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Belfast Stormwater Tunnel Safeguarding Requirements — Guidance Note

May 2026

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1. Introduction

The Belfast Stormwater Tunnel is a series of interconnected tunnels, varying in internal diameter from 1.5 m to 4.05 m, and shafts of various depths and sizes.

The tunnels have been constructed under land which, in some areas, may be developed in the future.

In order to (a) maintain the Belfast Stormwater Tunnel's structural integrity, (b) maintain its emergency management capability, (c) ensure it can be safely and adequately maintained at all times, NI Water requires that Belfast Stormwater Tunnel Safeguarding Requirements be identified and guidance provided to potential developers, via this Draft Guidance Note.

This document should be read in conjunction with drawings DRAWING 01 to DRAWING 19. This shall be used to inform stakeholders of requirements of the Exclusion and Protection Zones surrounding the Belfast Stormwater Tunnel Alignment.

2. Safeguarding requirements

2.1. General

- a. NI Water cannot allow any external influences by either temporary or permanent landscaping, groundworks or construction works to adversely affect the tunnel, for the whole life of the groundworks or construction works.
- b. NI Water requires that any temporary or permanent landscaping, groundworks or construction works, over or adjacent to the Belfast Stormwater Tunnel be subject to a rigorous technical approval procedure.
- c. For the purposes of structural protection from future works or developments, NI Water requires that boundaries of Exclusion and Protection are enforced to protect the Belfast Stormwater Tunnel. Any proposed works or developments encroaching either of these zones would be subject to build-over/legal/property/asset protection arrangements and NI Water approval, including methods of construction and potential construction/temporary surcharge loadings.
- d. NI Water reserves the right, before any approved work over or adjacent to the tunnel, as defined below, is allowed to proceed to construction, to require surface monitoring equipment to be placed in the area of the proposed construction. NI Water also reserves the right, on a case-by-case basis, to request a visual condition survey, particularly in areas where construction methods and deep foundations within the protection zone are deemed to create a significant risk to the tunnels.

2.2. Scope of this Guidance Note

This Guidance Note defines the constraints for any future works or developments in the vicinity of the Belfast Stormwater Tunnel.

2.3. Referenced documents

Belfast Stormwater Project Tunnels and Shafts - Health and Safety File

2.4. Zones of Exclusion and Zones of Protection

Works or developments will not be permitted in Exclusion Zones. Works or development in Protection Zones will require NI Water's prior consent.

The boundaries of the projected surface areas of the Protection and Exclusion Zones for tunnels and shafts are shown in Figure 2-1, Figure 2-2 and Figure 2-3 below.

2.4.1. Exclusion Zone – Tunnels

- a. This is the volume of subsoil along the tunnel alignment in which no future works or developments are allowed to encroach. Future surface works or developments are allowed above a subsurface Exclusion Zone provided the foundation does not intrude into the Exclusion Zone and the Belfast Stormwater Tunnel is not adversely affected.
- b. The Exclusion Zone boundaries for tunnels are:
 - i. 3 m from the external edge of the 1.5 m to 2.44 m dia. tunnels and 4.5 m from the external edge of the 4.05 m dia. tunnel, measured at tunnel horizontal axis level.
 - ii. 4.5 m above the external edge of the 1.5 m to 2.44 m dia. tunnels and 7 m above the external edge of the crown of the 4.05 m dia. tunnel, measured from the tunnel crown level.
 - i. 3 m from external edge of the 1.5 m to 2.44 m dia. tunnels and 4.5 m from the external edge of the 4.05 m dia. tunnel, measured from the tunnel external invert level.

2.4.2. Exclusion Zone – Shafts

- a. This is the column of subsoil and surface surrounding each shaft in which no future works or developments are allowed to encroach.
- b. The Exclusion Zone boundaries for Shafts, as indicated in drawings DRAWING 01 to DRAWING 19, are:
 - i. 5 m from the external edge of the shaft in all directions.
 - ii. 5 m below the foundation level of the shaft.

2.4.3. Protection Zone – Tunnels

- a. This is the volume of subsoil and the area on the ground surface along the tunnel alignment. Future works or developments are allowed in the Protection Zone, on either side of the Belfast Stormwater Tunnel with any depth of foundation, provided they do not adversely affect the Belfast Stormwater Tunnel.
- b. The boundaries of the Protection Zone for tunnels are defined as starting from the bottom corner points on either side of the Exclusion Zone and extending up to the ground surface at an angle to the point where they meet the surface 15 m horizontally from the edge of the Exclusion Zone for the 2.44 m dia. tunnels and 20 m horizontally from the edge of the Exclusion Zone for the 4.05m dia. tunnel.

2.4.4. Protection Zone – Shafts

- a. This is the column of subsoil and the area on the ground surface surrounding each shaft of the Belfast Stormwater Tunnel. Future works or developments are allowed in the Protection Zone with any depth of foundation, provided they do not adversely affect the Belfast Stormwater Tunnel shafts.
- b. The external boundaries of the Protection Zone for shafts are defined as starting at the outer edge of the shaft and extending for 20 m in all directions.

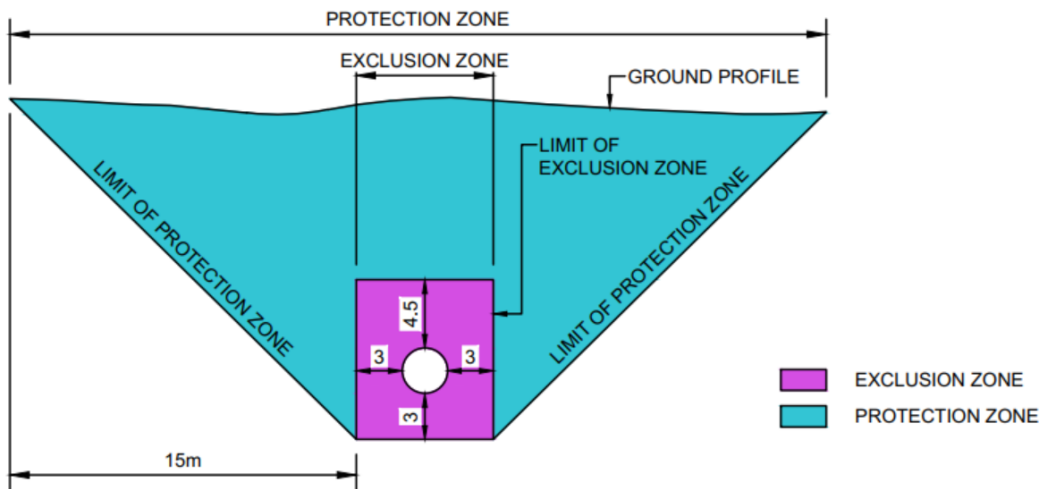


Figure 2-1 Exclusion and Protection Zones for Belfast Stormwater Tunnel 1.5 m to 2.44 m Tunnel

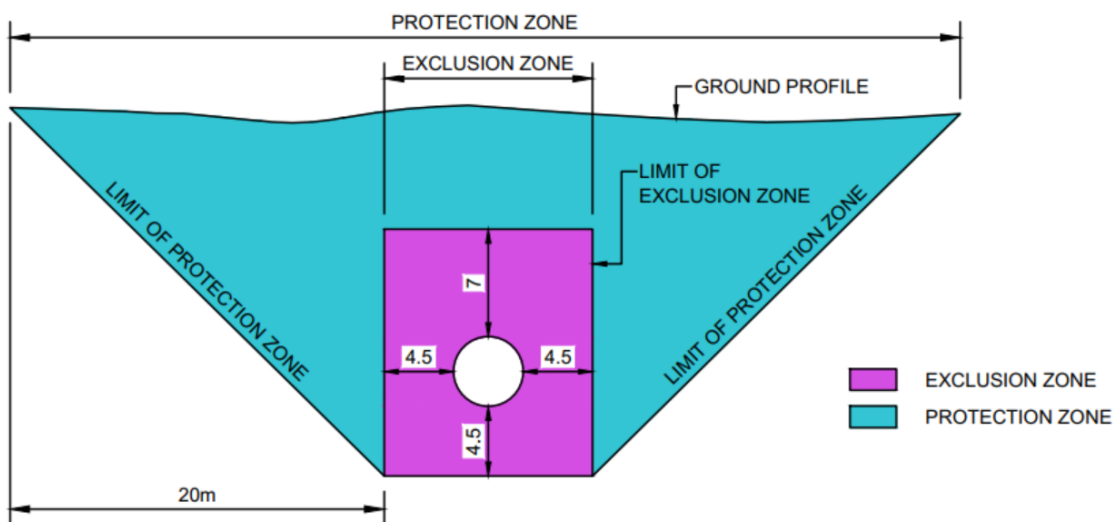


Figure 2-2 Exclusion and Protection Zones for Belfast Stormwater Tunnel 4.05 m Tunnel

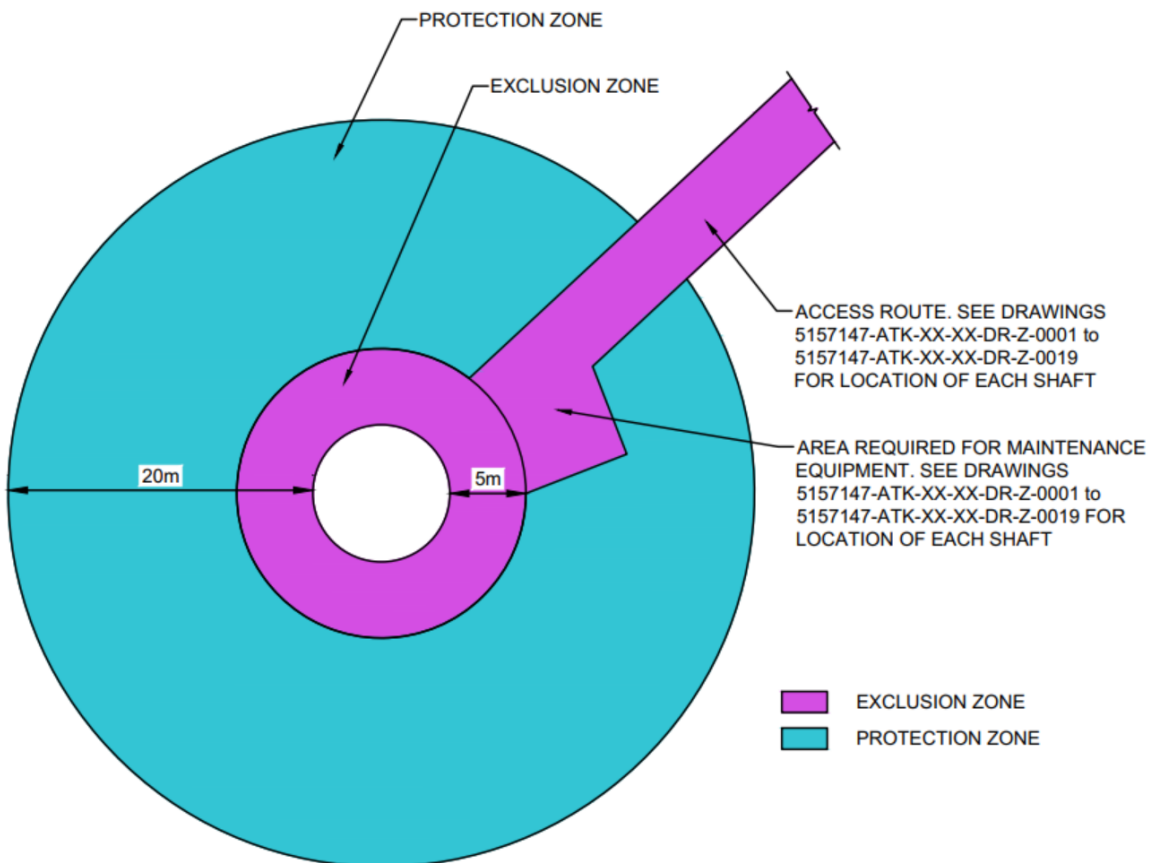


Figure 2-3 Plan of Exclusion and Protection Zones for Belfast Stormwater Tunnel Shafts

2.5. Foundations

- a. Driven piling shall not be closer than the exterior edge of the Protection Zone. Piles which are installed by a non-percussive push in process shall be treated as bored piles.
- b. Large diameter bored piles, diaphragm wall construction, jet grouting, ground investigation boring and similar processes shall not be constructed within or above the Exclusion Zone. Minor foundations elements that extend deeper than typical shallow foundations (i.e., mini piles) can be installed above the exclusion zone, subject to the provisions in section 2.4.3.a.
- c. Where any groundworks encroach into the Protection Zone, their design shall ensure load transfer to the Belfast Stormwater Tunnel is minimised and shall require NI Water's approval.

2.6. Loading/unloading

- a. Surface loads above the tunnel will disperse through the ground and will bear on the tunnel. The structural design of the Belfast Stormwater Tunnel considers by default a uniform surface surcharge of 20 kPa above and/or adjacent to the tunnel structures. Refer to Referenced Documents in 2.3. The limits of where this default surcharge can be placed are shown on drawings DRAWING 01 to DRAWING 19.
- b. Future works or developments that create a uniform surcharge as specified in the paragraph above are not anticipated to adversely affect the tunnel structures, however the potential exists for certain arrangements of asymmetric vertical loading or horizontal loading (that is asymmetric to the Belfast Stormwater Tunnel centrelines), patch loading, or other concentrated loading effects to give rise to

adverse conditions on the Belfast Stormwater Tunnel, even though no part of these loads is above 20 kPa. Details of loading location, nature and orientation relative to the Belfast Stormwater Tunnel shall be provided by the Developer, and their effects considered by NI Water prior to acceptance or the establishment of criteria for proximity and admissible loading intensity that the particular structure may sustain under defined loading conditions.

- c. All loading, even below the surcharges specified above, created by future works or developments within the zones shown on drawings DRAWING 01 to DRAWING 19 will have to be proven by the Developer to not adversely affect the Belfast Stormwater Tunnel.

2.7. Normal maintenance operations and emergency access capability protection

NI Water requires 24/7 access to the Belfast Stormwater Tunnel shafts. The route from public Rights of Way to the shafts are considered part of exclusion zones shown in drawings DRAWING 01 to DRAWING 19.

3. Build Over Agreement

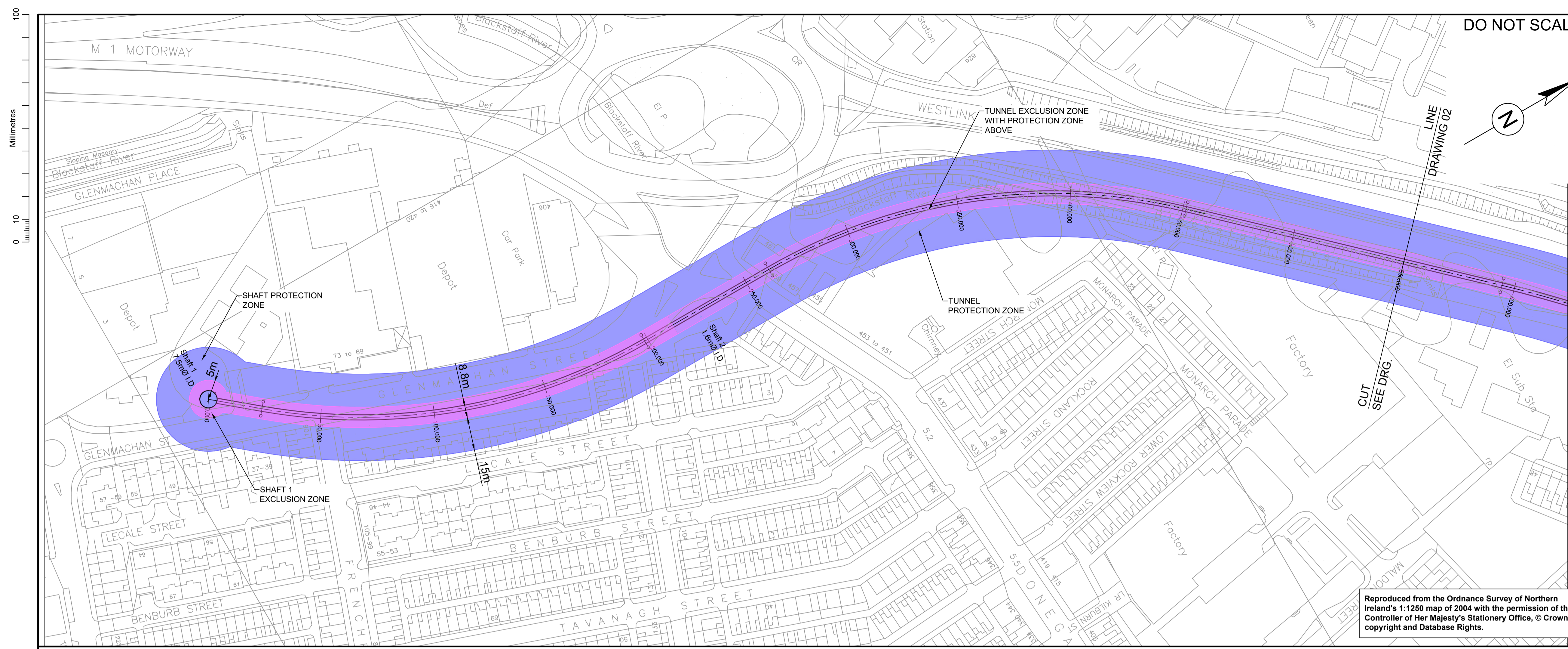
- a. NI Water shall expect formal Build Over Agreements to be entered into with any Developer in accordance with Article 236 (9) of The Water and Sewerage Services (NI) Order 2006. This is to formalise and describe the provisions set out in 2.4 and 2.7 above.
- b. See drawings DRAWING 01 to DRAWING 19 illustrating partial plans of the Belfast Stormwater Tunnel, showing areas of land around the Belfast Stormwater Tunnel. Build Over Agreements will be required for the entire tunnel route.

The documents (known as 'lands notices' or 'wayleave notices') which set out the rights which NI Water has in respect of the Belfast Tunnel, and the area covered by those rights, are registered in the Statutory Charges Registry, which is part of Land Registry. Your solicitor should be able to provide you with copies of the documentation registered there in respect of any area in which you are interested. Land Registry's website is available at <https://www.landwebni.gov.uk/static/default.aspx>.

Even if work is taking place outside the protection zone, it may affect the tunnel if e.g. it involves percussive driving of piles, where the vibration causes disruption to the soil. NI Water should be consulted before any such work is done or planned, and ongoing engagement will be required at all stages. A method statement will be required.

Any expenses incurred by NI Water (including external consultants' fees and outlay and external solicitors' fees and outlay in respect of build over agreements) will have to be reimbursed by the developer.

Appendix A. Drawings

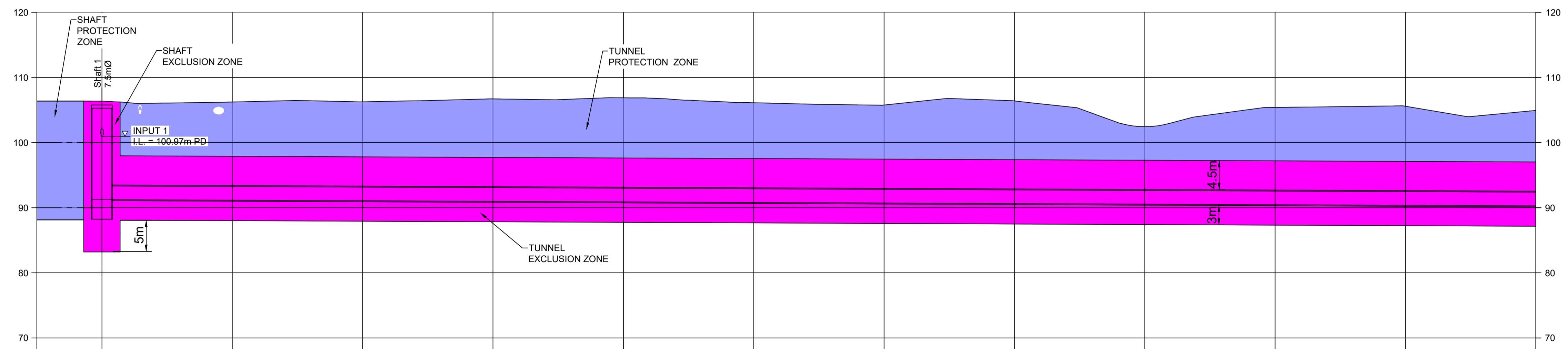


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PLAN
SCALE 1:1000



DATUM = 60m PD	
Ground Level	106.37, 106.21, 106.28, 106.7, 106.66, 106.40, 106.109, 105.62, 106.39, 105.667, 105.398, 105.57, 104.934
Invert Level	91.23, 90.85
Horizontal Alignment	STRAIGHT, R=250, STRAIGHT, R=250, STRAIGHT
Vertical Alignment	2.1m Ø TUNNEL Gradient (1:571)
Chainage	0.00, 26.54, 50.00, 100.00, 150.00, 200.00, 201.95, 225.22, 250.00, 261.40, 300.00, 350.00, 400.00, 450.00, 451.43, 500.00, 550.00

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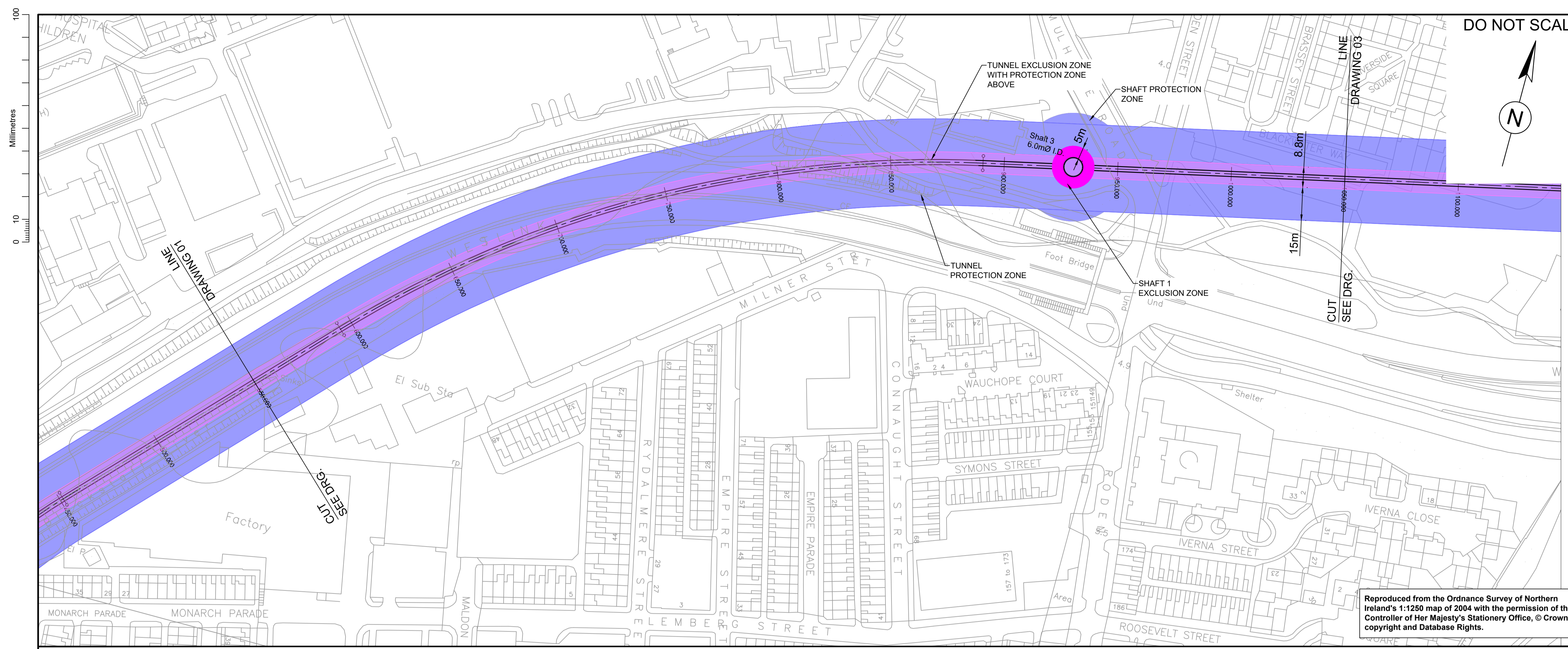


BELFAST STORMWATER TUNNEL
SAFEGUARDING REQUIREMENTS
GUIDANCE DRAWINGS

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**EXCLUSION ZONE AND
PROTECTION ZONE LIMITS
SHEET 1**

Drawing Number
DRAWING 01

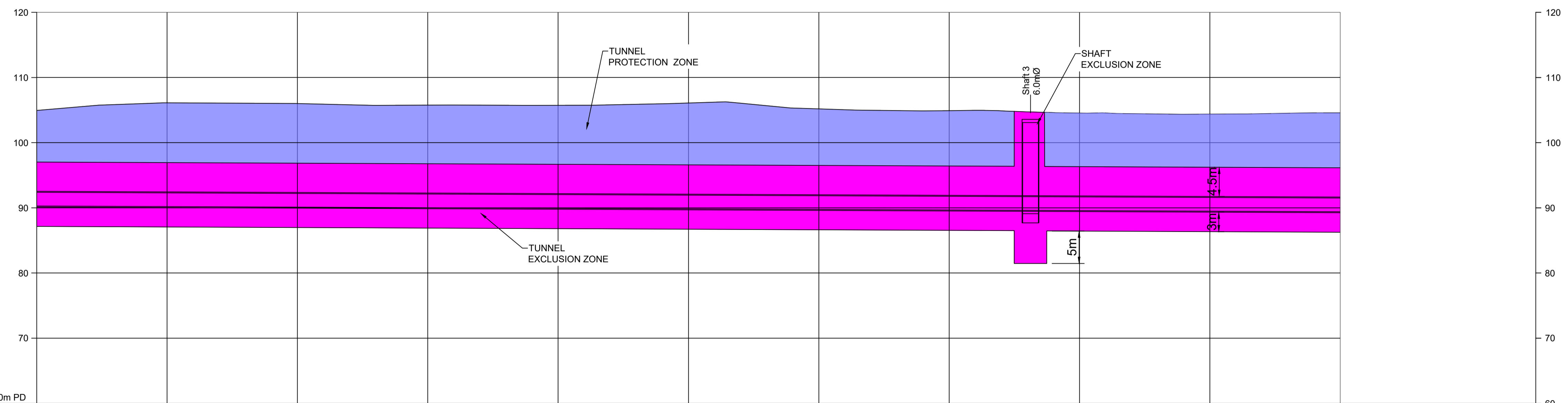
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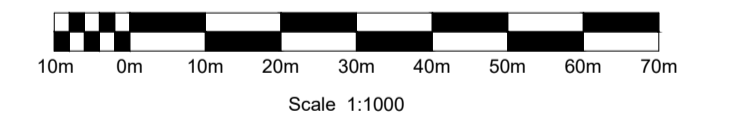
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PLAN
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DATUM = 60m PD	
Ground Level	104.934 106.109 105.992 105.759 105.731 106.078 105.177 104.911 89.62 89.61 104.61 104.543 104.273 104.566
Invert Level	
Horizontal Alignment	← STRAIGHT → 20m T.C → R=500 → 20m T.C → STRAIGHT → STRAIGHT →
Vertical Alignment	← 2.1mØ TUNNEL Gradient (1:571) →
Chainage	550.00 584.39 600.00 650.00 700.00 750.00 800.00 850.00 890.65 900.00 931.200 950.00 1000.00 1050.00

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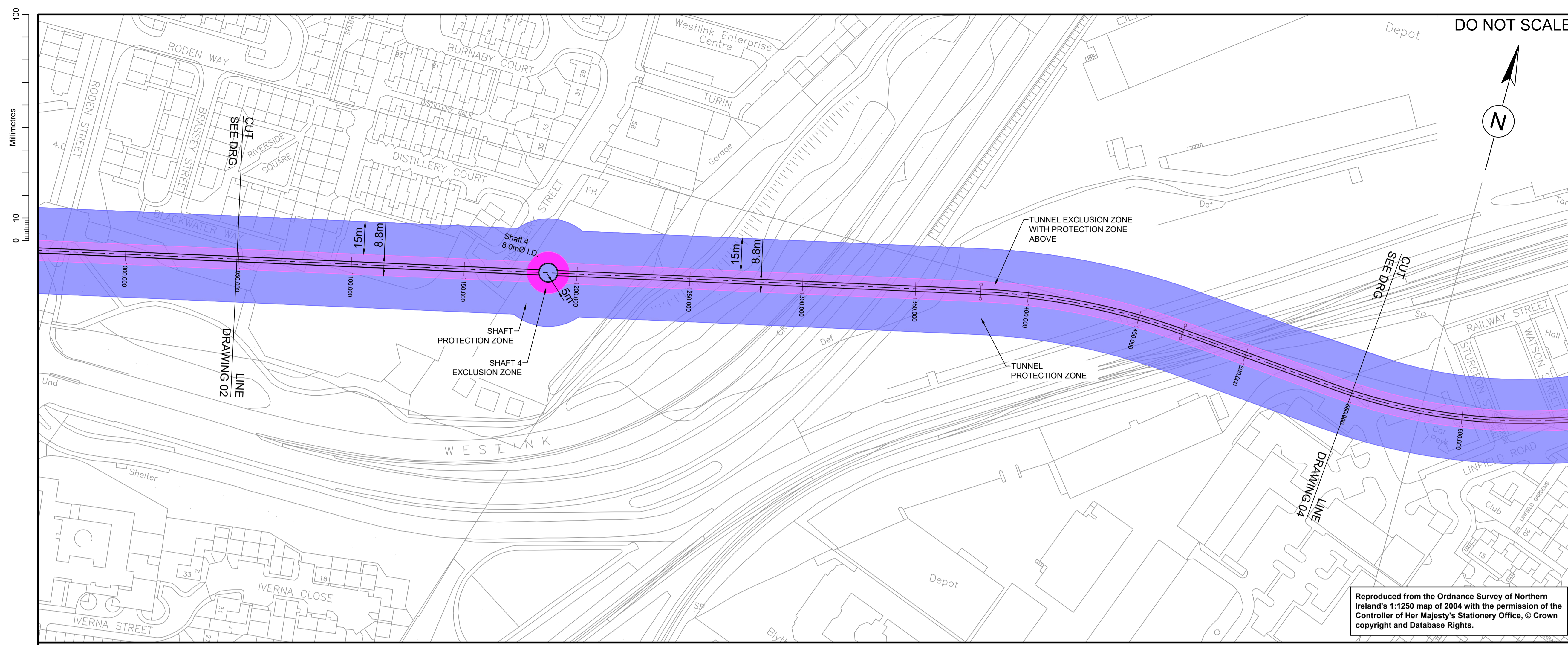


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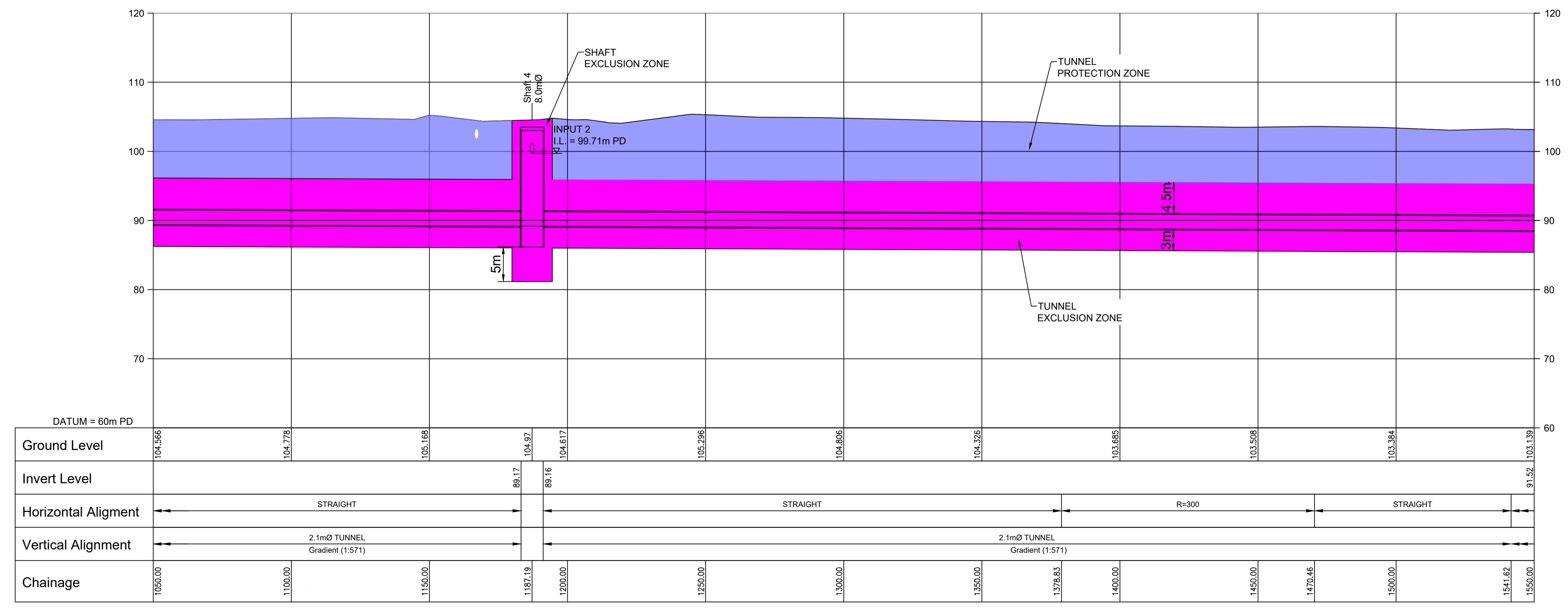
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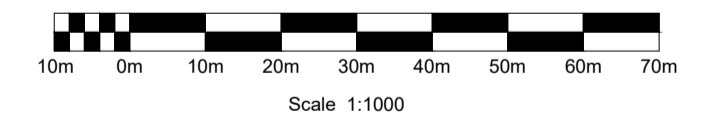
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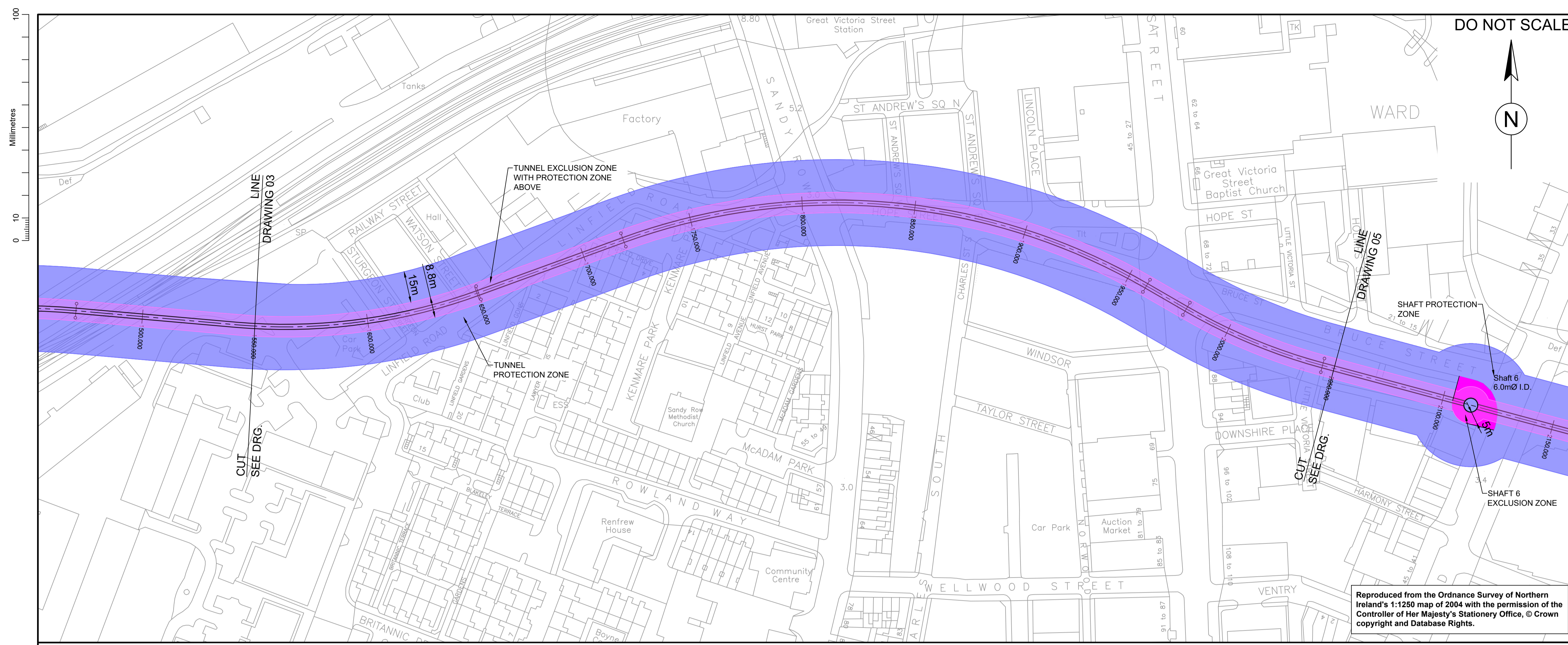


BELFAST STORMWATER TUNNEL SAFEGUARDING REQUIREMENTS GUIDANCE DRAWINGS

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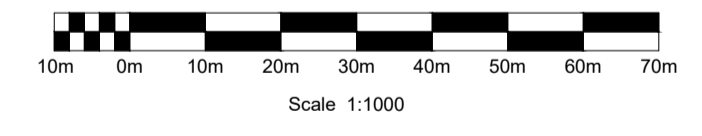
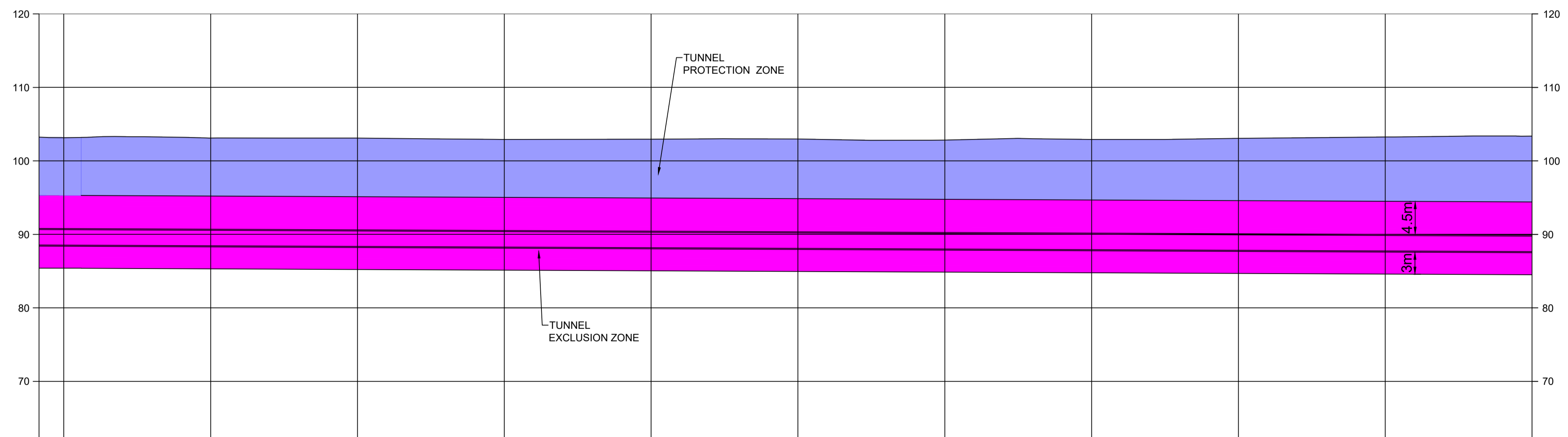
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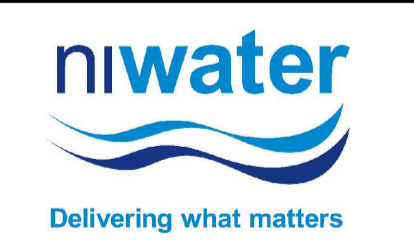
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Invert Level	91.52
Horizontal Alignment	R=250 STRAIGHT R=275 STRAIGHT R=250
Vertical Alignment	2.1m Ø TUNNEL Gradient (1:571)
Chainage	1550.00 1555.70 1600.00 1650.00 1650.70 1700.00 1718.92 1750.00 1800.00 1850.00 1900.00 1950.00 1958.91 1979.29 2000.00 2044.74 2050.00

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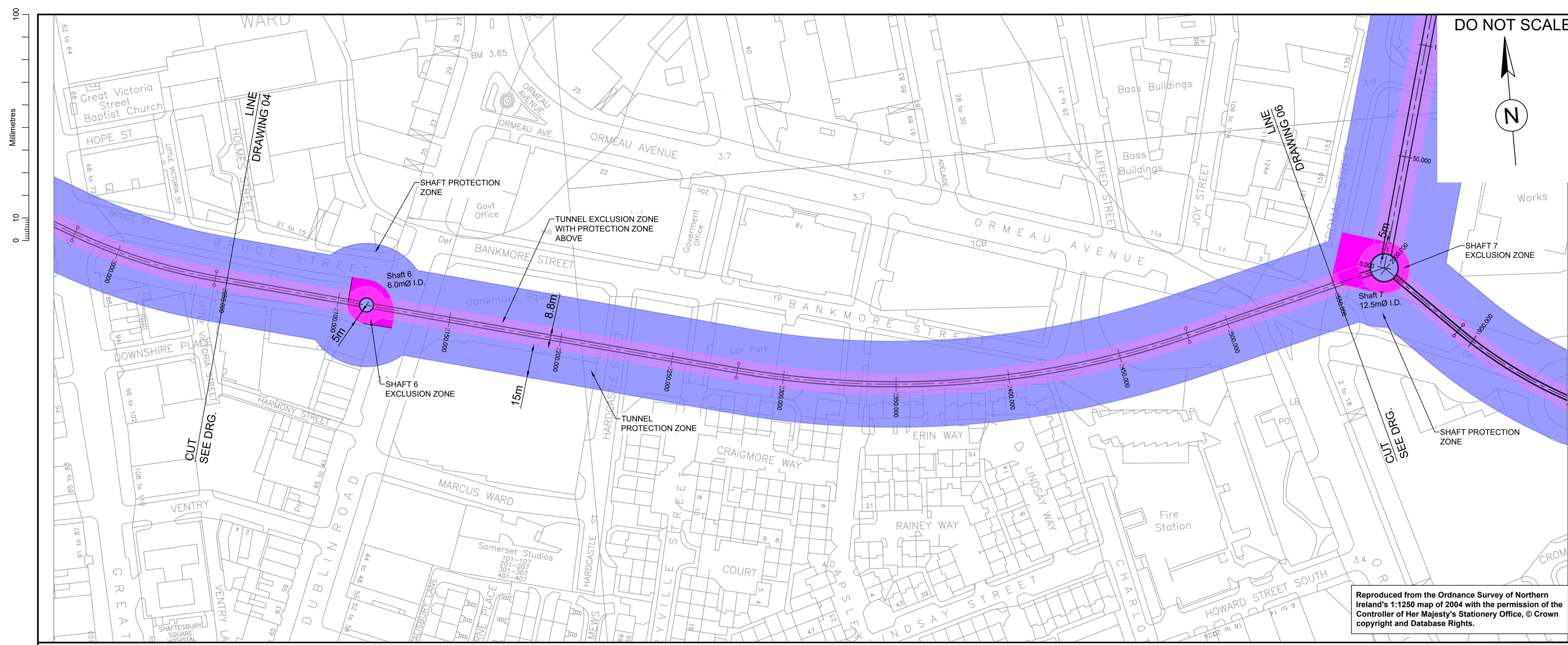


BELFAST STORMWATER TUNNEL SAFEGUARDING REQUIREMENTS GUIDANCE DRAWINGS

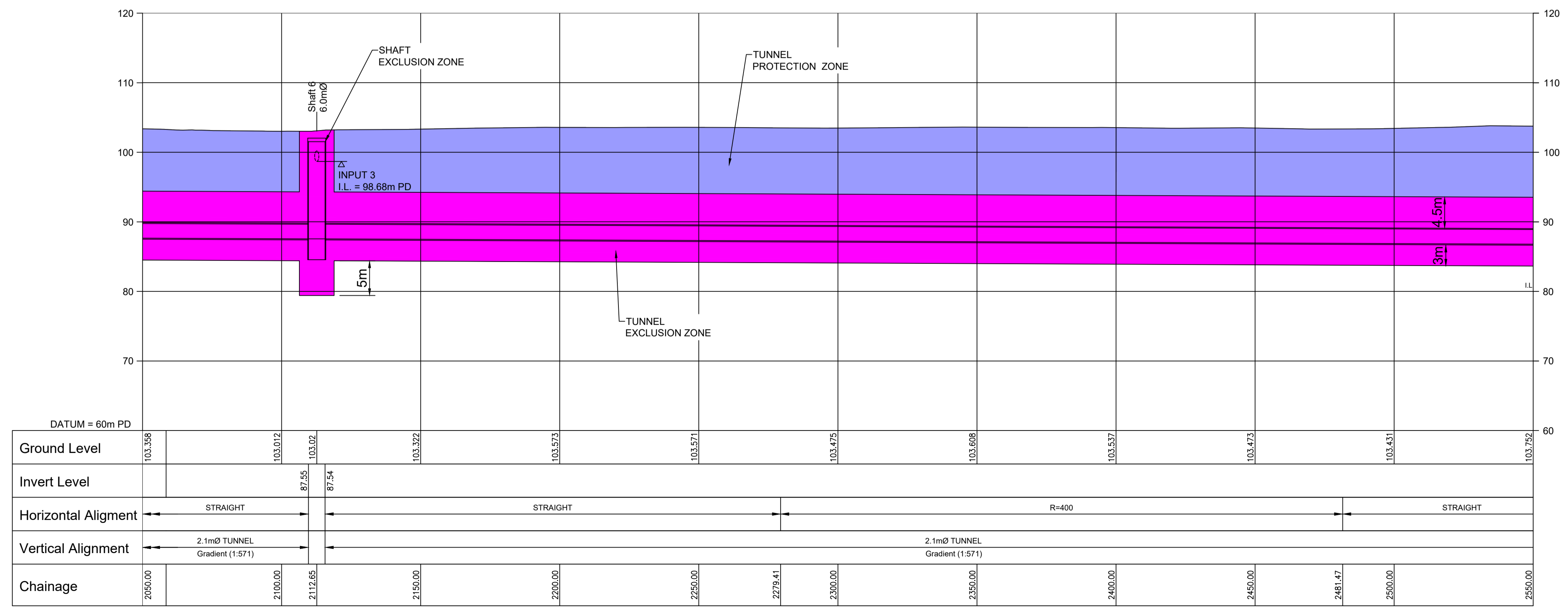
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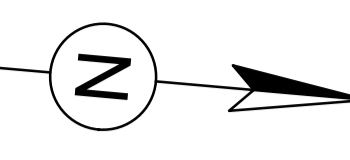
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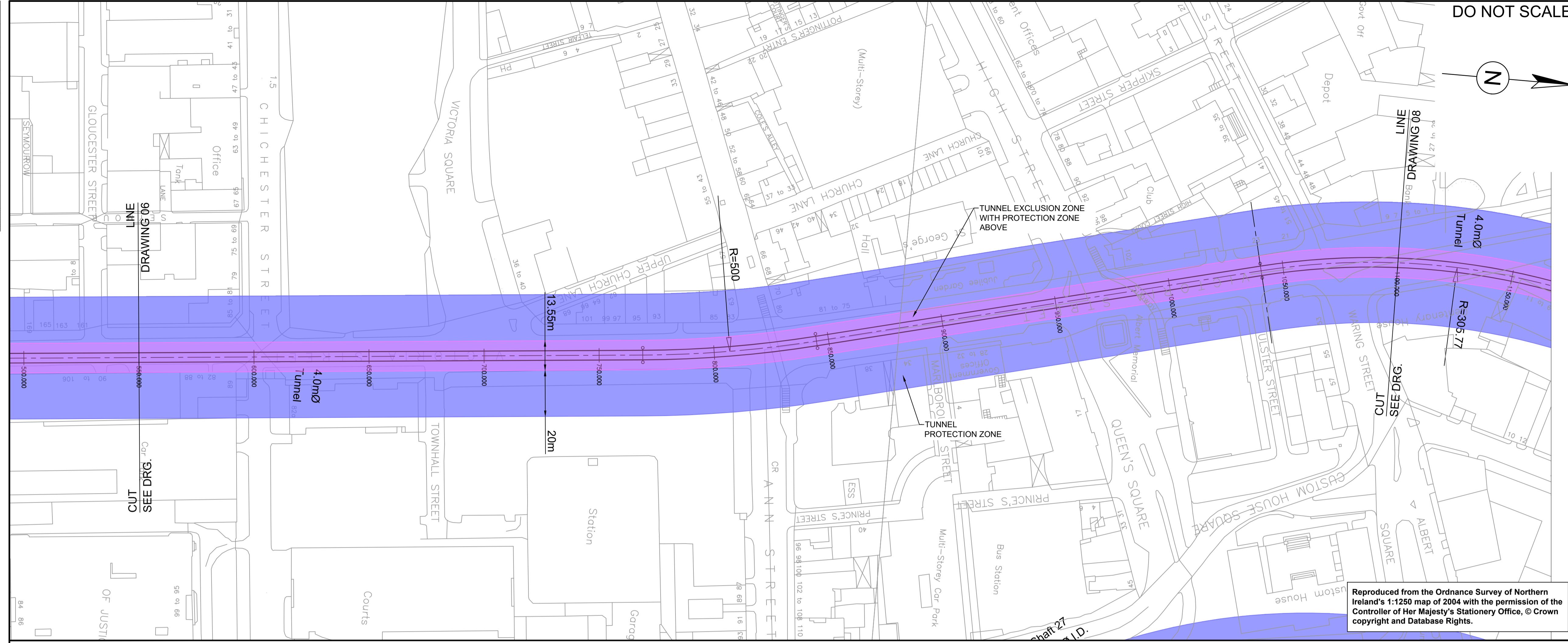
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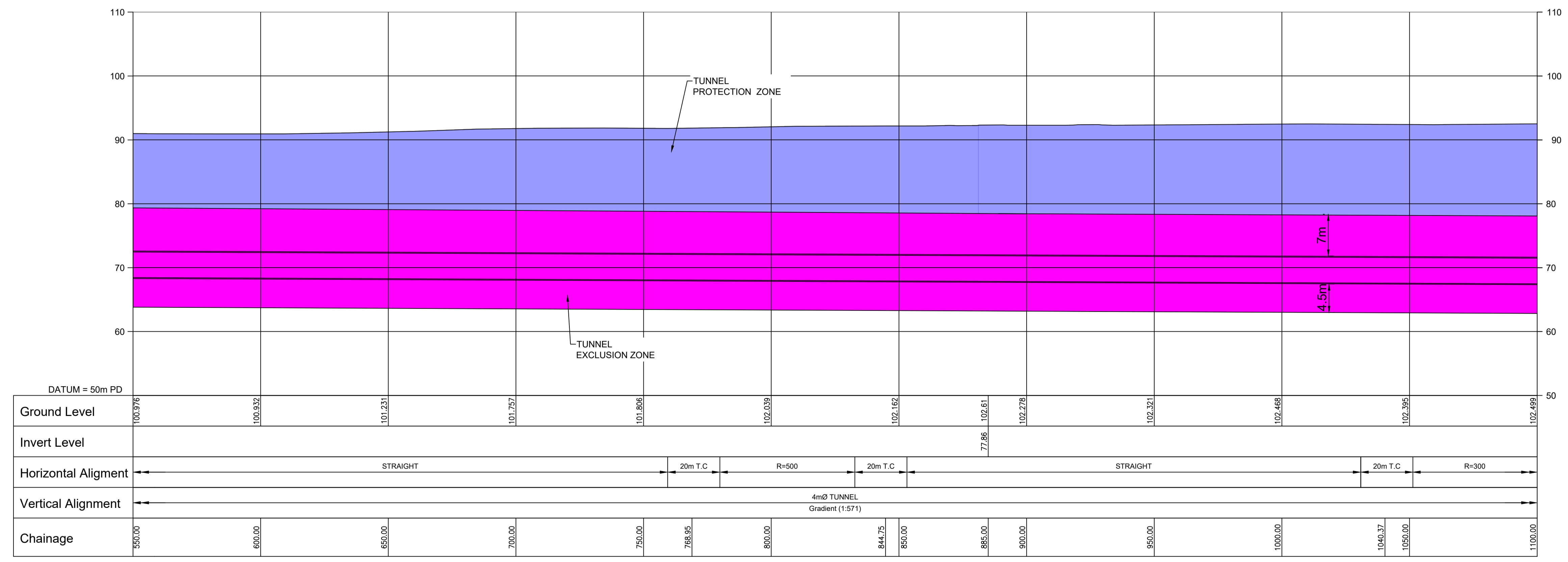


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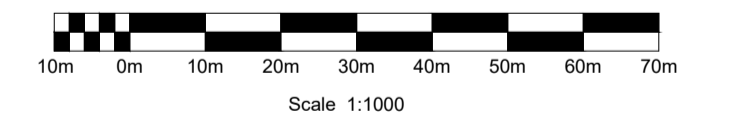
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SAFEGUARDING REQUIREMENTS
GUIDANCE DRAWINGS

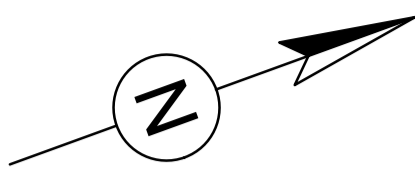
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PROTECTION ZONE LIMITS
SHEET 7**

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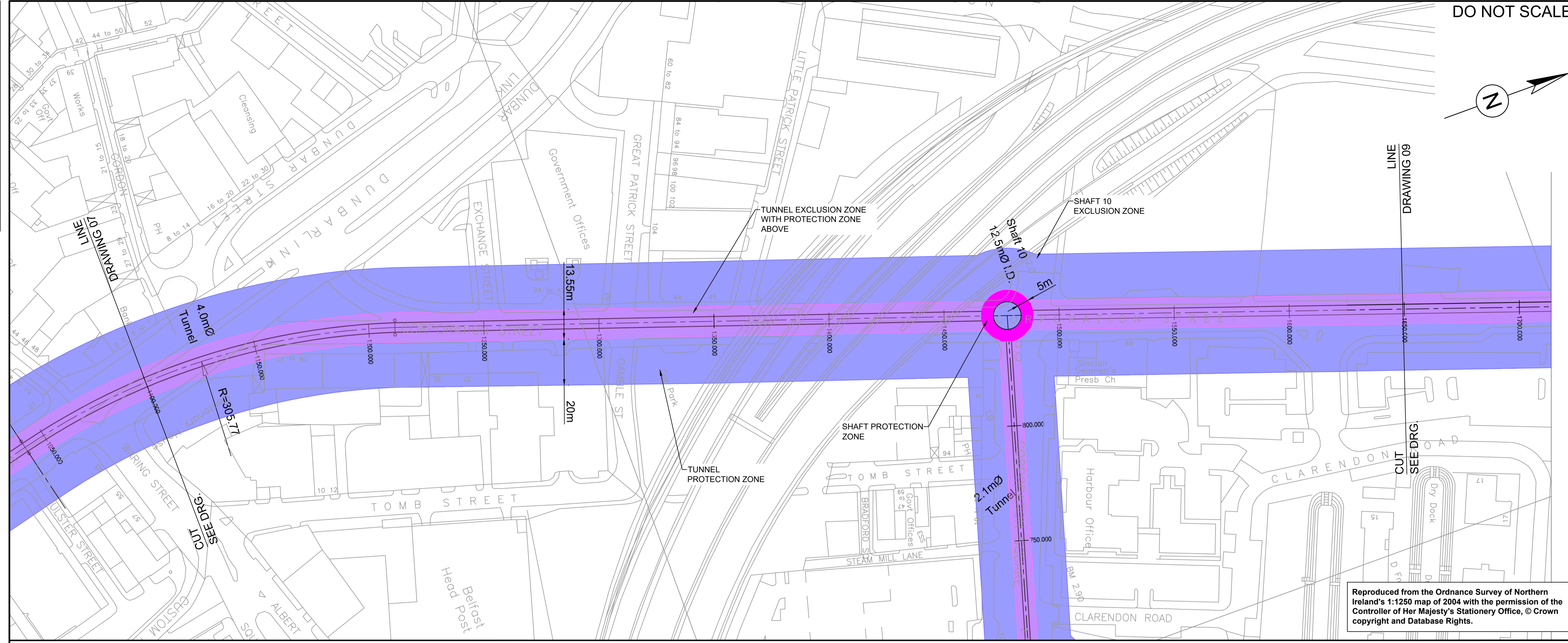
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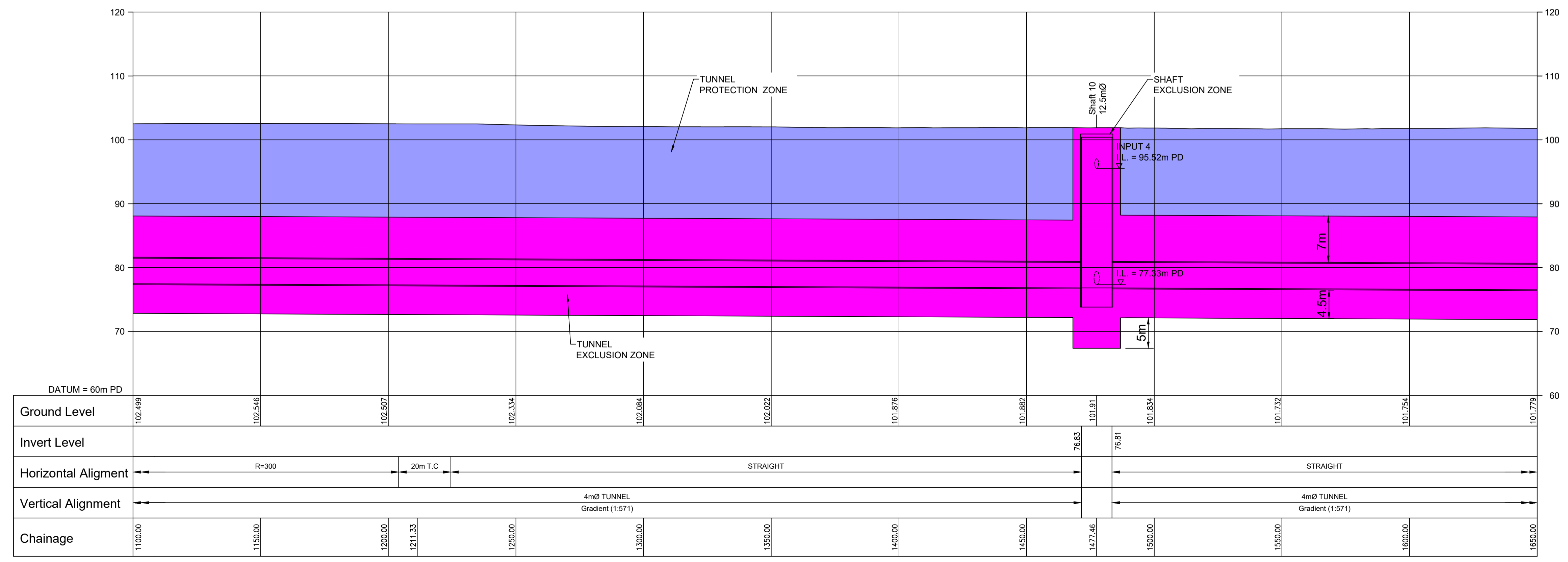


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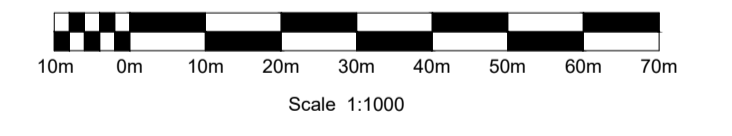


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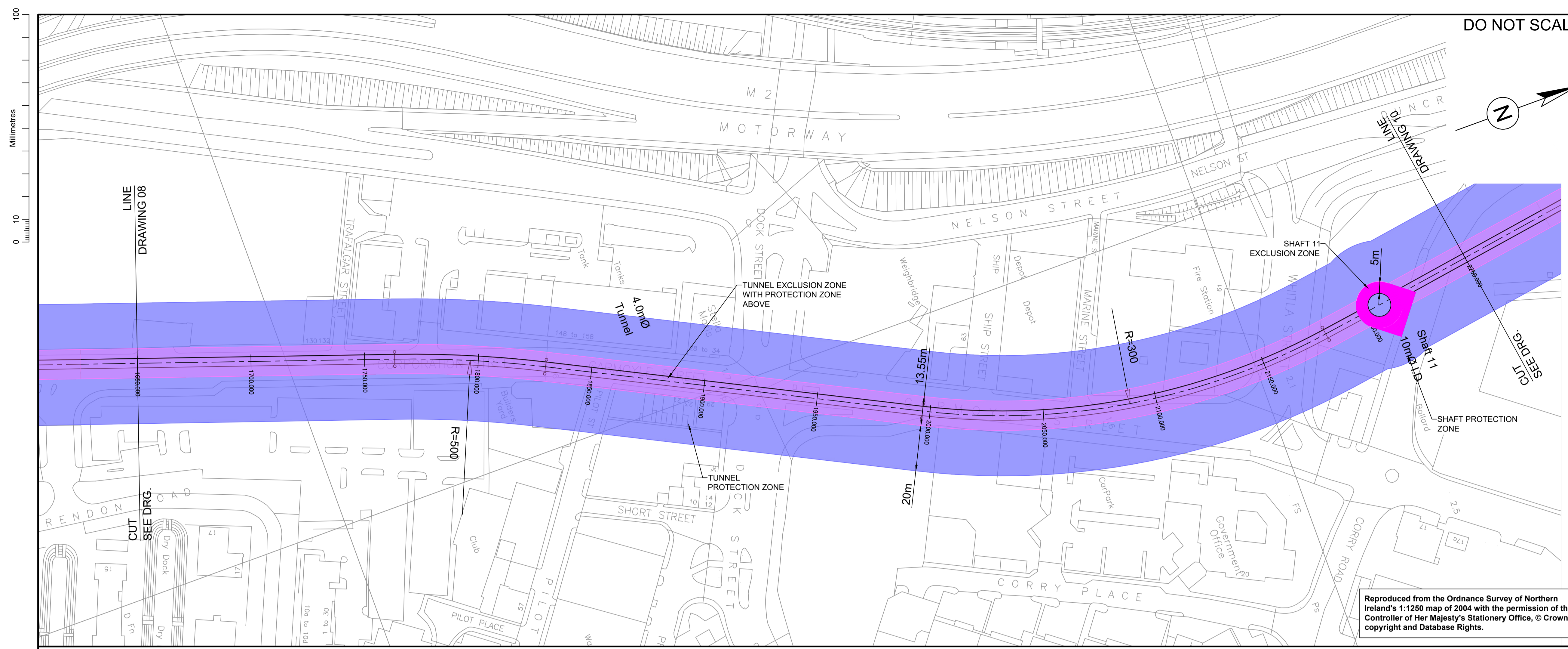


BELFAST STORMWATER TUNNEL SAFEGUARDING REQUIREMENTS GUIDANCE DRAWINGS

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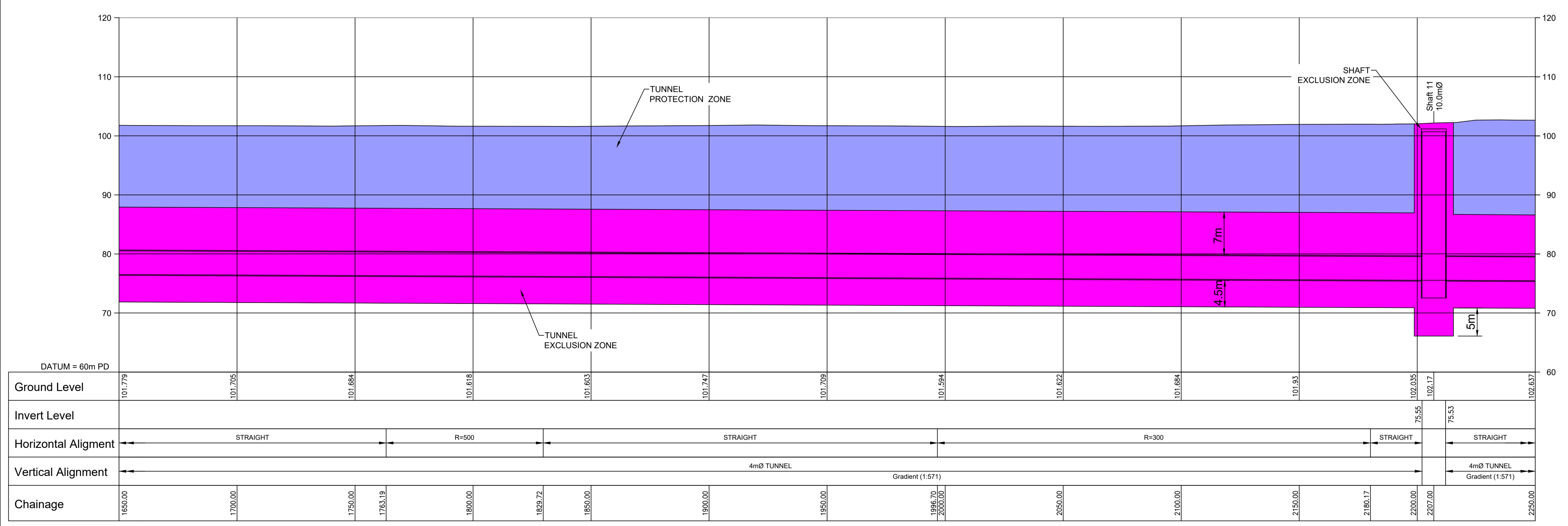
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NOTES :

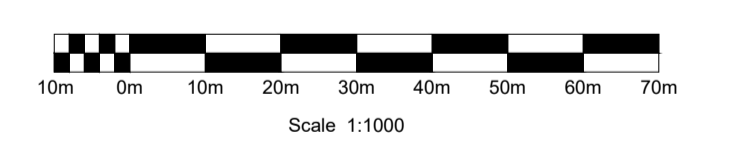
1. DRAWINGS TO BE READ IN CONJUNCTION WITH BELFAST SEWER PROTECTION GUIDANCE NOTE.
2. ALL DIMENSIONS ARE IN METRES UNLESS OTHERWISE STATED.
3. ALL LEVELS ARE IN METRES RELATIVE TO PROJECT DATUM (PROJECT DATUM = ORDNANCE DATUM + 100m).
4. SHAFT DEPTHS ARE INDICATIVE ONLY.
5. FOR PERMANENT ACCESS REQUIREMENTS AT SHAFT LOCATIONS, REFER TO GUIDANCE NOTE.
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PLAN
SCALE 1:1000



PROFILE
SCALE 1:1000 HORZ, 1:400 VERT

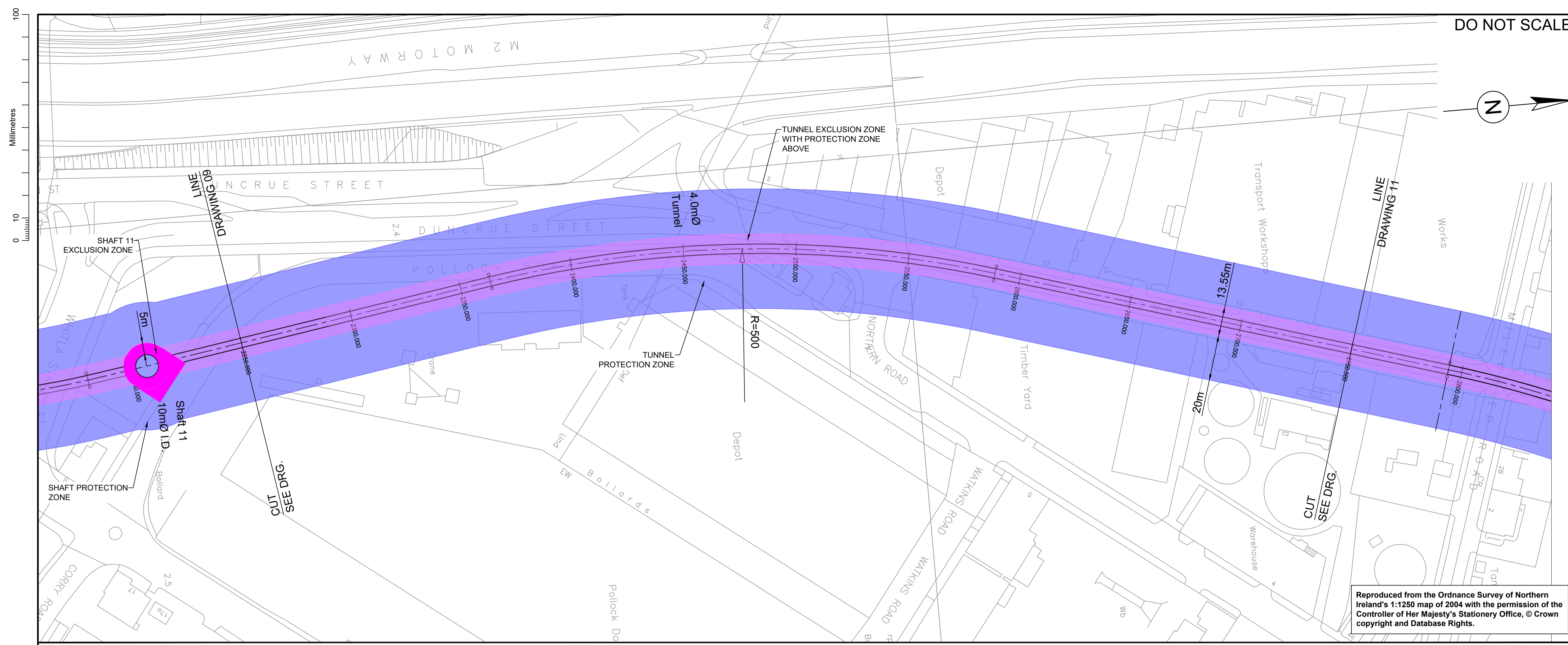


BELFAST STORMWATER TUNNEL
SAFEGUARDING REQUIREMENTS
GUIDANCE DRAWINGS

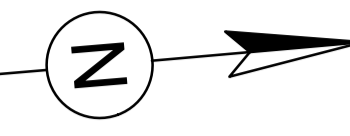
Drawing Title
**EXCLUSION ZONE AND
PROTECTION ZONE LIMITS
SHEET 9**

Drawing Number
DRAWING 09

Scale
AS SHOWN
Original Size
A1

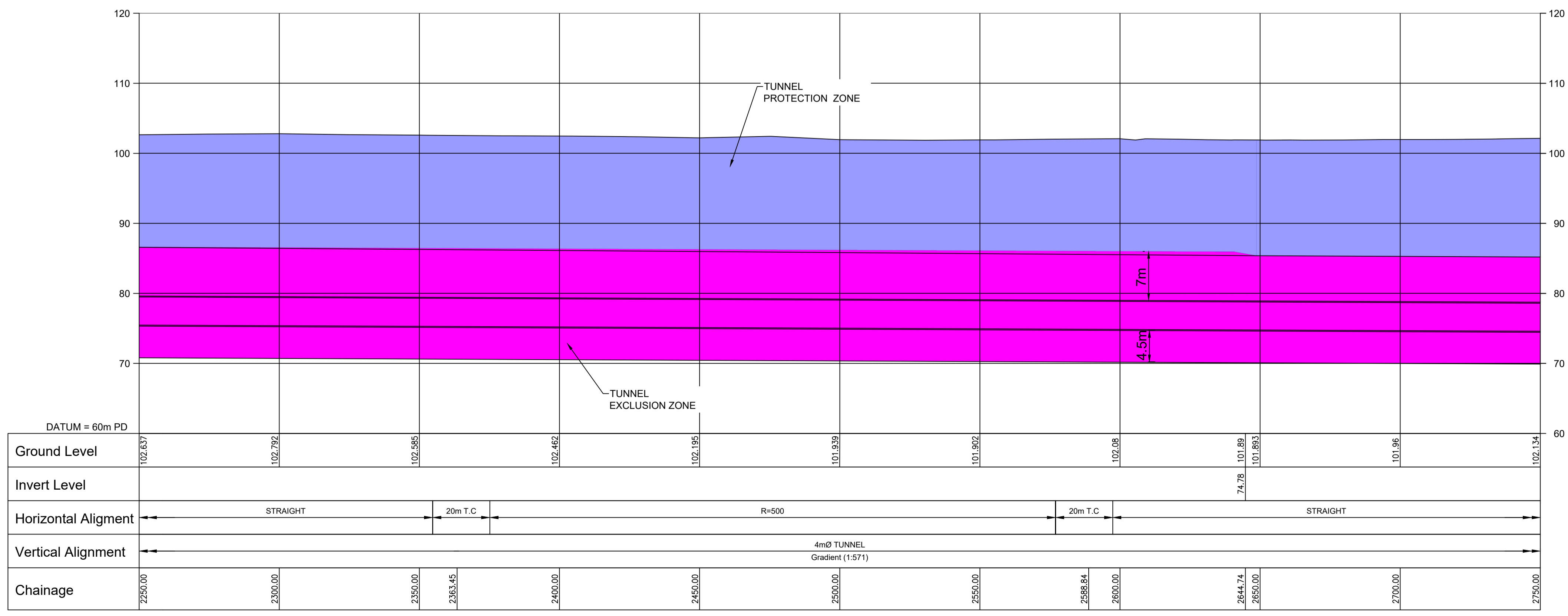


DO NOT SCALE

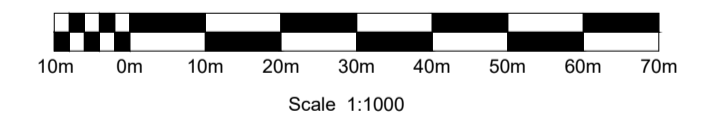


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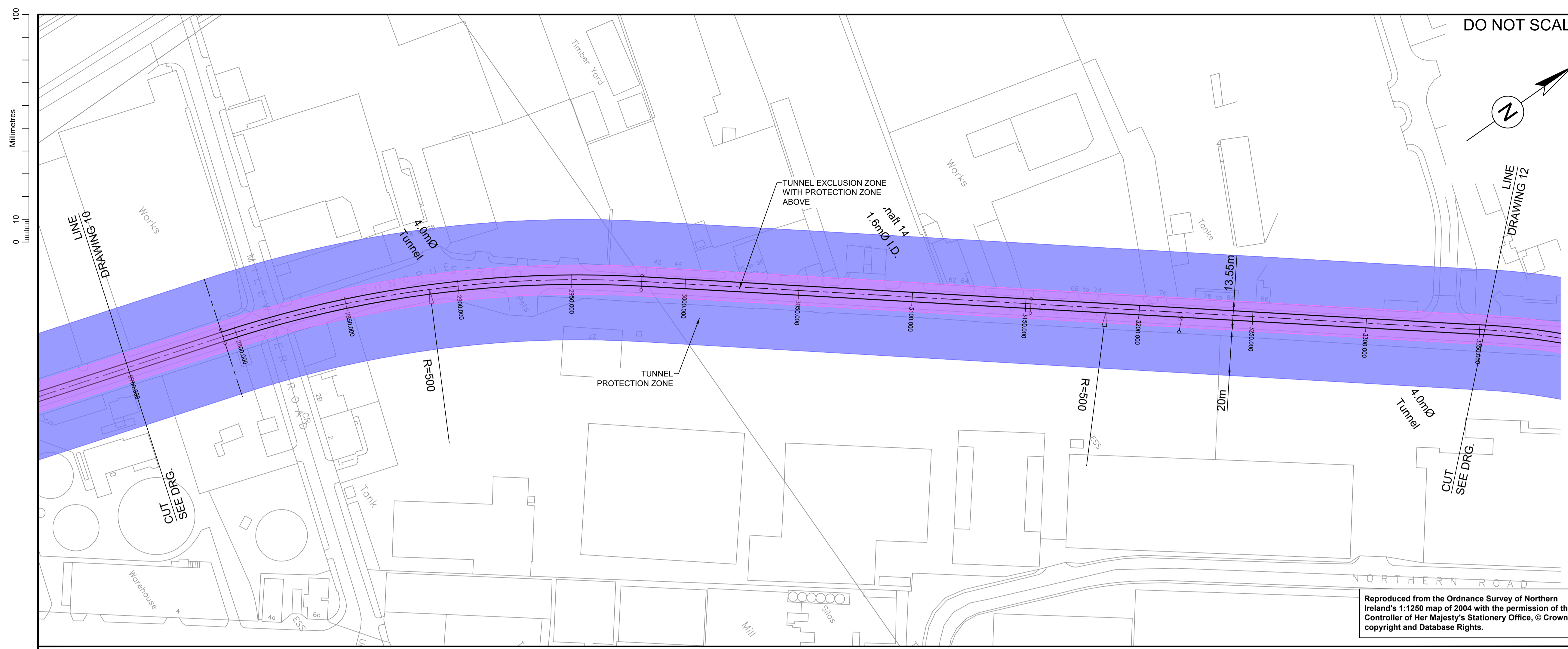
PROFILE
SCALE 1:1000 HORIZ, 1:400 VERT



BELFAST STORMWATER TUNNEL SAFEGUARDING REQUIREMENTS GUIDANCE DRAWINGS

EXCLUSION ZONE AND PROTECTION ZONE LIMITS SHEET 10

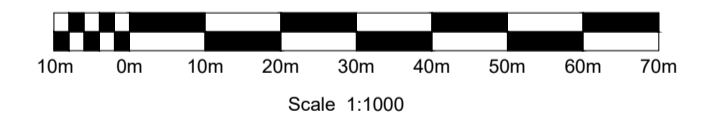
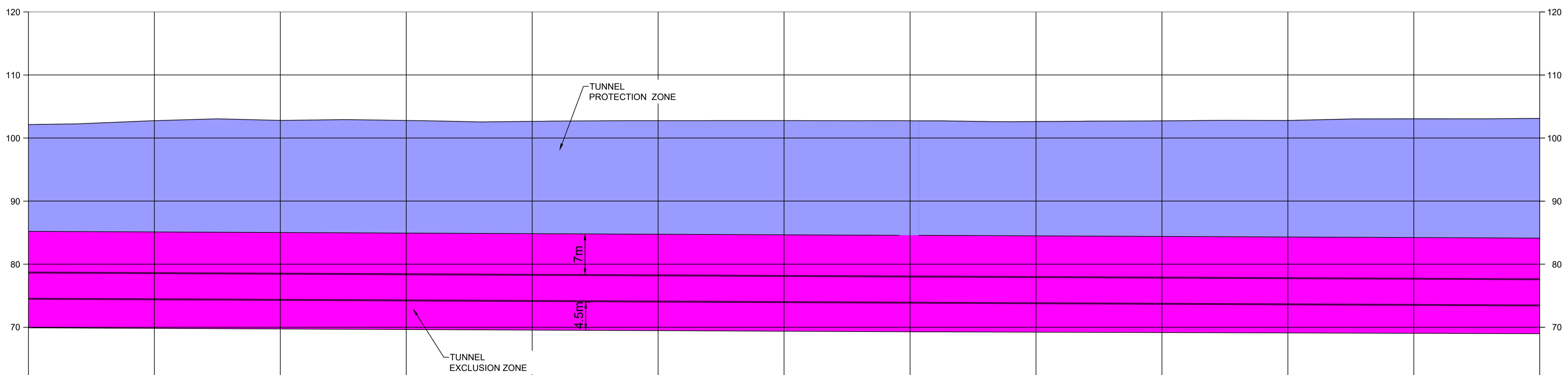
Drawing Number	DRAWING 10	Scale	AS SHOWN
		Original Size	A1



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PLAN
SCALE 1:1000



DATUM = 60m PD	
Ground Level	102.134, 102.285, 102.296, 102.284, 102.843, 102.259, 102.273, 103.011, 102.733, 102.608, 102.714, 102.782, 103.047, 103.109
Invert Level	73.98, 73.98
Horizontal Alignment	STRAIGHT, 19m T.C, R=500, 19m T.C, STRAIGHT, R=500, STRAIGHT
Vertical Alignment	4mØ TUNNEL Gradient (1:571)
Chainage	2750.00, 2793.99, 2800.00, 2850.00, 2900.00, 2950.00, 2980.77, 3000.00, 3050.00, 3099.98, 3100.00, 3150.00, 3152.26, 3200.00, 3218.66, 3250.00, 3300.00, 3350.00

PROFILE
SCALE 1:1000 HORZ, 1:400 VERT

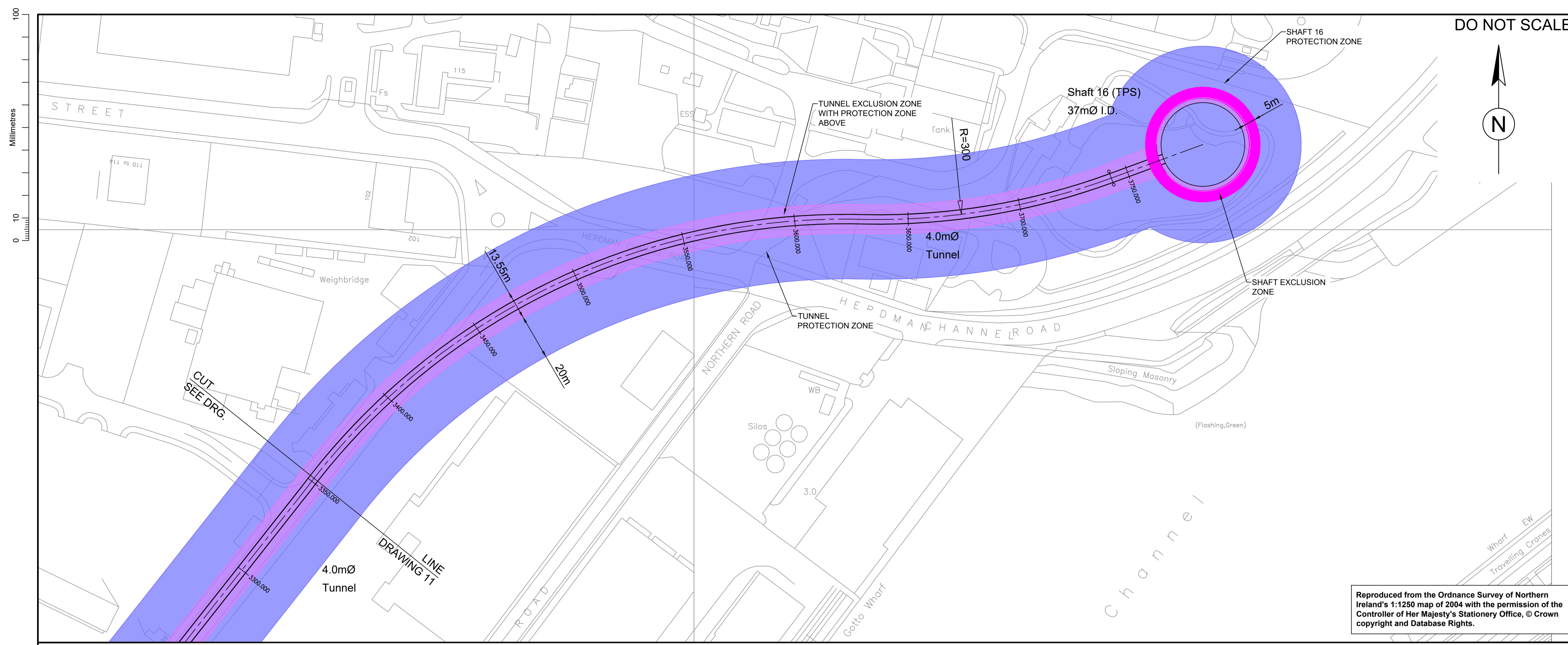


BELFAST STORMWATER TUNNEL SAFEGUARDING REQUIREMENTS GUIDANCE DRAWINGS

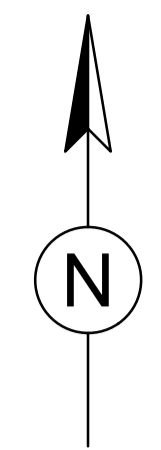
Drawing Title
EXCLUSION ZONE AND PROTECTION ZONE LIMITS SHEET 11

Drawing Number
DRAWING 11

Scale
AS SHOWN
Original Size
A1



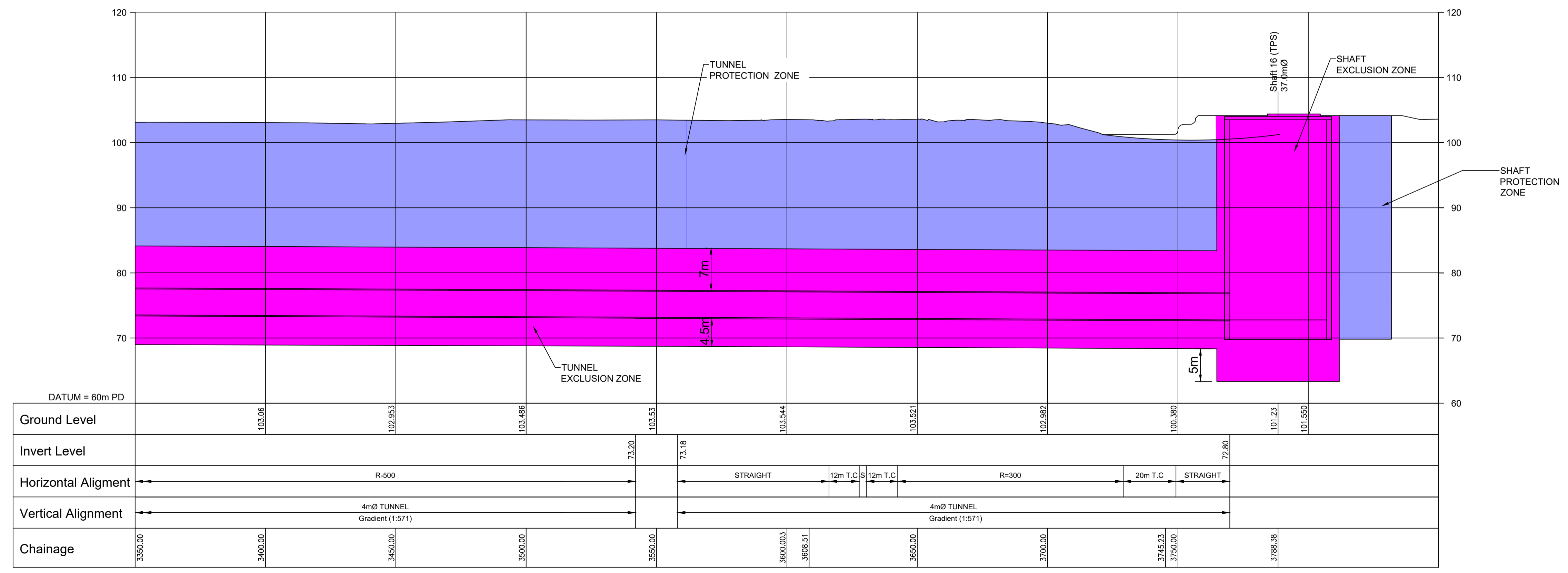
DO NOT SCALE



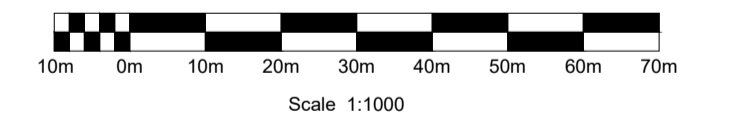
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PLAN
SCALE 1:1000



PROFILE
SCALE 1:1000 HORIZ, 1:400 VERT

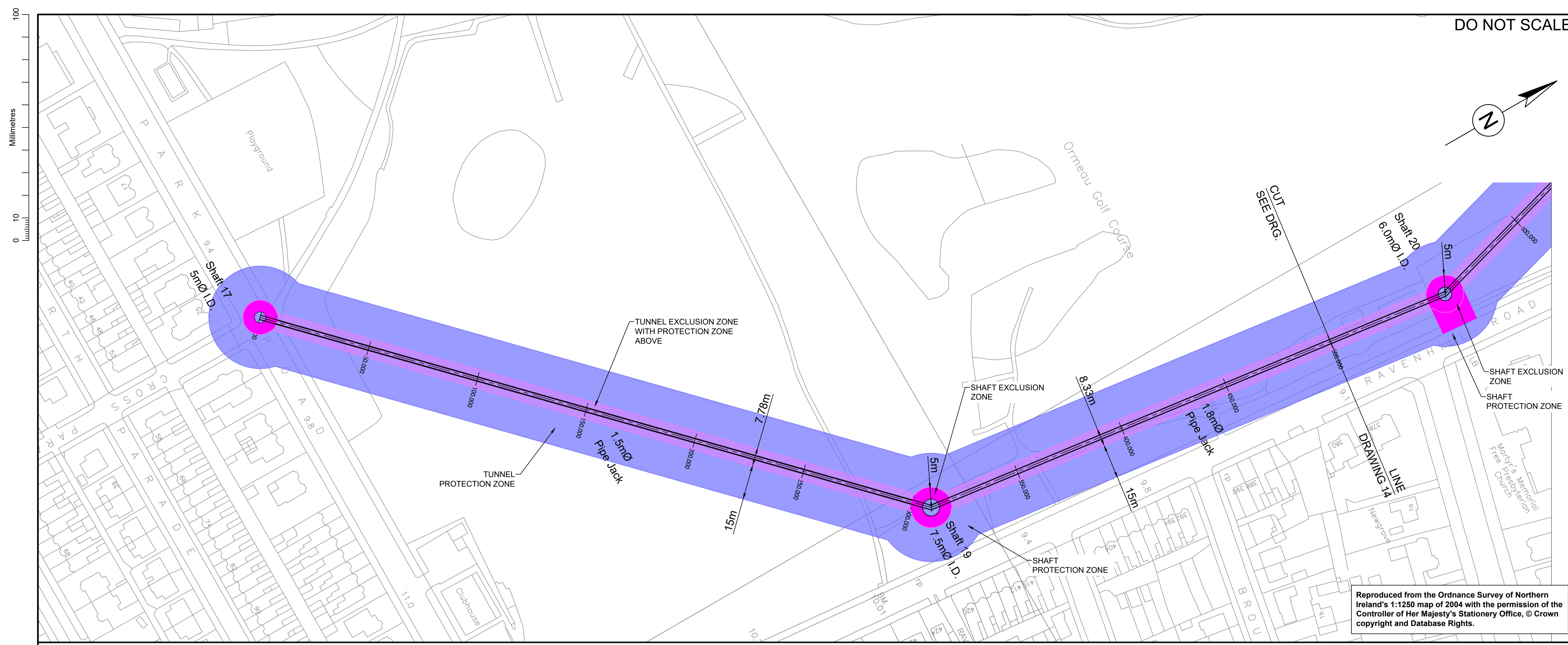


BELFAST STORMWATER TUNNEL SAFEGUARDING REQUIREMENTS GUIDANCE DRAWINGS

Drawing Title
EXCLUSION ZONE AND PROTECTION ZONE LIMITS SHEET 12

Drawing Number
DRAWING 12

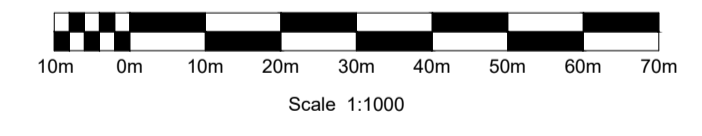
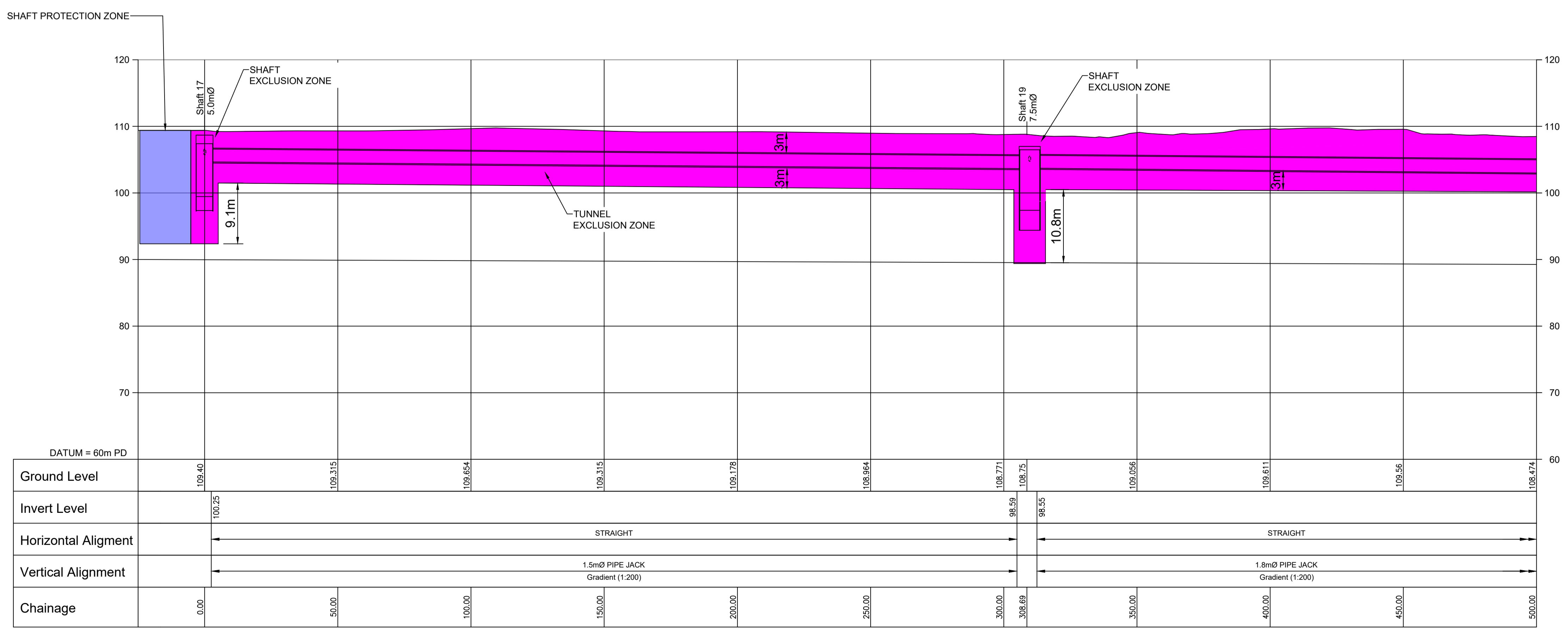
Scale
AS SHOWN
Original Size
A1



DO NOT SCALE

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PLAN
SCALE 1:1000



	0.00	50.00	100.00	150.00	200.00	250.00	300.00	308.69	350.00	400.00	450.00	500.00
DATUM = 60m PD												
Ground Level	109.40	109.315	109.654	109.315	109.178	108.864	108.771	108.75	109.096	109.611	109.56	109.474
Invert Level	100.25						98.59	98.55				
Horizontal Alignment	STRAIGHT							STRAIGHT				
Vertical Alignment	1.5mØ PIPE JACK Gradient (1:200)							1.8mØ PIPE JACK Gradient (1:200)				
Chainage	0.00	50.00	100.00	150.00	200.00	250.00	300.00	308.69	350.00	400.00	450.00	500.00

PROFILE
SCALE 1:1000 HORZ, 1:400 VERT

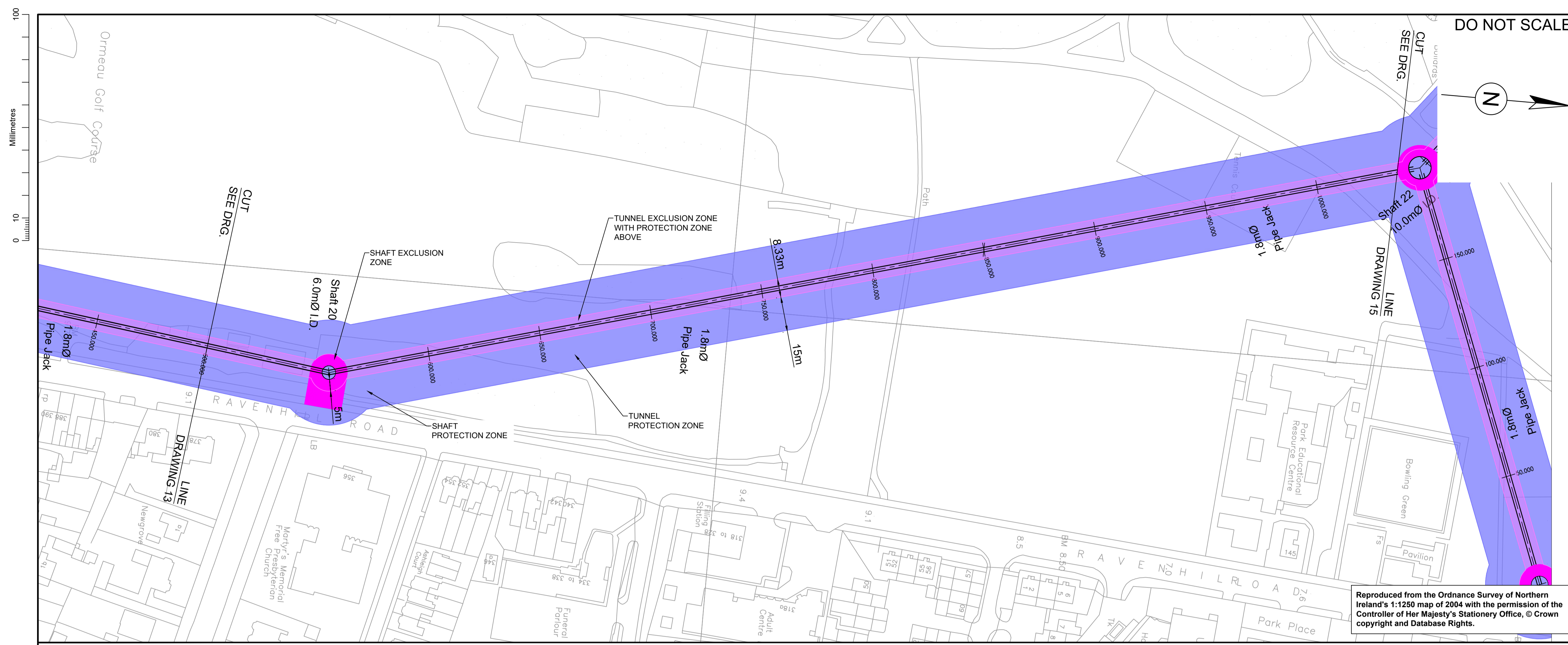


BELFAST STORMWATER TUNNEL
SAFEGUARDING REQUIREMENTS
GUIDANCE DRAWINGS

Drawing Title
**EXCLUSION ZONE AND
PROTECTION ZONE LIMITS
SHEET 13**

Drawing Number
DRAWING 13

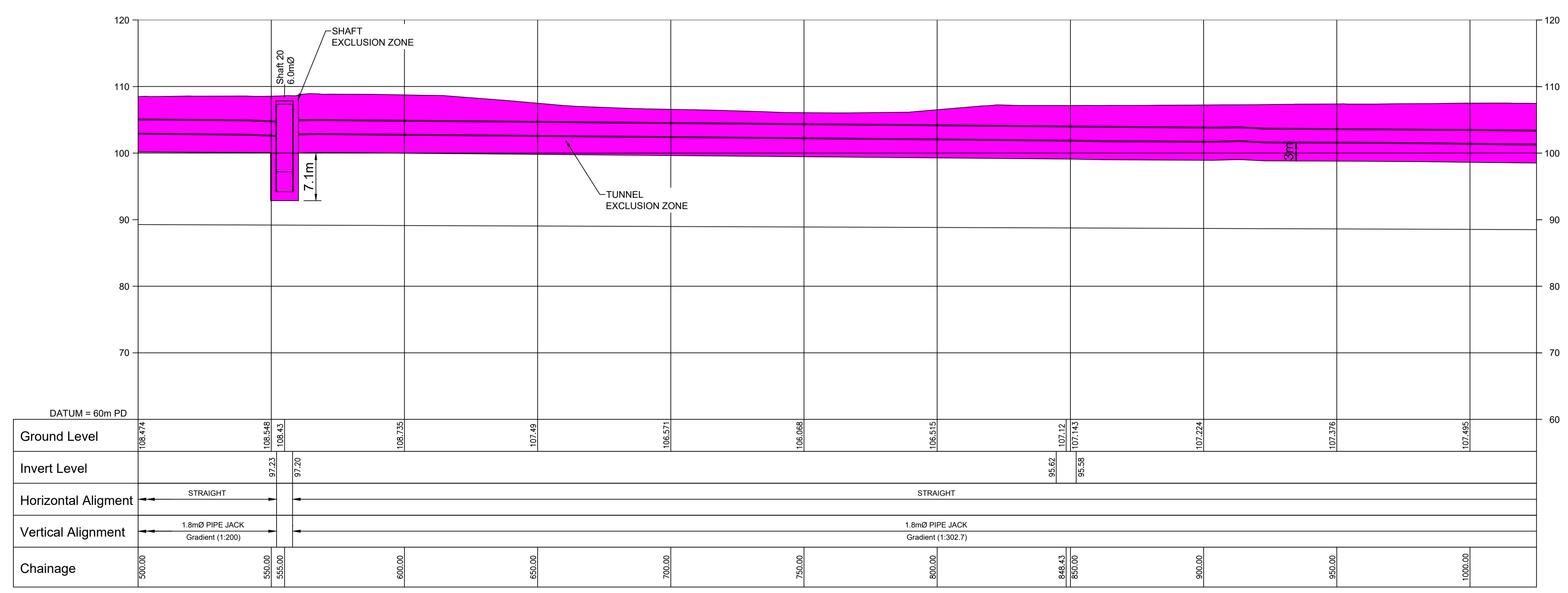
Scale
AS SHOWN
Original Size
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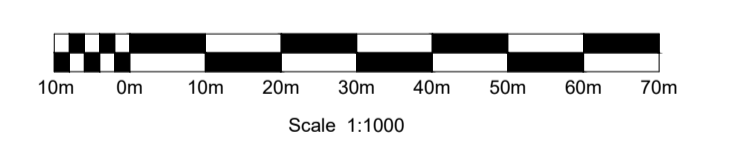
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PLAN
SCALE 1:1000



PROFILE
SCALE 1:1000 HORIZ, 1:400 VERT

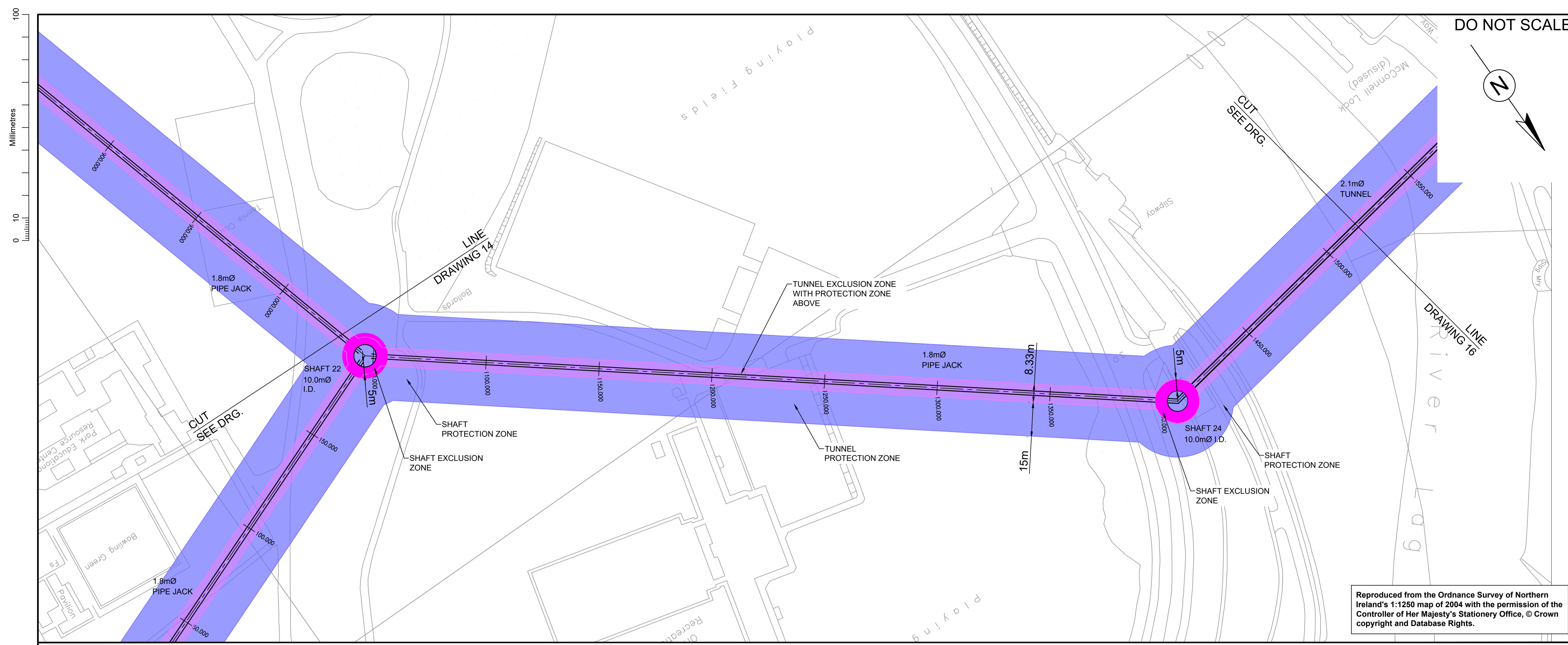


BELFAST STORMWATER TUNNEL SAFEGUARDING REQUIREMENTS GUIDANCE DRAWINGS

Drawing Title
EXCLUSION ZONE AND PROTECTION ZONE LIMITS SHEET 14

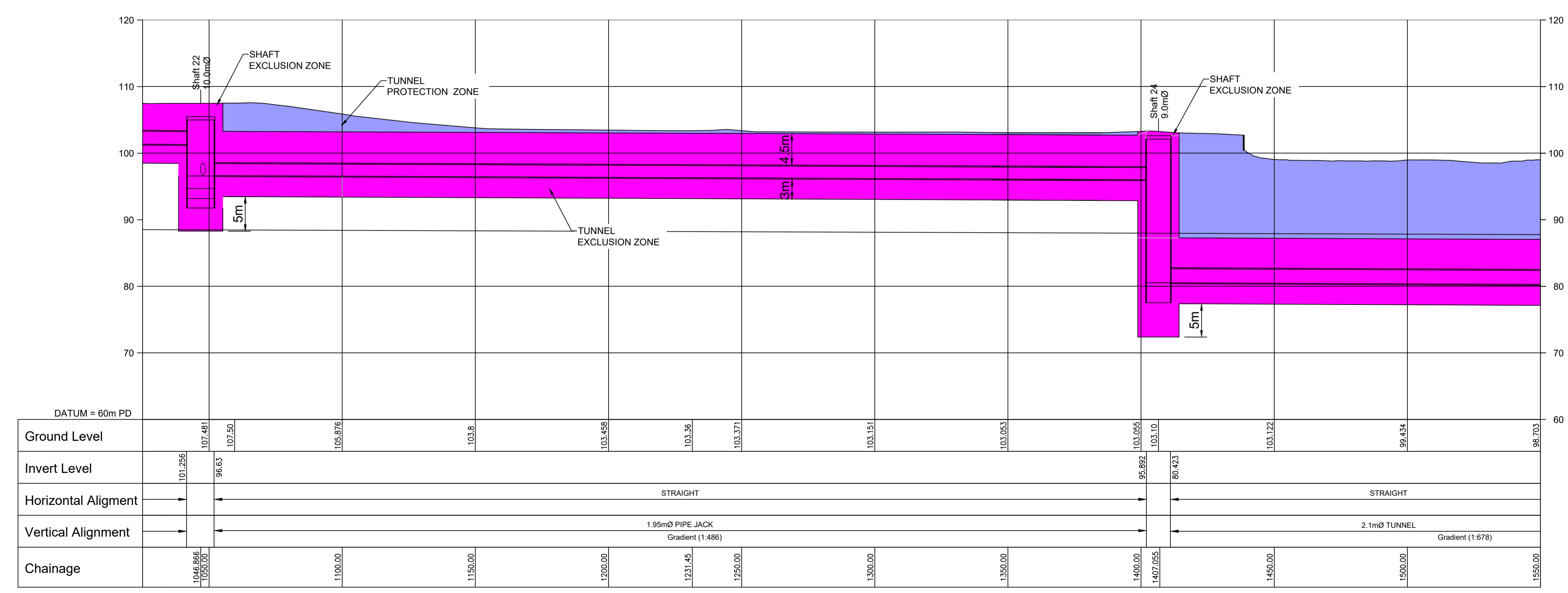
Drawing Number
DRAWING 14

Scale
AS SHOWN
Original Size
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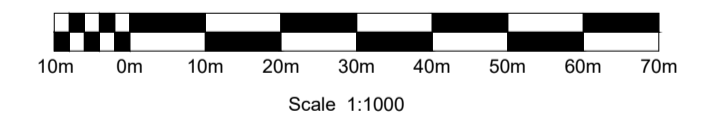


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PLAN
SCALE 1:1000



PROFILE
SCALE 1:1000 HORZ, 1:400 VERT

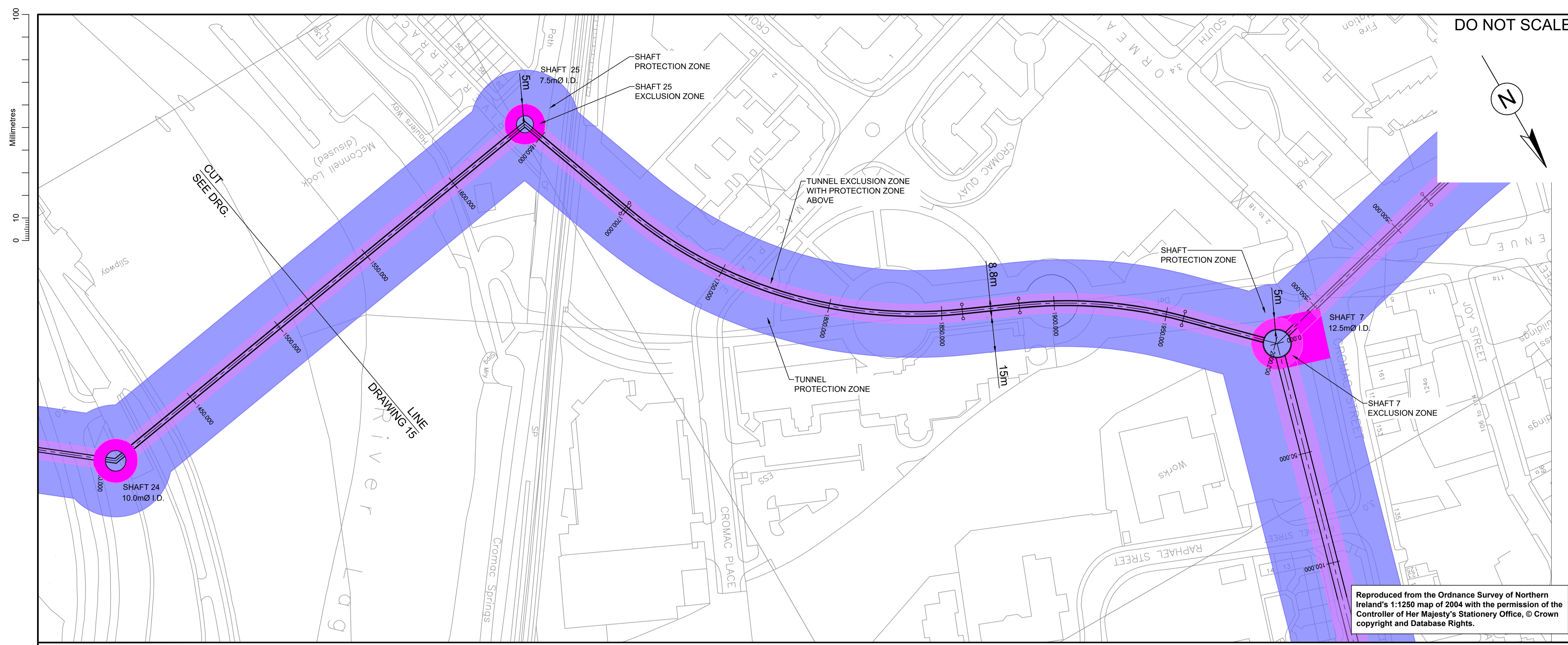


BELFAST STORMWATER TUNNEL SAFEGUARDING REQUIREMENTS GUIDANCE DRAWINGS

Drawing Title
EXCLUSION ZONE AND PROTECTION ZONE LIMITS SHEET 15

Drawing Number
DRAWING 15

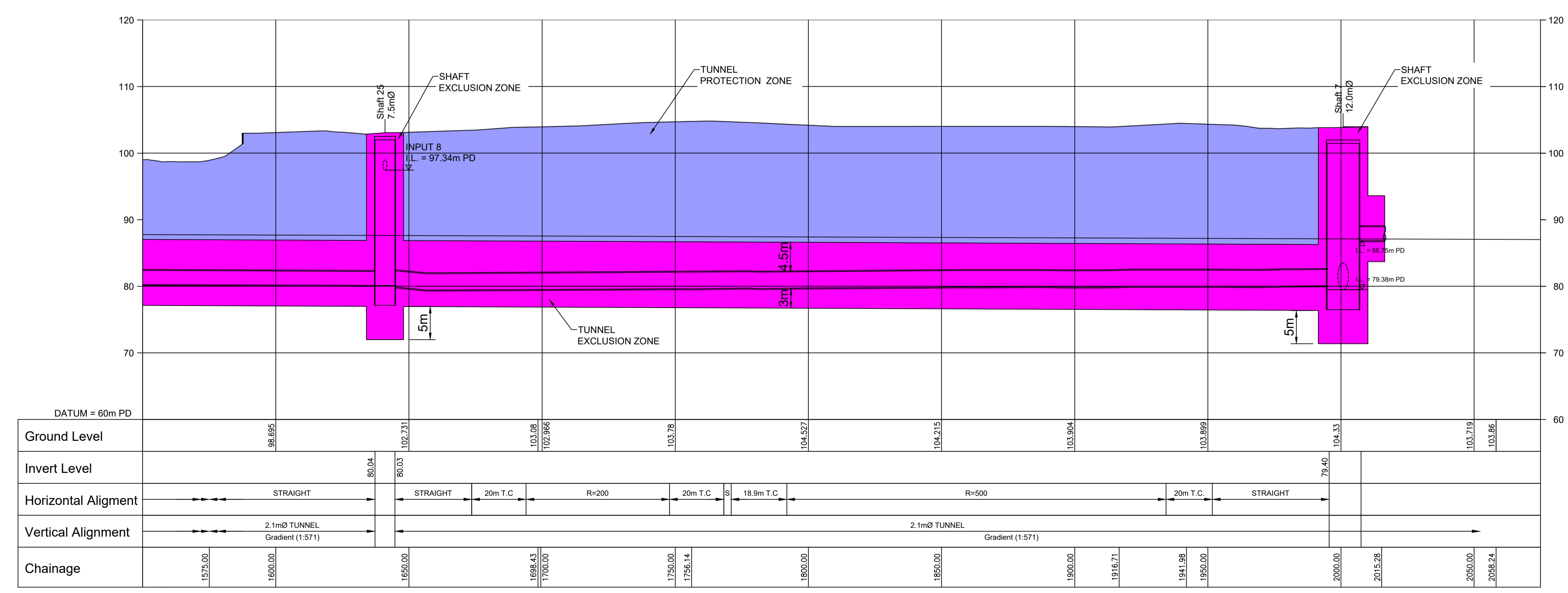
Scale
AS SHOWN
Original Size
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- NOTES :**
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PLAN
SCALE 1:1000



PROFILE
SCALE 1:1000 HORIZ, 1:400 VERT

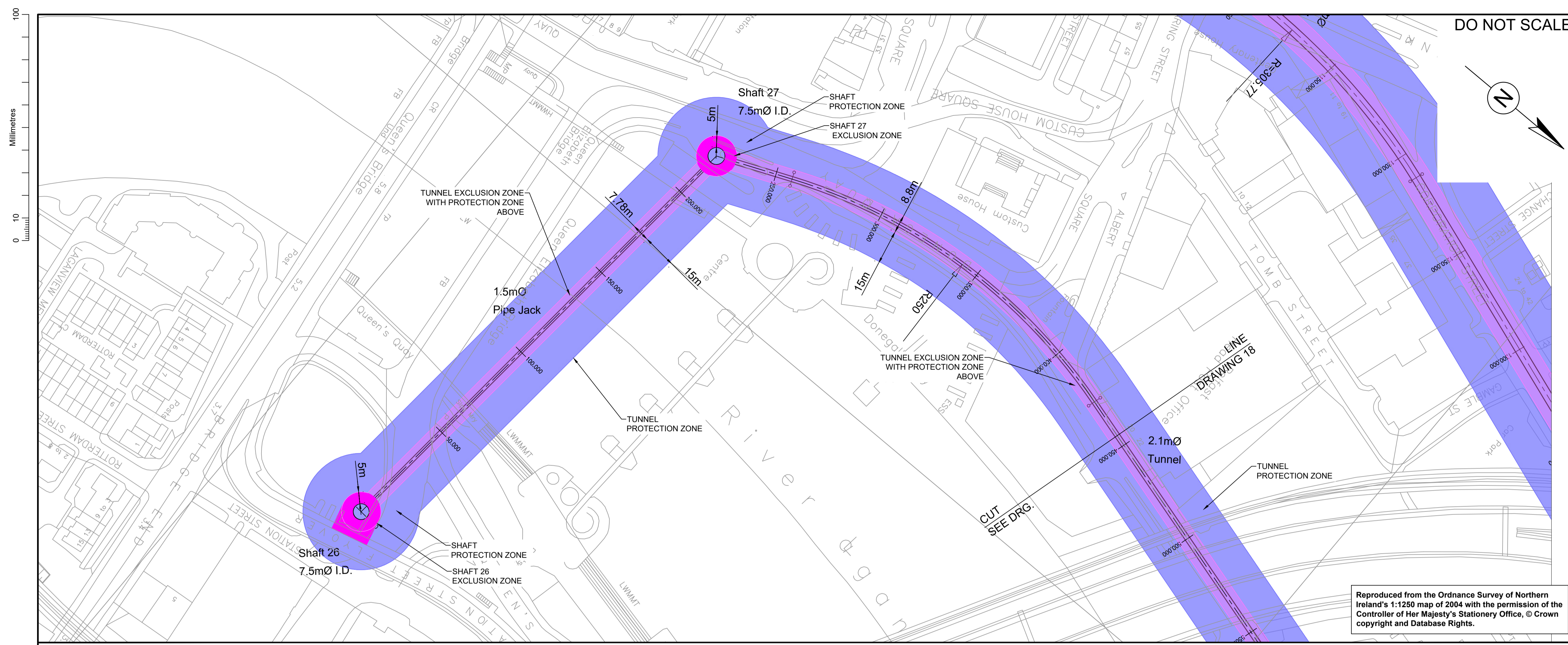


BELFAST STORMWATER TUNNEL SAFEGUARDING REQUIREMENTS GUIDANCE DRAWINGS

Drawing Title
EXCLUSION ZONE AND PROTECTION ZONE LIMITS SHEET 16

Drawing Number
DRAWING 16

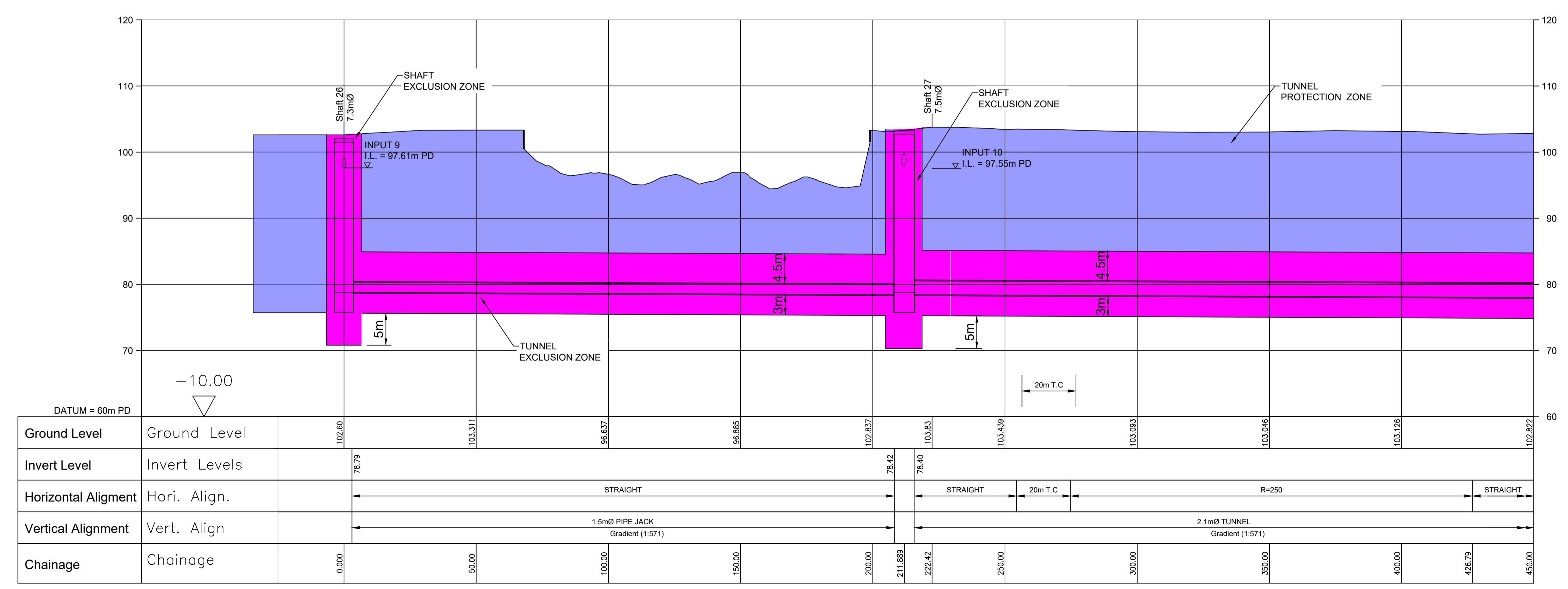
Scale
AS SHOWN
Original Size
A1



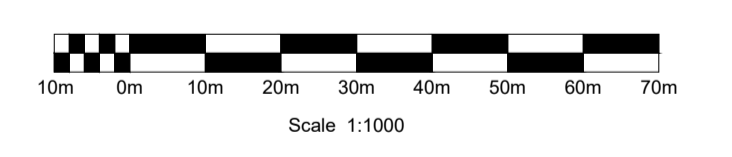
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PLAN
SCALE 1:1000



PROFILE
SCALE 1:1000 HORZ, 1:400 VERT

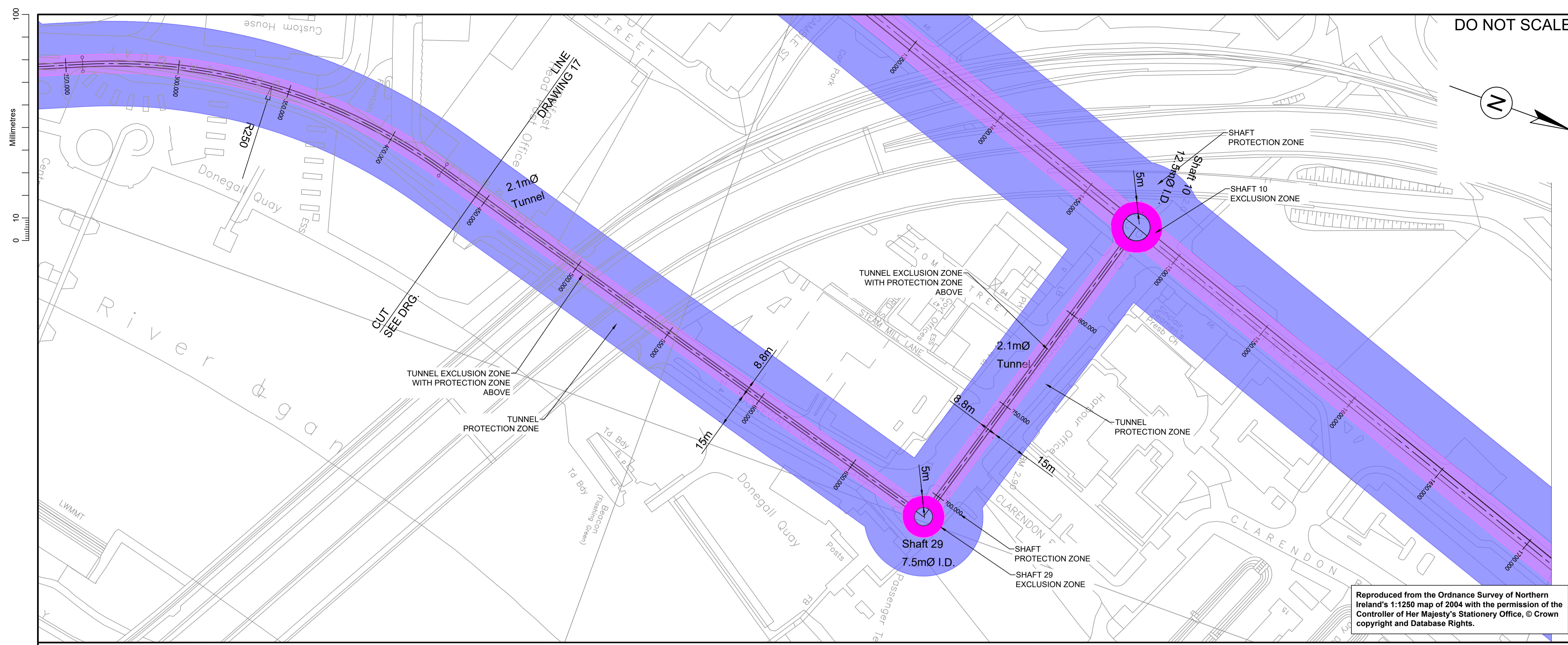


BELFAST STORMWATER TUNNEL SAFEGUARDING REQUIREMENTS GUIDANCE DRAWINGS

Drawing Title
EXCLUSION ZONE AND PROTECTION ZONE LIMITS SHEET 17

Drawing Number
DRAWING 17

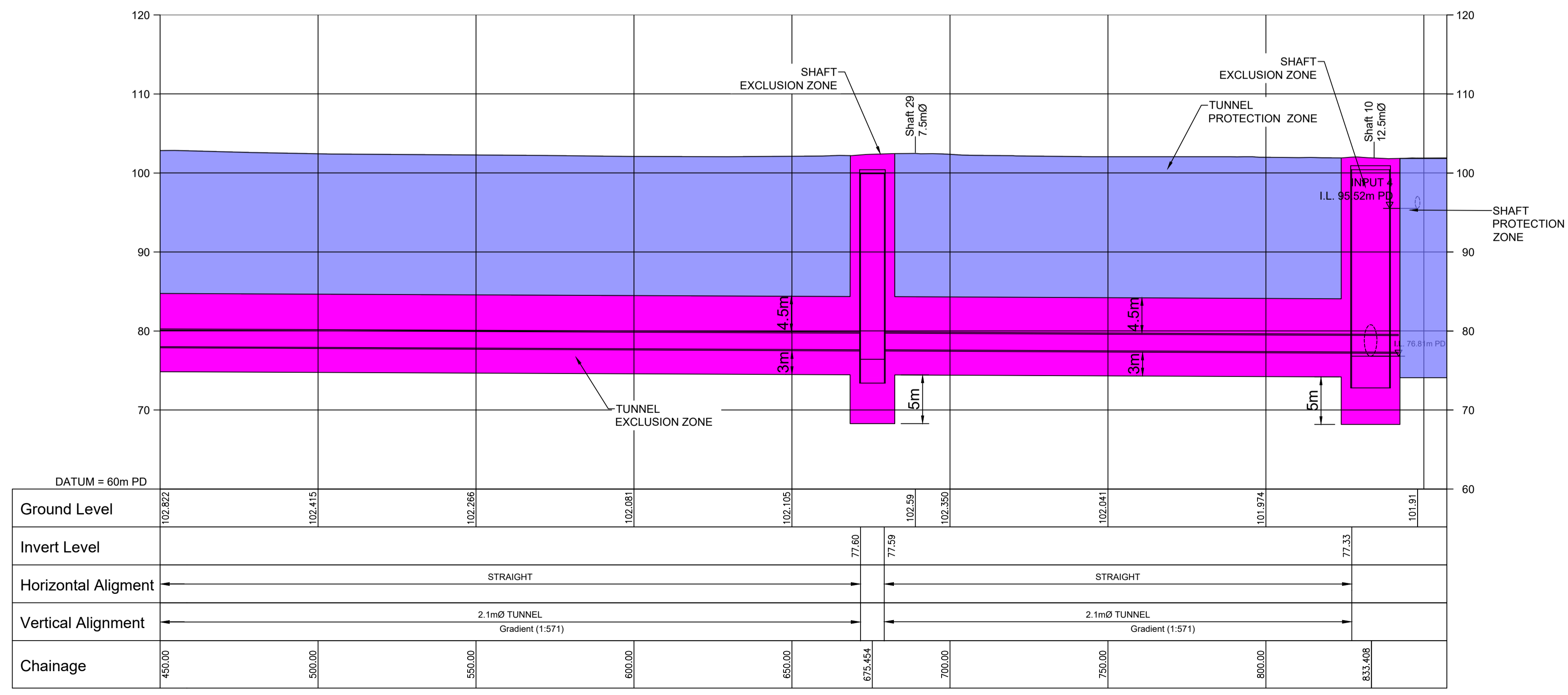
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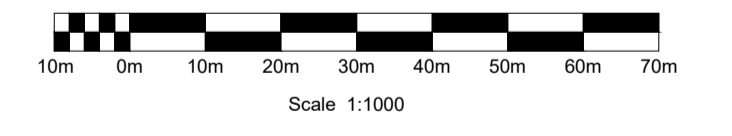
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PLAN
SCALE 1:1000



PROFILE
SCALE 1:1000 HORZ, 1:400 VERT



BELFAST STORMWATER TUNNEL SAFEGUARDING REQUIREMENTS GUIDANCE DRAWINGS

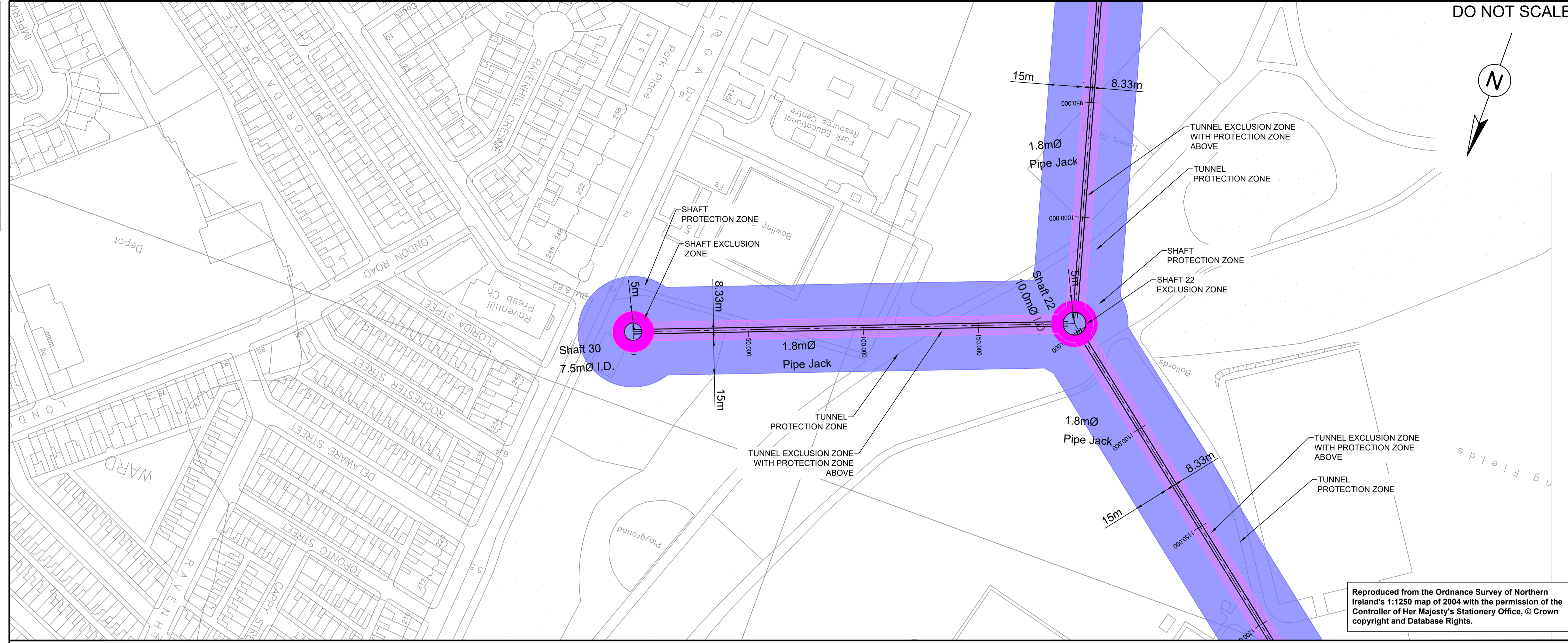
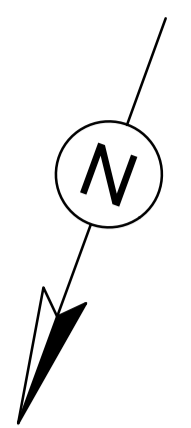
Drawing Title
EXCLUSION ZONE AND PROTECTION ZONE LIMITS SHEET 18

Drawing Number
DRAWING 18

Scale
AS SHOWN
Original Size
A1

100
0 10
Millimetres

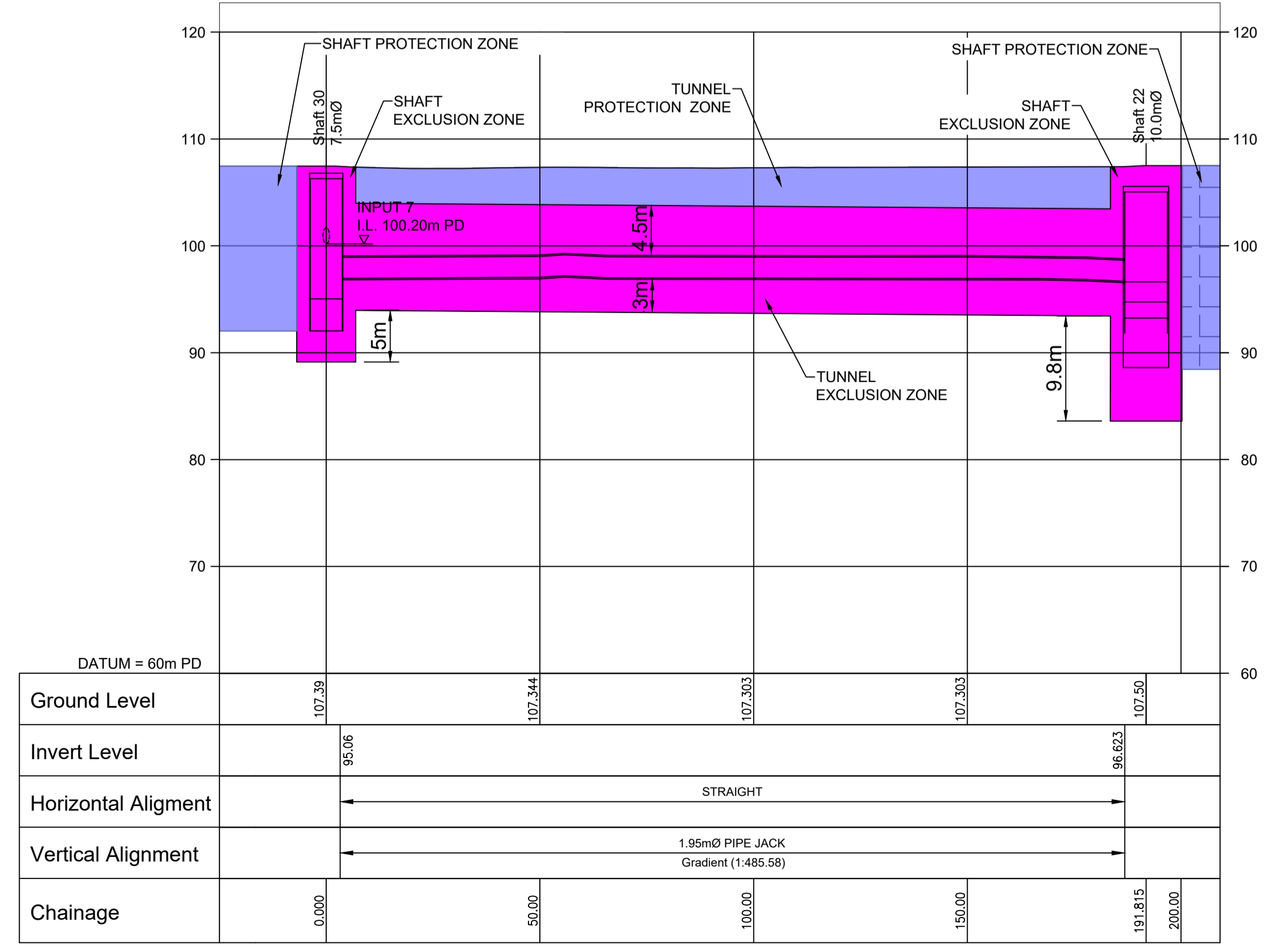
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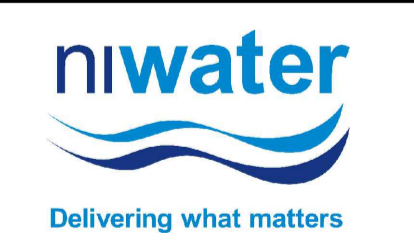
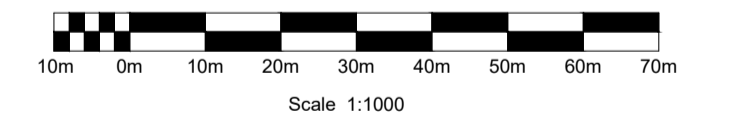
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PLAN
SCALE 1:1000



PROFILE
SCALE 1:1000 HORIZ, 1:400 VERT



BELFAST STORMWATER TUNNEL SAFEGUARDING REQUIREMENTS GUIDANCE DRAWINGS

Drawing Title
EXCLUSION ZONE AND PROTECTION ZONE LIMITS SHEET 19

Drawing Number
DRAWING 19

Scale
AS SHOWN
Original Size
A1

Appendix B. Sample Deed of Consent and Indemnity

*Note: These are example templates only.
Formal documents will be provided by NI Water during the application process.*

[CLIENT]
and
NORTHERN IRELAND WATER LIMITED

**DEED OF CONSENT AND INDEMNITY
IN RESPECT OF PROPOSED CONSTRUCTION OF WORKS AT
[.....]**

30/09/24

THIS DEED is made on [] 20[.].

BETWEEN:-

- (1) **[CLIENT NAME] of** (hereinafter referred to as “**(Client)**” and such term shall include its successors)
- (2) **NORTHERN IRELAND WATER LIMITED** whose registered office is at Westland House, 40 Old Westland Rd, Belfast BT14 6TE (Company Number NI054463) (hereinafter referred to as “**NIW**” and such term shall include its successors and assigns).

Together the Parties and each a Party

RECITALS:

- (A) NIW is a statutory undertaker with responsibility for, amongst other things, the provision and maintenance of a system of public sewers (the “**System**”) across Northern Ireland.
- (B) Part of that System includes the main stormwater tunnel for Belfast (the “**Tunnel**”). The Tunnel comprises 9700m of tunnels which transfer flows under storm conditions from 10 combined sewer overflows to a terminal pumping station, screens and outfall and consists of three main sections. Two sections start at Park Road and Glenmachan Street Wastewater Pumping Station, respectively, and end at Cromac Street. The third section starts at Cromac Street and ends at the Terminal Pumping Station at Belfast Wastewater Treatment Works at Duncrue Street.
- (C) The [Client] seeks consent from NIW pursuant to Section 236 of the Water and Sewerage Services (Northern Ireland) Order 2006 (the “**Order**”) for the purposes of enabling [Client] to undertake and execute the Works.
- (D) The Tunnel is a critical piece of NIW infrastructure. Any damage to the Tunnel and/or interference with its operation, including the threat of same, could, amongst other things: prevent or hinder NIW in performing and/or meeting its statutory functions, duties; and/or obligations; compromise levels of service to NIW customers; cause flooding and/or property damage; compromise the safety of any persons, and consequently expose NIW to considerable liabilities.
- (E) NIW therefore requires that certain duties, obligations, assurances and/or undertakings to be met and/or given by [Client], as a condition of any Consent being given by NIW.
- (F) NIW has agreed to provide its Consent subject to the provisions of this Deed.

IT IS HEREBY AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATIONS

1.1 In this Deed:

1.1.1 clause headings are inserted for convenience only and shall not affect the construction of this Deed and all references to Recitals, Clauses, Appendices, Annexes, Schedules or Paragraphs are to recitals, clauses and paragraphs of, and appendices, annexes and schedules to, this Deed;

1.1.2 words denoting the singular shall also include the plural and vice versa;

- 1.1.3 references to “person” includes references to any individual, partnership, firm, trust, body corporate, government, relevant body, authority, emanation, council or instrumentality, unincorporated body of persons or association;
- 1.1.4 references to statutes or statutory instruments, orders in council, specific standards or codes of practice include references to any modification, extension, replacement or re-enactment of them from time to time
- 1.1.5 the term “including” means including but without limitation and the terms “includes”, “included”, “include”, shall be construed accordingly also;
- 1.1.6 a reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this Deed) at any time;
- 1.1.7 any reference to the masculine gender shall include reference to the feminine gender and any reference to the neuter gender shall include the masculine and feminine gender;
- 1.1.8 words denoting an obligation on a Party to do any act, matter or thing shall include an obligation to procure that it be done and words placing a Party under a restriction include an obligation not to permit or allow any infringement of that restriction;
- 1.1.9 a reference herein to the “execution of the Works” will be deemed, unless the context otherwise requires, to include both the Design and the Construction of the Works and, following the completion of the Works, any subsequent maintenance/repair works;
- 1.1.10 any reference to a public organisation or body or entity (including publicly owned companies) shall be deemed to include a reference to any successor to such public organisation or body or entity or any organisation or entity or body which has taken over the functions or responsibilities of such public organisation or body or entity.
- 1.2 In this Deed the following capitalised words and expressions shall have the meanings provided for below, except where the context requires otherwise:

CDM

Regulations means the Construction (Design & Management) Regulations (Northern Ireland) 2016 or any subsequent amendment to or replacement of.

Claim means any claim, demand, notice and/or proceedings

Collateral Agreement(s) means the Agreement(s) set out in Schedule 3 which [Client] shall arrange for the Contractor and Consultant to execute and complete;

Consent means a consent of NIW pursuant to Article 236(9) and or to the extent required Article 236(2) of the Water and Sewerage Services (NI) Order 2006 as provided for at clause 2.2 of this Deed;

Construction means the construction, completion, testing, commissioning and/or defect correction of the Works or any part thereof (including any and all site preparation and/or temporary works) and “**Construct**”, “**Constructing**” and “**Constructed**” will all be construed accordingly.

Construction

- Contract(s)** means a contract or contracts by which [Client] has engaged or will engage a Contractor or Contractors to execute and complete the Works and a copy of which shall be provided to NIW;
- Contractor(s)** means the contractor or contractors or developer who have been or will be appointed by [Client] to execute and complete the Design and/or Construction of the Works (and such term shall include any replacement contractor);
- Consultant(s)** means the consultant or consultants who have been or will be appointed by [Client] and / or the Contractor for the provision only of any Services in respect of the Works (and such term shall include any replacement consultant);
- Consultant Appointment(s)** means a contract or contracts by which [Client] and / or the Contractor has engaged or will engage a Consultant or Consultants to provide Services in respect of the Works;
- Damage** the occurrence and/or non-occurrence of anything which, as a consequence, adversely affects (either in the short or long term), the stability, integrity, condition, durability, serviceability, and/or operation and maintenance of the Tunnel (or any part thereof) and/or to any surrounding area, including, but not limited to, maintaining the integrity of its supporting matrix, arising out of and/or in connection with, whether directly or indirectly, the execution of the Works
- Deed** means these terms and conditions (including the recitals), all schedules attached to them, and, any amendments made to any schedules or these terms and conditions in accordance with the terms and conditions
- Defects Certificate** The Certificate of Making Good Defects or has the meaning ascribed to it in the Construction Contract;
- Design** means all work necessary for the preparation of drawings, specifications and/or all other documents from which any part of the Works (including temporary works) are to be constructed and includes the provision of all Design Data
- Design Data** means all material calculations, designs, design or construction information, standards, specifications, plans, drawings, graphs, sketches, models and/or other materials used, prepared or to be prepared by or on behalf of [Client] relating to the Works, including any development of, supplement to or amendment of such documents.
- Disclosed Data** has the meaning given to it in Clause 7.1
- Disruption** means any interference, obstruction, delay, disruption and/or hindrance being caused, and/or which may be caused, to NIW (including any NIW Party) in the exercise of its statutory functions and duties in general and/or in respect of the Tunnel (including its operation and maintenance), and/or, its rights pursuant to this Deed, as a consequence (either directly or indirectly) of the execution of the Works. For the avoidance of doubt, Disruption will also include any increased difficulty, and/or any requirement for additional (or special) measures to be taken, in respect of the execution of any Maintenance/Upgrade Works by NIW (including NIW Parties) as a consequence of the execution of the Works.
- Effective Date** means the date of execution of this Deed by both Parties

Emergency	<p>means the actual, and/or the Threat of the imminent, occurrence of any event or circumstance which does and/or may result in:</p> <ul style="list-style-type: none"> • Damage being caused; and/or, • without prejudice to the foregoing, the Tunnel no longer operating, or being able to operate, at full design capacity
Exclusion Zone	<p>means</p> <ul style="list-style-type: none"> • the volume of subsoil along the Tunnel alignment (Exclusion Zone – Tunnels); and, • the column of subsoil and surface surrounding each shaft of the Tunnel and the access route to the shaft (Exclusion Zone – Shafts) <p>in which no works or developments are allowed to encroach, as more particularly described in the Safeguarding Note.</p>
Law	<p>means any and all applicable legal and regulatory requirements in Northern Ireland including Orders in Council, Acts of Parliament and subordinate instruments, orders, rules and/or regulations made thereunder; binding court judgments; and/or the rules, regulations and/or bye-laws of any local authority and/or statutory, public or utility undertaker</p>
Liaison Procedures	<p>means any of the procedures as set out in Part 1 of Clause 5 (Liaison and Review Procedures) as the same may be, in each case, amended or supplemented from time to time. Compliance in full by [Client] (including any [Client] Party) with the provisions of clause [5] and the Liaison Procedures will form part of the NIW Requirements.</p>
Loss or Losses	<p>means any and all damages, direct losses and reasonable costs (including legal costs) and/or expenses properly incurred whatsoever;</p>
Maintenance/ Upgrade Works	<p>means any works and/or services to be executed by or on behalf of NIW which form part of the general maintenance of, and/or any upgrade works to, the Tunnel or any part thereof and will include:</p> <ul style="list-style-type: none"> • inspections; • cleaning operations; • renewal, reinstatement, replacement and/or remedial works (including temporary repair works) which are required for reasons not connected with the execution of the Works; and, • other maintenance services.
[Client] Party	<p>means any of [Client]'s employees and/or agents, all other persons employed or engaged or authorised, or to be employed or engaged or authorised, on or in connection with the Works by [Client] and/or any other person on the Site in connection therewith, excluding NIW and any NIW Party</p>
[Client]'s Representative	<p>means the person or persons (or such substitute or substitutes) as are to be appointed by [Client] from time to time in accordance with Clause 4.</p>

NIW Party	means any of NIW's employees and/or agents, and all other persons employed or engaged or authorised by NIW, excluding [Client] and any [Client] Party;
NIW Requirements	means any and all of the conditions and/or requirements that are to be satisfied and/or complied with by [Client], as more specifically set out and/or referred to and/or provided for at Schedule [1] hereto and/or elsewhere in this Deed, including any development of, supplement to and/or amendment of such conditions and/or requirements. Compliance by [Client] in full with the Liaison Procedures and the Review Procedures (subject to the above provisions) will form part of the NIW Requirements.
NIW Work	means the Maintenance/Upgrade Works and/or Tunnel Works;
NIW's Representative	means the person or persons (or such substitute or substitutes) as may be appointed by NIW from time to time in accordance with Clause 4
Party	means a party to this Deed;
Protection Zone	means: <ul style="list-style-type: none"> • the volume of subsoil and the area on the ground surface along the Tunnel alignment (Protection Zone – Tunnels); and, • the column of subsoil and the area on the ground surface surrounding each shaft of the Tunnel (Protection Zone – Shafts) in which works or developments could be allowed, as more particularly described in the Safeguarding Note.
Relevant Zone	has the meaning ascribed to such term at clause 2.2 hereto;
Review	means the review and consideration by NIW (including any NIW Party) of any Reviewable Data. “Reviewed” and “Reviewing” will all be construed accordingly
Reviewable Data	means all data, documentation, materials, inputs and/or information relating to the Design and Construction of the Works which will be subject to Review under the Review Procedures (and/or as may be otherwise provided for by the Parties). The full extent and nature of the data, documentation, materials, inputs and/or information to be reviewed under Review Procedures will be discussed and finalised through the Liaison Procedures but, notwithstanding that, it includes: <ul style="list-style-type: none"> • the Design Data; and, • to the extent not included in the Design Data, all proposed methodologies (including method statements) and/or systems of work for Construction (including the analysis of any anticipated loadings and their possible effects on the Tunnel). This includes (to the extent not already covered above) the items specified in the Annex to this Deed.
Review Procedures	means the procedure or procedures relating to the Review of the Reviewable Data and which will include the review Procedure set out at Part 2 of clause 5 (Liaison and Review Procedures) (as may be amended and/or revised by NIW from time to time) and/or any other review procedures. Compliance by [Client] (including any [Client] Party) with the Review Procedures will form part of the NIW Requirements.

Safeguarding

Note means the technical guidance note, entitled 'Belfast Stormwater Tunnel Safeguarding Note' (Version 1.0 dated 23 February 2022), and all references herein to the Safeguarding Note will also include references to any amendment and/or replacement of same, which may occur from time to time and which is notified to [Client]. The Safeguarding Note forms part of the NIW Requirements.

Sign Off means, following the completion of any review (including a Review) by NIW and/or any NIW Party, whether pursuant to any Review Procedure (or otherwise), of any data, documentation, materials, inputs and/or information (including Reviewable Data) that may have been provided to it by [Client] and/or any [Client] Party either pursuant to this Deed and/or in connection with the execution of the Works, that NIW has notified [Client] in writing that NIW has no objection to [Client] proceeding with the proposed course of action, execution of the Design or Construction (whichever the case may be) of that part of the Works to which the data, documentation, materials, inputs and/or information relates. “**Signs Off**” “**Signed Off**” and “**Signing Off**” will all be construed accordingly. For the avoidance of doubt, Sign Off is strictly limited to being a technical sign off only. It does not create any legal right or entitlement for [Client] to execute the Works, or any part of same, or to undertake the proposed course of action which may be the subject of any Sign Off. Accordingly, [Client] will not be entitled to make (and will be estopped from making) any Claim against NIW that it does and/or [Client] will not be entitled to rely (and will be estopped from relying) upon any Sign Off in support of any Claim that it may seek to make in respect of any such right or entitlement either being created or existing.

Site means the land or lands upon which the Works are to be executed, as may be more particularly described and identified in Schedule 2.

Threat the occurrence and/or non-occurrence of anything which, as a consequence, poses a potential or actual risk (either in the short or long term), to the stability, integrity, condition, durability, serviceability, and/or operation and maintenance of the Tunnel (or any part thereof) and/or to any surrounding area, including but not limited to the integrity of its supporting matrix, arising out of and/or in connection with, whether directly or indirectly, the execution of the Works

Tunnel has the meaning ascribed to such term at Recital B above (which for the avoidance of doubt will include all access chambers/points and connected infrastructure and pipework) and as may be more precisely identified in the map attached at Schedule 2 hereto

Tunnel Health & Safety File

means the existing health and safety file, pursuant to the CDM Regulations, in respect of the Tunnel in NIW’s possession. The Tunnel Health & Safety File forms part of the Disclosed Data.

Tunnel Works means any works and/or services that are executed and/or are to be executed by or on behalf of NIW in respect of any Damage and/or Threat which will include:

- excavation/uncovering/breaking open works;
- inspections;
- remedial works (including temporary repair works); and
- any necessary additional measures

Working Day means a day (other than a Saturday or Sunday) on which banks are generally open to the public for business in Northern Ireland.

Works has the meaning ascribed to such term at Recital C. For the avoidance of doubt, the term "Works" will also include both permanent and temporary works, and, is also expected to include works executed in accessing the Tunnel from defined access points (which may be remote from the Site) for survey purposes.

1.3 This Deed shall not be construed or interpreted against or to the disadvantage of NIW on the grounds that this Deed represents NIW's basis for providing its Consent and that this Deed and/or any particular term or condition hereof may have originated from NIW.

2. **CONSENT**

2.1 For the purposes of [Client] being able to Construct the Works it will first need to obtain the necessary consents from NIW pursuant to Article 236(9) and (to the extent necessary) pursuant to Article 236(2) of the Water and Sewerage Services (NI) Order 2006.

2.2 Subject to the provisions of this Deed and [Client]'s compliance in full with the provisions of this Deed, NIW consents, pursuant to Article 236(2) and (9) of the Water and Sewerage Services (NI) Order 2006, to the execution of the Works over and/or in the vicinity of the Tunnel (the "**Relevant Zone**").

2.3 The extent of the Relevant Zone will be determined by NIW, acting reasonably, but the plan attached at Schedule 2 hereto provides a general indication of the Relevant Zone (in the horizontal plane) hatched in red (as may be revised from time to time by NIW). The Relevant Zone will also include the Exclusion Zone and the Protection Zone. NIW has already provided to [Client] what are understood to be as-built co-ordinates of the Tunnel (the "**As-built Co-ordinates**") which form part of the Tunnel Health & Safety File. However, notwithstanding the provision of same, and for the avoidance of doubt, the As-built Co-ordinates are Disclosed Data and therefore NIW makes no representation that the As-built Co-ordinates are complete, correct and/or accurate.

2.4 [Client] will execute the Works, and/or will cause the Works to be executed, in strict conformity in all respects with the NIW Requirements and in any event, in such a manner so as to not cause any Threat, Damage and/or Disruption. [Client] bears, and will bear, all risks and responsibilities of, and incidental to, the execution of the Works.

2.5 The Consent provided for in Clause 2.2 is that of NIW alone and does not obviate or remove the need for [Client] to obtain the consent of any person which might be required at Law to execute the Works.

2.6 For the avoidance of doubt, nothing otherwise contained and/or provided for in this Deed will in any way whatsoever extinguish, reduce, restrict, qualify, or adversely affect any rights, entitlements and/or powers that NIW has, and/or will have, at Law whether for the purposes of exercising its statutory functions, duties and obligations or otherwise.

3. **THE TUNNEL, DAMAGE AND EMERGENCIES**

Access

3.1 Subject to the remaining provisions of this clause 3.1, [Client] will provide, and will use best endeavors to ensure that, NIW and/or any NIW Party has access to the Tunnel in order for NIW:

- (a) to exercise any rights and/or entitlements of NIW under this Deed; and/or,
- (b) to exercise and fulfill its statutory functions, duties and obligations; and/or

- (c) to execute any Maintenance/Upgrade Works and/or Tunnel Works (whichever the case may be).

Provided that prior to accessing any parts of the Tunnel that adjoin the Site (but excluding the Site itself, which shall not be accessed by NIW at any time, save in the event of an Emergency to carry out any repair work to the Tunnel in accordance with clause 3.3.2):

- (i) NIW and/or any NIW Party shall provide reasonable notice of not less than 5 Working Days to [Client];
- (ii) if [Client] (acting reasonably) considers appropriate, NIW shall be accompanied by [Client]'s Representative (or such other person nominated by [Client] to accompany NIW and/or any NIW Party); and
- (iii) NIW shall execute any NIW Work without entering upon the Site and/or without disturbing and/or disrupting the Works.

Stopping the Works

- 3.2 Without prejudice to any other rights, remedies and/or powers which NIW has or may have either pursuant to this Deed and/or at Law:
 - 3.2.1 Subject to clause 3.2.3, NIW will be entitled to take whatever actions which may be necessary, in NIW's opinion, to prevent, alleviate and/or minimise the extent of any Threat and/or Damage (including for the avoidance of doubt, the remedy of same) and/or Disruption, which will include but not be limited to NIW requiring the execution of the Works, or any part thereof, to be delayed and/or temporarily or permanently stopped by [Client]. In respect of any such actions, [Client] agrees that it will do whatever is reasonably required of it by NIW in order to put such actions fully into effect and [Client] also undertakes to ensure that any [Client] Party will do likewise; and,
 - 3.2.2 Subject to clause 3.2.3, [Client] will, if required by NIW, remove or cease any part or parts of the Works if NIW, in its opinion (acting reasonably), considers that the existence of same:
 - (a) has caused and/is causing Damage;
 - (b) is causing a Disruption;
 - (c) will cause Damage and/or Disruption and/or,
 - (d) constitutes a Threat.
 - 3.2.3 Prior to commencing any actions under 3.2.1 and 3.2.2, NIW shall give prior notice of the same in writing to [Client] and provide a sufficiently detailed explanation as to:
 - (a) why the temporary suspension of the Works or removal of part(s) of the Works is required;
 - (b) the anticipated duration of any temporary suspension;
 - (c) information as to the steps required to lift the suspension or to prevent the removal of the whole or any part of the Works.
 - 3.2.4 On service and receipt of a notice under clause 3.2.3, the Parties shall work together to ascertain whether there is an alternative solution to stopping or removing the Works. If it is agreed that if the Works are to be temporarily or permanently stopped or removed, NIW shall use all reasonable endeavors to find a solution which will allow [Client] to be recommence and complete the Works once the relevant Threat and/or

Damage and/or Disruption outlined in clauses 3.2.1 and 3.2.2 has been satisfactorily resolved between the Parties.

Emergency

- 3.3 In the case of any Emergency, NIW will not be required to provide any notice to [Client] (including any [Client] Party) in respect of NIW (including any NIW Party) accessing the Tunnel, and NIW (including any NIW Party) will be provided by [Client] (including any [Client] Party) with, immediate unrestricted access to the Tunnel and/or do all such things as may be necessary for the purposes of enabling NIW (including any NIW Party) to:
- 3.3.1 properly assess and/or investigate any Threat and/or Damage, including measures to avoid and/or mitigate impact of same; and/or,
 - 3.3.2 execute any NIW Work.
- Provided that subject to clause 3.2 above and 3.4 below, NIW shall not enter upon the Site and/or disturb or disrupt the Works at any time.
- 3.4 For the avoidance of doubt, if in NIW's reasonable opinion, a Threat has arisen, then NIW will be entitled in its absolute discretion to execute, and/or cause to be executed, any Tunnel Works it considers necessary either to prevent, and/or minimise the impact of, such Threat crystallising into Damage even if it impacts directly upon the site or the Works.
- 3.5 Any Tunnel Works will be executed by NIW (including any NIW Party).
- 3.6 Without prejudice to any other rights, remedies and/or powers which NIW has or may have either pursuant to this Deed and/or at Law, [Client] will pay, on demand by NIW, the reasonable costs properly incurred and/or to be incurred by NIW in respect of the execution by NIW (including any NIW Party) of any NIW Work which has arisen as a direct consequence of:
- 3.6.1 any Damage and/or Threat (including any NIW Work undertaken to prevent, and/or minimise the impact of, such Threat crystallising into Damage); and/or,
 - 3.6.2 any Disruption, (including any NIW Work undertaken to prevent, and/or minimise the impact of, any such Disruption).

4. REPRESENTATIVES

NIW's Representative

- 4.1 NIW shall appoint a competent and qualified person to act as its agent in connection with this Deed and such NIW's Representative who will have the delegated authority to act on behalf of NIW in all matters except as may otherwise be set out in this Deed. NIW's Representative shall exercise such functions as may be set out in this Deed and such other functions in respect of this Deed which NIW may notify to [Client] in writing from time to time.
- 4.2 NIW's Representative shall have full authority to act on behalf of NIW for all purposes of this Deed. [Client] and [Client]'s Representative shall be entitled to treat any act of NIW's Representative in connection with this Deed as being expressly authorised by NIW and [Client] and [Client]'s Representative shall not be required to determine whether any express authority has in fact been given.

[Client]'s Representative

- 4.3 [Client] shall appoint a competent and qualified person to act as its agent in connection with this Deed and such person shall be [Client]'s Representative who will have the delegated authority to act on behalf of [Client] in all matters except as may otherwise be set out in this Deed. [Client]'s Representative shall exercise such functions as may be set out in this Deed and such other functions in respect of this Deed which [Client] may notify to NIW in writing from time to time.

- 4.4 [Client]'s Representative shall have full authority to act on behalf of [Client] for all purposes of this Deed. NIW and NIW's Representative shall be entitled to treat any act of [Client]'s Representative in connection with this Deed as being expressly authorised by [Client] and NIW and NIW's Representative shall not be required to determine whether any express authority has in fact been given.
- 4.5 NIW shall and shall procure that the NIW Representatives shall only communicate with the [Client]'s Representative and unless specifically authorised by the [Client]'s Representative, shall not communicate with any [Client] Party.

Change of Representatives

- 4.6 Either Party may, at any time and from time to time by notice to the other, terminate the appointment of their respective Representatives or appoint one or more substitute Representatives. Any such notice shall specify the date on which such termination or substitution shall have effect.
- 4.7 As soon as reasonably practicable upon either party's Representative ceasing to act in the case of death or serious illness and 20 (twenty) Working Days prior to termination of the appointment in all other cases, the applicable Party shall notify the other in writing of its intention to appoint a substitute.

5. LIAISON AND REVIEW PROCEDURES

Liaison

Part 1: Liaison

- 5.1 The Parties agree that the provisions of Part 1 of this clause 5 shall act as a framework for communication between [Client] and NIW (the "**Liaison Procedures**").
- 5.2 The Parties agree to work together in order to deliver the outcomes of this Deed and in order to achieve the completion of the Works.
- 5.3 The Parties agree to provide for regular meetings, reasonable exchange of information, co-ordination and co-operation between [Client], any [Client] Party, NIW, any NIW Party and interested parties, as appropriate, in connection with the proposed execution of the Works. Each Party will take into account any reasonable comments raised by the other during the course of any such communications.
- 5.4 Whenever either Party is required by this Deed to take any action which requires liaison or communication with the other, or any other third party, it shall take such action in accordance with the principles set out in this clause.
- 5.5 The Parties agree to the following principles:
- 5.5.1 so far as possible, there will be full consultation and co-operation between the Parties (and between any NIW Party and [Client] Party);
 - 5.5.2 matters will be prepared on a joint basis so far as possible;
 - 5.5.3 NIW will be given a reasonable opportunity to consider matters which relate to the Works on Site and where information is supplied it will include, or be accompanied by, sufficient explanatory or other material to enable the information to be properly considered;
 - 5.5.4 so far as is practical, points arising will be discussed in a timely fashion between those concerned so that where there is reference to any material being sent for comment, this will be a reference to the final form of material, the substance of which has previously been discussed between those concerned;

- 5.5.5 the Parties may agree between themselves alternative timescales (to those timescales set out in Part 2 of clause 5 below) for the review and consideration of points or comments raised or documents submitted by either Party to the other; and
- 5.5.6 the Parties may (working together) agree amendments to these guiding principles in the light of practical experience and, if so, they will be amended as set out below.
- 5.6 Where either NIW or [Client] is dissatisfied with the operations of any Liaison Procedures and/or considers that they need to be amended in any way, the following provisions will apply:
- 5.6.1 The matter must, in a timely fashion, be brought to the attention of NIW's Representative and [Client]'s Representative who will, as soon as possible, discuss matters with a view to resolving the dissatisfaction and reaching agreement on what action will be taken, including any possible amendment to the Liaison Procedures; and,
- 5.6.2 Should NIW's Representative and [Client]'s Representative fail to agree, then the matter will be determined in accordance with the dispute mechanism procedure set out in clause 17 of this Deed.

Part 2: Review Procedure

- 5.7 It is acknowledged that, following the Effective Date and whilst this Deed remains in place, [Client] will (where stipulated under this Deed) be required to submit Reviewable Data to NIW's Representative who will be entitled (acting reasonably at all times) to review, comment and/or Sign Off any item submitted for review (the "**Submitted Item**") in accordance with the review procedure set out in this Part 2 of clause 5.
- 5.8 The items specified in the Annex to Schedule 1 will be submitted for review, comment and/or Sign Off in respect of the Works and will constitute Reviewable Data.
- 5.9 At the relevant time, [Client] will submit the relevant Submitted Item in an orderly fashion for review, comment and/or Sign Off by NIW's Representative. Each submission will be accompanied by a copy of any proposed documentation to be reviewed.
- 5.10 NIW's Representative shall provide its response to any Submitted Item within ten (10) Working Days of submission. The response of NIW's Representative may be made in the following ways:
- (a) return a Submitted Item to [Client] marked "no objection - proceed" which will mean that:
- (i) NIW's Representative has no objection to the Submitted Item and/or Signs Off the relevant item for the purposes of this Deed; and
 - (ii) [Client] may proceed with the execution of the Design or Construction (whichever the case may be) of that part of the Works to which the Submitted Item relates, entirely at its sole risk, on the basis of the Submitted Item as submitted; or
- (b) return a Submitted Item to [Client] with the comment "proceed subject to comments as noted" which will mean that [Client] may proceed with the execution of the Design or Construction (whichever the case may be) of that part of the Works to which the Submitted Item relates, entirely at its sole risk, subject to taking all of NIW's comments into account, and [Client] is not required to refer the Submitted Item back to NIW's Representative; or
- (c) return a Submitted Item to [Client] with an objection or alternatively with the comment "re-submit subject to comments as noted" in which case [Client] must:
- (i) re-submit the Submitted Item to NIW's Representative for its approval (acting reasonably) taking NIW's Representative's objection and/or reasonable comments into account; and

- (ii) not proceed with the execution of the Design or Construction (whichever the case may be) of that part of the Works to which the Submitted Item relates until the Submitted Item has been Signed Off by NIW's Representative (acting reasonably). NIW's Representative must respond to the re-submitted Submitted Item within ten (10) Working Days. If NIW's Representative has not responded within this time frame then the Submitted Item shall be deemed to be in agreed form and [Client] may proceed with the execution of the Design or Construction (whichever the case may be) of that part(s) of the Works to which the Submitted Item relates.

5.11 NIW's Representative may raise comments or objections in relation to any Submitted Item if, in NIW's Representative's opinion (acting reasonably at all times):

- (a) the Submitted Item will effect developments which would constitute any Threat and/or manifest in any Damage and/or Disruption;
- (b) the Submitted Item is inconsistent or conflicts with any other Submitted Item that has been reviewed or is under review;
- (c) implementation of the Submitted Item could materially adversely affect the ability of NIW to fully perform its statutory functions and/or comply with its duties and/or obligations at Law; and/or,
- (d) NIW's Representative cannot reasonably be expected to accept the Submitted Item because of a lack of information and/or any material unaddressed queries or concerns.

5.12 [Client] will provide NIW with computer-readable media copies of all Submitted Items to NIW's Representative and will maintain a record of the date and contents of the submission of all Submitted Items and the date of receipt and content of all Submitted Items that are returned by NIW's Representative which shall also be shared with NIW Representative.

6. NIW REQUIREMENTS

6.1 In respect of the proposed execution of the Works, [Client] will, without charge to NIW, fully comply with and/or satisfy (whichever the case may be) any and all of the NIW Requirements, including the Liaison Procedures and the Review Procedures. NIW shall also comply with the requirements of the Liaison Procedures and the Review Procedures and both parties shall liaise with each other in connection with the provisions of this Deed.

6.2 Without prejudice to the provisions of Clause 2, [Client] will not commence the Construction of any particular part and/or element of the Works at the Site unless and until [Client] has first fully complied with and/or satisfied any and all of the procedures and requirements which may have been set out, referred to and/or provided for in the NIW Requirements in respect of that part and/or element and the Contractor and Consultant have signed the Collateral Agreement.

6.3 The Parties agree and acknowledge that, as at the date of this Deed, Stage 1 of Schedule 1 has been completed by [Client] in full and in compliance with the requirements of that Schedule and the remainder of this Deed.

6.4 Without prejudice to any other provisions of this Deed, if the Works, or where the Works have been executed in separate sections ("Sections"), the relevant Sections thereof, have been completed within the Relevant Zone, to the extent that [Client] has been able to take back possession of the completed Works, or the relevant Section, then [Client], at its sole cost, will provide NIW with as-built drawings in PDF format comprising:

6.4.1 Site Location Plan at 1:1250 or 1:1250 scale when printed with the site boundary clearly indicated in red and relative to existing topographical features;

6.4.2 Site layout plan to an appropriate scale when printed showing the location of the existing tunnel and ancillary structures (e.g. access shafts) within the site boundary

based on co-ordinates provided by NIW;

- 6.4.3 Longitudinal section to an appropriate scale when printed of the existing Tunnel and ancillary structures (e.g. access shafts) within the site boundary based on co-ordinates provided by NIW;
- 6.4.4 Details comprising plans and sections to appropriate scales when printed of as constructed Works; and
- 6.4.5 Any other reasonable data in a format reasonably requested by NIW or NIW Representative at any time.

for the Works, or the relevant Sections thereof, whichever the case may be, within the Relevant Zone, within 3 (three) months of [Client] taking back possession of the Works, or the relevant Section thereof, whichever the case may be.

7. DISCLOSED DATA

- 7.1 Without prejudice to the foregoing, NIW has made and/or may make available to [Client], either prior to and/or after the Effective Date, certain materials, inputs, information, documents and/or data relating to the Tunnel, the Site and/or other matters which are or may be relevant to the execution of the Works, the Project and/or any of the duties and obligations undertaken by [Client] under this Deed (the "**Disclosed Data**").
- 7.2 NIW (including all NIW Parties) shall be deemed to have given no warranty or undertaking that any Disclosed Data represents all of the information in its (or their) possession, control or power which is or may be relevant or material to the execution of the Works, the Project or the obligations undertaken by [Client] under this Deed.
- 7.3 [Client] acknowledges that it has conducted and/or will conduct its own analysis and review of the Disclosed Data and therefore [Client] will be deemed to have satisfied itself as to the accuracy, completeness and/or fitness for purpose of all such Disclosed Data upon which it may place any reliance and accordingly [Client] accepts all risk in respect thereof.

8. INDEMNITY AND CONDUCT OF CLAIMS

- 8.1 [Client] will be responsible for, and will indemnify NIW, within 20 Working Days of written demand, from and against any and all liability whatsoever (whether in contract, equity, tort (including negligence), by statute or otherwise at Law) for any and all Claims and/or Losses which may be suffered and/or incurred, by NIW directly as a consequence of or in any way connected with:
 - 8.1.1 any negligent act and/or omission by [Client] (including any [Client] Party) to the extent same same has not been caused, or contributed to, in whole or in part, by reason of the negligence of NIW (including any NIW Party); and/or,
 - 8.1.2 without prejudice to the generality of clause 8.1.1 above, a breach by NIW of any of its statutory duties and/or any other duties it may have at Law, arising as a direct consequence of any negligent act and/or omission of [Client] and/or any [Client] Party;
- 8.2 Nothing in clause 8.1 shall restrict or limit NIW's general obligation at law to mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under clause 8.1.
- 8.3 [Client] shall not be liable in respect of Claims and/or Losses attributable solely to any act or default on the part of NIW (whether negligent, deliberate, fraudulent or otherwise).
- 8.4 [Client]'s liability to NIW arising under any indemnity in this Deed shall be without prejudice to any other rights and/or remedies which NIW has or may have either pursuant to this Deed and/or at Law.

- 8.5 Notwithstanding the above, [Client]'s total liability for any claims and/or any losses which may be suffered or incurred by NIW shall be capped at £100,000,000 in the aggregate.

Conduct of Claims

- 8.6 If NIW receives any notice, demand, letter or other document concerning any Claim from which it appears that NIW is or may become entitled to indemnification under this Deed, NIW shall give notice in writing to [Client] as soon as reasonably practicable.

8.6.1 Subject to the following provisions of this clause 8.5, on the receipt of a notice pursuant to clause 8.4, [Client] shall be entitled to resist the Claim in the name of NIW at its own expense and shall have the conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations, and NIW will give [Client] all reasonable co-operation, access and assistance for the purposes of considering and resisting such Claim.

8.6.2 With respect to any Claim being resisted by [Client] in accordance with Clause 8.5.1:

- (a) [Client] shall keep NIW fully informed and consult with it about the conduct of the Claim;
- (b) to the extent that NIW is not entitled to be indemnified by [Client] for all of the liability arising out of the act or omission which is the subject of the Claim, no action shall be taken pursuant to clause 8.5.1 which shall increase the amount of any payment to be made by NIW in respect of that part of the Claim which is not covered by the indemnity from [Client]; and
- (c) [Client] shall not pay or settle such Claim without the written consent of NIW such consent not to be unreasonably withheld or delayed.

8.6.3 NIW shall be free to pay or settle any Claim on such terms as it may (subject always to clause 8.2), in its absolute discretion, think fit, and, without prejudice to any other rights, remedies and/or powers which NIW has or may have either pursuant to this Deed and/or at Law (including, without limitation, clause 8.1), if:

- (a) within 20 (twenty) Working Days of the issue date of the notice from NIW under Clause 8.4 [Client] fails to notify NIW of its intention to dispute the Claim; or,
- (b) [Client] fails to comply in any material respect with the provisions of clause 8.5.2.

8.6.4 NIW shall be free at any time to give notice to [Client] that it is taking-over the conduct of any defence, dispute, compromise or appeal of any Claim subject to clause 8.5.1 or of any incidental negotiations. Upon receipt of such notice [Client] shall promptly take all steps necessary to transfer the conduct of such Claim to NIW and shall provide to NIW all reasonable co-operation, access and assistance for the purposes of considering and resisting such Claim. If NIW gives any notice pursuant to this clause 8.5.4, then [Client] shall be released from its indemnity in respect of such Claim save where such notice was given as a consequence of the failure of [Client], in the opinion of NIW, to deal properly with any such Claim in which case NIW shall not settle or compromise any such claim without the consent of [Client], such consent not to be unreasonably withheld or delayed.

9 INSURANCE

Minimum Insurance Requirements for [Client]

- 9.1 [Client] will obtain and maintain in full force and effect, at its own cost and expense, during the term of this Deed and the execution of the Works and after the completion of same until release of [Client] liability pursuant to clause 11A, the following minimum types and limits of insurance

and any other insurance that may be required by Law. Such insurance shall be maintained with reputable and solvent insurance companies having, where available, a Standard & Poor's insurance rating of A- or better or a comparable rating from a reputable rating agency, and will comply with all those requirements as stated herein. In no way do these minimum insurance requirements limit the liability of [Client] assumed elsewhere in this Deed, including but not limited to [Client]'s indemnity obligations.

- 9.1.1 Employers' liability insurance with limits not less than £10,000,000 for any one occurrence or series of occurrences arising out of one event. The Contractor shall procure that such insurance contains an "Indemnity to Principals" provision in favour of NIW with such coverage noted on the insurance policy either specifically or generally..
- 9.1.2 Public liability insurance cover with a limit of cover of not less than £100,000,000 for any one occurrence or series of occurrences arising out of one event in respect of [Client]'s liability at law in respect of death of or injury to third parties and/or loss of or damage to third party property, destruction, loss of amenities or any like cause all arising out of or in the course of or by carrying out, the Works. [Client] shall procure that such insurance contains an "Indemnity to Principals" provision in favour of NIW with such coverage noted on the insurance policy either specifically or generally.
- 9.1.3 Except to the extent prohibited by Law and except with respect to the professional indemnity insurance. [Client] shall require its insurers to waive all rights of recovery from or subrogation against NIW and its insurers.

Minimum Insurance Requirements for Contractors

- 9.2 [Client] will also procure that its Contractors or Developer, at no cost to NIW, obtain and maintain in full force and effect, during the term in which such Contractors are engaged in connection with the Works, and for such additional periods as may be specified below, the following minimum types and limits of insurance and any other insurance required by Law, with reputable and solvent insurance companies having a Standard & Poor's insurance rating of A- or better or a comparable rating from a reputable rating agency.
 - 9.2.1 Employer's Liability insurance with limits not less than £10,000,000 for any one occurrence or series of occurrences arising out of one event. Contractors shall procure that such insurance contains an "Indemnity to Principals" provision in favour of NIW with such coverage noted on the insurance policy either specifically or generally.
 - 9.2.2 Public Liability insurance cover with a limit of cover of not less than £100,000,000 in respect of a Contractor's liability at law in respect of death of or injury or illness to third parties and/or loss of or damage to third party property, destruction, loss of amenities, or any like cause all arising out of or in the course of or by carrying out, the Works and the Contractors will warrant and undertake that they shall continue to maintain such insurance with that insurer or another reputable insurer throughout the duration of the Works and the defects period relating to such Works. The Contractors shall procure that such insurance contains an "Indemnity to Principals" provision in favour of NIW with such coverage noted on the insurance policy either specifically or generally.
 - 9.2.3 Professional Indemnity insurance. If a Contractor is responsible for any Design in connection with the Works then that Contractor shall maintain professional indemnity insurance cover with a limit of indemnity of not less than £10,000,000, with a deductible/excess no greater than £100,000, in respect of each and every claim arising out of any negligent act, error or omission on the part of the Contractor in respect of any such Design and the Contractor shall be obliged to maintain such insurance with a reputable insurer throughout the duration of the Works for a period of 12 (twelve) years following the the date of completion of the Works as evidenced by a substantial or practical completion certificate (or other similar type document) issued under the relevant Construction Contract or the date of termination of the Contractor's employment under its Construction Contract, whichever is the earlier.

- 9.2.4 [Client] will require that, except to the extent prohibited by Law and except with respect to a Contractors professional indemnity insurance, Contractors require their insurers to waive all rights of recovery from or subrogation against NIW and its respective insurers.

Minimum Insurance Requirements for Consultants

- 9.3 [Client] will also ensure that the Consultants, at no cost to NIW, obtain and maintain in full force and effect, during the term in which such Consultants are engaged in connection with the Works, and for such additional periods as may be specified below, the following minimum types and limits of insurance and any other insurance required by Law, with reputable and solvent insurance companies having a Standard & Poor's or Moody's insurance rating of A- or better or a comparable rating from a reputable rating agency.
- 9.3.1 Employer's Liability insurance with limits not less than £10,000,000 for any one occurrence or series of occurrences arising out of one event. Consultants shall procure that such insurance contains an "Indemnity to Principals" provision in favour of NIW with such coverage noted on the insurance policy either specifically or generally.
- 9.3.2 Public liability insurance cover with a limit of cover of not less than £25,000,000 for any one occurrence or series of occurrences arising out of one event in respect of the Consultant's liability at law in respect of death of or injury or illness to third parties and/or loss of or damage to third party property, destruction, loss of amenities or any like cause all arising out of or in the course of or by providing Services in respect of the Works and the Consultants will warrant and undertake that they shall continue to maintain such insurance with that insurer or another reputable insurer throughout the duration of the Works and defect period relating to such Works. The Consultants shall procure that such insurance contains an "Indemnity to Principals" provision in favour of NIW with such coverage noted on the insurance policy either specifically or generally.
- 9.3.3 Professional Indemnity insurance. The Consultant shall maintain professional indemnity insurance cover with a limit of indemnity of not less than £10,000,000 with a deductible/excess no greater than £100,000, in respect of each and every claim arising out of any negligent act, error or omission on the part of the Consultant in respect of any Services and the Consultant shall be obliged to maintain such insurance with a reputable insurer throughout the duration of the Works and for a period of 12 (twelve) years following the date of completion of the Works as evidenced by a substantial or practical completion certificate (or other similar type document) issued under the relevant Consultant Appointment or the date of termination of the Consultant's employment under its Consultant Appointment, whichever is the earlier.
- 9.3.4 [Client] will require that, except to the extent prohibited by Law and except with respect to a Consultants' professional indemnity insurance, Consultants require their insurers to waive all rights of recovery from or subrogation against NIW and its respective insurers.
- 9.4 At the time this Deed is executed, or within a reasonable time thereafter, and within a reasonable time of demand (being no more than once per annum), [Client] will deliver to NIW evidence that the foregoing coverages required from [Client] are in place. Likewise, at the time the relevant Construction Contract is executed, or within a reasonable time thereafter, and within a reasonable time of demand (being no more than once per annum), [Client] will deliver to NIW evidence that the foregoing coverages required from its Contractors are in place.
- 9.5 [Client] shall promptly notify NIW if at any time it and/or any of its Contractors is unable to obtain and/or maintain any of the insurances as required under this Clause 9. NIW will decide, following any consultation with [Client], the method of best covering [Client]'s and/or any Contractors' potential liability to NIW. [Client] will then, at no cost to NIW, put in place and maintain, and/or cause to be put in place and maintained, any replacement protection which may be determined by NIW acting reasonably to be appropriate.

9.6 [Client] will arrange for the Contractor and the Consultant to execute the Collateral Agreements at before start on site.

10 TERMINATION

10.1 Without prejudice to or derogation from any other rights, remedies and/or powers that NIW has or may have pursuant to this Deed and/or at Law, this Deed may be terminated by NIW if [Client] commits a breach of this Deed and, within 20 (twenty) Working Days of a written notice from NIW referring to the breach, fails to remedy such breach, NIW may forthwith, upon giving further notice in writing, terminate this Deed.

10.2 Upon termination of this Deed or completion of the Works, as applicable, the obligations of the Parties shall cease except for any obligations arising as a result of any antecedent breach of this Deed or any accrued rights.

10.3 Termination of this Deed is without prejudice to the rights of either Party which accrued before or as a result of such termination.

11 ASSIGNMENT AND SUB-CONTRACTING

11.1 [Client] shall not assign, or transfer, any right it may have under this Deed to any other person.

11.2 NIW is permitted, to assign, or transfer, the benefit of this Deed or any part thereof without the prior written consent of [Client] and shall following such permitted assignment or transfer of the benefit of this Deed notify [Client] of the relevant assignee.

11.3 [Client] shall not be entitled to sub-contract or transfer the execution of the Works or any part thereof to any other person without NIW's prior written consent.

11A RELEASE

[Client] shall provide to NIW all appropriate constructional site records and as-constructed drawings as part of the Review Procedures and, provided that NIW do not raise any issue with the Works with [Client], then following the issue of the Defects Certificate (save in the case of fraud and/or deliberate dishonesty) [Client] shall be released from all liability to NIW and/or any other person in relation to carrying out or completion of the Works whether in contract or otherwise.

12 DISCLAIMER

General Disclaimer

12.1 Notwithstanding:

12.1.1 the giving by NIW of any Consent pursuant to this Deed; and/or,

12.1.2 any other provision of this Deed,

[Client] is, and will be, entirely responsible, in all respects, for the execution of the Works and for any and all consequences of same (whether direct or indirect, in the short term or the long term) upon the Tunnel, including the Tunnel's stability, integrity, condition, durability, serviceability, and/or operation and maintenance.

12.2 Without prejudice to the other provisions of clause 7, the giving, or not giving (whichever the case may be), of any approval, consent, agreement, opinion, confirmation, rejection, Sign Off, certificate, comment, input, or notice by NIW (including, for the avoidance of doubt, any NIW Party) pursuant to this Deed and/or in respect of the execution of the Works (proposed or otherwise), or any review or inspection of, or failure to review or inspect, the Works or any part

of it (including any Reviewable Data) shall not extinguish, diminish or reduce in any way whatsoever, any of [Client]'s duties, obligations and/or liabilities pursuant to this Deed or at Law.

12.3 Further, for the avoidance of doubt:

- 12.3.1 the withholding, giving and/or withdrawal of any Consent by NIW; and/or,
- 12.3.2 NIW's ongoing cooperation and/or involvement in any way with any aspect of the Works (including its Design and/or its Construction); and/or,
- 12.3.3 NIW exercising and/or enforcing, or not exercising and/or enforcing (whichever the case may be), any of its rights or powers in connection with the Tunnel, either pursuant to this Deed and/or at Law; and/or,
- 12.3.4 the compliance in full by [Client] with any of the duties and/or obligations to which [Client] is subject to pursuant to this Deed;
- 13.3.5 the provision, or non-provision (whichever the case may be), by NIW and/or any NIW Party of any inputs, data, materials, information and/or documentation (including any Disclosed Data) in connection with the execution of the Works and/or the Project;
- 12.3.6 any review (including a Review), or non-review (whichever the case may be), of any proposed Reviewable Data and/or any other inputs, data, materials, information and/or documentation which may be provided by or on behalf of [Client] to NIW pursuant to this Deed and/or in connection with the Design and/or Construction, including any comments, approvals, objections or Sign Offs that may be made in respect of same by or on behalf of NIW, or the absence of any such comments, approvals, objections or Sign Offs; and/or,
- 12.3.7 any inspection, and/or non-inspection (whichever the case may be), of the Works, and/or, any attendance, or non-attendance (whichever the case may be), at Site, at any other location in connection with the Works, and/or at meetings with [Client] and/or [Client] Parties, by NIW and/or any NIW Party,
- 12.3.8 the participation and/or non-participation by NIW (and/or any NIW Party), at NIW's election, in respect of:
 - (a) the setting up of any Liaison Procedures and/or involvement in any such Liaison Procedures themselves; and/or,
 - (b) the setting up of any Review Procedures and/or any involvement in any such Review Procedures themselves;
- 12.3.9 the giving, or not giving (whichever the case may be), of any approval, consent, agreement, opinion, confirmation, rejection, objection, certificate, comment, input, Sign Off, or notice by NIW (including, for the avoidance of doubt, any NIW Party) pursuant to this Deed and/or in respect of the execution of the Works (proposed or otherwise), or any review or inspection of, or failure to review or inspect, the Works or any part of it (including any Reviewable Data); and/or,
- 12.3.10 any termination of this Deed and/or any suspension of the execution of the Works and/or the performance by [Client] of any of its duties and obligations under this Deed, whether pursuant to this Deed and/or at Law,

will in no way whatsoever and/or howsoever:

- create and/or impose any liability whatsoever being owed by NIW to [Client] and/or to any [Client] Party (whether in contract, equity, tort (including negligence), by statute or otherwise at Law) and whether or not arising out of or in connection with any negligence and/or other default on the part of NIW or any NIW Party), and/or,

- without prejudice to the foregoing, be taken and/or relied upon by [Client], or any [Client] Party (and [Client] and/or any [Client] Party will be estopped from seeking to claim it as such), as any assurance and/or representation by NIW or any NIW Party;
- that any and all necessary Consents required for the execution of the Works would be provided by NIW, or if so provided, that any or all of same would not be withdrawn by NIW; and/or,
- as to the feasibility, adequacy, suitability, buildability and/or viability of the Works (including its Design and/or Construction), and/or any endorsement of the Works, and/or that no adverse impact upon the Tunnel and/or its operation or any other property (whether owned by NIW, [Client] or any third party) will be caused (whether directly or indirectly) as a consequence of the execution of the Works.

13 THIRD PARTY RIGHTS

This Deed is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

14 GOVERNING LAW

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Northern Ireland.

15 JURISDICTION

Each party irrevocably agrees that the courts of Northern Ireland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

16 COSTS OF THIS DEED

- 16.1 [Client] will be responsible for and will reimburse NIW all reasonable costs and outlays reasonably incurred by NIW over the course of this Deed due to NIW's ongoing involvement under it, including, for example, its involvement in any review processes, attendance at meetings, administration activities etc., it being agreed that [Client], save in relation to costs and outlays arising in the event of an Emergency arising due to the act or omission of [Client] or its Contractor, shall not be liable for any individual cost of more than £10,000 exclusive of VAT unless such cost is pre-approved by [Client]. These costs shall be paid by [Client] within 10 days of receiving an invoice.
- 16.2 Reimbursable costs will not include those incurred for NIW staff time but will include third party, consultancy fees and any fees and/or charges paid to others (including obtaining any appropriate advices) for the purposes of giving effect to this Deed and/or the exercise of the rights and entitlements provided for under this Deed.
- 17.3 Accordingly, NIW will invoice [Client] on an on-going basis in respect of such costs and outlays provided that if such costs and outlays are over a threshold of £10,000 they will have to be pre-approved by [Client].

17. ENTIRE AGREEMENT

- 17.1 This Deed constitutes the entire agreement between the Parties and supersedes and replaces any previous agreements, arrangements or understandings between the Parties in respect of the subject matter hereof.
- 17.2 To the extent that there has already been any engagement prior to the execution of this Deed between the Parties in respect of the subject matter of this Deed, including the exchange or

provision of any inputs, information, materials, documents and/or data relating to the Tunnel, the Site and/or other matters which are or may be relevant to the execution of the Works or the Project, the same shall be treated as having been carried out and/or provided under, and shall be subject to, the provisions of this Deed.

- 17.3 In entering into this Deed [Client] does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Deed.
- 17.4 [Client] shall have no Claim for innocent or negligent misrepresentation and/or negligent misstatement based on any provision of and/or statement in this Deed. Nothing in this Deed shall, however, operate to limit or exclude any liability for fraud.
- 17.5 Any and all additions, amendments and/or modifications to the terms and conditions of this Deed must be in writing and shall only be binding if signed or initialled by the original signatories to this Deed or other duly authorised representatives of NIW and [Client]. All such additions, amendments and/or modifications should be dated and physically attached or appended to this Deed for safekeeping.

18 DISPUTE RESOLUTION

- 18.1 The Parties shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with this Deed within twenty (20) Working Days of either Party notifying the other of the dispute.
- 18.2 The directors or other senior representatives of the Parties with authority to settle the dispute will, within fourteen (14) days of a written request from one Party to the other, meet in a good faith effort to resolve the dispute.
- 18.3 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 18.4 If the dispute cannot be resolved by the Parties pursuant to clause 17.1, the dispute may be referred to mediation if both Parties agree.
- 18.5 The performance of this Deed shall not be suspended, ceased or be delayed by the reference of a dispute to mediation (or any other formal dispute resolution procedure) and the Parties shall comply fully with the requirements of this Deed at all times.
- 18.6 The procedure for mediation is as follows:
- (a) a neutral adviser or mediator (“the **Mediator**”) shall be chosen by agreement between the Parties. If they are unable to agree upon the Mediator within ten (10) Working Days after a nomination of a Mediator by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, the Parties shall within ten (10) Working Days from the date of the nomination or within ten (1) Working Days of discovering that the nominated Mediator is unable or unwilling to act, apply to the Resolution Centre (“the RC”) to appoint a Mediator;
 - (b) the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with the appointed Mediator in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the RC to provide guidance on a suitable procedure;
 - (c) unless otherwise agreed in writing, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted on a ‘without prejudice basis’, in confidence and without prejudice to the rights of the Parties in any future proceedings;
 - (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be

reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;

- (e) failing agreement, the Parties may agree to invite the Mediator to provide a non-binding but informative opinion in writing. Such opinion shall be provided on a without prejudice basis and shall not be used in any proceedings relating to this Deed without the prior written consent of the Parties;
- (f) if the Parties fail to reach agreement in the structured negotiations within forty-five (45) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties in writing, then any dispute or difference between them may be referred to the courts.

19 SEVERABILITY

If any term or condition of this Deed is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable, it shall be severed and deemed to be deleted from this Deed and the validity and enforceability of the remainder of this Deed shall not be affected or impaired thereby. If any term or condition of this Deed is found to be illegal, invalid, ineffective, inoperable or otherwise unenforceable, but would not be so if some part of it were deleted, the term or condition shall apply with such modifications as may be necessary to make it enforceable.

20 COUNTERPARTS

This Deed may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

IN WITNESS whereof this document has been executed and delivered as a deed on the date first before written.

Executed and delivered as a deed
By [Client]

Acting by _____ (Director)

Name in block letters _____

in the presence of: _____ (Witness signature)

Name _____

Address _____

Occupation _____

Executed and delivered as a Deed
by NORTHERN IRELAND WATER LIMITED

Acting by _____ (Director)

Name in block letters _____

in the presence of: _____ (Witness signature)

Name _____

Address _____

Occupation _____

SCHEDULE 1 – NIW REQUIREMENTS
STRUCTURAL ANALYSIS REQUIREMENTS

In this Schedule 1 references to “BST” will be deemed to be references to the Tunnel and references to “[Client]” will be deemed to be references to the Works.

1. Stage 1 – Initial Structural Analysis

[Client] shall carry out a suitable and sufficient structural analysis, the outputs of which shall identify the following:

- All working assumptions used in the analysis;
- Current BST structural loading conditions
- New BST structural loading conditions that will occur from constructing and operating the [Client];
- The ‘zone of influence’ of [Client] proposals on the BST – i.e. affected sections of the BST.

The purpose of the initial analysis was to ascertain, at an early stage, the effects of the [Client] proposals on the BST in order to inform decision in respect to extant risks and their mitigation, pre-construction survey requirements and construction monitoring requirements. The analysis informed the finite analysis encompassing the analysis of BST structural loading conditions and the BST structure itself. [Client] have presented the analysis findings and outputs to NIW and (NIW's technical advisor).

2. Stage 2 – Construction Planning

[Client] shall provide a detailed Construction Plan that specifically relates to its proposed construction works and operations that have the propensity to affect the structural integrity or serviceability of the BST. The plan shall include, as a minimum, the following key elements:

- Detailed risk assessments and method statements;
- Detailed programming and timelines;
- Detailed constructional design drawings;
- Contingency provisions;
- Communication provisions (between [Client] delivery team and NIW and its appointed agents) including immediate actions to be undertaken in the event of a monitoring trigger value being approached or exceeded.

[Client] shall provide the Construction Plan to NIW for review in accordance with the Review Procedure.

ANNEX (REVIEW PROCEDURE)

ITEMS FOR SUBMISSION IN RELATION TO NIW REQUIREMENTS (SCHEDULE 1)

- Stage 1 Initial Structural analysis report
- Stage 2 Construction plan

OTHER ITEMS FOR SUBMISSION

- Any other drawings, data and/or other information on the proposals as may from time to time be requested by NIW.

SCHEDULE 2

THE TUNNEL MAP

SCHEDULE 3

COLLATERAL AGREEMENTS

FOR THE CONTRACTOR/DEVELOPER AND THE CONSULTANT

THIS DEED is made on

20[.]

BETWEEN:-

1. [.....](**Consultant**) whose registered office is at (the "**Consultant**");
2. **NORTHERN IRELAND WATER LIMITED** whose registered office is at Westland House, 40 Old Westland Rd, Belfast BT14 6TE (Company Number NI054463) (hereinafter referred to as the "**Beneficiary**" and such term shall include its successors and assigns).

RECITALS:

- A. [Client] (the "**Employer**") has entered into a contract dated [.....] (the "**Contract**", as the same may be amended or varied from time to time) with the Consultant for the design of the proposed construction works at [.....] (the "**Works**"), all as more fully set out in the Contract.
- B. The Consultant has agreed as a term of the Contract to enter into this deed with the Beneficiary.

IN CONSIDERATION OF THE SUM OF £1.00 (ONE POUND), RECEIPT AND SUFFICIENCY OF WHICH THE CONSULTANT HEREBY ACKNOWLEDGES, THE CONSULTANT, THE EMPLOYER AND THE BENEFICIARY AGREE AS FOLLOWS:

1. Capitalised terms in this Deed shall have the same meaning as in the Contract unless the context otherwise requires.

Warranties and representations

2. The Consultant warrants to the Beneficiary that it has performed and will continue to perform its duties and obligations in respect of the Works in accordance with the terms of the Contract, and, that it has not broken and will not break any express or implied terms of the Contract. Without prejudice to the generality of the foregoing, the Consultant further warrants and undertakes to the Beneficiary that:
 - 2.1 in executing the Works, it has exercised and shall continue to exercise the level of skill, care and diligence to be expected of a properly qualified and competent Consultant who is experienced in performing work of a similar size, scope, nature and complexity as the Works and in a similar location to the Works;
 - 2.2 the Works shall be carried out in a good and workmanlike manner using only suitable good quality materials which shall be used in accordance with any relevant manufacturer's specifications;
 - 2.3 the Works shall, when completed, comply with any performance specification or requirement contained or referred to in Contract; and
 - 2.4 the execution of the Works (including any design for which the Consultant is responsible under the Contract) shall comply with any applicable laws and any other consents, licences, permissions and approvals whether of a public or a private nature, including detailed planning permission and any conditions thereto, necessary or applicable to the completion of the Works.
 - 2.5 the execution of the Works (including any design for which the Contractor is responsible under the Contract) shall comply with any applicable laws and any other consents, licences, permissions and approvals whether of a public or a private nature, including detailed planning permission and any conditions thereto, necessary or applicable to the completion of the Works.

3. The obligations of the Consultant under or pursuant to clause 2 shall not be limited or excluded by any enquiry or inspection into any matter which may be made or carried out by the Beneficiary or by the appointment of any person by the Beneficiary to make or carry out any enquiry or inspection, whether or not any independent liability of any such person to the Beneficiary arises in connection therewith.

Intellectual property

4. The Consultant grants to the Beneficiary a royalty-free, irrevocable, perpetual and non-exclusive licence to use and to reproduce any documentation, information and/or data (including but not limited to designs, design standards, design reports, durability reports, specifications, models, samples, calculations, bills of quantities and drawings) in computer readable and written formats, or stored by any other means, prepared or created (and to be prepared and created) by or on behalf of the Consultant (the "Documentation and Data") for any purpose in connection with the Works, including the construction, completion, maintenance, operation, advertisement, reinstatement and repair of the Works. Such licence shall:
 - 4.1. be freely assignable by the Beneficiary;
 - 4.2. include the right to grant sub-licences to any third parties; and
 - 4.3. apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works and shall survive termination or expiry of this Deed.
5. The Consultant:
 - 5.1 warrants and undertakes to the Beneficiary that the intellectual property rights in the Documentation and Data are vested or will vest in the Consultant (or, where appropriate, that the Consultant has or will obtain the benefit of a licence in respect of such intellectual property rights) such that the Consultant has full right and liberty to grant the licence and to assume and undertake the obligations contained in clauses 4 and 5 without restriction or limitation;
 - 5.2 shall ensure that the Consultant's activities do not infringe any copyright, design rights or intellectual property rights; and
 - 5.3 shall be liable for and shall indemnify (and keep indemnified) the Beneficiary against any and all claims, damages, losses, costs or expenses suffered by the Beneficiary and its licensees and/or assignees or for which the Beneficiary is otherwise liable arising out of or in connection with any infringement of any existing or future copyright, design rights or intellectual property rights.

Insurance

6. The Consultant will obtain and maintain in full force and effect, at its own cost and expense, during the term of this Deed and the execution of the Works, and for such additional periods as may be specified below, the following minimum types and limits of insurance and any other insurance that may be required by Law. Such insurance shall be maintained with reputable and solvent insurance companies having, where available, a Standard & Poor's insurance rating of A- or better or a comparable rating from a reputable rating agency and will comply with all those requirements as stated herein. In no way do these minimum insurance requirements limit the liability of the Consultant assumed elsewhere in this Deed, including but not limited to the Consultant's indemnity obligations.
 - 6.1 Employers' liability insurance with limits not less than £10,000,000 for any one occurrence or series of occurrences arising out of one event. The Consultant shall procure that such insurance contains an "Indemnity to Principals" provision in favour of

the Beneficiary and such coverage is noted on the insurance policy either specifically or generally.

- 6.2 Public liability insurance cover with a limit of cover of not less than £100,000,000 for any one occurrence or series of occurrences arising out of one event in respect of the Consultant's liability at law in respect of death of or injury to third parties and/or loss of or damage to third party property, destruction, loss of amenities or any like cause all arising out of or in the course of or by carrying out, the Works. The Consultant warrants and undertakes that it shall continue to maintain such insurance with that insurer or another reputable insurer throughout the duration of the Works and the defects period relating to such Works. The Consultant shall procure that such insurance contains an "Indemnity to Principals" provision in favour of the Beneficiary and such coverage is noted on the insurance policy either specifically or generally.
- 6.3 Professional Indemnity insurance cover with a limit of indemnity of not less than £2,000,000, with a deductible/excess no greater than £10,000,000 in respect of each and every claim arising out of any negligent act, error or omission on the part of the Contractor in the performance of any professional consultancy type services which form part of the Works (which may include architectural, civil engineering, structural engineering, services engineering services) and the Contractor warrants and undertakes that it shall continue to maintain such insurance with that insurer or another reputable insurer throughout the duration of the Works and for a period of 12 (twelve) years following the date of completion of the Works as may be evidenced by a substantial completion certificate (or other similar type document) issued under the Contract.
- 6.4 Except to the extent prohibited by law and except with respect to the professional indemnity insurance, the Contractor shall require its insurers to waive all rights of recovery from or subrogation against the Beneficiary and its insurers.
- 6.5 At the time this Deed is executed, or within a reasonable time thereafter, and within a reasonable time of demand (being no more than once per annum) thereafter, the Contractor will deliver to the Beneficiary reasonable documentary evidence that the foregoing coverages required from the Contractor are in place.
- 6.6 The Contractor shall promptly notify the Beneficiary if at any time it is unable to obtain and/or maintain any of the insurances as required under this Clause 6. The Beneficiary will decide, following any consultation with the Contractor, the method of best covering the Contractor's potential liability to the Beneficiary. The Contractor will then, at no cost to the Beneficiary, put in place and maintain, and/or cause to be put in place and maintained, any replacement protection which may be determined by the Beneficiary in all the circumstances to be appropriate.

Indemnity

- 7.1 The Consultant will be responsible for and indemnify the Beneficiary, within 20 Working Days of written demand, from and against (whether in contract, equity, tort (including negligence), by statute or otherwise at law) for any and all Claims and/or Losses which may be suffered and/or incurred, by the Beneficiary as a direct consequence of any negligent act and/or omission by the Consultant.
- 7.1.1 the execution of the Works (including any design for which the Consultant is responsible under the Contract); and/or,
- 7.1.2 any negligence, deliberate act or breach of the Contract by the Consultant (regardless of whether or not the same has been caused, or contributed to, in whole or in part, by reason of the negligence of the Beneficiary).

For the purposes of this clause 7:

“Claim” means any claim, demand, notice and/or proceedings

“Losses” means any and all damages, direct losses, reasonable costs (including legal costs) and/or expenses properly incurred whatsoever;

- 7.2 Nothing in clause 7.1 shall restrict or limit NIW's general obligation at law to mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under clause 7.1.
- 7.3 The Consultant shall not be liable in respect of Claims and/or Losses attributable solely to any act or default on the part of NIW (whether negligent, deliberate, fraudulent or otherwise).

Liability

8. The duty and / or liability (whether in duration, extent or nature) of the Consultant is to be treated as being no greater than it would have been if the Beneficiary had been named as joint client with the Employer to the Contract and the Consultant shall be entitled in defence of any action or proceedings by the Beneficiary under this agreement to rely on any limitation or exclusion in the Contract and to raise equivalent rights in defence of liability as it would have against the Employer under the Contract.

Liability Period

9. The obligations of the Consultant under this Deed shall cease on the date 12 (twelve) years following the date of completion of the Works as may be evidenced by a substantial completion certificate (or other similar type document) issued under the Contract.

Assignment

10. The Contractor consents to the benefit of this Deed being assigned once only without the consent of the Contractor being required and such assignment shall be effective upon written notice to the Contractor PROVIDED ALWAYS that the maximum number of one assignment referred to above shall not be affected by assignments by way of security and assignments to and from subsidiary or other associated companies within the same group of companies as the Beneficiary so long as such assignee company remains within the same group of companies as the Beneficiary.
11. The Contractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 11 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named promisee under this Deed.
12. If any term or condition of this Deed is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable, it shall be severed and deemed to be deleted from this Deed and the validity and enforceability of the remainder of this Deed shall not be affected or impaired thereby. If any term or condition of this Deed is found to be illegal, invalid, ineffective, inoperable or otherwise unenforceable, but would not be so if some part of it were deleted, the term or condition shall apply with such modifications as may be necessary to make it enforceable.

Common law rights

13. The provisions of this Deed are without prejudice to and shall not be construed so as to exclude or limit such rights and remedies (if any) as the Beneficiary may have against the Contractor from time to time otherwise than as a result of this Deed (including, without limitation, breach of contract, breach of statutory duty or in tort).

Notices

14. Any notice to be given by the Contractor under this Deed shall be deemed to be duly given if it is delivered by hand at or sent by registered post to the Beneficiary at its address set out above and any notice to be given by the Beneficiary hereunder shall be deemed to be duly given if it is delivered by hand or sent by registered post to the Contractor at its address set out above, and in the case of any such notices the same shall, if sent by registered post, be deemed to have been received two working days after being posted.

Governing law

15. This Deed shall be governed by the laws of Northern Ireland and the parties submit to the non-exclusive jurisdiction of the courts of Northern Ireland.

Counterparts

16. This Deed may be executed in any number of counterparts each of which when executed and delivered will be an original, but all the counterparts will together constitute one and the same deed.

IN WITNESS whereof the Contractor and the Beneficiary have executed and delivered this document as a deed on the date first before written.

Appendix C. Sample Schedule 1

*Note: These are example templates only.
Formal documents will be provided by NI Water during the application process.*

NIW REQUIREMENTS

SCHEDULE 1 Part 1

STRUCTURAL ANALYSIS AND SURVEY REQUIREMENTS

In this Schedule 1 references to “BST” will be deemed to be references to the Tunnel and references to “the Development” or “the Developer” will be deemed to be references to the Works.

1. Stage 1 – Initial Structural Analysis

If required by NIW, The Developer shall carry out a suitable and sufficient structural analysis, the outputs of which shall identify the following:

- All working assumptions used in the analysis;
- Current BST structural loading conditions;
- New BST structural loading conditions that will occur from constructing and operating the Development;
- Current BST structural lining stresses and strains;
- Resultant changes in BST structural lining stresses and strains due to proposed changes in structural loading conditions;
- Comparison of resultant changes in the BST structural lining stresses to allowable stresses in the BST structural lining;
- The ‘zone of influence’ of Development proposals on the BST – i.e. affected sections of the BST.

The purpose of the initial analysis is to ascertain, at an early stage, the effects of the Development proposals on the BST in order to inform decisions in respect of extant risks and their mitigation, pre-construction survey requirements, and construction monitoring requirements. It is anticipated that the analysis will be in the form of a finite element analysis encompassing the analysis of BST structural loading conditions and the BST structure itself. The Developer shall present the analysis findings and outputs in the form of a suitable report for critical review by a suitably competent third party consultant, employed directly NIW.

2. Stage 2 – Pre-construction Survey

If required by NIW, The Developer shall carry out a suitable and sufficient pre-construction survey of the BST structural lining located within, as a minimum, the ‘zone of influence’ as identified in Stage 1. The survey outputs shall provide:

- A visual record of the general condition of the BST intrados;
- A detailed record of any patent defects;
- An accurate detailed record of the BST line and level;
- An accurate record of the internal dimensions of the BST intrados, as required for further structural analysis and monitoring;
- An accurate record of any extant deflections and / or deformations in the BST structural lining.

The purpose of the pre-construction survey is to gather sufficient information and data in order to confirm the BST’s line and level, ascertain its ‘baseline’ condition and extant deformations. It is anticipated that the required accuracy of dimensional measurement and monitoring of the BST intrados will be achieved through a ROV survey and associated dense point cloud, as safety

concerns will not allow manned access. The accuracy of survey measurements and outputs shall be such as to enable further meaningful analysis and meaningful comparison between baseline data and any future data gathered during construction or post-construction monitoring or surveys. The Developer shall provide details of its proposals for the survey techniques and methodology for critical review by the aforementioned third party consultant. The Developer shall present the survey findings in the form of a suitable report for critical review by the aforementioned third party consultant.

From previous experience, It is anticipated that man-entry to the BST will only be briefly required to undertake the ROV survey. Consequently, before any such access can be granted by NIW, The Developer will be required to submit their proposed methodology in respect of same, including proposals for safe systems of working within the BST, to NIW for its critical review. The Developer will not be allowed man-entry to the BST for the purposes of commencing the survey work unless and until NIW has provided the Developer with a Permit to Work for man-entry to the BST.

3. Stage 3 - Follow-up Structural Analysis

The Developer shall update the Stage 1 structural analysis with the results from the survey, the outputs of which shall additionally identify the following:

- Location and magnitude of monitoring 'trigger values' for intervention to prevent, or mitigate, damage to the BST during construction and proposed locations and types of instrumentation;

The purpose of the follow-up analysis is to update and improve the accuracy of the outputs of the Stage 1 analysis, in order to further inform decisions in respect of risks and their mitigation, Development construction monitoring and 'intervention trigger value' requirements.

The Developer shall present the analysis findings and outputs in the form of a suitable report for critical review by the aforementioned third party consultant.

4. Stage 4 – Construction Planning

The Developer shall provide a detailed Construction Plan that specifically relates to its proposed construction works and operations that have the propensity to affect the structural integrity or serviceability of the BST. The plan shall include, as a minimum, the following key elements:

- Detailed risk assessments and method statements;
- Detailed programming and timelines;
- Detailed constructional design drawings;
- Monitoring and monitoring reporting provisions;
- Contingency provisions;
- Communication provisions (between the Developer's delivery team and NIW and its appointed agents) including immediate actions to be undertaken in the event of a monitoring trigger value being approached or exceeded.

NIW and the aforementioned third party consultant will critically review the Construction Plan. Following completion of the review, The Developer shall provide an agreed Construction Plan and carry out construction in accordance with the plan.

5. Stage 5 – Construction Monitoring

The Developer shall provide details of its proposals for suitable and sufficient monitoring of the BST structure during the Development construction phase for critical review by the aforementioned third party consultant. Following completion of the review, The Developer shall provide an agreed Monitoring Plan and monitor the BST in accordance with the plan. The Developer shall present monitoring results in the form of suitable reports, and in accordance with the plan, for critical review by the aforementioned third party consultant. The purpose of construction monitoring is to ascertain Development constructional impacts on the BST structure in order to inform decisions in respect of extant risks and their mitigation.

6. Stage 6 – Post-Construction Survey

The Developer shall carry out a suitable and sufficient post-construction survey of the BST structural lining located within, as a minimum, the 'zone of influence' as identified in Stage 1. The survey outputs shall provide:

- A visual record of the general condition of the BST intrados;
- A detailed record of any patent defects;
- An accurate record of the internal dimensions of the BST intrados at the Stages 2 and 3 survey and monitoring points;
- An accurate record of any extant deflections and / or deformations in the BST structural lining.

The purpose of the post-construction survey is to gather sufficient information and data in order to ascertain the BST's post-construction condition and extant deformations. The Developer shall present the survey findings in the form of a suitable report for critical review by the aforementioned third party consultant.

7. Stage 7 – Post-Construction Structural Analysis

The Developer shall update the Stage 3 structural analysis with any new information from the post construction survey and any actual construction methods that differ from the assumptions in the preconstruction analysis

The purpose of the post-construction analysis is to update and improve the accuracy of the outputs of the Stage 3 analysis, in order to inform decisions in respect of any extant risks and their mitigation and for NIW record purposes. The Developer shall present the analysis findings and outputs in the form of a suitable report for critical review by the aforementioned third party consultant.