



By email only:
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Legal Services
National Highways Limited
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6 September 2023

Dear Sirs,

Deadline 7 submissions of National Highways Limited

This letter sets out the latest submissions of National Highways Limited provided at deadline 7 of the examination.

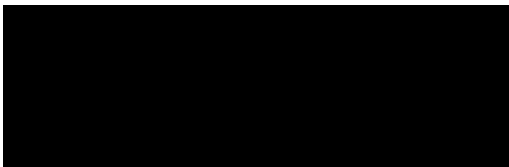
The Examining Authority's commentary and questions on the draft Development Consent Order (DC1) Issued on 16 August 2023

Enclosed at Appendix 1 to this letter is National Highways' response to those questions directed to it from the ExA. Since the ExA wrote its questions National Highways and the Applicant have reached common ground on many of the issues that the ExA has sort each party's views on. National Highways has therefore provided its DC1 response with this in mind (i.e. where paragraphs of the protective provisions are now agreed, National Highways has not sort to justify its position).

Protective Provisions

Enclosed at Appendix 2 is a copy of the protective provisions which are now largely agreed between the parties. Only two provisions remain where National Highways and the Applicant have been unable to reach agreement. A clean version of the protective provisions which National Highways respectfully requests are included in the final draft order is enclosed at Appendix 3.

Yours faithfully



Paul Bellingham, Senior Lawyer

Legal Services



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Appendix 1 - National Highways DC1 response



Application by National Grid Electricity Transmission (NGET) Plc for the Yorkshire Green Energy Enablement (GREEN) Project
The Examining Authority's commentary and questions on the draft Development Consent Order (DC1)
Issued on 16 August 2023

The following table sets out the Examining Authority's (ExA's) commentary and questions in relation to the latest version of the draft Development Consent Order (dDCO) [REP6-025] and Explanatory Memorandum [REP6-027].

This document takes into account the evidence submitted to the Examination to date. Some aspects of the dDCO are under active discussion between the parties. The ExA will consider any further evidence that is submitted before the close of the Examination in making its recommendation to the Secretary of State (SoS).

Column 1 assigns each row a unique reference number. When you are answering a question, please start your answer by quoting the unique reference number.

Column 2 of the table indicates to which Interested Parties (IPs) and other persons each question is directed. Please answer all questions directed to you, providing a substantive response, or indicating that the question is not relevant to you for a reason. This does not prevent an answer being provided to a question by a person to whom it is not directed, should the question be relevant to their interests.

If you are responding to a small number of questions, answers in a letter will suffice. If you are answering a larger number of questions, it will assist the ExA if you use a table based on this one to set out your responses. An editable version of this table in Microsoft Word is available on request from the case team: please contact YorkshireGreen@planninginspectorate.gov.uk and include 'Yorkshire GREEN – DC1' in the subject line of your email.

Responses are due by Deadline 7: Wednesday 6 September 2023.

Parties are reminded that the ExA may close the Examination before the end of the statutory six month period if it is satisfied that all relevant matters have been addressed. **Deadline 8 is the final opportunity for submissions. Any matters (including Protective Provisions) not concluded / agreed and fully documented as such by Deadline 8 will fall to be adjudicated by the ExA through its Recommendation.**

ExA's DCO Commentary: 16 August 2023

Responses due by Deadline 7: Wednesday 6 September 2023

DC1 1.	Question to:	Question:	National Highways' Response
Q1.01	National Highways	<p>Articles 11, 12 and 13: Streets</p> <p>In its earlier submissions [REP4-029], National Highways has stated an objection to Articles 11(1), 11(2) and 11(3) (Street works), Article 12(3) (Application of the 1991 Act) and Articles 13(1), 13(2), 13(4), 13(5) (Power to alter layout etc. of streets), whereas these Articles are not referred to in [REP6-076].</p> <p>Does National Highways maintain an objection in relation to the above Articles?</p>	<p>Even though the parties are still not 100% aligned on all matters, the applicant's version of the protective provisions is sufficient to address National Highways concerns regarding these articles and therefore National Highways no longer maintains an objection to such.</p>
Q1.02	National Highways and the Applicant	<p>Article 14: Temporary stopping up of streets, cycle tracks and public rights of way</p> <p>a) To National Highways: your submissions [REP6-076] that the undertaker would have a power to temporarily stop up the Strategic Road Network (SRN) and National Highways would only have the benefit of its Protective Provisions if there were associated "works" are noted. Can you give practical examples of activities that you consider the undertaker might foreseeably wish to carry out under these powers that are not associated with a specific 'works' within Schedule 1 of the dDCO.</p>	<p>The Applicant has agreed to include Article 14 within the list of articles at paragraph 7(3) of the protective provisions and this is sufficient to alleviate National Highways' concerns in this regard.</p>

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DC1	Question to:	Question:	National Highways' Response
Q1.0.3	National Highways	<p>Article 16: Access to works</p> <p>In its earlier submissions [REP4-029], National Highways has stated an objection to Articles 16(1) and 16(2) (Access to works), whereas Article 16 is not referred to in [REP6-076].</p> <p>Does National Highways maintain an objection in relation to Article 16?</p>	National Highways notes <i>Requirement 14 Access to Works</i> which addresses concerns raised by National Highways in earlier submissions. National Highways no longer maintains an objection to Article 16.
2. Schedule 15: Protective Provisions		3.	
3.0 Overarching matters		3.1	
Q3.1.1	The Applicant, Network Rail Infrastructure Limited, National Highways, National Gas Transmission PLC, Northern Gas Networks Limited	<p>Resolution of Protective Provisions yet to be agreed</p> <p><u>Deadline 8 (Wednesday 13 September 2023) is the final opportunity for submissions.</u> After this deadline, the ExA will close the Examination.</p> <p>Any Protective Provisions that have not been agreed between the parties and fully documented as such by the close of Examination will fall to be adjudicated by the ExA through its Recommendation.</p>	National Highways notes this position and hopes that the information submitted at deadline 7 will be helpful to the ExA in adjudicating on the small number of issues that remain not agreed.
3.2 Part 6 – For the Protection of National Highways Limited		3.3	
<p>The following questions seek to assist the ExA (and the SoS) to adjudicate positions in the scenario that disagreement on Protective Provisions remains at the close of Examination. If agreement between the parties is reached and agreed Protective Provisions are submitted in full at Deadline 7, then responses to the following questions will not be necessary.</p>		National Highways has now reached agreement with the Applicant on the majority of its protective provisions. There are only a couple of outstanding provisions that the parties have been unable to reach agreement on and will need to be adjudicated by the	

ExA's DCO Commentary: 16 August 2023

Responses due by Deadline 7: Wednesday 6 September 2023

DC1	Question to:	Question:	National Highways' Response
		<p>However points of clarity mentioned in the questions below should be addressed</p> <p>The ExA notes that progress has been made since the hearings in July (CAH2 and ISH4). However there still seems to be some considerable distance between parties on some matters, which in the ExA's view must arise on works to other overhead line crossings of the SRN. The ExA notes the annotated version of the Applicant's Protective Provisions provided by National Highways, which sets out reasoning for its proposed changes [REP6-076], Appendix 1. References are made to the Applicant's Proposed Protective Provisions to benefit National Highways [REP6-064], which helpfully sets out where differences still exist between parties. However, it is noted that the paragraph numbering in that document differs from that in the dDCO [REP6-025] so both are used where applicable. Where responses are made, reference should be to the dDCO paragraph numbers.</p> <p>The ExA notes that discussions are now taking place outside the Examination regarding land rights, which would negate the need for Compulsory Acquisition (CA).</p>	<p>ExA and the SoS. National Highways has answered the following questions with this in mind.</p> <p>Included with this submission is a further copy of the protective provisions with the outstanding provisions of disagreement (two paragraphs) highlighted.</p>
Q3.3.1	The Applicant National Highways	<p>Para 60 (dDCO [REP6-025]/ para 2 [REP6-064]): definition of "reconductoring detailed design information"</p> <p>It is noted that National Highways proposes inclusion of three more items in dDCO para 60(2) under definition of "reconductoring detailed design information"; namely at (c) road restraints systems, (e) earthworks and (f) landscaping [REP6-064], page 8 and [REP6-076], Appendix 1.</p>	<p>The inclusion of these three items in the protective provisions is now agreed between the Applicant and National Highways.</p>

ExA's DCO Commentary: 16 August 2023

Responses due by Deadline 7: Wednesday 6 September 2023

DC1	Question to:	Question:	National Highways' Response
		<p>These descriptions are covered later under “highway detailed design information”, but not for the reconductoring.</p> <p>c) Both: based on National Highways' comments regarding situations where scaffolding would not interfere with the existing road restraints systems [REP6-064], pages 4 to 5, is there a need for further definition to cover this difference? If so, provide precise wording and indicate where it would be included in the dDCO.</p> <p>d) National Highways: Why is “landscaping” needed?</p>	
Q3.3.2	The Applicant National Highways	<p>Para 61 and 62 (dDCO [REP6-025]/ para 3 and 4 [REP6-064]): General</p> <p>The ExA notes the addition of para 61 regarding highway and maintenance operations contractors under design, build, finance and operate (DBFO) contracts having the benefit of this “Part of Schedule 15”.</p> <p>a) Applicant: It is not clear to which Part of Schedule 15 this refers. Is it all of Part 6? This requires clarification in the dDCO.</p> <p>b) Applicant: Would the deletion of the words “when constructed” as proposed by National Highways [REP6-064], para 7(1), page 19 to 20, which is included in dDCO para 65(1) alter the differentiation that you seek with regards works under</p>	The Applicant and National Highways have now reached agreement on this point.

ExA's DCO Commentary: 16 August 2023

Responses due by Deadline 7: Wednesday 6 September 2023

DC1	Question to:	Question:	National Highways' Response
		<p>5.5m and above 5.5m of the surface of the SRN? If so, suggest precise wording to resolve this matter, agreed with National Highways, to resolve the ambiguity to which it refers. Respond to the point made regarding increased ambiguity [REP6-076], Appendix 1.</p>	
Q3.3.3	The Applicant National Highways	<p>Para 65 (dDCO [REP6-025]/ para 7 [REP6-064]): Prior approvals and security</p> <p>a) Applicant: As above, would the deletion of the words “when constructed” as proposed by National Highways which is included in dDCO para 65 alter the differentiation that you seek with regards works under 5.5m and above 5.5m of the surface of the SRN? If so, suggest precise wording to resolve this matter, agreed with National Highways to resolve the ambiguity to which it refers [REP6-064], page 19 to 20.</p> <p>As there is no difference between parties indicated in the wording of dDCO para 65(1) and para 65(2), other than the point above, the ExA assumes that the parties agree over the two-tier differentiation of works under 5.5m and above 5.5m of the surface of the SRN. The ExA had understood the purpose of this differentiation – which the Applicant has sought in order to effect a streamlined approach, “to ensure that NH is afforded appropriate</p>	<p>The Applicant and National Highways have now reached agreement on this point.</p> <p>No amendments to Schedule 1 are necessary now that National Highways is satisfied that the protective provisions are adequate to address its concerns in this regard.</p>

ExA's DCO Commentary: 16 August 2023

Responses due by Deadline 7: Wednesday 6 September 2023

DC1	Question to:	Question:	National Highways' Response
		<p><i>protections but not at the expense of following burdensome and unnecessary processes for the standard scaffold and reconductoring works</i>" [REP6-064], para 1.2.3 to 1.2.4.</p> <ul style="list-style-type: none">b) National Highways: Explain further the need for the broad-brush exclusion powers sought under proposed dDCO para 65(3) ([REP6-064], para 7(3), page 26 to 28) which could undermine the purpose of the rights being sought.c) Applicant: Set out details of how the National Highways additional drafting proposed under dDCO new para 65(3) would hinder progress and fetter rights to the undertaker's ability to deliver the authorised development in terms of the rights sought in the vicinity of the SRN [REP6-064], para 7(3), page 21 and page 26 to 28.d) Both: Respond to National Highways' addition of dDCO new para 65(3) ([REP6-064], para 7(3), page 26 to 27) which would remove the right for the undertaker to exercise rights under Articles 14, 19, 20, 21, 22, 25, 25, 35, 36, 38, 39, 45 over the SRN without National Highway's consent - as questioned under Schedule 1, what would be the precise wording required here if Schedule 1 was amended to exclude works to the SRN from the description of associated development?	

ExA's DCO Commentary: 16 August 2023

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DC1	Question to:	Question:	National Highways' Response
		<p>Would the Applicant's wording then be acceptable to National Highways?</p> <p>e) Both: What is progress on the Land Rights heads of terms. Has agreement been reached by Deadline 7? If not when? Would the agreement over land rights remove the disagreement over dDCO new para 65(3) ([REP6-064], para 7(3), page 26 to 28) and the need for its inclusion?</p> <p>f) Applicant: Explain why the additional wording regarding National Highways notifications to the undertaker regarding exercise of powers under dDCO existing para 65(3) is a point of difference [REP6-064], para 7(4), page 28.</p> <p>g) National Highways: If the two-tier approach is agreed, explain why the shorter time period, which is suggested for deletion from dDCO existing para 65(4)(d) and part 65(4)(e) is not required [REP6-064], para 7(5)(d) and (e), page 29 to 30.</p> <p>h) National Highways: Presumably the collateral warranties have National Highways as the third party dDCO existing para 65(6) [REP6-064], para 7(6), page 30 and [REP6-076], Appendix 1, comment PB8? Is this set out somewhere? Would the benefit also be for DBFO contractors? If not would wording be required to preclude them?</p>	

ExA's DCO Commentary: 16 August 2023

Responses due by Deadline 7: Wednesday 6 September 2023

DC1	Question to:	Question:	National Highways' Response
		<p>i) Applicant: Explain your objection to the proposed wording regarding collateral warranties, in light of National Highways comment that collateral warranties procured for National Highways has been agreed [REP6-076], Appendix 1, comment PB8. Is it the case that collateral warranties would be procured for National Highways? Do you have any other suggested wording to provide the comfort sought by National Highways? Also consider the point above regarding DBFO contractors.</p>	
Q3.3.4	The Applicant National Highways	<p>Para 66 (dDCO [REP6-025]/ para 8 [REP6-064]): Construction of the specified works</p> <p>a) Both: Regarding National Highways' concern about land over which it has rights that is not part of the SRN and the proposed general additional wording to dDCO para 66(5)(b), ([REP6-064], para 8(5)(b), page 34 and [REP6-076], Appendix 1, comment PB9), is one way forward to define land more narrowly by naming/ defining the balancing pond site, rather than adding "any other land of National Highways"?</p> <p>b) Applicant: Propose agreed wording if this is the case.</p> <p>c) National Highways: Explain why you consider it necessary to add in reference to payment under dDCO para</p>	The Applicant and National Highways have now reached agreement on this point.

ExA's DCO Commentary: 16 August 2023

Responses due by Deadline 7: Wednesday 6 September 2023

DC1	Question to:	Question:	National Highways' Response
		<p>66(7) in light of payments under dDCO para 67 (below) ([REP6-064], para 8(7), page 35 to 36). Or is the point that this needs to be paid more quickly than other payments, which the Applicant is proposing to be 42 days? (The ExA acknowledges that there is disagreement between parties over terms of 30 or 42 days).</p> <p>d) Applicant: Consider if the word "reinstatement" in para dDCO 66(9) is consistent with glossary definitions, and if it matters if it is not, and if it needs any further description in this place.</p>	
Q3.35	The Applicant National Highways	<p>Para 70 (dDCO [REP6-025]/ para 12 [REP6-064]): Final condition survey</p> <p>a) Applicant: It is not clear to the ExA to which some of the sub-paragraph references within the body of para dDCO 70 apply. Are some of the references to dDCO para 65(1) and 65(2)? Provide clarity over sub-paragraph numbering (which was clearer in [REP6-064] and [REP6-76]).</p> <p>b) Applicant: Respond to National Highways' point regarding the need for a final condition survey after reductoring works resulting in the addition of dDCO 65(1) (we think) to the stated (2) which we think is 65(2) in</p>	The Applicant and National Highways have now reached agreement on this point.

ExA's DCO Commentary: 16 August 2023

Responses due by Deadline 7: Wednesday 6 September 2023

DC1	Question to:	Question:	National Highways' Response
		<p>dDCO para 70(1) [REP6-064], para 12, page 45 to 46.</p> <p>c) Both: What implications would this addition of the reconductoring works have on the delivery of the authorised development?</p>	
Q3.3.6	The Applicant National Highways	<p>Para 75 (dDCO [REP6-025]/ para 20 [REP6-064]): Indemnity</p> <p>a) Applicant: Set out your response to National Highway's proposed removal of the word "directly" from dDCO para 75(1) ([REP6-064], para 20(1), page 53) and [REP6-076].</p> <p>b) National Highways: Set out your rationale for the exclusion of the word "directly" from dDCO para 75(1) ([REP6-064], para 20(1), page 53) and explain under what circumstances other liabilities might arise based on the facts of this case.</p> <p>c) Both: Set out your respective positions regarding the need or otherwise for setting a timescale of 14 days on demand for the indemnity in para dDCO 75(1) ([REP6-064], para 20(1), page 53).</p> <p>The ExA notes that there are differences regarding the need for an indemnity to be limited to a maximum aggregate amount,</p>	<p>This is one of two issues that remain outstanding between the parties.</p> <p>National Highways continues to object to the Applicant's insertion of the word 'directly' into the paragraph. As a public funded body National Highways should not be put at financial risk by restricting liabilities to direct losses only. Indirect losses may also arise at no fault of National Highways and it should not be for the public purse to remedy and/or mitigate such losses.</p> <p>It is not possible to set out an exhaustive list of circumstances that may result in liabilities accruing to National Highways but an example would be works carried out by the Applicant that may indirectly lead to an accident on the SRN - had those works not have taken place then no accident would have occurred and so National Highways would not have faced any liability claim. Depending on the size and severity of the accident, these liabilities could be significant. It would be impossible to try and quantify such liabilities which</p>

DC1	Question to:	Question:	National Highways' Response
		<p>dDCO para 75(2) ([REP6-064], para 20(2), page 53).</p> <p>d) Applicant: Respond to the point made by National Highways regarding the fact that the Applicant does not agree to caps on indemnities in the reverse situation and has thus proposed removal of dDCO para 75(2) ([REP6-064], para 20(2), page 53).</p> <p>e) Both: What would be the risks associated with the powers and rights sought for the authorised development and its interface with the SRN that are relevant to your respective positions regarding capping or not capping the indemnity.</p>	<p>is why National Highways also objects to any indemnity being capped.</p> <p>Limiting an indemnity to direct losses only can have several risks over and above the indemnity not providing adequate financial coverage. It could also create legal ambiguity; the definition of "<i>direct losses</i>" can be subject to interpretation, leading to disputes over what is covered and what is not. Such disputes can lead to costly legal battles again putting public finances at risk. Qualifying an indemnity in this way could also result in incomplete risk mitigation from the Applicant and its contractors; focusing solely on direct losses may leave gaps in risk management, as it ignores the broader consequences of an event.</p> <p>National Highways objects to its indemnity being capped for similar reasons. It is impossible to estimate the cost of future claims, so by capping an indemnity National Highways (and therefore the public purse) is put at risk of having to rectify damage and /or compensate claimants itself should the cap be met.</p> <p>A capped indemnity also creates a risk of reputational damage for National Highways. A capped indemnity that fails to cover a high-profile incident can damage the public body's reputation and erode public trust leading to questions as to its competence to protect the public interest.</p>

DC1	Question to:	Question:	National Highways' Response
			<p>Capping an indemnity may also may reduce the incentive for the Applicant (or their contractors) to exercise due care, as they might not be fully accountable for losses beyond the cap.</p> <p>National Highways objects to any form of cap on its indemnity but £30m seems particularly low for such an important national undertaking and National Highways is unclear of the reasons why the Applicant believes such a cap would be sufficient to cover all possible liabilities.</p> <p>Whilst National Highways is supportive of the proposed development, this support is conditional on there being nil risk to National Highways. The Applicant's proposed changes with regards to the indemnity wording create financial risks for National Highways which are unacceptable.</p>
Q3.3.7	The Applicant National Highways	<p>Para 77 (dDCO [REP6-025]/ para 19 [REP6-064]): Land</p> <p>a) Both: Regarding the proposed National Highways change to "the" final certificate in dDCO para 77(1) ([REP6-064], para 19(1), page 54), is there a difference of opinion over whether there would be more than one final certificate? If so, set this out and explain how this could be resolved in the wording.</p>	<p>a) There is no disagreement between the parties over the need for a final certificate. There may be more than one final certificate necessary if '<i>specified works</i>' are carried out independently of each other.</p> <p>c) National Highways is not aware of a proposal to delete said wording.</p>

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DC1	Question to:	Question:	National Highways' Response
		<p>b) Applicant: Should the “paragraph (2)” cited in para dDCO 77(1) be paragraph 65(2)?</p> <p>c) Both: Clarify if, and why the words “approved under dDCO para 7(2)” at the end of dDCO para 77(1), ([REP6-064]), para 19(1) page 55) in are proposed for deletion. These words remain in National Highways' commentary on the Protective Provisions [REP6-076].</p> <p>d) National Highways: In addition to comments in your commentary on the dDCO [REP6-076], Appendix 1, comment PB17, set out evidence to show how the powers sought under the Order would cause serious detriment to National Highway undertaking in the context of and on the facts of the authorised development.</p> <p>e) Applicant: Provide any further specific points which are relevant to the authorised development.</p>	<p>d) The Applicant has now agreed to protect National Highways' rights and interests in respect of its operational undertaking and the protective provisions now reflect this. The only ‘lands’ issue that remains in dispute between the parties relates to the Applicant’s case for CA powers in respect of land owned by National Highways which forms part of the local highway network. These plots were historically part of the SRN and ownership of the subsoil did not automatically transfer to the local authority following de-trunking. Whilst clearly this could not cause serious detriment to National Highways' undertaking, submissions are made to protect the local highway authority’s undertaking on the basis that granting powers of compulsory acquisition to enable a third party to acquire the freehold to a highway would cause serious detriment to the highway authority’s undertaking (whoever that highway authority may be).</p> <p>Serious detriment would result due to loss of ownership of the estate and therefore effect the ability of the highway authority to comply with regulatory responsibilities. It would also create an issue with regard to suitable depth and height of ownership for maintenance purposes and potential for the highway authority to trespass into third party land when carrying out vital and critical works necessary to support its undertaking.</p>

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DC1	Question to:	Question:	National Highways' Response
			<p>Ownership of the subsoil beneath the highway, as well as the airspace above, also enables the highway authority to grant easements and to properly authorise street works. Should a third party own that land they could potentially benefit from a ransom position should other parties need to place apparatus over or under the highway – whilst the highway authority would still have powers under the New Roads and Street Works Act 1991 (NRSWA) to authorise such works, it would no longer have the proprietary interest to permit what would otherwise be a trespass in the absence of a statutory right. That third party would need to authorise such works. This would not be in the public interest.</p> <p>There are numerous locations across the highway network where apparatus has been placed over or under the highway and the relevant highway authority, as a responsible public body with statutory obligations, routinely accommodates such requests in their role as street authority and landowner. National Highways is concerned that should subsoil ownership pass to a third party then the highway authority would no longer be able to accommodate those requests without third party approval. Unlike when it is National Highways or the local highway authority that own the land, there is no statutory obligation for that third party to acquiesce to such requests. The risk is such that should this become common practice, there may become a time when land beneath all highways no</p>

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DC1	Question to:	Question:	National Highways' Response
			<p>longer lies in public ownership and this may have implications for future development with those third parties holding strong ransom positions.</p> <p>National Highways is objecting to this case for CA out of principle as there is a strong public interest justification for highway authorities to maintain ownership of the subsoil beneath, and airspace above, their networks and the problems that could be caused if a precedent is set should this DCO authorise such compulsory acquisition.</p> <p>In any event, it is unnecessary for the Applicant to compulsory acquire the freehold to these parcels of land when National Highways is willing to grant them the proprietary interest to carry out the necessary works. As a statutory undertaker they also have statutory rights that may negate the need for compulsory acquisition, at least insofar as some of the plots are concerned.</p> <p>In summary, the compulsory acquisition powers that the Applicant seeks in respect of National Highways land and interests are not necessary and National Highways submit that the necessary tests for authorising such have not been met. Compulsory acquisition should be an option of last resort. National Highways have shown that they are willing to grant the Applicant the necessary rights and interests to carry out the works necessary to construct the authorised development. As such it would be wholly inappropriate to grant powers of</p>

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DC1	Question to:	Question:	National Highways' Response
			compulsory acquisition over operational highway land that would result in serious detriment to the highway authority and have numerous knock on implications for the future operation of the highway network.

Appendix 2 - National Highways protective provisions (with commentary)

Protective provisions are now largely agreed between the Applicant and National Highways save for differences of opinion in respect of paragraphs 17 and 19. These protective provisions are submitted by National Highways at D7 and are the version proposed by the Applicant with National Highways requested amendments shown using tracked-changes and associated commentary.

PART 6

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 highway 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 in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 or any successor guidance, for which an estimate is to be provided prior to the commencement of the specified works, 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;

“reconducting 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) landscaping;
- (g) traffic signs and road markings;
- (h) stage 1 and stage 2 road safety audits and exceptions agreed;
- (i) topographical survey;
- (j) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
- (k) health and safety information including any asbestos survey required by GG105 or any successor document; and
- (l) other such information that may be required by National Highways to be used to inform the detailed design of the specified works;

“highway 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 14;

“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 10 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 (limits of deviation) of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out on, under or over the strategic road network at a distance within 5.5 metres vertically of the lowest point of the ground unless with the express consent of National Highways save in respect of any temporary oversailing equipment which falls below the 5.5m height temporarily during construction, provided that such equipment's installed position is above 5.5m, where such express consent is not required.

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) In respect of any specified works being at least 5.5 metres above the surface of the strategic road network (including any temporary oversailing equipment which falls below the 5.5m height temporarily during construction, provided that such equipment's installed position is above 5.5m), such works must not commence until—

- (a) Evidence that 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 reductoring 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, including scaffolding to oversail the strategic road network, 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) where necessary, 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,
unless otherwise agreed by National Highways.

(2) In respect of specified works save for those which fall under sub-paragraph (1), such 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 highway 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 reasonably 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, unless otherwise agreed by National Highways.
- (3) The undertaker must not exercise—
- (a) article 14 (temporary stopping up of streets, cycle tracks and public rights of way);
 - (b) article 19 (discharge of water);
 - (c) article 20 (protective works to buildings);
 - (d) article 21 (authority to survey and investigate the land);
 - (e) article 45(2) (Traffic regulation) of this Order,
- (4) 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. The undertaker must provide 28 days' notice of the exercise of Article 45(1) (Traffic regulation) 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.

- (5) National Highways must prior to the commencement of the specified works or the exercise of any power referenced in sub-paragraph (3) 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-paragraphs (1), (2),(3) or (4).
- (6) Any approval of National Highways required under this paragraph-
 - (a) must not be unreasonably withheld;
 - (b) must be given in writing;
 - (c) may be subject to any conditions as National Highways considers necessary;
 - (d) in respect of any approval under sub-paragraph (1), must be given by the end of the period of 28 days, beginning with the date on which any request for approval has been made and if National Highways has not intimated disapproval of those works and the grounds of disapproval within that period, the undertaker may serve upon National Highways written notice requiring National Highways to intimate approval or disapproval within a further period of 28 days beginning with the date upon which National Highways receives written notice from the undertaker; and
 - (e) in respect of any other approval, shall be deemed to have been refused if neither given nor refused within 56 days of receipt of the information for approval or, where further particulars are requested by National Highways within 56 days of receipt of the information to which the request for further particulars relate.
- (7) 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 and in respect of any specified works under sub-paragraph (2) collateral warranties in a form agreed by National Highways will be provided.
- (8) Any change to the detailed design of the specified works must be approved by National Highways in accordance with this paragraph.

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 of 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) or (2) as appropriate 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 strategic road network or any other land of National Highways used for its undertaking,
- (c) National Highways acting properly and reasonably 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 reasonable 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 acting properly and reasonably 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 (6) or sub-paragraph (7) 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 reasonable satisfaction of National Highways.

(10) During the construction of the specified works approved under paragraph 7(2), 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(2)(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 sub-paragraph 7(1)(b) or 7(2)(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 reasonable and proper 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;
- (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 but the absence of such estimate will not inhibit the commencement of the specified works by the undertaker.

- (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 30 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 30 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) in respect of any specified works captured by paragraph 7(2), 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 (if applicable) 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 audit 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. In respect of any specified works approved under paragraph 7(1) or 7(2)—

- (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-survey 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. In respect of any specified works approved under paragraph 7(2)—

- (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) In respect of any specified works approved under paragraph 7(2)—

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

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

(i) inspect the strategic road network; and

(ii) 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.

(c) The undertaker must carry out such works notified to it pursuant to sub-paragraph 14(2).

(d) When National Highways is satisfied that:

(i) 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

(ii) 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.

(e) The undertaker must pay to National Highways within 30 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.

(2) In respect of any specified works approved under paragraph 7(1), the undertaker may apply for a final certificate at any time following issue of the provisional certificate, whereupon National Highways must issue a final certificate forthwith.

Security

15. —In respect of any specified works approved under paragraph 7(2), the works must not commence until—

(1) 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

(2) 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.

Insurance

16. Prior to the commencement of the specified works the undertaker must effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (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

17. —(1) The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways ~~directly~~ arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order within 30 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

~~(2) Any indemnity under this part of Schedule 15 shall be limited to a maximum aggregate liability of the Undertaker to National Highways for all claims to a sum of £30,000,000 (thirty million pounds sterling).~~

Commented [PB1]: National Highways does not agree to its indemnity being qualified in this way. Limiting the indemnity to liabilities arising 'directly' as well as imposing a financial cap exposes National Highways, and therefore the public purse, to financial risk that would not exist if the authorised development did not go ahead. National Highways' justification is further set out in its DC1 response in answer to Q3.3.6.

Maintenance of the specified works

18. —(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 (save for in the event of an emergency situation).

(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

19. —(1) Following the issue of a 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 approved under paragraph 7(2).

(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 freehold land ~~forming part of of National Highways~~; and/or

(b) seek to impose or extinguish any restrictive covenants over any part of the strategic road network or extinguish any existing rights of National Highways in respect of land owned by National Highways used for its undertaking and any third party property used for National Highways' undertaking, 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.

Commented [PB2]: National Highways objects to the compulsory acquisition of its freehold interests and does not agree to the Applicant limiting this provision to the SRN only given the other interests of National Highways within the order limits. National Highways' justification is set out in its DC1 response in answer to Q3.3.7.

Arbitration

20. Any dispute under this Part of this Schedule shall be settled by arbitration in accordance with article 53 (arbitration).

Appendix 3 - National Highways protective provisions (clean version)

PART 6

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 highway 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 in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 or any successor guidance, for which an estimate is to be provided prior to the commencement of the specified works, 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;
“reconductoring 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) landscaping;
- (g) traffic signs and road markings;
- (h) stage 1 and stage 2 road safety audits and exceptions agreed;
- (i) topographical survey;
- (j) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
- (k) health and safety information including any asbestos survey required by GG105 or any successor document; and
- (l) other such information that may be required by National Highways to be used to inform the detailed design of the specified works;

“highway 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 14;

“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 10 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 (limits of deviation) of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out on, under or over the strategic road network at a distance within 5.5 metres vertically of the lowest point of the ground unless with the express consent of National Highways save in respect of any temporary oversailing equipment which falls below the 5.5m height temporarily during construction, provided that such equipment's installed position is above 5.5m, where such express consent is not required.

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) In respect of any specified works being at least 5.5 metres above the surface of the strategic road network (including any temporary oversailing equipment which falls below the 5.5m height temporarily during construction, provided that such equipment's installed position is above 5.5m), such works must not commence until—

- (a) Evidence that 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 reconditioning 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, including scaffolding to oversail the strategic road network, 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) where necessary, 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, unless otherwise agreed by National Highways.

(2) In respect of specified works save for those which fall under sub-paragraph (1), such 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 highway 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 reasonably 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,

unless otherwise agreed by National Highways.
- (3) The undertaker must not exercise—
- (a) article 14 (temporary stopping up of streets, cycle tracks and public rights of way);
 - (b) article 19 (discharge of water);
 - (c) article 20 (protective works to buildings);
 - (d) article 21 (authority to survey and investigate the land);
 - (e) article 45(2) (Traffic regulation) of this Order,
- (4) 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. The undertaker must provide 28 days’ notice of the exercise of Article 45(1) (Traffic regulation) 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.
- (5) National Highways must prior to the commencement of the specified works or the exercise of any power

referenced in sub-paragraph (3) 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-paragraphs (1), (2),(3) or (4).

- (6) Any approval of National Highways required under this paragraph-
- (a) must not be unreasonably withheld;
 - (b) must be given in writing;
 - (c) may be subject to any conditions as National Highways considers necessary;
 - (d) in respect of any approval under sub-paragraph (1), must be given by the end of the period of 28 days, beginning with the date on which any request for approval has been made and if National Highways has not intimated disapproval of those works and the grounds of disapproval within that period, the undertaker may serve upon National Highways written notice requiring National Highways to intimate approval or disapproval within a further period of 28 days beginning with the date upon which National Highways receives written notice from the undertaker; and
 - (e) in respect of any other approval, shall be deemed to have been refused if neither given nor refused within 56 days of receipt of the information for approval or, where further particulars are requested by National Highways within 56 days of receipt of the information to which the request for further particulars relate.
- (7) 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 and in respect of any specified works under sub-paragraph (2) collateral warranties in a form agreed by National Highways will be provided.
- (8) Any change to the detailed design of the specified works must be approved by National Highways in accordance with this paragraph.

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 of 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) or (2) as appropriate 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 strategic road network or any other land of National Highways used for its undertaking,
- (c) National Highways acting properly and reasonably 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 reasonable 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 acting properly and reasonably 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 (6) or sub-paragraph (7) 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 reasonable satisfaction of National Highways.

(10) During the construction of the specified works approved under paragraph 7(2), 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(2)(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 sub-paragraph 7(1)(b) or 7(2)(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 reasonable and proper 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;
- (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 but the absence of such estimate will not inhibit the commencement of the specified works by the undertaker.

- (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 30 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 30 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) in respect of any specified works captured by paragraph 7(2), 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 (if applicable) 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 audit 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. In respect of any specified works approved under paragraph 7(1) or 7(2)—

(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-survey 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. In respect of any specified works approved under paragraph 7(2)—

(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) In respect of any specified works approved under paragraph 7(2)—

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

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

(i) inspect the strategic road network; and

(ii) 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.

(c) The undertaker must carry out such works notified to it pursuant to sub-paragraph 14(2).

(d) When National Highways is satisfied that:

(i) 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

(ii) 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.

(e) The undertaker must pay to National Highways within 30 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.

(2) In respect of any specified works approved under paragraph 7(1), the undertaker may apply for a final certificate at any time following issue of the provisional certificate, whereupon National Highways must issue a final certificate forthwith.

Security

15. —In respect of any specified works approved under paragraph 7(2), the works must not commence until—

(1) 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

(2) 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.

Insurance

16. Prior to the commencement of the specified works the undertaker must effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (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

17. —(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 30 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

18. —(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 (save for in the event of an emergency situation).

(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

19. —(1) Following the issue of a 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 approved under paragraph 7(2).

(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 freehold land of National Highways; and/or

(b) seek to impose or extinguish any restrictive covenants over any part of the strategic road network or extinguish any existing rights of National Highways in respect of land owned by National Highways used for its undertaking and any third party property used for National Highways' undertaking, 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.

Arbitration

20. Any dispute under this Part of this Schedule shall be settled by arbitration in accordance with article 53 (arbitration).