “farmer and rural landowner memorandum” be developed in a similar way to the environmental memorandum to identify the full management approach to the continuance of farming and land based business during construction. We believe such an approach would strengthen the CoCP and deal with some of our concerns with the lack of detail in the CoCP.

### **25. Land acquisition EMR (3.2.3)**

The CLA’s interest in the acquisition process is clear and is highlighted in this document. The CLA therefore will take particular notice of this EMR. The complexity and lack of full transparency are widely acknowledged throughout the compulsory purchase industry. In sustainability terms HS2 has set out to be an exemplar.

The CLA believes that HS2 should set the exemplar standard for fairness in the compulsory purchase acquisition. The unique nature of a Hybrid Bill allows HS2 to deal with statutory problems to resolve a number of issues in the Compulsory Purchase Code. The CLA has set out these ideas in its Fair Play policy document.

Incorporating CLA ideas on a “Duty of Care” into the EMR would be a significant declaration of intent in this respect.

### **26. Enforcement (4.1)**

The CLA is concerned that there appears to be no mechanics for third parties to ensure that codes and ERM’s are upheld. Our ideas of an independent person would fit the enforcement role and hold the Nominated Undertaker and their contractors to account. The use of an independent complaints commissioner to provide an arbitration service, is welcome. Such a role in our view could be extended to an ombudsman type role with the ability to levy sanction on the Nominated Undertaker for any failure to follow their own codes and minimum standards.

### **27. Small Claims (5.1.7)**

The CLA welcomes the inclusion of a small claims procedure, however a claim limit of £7,500 is too low. £100,000 is a level at which the scheme could be effective. Experience of the Channel Tunnel Rail Link scheme was that a low limit precluded many agricultural claims from being dealt with in this way.

### **28. Complaints Commissioner**

The CLA welcomes the role of complaints commissioner albeit the role is not fully defined. The CLA would like to see a Complaints Commissioner deal with compulsory purchase disputes as a cost effective method of dealing with compulsory purchase

claims where settlement has become difficult. For most claimants the costs associated with a claim being presented at the Upper Tribunal (Lands Chamber) is prohibitive. A cheaper method of dispute resolution could be extremely useful.

**29. Agriculture Forestry and Soils (6)**

The CLA agrees with all of the areas highlighted in section 6. The lack of detail however is concerning. The proposition of a “farmer and rural landowner memorandum” would deal with the shortcomings in detail in this section.

**30. Measures to reduce potential impacts on landscape and visual features (12.3)**

The current description fails, other than a passing mention, to recognise the key part rural landowners will play in the landscape mitigation of the HS2 project. Most CLA members will recognise the part their adjoining land will play in the requirement to blend the railway into the landscape.

HS2 must acknowledge that landowners, who will ultimately manage much of this mitigation (ie bunds returned to agricultural use), are key stakeholders in this process. Proposals for mitigation projects should obtain the full backing of landowners and farmers before proposals are submitted to other stakeholders such as NGOs and Community Forums. Proposals for large areas of additional landscape mitigation works have the potential to place further burden on already severed landholdings.

CLA (Country Land and Business Association)  
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