



**Havering**  
LONDON BOROUGH

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**London Borough of Havering (20035775) – Submission of Draft Protective Provisions**

Dear Sir,

LB Havering indicated in its Deadline 1 Submission (REP1-251) that it intended to submit further comments on the draft DCO at Deadline 2, specifically draft Protective Provisions being sought by LB Havering. The Council's draft set of Protective Provisions can be found in Appendix 1.

The purpose of these is to commence positive discussions. These have been circulated to the Applicant, as well as other Local Highway Authorities, for comments.

The draft Protective Provisions that Havering has prepared are based on similar provisions secured for Somerset Council as well as the proposed Side Agreement that the Applicant has drafted.

Yours faithfully,

[REDACTED]  
Daniel Douglas

**Team Leader Transport Planning**

**The Havering you want to be part of**

## Submission of Draft Protective Provisions – Appendix 1

### PART [ ]

#### FOR THE PROTECTION OF LOCAL HIGHWAY AUTHORITIES

##### *Application*

1.—(1) The provisions in this Part of this Schedule shall have effect in respect of the local highways unless otherwise agreed in writing between the undertaker and the relevant local highway authority responsible for the local highway concerned.

##### *Interpretation*

2.—(1) In this Part of this Schedule -

“as built information” means one digital copy of the following information where applicable to the local highway works in question—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker;
- (b) list of suppliers and materials used, test results and CCTV surveys;
- (c) product data sheets, technical specifications for all materials used;
- (d) as constructed information for any utilities discovered installed or moved during the works
- (e) method statements for works carried out;
- (f) in relation to road lighting, signs and traffic signals any information required by Series 1400 of the Specification for Highway Works;
- (g) plan of temporary signage indicating new road layouts;
- (h) organisation and methods manuals for all products used in the construction of the authorised development;
- (i) as constructed programme;
- (j) test results and records required by the Detailed Design Information and during the construction phase;
- (k) RSA3 and exceptions agreed;
- (l) Health and Safety File; and
- (m) any other information, document, certificate or drawing that has been required to be obtained, produced or designed to satisfy the technical approval requirements in this Order

“business days” means any day other than a Saturday, a Sunday or a day on which commercial banks in London are required or authorised to be closed;

“commence” means the carrying out of any material operation as defined in s.155 of the 2008 Act and “commencing” shall be construed accordingly

“commuted sum” means sums provided for in paragraph [13] of this Part of this Schedule to be used to fund the future cost of maintenance of the local highway works to which the sum relates.

“detailed design” means the information comprising the detailed design for the authorised works in accordance with requirement [3] of Schedule 2 of the Order

“detailed information” means drawings, specifications and other information relevant to the local highway works in question which shall comprise the following and shall be in accordance with the detailed design—

- (a) site clearance details;
- (b) boundary environmental and mitigation fencing;

- (c) road restraints systems (vehicle and pedestrian)
- (d) drainage and ducting;
- (e) earthworks including supporting geotechnical assessments required by HD22/08 and any required Strengthened Earthworks Appraisal Form certification (SEAF);
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) electrical work for road lighting, traffic signs and signals;
- (k) highway structures;
- (l) hard and soft landscaping;
- (m) utilities new provision and diversions;
- (n) topographical survey;
- (o) identification of any land to be dedicated as highway; and
- (p) pre- construction health and safety information
- (q) a schedule of timings of the works, including dates and durations for any closures of any part of the local highway
- (r) traffic management proposals including diversionary routes
- (s) a schedule of the existing condition of the local highway prior to the commencement of the local highway works
- (t) a specification of the condition in which it is proposed that the local highway will be returned once the local highway works concerned have been completed
- (u) any temporary works or structures which are to be erected or retained under the Order or otherwise
- (v) plans showing all any public non vehicular highway which is maintainable by the relevant local highway authority or is intended at the completion of the authorised works to be maintainable by the local highway authority concerned comprising footpaths, footways, cycleways and bridleways
- (w) schedule of widths and limitations of any public non-vehicular highways

where relevant to the local highway works concerned.

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of all or part of that document for the time being in force

“local highway” means any public highway including any public right of way which is maintainable or is intended by the completion of the authorised works to be maintainable by a local highway authority

“local highway works” means that part of the authorised works which is to be carried out on, above or below the local highway (including any preliminary works and drainage works) and also any traffic management measures affecting the use of the local highway by the public

“maintenance period” means in respect of any of the local highway works the period commencing with the date of the issue of the provisional certificate under paragraph [9] in respect of those works by the relevant local highway authority and ending with the date of the issue of the final certificate under paragraph [11] in respect of those works by the relevant local highway authority

“nominated officers” means the nominated officers of the relevant local highway authority as notified to the undertaker from time to time

“senior representatives” means the Regional Director on behalf of the undertaker and persons notified to the undertaker by the relevant local highway authorities as being their senior representatives; 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.

*Design input and commencement*

3.—(1) The undertaker must allow and facilitate any nominated officer from a relevant local highway authority to participate in all aspects of the detailed design which relate to the local highway works within the administrative area of that relevant local highway authority

(2) Prior to the undertaker finalising the detailed design of any of the local highway works referred to in sub-paragraph (1) the undertaker must, in respect of those local highway works-

- (a) provide the nominated officers with drawings/cross/long sections, design information where different from the detailed design and any other information as is reasonably required
- (b) offer and, if accepted, facilitate a meeting, or series of meetings, as necessary for the proper understanding of the detailed design by the nominated officers and allowing for iterations of the detailed design in response to such meetings
- (c) allow a period of not less than [ ] business days from the date that the final detailed design information has been supplied for the nominated officers to make representations on and recommendations in respect of the proposed design; and
- (d) have regard to any representations of the nominated officers in finalising the design and provide to the nominated officers a response to those representations in writing within [ ] business days of their receipt setting out reasons for non-acceptance of any representation or recommendation including confirming whether or not and how the detailed design has been changed in response to the representations from the local highway authority

(3) Prior to the undertaker commencing any of the local highway works referred to in sub-paragraph (1) the undertaker must, in respect of those local highway works-

- (a) submit the detailed information in respect of those local highway works to the nominated officers
- (b) allow a period of not less than [ ] business days for the nominated officers to provide representations on and make representations in respect of the detailed design information; and
- (c) have regard to any representations of the nominated officers in respect of the detailed design information and provide to the nominated officers a response to those representations in writing within [ ] business days of their receipt setting out reasons for non-acceptance of any representation or recommendation including confirming whether or not and how the detailed design information has been changed in response to the representations from the local highway authority
- (d) agree with the relevant local highway authority the commuted sum to be paid for those local highway works concerned under paragraph [13]
- (e) agree with the relevant local highway authority details of adequate maintenance access and hardstandings for inspection and maintenance on foot or using vehicles (if necessary) for any elements of the local highway works for which the relevant local highway authority will become responsible; and
- (f) agree the design of any temporary new access to the local highway which is not otherwise identified in any of the plans certified in this Order plans ]

(4) The local highway works must be carried out in accordance with the detailed information provided to the relevant local highway authority (subject to the process in sub paragraph (3) (a) to (c) above) unless otherwise agreed between the undertaker and the relevant local highway authority

#### *Local Operating Agreement*

4. (1) Prior to the undertaker commencing the local highway works the undertaker must enter into a local operating agreement with the relevant local highway authority in relation to the carrying out of those works such agreement to cover as a minimum:

- (a) arrangements for communication with relevant stakeholders and the community generally, including where the responsibility lies for such communication
- (b) identification of the operational area, free recovery areas and the extent of influence of the local highway works in question
- (c) identification of the responsibility for assets during the carrying out of the local highway works and upon completion
- (d) arrangements for maintenance during severe weather to apply during the carrying out of the local highway works and the maintenance period
- (e) arrangements for continuity of technology during the carrying out of the local highway works and the maintenance period
- (f) arrangements for dealing with and recording all incidents which occur on the local highway in question during the carrying out of the local highway works and the maintenance period
- (g) traffic management arrangements
- (h) arrangement for submission of digital copies of all as-built information including identification of any new limits of highway maintainable by the local highway authority
- (i) the reporting of any claims made and against the undertaker in respect of the local highway works concerned

(2) The local operating agreements entered into under sub paragraph (1) must be complied with at all times and continue in full force until such time as the relevant final certificates have been issued in respect of the local highway works concerned.

(3) Where agreement cannot be reached on the terms of any local operating agreement under sub-paragraph (1) the contents will be resolved using the procedure in paragraph [18 ].

(4) The undertaker must not alter, disturb or in any way interfere with any property of the local highway authority or any access to such property (except to the extent authorised under the powers conferred by this Order), without the prior written consent of the local highway authority.

#### *Survey reinstatement*

5. (1) The undertaker must reinstate to the reasonable satisfaction of the local highway authority any part of the local highway which has been temporarily used for survey or investigation purposes by the undertaker to the condition and level it was in on the date on which the survey or investigation began, or such other condition as may be agreed in writing with the local highway authority.

#### *Access*

6. (1) The undertaker must provide adequate maintenance access and hard standings for inspection and maintenance on foot or using vehicles (if necessary) for any elements of the local highway for which the local highway authority will become responsible pursuant to the Order in accordance with the details agreed under paragraph 3(1)(e).

(2) The undertaker must provide any temporary new access which is not otherwise identified in any of the certified Order plans in accordance with the design agreed under paragraph 3(1)(f).

#### *Inspections and testing of materials*

7. (1) The undertaker must allow and facilitate nominated officers of the relevant local highway authority access at all reasonable times to inspect any part of the local highway works being carried out within its administrative area during their construction at any time before a final certificate has been issued in respect of those works under paragraph [11 ].

(2) The undertaker must carry out any testing of materials used or proposed to be used in the local highway works reasonably required by the relevant local highway authority and such testing must be in accordance with the latest version of the Manual of Contract Documents for Highway Works or another testing specification agreed between the undertaker and the relevant local highway authority.

(3) The relevant local highway authority may test materials used or proposed to be used in local highway works being or to be carried out within its administrative area and the undertaker must provide such information access and materials as are necessary to facilitate such testing.

(4) The undertaker must provide the relevant local highway authority with a copy of all tests results and certificates relevant to the testing of materials carried out by the undertaker within seven business days of their receipt by the undertaker.

#### *Road Safety Audits*

8. (1) The undertaker must procure that an appropriately qualified safety auditor (as defined in DMRB standard GG 119) undertakes road safety audits in accordance with DMRB standard GG 119 and must provide copies of the road safety audit reports to the relevant local highway authority within seven business days of their receipt by the undertaker.

(2) The undertaker must provide details of the safety auditors the undertaker proposes to appoint to carry out road safety audits in respect of the local highway works to the relevant local highway authority and provide the relevant local highway authority with a reasonable opportunity to raise any concerns in respect of such appointment prior to the appointment being made.

(3) The undertaker must invite the relevant local highway authority to be involved in all the road safety audits carried out in respect of the local highway works being or to be carried out within its administrative area and prior to the commencement of any of those road safety audits must consult with the relevant local highway authority with respect to any additional requirements the relevant local highway authority requires to be addressed in those audits.

(4) Where the stage 3 or stage 4 road safety audit in respect of any local highway authority works recommends that works be carried out then the undertaker must carry out at its expense and to the reasonable satisfaction of the relevant local highway authority all the works recommended unless otherwise agreed with the relevant local highway authority or unless the works would give rise to a materially different environmental effect in comparison with those identified in the environmental statement.

(5) The carrying out of works under sub-paragraph (4) shall be taken to be works carried out under this Order.

#### *Provisional Certificate*

**9.** (1) When the undertaker considers that any part of the local highway works have been completed then it must notify the relevant local highway authority and allow the relevant local highway authority to inspect those local highway works to identify any defects or incomplete works.

(2) No notification under sub-paragraph (1) will be effective until either

- (a) a stage 3 safety audit in accordance with GG 119 of DMRB has been undertaken and any works arising therefrom have been completed in accordance with paragraph 8 (4); or
- (b) if the local highway works in question were not subject to a safety audit the relevant local highway authority has been provided with an opportunity to inspect those works to identify any safety deficiencies and those have been rectified to the reasonable satisfaction of the relevant local highway authority

(3) The relevant local highway authority must inspect the local highway works and notify the undertaker of any defects and incomplete works within [ ] business days works of the notification given under sub-paragraph (1).

(4) The undertaker must supply to the relevant local highway authority a description of works to be carried out, a schedule of timings for the works, including dates and durations for any closures of any part of the local highway and traffic management proposals, in respect of any work to make good defects or complete works referred to in sub paragraph (3)

(5) When the undertaker has rectified any defects and finished any incomplete works identified by the relevant local highway authority under sub paragraph (3) to the reasonable satisfaction of the local highway authority then the local highway must issue a provisional certificate in respect of those works.

#### *Maintenance*

**10.** (1) The undertaker must maintain the local highway works to a standard appropriate for their use as public highway and remedy any defects arising throughout the relevant maintenance period.

(2) The undertaker will not be responsible for any street works or maintenance undertaken by the relevant local highway authority during the relevant maintenance period.

#### *Final Certificate*

**11.** (1) When the undertaker considers that a final certificate in respect of any part of the local highway works should be issued then it must notify the relevant local highway authority and allow the relevant local highway authority to inspect those local highway works to identify any defects, incomplete works or failures in maintenance.

(2) The relevant local highway authority must inspect the local highway works and notify the undertaker of any defects, incomplete works and/or failure in maintenance within [ ] business days works of the notification given under sub-paragraph (1).

**12.** (1) The relevant local highway authority must promptly issue a final certificate in respect of local highway works concerned following the satisfaction of all the conditions set out in (a) to [ ] below:

- (a) the local highway works concerned have been maintained to the reasonable satisfaction of the relevant local highway authority
- (b) all defects have been made good, works completed and failures in maintenance rectified to the reasonable satisfaction of the relevant local highway authority
- (c) a stage 4 safety audit in accordance with GG 119 of DMRB has been undertaken and any works arising therefrom have been completed in accordance with paragraph 8 (4)

- (d) the local highway works concerned are not subject to any ongoing traffic management measures or routing of construction traffic related to the authorised works
- (e) the undertaker has provided the as built information in relation to the local highway works concerned
- (f) the undertaker has paid to the relevant local highway authority any commuted sum payable under paragraph [13 ] in relation to the local highway works concerned
- (g) the undertaker has paid to the local highway authority all costs and expenses accrued and payable under paragraph [14 ]
- (h) any transfer of land requested by the local highway authority has been completed under paragraph [15 ]
- (i) [????????]

*Commuted Sums*

- 13.** (1) [Provision for payment of commuted sums prior to issue of final certificate]

*Expenses and indemnity*

- 14.** (1) The undertaker must pay to the relevant local highway authority a sum equal to all costs and expenses which that relevant local highway authority reasonably incur –

- (a) in participating in the design input under paragraph [ 3 ]
- (b) in carrying out any inspections under paragraphs [7,9,and 11 ]
- (c) in issuing approvals/certificates under paragraphs [9 and 11 ]
- (d) calculating and agreeing any commuted sum under paragraph [13 ]
- (e) providing and agreeing all costs payable pursuant to this paragraph
- (f) dealing with any transfers of land under paragraph [15 ]
- (g) negotiating, completing, implementing, monitoring compliance with the local operating agreement
- (h) [??????]

(2) The undertaker must pay the costs and expenses referred to in sub paragraph (1) to the relevant local highway authority within 28 business days of the relevant local highway authority advising the undertaker that they have been incurred and no final certificate will be issued under paragraph [12 ] if any payment due to be paid at that point by the undertaker has not been paid.

(3) The undertaker will indemnify and keep indemnified the relevant local highway authority against any liability, loss, cost, or claim arising out of or incidental to the local highway works being or to be carried out within its administrative area (other than any caused by any negligent act, default or omission of the local highway authority)

(4) No claim made against the relevant local highway authority in respect of which sub-paragraph (3) applies can be settled or liability accepted by the relevant local highway authority without first providing the undertaker with a reasonable opportunity to consider the claim and to respond to the relevant local highway authority with any comments on it.

*Transfer of land*

**15.** (1) Following the issuing of the provisional certificate under paragraph 9 in respect of any part of the local highway works the undertaker must, if requested by the relevant local highway authority, execute and complete a transfer to the relevant local highway authority at nil consideration of any land and rights which have been compulsorily acquired pursuant to the provisions of this Order in respect of land which is to be maintainable by the relevant local highway authority following, and as a result of, the completion of those local highway works.



*Notices etc*

16. (1) Subject to (2) any notices, approvals of certificates shall be in writing and –  
(a) in respect of the undertaker shall be sent to [ ] and copied to [ ]  
(b) in respect of the local highway authorities shall be [ ]

(2) The undertaker and a relevant local highway authority may at any time specify addresses or persons to be notified in addition to or instead of those referred to in sub paragraph (1).

*Emergency work*

17. (1) Nothing in this Part of this Schedule prevents a local highway authority from carrying out any work or taking such action as deemed appropriate without prior notice to the undertaker in the event of an emergency or danger to the public.

*Disputes*

18. (1) Any dispute between the undertaker and a local highway authority under this Part is to be determined by arbitration under article [64] (*arbitration*).

OR

18. (1) In the event of any disagreement between the undertaker and a local highway authority arising out of or in connection with this Part of this Schedule which cannot be resolved within 10 business days of the disagreement arising either the undertaker or the local highway authority may request a review of the issue in disagreement by referring the disagreement to their senior representatives.

(2) The senior representatives will use all reasonable endeavours in good faith to resolve any disagreement.

(5) Where agreement is not reached by the senior representatives within 10 business days of referral to the senior representatives the disagreement shall become a dispute and shall referable to arbitration (if the dispute is capable of referral to arbitration) in accordance with article [64] of the Order]

(6) No dispute between the undertaker and the local highway authority can be referred to arbitration in accordance with article [ ] of this Order unless the process in sub paragraphs (1) to (3) has first been utilised and exhausted.

OR

**Expert Determination**

[ ].—(1) Article [ ] (*arbitration*) does not apply to this Part of this Schedule except in respect of sub-paragraph (5) below.

(2) Any difference under this Schedule must 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) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the

difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

- (4) 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 21 days of the expert's appointment;
  - (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
  - (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and (d) give reasons for the decision.
- (5) 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 [ ].
- (6) 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.

DRAFT