HyNet North West

APPLICANT'S UPDATE ON THE DCO DRAFTING

HyNet Carbon Dioxide Pipeline DCO

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010 Rule 8(1)(c)

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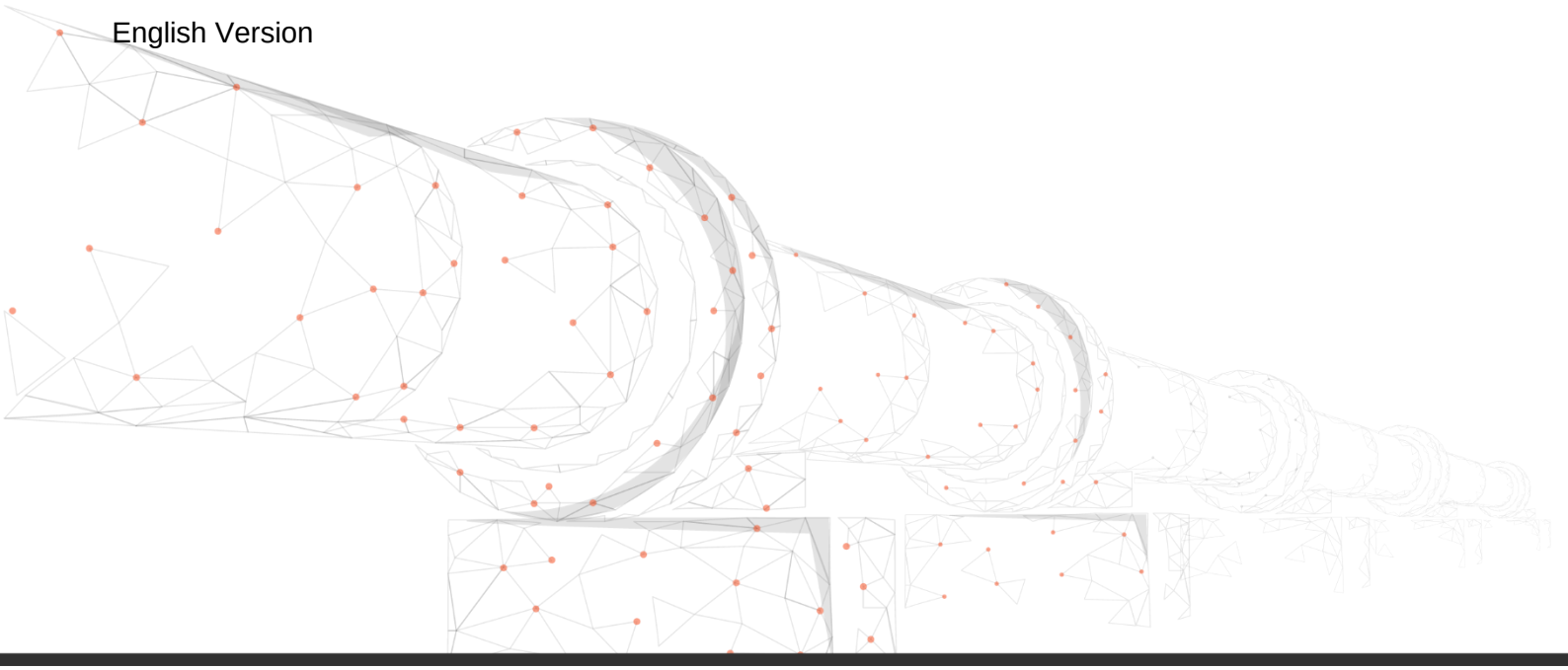

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1. INTRODUCTION

1.1. PURPOSE OF THIS DOCUMENT

1.1.1. This document has been prepared on behalf of Liverpool Bay CCS Limited ('the Applicant') and relates to an application ('the Application') for a Development Consent Order (DCO) that has been submitted to the Secretary of State (SoS) for Energy Security and Net Zero (DESNZ) under Section 37 of the Planning Act 2008 ('the PA 2008'). The Application relates to the carbon dioxide (CO_2) pipeline which constitutes the DCO Proposed Development.

1.1.2. This document provides the Examining Authority (ExA) with an update regarding the DCO drafting and in particular, the status of protective provisions at Deadline 7.

1.2. THE DCO PROPOSED DEVELOPMENT

1.2.1. HyNet (the Project) is an innovative low carbon hydrogen and carbon capture, transport and storage project that will unlock a low carbon economy for the North West of England and North Wales and put the region at the forefront of the UK's drive to Net-Zero. The details of the project can be found in the main DCO documentation.

1.2.2. A full description of the DCO Proposed Development is detailed in Chapter 3 of the consolidated Environmental Statement (ES) **[REP4-029]**, submitted at Deadline 4. On the 12 July 2023, the Examining Authority (ExA) accepted the Applicant's Change Request 3, subsequently the description of the development will be updated in accordance with Change Request 3 Environmental Technical Note **[CR3-019]**. The Applicant has submitted a further consolidated Environmental Statement (ES) at Deadline 7 which contains the concluding description of the DCO Proposed Development.

2. UPDATE ON THE DCO DRAFTING

1 USE OF ABBREVIATIONS (EG NRW)

1.1 These abbreviations have been replaced by the full names of the bodies concerned.

2 DEFINITIONS OF STATUTORY BODIES

2.1 The Applicant undertook in the hearing in August to review whether statutory bodies (such as the Environment Agency and Natural Resources Wales) required definitions. The Applicant has reviewed the relevant legislation and precedent DCOs and does not consider that such definitions are necessary or are included in the underlying legislation, including statutory instruments made by Parliament. The Applicant notes that, as an example, the Infrastructure Planning (Application Prescribed Forms and Procedure) Regulations 2009 refers to but does not define the various statutory bodies (including the Environment Agency, Natural Resources Wales, Natural England and internal drainage boards).

3 REQUIREMENT 9 AND THE ENVIRONMENT AGENCY'S SUGGESTED DRAFTING

3.1 The Applicant objects to the amendments to requirement 9 sought by the Environment Agency **[REP6A-021]**. The Applicant notes that the approach and requirement wording originally proposed by it were based on the precedent set out in the granted Southampton to London Pipeline Project DCO. The Applicant does not accept that, outside of the Stanlow refinery site, there are any facts or circumstances in this case which justify the unreasonably more onerous approach being sought by the EA in this case over that DCO. The Applicant also notes that no request for the drafting sought by the EA has been raised by the Welsh authorities.

3.2 The EA has advised the Applicant that a risk-based approach to dealing with contaminated land is appropriate but the drafting of the requirement as submitted by the EA does not follow that approach. The EA asked for some additional narrative around the investigations carried out and reported in the ES. That was provided to the EA and has also been submitted to the Examination at Deadline 7 as document (document reference: **D.7.61**). That document demonstrates that outside of the Stanlow refinery area, there are 4 areas where the site walkovers, desk based assessment and investigatory work carried out indicates that further investigation is required; plot 1-25 near the Ince railway which was flooded and unable to be investigated, plot 4-12 where investigation revealed some made ground (comprising brick and tile materials understood to have been used to infill an old ditch when 2 fields have been joined together) and plot 4-20 beside the M56 where borderline levels of groundwater contamination results were obtained.

3.3 The remainder of the route is primarily greenfield land with no prior uses which would raise concern of contamination or any identified results of concern from investigations so far. Those areas have accordingly all been categorised as having low or very low risk of contamination and the Applicant maintains it is appropriate to deal with those as being low risk, with any contamination found during construction being addressed under the unknown contamination provision of the requirement. There are 2 plots where the investigation requires to be supplemented, plots 8-10 and 8-12, but this is due to rerouting around the Shropshire Union Canal, not because there is an identified concern.

3.4 The EA's draft requirement does not follow the risk based approach of targeting the areas assessed as requiring further investigation, but rather seeks to apply the requirements to all stages requiring an unnecessary and undefined, unscoped 'design statement' over the measures already in place through the CEMP. It also seeks disproportionate and unjustified investigations to be carried out in all stages prior to commencement which is directly contrary to the risk based approach the EA has been advising the Applicant it must adopt. There is no justification for requiring further investigation in land already investigated and assessed as low risk, especially where that land is greenfield land in arable use. The requirement sought by the EA is accordingly unduly onerous and not proportionate to the risk identified, and the Applicant objects to it on that basis.

3.5 The Applicant has proposed a draft which would require investigation in the areas identified as having some risk which requires that further work, not across the entire order limits.

3.6 The Applicant notes that the drafting sought by the EA would also act to control the whole DCO Proposed Development, including the areas in Wales outside of the EA's jurisdiction. The drafting would require consultation with the EA on every stage including those located wholly in Wales. The Applicant has repeatedly flagged to the EA that it is inappropriate for them to draft a requirement as if this DCO Proposed Development were a single site development given its linear nature and cross border location. The Applicant is disappointed that the EA's drafting still does not recognise or reflect the linear and cross border nature of the development. The drafting sought by the EA is clearly inappropriate.

3. PROTECTIVE PROVISIONS DRAFTING

4 AIRBUS

4.1 Airbus have advised the Applicant that they are not seeking any protective provisions in the DCO.

5 CADENT

5.1 There are no outstanding points of discussions between the Applicant and Cadent in relation to the terms of the protective provisions. However, Cadent's agreement of the protective provisions is subject to agreement on the terms of a private side agreement. The terms of the side agreement are largely agreed, with one outstanding point remaining under consideration.

6 CANAL AND RIVER TRUST

6.1 The only unagreed point in the protective provisions is regarding the restriction of use of DCO powers. The Applicant cannot agree to the disapplication of the compulsory powers and other powers in the absence of a suitable voluntary land rights agreement. That a voluntary agreement has not yet been concluded demonstrates why these powers are required to ensure delivery of the NSIP.

6.2 The Applicant therefore cannot agree to the disapplication of Articles 24 (Compulsory acquisition of land), 26 (compulsory acquisition of rights), 31 (acquisition of subsoil or airspace only), or 36 (statutory undertakers) in respect of the Trust's interests in the waterway.

6.3 The Applicant likewise cannot agree to a requirement for the Trust's consent to exercise powers under Articles 34 (temporary use of land for carrying out the authorised development), article 35 (temporary use of land for maintaining the authorised development) or article 39 (felling or lopping of trees and removal of hedgerows) in respect of the waterway.

6.4 The Applicant also cannot agree to a requirement for the Trust's consent to exercise powers under Article 21 or Section 11(3) of the 1965 Act in relation to the waterway (as defined in the protective provisions) as this includes land outside the canal itself and is accordingly unduly restrictive in the absence of a completed voluntary land agreement. The Applicant is willing to agree to a requirement for the Trust's consent to exercise such powers in respect of the Shropshire Union Canal.

7 CF FERTILISERS

7.1 These provisions are now agreed and have been included in the draft DCO.

8 ENCIRC

8.1 The Applicant agrees that Protective Provisions in favour of Encirc Limited are appropriate for this development. The Applicant does not however agree that the form of such provisions put forward by Encirc is proportionate or reasonable to secure the required

protections for the works which would be consented by this DCO. The outstanding points of disagreement are addressed in this submission.

8.2 The Applicant has incorporated its preferred drafting of the Protective Provisions in favour of Encirc in the draft DCO submitted at Deadline 7 and respectfully requests the Examining Authority to prefer that drafting as being appropriate to the circumstances of this application.

Encirc's Future Development

Encirc's submissions

8.3 Encirc has previously advised in written and oral submissions their intentions to carry out further rail development on Plots 1-21 and 1-22, for example, paragraph 2.2.1 of **[REP6A-022]** states

"2.2.1.1 As has been previously explained, Encirc has development plans for its land included with the Order land.

2.2.1.2 These plans include an automated warehouse, new rail sidings and intermodal area, and hydrogen powered furnace, all of which are either with the local planning authority or well publicised, will include the installation of further railway tracks / sidings to be installed over plots 1-22, 1-21 and 1-06."

8.4 At paragraph 4.1.3.1 of **[REP3-050]** it is stated:

"Encirc is legally obligated to bring 12% of its raw material to the site by rail or other alternative sustainable modes of freight transport as set out in an agreement under section 106 of the Town and Country planning Act 1990. As Encirc's operations expand, it has ambitions to enhance its existing rail capabilities and increase the amount of material that can be brought to site by rail, to ensure that it can maintain its 12% quota. Therefore, the alnd around the existing railhead must be safeguarded to facilitate this expansion. Encirc is also concerned that the Project construction activity could impact the current operation of its railhead. Operation must be maintained at all times to ensure Encirc can meet its prescribed quotas."

The S.106 Agreement

8.5 Following CAH2, Cheshire West and Chester Council ("CWCC") submitted a copy of the S.106 Agreement **[AS-080]** referred to by Encirc.

8.6 The S.106 Agreement was entered into in relation to planning applications 08/00200/FUL and P/2008/101/ST/75, submitted to Chester City Council ("CCC") and Ellesmere Port and Neston Borough Council ("EPNBC") respectively, prior to the establishment of CWCC in April 2009.

8.7 The obligations on Encirc (former Quinn Glass Limited) are set out in Schedule 2 of the S.106 Agreement. Paragraph 14 sets out Encirc's obligations in relation to rail freight targets. Paragraph 14.1 states that Encirc agrees with the Council:

"to transport by rail or such alternative sustainable modes of freight transport as may be agreed by the Council in writing the following percentages of the total annual freight cargo

imported to and exported from the Development by the specified target dates calculated from the Start Date as follows:

(i) *8% of the total annual freight cargo transported to and from the Development in the twelve months ending with the date three years from the Start Date and in the following twelve month period;*

(ii) *10% of the total annual freight cargo transported to and from the Development in the twelve months ending with the date five years from the Start Date and in each of the four subsequent twelve month periods; and*

(iii) *12% of the total annual freight cargo transported to and from the Development in the twelve months ending with the date ten years from the Start Date and in every subsequent twelve month period*

With the aim of reducing the number of Heavy Commercial Vehicle movements from the highway network equivalent to 2 Heavy Commercial Vehicle movements arriving and departing per 28 tonnes of freight cargo transported by rail or other sustainable modes of freight transport".

8.8 "*Start Date*" is defined in the S.106 Agreement as "*the date when the Intermodal Facility Phase 1 becomes operational in accordance with paragraph 14.1 of Schedule 2*".

8.9 The *"Intermodal Facility Phase 1"* is defined in the S.106 Agreement "*as the rail spur goods yard and ancillary facilities shown on drawing number 3P7079/PL/1000 rev.3 annexed to this Deed at Appendix 3*". Encirc confirmed in oral submissions that the proposed future rail sidings and intermodal area were those shown on the plan at end of the S.106 Agreement.

8.10 Paragraph 14.1 does not set out when the Intermodal Facility Phase 1 is considered to have become operational, and the words *"in accordance with paragraph 14.1 of Schedule 2*" therefore cannot properly be given effect to. However, if an ordinary meaning is given to "*the date when the Intermodal Facility Phase 1 becomes operational*", then this means the targets set out in Paragraph 14.1 will not take effect until the Intermodal Facility Phase 1 has been constructed and begun operating.

8.11 It would therefore appear that Encirc are not yet under a legally binding obligation to meet the 12% quota.

Planning permissions

8.12 Planning permission 08/00200/FUL and P/2008/101/ST/75 authorised the construction of a glass container manufacturing, filing and distribution facility, including associated plant, an intermodal facility, and infrastructure works. As noted above, applications were submitted to both CCC and EPNBC as the application site fell across both administrative areas. By the time the applications were granted CWCC had been established, but both applications were determined.

8.13 Encirc have not submitted to the Examination copies of the planning permissions. However, the Applicant understands that condition 23 of planning permission 08/00200/FUL and condition 24 of planning permission P/2008/101/ST/75 are in the same terms, and state:

"Phase 1 of the intermodal facility hereby approved shall be completed and operational within 2 years from the date of this planning permission. The works shall be carried out in accordance with Drawing No. 3P7079/PL/1000 Revision 3."

8.14 The referenced drawing is the drawing included at Appendix 3 of the S.106 Agreement.

8.15 The Applicant understands that two s.73 applications (with references 13/03999/S73 and 13/04000/S73) were submitted in 2013 to vary planning permission 08/0200/FUL and P/2008/101/ST/75, in order to vary conditions 23 and 24 to refer to a revised plan, relocating the proposed rail lines approximately 50 metres north of the approved location; relocating the intermodal handling area, container stacking area and road access approximately 50 metres to the north of the approved location, and altering the shape and general arrangement of the intermodal layout.

8.16 The Applicant understands that planning permissions 13/03999/S73 and 13/04000/S73 were granted subject to the same condition 23, which state:

"Unless otherwise agreed in writing with the Local Planning Authority, phase 1 of the intermodal facility hereby approved shall be completed and operational within 2 years from the date of this planning permission. The works shall be carried out in accordance with Drawing Number C-01 Rev A."

8.17 The Applicant understands a Deed of Variation was entered into in January 2014 to amend the S.106 Agreement to incorporate reference to planning permission 13/03999/S73 and 13/04000/S73. However, the Deed of Variation does not amend Appendix 3 of the S.106 Agreement to swap in Drawing Number C-01 Rev A.

8.18 The obligations in the S.106 Agreement relating to the Intermodal Facility Phase 1 therefore relate to the original, superseded, version of the Intermodal Facility, and would appear not be triggered by development of the intermodal facility authorised under planning permission 13/03999/S73 and 13/0400/S73.

8.19 Neither CWCC nor Encirc have confirmed whether an extension to the time period in condition 23 of the S.73 permissions has been agreed in writing. However, Encirc confirmed at CAH2 that it was preparing to submit a new planning application in relation to the intermodal facility and was in pre-application discussions with CWCC.

8.20 Given the significant delay in the development of the Intermodal Facility since it was first authorised in 2009 (subject to a condition requiring it to be delivered by 2011), there can be no certainty that the Intermodal Facility will be delivered in the near future. It does not appear that it will be delivered in accordance with the plan at Appendix 3 of the S.106 Agreement, given the existence of the S.73 permissions and Encirc's stated intention to submit a new planning application.

8.21 As set out in the Applicant's response to Encirc's submissions at Deadline 6A, the Applicant acknowledges Encirc's future plans, and has assessed completing the trenchless crossing in a single crossing as well as two crossings with an intermediate shaft. Due to the complex nature of the trenchless crossing, and the interactions with adjacent stakeholders (in particular Network Rail), it will not be possible to confirm the details of the crossing before the end of the DCO examination.

Protective Provisions

8.22 Discussions between the Applicant as to the terms of the Protective Provisions are ongoing, and the Applicant has sought to agree as much as reasonably possible prior to Deadline 7. However, there remain some outstanding matters. The Applicant is keen to continue working with Encirc to agree the terms of the Protective Provisions following Deadline 7. Where any further agreement is reached prior to close of the Examination, the Applicant undertakes to update the Examining Authority.

8.23 The outstanding points are set out below.

Compulsory acquisition powers

8.24 The Applicant cannot agree to the disapplication of the CA powers and other powers in the absence of a suitable voluntary land rights agreement. That a voluntary agreement has not yet been concluded demonstrates why these powers are required to ensure delivery of the NSIP.

Rights of access

8.25 Sub-paragraph (d) provides that the undertaker must comply with any reasonable conditions which Encirc may specify in relation to the undertaker's entry to the relevant property. The Applicant considers it to be appropriate to qualify this to the extent that Encirc's conditions do not restrict or impede the ability of the undertaker to construct, operate or maintain the authorised development. If this qualification is not included, there is a risk that an access condition imposed by Encirc could impede the undertaker's ability to construct, operate or maintain part of the Carbon Dioxide Pipeline. Given the linear nature of the DCO Proposed Development, this could have the effect of sterilising the entire Carbon Dioxide Pipeline. This would be significantly disproportionate to the level of protection required by Encirc and to the small volume of traffic required for the authorised development compared to Encirc's traffic flows.

Construction traffic scheduling

8.26 This paragraph requires the undertaker and Encirc to meet during the design and construction of the specified works to discuss and seek to agree a schedule in relation to traffic movements.

8.27 The Applicant objects to Encirc's proposal that the undertaker be obliged to use the access routes only in accordance with the schedule agreed with Encirc, as it is concerned that this could impede the ability of the undertaker to carry out the authorised development if a schedule cannot be agreed. This would be significantly disproportionate to the level of protection required by Encirc.

8.28 The Applicant's preference would be to require the undertaker and Encirc to use all reasonable but commercially prudent endeavours to agree a schedule. If a schedule is agreed, the parties would then agree to use the access routes only in accordance with the agreed schedule.

Rights of access – Grinsome Road to the Protos Site

8.29 The Applicant agrees to restrict its use of temporary possession and other powers where Peel NRE Limited has constructed the Peel access road(s) (as defined in the Protective

Provisions) and granted the undertaker an appropriate easement for rights of access over the Peel access road(s).

8.30 The Applicant cannot agree to restrict its use of such powers only where the undertaker has used best endeavours to secure the grant of such an easement as proposed by Encirc. If an easement is not in place the DCO powers are required to ensure delivery of the NSIP.

8.31 The Applicant's preference is to include an obligation to use all reasonable but commercially prudent endeavours to secure the grant of an easement by Peel.

Railway

8.32 The Applicant objects to Encirc's proposal that the undertaker be under a strict obligation not to prevent or interfere with scheduled trains arriving at and leaving the relevant property. It was agreed between the Parties that provided that sufficient notice is given, Encirc can accommodate a short term (circa one week) suspension of the use of the train line while the tunnelling works take place under the rail line if required.

8.33 The Applicant's preference would be to require the undertaker and Encirc to use all reasonable but commercially prudent endeavours to agree provisions to enable the authorised development and business operations to continue as usual.

Expenses

8.34 Given the nature of Encirc's site, they are seeking recovery of expenses relating to the provision of reasonably necessary security.

8.35 The Applicant does not oppose to the principle of this, but proposes additional wording making clear that Encirc may only recover expenses for security for any land, works, apparatus and equipment belonging to Encirc to the extent attributable to the specified works.

9 ENVIRONMENT AGENCY

9.1 These provisions are now agreed and have been included in the draft DCO.

10 EXOLUM

10.1 Discussions between the Applicant as to the terms of the Protective Provisions are ongoing, and the Applicant has sought to agree as much as reasonably possible prior to Deadline 7. However, there remain some outstanding matters. The Applicant is keen to continue working with Exolum to agree the terms of the Protective Provisions following Deadline 7. Where any further agreement is reached prior to close of the Examination, the Applicant undertakes to update the Examining Authority.

10.2 The outstanding points of disagreement are set out below.

Compulsory powers

10.3 The Applicant cannot agree to any limits to the compulsory powers by way of requiring Exolum's consent to exercise those compulsory powers in the absence of a suitable voluntary land rights agreement. That a voluntary agreement has not yet been concluded demonstrates why these powers are required to ensure delivery of the NSIP.

10.4 Definition of Deed of Consent

10.5 Exolum has requested that the definition of Deed of Consent be expanded to include deeds which regulate works and activities in the vicinity of the Apparatus; and/or which provide for the recovery of additional costs incurred by Exolum in exercising its rights in Apparatus and its functions as a result of the Authorised Development.

10.6 These are matters which are already addressed with the Protective Provisions and the inclusion of provisions directing these matters to separate deeds is not proportionate, necessary or reasonable to secure the required protections for the works which would be consented by this DCO.

10.7 Rights of access

10.8 The Applicant has accepted that where it takes temporary possession of any land or carries out survey works on land in respect of which Exolum has an easement, right, asset, interest, Apparatus or Premises that Exolum may need to exercise its rights to access such land where reasonably necessary. However, the Applicant cannot accept the risk of those entering such land under Exolum's access rights without requirements that they comply with any health and safety requirements, including any requirements applicable to the undertaker under the Construction, Design and Management Regulations 2015.

10.9 Without this requirement the Applicant cannot accept provision for Exolum to access land under the Applicant's control where there may be hazards.

10.10 Timeframe to approve plans

10.11 Before commencing the execution of any Restricted Works, the Applicant is required to submit to Exolum a plan of the works to be executed. Exolum are seeking that upon receipt of such plans that Exolum is required to meaningfully engage within 35 days.

10.12 The Applicant cannot agree to Exolum only being subject to a requirement to engage meaningfully. A timeframe to approve or refuse works on the plans as submitted within 56 days is therefore proposed.

11 NATIONAL GAS TRANSMISSION AND NATIONAL GRID ELECTRICITY TRANSMISSION

11.1 These provisions are largely identical in substance. In both cases the provisions are mostly agreed subject to two exceptions. The first is in the Indemnity clause where the Applicant seeks the addition of the text in blue and underlined below;

—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of

National Gas Transmission, or there is any interruption in any service provided, or in the supply of any goods or energy, by National Gas Transmission, or National Gas Transmission becomes liable to pay any amount to any third party, and provided that at all times National [Grid] [Gas Transmission] will be under an obligation to take reasonable steps to mitigate its loss, the undertaker will—

a)bear and pay on demand accompanied by an appropriately detailed invoice or appropriately detailed claim from National ...

11.2 The Applicant considers that it is entirely reasonable where an uncapped indemnity is given that the normal position of parties making a claim to be required to mitigate their own loss (as would apply in compensation claims) is applied. The Applicant also considers it reasonable that claim be appropriately detailed to allow the Applicant to understand what cots have been incurred and why these are reasonable.

11.3 The second instance of not agreed wording is in the co-operation paragraph:

(2) For the avoidance of doubt whenever National [Grid] [Gas Transmission]'s consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed, and any action, decision, cost and/or expense which may be claimed under this Part of this Schedule shall at all times be subject to National [Grid] [Gas Transmission] acting reasonably.

11.4 The Applicant considers that it should be uncontroversial that parties should only claim reasonable costs.

11.5 The Parties are in discussion to resolve the provisions drafting through a side agreement and the Applicant is confident that agreement can be reached by Deadline 8 and will advise the Examination of any update at Deadline 8.

12 LEAD LOCAL FLOOD AUTHORITIES

12.1 The terms of the Protective Provisions for the protection of drainage authorities are agreed with CWCC.

12.2 The Applicant does not object to the principle of the drainage authorities have step in rights. However, the Applicant is concerned that, if the drainage authority sought to carry out works which would affect the pipeline, this could put the undertaker into conflict with their obligations under the Pipeline Safety Regulations 1996. The Applicant has therefore proposed wording necessary to prevent this happening. This wording is still under consideration by FCC, however the Applicant submits that it is necessary to ensure the safety and integrity of the pipeline and compliance with the Pipeline safety Regulations.

13 LOCAL HIGHWAY AUTHORITIES

13.1 The terms of the Protective Provisions for the protection of local highways authorities are under discussion with CWCC and FCC.

13.2 The Applicant cannot agree to CWCC's deletion of the ability for the undertaker to undertake the highway conditions survey – if the undertaker's contractors are qualified there is no reason why they should not be able to undertake the surveys.

13.3 The Applicant cannot agree to CWCC's requirement for the highway conditions surveys to be undertaken by "Gaist", which appears to be a specific company offering surveys. For procurement reasons, the undertaker cannot agree to reference a specific provider in the protective provisions. Additionally, these protective provisions will apply to FCC, whose preferred supplier may not be Gaist.

13.4 The Applicant cannot agree to CWCC's requirement for the highway conditions surveys to be undertaken on any highways utilised for the delivery of the authorised works. This would be disproportionate given many of the relevant roads will be trunk roads. The Applicant has asked CWCC to narrow this to specific highways of concern.

13.5 The Applicant cannot agree to CWCC's proposed wording requiring the undertaker to fund an appropriately qualified officer or agent to participate in the design process for the specified works. This work relates to the carrying out of the Council's statutory functions and should already be funded, and should be carried out by the Council through an officer and not an external agent.

13.6 The Applicant cannot agree to CWCC's requirement to give an appointed officer 'unhindered' access to the specified work for inspection. This simply may not be possible due to CDM compliance requirements. Access must be taken in accordance with health and safety and site security requirements.

13.7 The Applicant considers that its drafting of the rectification provisions should be included in the Protective Provisions. This paragraph provides that, where street works require to be undertaken to the reasonable satisfaction of the local highway authority, the authority will inspect the street works once completed. Where any defects arise in the 24 month period following the authority's last inspection, the authority may recover from the undertaker the reasonable costs of repairing or rectifying any defects. This period was extended from 12 to 24 months at the request of both Councils following the first set of hearings. FCC want the paragraph to be included in the Protective Provisions. CWCC have asked for it to be deleted.

13.8 CWCC's position is that it will not do any works to rectify defects in street works carried out by the undertaker. However, the undertaker will not have a contractor in place or on site for the full 24 month defects period, and therefore it is considered reasonable to allow for a process for the local highways authority to repair or rectify any defects. The wording of the Protective Provisions does not oblige CWCC to rectify defects, and there is therefore no prejudice to CWCC if the wording is retained. This approach was originally agreed with CWCC in June however no comments on the draft were received until late August when the provision was struck through. The Applicant is disappointed that CWCC not only changed position without notice but did so at such a late stage that there has not been sufficient time to resolve this point.

13.9 The Applicant accordingly submits that its preferred version should be taken forward.

14 NATIONAL HIGHWAYS

14.1 These provisions remain not agreed and the Applicant and National Highways have both submitted differing preferred versions to the Examination.

14.2 The Applicant maintains its position as set out at Deadline 6 **[REP6-035 appendix A]** and reserves the right to respond to any National Highway's submission at Deadline 8. The

Applicant maintains that National Highways' position that the DCO consents unknown, unspecified works to the SRN that are not described or assessed in the application documents, and importantly not considered in the environmental statement, is unsustainable. It is not a credible interpretation of the DCO that it allows unspecified works to be carried out to the strategic road network. The Applicant accordingly continues to submit that the version of the protective provisions submitted by National Highways are disproportionate to the works for which consent is actually sought in this case and should not be imposed.

14.3 The Applicant has, in an attempt to close some of the considerable distance between the parties, made two changes its preferred drafting of the protective provisions. The first is to add a provision for 'acceptable security'. The Applicant does not accept that the bonding or cash surety provisions sought by National Highways are reasonable but accepts that as the Applicant is being funded by a parent company at this time, backing of the Applicant by the parent company is appropriate. The wording inserted is based on the security provisions given to National Grid and which are therefore considered appropriate for a national infrastructure owner.

14.4 The second amendment made by the Applicant is to accept National Highways' drafting seeking payment of its costs to be made in advance of those costs being incurred.

14.5 A copy of the Applicant's draft of the Protective provisions showing in track the changes made by the Applicant since the Deadline 6 submission is set out in appendix 1.

14.6 In addition to the comments on National Highways' drafting made at Deadline 6 the Applicant would make the further following comments.

14.7 The Applicant has asked National Highways to clarify what would be classed as 'specified works' under its drafting of its provisions. National Highways advised that it could not specify that at this time and would not be able to do so until detailed plans were put to it. That means that National Highways' drafting includes commitments to costs that cannot be defined or estimated at this time and the reasonableness of which cannot be ascertained. For example, the drafting requires a bond for 200% of the cost of the 'specified works', but National Highways cannot even explain what works they would expect to fall into that category. It cannot be agreed whether this only means the tunnelling under the motorway or other works. It is not reasonable to impose such an unclear, imprecise term on the Applicant.

14.8 The Applicant notes that the bond would also include the 200% of the cost of the 'commuted sum', being a cost for maintenance of the works. The works for which the Applicant is seeking consent are the buried pipeline, not any highway for which National Highways would become responsible. Not only does the Applicant object to the commuted sum provision in principle but it objects in particular in this case where, under no circumstances, will National Highways be responsible or empowered to carry out maintenance to the pipeline. That will be carried out only by the Applicant as the operator and the responsible party under the pipeline safety regulations for maintaining the safety and integrity of the pipeline. There is no justification for National Highways seeking a commuted sum for maintenance in the circumstances of this development.

14.9 The Applicant further notes that in addition to the request for a bond, and insurance and indemnity provisions, the National Highways' drafting also seeks an undefined and

unquantified cash surety for a sum ‘to be agreed’. The Applicant submits that this is entirely unreasonable and unenforceable provision as no basis for calculating the surety is set out, it is ‘an agreement to agree’ and no justification has been given as to why this is considered necessary. The Applicant does not accept that this is justified or reasonable.

14.10 The Applicant objects to the seeking of collateral warranties by National Highways for the design of the works. The Applicant would agree this is appropriate if any highway works which National Highways would ‘adopt’ were being consented, however on the facts of this application, that is simply not the case. There is accordingly no need or justification for a collateral warranty as that would apply in circumstances where the designer of highway works was required to liable to National Highways for that design. In this case, the design will be for the pipeline. National Highways will have approval of the methodology and design of the trenchless crossing works in accordance with DMRB CD622, but will not adopt the works once they are complete, they will remain with the undertaker as the operator of the pipeline.

15 NATURAL RESOURCES WALES

15.1 The Applicant understands that following the insertion of provisions providing that compound fencing will not prevent NRW taking access to flood defences in the outline CEMP and CTMP, NRW are not seeking any protective provisions. Accordingly no provisions have been included in the draft submitted at Deadline 7.

16 NETWORK RAIL

16.1 These provisions are now agreed and have been included in the draft DCO.

17 PEEL NRE

17.1 The Applicant agrees that Protective Provisions in favour of Peel NRE Limited are appropriate for this development. The Applicant does not however agree that the form of such provisions put forward by Peel is proportionate or reasonable to secure the required protections for the works which would be consented by this DCO. The outstanding points of disagreement are addressed in this submission.

17.2 The Applicant has incorporated its preferred drafting of the Protective Provisions in favour of Peel in the draft DCO submitted at Deadline 7 and respectfully requests the Examining Authority to prefer that drafting as being appropriate to the circumstances of this application.

17.3 Discussions between the Applicant as to the terms of the Protective Provisions are ongoing, and the Applicant has sought to agree as much as reasonably possible prior to Deadline 7. However, there remain some outstanding matters. The Applicant is keen to continue working with Peel to agree the terms of the Protective Provisions following Deadline 7. Where any further agreement is reached prior to close of the Examination, the Applicant undertakes to update the Examining Authority.

17.4 The outstanding points of disagreement are set out below.

Compulsory acquisition powers

17.5 The Applicant cannot agree to the disapplication of the CA powers and other powers in the absence of a suitable voluntary land rights agreement. That a voluntary agreement has not

yet been concluded demonstrates why these powers are required to ensure delivery of the NSIP.

Damage, interference or obstruction

17.6 The Applicant agrees that if it causes any damage to relevant property or interference or obstruction by the carrying out of the construction of a specified work, the undertaker must pay to Peel compensation for any loss which it may incur.

17.7 Peel has indicated that it would accept a cap on the undertaker's liability for such loss. The Applicant has proposed a cap in its preferred drafting and awaits Peel's confirmation whether this is acceptable.

Indemnity

17.8 The Applicant agrees to indemnify Peel against all claims and demands arising out of or in connection with a specified work or any failure of a specified work or by reason of any act or omission of the undertaker or its employees or contractors.

17.9 Peel has indicated that it would accept a cap on the level of this indemnity. The Applicant has proposed a cap in its preferred drafting and awaits Peel's confirmation whether this is acceptable..

Consultation

17.10 The Applicant agrees that it will consult with Peel prior to submitting any CEMP, CTMP, DEMP or LEMP relating to or in the vicinity of relevant property, including any CEMP, CTMP, DEMP or LEMP affecting land adjacent to relevant property.

17.11 The Applicant agrees that it will have due regard to any representations timeously made by Peel on any such draft CEMP, CTMP, DEMP or LEMP and will seek to incorporate any reasonable requests made by Peel where practicable.

17.12 The Applicant cannot agree to an absolute obligation to incorporate any reasonable requests made by Peel. The Applicant requires to balance a number of considerations in the preparation of any CEMP, CTMP, DEMP or LEMP. A request made by Peel may be reasonable but there still may be reasons why practicably it cannot or should not be incorporated into the final CEMP, CTMP, DEMP or LEMP submitted for approval in accordance with the DCO Requirements. An absolute obligation could prejudice the Applicant's ability to discharge the Requirements and would be disproportionate. These provisions are now agreed and have been included in the draft DCO.

18 UNITED UTILITIES

18.1 The Applicant agrees that Protective Provisions in favour of United Utilities are appropriate for this development. The Applicant does not however agree that the form of such provisions put forward by United Utilities is proportionate or reasonable to secure the required protections for the works which would be consented by this DCO.

Interpretation

18.2 The Applicant cannot agree to include United Utilities' proposed definition of "commence" and "commencement" in the Protective Provisions. The proposed definition is inconsistent

with the definition in Article 2 of the DCO. United Utilities' definition includes operations which would have no effect on their apparatus.

18.3 The Applicant cannot agree to include United Utilities' proposed additional wording at the definition of "ground mitigation scheme", which seeks to expand the definition to include measures necessary for a groundwater dewatering, hazardous material or vibration event. The Applicant's definition of "ground mitigation scheme" relates to a scheme to be submitted to and approved by United Utilities to be implemented following a "ground subsidence event". This includes any ground subsidence or vibration identified by monitoring which has exceeded, or reasonably has the potential to exceed, the level described in the ground monitoring scheme as requiring a ground mitigation scheme. There is no evidence justifying why this should be extended to include groundwater dewatering or hazardous material events. United Utilities' definition is therefore disproportionate.

19 UKOP

19.1 The Applicant agrees that Protective Provisions in favour of United Kingdom Oil Pipelines Limited are appropriate for this development. The Applicant does not however agree that the form of such provisions put forward by UKOP is necessary to secure the required protections for the works which would be consented by this DCO.

Acquisition or possession of land

19.2 The Applicant cannot agree to an obligation to complete a formal works' compound licence in respect of the works compound proposed to be constructed over the apparatus at Plot 6.20. The Protective Provisions provide adequate protection for UKOP's apparatus. Any land agreement for the works compound would be entered into with the landowner, which is not UKOP.

20 WALES & WEST UTILITIES

20.1 The Applicant agrees that Protective Provisions in favour of Wales & West Utilities are appropriate for this development. The Applicant does not however agree that the form of such provisions put forward by Wales & West Utilities is reasonable to secure the required protections for the works which would be consented by this DCO.

Betterment

20.2 The Applicant considers it is reasonable to include a standard provision that where replacement apparatus is of a better type, greater capacity or greater dimension than the existing apparatus, or placed at a greater depth, if it is not agreed by the undertaker or not determined by arbitration to be necessary, the cost in the construction of works exceeding the costs which would have been involved if replacement apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth placing of apparatus removed, is to be deducted from any sum payable in terms of expenses for which the Applicant is liable to pay Wales & West Utilities.

20.3 The values in these instances are not always negligible and therefore the Applicant cannot agree to removing this provision as requested by Wales & West Utilities. Where the undertaker agrees to the placing of better apparatus, or an arbitrator determines better apparatus to be necessary, the additional costs will not be deducted from any sum for

which the Applicant is liable to pay Wales & West Utilities. However, the undertaker should be entitled to offset additional costs where Wales & West Utilities otherwise require replacement apparatus to be of a better type, greater capacity, greater dimension or greater depth.

21 WELSH MINISTERS

21.1 These provisions are now agreed and have been included in the draft DCO.

22 WELSH WATER

22.1 The Applicant provided draft provisions to Welsh Water at its request but has received no comments thereon and Welsh Water have not provided any alterative drafting. The version included accordingly aligns directly with the standard protections for water and sewerage undertakers.

APPENDIX 1 – CHANGES TO APPLICANT'S DRAFT PROTECTIVE PROVISIONS IN FAVOUR OF NATIONAL HIGHWAYS SINCE DEADLINE 6 SUBMISSION [REP6-035]

FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Application etc.,

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.

Interpretation

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

(1) In this Part of this Schedule—

"acceptable security**"** means either:

(a) a parent company guarantee from a parent company in favour of National Highways to cover the undertaker's liability to National Highways to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Highways and where required by National Highways, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Highways to cover the undertaker's liability to National Highways for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Highways);

"as built information" means one electronic copy of the following information—

(a) as constructed drawings in both PDF and AutoCAD DWG formats showing the location and depth of the pipeline as installed and any ancillary or protective measures installed within the strategic road network;

(b) as constructed information for any utilities discovered or moved during the specified works;

(c) method statements for the specified works carried out;

(d) in so far as it is relevant to the specified works, the health and safety file; and

(e) such other information as is reasonably 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.

"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;

"detailed design information" means such of the following drawings specifications and calculations as are relevant to the specified works—

(a) site clearance details;

(b) boundary, environmental and mitigation fencing;

(c) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;

(f) utilities diversions; and

(g) other such information that may be reasonably required by National Highways to be used to inform the detailed design of the specified works;

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

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

"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;

"parent company" means a parent company of the undertaker acceptable to National Highways acting reasonably;

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

"specified works" means so much of the authorised development, 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, and specifically including Work No.12 in so far as that crosses the M56 motorway, Work No.16 in so far as that crosses the M53 motorway, and Work No. 22 in so far as that crosses the A41 highway.

"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

(2) 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.The undertaker acknowledges that parts of the works authorised by this Order affect or may affect parts of the strategic road network in respect of which National Highways may have appointed or may appoint a highway operations and maintenance contractor.

4.Notwithstanding the limits of deviation permitted pursuant to article 6 (limits of deviation) of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under the strategic road carriageway at a distance less than 4 metres below the lowest point of the carriageway surface.

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.

Prior approvals and security

6.—(1) Any specified works which involve tunnelling, boring or otherwise installing the pipeline under the strategic road network without trenching from the surface, must be designed by the undertaker in accordance with DMRB CD622 unless otherwise agreed in writing by National Highways.

(2) The specified works must not commence until—

(a) the programme of works has been approved by National Highways;

(b) the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—

(i) the detailed design information;

(ii) the identity and suitability of the contractor and nominated persons; and

(iii) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;

(c) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways reasonably considers will be affected by the specified works, has been agreed in writing by National Highways; ; and

(d) an acceptable security in favour of National Highways for the indemnity set out in paragraph [11] below has been put in place, which security must be maintained in place until the expiry of 12 months following the completion of all of the specified works.

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

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

(a) must not be unreasonably withheld;

(b) must be given in writing;

(c) shall be deemed to have been given if neither given nor refused within 2 months of the receipt of the information for approval or, where further particulars are requested by National Highways (acting reasonably) within 2 months of receipt of the information to which the request for further particulars relates; and

(d) may be subject to any reasonable conditions as National Highways considers necessary.

(5) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways immediately and details of their suitability to deliver the specified works will be provided on request.

(6) Any change to the detailed design of the specified works must be approved by National Highways in accordance with paragraph 6(2) of this Part.

Construction of the specified works

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

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

(a) the relevant detailed design information and programme of works approved pursuant to paragraph 6(2) above or as subsequently varied by agreement between the undertaker and National Highways;

(b) in so far as it may be applicable, the DMRB, 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.

(3) 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.

(4) If any part of the specified works is constructed-

(d) other than in accordance with the requirements of this Part of this Schedule; or

(e) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways,

National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the satisfaction of National Highways, acting reasonably.

(5) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may by notice in writing require the undertaker, at its own expense, to remedy the damage.

(6) If within 28 days on which a notice under sub-paragraph (4) or sub-paragraph (5) 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 reasonably incurred by National Highways in so doing.

(7) 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.

(8) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities.

(9) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme of works pursuant to paragraph 6(2)(b) of this Part, or suspends the carrying out of any specified work beyond 14 days, 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

8.—(1) The undertaker must pay to National Highways a sum equal to the whole of any reasonable 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 6(2);

(b) the supervision of the specified works;

(c) any costs reasonably incurred under paragraph 7(7) of this Part, and

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

(3) If at any time after the payment referred to in sub-paragraph (2) has become payable, National Highways reasonably believes that the NH costs will exceed the reasonably estimated NH costs it may give notice to the undertaker of the amount that it reasonably believes the NH costs will exceed the estimate of the NH costs (the excess) and the undertaker must pay to National Highways within 28 days of the date of the notice a sum equal to the excess.

(4) 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 date of completion of the specified works as set out in the programme of works.

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

(a) if the final account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it; or

(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.

(6) If any payment due under sub-paragraph (2) above, 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.

Condition survey and as built details

9.—(1) The undertaker must, as soon as reasonably practicable after completing the specified work, arrange for any highways structures and assets that were the subject of the condition survey under paragraph 6(2)(c) to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 if the specified works include any works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to sub-paragraph 9 (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. National Highways must remedy any damage identified in the re-surveys and National Highways may recover any expenditure it reasonably incurs in so doing from the undertaker

(3) 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.

(4) Within 30 days of completion of the specified works, the as built details must be provided by the undertaker to National Highways.

Insurance

10. Prior to the commencement of the specified works the undertaker must effect and maintain in place until the completion of all of the specified works, 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

11. The undertaker fully indemnifies National Highways from and against all reasonable 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 and always excluding any indirect or consequential loss suffered by National Highways.

Maintenance of the specified works

12.—(1) The undertaker must, prior to the commencement of any works of external 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. Works of inspection or maintenance undertaken from within the pipeline will not be subject to this paragraph.

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

(3) The undertaker must comply with any reasonable requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 14 days' in advance of the planned commencement date of the maintenance works.

Land

13.—(1) The undertaker must not, in reliance on or in exercise of any power under this Order, interfere with, remove, damage or prevent or impair the functioning of, and must on reasonable request (or in case of emergency, on demand) allow access by National Highways to, the highway drainage assets located in plots 2-14, 4-20, 5-01, 5-02, 5-03, 5-04, 5-10, 5-14, 5-15, 5-20, 5-22, 5-23, 6-02, 6-04, 6-05, 6-06,

(2) The undertaker must not, in reliance on or in exercise of any power under this Order, interfere with, remove or prevent access by National Highways in pursuance of any right held over plots 2-03, 2-14 and 5-05.

(3) The undertake must not, in reliance on or in exercise of any power under this Order, acquire, extinguish or remove any right National Highways holds for the purposes of its undertaking in any of the plots listed in sub-paragraphs (1) and (2) and plot 9-04.

Expert Determination

14.—(1) Article 49 *(arbitration)* of the Order does not apply to this Part of this Schedule.

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

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

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

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;

(c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and

(d) give reasons for the decision.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 49 *(arbitration)*.

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