

**Deadline 6 Submission of National Highways Limited  
including a response to the Rule 17 request for further  
information dated 6 September 2024 and comments on  
the Applicant's D5 submissions**

Application by Chrysador Production (UK) Limited for an Order granting  
Development Consent for the Viking CCS Pipeline Project

Planning Inspectorate Reference Number: EN 070008



## **1 Introduction**

- 1.1 This document sets out the latest submissions of National Highways Limited (National Highways) provided at Deadline 6 of the examination.
- 1.2 The proposed development would 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 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 proposed development and the SRN. To date it has not been possible to reach full agreement with the Applicant in this regard.

## **2 Rule 17 Request for Further Information (RfI)**

- 2.1 The following question has been asked of National Highways in the RfI:

*National Highways – in your Deadline 5 submission, there is a reference to 'bonds' that are required to secure works to the Strategic Road Network. Please specify why these are necessary, examples of where these have been sought and accepted before in other development consent orders, the amount of bond required (£) and any text that you would want to be included to secure this in the DCO.*

- 2.2 The Applicant is proposing to carry out significant works beneath the highway. In line with all other applications for works which may affect the SRN National Highways requires that financial provision is put in place to ensure that in the event of the Applicant commencing works and falling into financial difficulty or defaulting on completion of the works, National Highways has the resources needed to put the SRN and the highway estate into the position it was in before the Applicant commenced work. In such cases, National Highways is exposed to a potentially significant financial burden in remedying the situation and ensure no ongoing safety issues for the SRN. National Highways is a public body funded by the taxpayer. It does not carry any budget for third party works and so must ensure that it, and therefore the public purse, is not exposed to any financial risk.
- 2.3 Outside of the Planning Act 2008, National Highways requires bonds before permitting any works to take place that could impact the SRN (for example these are often secured when developers enter into agreements pursuant to section 278 of the Highways Act 1980). The protective provisions that National Highways require in respect of third party DCOs merely include security provisions which are consistent with the measures applying to developments carried out under other consenting regimes (e.g. Town and Country Planning Act 1990 and Highways Act 1980). The National Highways

protective provisions are an appropriate mechanism to assure security such as a bond and without this National Highways would be faced with potentially significant financial liabilities for which it is not funded and has no budget. The potential issues that may arise in respect of the SRN as a result of third party works are no different regardless of consenting regime and therefore National Highways seeks to ensure consistency when protecting this asset.

- 2.4 National Highways routinely requests (and is granted) security such as bonds for third party NSIPs that impact the SRN. A recent example can be found in the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024 ([Schedule 15, Part 6](#)). This required a bond to be provided in the amount of 200% of the cost of the relevant works:

**Security**

75.—(1) In respect of any specified works approved under paragraph 67(2), the works must not commence until—

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

(3) the undertaker has provided the cash surety which may be utilised by National Highways in the event of the undertaker failing to meet its obligations to make payments under paragraph 69 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker under the provisions of this Part of this Schedule.

- 2.5 The same provisions can be found in the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024 ([Schedule 12, Part 4](#)):

**Security**

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

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

(b) the undertaker has provided the cash surety which may be utilised by National Highways in the event of the undertaker failing to meet its obligations to make payments under paragraph 43 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker under the provisions of this Part of this Schedule.

- 2.6 In addition these exact same provisions are included in the Medworth Energy from Waste Combined Heat and Power Facility Order 2024 ([Schedule 11, Part 5](#))

#### Security

58. The specified works must not commence until—

- (a) the undertaker procures that the specified works are secured by a bond from a bondsman first approved by National Highways in the agreed form between the undertaker and National Highways to indemnify National Highways against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of the exercise of the powers under this Order and the specified works under the provisions of this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum; and
- (b) the undertaker has provided the cash surety which may be utilised by National Highways in the event of the undertaker failing to meet its obligations to make payments under paragraph 52 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker under the provisions of this Part of this Schedule.

2.7 With regards to the Viking CCS Pipeline application, it will be noted that at D5 National Highways included a copy of protective provisions that included a form of security in slightly different terms to the examples provided above. This was based on a compromise position which National Highways believed had been agreed with the Applicant - though it is noted that no such provision was included in the draft DCO submitted by the Applicant at D5. These security provisions were drafted by the Applicant and accepted by National Highways subject to a slight amendment (as set out in National Highway's D5 submission – see [Appendix 1 Protective Provisions – tracked with commentary](#)).

2.8 This form of security is based on that which appears in [Schedule 10, Part 17](#) of the HyNet Carbon Dioxide Pipeline Order 2024. It requires the undertaker to ensure that an acceptable security in favour of National Highways is in place prior to commencing any specified works (i.e. any works that take place in, on, over or under the SRN). Those provisions are drafted as follows:

(2) The specified works must not commence until—

- (d) an acceptable security in favour of National Highways for the indemnity set out in paragraph 232 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.

“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);

- 2.9 The provisions included at paragraph 113(2) and 119 of the protective provisions provided within National Highways' D5 submission are based on the Hynet drafting. For ease of reference, a further full copy of Appendix 1 of National Highways' D5 submission is appended hereto (with the specific drafting extracted below). National Highways respectfully asks that this form of wording is included in any made DCO to ensure that National Highways has the protection it requires in this regard.

Inclusion at paragraph 113(2):

“acceptable credit provider” means a United Kingdom based bank or financial institution that transacts under the law of England and Wales with a credit rating that is not lower than:  
(i) “A-” if the rating is assigned by Standard and Poor’s Ratings Group or Fitch Ratings, or  
(ii) “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable security” means 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 (ten million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to National Highways);

Inclusion at paragraph 119:

#### **Security**

**119.**—(1) No specified work shall commence until the undertaker has first provided the acceptable security in favour of National Highways, and provided evidence (to the reasonable satisfaction of National Highways) that it shall maintain such acceptable security for the construction period of the specified works from the proposed date of commencement of the specified works until no earlier than the end of the defects period.

### **3 Updates following review of the Applicant’s D5 submissions**

- 3.1 National Highways welcomes the Applicant’s commitment to updating the protective provisions within the draft DCO to satisfy National Highways’ request with regards to articles 14 and 17 (previously 13 and 16). On the assumption that these updates are made this satisfies all of National Highways’ concerns with regards the articles of the draft DCO and National Highways offers no further objection in that regard.
- 3.2 Whilst National Highways is not in a position to withdraw its objection to this application in full at this deadline the issues between it and the applicant have narrowed considerably. The only outstanding issues for the ExA (and ultimately the Secretary of State) to adjudicate on are:
- The issue of a bond within the protective provisions for National Highways’ benefit as detailed in section 2 above.
  - National Highways’ request for inclusion within the protective provisions of a twelve month defects period following any works that

may effect the SRN during which time the undertaker remains responsible for rectifying any issues within the prescribed timescales as set out. See National Highways' D5 submission for further detail.

- The extent of a restriction the Applicant is seeking to impose on National Highways regarding the interaction between each party's assets. See National Highways D5 submission for further detail, in particular the suggested additional wording for inclusion at paragraph 116 (10) of the protective provisions.
- National Highways' request for an approval role under Requirements 6 and 16 which to date has not been accepted by the Applicant. This relates to National Highways role in respect of the Construction Traffic Management Plan (CTMP) and Decommissioning Traffic Management Plan (DTMP).

National Highways repeats its request in this regard and refers to its D4 submissions. It should be noted that whilst on some occasions National Highways is content with the role of a consultee (rather than an approving body as requested here), this is usually because National Highways has early sight of sufficiently developed management plans and is confident that the measures set out would be appropriate to manage the effects of traffic on the SRN. Unfortunately, with regards to this application, the measures set out to date by the Applicant are insufficient to manage the effects of construction traffic on the SRN. The applicant has not assessed their impact or safety on the SRN and National Highways has made it clear that further evidence is still required. If insufficient information is provided for National Highway at this juncture we would expect to be approvers of the relevant management plans to provide reassurance for a safe and smooth operation of the SRN. If the Applicant had provided sufficient information upfront, as National highways would ordinarily expect, then it may have not been necessary to make this request. Rather than holding the Applicant to task over information that should have already have been provided as part of their application National Highways sort a pragmatic solution by instead requesting this role in discharging the CTMP and DTMP.

- 3.3 If these few issues are resolved to National Highways' satisfaction in the final draft DCO to be submitted by the Applicant then National Highways' objection can be withdrawn in full, however this submission is written on the assumption that these issues remain.

**National Highways Limited**  
**19 September 2024**

## **APPENDIX**

Further copy of Appendix 1 to National Highways' D5 submission: *Protective Provisions – tracked with commentary.*

***NOTE: as referenced in National Highways D5 submission these protective provisions used, as a baseline, those which National Highways believed the applicant would be including in a revised DCO at D5. On review of the latest draft DCO submitted by the Applicant at D5 we now know this not to be the case.***

Viking CCS Pipeline

Protective Provisions

PART 9

For the protection of National Highways Limited

**Application etc.**

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

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

**Interpretation**

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

(2) In this Part of this Schedule—

“acceptable credit provider” means a United Kingdom based bank or financial institution that transacts under the law of England and Wales with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard and Poor’s Ratings Group or Fitch Ratings, or (ii) “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable security” means either:—

(a) evidence provided to National Highways’ reasonable satisfaction that the undertaker has a tangible net worth of not less than £50,000,000 (fifty million pounds); or

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 (ten million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to National Highways);

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

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

**Commented [NH1]:** National Highways only accepts security from a bank or financial institution that is UK based and transacts under the law of England & Wales.

**Commented [NH2]:** National Highways expects any security to be in the form of a bond (or letter of credit). It does not consider that evidence that the undertaker has a net worth of £50 million would be appropriate here, particularly as the undertaker could be liable to NH for £50 million as well as having other competing liabilities.



“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;

“defects period” means a period of twelve months commencing from the date of completion of a specified work;

“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) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways;
- (e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- (f) highway structures and any required structural approval in principle;
- (g) landscaping;
- (h) proposed departures from DMRB standards;
- (i) walking, cycling and horse-riding assessment and review report;
- (j) stage 1 and stage 2 road safety audits and exceptions agreed;
- (k) utilities diversions;
- (l) topographical survey;
- (m) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
- (n) health and safety information including any asbestos survey required by GG105 or any successor document; and
- (o) 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 authorised development required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

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

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

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

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

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

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

“Specification for Highways Works” means the specification for highways works forming part of the manual of contract documents for highway works published by National Highways and setting out the

**Commented [NH3]:** Definition required due to insertion of ‘defects period’ provisions later in the document.

requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the strategic road network;

“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 for which National Highways is the highway authority; and

“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.

### General

**114.**—(1) 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.

(2) No works in carrying out, maintaining or diverting the authorised development may be carried out under the strategic road network at a distance within 4 metres of the lowest point of any services and/or drainage under the highway.

(3) All works associated with the construction and installation of the pipeline pursuant to Work No.03 and Work No.08 shall, in so far as those works cross the strategic road network, be carried out by trenchless methods unless otherwise agreed by National Highways.

### Prior approvals

**115.**—(1) The specified works must not commence until:—

- (a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways;
- (b) the programme of works has been approved by National Highways;
- (c) the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—
  - (i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a);
  - (ii) details of the proposed road space bookings;
  - (iii) the identity and suitability of the contractor and nominated persons;
  - (iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker; and
  - (v) information demonstrating that the walking, cycling and horse-riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding;
- (d) a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;
- (e) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c)(iv) above; and
- (f) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways considers will be affected by the specified works, has been agreed in writing by National Highways.

(2) Except where an approval has otherwise been provided under this Part, the undertaker must not exercise:—

- (a) article 5 (power to maintain the authorised development);
- (b) article 8 (street works);

- (c) article 9 (power to alter layout, etc. of streets)
- (d) article 11 (temporary restriction of public rights of way);
- (e) article 12 (temporary restriction of use of streets);
- (f) article 13 (access to works);
- ~~(g)~~ article 16 (traffic regulation);
- ~~(h)~~ article 17 (discharge of water);
- ~~(i)~~ article 19 (authority to survey and investigate land);
- ~~(j)~~ article 20 (protective works to buildings);
- ~~(k)~~ article 22 (compulsory acquisition of land);
- ~~(l)~~ article 24 (compulsory acquisition of rights);
- ~~(m)~~ article 31 (rights under or over streets);
- ~~(n)~~ article 32 (temporary use of land for carrying out the authorised project);
- ~~(o)~~ article 33 (temporary use of land for maintaining the authorised project); or
- ~~(p)~~ article 39 (felling or lopping trees or removal of hedgerows) of this Order,

over any part of the strategic road network.

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

(4) National Highways must within 56 days of the undertaker requesting National Highways' approval pursuant to sub-paragraphs (1) and (2):—

- (a) intimate their approval;
- (b) intimate their refusal together with reasons for refusal; or
- (c) request more time to intimate approval or refusal pursuant to sub-paragraphs (a) or (b).

(5) In the event National Highways requests more time pursuant to sub-paragraph (4)(c), the undertaker may:—

- (a) approve that request; or
- (b) require that the person identified to the undertaker pursuant to sub-paragraph (3) meets with the undertaker's project director to discuss the request for approval.

(6) Any approval of National Highways required under this paragraph 4:—

- (a) must be given in writing; and
- (b) may be subject to any conditions as National Highways considers reasonably necessary.

(7) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways as soon as reasonably practicable and in any event within 7 days and details of their suitability to deliver the specified works will be provided on request.

(8) Any change to the detailed design of the specified works must be approved by National Highways in accordance with sub-paragraph 4(4) of this Part.

#### Construction of the specified works

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

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

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

**Commented [NH4]:** National Highways requires the addition of these 2 articles to this list for the reasons stated in its D4 submission.

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 4(1) above or as subsequently varied by agreement between the undertaker and National Highways;
- (b) in so far as it may be applicable, the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as may reasonably be required by National Highways to include, inter alia; all relevant interim advice notes, the Traffic Signs Manual, and the Traffic Signs Regulations and General Directions 2016, save to the extent that exceptions from those standards apply which have been approved by National Highways; and
- (c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of National Highways.

(4) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the specified works for the purposes of inspection and supervision of the specified works.

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

- (a) other than in accordance with the requirements of this Part of this Schedule; or
- (b) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways, National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the satisfaction of National Highways acting reasonably.

(6) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may carry out steps required to remedy the damage and may recover any expenditure reasonably incurred by National Highways in so doing, such sum to be payable within 30 days of demand.

(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. Notwithstanding the foregoing, National Highways will inform the undertaker of any such works or action as soon as reasonably practicable.

(8) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities (where required to prevent unreasonable interference or damage) and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the satisfaction of National Highways acting reasonably.

(9) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme pursuant to paragraph 115(1)(b) of this Part or suspends the carrying out of any specified work beyond a reasonable period of time and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

(10) Powers granted to National Highways to undertake any works under this paragraph include works to make safe an area but do not include powers to undertake any works to the pipeline or any works which could conflict with the duties and obligations of the undertaker under the Pipeline Safety Regulations 1996, any direction issued by the Health and Safety Executive under those Regulations or any other health and safety legislation relating to the operation and maintenance of the pipeline. unless any such works are unavoidable due to a requirement to protect the safety of the SRN but in all cases of conflict matters of health and safety take precedence and the undertaker and National Highways must work together to ensure that all safety issues are appropriately dealt with.

**Commented [NH5]:** A caveat is needed here to ensure this provision does not introduce safety risks for NH /the SRN. NH cannot be prevented from complying with its own statutory obligations around safety but acknowledges in cases of conflict the parties will need to work together to ensure all matters of safety are appropriately dealt with.

## Payments

**117.**—(1) The undertaker must pay to National Highways a sum equal to the whole of any costs and expenses which National Highways reasonably 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, including:—

- (a) the checking and approval of the information required under this Part;
- (b) the supervision of the specified works;
- (c) all legal and administrative costs and disbursements incurred by National Highways in connection with the specified works and sub-paragraphs (a) and (b); 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 within 14 days of receipt of the information pursuant to sub-paragraph 115(1) provide the undertaker with a schedule showing its estimate of the NH costs.

(3) The undertaker must within 30 days of receipt of the notice pursuant to sub-paragraph (2) pay to National Highways the estimate of the NH costs.

(4) If at any time after the payment referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs notified pursuant to sub-paragraph (2) it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate (the “excess”).

(5) The undertaker must within 30 days of receipt of the notification pursuant to sub-paragraph (4) pay to National Highways an amount equal to the excess.

(6) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above as a fully itemised invoice within 30 days of the undertaker notifying to National Highways that a specified work has been completed.

(7) Within 30 days of the issue of the final account:

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

(8) The undertaker must pay to National Highways within 30 days of receipt and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National Highways in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the specified works.

## Completion of a specified work

**118.**—(1) The undertaker must within 28 days of completion of a specified work arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed including a renewed geotechnical assessment required by DMRB CD622 and must submit the re-survey to National Highways for its approval.

(2) If the re-surveys carried out pursuant to sub-paragraph 118(1) indicates that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing, which must not be unreasonably withheld or delayed, and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted.

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

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to sub-paragraph 118(1) give notice in writing that National Highways will remedy any damage

identified in the re-surveys and National Highways may recover any expenditure it reasonably incurs in so doing.

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

(6) The undertaker must within 28 days of completion of any specified works submit to National Highways the as built information in relation to those works.

(7) A defects period shall commence following completion of a specified work during which time the undertaker must, at its own expense, remedy any defects in the SRN as are reasonably required by National Highways. All identified defects must be remedied in accordance with the following timescales—

a. in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of National Highways);

b. in respect of matters which National Highways considers to be serious defects or faults, within 14 days of receiving notification of the same; and

c. in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.

## Security

119.—(1) No specified work shall commence until the undertaker has first provided the acceptable security in favour of National Highways, and provided evidence (to the reasonable satisfaction of National Highways) that it shall maintain such acceptable security for the construction period of the specified works from the proposed date of commencement of the specified works until no earlier than the end of the defects period.

## Insurance

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

## Indemnity

121.—(1) The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order within 30 days of demand.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) any loss arising out of or in consequence of any negligent act or default of National Highways or its officers servants agents or contractors or any person or body for which it is responsible; or
- (b) any indirect or consequential loss of National Highways or any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption).

## Maintenance of the specified works

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

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

**Commented [NH6]:** National Highways must ensure it is protected from defects that can occur within twelve months of works completing. There are known issues that works such as those proposed by the undertaker can lead to potential settlement induced due to the pipe installation which could potentially take several months to materialise with inherent damage to National Highways' earthworks and pavement. A defects period is a standard request of National Highways when any third party works take place that could affect the SRN.

**Commented [NH7]:** Wording added to ensure that NH also benefits from the security for that twelve month period when known defects can occur.

(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 7 days in advance of the planned commencement date of the maintenance works.

#### **Land**

**123.**—(1) The undertaker must not under the powers of this Order:

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

any of the strategic road network, or extinguish any existing rights of National Highways in respect of any third-party property, except with the consent of National Highways such not to be unreasonably withheld or delayed by written request to [legalserviceteam@nationalhighways.co.uk](mailto:legalserviceteam@nationalhighways.co.uk).

#### **Expert Determination**

**124.**—(1) Subject to the provisions of this paragraph, article 48 (arbitration) of the Order does not apply to this Part of this Schedule.

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

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

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

(5) The expert must—

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

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 48 (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.

#### **Co-operation**

**125.**—(1) Where in consequence of the proposed construction of any part of the authorised development, National Highways makes requirements for the protection of the SRN under paragraph 115, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety of the authorised development and taking into account the need to ensure the safety of National Highways' undertaking and National Highways must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Highways' 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.