

**Deadline 4 - Post hearing submissions of National Highways Limited
in respect of ISH2 and CAH1**

Application for an Order granting Development Consent for the HyNet Carbon Dioxide Pipeline Development Consent Order (“the DCO”) which has been applied for by Liverpool Bay CCS Limited

Planning Inspectorate Reference Number: EN070007

1 Introduction

- 1.1 National Highways Limited (National Highways) attended Compulsory Acquisition Hearing 1 and Issue Specific Hearing 2 on 7th and 8th June 2023. This document sets out National Highways' post hearing submissions.
- 1.2 The Authorised Development will have an impact on the Strategic Road Network (SRN) and as such it is critical to the operation of the SRN, the safety of the travelling public and to ensure the proper and efficient use of public resources that the Authorised Development proceeds in consultation and agreement with National Highways and with appropriate protections in place.
- 1.3 National Highways does not object to the principle of the development subject to the inclusion of adequate protections to manage any potential interface between the Authorised Development and the highway.

2. Compulsory Acquisition Hearing

- 2.1 As set out in previous submissions, National Highways notes that Compulsory Powers are sought in relation to land forming part of the SRN being the M53 and M56, including acquisition of the subsurface of the carriageway itself at two locations where the pipeline crosses the strategic road network – the SRN. To safeguard National Highways' interests and the safety and integrity of the SRN, National Highways continues to object to the inclusion of the Plots in the Order and to Compulsory Powers being granted in respect of them.
- 2.2 National Highways considers that there is no compelling case in the public interest for the Compulsory Powers and that the Secretary of State, in applying section 127 of the Planning Act 2008, cannot conclude that the permanent acquisition of land forming the SRN and the creation of new rights and restrictions over all of the Plots can be created without serious detriment to National Highways' undertaking. No other land is available to National Highways to remedy the detriment.
- 2.3 To safeguard National Highways' interests and the safety and integrity of the SRN, National Highways objects to the inclusion of the Plots in the Order and to Compulsory Powers being granted in respect of them and to any other powers affecting National Highways in the Order. The Plots constitute land acquired by National Highways for the purpose of its statutory undertaking. National Highways acquires the subsoil below the SRN for the very reason of retaining control over that land for the purposes of ensuring the integrity and stability of the highway and its safe operation. National Highways has concerns of potential interference with the integrity and stability of the SRN and there is a need for National Highways to have full control over such land for that purpose. This also further emphasises the need to include protective provisions in the form required by National Highways as these would assist in regulating the interference with the SRN.
- 2.4 National Highways is under a duty to preserve its statutory duties and protect its own legal position and must preserve and maintain the integrity of the SRN. To limit in any way the safe running of the SRN compromises the ability of National Highways to do so.

- 2.5 National Highways objects in particular to the Compulsory Acquisition of plots 5-06 (M56 motorway and verges), 5-09 (public road and verges) and 7-05 (M53 motorway and verges).
- 2.6 In order for National Highways to be in a position to withdraw its objection, National Highways requires:
- (a) the inclusion of protective provisions in the Order in the form previously provided by National Highways for its benefit; and
 - (b) agreements with the Applicant that regulate (i) the manner in which rights over the Plots are acquired and the relevant works are carried out including terms which protect National Highways' statutory undertaking and agreement that compulsory acquisition powers will not be exercised in relation to such land; and (ii) the carrying out of works in the vicinity of the SRN to safeguard National Highways' statutory undertaking.
- 2.7 National Highways is in early discussions with the Applicant regarding both of these points at present and although there is no substantive update to date, National Highways will update the Examining Authority as discussions progress.
- 2.8 National Highways has also previously set out its position with regard to alternatives to compulsory acquisition which are open to the Applicant and the reasons for which National Highways contends that the case for compulsory acquisition has not been made out.
- 2.9 National Highways notes the Examining Authority's second set of questions which are due for response by Deadline 5. In light of these questions National Highways reserves its position generally with regard to compulsory acquisition and will respond in full on this and the Applicant's submissions made at Deadline 3 at Deadline 5 on 4th July 2023.

3 Issue Specific Hearing 2

- 3.1 National Highways identified a number of concerns regarding the draft DCO as presented by the Applicant and made clear that it had further comments in respect of other elements of the draft DCO for which it would follow up in writing.
- 3.2 There is a general theme of concern that National Highways has, which all relate to safety issues. There are a number of articles in the draft DCO that give power to the applicant to enter, carry out works or otherwise interfere with the Strategic Road Network. Sometimes it is not clear on the face of the wording as there is no express reference to the SRN but the wording is sufficiently wide that these powers could extend to the SRN. Some of these powers were highlighted at the above hearing and are set out in further detail below and are potentially extremely wide powers for which National Highways has serious concerns.
- 3.3 There are different levels of 'protection' afforded to National Highways under each article. Some articles allow conditions to be attached whilst others do not. Where National Highways' consent is required under an article, a deemed consent provision is imposed if a decision is not made within a certain timeframe. This is not appropriate for the reasons set out in this response. Given the associated safety concerns, National Highways does not consider this to be a reasonable imposition.

- 3.4 National Highways requires that any interference with the SRN should be subject to its explicit consent with the ability to attach any necessary conditions. National Highways does appreciate the applicant will not want undue delay in the delivery of a nationally significant infrastructure project but it is National Highways' position that this shouldn't override National Highways safety concerns, particularly when those concerns relate to the safety of the travelling public (and so people potentially being put at risk). National Highways has approval processes in place for instances where third parties are looking to work on, or in the vicinity, of the SRN and do not consider it reasonable that this application should be able to bypass those approvals which have been put in place for very strong safety reasons.
- 3.5 Given its concerns are safety related, it is imperative that due process is followed and time is taken to ensure that anything being signed off is adequately assessed. National Highways would find it very difficult to fully consider, determine and respond to such applications within some of the currently proposed timeframes and has concerns with deemed consent. A number of National Highways' functions are outsourced to consultants who operate under service level agreements with already agreed timeframes which National Highways needs to respect. In addition, and noting the Applicant's view that National Highways should prioritise this application given its national significance, the team within National Highways' North West region are currently dealing with a number of DCO applications which are at pre application stage. It will be impossible for National Highways to give each one the priority they will all expect, particularly if they are all asking for decisions within tight timescales and deemed consent if no response is given.
- 3.6 As drafted the draft DCO does not include explicit reference to works to the SRN. However National Highways' understanding is that there will indeed be works to the SRN which are 'under' the SRN and therefore these works should be specified within the draft DCO. The New Roads and Street Works Act 1991 and National Highways' protective provisions both refer to works to the SRN including 'under' and on that basis it is unclear why the Applicant does not see that the works are to the SRN. Works under the carriageway of the SRN are still works to the SRN given the potential to interfere with the integrity of the highway.
- 3.7 In addition, National Highways is concerned that there are various articles within the draft DCO which are extremely wide and could encompass works beyond those works set out in the schedules. Further detail is given on this below.
- 3.8 Schedule 1 of the draft DCO gives the applicant extremely wide powers that would permit them carrying out potentially significant works to the SRN and the DCO in its current form would give National Highways no role in ensuring that any such works are carried out appropriately and safely.
- 3.9 National Highways wants to bring to the Examining Authority's attention the following wording which is potentially far reaching and would include works to the SRN. This is contained at the end of Schedule 1 of the current draft DCO:

and in connection with Work Nos. 1 to 57N, and to the extent that they do not otherwise form part of any such work, **development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement**, including—

- (a) temporary works for the benefit or protection of land, watercourses or structures affected by the authorised development;
- (b) site clearance (including fencing and demolition of existing structures);
- (c) earthworks (including soil stripping and storage, site levelling and alteration of ground levels), and remediation of contamination if present;
- (d) works to alter the position of apparatus at or below ground level including mains, sewers, drains and cables and also including below ground structures associated with that apparatus;
- (e) watercourse and other temporary crossings;
- (f) means of access and other vehicular and/or pedestrian means of access, including creation of new tracks and footpaths, and/or widening, upgrades, alterations and improvements of existing roads, tracks and footpaths / alteration of layout of streets to form temporary and permanent accesses, altering the level of any kerb, footway or verge within a street and surface treatments; diversions during construction of existing access routes and subsequent reinstatement of existing routes;
- (g) surface water management systems, temporary drainage during installations;
- (h) landscaping works/ landscaping, planting, vegetation removal, trimming and lopping of trees, tree planting and erection of permanent means of enclosure and boundary facilities including fences and gates, alteration of drains and ditches; / bunds, embankments, swales, landscaping, fencing and boundary treatments;
- (i) manholes, marker posts, underground markers, tiles and tape;
- (j) works for the provision or relocation of apparatus including cabling, water and electricity supply works, foul drainage provision; and
- (k) works of restoration.

3.10 It would be unacceptable to National Highways for any third party to be granted such powers without National Highways being afforded appropriate protections to ensure that the usual policies and approval processes are adhered to. For this reason in addition to those concerns set out in the table below, National Highways requires protective provisions in the form previously submitted to both the Applicant and the Examining Authority to be included within the DCO. The list of articles to be included within the protective provisions

would need to be reviewed and extended to include those articles listed as a concern to National Highways but not covered in the protective provisions to date (being primarily articles 11, 14, 15, 29 and 33).

- 3.11 National Highways are in discussions with the Applicant over the inclusion of protective provisions into the draft DCO but as stated at the hearing, to date are some distance apart. The absence of adequate protective provisions is a significant concern for National Highways. National Highways' Licence provides a duty on National Highways to "*have due regard to the need to protect and improve the safety of the network as a whole for all road users*". The DCO in its current form provides the Applicant with very wide powers that could be used to carry out works to the SRN. It is therefore of upmost importance to National Highways that adequate protections are secured to ensure that National Highways can comply with its statutory and Licence obligations. The draft DCO as currently before the Examination would not do that.
- 3.12 The Applicant confirmed during hearings that they would adhere to DMRB which we presume was reference to the inclusion of references to the DMRB standard within the National Highways protective provisions. This commitment is welcomed but underlines even more so the need for the protective provisions as submitted by National Highways to remain as drafted to ensure they are complied with.
- 3.13 The following table sets out the Articles within the DCO which National Highways objects to in its current form (Revision E as at the date of the hearings):

Article No and heading	Provisions of concern	Reasons
Interpretation	"Street" means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street (streets, street works and undertakers)	This definition encompasses the SRN and therefore any article of the DCO that may allow the applicant to undertake works on "Streets" would encompass the SRN raising issues of safety of the travelling public and impact of such works on the operation of the SRN without the required safeguards in place provided by National Highways' protective provisions.
Article 10 - Street Works	(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets	National Highways would query why no works which are to be carried out 'under' the SRN seem to be

	<p>specified in Part 1 (streets subject to street works) and Part 2 (streets subject to temporary street works) of Schedule 3 as is within the Order limits and may without the consent of the street authority—</p> <p>(a) break up or open the street, or any sewer, drain or tunnel under it;</p> <p>(b) tunnel or bore under the street or carry out works to strengthen or repair the carriageway;</p> <p>(c) remove or use all earth and materials in or under the street;</p> <p>(d) place apparatus under the street;</p> <p>(e) maintain, alter or renew apparatus under the street or change its position;</p> <p>(f) demolish, remove, replace and relocate any street furniture within the street;</p> <p>(g) execute any works to provide or improve sight lines;</p> <p>(h) execute and maintain any works to provide hard and soft landscaping;</p> <p>(i) carry out re-lining and placement of road markings;</p> <p>(j) remove and install temporary and permanent signage; and</p> <p>(k) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (j).</p>	<p>included in Part 1 nor Part 2 of Schedule 3 given that pursuant to section 105 of the 1991 Act works would include those carried out ‘under’ the SRN.</p> <p>The current drafting keeps open the possibility for the Applicant to undertake works to the SRN. Therefore, National Highways’ form of protective provisions should be included in the event such works are required.</p> <p>National Highways’ protective provisions reference any work authorised by the proposed Order that is on, in, under or over the SRN to ensure any works are carried out in consultation with National Highways and makes provisions in the event there is non-compliance protecting National Highways’ position and the public purse. National Highways is required to ensure public money is spent appropriately and the protective provisions provide that protection in the event of default.</p> <p>(3) This would allow the undertaker to enter onto any other street whether or not within the Order limits which is far reaching and as a result could encompass the SRN. This, therefore, raises questions of safety to users and the integrity of the SRN. Any works should be done in consultation with National Highways with the relevant safeguards in place as provided for in the National Highways protective provisions.</p> <p>The draft DCO has deemed consent should National Highways not respond within the period stated. National Highways would ask that deemed consent is not accepted given the fact that they may not be</p>
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	<p>(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.</p> <p>(3) Without limiting the scope of the powers conferred by paragraph (1) but subject to paragraph (4), the undertaker may, for the purposes of the authorised development, or for purposes ancillary to it, enter on so much of any other street whether or not within the Order limits, for the purposes of carrying out the works set out in paragraph (1).</p> <p>(4) The powers conferred by paragraph (3) must not be exercised without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent is not to be unreasonably withheld or delayed.</p> <p>(5) If a street authority that receives an application for consent under paragraph (4) fails to notify the undertaker of its decision within 42 days beginning with the date on which the application was received by the street authority, that authority will be deemed to have granted consent</p> <p>(6) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act save that “apparatus” includes pipelines (and parts thereof), fibre optic or other telecommunication cables, aerial markers, cathodic protection test posts, field boundary markers, monitoring kiosks, and electricity cabinets.</p>	<p>able to respond within tight timescales. National Highways’ protective provisions gives 2 month timescales and deemed refusal if no response is given within this timescale. Given workloads (which includes other DCOs) and restrictions with outsourcing work, National Highways cannot always commit to responding within tight timescales and deemed acceptance could lead to risks to the safety and integrity of the SRN.</p>
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<p>Article 11 Power to alter layout, etc. of street</p>	<p>(2) Without limitation on the specific powers conferred by paragraph (1), but subject to paragraph (4), the undertaker may, for the purposes of constructing and maintaining the authorised development, permanently or temporarily alter the layout of any street (and carry out works ancillary to such alterations) whether or not within the Order limits and the layout of any street having a junction with such a street; and, without limiting the scope of this paragraph, the undertaker may.....</p> <p>(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority, which may attach reasonable conditions to any consent, but such consent is not to be unreasonably withheld or delayed</p> <p>(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was received by that street authority, it is deemed to have granted consent</p>	<p>This would allow the undertaker in relation to constructing and maintaining the authorised development the ability to permanently or temporarily alter the layout of any street whether or not within the Order limit. This drafting is extremely wide and has the potential to impact the SRN. It is another reason why National Highways' protective provisions must be included within the draft DCO.</p> <p>There are deemed consent provisions if National Highways fails to notify the undertaker within 42 days from receipt of application – National Highways Protective provisions have a 2-month period and an automatic refusal if consent is not provided and so this drafting is unacceptable to National Highways.</p>
<p>Article 12 – Application of the 1991 Act</p>	<p>Article 12 (4) and generally</p> <p>(4) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order— (a) section 56(d) (power to give directions as to timing of street works); (b) section 56A(e) (power to give directions as to placing of apparatus); (c) section 58(f) (restriction on works following substantial road works); (d) section</p>	<p>We note that Article 12(4) disapplies sections of the 1991 Act and would ask that it is made clear where the draft DCO is silent on sections of the 1991 Act that it is made clear that these sections are not disapplied. We would also request that section 56 in particular is not disapplied.</p> <p>Article 12 is seeking a power such that the DCO would trump a usual provision of the 1991 Act. The 1991 Act was set up for very clear reasons to</p>

	58A(g) (restriction on works following substantial street works); and (e) schedule 3A(h) (restriction on works following substantial street works).	address historical problems in this area, setting out a clear code for street works and an appropriate statutory process to protect both highway authorities and statutory undertakers. As such its provisions should not be so easily overruled. It is National Highways' view that any exclusions of the 1991 Act need to be very clearly justified.
Article 14 - Temporary restriction of use of streets	<p>(5) The undertaker must not temporarily stop up, alter, divert or use as a temporary working site, any street other than those referred to in Schedules 5 (streets to be temporarily stopped up or restricted); and 6 (public rights of way to be temporarily restricted) without the consent of the street authority, which may attach reasonable conditions to the consent but such consent is not to be unreasonably withheld or delayed.</p> <p>(7) If a street authority which receives an application for consent under paragraph (5) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was received by that street authority, it is deemed to have granted consent.</p>	<p>This would allow with the consent of the street authority any street with the within the Order limits if required in carrying out the authorised development to be temporarily stopped up, altered or diverted in addition to those set out in Schedule 5 and 6. This seems unnecessarily wide. National Highways would reasonably require input and the necessary safeguards to protect its position including for instance a scheme of traffic management, road safety audit, road space booking (if applicable) and a commuted sum to protect our position as per National Highways' protective provisions.</p> <p>If temporarily stopped up streets can be used as a temporary working site, then consideration must be given to the duration and any impacts on National Highways duty regarding the SRN in the event access is required. Whilst consent is required, deemed consent applies and this is not acceptable to National Highways for the reasons set out in this response.</p>
Article 15 Access to Works –	(1) The undertaker may, for the purposes of the authorised development, form and lay out means of access, or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.	Any new access off the SRN poses safety concerns and under the Highways Act 1980 (s175B) National Highways approval is required to ensure that only safe and appropriate accesses are introduced. Whilst s175B does not apply if development consent is required under the Planning Act 2008 this is not, in National Highways' view, because highway authority

	<p>(2) Subject to paragraph (3), the power set out in paragraph (1) may not be exercised without the undertaker having first obtained the consent of the street authority which may attach reasonable conditions to any consent, but such consent is not to be unreasonably withheld or delayed, following consultation by the street authority with the relevant planning authority. If the street authority which has received an application for consent under this paragraph fails to notify the undertaker of its decision before the end of the 42 day period beginning with the date on which the application was received by that street authority, it is deemed to have granted consent.</p>	<p>consent is not required but rather that is expected to be appropriately covered under the DCO and the DCO would provide for such consent to be given, if appropriate. The deemed consent approval is again unacceptable to National Highways for reasons already given.</p>
<p>Article 21 Authority to survey and investigate the land –</p>	<p>21.(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—</p> <p>(a) survey or investigate the land;</p> <p>(b) without prejudice to the generality of sub-paragraph (a), make trial holes or pits in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;</p> <p>c) without prejudice to the generality of sub-paragraph (a), carry out environmental, utility or archaeological investigations on such land; and</p> <p>(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.</p> <p>(3) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at</p>	<p>This Article would allow the undertaker to enter onto any land for the purposes set out in this article. The consent of the Highway Authority is qualified and deemed consent is granted after 28 days which is too short for National Highways. National Highways requests that the period is extended and that deemed consent provisions are not included for the reasons already set out. National Highways also requests that there is the opportunity to attach conditions as is the case with other articles within the draft DCO.</p>

	<p>least 14 days' notice has been served on every owner and occupier of the land.</p> <p>(5) No trial holes, boreholes, excavations or horizontal cores may be made under this article—</p> <p>(a) on land located within the highway boundary without the consent of the relevant highway authority; or (b) in a private street without the consent of the street authority, which authority may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld or delayed</p> <p>(7) If either a highway authority or street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent, that authority is deemed to have granted consent.</p>	
<p>Article 26 - Compulsory acquisition of rights and restrictive covenants</p>	<p>(1) The undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 24 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.</p>	<p>Interests of National Highways are subject to compulsory acquisition and the Applicant is also seeking the compulsory acquisition of rights over land belonging to National Highways, or which it holds an interest. Article 26(1) could therefore result in the extinguishment of National Highways interests. Given National Highways role as the strategic highways company responsible for the SRN in England it is not acceptable for its interests to be extinguished in such manner which could make it impossible for National Highways to fulfil its statutory and Licence obligations.</p>
<p>Article 29 - Private Rights</p>	<p>(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for</p>	<p>Private rights are suspended and unenforceable which may have an impact on day-to-day operations if access is required as any rights will be suspended for as long as the undertaker remains in lawful possession.</p>

	<p>which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.</p> <p>(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) to be determined, in case of dispute, as if it were a dispute, under Part 1 of the 1961 Act.</p>	<p>Given National Highways role as the strategic highways company responsible for the SRN in England it is not acceptable for its interests to be extinguished in such manner which could make it impossible for National Highways to fulfil its statutory and Licence obligations.</p> <p>The compensation provisions are not sufficient from National Highways' perspective as we have a duty to safeguard the SRN.</p>
<p>Article 33 – Rights under or over streets</p>	<p>(1) The undertaker may enter on and appropriate so much of the subsoil of or air-space over any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.</p> <p>(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.</p>	<p>There is no requirement to obtain the consent prior to doing so. Also, this can be exercised in connection with the authorised development and any other purpose ancillary to the authorised development. This seems to be wide ranging and could potentially interfere with the subsoil of the SRN. National Highways is concerned that such a wide power, without controls, creates significant safety concerns. Anyone seeking to carry out works above or below the SRN would ordinarily be expected to comply with various safety requirements so National Highways is concerned with the blanket power this article provides without the ability for National Highways to influence how any such works are carried out.</p> <p>It is clearly in the public interest to ensure that any works in the airspace above the SRN are appropriately authorised and National Highways must have a role to play in such. Similarly, any works beneath the SRN must be carried out with</p>

		appropriate safeguards to ensure the integrity of the highway is not adversely affected.
<p>Article 34 – Temporary use of land for carrying out the authorised development</p>	<p>(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 25 (time limit for exercise of authority to acquire land compulsorily)—</p> <p>(a) enter on and take temporary possession of—</p> <p>(iii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;</p> <p>(c) construct temporary works (including the provision of means of access), structures and buildings on that land</p> <p>(2) Not less than 3 months before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(iii)</p> <p>(3) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article—</p> <p>(b) in the case of any land referred to in paragraph (1)(a)(iii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry</p>	<p>The undertaker can temporarily use any other Order land in connection with the authorised development subject to the time limit in Article 25. There is an obligation on the undertaker to serve a notice not less than 3 months before doing so. This might include the SRN which would allow the provision of means of access from the SRN. This also gives a power to construct new accesses. Such a wide power has the potential to cause National Highways significant concerns and could make it impossible for National Highways to fulfil its statutory and Licence obligations.</p> <p>National Highways’ Protective Provisions would require the consent of National Highways and details of any proposed road space bookings, if applicable and/or to submit a scheme of traffic management for National Highways’ approval.</p>

	<p>under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.</p>	
<p>Article 35 – Temporary use of land for maintaining the authorised development</p>	<p>(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—</p> <p>(a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised development; and</p> <p>(b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.</p> <p>(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.</p> <p>(11) In this article “the maintenance period”, in relation to any part of the authorised development means the period following completion of that part of the authorised development until the commencement of decommissioning</p>	<p>As above, this Article gives the ability to take possession of any land within the Order limits which would include the SRN.</p> <p>Apart from the undertaker having to provide not less than 28 days’ notice to the owners and occupiers of the land there is no requirement to obtain consent or the ability for the owner/occupiers to impose any conditions. This period is too short, National Highways objects generally to notifications without explicit consent being provided and would request that there is the opportunity to attach conditions if required.</p> <p>National Highways’ Protective Provisions would require the consent of National Highways and details of any proposed road space bookings, if applicable and/or submit a scheme of traffic management for National Highways approval</p>

National Highways Limited

20 June 2023