

National Energy  
Board



Office national  
de l'énergie

## DECISION

File OF-Fac-Oil-T260-2013-03 15  
2 March 2018

Mr. Erich Ploentzke  
President  
1014309 Alberta Limited  
Box 6452  
Edson, AB T7E 1T8

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Dear Mr. Ploentzke, Mr. Stoness, and Mr. Denstedt:

**Trans Mountain Pipeline ULC (Trans Mountain)  
Trans Mountain Expansion Project – Certificate OC-064  
Decision for Detailed Route Hearing MH-022-2017  
1014309 Alberta Ltd.**

### 1. Background

On 19 May 2016, the National Energy Board (NEB or Board) issued its Report recommending that Governor in Council approve the Trans Mountain Expansion Project (TMEP), subject to 157 conditions ([A77045](#)).

The TMEP included twinning the existing 1,147-kilometre-long Trans Mountain Pipeline (TMPL) system in Alberta (AB) and British Columbia (BC) with approximately 981 kilometres of new buried pipeline; new and modified facilities, such as pump stations; additional tanker loading facilities at the Westridge Marine Terminal in Burnaby; and reactivating 193 kilometres of existing pipeline between Edmonton and Burnaby. Trans Mountain requested approval of a 150-metre-wide corridor for the TMEP pipeline's general route.

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On 29 November 2016, Governor in Council directed the Board to issue the Certificate of Public Convenience and Necessity (Certificate) OC-064 ([A80871](#)), the effect of which was to approve the TMEP, including the proposed 150-metre-wide corridor.

On 17 and 24 February 2017, Trans Mountain applied to the Board for Segments 1 and 2 of its TMEP detailed route, submitting the Plan, Profile, and Book of Reference (PPBoR). Under section 34 of the *National Energy Board Act* (NEB Act), Trans Mountain made available for public viewing copies of its PPBoR, served notices on owners of lands proposed to be acquired for the proposed detailed route,<sup>1</sup> and published notices in newspapers in the vicinity of the proposed detailed route.<sup>2</sup>

In all detailed route hearings, the Board considers the following issues:

- 1) the best possible detailed route of the pipeline;
- 2) the most appropriate method of constructing the pipeline; and
- 3) the most appropriate timing of constructing the pipeline.

In its 31 August 2017 Letter of Decision ([A85762](#)), the Board stated that it would not consider the issue of compensation to be paid to landowners as that matter is not within its jurisdiction.

## **2. Detailed Route Hearing MH-022-2017**

Mr. Erich Ploentzke is the president of 1014309 Alberta Ltd., which is the registered owner of lands located at SE 6-53-19 W5M in the Rural Municipality of Yellowhead County, AB. The company acquired this property in 1973. Trans Mountain identified these lands as Tract 602, and the property is shown on PPBoR M002-PM03006-068 and in Figure 1.<sup>3</sup> Trans Mountain proposes crossing these lands with the new TMEP pipeline in Segment 2.

Mr. Ploentzke, on behalf of 1014309 Alberta Ltd. filed a statement of opposition on 29 March 2017 ([A82301](#)). The Board granted him a detailed route hearing and issued Hearing Order MH-022-2017 ([A85764](#)) on 31 August 2017. The Hearing Order set a November-December 2017 timeframe for the oral portion of the hearing.

A site visit of 1014309 Alberta Ltd. lands was requested by Mr. Ploentzke on 26 October 2017 ([A87328](#)), which was dismissed by the Board on 15 November 2017 ([A87818](#)).

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<sup>1</sup> As required by [paragraph 34\(1\)\(a\)](#) of the NEB Act.

<sup>2</sup> As required by [paragraph 34\(1\)\(b\)](#) of the NEB Act.

<sup>3</sup> The map in Figure 1 was originally filed by Trans Mountain as part of its evidence for detailed route hearing MH-022-2017 ([A87916](#)). It was used and marked during the hearing and subsequently entered as an exhibit on the record ([A87916](#)).

The oral portion of the detailed route hearing was held on 27 November 2017 in Edson, AB. Trans Mountain presented a panel of witnesses for cross-examination. Mr. Plöentzke was also present, asked questions of Trans Mountain’s witness panel, answered questions, and provided argument.

Regarding current land use, Mr. Plöentzke indicated that he lives on the property. During the hearing, he stated that 1014309 Alberta Ltd. recently developed some of the lands into a golf course. The land is also used for storage for a portable toilet business. Mr. Plöentzke’s brother-in-law also runs horses on the land.

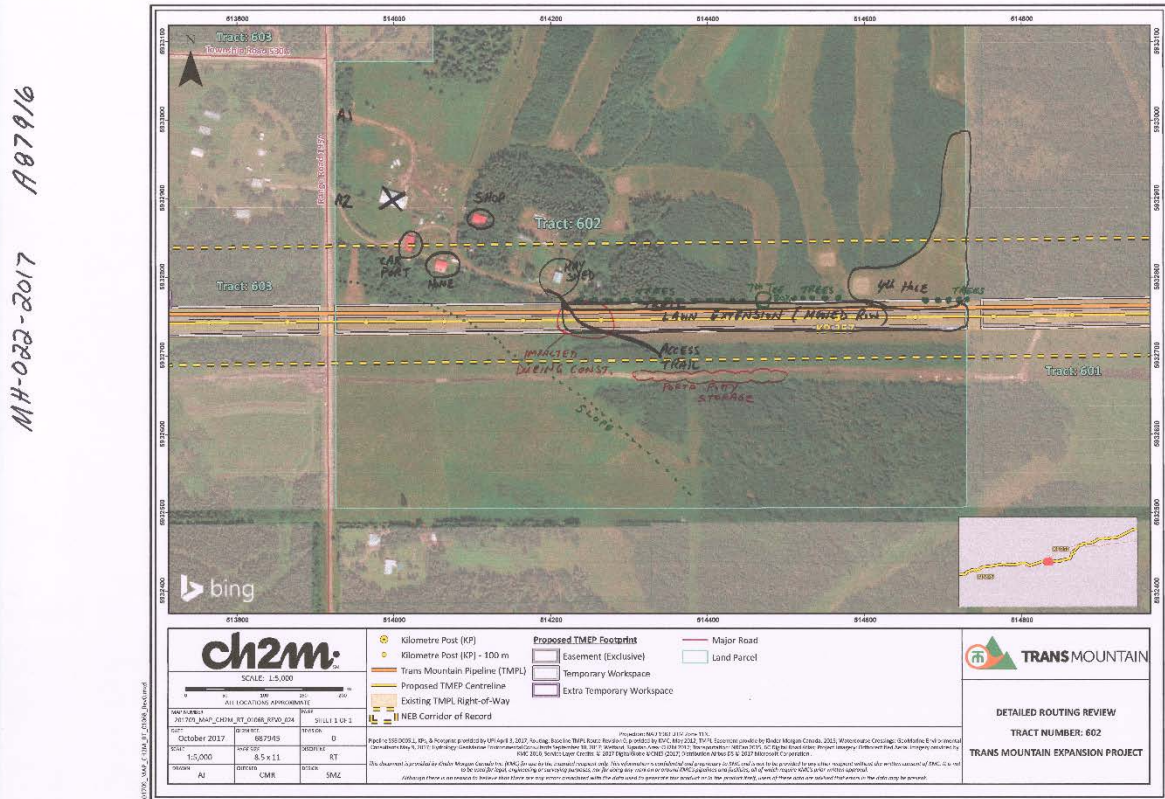


Figure 1 Map of Erich Plöentzke’s property. The notations on this map were made by the Parties during the hearing and it was entered as Exhibit No. A87916.

## 2.1 Proposed Detailed Route

### 2.1.1 Trans Mountain’s Routing Criteria

In selecting its 150-metre-wide corridor and detailed route for the new TMEP pipeline, Trans Mountain submitted in its written evidence and opening statement at the detailed route hearing that it had established a hierarchy of routing principles. In descending order of preference, these were:

1. where practicable, co-locate the new TMEP pipeline on or adjacent to the existing TMPL easement;

2. where co-location was not practicable, minimizing the creation of new linear corridors by installing the new TMEP pipeline adjacent to existing easements or rights-of-way for other linear facilities including other pipelines, power lines, highways, roads, railways, fibre optic cables and other utilities;
3. if co-location with any existing linear facility was not feasible, install the new pipeline in a new easement selected to balance safety, engineering, construction, environmental, cultural and socio-economic factors; and
4. in the event a new easement was necessary, minimize the length of the new easement before returning to a contiguous right-of-way.

Trans Mountain submitted that it had been engaging landowners in its routing discussions since 2012 and used this feedback to optimize the location of its 150-metre-wide corridor. Trans Mountain stated that the width of the corridor provided flexibility for minor route adjustments including those informed by landowner input.

### **2.1.2 Proposed Detailed Route on 1014309 Alberta Ltd. Lands**

As shown in Figure 1, the proposed detailed route crosses through the southern portion of 1014309 Alberta Ltd.'s property between kilometre post 256.8 and kilometre post 257.7, and is identified by Trans Mountain as Tract 602. Approximately 803.95 metres of new pipeline and a corresponding permanent easement area of 1.446 hectares (3.57 acres) would be situated on the property.

Trans Mountain noted that the new TMEP pipeline is proposed to be installed between the existing TMPL and an existing deactivated 24-inch pipeline located south of the new TMEP pipeline.

Trans Mountain indicated in its reply evidence that the construction footprint is currently proposed to be within the pre-existing TMPL easement which is approximately 37 metres wide. The permanent right-of-way is 18 metres wide.

#### ***Views of Mr. Ploentzke for 1014309 Alberta Ltd.***

In his statement of opposition and at the hearing, Mr. Ploentzke stated that he was not against the new TMEP pipeline, but that he wanted to protect his property for the present and future. He expressed concerns about the impacts to his lands and golf course operations due to the new TMEP pipeline right-of-way and prescribed area. He also stated that he is subject to a land agreement that was signed when the land use was different. He expressed concerns about the communications he had with the Trans Mountain consultant (land agent). He stated that the new TMEP pipeline would split his land in half and make the area to the south of the right-of-way inaccessible during construction. He also stated that he needs access to the southern portion of his property via his current access route.

In his written evidence, Mr. Ploentzke reiterated his concerns about the width of the right-of-way, and impacts to his golf course, sheds, residence, water wells, sewer system, and shelterbelt of trees around his home. He was especially concerned about reclamation-related impacts to the golf course.

During the hearing, Mr. Ploentzke further indicated that he had concerns with the impacts construction may have on his topsoil, the planned use of chemical fertilizer, removal of trees, reclamation of his lands, and impacts to his golf course operation. Mr. Ploentzke stated that he would like the reclamation of his lands to be completed prior to the opening of the golf course for the season on 1 May.

During the hearing and in his written submissions, Mr. Ploentzke also raised concerns about compensation.

In final argument, Mr. Ploentzke reiterated that he was hoping that he can work with the contractor in future and continue the dialogue with Trans Mountain directly. Mr. Ploentzke also stated in his final argument that he had no remaining outstanding concerns, aside from compensation.

### ***Views of Trans Mountain***

Trans Mountain submitted in final argument that the routing on this land in particular shows the routing criteria at work as the new TMEP pipeline will be installed within the existing TMPL easement. Trans Mountain submitted that the route is consistent with its routing principles and will not result in impacts to the four fairways, three sheds, or main residence.

## **2.2 Location of the Route**

### **2.2.1 Alternate Routes**

Mr. Ploentzke initially proposed an alternate route in his written statement of opposition. During the hearing, Trans Mountain stated that it did not believe that alternate routes had been discussed in its recent discussions with Mr. Ploentzke.

### **2.2.2 Prescribed Area**

With regards to Mr. Ploentzke's concerns about the prescribed area (i.e. the area where certain activities may be limited by legislation and regulation to protect the pipeline) Trans Mountain stated at the hearing that it hoped to minimize any further impacts from this prescribed area by putting the new TMEP pipeline between two existing pipelines.

Trans Mountain also stated that, if a landowner planned ground disturbance activities that could potentially affect or damage the pipeline, or crossing with heavy equipment anywhere other than an agreed-upon crossing, they should call the company first and the company can come out and flag the pipeline's location. Trans Mountain committed to respond to Mr. Ploentzke's requests of this nature within three days. Mr. Ploentzke confirmed at the hearing that he recognized the

importance of pipeline safety, and he does his best to stay away from working in the prescribed area and work safely.

Trans Mountain also stated at the hearing that golf courses and pipelines can coexist very well, and that there are approximately 18 or 19 golf courses that are contiguous to the existing TMPL, through fairways, greens and under some greens. Trans Mountain stated that land use for a golf course is allowed over top of a pipeline and generally the only restriction is permanent structures or large mature trees.

## **2.3 Method of Construction**

Trans Mountain stated that the new TMEP pipeline would be located between its two existing pipelines, one of which was deactivated. Due to work space limitations and proximity to the existing lines the new TMEP pipeline would be installed using a hybrid of the stovepipe construction method. Trans Mountain explained that this technique involved walking one to three joint pipeline segments into place, welding, backfilling, then excavating for the next pipe segment and repeating the process.

### **2.3.1 Impacts to Access**

Trans Mountain stated that the new TMEP pipeline construction activities will partially impede access across the right-of-way due to the construction activities that take place on the surface. Trans Mountain stated that it will continue to work with Mr. Ploentzke in an effort to maximize accessibility to the area south of the construction footprint and expedite construction as much as possible in a safe and environmentally conscious manner and in accordance with the conditions of regulatory permits and conditions.

At the hearing, Trans Mountain confirmed that there would be impacts to access to the south area during construction, but that with the proposed stovepipe method of the construction, Trans Mountain would be able to maximize access by continually relocating the access by leaving breaks in the topsoil piles and excavated materials to allow access. Trans Mountain also stated that it would look at possible solutions to address the issue of access by golfers to the construction area and trampling grass that is trying to regrow. Trans Mountain stated that it would work with Mr. Ploentzke on what that access is for the initial phase after the reclamation.

Mr. Ploentzke initially expressed concerns about access to the south portion of his lands in his statement of opposition and written evidence.

At the hearing, Mr. Ploentzke stated he needed continuous access on the south side of the easement as in the winter he transports portable toilets that he rents out as a business and stores 150 portable toilets where the power line goes through his land.

In response to Trans Mountain's commitments at the hearing to maximize access, Mr. Ploentzke confirmed that his concerns about access had been addressed.

### **2.3.2 Tree Removal**

Mr. Ploentzke raised concerns with the removal of some trees along the north boundary of the original right-of-way as some of those trees are over 60 years old and he did not want those trees removed.

Trans Mountain committed to minimizing the removal of trees located in temporary workspace to the extent possible. Trans Mountain also committed to working with the landowner in developing a restoration plan to replace trees removed for construction with special consideration for ornamental trees or shelter belts. Trans Mountain stated that any trees removed from the temporary workspace for the purposes of construction and in close proximity to the fairway and tee boxes will be replaced or compensated. Trans Mountain clarified that trees cannot be replanted on the permanent Trans Mountain right-of-way for operational reasons.

Given the commitments made by Trans Mountain, Mr. Ploentzke confirmed that he had no outstanding concerns.

### **2.3.3 Soil Handling**

Mr. Ploentzke raised concerns about soil conservation during the hearing, and stated that when the existing TMPL was originally built the topsoil was not preserved so a lot of the original topsoil has disappeared.

During the hearing, Trans Mountain stated that it had completed a detailed soil study on Mr. Ploentzke's lands to prepare for soil handling and separation when it is removed. Trans Mountain also stated that keeping the soil separate, putting it back in the right sequence, and levelling it off for reclamation was important, and driven by the needs of Mr. Ploentzke. Further, it stated that whatever commitments Trans Mountain made with respect to Mr. Ploentzke's land would be captured in a document (line list) for the construction contractor.

Trans Mountain committed to having an environmental inspector on site, and one of the inspector's duties will be to ensure that the topsoil and subsoils are stored separately.

### **2.3.4 Grass**

Mr. Ploentzke raised concerns about his fairway grass and its reclamation, since his golf course relies on green grass and not bare soil. Mr. Ploentzke also commented that Midwest (a Trans Mountain contractor) said a berm could be installed alongside fairway four to separate the fairway from the zone of construction should the reclamation not be complete by the time the golf course opened. Mr. Ploentzke also stated he would like some assurances that he will have green grass growing prior to his opening (1 May) or shortly thereafter.

When speaking to what Trans Mountain planned to do for reclaiming golf course grasses, Trans Mountain stated it would work collaboratively with Mr. Ploentzke to determine a plan that meets the needs of the golf course. Trans Mountain made a commitment during the hearing to use only organic fertilizer on Mr. Ploentzke's land.

### **2.3.5 Reclamation Plan**

In its written evidence, Trans Mountain stated that it had developed a detailed Reclamation Management Plan as part of the Pipeline Environmental Protection Plan]. Mr. Ploentzke was satisfied with Trans Mountain's commitment to do the best it can to work with him to come up with a specific plan for his property.

When the NEB's counsel asked if Mr. Ploentzke had any outstanding concerns remaining after the commitments Trans Mountain made during the hearing, he stated that he had no concerns other than monetary ones.

## **2.4 Timing of Construction**

### **2.4.1 Impacts to Golf Course Operations**

Mr. Ploentzke expressed concerns in the hearing about the timing of construction and how it would impact his plans to open his golf course on 1 May. He said that his understanding was that the new TMEP pipeline will likely go ahead in the winter of 2018.

At the hearing, Trans Mountain confirmed that construction on Mr. Ploentzke's lands would take place in winter, November at the earliest, with possible topsoil stripping in October, but that the timing would be set in consultation with Mr. Ploentzke and take into account the golf course operating schedule from May to October or November. Trans Mountain also said that in order to try to meet the May opening date and have green grass, it may need to limit the amount of temporary work space on the north side and was working to develop a plan that works for the company and Mr. Ploentzke. Trans Mountain asserted that the grass may not be greened up by the opening date as it will just be the first spring following construction but that it would hopefully be greened up by mid-summer. Trans Mountain stated that it planned to do post-construction monitoring for a five-year period.

Mr. Ploentzke agreed that Trans Mountain's plans to do winter construction starting in November would address his concerns.

## **2.5 Summary of Commitments**

During the hearing, Trans Mountain committed to:

- Working to conserve topsoil by proper separation as outlined in the Environmental Protection Plan;
- Winter construction starting in November (with possible top soil stripping in October) and ending by May, with best efforts for reclamation done in time for the golf course opening;
- Using the stovepipe construction method to minimize impacts on the adjacent lands and safely install the pipeline between two existing lines;
- Working with Mr. Ploentzke to minimize impacts to golf course operations including maintaining access to the south storage area;



- Using only organic fertilizers and adding this information to the line list for the contractor;
- Having an environmental inspector present during the construction activities on Mr. Ploentzke's lands to keep soils separate;
- Sharing of any soil studies or Environmental Protection Plan info or line list with Mr. Ploentzke (if Mr. Ploentzke was interested in those);
- Considering the use of temporary fencing to keep horses or livestock out during reclamation;
- Continuing to engage with Mr. Ploentzke regarding reclamation;
- Providing Mr. Ploentzke with the direct name and number of someone he can talk to about his issues with reclamation or otherwise; and
- A three day turnaround from notification to flagging the pipeline when asked by Mr. Ploentzke about work in the prescribed area.

### **3. Board Decision for Detailed Route Hearing MH-022-2017**


The Board appreciates the time spent by Mr. Ploentzke and Trans Mountain in discussing their concerns at the detailed route hearing.

The Board notes that almost all of the issues raised by Mr. Ploentzke were addressed by Trans Mountain through the commitments it made in both its written evidence and at the hearing. Trans Mountain has also committed to continuing to engage with Mr. Ploentzke and the Board is of the view that this will provide a means for issues to be raised and addressed. For all other issues, Mr. Ploentzke confirmed at the hearing that he had no outstanding concerns, except compensation. This issue is outside of the Board's jurisdiction.


Having considered all of the evidence filed on the record by the Parties, the representations made at the oral portion of the detailed route hearing, and the matters described above, the Board finds that the route proposed by Trans Mountain is the best possible detailed route of the pipeline. The Board also finds that the methods and timing of constructing the new TMEP pipeline are the most appropriate, subject to the commitments made by Trans Mountain.

Any approval by the Board of the PPBoR for 1014309 Alberta Ltd.'s lands will include a condition requiring Trans Mountain to list and fulfill the commitments it made in the course of this detailed route hearing, and update its alignment sheets. Mr. Ploentzke is entitled to seek remedy from the Board if the commitments are not being fulfilled.

Trans Mountain is reminded that the relevant conditions of approval in Certificate OC-064 also apply to the construction and operation of the TMEP on 1014309 Alberta Ltd.'s lands.

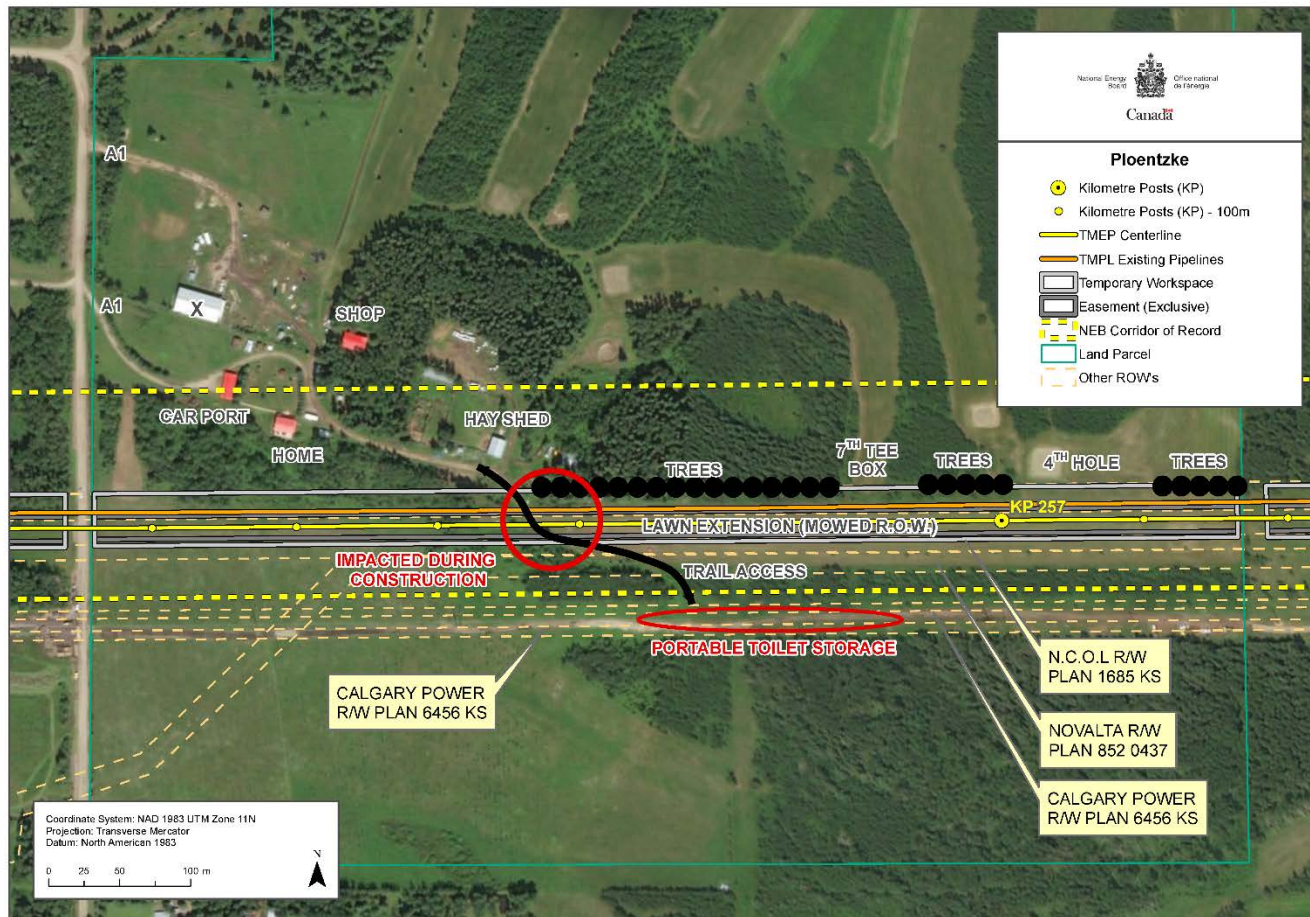
  
L. Mercier  
Presiding Member

  
S. Parrish  
Member

  
J. Ballem  
Member

## Appendix I – Map of the Erich Ploentzke’s property

This map was created by the NEB for illustrative purposes only.



MAP PRODUCED BY THE NEB, FEBRUARY 2018. THIS MAP HAS BEEN GENERATED BY THE NEB FOR ILLUSTRATIVE PURPOSES ONLY. THE NEB DISCLAIMS ALL RESPONSIBILITY FOR ANY ERRORS, OMISSIONS AND INACCURACIES. READERS WISHING TO CONSULT THE ACTUAL MAPS AS THEY WERE FILED SHOULD REFER TO THE OFFICIAL RECORD.