

Deadline 5 submissions of National Highways Limited

Application by National Grid Electricity Transmission for an Order granting Development Consent for the Yorkshire Green Energy Enablement (Green) Project

Planning Inspectorate Reference Number: EN020024

1 Introduction

- 1.1 This document sets out the latest submissions of National Highways Limited (National Highways) provided at deadline 5 of the examination.
- 1.2 The Authorised Development will have an impact on the Strategic Road Network (SRN) and as such it is critical to the operation of the SRN, the safety of the travelling public and to ensure the proper and efficient use of public resources that the Authorised Development proceeds in consultation and agreement with National Highways and with appropriate protections in place.
- 1.3 National Highways does not object to the principle of the development subject to the inclusion of adequate protections to manage any potential interface between the Authorised Development and the highway.

2 Protective Provisions

- 2.1 As the strategic highways company appointed by the Secretary of State for Transport pursuant to the Infrastructure Act 2015 and regulated by the Office of Road and Rail, National Highways' primary responsibility is the safety of the travelling public and maintaining the integrity and security of the SRN. Much like the operational railway estate, the SRN is a critical piece of national infrastructure, connecting all major towns and cities and carrying a third of all traffic and two-thirds of all freight in England. As a key economic asset, it provides businesses with the means to get products and services to customers, gives access to labour markets and suppliers and encourages trade and new investment. As a result of its vital importance to UK economic interests, National Highways is charged with a number of statutory responsibilities with respect to the management of this operational undertaking.
- 2.2 In the exercise of any of its functions as a public body, National Highways must have regard to the safety of all users of the highway¹. In addition to safety and pursuant to section 6 of the Infrastructure Act 2015, National Highways has a statutory duty to comply with directions issued by the Secretary of State for Transport. These directions are set out in its Licence and include a duty to hold and manage land and property in line with, and as a function of, the Licence holder's legal duties as a highway authority, and solely for the purposes of operating, managing and improving the highway, unless otherwise approved by the Secretary of State for Transport². These statutory obligations place a burden on National Highways to ensure that third party

¹ S5(2)(B) Infrastructure Act 2015

² Paragraph 5.37 National Highways: Licence April 2015

development which may impact on its network is both safe to road users and does not interfere with the legal duty placed on National Highways to operate, manage and improve the SRN. This is not to say that National Highways is opposed to development which impacts its network and as part of its existing licence obligations, National Highways is required to have regard to and support sustainable development provided that suitable protections for the SRN are agreed with the applicant.

- 2.3 National Highways position has been clear throughout the examination that it requires its standard set of protective provisions to appear on the order. To date the Applicant has not been prepared to do so. Whilst negotiations have been held on the subject, the parties remain some distance apart from reaching agreement.
- 2.4 National Highways' position is a simple one. No third party should be permitted to carry out works to the SRN without the approval and authorisation of National Highways as the strategic highway company with full responsibility for such. Outside of the Planning Act 2008 regime (for example when applications come forward under the Town & Country Planning Act 1990) there is never any dispute on this point. Applicants accept that to carry out any such works to facilitate their development they are required to enter in an agreement with the highway authority pursuant to section 278 of the Highways Act 1980. The position that National Highways takes on Development Consent Order applications mirrors its position for such traditional developments.
- 2.5 National Highways' standard set of protective provisions originated from the company's section 278 agreement. It includes all of the provisions that a developer is required to adhere to when it wants to carry out works to the SRN to facilitate any development. It is needed to secure, inter alia:
 - 2.5.1 Bonds, cash deposits and commuted sums to ensure that National Highways is not exposed financially as a consequence of the Applicant's works;
 - 2.5.2 Road space booking procedures to ensure that network occupancy requirements are managed effectively for the safety of the public and contractors;
 - 2.5.3 Detailed design information to appropriately consider and approve the specification of works in accordance with technical standards;
 - 2.5.4 Appropriate maintenance obligations and defects liability periods;
 - 2.5.5 Collateral warranties from contractors and designers in respect of works undertaken on behalf of the Applicant;

- 2.5.6 Restrictions on the commencement of works and the use of powers until detailed design specifications are agreed and safety implications have been satisfactorily addressed;
- 2.5.7 Handover of maintenance responsibilities;
- 2.5.8 Payment of all reasonable fees incurred by National Highways in respect of the Authorised Development;
- 2.5.9 Indemnities for any loss incurred by National Highways in respect of the Authorised Development;
- 2.5.10 Dispute resolution provisions.

- 2.6 All of these provisions are necessary to ensure the continued safe operation of the SRN, the safety of contractors working on the SRN and to protect National Highways, and therefore the public purse, from any financial risk.
- 2.7 The Applicant has advised National Highways that its requirements in this regard are disproportionate to the works expected to take place to facilitate the Authorised Development. National Highways strongly disagrees with this. Specified works which are carried out above or below the carriageway should be covered by the protective provisions. This includes oversailing and undergrounding works. Practically, both of these interfaces with the SRN could result in major loss to National Highways and must be signed off in the usual way as provided for in the protective provisions.
- 2.8 Any works on, in, over, under or adjacent to the SRN have the potential to be a source of danger to both the travelling public using the SRN as well as those who are carrying out such works. Safety is critical and is National Highways number one imperative. National Highways cannot permit anyone to carry out works to its undertaking without safety being adequately addressed. The Applicant feels that National Highways safety concerns should be outweighed by the need to deliver their project expeditiously:

The Yorkshire Green Project needs to be delivered by 2027. Any delay could have potential implications on this. This provision has the potential to hinder progress of the Project.³

³ The Applicant's response to National Highways requirement for its prior approval for any programme of works affecting the SRN.

- 2.9 It should be wholly unacceptable for anyone to consider compromising safety to enable a developer to potentially achieve a quicker programme of delivery, even if the development is a nationally significant infrastructure project.
- 2.10 It is clear that the Applicant does not fully appreciate National Highways significant safety concerns associated with its proposed works:

National Grid would not expect there to be a need for approval of scaffolding/crossing works 'over' the SRN, for which only prior notice is proposed to be given.⁴

- 2.11 It is quite concerning that the Applicant considers it could carry out crossing works over live traffic without doing anything other than providing National Highways with prior notice. National Highways understands that the Applicant is proposing to use a Scaffold *Guard System* to install the new overhead lines at two locations on the SRN. This system comprises a temporary scaffold tower at both sides of the highway with netting suspended between them. Temporary structures of this sort are subject to a technical approval process which will cover both structural and geotechnical aspects of the temporary works design. Should due process not be followed, and National Highways not grant technical approval, then the risks to both workers and the public could be significant. This is particularly sensitive given historic instances where third parties have not followed due process. See *Highways England Safety Alert January 2017* at Appendix 1.
- 2.12 It is National Highways position that its full set of, unaltered, protective provisions must apply to this development in respect of the *known* works that are to take place. However, of further concern to National Highways is the *unknown* works that may take place to the SRN to facilitate the Authorised Development. Even if it was felt that National Highways' protective provisions were disproportionate to the *known* SRN works (which is the Applicant's view but strongly disputed by National Highways), there can be no dispute that they must apply in full given the Applicant seeks a power to carry out further *unknown* SRN works.

Such associated development not listed above, within the Order limits, as may be necessary or expedient for the purposes of or in connection with the construction or maintenance of the above Work Nos. or any of them, which may include—

- (a) ramps, means of access, footpaths, cycleways, bridleways and trackways;*
- (b) embankments, bridges, aprons, abutments, foundations, retaining walls, drainage, wing walls, headwalls, culverts and fencing including stock-proof fencing;*
- (c) works to alter the course of, or otherwise interfere with a watercourse, drainage works, attenuation ponds, and culverts;*

⁴ The Applicant's response with regards the extent to which National Highways' approval is required for works which affect the SRN.

- (d) landscaping and other works to mitigate any adverse effects of construction, maintenance, operation or use, together with means of access;*
- (e) tree, hedgerow and vegetation planting and maintenance works;*
- (f) works for the benefit or protection of the environment;*
- (g) works for the benefit or protection of land, structures, apparatus or equipment affected by the authorised development (including earthing and works for monitoring);*
- (h) works required for the strengthening, improvement, maintenance, or reconstruction of any streets;*
- (i) works to streets and any alteration, removal or installation of street furniture, traffic signage and signals, and road lining, including where required to facilitate the construction of temporary accesses;*
- (j) site preparation works, site clearance (including scaffolding, fencing, vegetation removal, demolition of existing buildings or structures and the creation of alternative footpaths, cycleways, bridleways and trackways);*
- (k) earthworks (including soil stripping and storage, site levelling, ground improvement, berms and bunding);*
- (l) works within temporary construction compounds, comprising temporary laydown, assembly and storage areas, temporary offices, security cabins, temporary vehicle parking, construction fencing, gates and hoarding, perimeter enclosure, security fencing, construction related buildings, welfare facilities, construction and security lighting and haulage roads, provision of services, generators, lighting, waste management facilities, drainage works, attenuation ponds, access roads, wheel cleaning facilities, biosecurity measures, fencing and hoarding;*
- (m) works within cable sealing end compounds and substations, comprising the installation of switchgear, above and below ground services, troughs and cables, perimeter fencing, gates and hoarding, drainage systems, attenuation ponds, pollution control, generators, earthing and protection control systems, supervisory control and data acquisition communications, lighting, waste management facilities, drainage works, attenuation ponds, access roads, wheel cleaning facilities, biosecurity measures, parking areas;*
- (n) works to allow for the provision of services, including power supplies, electric vehicle charging points and communication equipment;*
- (o) installation of wires, cables, ducts, pipes and conductors including establishment of winching points;*
- (p) the changing of name plates;*
- (q) such other works, including scaffolding and crossing protection, working areas, and works of demolition (which includes but is not limited to demolition of residential properties), as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development and which do not give rise to any materially different environmental effects from those assessed in the environmental statement;*

- (r) the construction and installation of permanent vehicle access roads, gates and fencing, hardstanding, and drainage;
- (s) works to place, alter, divert, relocate, protect, remove or maintain the position of apparatus (including statutory undertakers' apparatus), services, plant and other equipment in, under or above a street, or in other land, including mains, sewers, drains, pipes, lights, conductors, cables, fencing and other boundary treatments; and
- (t) such other works as may be necessary or expedient for the purposes of or in connection with the construction, installation, operation or maintenance of the authorised development and which do not give rise to any materially different environmental effects from those assessed in the environmental statement.⁵

2.13 It can therefore be seen that the Applicant is seeking development consent to carry out unspecified works to the SRN which, amongst other things includes its reconstruction. Given the unknown nature of these works National Highways cannot be left in a position where it does not have full protection for what could amount to significant SRN works.

2.14 The Applicant has provided commentary within their latest Statement of Common Ground update on the areas of disagreement with regards the protective provisions. National Highways' response to the same is as follows:

Provision	Explanation	Applicant's comments	National Highways' response
Highways maintenance contractor	Whether any works to the SRN are discussed directly with a highways maintenance contractor.	<i>The only specified works National Grid are currently aware of are the above ground crossing of the A64 – it is National Grid's understanding that the remainder are on land owned by National Highways but not within the SRN. Instructing a contractor for works which do not seek to change the SRN and will not need to be maintained by National Highways is disproportionate. National Grid propose the removal of this wording.</i>	This relates to paragraph 3 of the protective provisions. National Highways believes the Applicant has misunderstood the reason for this provision. Parts of the strategic road network are routinely managed by design build finance and operate (DBFO) contractors, who have primary responsibility for managing the asset. The purpose of paragraph 3 is to ensure that, where a road, subject to the specified works, is managed under a DBFO contract, the highway operations and maintenance contractor can take the benefit

⁵ Taken from Schedule 1 *Authorised Development*

Provision	Explanation	Applicant's comments	National Highways' response
			<p>of the protective provisions. Otherwise, any claim that the highway operations and maintenance contractor had against the Applicant by virtue of its stewardship of the asset would need to be through a claim made by National Highways and sub-recovered by the DBFO contractor. This is unnecessary, inefficient and creates a contractual risk to National Highways, as the DBFO contract does not cater for risks occasioned by third party development.</p> <p>This provision creates no risk for, nor does it places any administrative burden on, the Applicant and should be accepted.</p>
<p>Prior approvals and security.</p>	<p>Whether National Grid should obtain prior approval from National Highways for any programme of works including a road safety audit.</p>	<p><i>On the basis of the specified works currently understood to be taking place, National Grid consider this paragraph disproportionate.</i></p> <p><i>National Grid propose the removal of this wording.</i></p> <p><i>The Yorkshire Green Project needs to be delivered by 2027. Any delay could have potential implications on this. This provision has the potential to hinder progress of the Project and fetters rights under the DCO. In the context of ongoing discussions relating to the land rights heads of terms and in line with</i></p>	<p>This relates to paragraph 7 of the protective provisions.</p> <p>The Applicant has deleted the entire section on prior approvals indicating a belief that it can carry out specified works without the need to agree details or obtain consent from the strategic highways company with responsibility for this important national asset.</p> <p>National Highways relies on its comments above to justify its position in this regard. It</p>

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		<i>the approach taken on protective provisions elsewhere within the DCO.</i>	should be wholly unacceptable for anyone to consider compromising safety to enable a developer to potentially achieve a quicker programme of delivery, even if the development is a nationally significant infrastructure project. The implications for this are potentially catastrophic. This could expose the Applicant's contractors and members of the public to extreme risk and is contrary to National Highways' statutory obligations with respect to safety. A public body should not be forced to concede on a safety related point that would expose it to significant financial liability and reputational risk.
Construction of the specified works.	The extent to which National Highways' approval is required for works which affect the SRN.	<i>National Grid has agreed to provide certain information for National Highways' approval in respect of works which are "in, on or over" the SRN. However, National Grid would expect there to be a difference in approval processes for scaffolding/crossing works over 4m above the SRN, for which a shorter approval time and deemed consent is proposed.</i>	National Highways relies on its comments above to justify its position in this regard. It should be wholly unacceptable for anyone to consider compromising safety to enable a developer to potentially achieve a quicker programme of delivery, even if the development is a nationally significant infrastructure project. The implications for this are potentially catastrophic. This could expose the Applicant's contractors and members of the public to extreme risk and is contrary to National Highways' statutory obligations with respect to safety. A public body should not be forced to concede on a

Provision	Explanation	Applicant's comments	National Highways' response
			<p>safety related point that would expose it to significant financial liability and reputational risk.</p> <p>As mentioned earlier, the Applicant is proposing to use a <i>Scaffold Guard System</i> to install the new overhead lines at two locations on the SRN. Temporary structures of this sort are subject to a technical approval process which will cover both structural and geotechnical aspects of the temporary works design. Should due process not be followed, and National Highways technical approval not be obtained then the risks to both workers and the public could be significant.</p>
Maintenance of the SRN	Whether during the construction of the specified works National Grid should carry out all maintenance of the SRN affected.	<i>This has not been included by National Grid because there will be no works to the SRN requiring maintenance.</i>	<p>This relates to paragraph 10 of the protective provisions.</p> <p>For clarification, this is not a general requirement on the Applicant to maintain the carriageway or highway apparatus found on the SRN. It is an obligation to maintain those parts of the network which they are interfering with until such time as the works have been signed off by National Highways. It would not be reasonable to expect National Highways to continue to carry the maintenance liability for a part of the network which it may not be in possession of. Given</p>

Provision	Explanation	Applicant's comments	National Highways' response
			<p>the wide scope of associated development permitted by Schedule 1 as drafted, it is impossible for National Highways to be certain at this time that there will be no works to the SRN requiring maintenance.</p>
Approvals requirement	<p>Whether any approvals required by National Highways must not be unreasonably withheld or delayed, must be given in writing and are deemed to be refused if neither given or refused within 2 months, these approvals will also be given with any conditions that National Highways consider necessary.</p>	<p><i>The Yorkshire Green Project needs to be delivered by 2027. Any delay could have potential implications on this. This provision has the potential to hinder progress of the Project and fetters rights under the DCO.</i></p>	<p>This relates to paragraph 7(4) of the protective provisions.</p> <p>As mentioned earlier, it should be wholly unacceptable for anyone to consider compromising safety to enable a developer to potentially achieve a quicker programme of delivery, even if the development is a nationally significant infrastructure project. The risks associated with something going wrong should National Highways not explicitly approve works should outweigh any minimal time savings the developer might achieve by the imposition of deemed consent.</p>
Payments	<p>The scope for payment of administration costs to National Highways.</p>	<p><i>Amendments have been made to National Highways' standard provisions to prevent any undue delays to programme resulting from payment administration.</i></p>	<p>This relates to a number of paragraphs of the protective provisions which the Applicant would like to delete.</p> <p>National Highways does not carry a budget to fund third party works. Any third party</p>

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		<p><i>In the unlikely event of any works being carried out on the SRN, it is not anticipated that funds will be provided on account.</i></p> <p><i>National Grid's standard payment terms are for 42 days.</i></p>	<p>carrying out works to the SRN is expected to be able to fund those works as well as National Highways' associated costs. As a public body National Highways must have those costs paid in advance. The Applicant wants National Highways to self-fund any such costs and seek reimbursement. This creates financial risk and uncertainty for National Highways. It also poses safety concerns that links to all other comments. Once again it demonstrates a lack of regard for National Highways' concerns around the safety of those both using and working on the SRN.</p>
Miscellaneous provisions	Whether National Highways proposed protective provisions, which includes numerous miscellaneous provisions, are relevant to the works proposed under the DCO.	<p><i>National Highways' drafting includes provisions relating to the following, which are not relevant to the works being undertaken and therefore have not been included in the protective provisions:</i></p> <ul style="list-style-type: none"> • <i>Provisional Certificate</i> • <i>Final condition survey</i> • <i>Defects period</i> • <i>Final certificate</i> • <i>Security</i> 	<p>It is National Highways view that these provisions are all relevant and proportionate to the proposals put forward by the Applicant. They are relevant to both the <i>known</i> works and are further needed due to the <i>unknown</i> works that may come forward under the wide power for associated development in Schedule 1.</p> <p>As has been stated already, these are all standard terms agreed daily with developers seeking to carry out works on the SRN to facilitate their development. Other than their development being a nationally significant infrastructure project it is unclear why the Applicant thinks they should be treated</p>

Provision	Explanation	Applicant's comments	National Highways' response
		<ul style="list-style-type: none"> • <i>Commuted sums</i> • <i>Indemnity</i> • <i>Land</i> • <i>Expert Determination</i> <p><i>These provisions do not relate to the nature of works being carried out as part of the Yorkshire Green Project and so are not relevant or proportionate to include in the protective provisions under the DCO.</i></p>	<p>differently. For example, why should they not have to indemnify a public body against any costs, claims, expenses, damages, losses and liabilities arising from their development? Similarly, why should a public body carry the financial risk of having a third party carrying out work on its network without the backing of any security to ensure those works can be completed and/or made safe? These are basic conditions required by all public bodies and it should be without question that they must apply here.</p> <p>Every single provision included in National Highways' section 278 agreements and protective provisions have been carefully prepared to mitigate any risk to the SRN, the public purse and most importantly the safety of both those using the network and those working on it. The Applicant has not justified any reason for seeking departures from such other than saying, in their view, the provisions are disproportionate to the works they intend to carry out. National Highways fundamentally disagrees with this view for reasons already stated.</p>
Opening of SRN	Whether National Grid should notify National Highways of the intended	<i>No works are proposed which would relate to the opening to the public of the SRN.</i>	This relates to paragraph 10 of the protective provisions.

Provision	Explanation	Applicant's comments	National Highways' response
	opening to the public of the SRN.		<p>It is another reason why National Highways has significant concerns over the Applicant's attitude towards any works to the SRN. There is a high likelihood that even the <i>known</i> works will require temporary traffic management and potential lane closures to ensure works can be carried out safely. Any such closures will require re-opening once works are complete. The Applicant's deletion of this provision indicates a belief that their works won't require any such closures which in itself is a significant cause for concern and reinforces National Highways requirement to ensure that all works to the SRN are appropriately authorised.</p> <p>Notwithstanding its position with regards to known works, given the <i>unknown</i> works that may come forward under the wide power for associated development in Schedule 1 National Highways requirements for this provision to be reinstated are amplified.</p>
Maintenance of specific works	Whether National Grid should comply with National Highways' road space booking requirements in the	<i>Allowance needs to be made for National Grid to undertake emergency works which occupy road space without using National Highways' road space booking process. Wording to this effect has been added to the protective</i>	<p>This relates to additional text which the Applicant is proposing to add to paragraph 18 of the protective provisions.</p> <p>The wording is superfluous as the Applicant can rely on section 57 of the New Roads and</p>

Provision	Explanation	Applicant's comments	National Highways' response
	event of an emergency.	<i>provisions included within the draft DCO.</i>	Street Works Act 1991 to carry out emergency works should the need arise.
Arbitration	Whether disputes should be determined through arbitration of expert determination	<i>Any dispute that may arise under the Protective Provisions set out in the DCO must be settled via arbitration in accordance with article 53 (arbitration) of the draft DCO for the Yorkshire Green Project.</i>	<p>For consistency with other agreements related to third party works on the SRN National Highways preference is for disputes to be determined through expert determination.</p> <p>It is widely considered that expert determination has significant benefits over arbitration, particularly in circumstances where the subject of the dispute may lead to construction delay. Given the Applicant's views around expeditious delivery and avoiding undue delay it is surprising that they are taking an inconsistent approach in this regard. Expert determination is typically much cheaper and quicker and is adjudicated by a technical subject matter expert, rather than a legal expert.</p>

2.15 For the avoidance of doubt, National Highways requires its full set of protective provisions to apply, a further copy of which is included at Appendix 2 to this submission.

3 Response to Further Written Questions

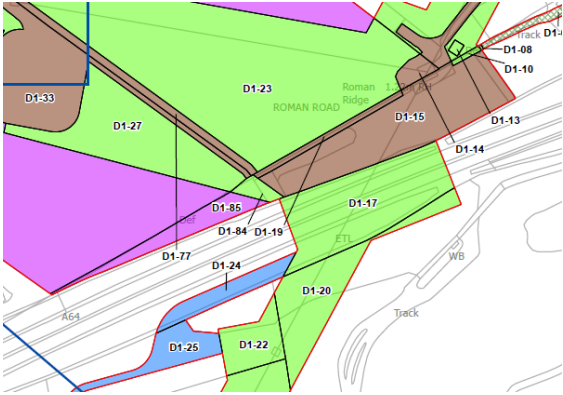
No.	ExA Question	National Highways Response
Q4.2.1	Sustained objections/ Protective Provisions	

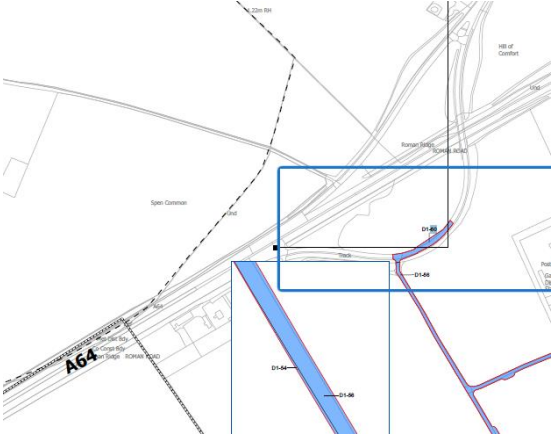
No.	ExA Question	National Highways Response
	<p>The Applicant's updated Protective Provisions Progress Schedule [REP4-016] indicates that it is unlikely that all Protective Provisions will be agreed and ready for inclusion in the dDCO to be submitted at Deadline 5 (the Deadline agreed by the Applicant for completion of Protective Provisions at ISH1).</p> <p>In instances where agreement cannot be reached by D5, the Applicant has been requested to submit its wording and any alternative wording under discussion from Statutory Undertakers.</p> <p>a) If it is clear that you will not reach agreement with the Applicant on Protective Provisions by Deadline 5, submit an explanation of the areas of disagreement, reasons why and your preferred wording. Submit this at Deadline 5.</p> <p>b) It is clear from some parties' submissions that agreement of Protective Provisions would not resolve all outstanding objections. Confirm here whether all your outstanding objections can be resolved through agreement of Protective Provisions or not.</p> <p>c) These matters will be explored further at hearings during the week commencing 17 July 2023, at which your presence will be</p>	<p>a) See section 2 above.</p> <p>b) If National Highways' preferred set of protective provisions was accepted then this <i>would</i> resolve all of National Highways' outstanding concerns.</p> <p>c) Noted. National Highways will attend the hearing on 17 July 2023.</p>


No.	ExA Question	National Highways Response
	<p>requested. At Deadline 6, the ExA requires an update on progress, either in response to this question or as a written submission of oral representations given at a relevant hearing(s).</p>	
Q4.2.5	<p>Land interests within the local highway network National Highways (NH) post hearing submission from CAH1, says that the objection extends to NH land interests located within the local highway authority network and that the local highway authority shares NH concerns around uncontrolled powers being granted in, on, over or adjacent to the highway network [REP4-029], para 4.5.</p> <p>North Yorkshire Council has confirmed this is an objection for its administrative area [REP4-041].</p> <p>a) National Highways: From your point of view, is this also the case for plots in which NH has an interest which lie in the administrative boundary of City of York Council?</p> <p>b) National Highways: Are plots B3-07, B3-08, B3-09, B3-11, B3-66, B3-74 and B3-75, in which NH has an interest, part of the strategic road network (SRN), or are they on a de-trunked section of the A19?</p>	<p>a) National Highways' position is the same for all of its land interests. This includes any land interests located within the local highway authority network, whomever the relevant highway authority may be.</p> <p>b) Plots B3-07, B3-08, B3-09, B3-11, B3-66, B3-74 and B3-75 do not form part of the SRN. Following the A19 de-trunking these plots are now located on the local highway network.</p>

No.	ExA Question	National Highways Response
	<p>c) National Highways: Does this point just refer to the possibility of any interests being extinguished, or is it also in connection with the safety implications of the local road network as well as the SRN?</p>	<p>c) Because this road has now been de-trunked National Highways has no interest as highway authority. National Highway' view is that it should be the highway authority who own such land rather than a third party. National Highways' objection is therefore made in support of any safety concerns that the local highway authority have with regards to third parties seeking compulsory powers of land and interests on its network.</p>
Q4.2.6	<p>SRN/ local highway networks List the plots in which NH has an interest which are:</p> <p>a) part of the SRN; and</p> <p>b) part of local highway networks.</p>	<p>a) The following plots are part of the SRN:D1-17, D1-24, D1-60, E6-02, E6-10, E7-04, E7-05, E7-19, E7-24, E7-27, E7-29, E7-32, E7-33, E7-36, E7-37, E7-38, E7-38a, E7-39, E7-43, E7-44, E7-44a, E7-45, E7-47, E7-48, E7-49, E7-50, E7-51, E7-52, E7-53, F1-30, F1-31, F1-34, F1-37 and F1-39.</p> <p>b) The following plots are part of the local highway network; B2-01, B2-30, B2-35, B2-47, B2-48, B2-52, B2-59, B2-60, B2-65, B2-66, B2-67, B3-01, B3-04, B3-05, B3-06, B3-07, B3-08, B3-09, B3-11, B3-66, B3-74, B3-75, B3-76, E7-07, E7-08, E7-10, E7-11, E7-12, E7-14 and E7-15.</p>
Q4.2.7	<p>Extinguishment of National Highways' interests</p>	<p>Part of National Highways concern relates to the uncertainty of the Applicant's intentions. It is not wholly</p>

No.	ExA Question	National Highways Response
	<p>Further to NH contribution at CAH1 and its post hearing submission [REP4-029], what NH interests which are planned for extinguishment have the potential to cause NH significant problems and could make it impossible for NH to fulfil its statutory and Licence obligations?</p>	<p>clear whether they do intend to extinguish any rights or interests belonging to National Highways yet the DCO, as drafted, would permit them to do so. National Highways would welcome clarity from the Applicant on this point. It is National Highways' understanding that should the Applicant utilise the CA powers granted by the Order any rights of National Highways shall be extinguished insofar as their continuance would be inconsistent. Whilst it is hoped that rights could coexist, without certainty on the point there is a risk that National Highways would lose rights which it benefits from and which are needed to fulfil its role as the strategic highway company.</p> <p>National Highways is not opposed to granting the Applicant the rights it will require to carry out the Authorised Development, it just needs to ensure that this is done appropriately and in a way where those rights can coexist with National Highways own rights. That is why a negotiated agreement is preferable to compulsory acquisition powers and why National Highways' protective provisions are written in the way they are – that is not to prevent or hinder the Applicant in the delivery of their project but to ensure that it is done in a safe and appropriate manner without any detrimental effect to the SRN. National Highways protective provisions would achieve this to the satisfaction of both parties which is why they should be included on the face of any made order.</p> <p>Outside of the SRN boundary National Highways have interests in third party land for matters such as maintenance access and drainage infrastructure. National Highways</p>

No.	ExA Question	National Highways Response
		<p>often maintains its network and assets from third party land. If these interests are extinguished then the implications for National Highways could be significant. For example if access was no longer available then it could make it impossible for National Highways to carry out its statutory maintenance duties with resultant safety impacts. Similarly if National Highways lost its rights of drainage over third party land the result could mean flooding to the SRN and the significant safety issues that could result therefrom.</p>
Q14.0.4	<p>Parts of the Strategic Road Network potentially affected by the Proposed Development Further to your comments in [REP2-079] and [REP4-029], and having regard to the Applicant's comments in [REP4-025], indicate by means of a plan (if possible) specifically which parts of the Strategic Road Network you consider could be affected by the Proposed Development in terms of highway safety and how any effects might occur.</p>	<p>There are four main areas within the development that cause particular concern:</p> <ol style="list-style-type: none"> 1. A64 crossing  <p>To construct and thereafter maintain the authorised development the Applicant is proposing to cross the A64 near Tadcaster. Any works to cross the SRN should only be carried out in accordance with the proper standards, traffic management arrangements</p>

No.	ExA Question	National Highways Response
		<p>and safety measures to protect both those carrying out the works and those using the network. National Highways must have a role in approving any such works to ensure safety is not compromised either during the carrying out of the works or thereafter and that the appropriate standards are adhered to.</p> <p>2. Access from A64 slip road</p>  <p>Any accesses to the SRN must be done in accordance with National Highways standards. An access onto an 'on slip', as is proposed here, creates safety issues due to potential conflict as vehicles look to join traffic that is picking up speed in readiness to join the SRN mainline. Furthermore, National Highways needs to have the rights and ability to maintain the assets to appropriate standards, including but not limited to drains,</p>

No.	ExA Question	National Highways Response
		<p>vegetation, road surface, and equipment (including lighting).</p> <p>3. Westfield Lane</p>  <p>Proposal to carry overhead lines across a balancing pond that is part of the highway drainage system for the A1(M). The importance of this asset means that National Highways must ensure that any works in this area are carried out with the appropriate consents and approvals to ensure works are carried out in a safe and appropriate manner and that National Highways ability to continue using the asset is in no way compromised.</p> <p>4. A1(M), A63 interface</p>

Appendix 1 – *Highways England Safety Alert January 2017*

Scaffold Guards

A Power Company through its supply chain has recently applied for a licence and once this was granted subsequently erected a series of Scaffold Guards over Highways England Network. The requirements for the licence, design and approval of Scaffold Guard Structures are described within CHE memorandum 15/94. A typical scaffold guard is shown below



Investigation / findings:

The requirements of CHE memorandum 15/94 are not widely known and installations have potentially been allowed to proceed without formal agreement being in place. The stability of the scaffold towers rely on cable stays fastened to kentledge blocks or ground anchors. It was unclear as to the required testing regime, effects of anchor interaction and the required design safety factor. The ground investigation was not agreed by Highways England and was initially rejected. (The GI did not take into account site specific conditions with only partial investigation of the site).

There were inconsistencies and errors within construction drawings that implied a reliance on site staff to decide whether the ground was suitable to meet design criteria. The initial submissions enclosing signed Design and Check Certificates were rejected, and required amendment after a further check being carried out by a third party, employed by National Grid.

Delays to the programmed work required further strengthening to the scaffold to account for ice loading. There are two loading conditions summer and winter (to account for ice loading). On site amendments were required during installation due to a lack of appreciation of vehicle restraint requirements. Supervision levels vary between service providers.

For further information about this incident please contact:

Martin Sunderland, Structures Advisor, Professional & Technical Services. 0300 4706165 or email martin.sunderland@highwaysengland.co.uk:

Actions

- The requirements of CHE memorandum 15/94 must be followed
- Applications for Scaffold Guard licences should be closely scrutinised and the Section 169 Licence must be in place prior to Structures Technical Approval.
- The design check must be undertaken by a competent person.
- The ground investigation must be adequate for the complexity of design.
- Competent personnel should ensure on site tests are performed correctly to ensure acceptable safety factors are maintained. Anchor integrity should not be compromised by the close proximity of an adjacent anchor.
- The designers should consider the risk of malicious damage or theft of components, which could lead to catastrophic failure on to the highway.
- Maintaining Organisations should consider the use of additional onsite supervision and audit.

Appendix 2 – *National Highways' Protective Provisions*

PART []
FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Application etc.,

1. —(1) The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(2) Except where expressly amended by the Order the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or Town and Country Planning (General Permitted Development) (England) Order 2015 shall continue to apply in respect of the exercise of all National Highways' statutory functions.

Interpretation

2.—(1) Where the terms defined in article 2 (*interpretation*) of this Order are inconsistent with subparagraph (2) the latter prevail.

(2) In this Part of this Schedule—

“as built information” means one electronic copy of the following information—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document;
- (b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);
- (c) product data sheets and technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for the works carried out;
- (f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during construction phase of the project;
- (j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;
- (k) the health and safety file; and
- (l) such other information as is required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway's *Asset Data Management Manual* as is in operation at the relevant time.

“the bond sum” means the sum equal to 200% of the cost of the carrying out the specified works (to include all costs plus any commuted sum) or such other sum agreed between the undertaker and National Highways;

“the cash surety” means the sum agreed between the undertaker and National Highways;

“commuted sum” means such sum calculated as provided for in paragraph 9 of this Part of this Schedule to be used to fund the future cost of maintaining the specified works;

“condition survey” means a survey of the condition of National Highways structures and assets within the Order limits that may be affected by the specified works;

“contractor” means any contractor or subcontractor appointed by the undertaker to carry out the specified works;

“defects period” means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;

“detailed design information” means such of the following drawings specifications and calculations as are relevant to the development—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways
- (e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) regime of California Bearing Ratio testing;
- (k) electrical work for road lighting, traffic signs and signals;
- (l) motorway communications as required by DMRB;
- (m) highway structures and any required structural approval in principle;
- (n) landscaping;
- (o) proposed departures from DMRB standards;
- (p) walking, cycling and horse riding assessment and review report;
- (q) stage 1 and stage 2 road safety audits and exceptions agreed;
- (r) utilities diversions;
- (s) topographical survey;
- (t) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
- (u) health and safety information including any asbestos survey required by GG105 or any successor document; and
- (v) other such information that may be required by National Highways to be used to inform the detailed design of the specified works;

“DBFO contract” means the contract between National Highways and the highway operations and maintenance contractor for the maintenance and operation of parts of the strategic road network which are within the Order Limits or any successor or replacement contract that may be current at the relevant time;

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“final certificate” means the certificate relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 9;

“the health and safety file” means the file or other permanent record containing the relevant health and safety information for the authorised development required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

“highway operations and maintenance contractor” means the contractor appointed by National Highways under the DBFO contract;

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of the specified works as notified to National Highways from time to time;

“programme of works” means a document setting out the sequence and timetabling of the specified works;

“provisional certificate” means the certificate of provisional completion relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 7 when it considers the specified works are substantially complete and may be opened for traffic;

“road safety audit” means an audit carried out in accordance with the road safety audit standard;

“road safety audit standard” means DMRB Standard HD GG119 or any replacement or modification of it;

“road space booking” means road space bookings in accordance with National Highways’ Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy;

“Specification for Highways Works” means the specification for highways works forming part of the manual of contract documents for highway works published by National Highways and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the strategic road network;

“specified works” means so much of any work, including highway works and signalisation, authorised by this Order including any maintenance of that work, as is on, in, under or over the strategic road network for which National Highways is the highway authority;

“strategic road network” means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including drainage infrastructure, street furniture, verges and vegetation and all other land, apparatus and rights located in, on, over or under the highway;

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991; and

“winter maintenance” means maintenance of the road surface to deal with snow and ice.

(3) References to any standards, manuals, contracts, Regulations and Directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

General

3.In respect of any part of the strategic road network that is managed under a DBFO contract both National Highways and the highway operations and maintenance contractor shall have the benefit of this Part of Schedule 15 but for the purposes of any approvals required under this Part of Schedule 15 the undertaker shall liaise directly with National Highways.

4.Notwithstanding the limits of deviation permitted pursuant to article 5 of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under or over the strategic road network at a distance within 4 metres of the lowest point of the ground.

5.References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

Works outside the Order limits

6.—If the undertaker proposes to carry out works to the strategic road network that are outside of the Order Limits in connection with the authorised development, the undertaker must enter into an agreement with National Highways in respect of the carrying out of those works prior to the commencement of those works.

Prior approvals and security

7.—(1) The specified works must not commence until—

- (a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways;
- (b) the programme of works has been approved by National Highways;
- (c) the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—
 - (i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a)
 - (ii) details of the proposed road space bookings;
 - (iii) the identity and suitability of the contractor and nominated persons;
 - (iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;
 - (v) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding; and
- (d) a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;
- (e) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c)(v) above;
- (f) National Highways has approved the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;
- (g) the undertaker has agreed the estimate of the commuted sum with National Highways;
- (h) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the specified works (which must include winter maintenance) has been agreed in writing by National Highways;
- (i) the undertaker has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the specified works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the specified works, including in the selection of materials, goods, equipment and plant; and
- (j) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways considers will be affected by the specified works, has been agreed in writing by National Highways.

(2) The undertaker must not exercise—

- (a) article 4 (*maintenance of authorised development*);
- (b) article 11 (*street works*);
- (c) article 13 (*power to alter layout, etc. of streets*);

- (d) article 14 (*temporary stopping up of streets, cycle tracks and public rights of way*);
- (e) article 16 (*Access to works*);
- (f) article 19 (*discharge of water*);
- (g) article 20 (*protective works to buildings*);
- (h) article 21 (*authority to survey and investigate the land*);
- (i) article 22 (*compulsory acquisition of land*);
- (j) article 25 (*compulsory acquisition of rights*);
- (k) article 26 (*Extinguishment and suspension of private rights*);
- (l) article 35 (*Use of subsoil under or airspace over streets*);
- (m) article 36 (*temporary use of land by National Grid*);
- (n) article 37 (*temporary use of land by NPG*);
- (o) article 38 (*temporary use of land by NGN*);
- (p) article 39 (*temporary use of land for maintaining the authorised development*);
- (q) article 45 (*Traffic regulation*); or
- (r) article 46 (*felling or lopping trees*) of this Order,

over any part of the strategic road network without the consent of National Highways, and National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and/or submit a scheme of traffic management for National Highways' approval.

(3) National Highways must prior to the commencement of the specified works or the exercise of any power referenced in sub-paragraph (2) inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraph (1) or (2).

(4) Any approval of National Highways required under this paragraph-

- (a) must not be unreasonably withheld;
- (b) must be given in writing;
- (c) shall be deemed to have been refused if neither given nor refused within 2 months of the receipt of the information for approval or, where further particulars are requested by National Highways within 2 months of receipt of the information to which the request for further particulars relates; and
- (d) may be subject to any conditions as National Highways considers necessary.

(5) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways immediately and details of their suitability to deliver the specified works will be provided on request along with collateral warranties in a form agreed by National Highways.

(6) Any change to the detailed design of the specified works must be approved by National Highways in accordance with paragraph 7(1) of this Part.

Construction of the specified works

8.—(1) The undertaker must give National Highways 28 days' notice in writing of the date on which the specified works will start unless otherwise agreed by National Highways.

(2) The undertaker must comply with National Highways' road space booking procedures prior to and during the carrying out the specified works and no specified works for which a road space booking is required shall commence without a road space booking having first been secured from National Highways.

(3) The specified works must be carried out by the undertaker to the satisfaction of National Highways in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 7(1) above or as subsequently varied by agreement between the undertaker and National Highways;
 - (b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as required by National Highways to include, inter alia; all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 save to the extent that exceptions from those standards apply which have been approved by National Highways; and
 - (c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of National Highways.
- (4) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the specified works for the purposes of inspection and supervision of the specified works.
- (5) If any part of the specified works is constructed-
- (a) other than in accordance with the requirements of this Part of this Schedule; or
 - (b) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways,
- National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the satisfaction of National Highways.
- (6) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may by notice in writing require the undertaker, at its own expense, to remedy the damage.
- (7) If within 28 days on which a notice under sub-paragraph (5) or sub-paragraph (6) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure incurred by National Highways in so doing, such sum to be payable within 30 days of demand.
- (8) Nothing in this Part of this Schedule prevents National Highways from carrying out any work or taking any such action as it reasonably believes to be necessary as a result of or in connection with the carrying out or maintenance of the authorised development without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and National Highways may recover any expenditure it reasonably incurs in so doing.
- (9) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the satisfaction of National Highways.
- (10) During the construction of the specified works the undertaker must carry out all maintenance (including winter maintenance) in accordance with the scope of maintenance operations agreed by National Highways pursuant to paragraph 7(1)(h) and the undertaker must carry out such maintenance at its own cost.
- (11) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme pursuant to paragraph 7(1)(b) of this Part or suspends the carrying out of any specified work beyond a reasonable period of time and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

Payments

9.—(1) The undertaker must pay to National Highways a sum equal to the whole of any costs and expenses which National Highways incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes abortive) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

- (a) the checking and approval of the information required under paragraph 7(1);
- (b) the supervision of the specified works;
- (c) the checking and approval of the information required to determine approvals under this Order;
- (d) all costs in relation to the transfer of any land required for the specified works; and
- (e) all legal and administrative costs and disbursements incurred by National Highways in connection with the Order and sub-paragraphs (a)-(d); and
- (f) any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the NH costs”.

(2) The undertaker must pay to National Highways upon demand and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the authorised development.

(3) National Highways must provide the undertaker with a schedule showing its estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the estimate of the NH costs prior to commencing the specified works and in any event prior to National Highways incurring any cost.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate of the NH costs (the excess) and the undertaker must pay to National Highways within 28 days of the date of the notice a sum equal to the excess.

(5) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above within 91 days of the issue of the provisional certificate issued pursuant to paragraph 10(4).

(6) Within 28 days of the issue of the final account:

- (a) if the final account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it;
- (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.

(7) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional Certificate

10.—(1) Following any closure or partial closure of any of the strategic road network for the purposes of carrying out the specified works, National Highways will carry out a site inspection to satisfy itself that the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of National Highways prior to reopening the strategic road network.

(2) As soon as the undertaker considers that the provisional certificate may be properly issued it must apply to National Highways for the provisional certificate.

(3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable:

- (a) inspect the specified works; and
- (b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(4) When—

(a) a stage 3 road safety audit for the specified works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways;

(b) the specified works incorporating the approved remedial works under sub-paragraph (4)(a) and any further works notified to the undertaker pursuant to sub-paragraph 10(3)(b) have been completed to the satisfaction of National Highways;

(c) the as built information has been provided to National Highways; and

(d) the undertaker has paid the commuted sum to National Highways,

National Highways must issue the provisional certificate.

(5) On the issue of the provisional certificate the bond sum shall be reduced to 20% of the total bond sum save insofar as any claim or claims have been made against the bond before that date in which case National Highways will retain a sufficient sum to ensure it does not have to meet any costs for or arising from the specified works.

(6) The undertaker must submit a stage 4 road safety audits as required by and in line with the timescales stipulated in the road safety audit standard. The undertaker must comply with the findings of the stage 4 road safety audit and must pay all costs of and incidental to such and provide updated as-built information to National Highways.

Opening

11. The undertaker must notify National Highways not less than 56 days in advance of the intended date of opening to the public of the strategic road network and the undertaker must notify National Highways of the actual date the strategic road network will be opened to the public within 14 days of that date.

Final condition survey

12.—(1) The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 10(2), arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 if the specified works include any works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to paragraph 12(1) indicates that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, National Highways may carry out the steps required of the undertaker and may recover any expenditure it reasonably incurs in so doing.

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to paragraph 12(1) give notice in writing that National Highways will remedy any damage identified in the re-surveys and National Highways may recover any expenditure it reasonably incurs in so doing.

(5) The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

Defects Period

13.—(1) The undertaker must at its own expense remedy any defects in the strategic road network as are reasonably required by National Highways to be remedied during the defects period. All identified defects must be remedied in accordance with the following timescales—

- (a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of National Highways);
- (b) in respect of matters which National Highways considers to be serious defects or faults, within 14 days of receiving notification of the same; and
- (c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.

(2) Following the expiry of the defects period National Highways has responsibility for routine maintenance of the strategic road network save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 3 years by and at the expense of the undertaker.

Final Certificate

14.—(1) The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate.

(2) Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable:

- (a) inspect the strategic road network; and
 - (b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the strategic road network or confirmation that no such works are required for this purpose.
- (3) The undertaker must carry out such works notified to it pursuant to sub-paragraph 14(2).
- (4) When National Highways is satisfied that:
- (a) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph 14(2) and any remedial works required as a result of the stage 4 road safety audit have been made good to the satisfaction of National Highways; and
 - (b) the NH costs have been paid to National Highways in full;

National Highways must issue the final certificate after which the bond shall be released in full.

(5) The undertaker must pay to National Highways within 28 days of demand the costs reasonably incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to these provisions.

Security

15.—(1) The specified works must not commence until—

- (a) the undertaker procures that the specified works are secured by a bond from a bondsman first approved by National Highways in the agreed form between the undertaker and National Highways to indemnify National Highways against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of the exercise of the powers under this Order and the specified works under the provisions of this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum; and

- (b) the undertaker has provided the cash surety which may be utilised by National Highways in the event of the undertaker failing to meet its obligations to make payments under paragraph 9 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker under the provisions of this Part of this Schedule.

Commuted sums

16.—(1) National Highways must provide to the undertaker an estimate of the commuted sum, calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 or any successor guidance, prior to the commencement of the specified works.

(2) The undertaker must pay to National Highways the commuted sum prior to the issue of the provisional certificate.

Insurance

17. Prior to the commencement of the specified works the undertaker must effect public liability insurance with an insurer in the minimum sum of £10,000,000 (ten million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of specified works or use of the strategic road network by the undertaker.

Indemnity

18.—(1) The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order within 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

Maintenance of the specified works

19.—(1) The undertaker must, prior to the commencement of any works of maintenance to the specified works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably.

(2) If, for the purposes of maintaining the specified works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of the specified works for which a road space booking is required shall commence without a road space booking having first been secured.

(3) The undertaker must comply with any requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 7 days' in advance of the planned commencement date of the maintenance works.

(4) The provisions of paragraph 11 shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

Land

20.—(1) Following the issue of the final certificate pursuant to paragraph 14(4) National Highways may serve notice on the undertaker that it wishes to take a freehold transfer of land within the extent of strategic road network boundary which is not in the ownership of National Highways but has been acquired by the undertaker for the purposes of carrying out the specified works.

(2) If the undertaker receives notice under sub-paragraph (1) then the undertaker must effect a freehold transfer of the land which is the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to National Highways.

(3) The undertaker must not under the powers of this Order:

- (a) acquire or use land forming part of;
- (b) acquire new or existing rights over; or
- (c) seek to impose or extinguish any restrictive covenants over;

any of the strategic road network, or extinguish any existing rights of National Highways in respect of any third party property, except with the consent of National Highways by written request to legalservicesinbox@nationalhighways.co.uk.

(4) Where any land or interest is proposed to be acquired for the benefit of National Highways, the undertaker must, unless otherwise agreed by National Highways, exercise article 22 (*compulsory acquisition of land*) and article 25 (*compulsory acquisition of rights*) as applied by articles 32 (*modification of Part 1 of the 1965 Act*) and article 33 (*application of the 1981 Act*) of this Order to directly vest in National Highways any such land or interest.

Expert Determination

21.—(1) Article 53 (*arbitration*) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date that an expert is appointed.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 53 (*arbitration*).

(7) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.