

Norfolk County Council
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At Deadline 8, Norfolk County Council indicated that it was minded to submit draft protective provisions in order to ensure that its position is protected above and beyond the high level consents and 'satisfaction' that it is required to give under articles 14 and 17 of the draft DCO, through ensuring that there are proper processes and demarcation of responsibilities between the parties.

The county council has continued in discussions with the Applicant in relation to reach an Agreement on the management of the handover process of roads that are to be de-trunked under the DCO and new local roads that are to be created under the DCO; as well as the management of the construction and handover of the 'stub' for the Norwich Western Link. This Agreement has been sought to be agreed in relation to processes and principles which would cover all three of the A47 DCOs being brought forward by the Applicant. It is therefore the case that these discussions have been going on for some time, without final resolution.

As such, whilst Norfolk County Council hopes that the parties can agree a legal agreement as to the management of these processes, we have been unable to do so to date and some key outstanding issues remain in relation to this project and the other A47 DCOs. The County Council therefore wishes to ensure its position is adequately protected across these important interventions for Norfolk.

Therefore we confirm that we are submitting Protective Provisions to protect our position as indicated in the previous submission at Deadline 8. Enclosed with this Deadline 9 submission are draft Protective Provisions for its benefit which Norfolk County Council requests are included in any DCO that is made for the Scheme. The county council intends also to submit these Protective Provisions for the other two A47 projects – Blofield to North Burlingham and A47 A11 Thickthorn Junction – that the Applicant is currently bringing forward in Norfolk.

Norfolk County Council will continue to discuss its concerns with National Highways, including in relation to the drafting of its Protective Provisions, with the hope of agreeing all issues between us across all three A47 schemes. However, failing agreement, the council must ensure its interests as local highways authority are adequately protected, which it believes is achieved through the draft Protective Provisions we are now bringing forward.

NORFOLK COUNTY COUNCIL

PROTECTIVE PROVISIONS

A47 NORTH TUDDENHAM TO EASTON

1. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the local highway authority.

2. In this Part of this Schedule—

“Commuted Sum” means the sum to be paid by the undertaker to the local highway authority for the future maintenance of the Non-standard Highway Assets not previously forming part of the local highway which will be transferred to the local highway authority, as calculated in accordance with paragraph 22 of this Part of this Schedule;

“Design Detailing” in relation to any Works, means any detailed design or amended detailed design relating to those Works which is approved by the Secretary of State pursuant to requirement 3;

“Detailed Information” means the following drawings, specifications and other information relating to the local highway and the NWL Stub, which must be in accordance with the Design Detailing—

(a) boundary, environmental and mitigation fencing;

(b) road restraint systems (vehicle and pedestrian);

(c) drainage and ducting;

(d) earthworks;

(e) road pavements;

(f) kerbs, footways and paved areas;

(g) traffic signs and road markings;

(h) road lighting (including columns and brackets);

(i) electrical work for road lighting and traffic signs;

(j) highway structures;

(k) landscaping, planting and any boundary features which will form part of the local highway;

(l) utility diversions;

(m) a schedule of timings for the Works, including dates and durations for any closures of any part of the local highway;

(n) traffic management proposals including any diversionary routes;

(o) a schedule of condition of all local highway within the order limits; and

(p) where a local highway is occupied under this Order in connection with any Works but is not itself subject to Works, specification of the condition in which the local highway will be returned post occupation;

“Detailed Local Operating Agreement” means an agreement made pursuant to paragraph 4 of

this Part of this Schedule;

“Works Local Highways” means the local highways that are subject to Works;

“final certificate” means the certificate issued by the local highway authority to the undertaker for each phase to certify that the Works have been completed to the satisfaction of the local highway authority;

“local highway” means any public, vehicular highway which vests or is intended at the completion of works to vest in or be otherwise maintainable by the local highway authority as well as the highway to be constructed under Work No 98;

“local highway authority” means Norfolk County Council;

“Non-standard Highway Assets” means highway assets associated with the local highway which the local highway authority will become responsible for maintaining and which incur maintenance costs beyond the normal costs of maintaining the public highway having regard to the lists of standard and nonstandard assets set out in paragraph 22(2)(b) of this Part of this Schedule;

“Non-Works Local Highways” means the local highways that are not subject to Works;

“NWL Stub” means the carriageway to be constructed under Work No. 98;

“NWL Stub Works” means the carrying out of Work No. 98;

“Other Detailed Information” relating to any Works, means—

(a) a schedule of timings for the Works, including dates and durations of any closures of any part of a local highway;

(b) traffic management proposals, including any diversionary routes and any Detailed Local Operating Agreement;

(c) a schedule of condition of the affected local highway within the Order limits; and

(d) where the local highway is occupied under this Order in connection with the Works but Works are not undertaken on, to or under the local highway, a specification of the condition in which the local highway will be returned after the occupation has finished;

“Provisional Certificate” means a certificate issued by the local highway authority to certify that the Works to which the certificate relates have been completed in accordance with this Part of this Schedule and are ready for use for public traffic; and

“Works” means any part of the authorised development which involves the construction of a local highway or interference with a local highway (including interference with the use by the public of a local highway and temporary or permanent stopping up of any part of a local highway).

3. (1) The undertaker shall only be required to carry out the NWL Stub Works if:

(a) the local highways authority has indicated that it wishes the undertaker to undertake the NWL Stub Works; and

(b) the local highways authority has given a commitment to the undertaker that it will provide the monies required for the carrying out of the NWL Stub Works,

before the date six months from the date that this Order comes into force.

(2) If the conditions in sub-paragraph (1) are met, the undertaker must carry out the NWL Stub Works and the NWL Stub Works shall be considered to form part of the Works.

4. – (1) Before commencing any part of the Works, the undertaker must provide to the local highway authority and the local highway authority must approve the Detailed Information relating to that part of the Works, and that part of the Works must not be carried out except in accordance with the Detailed Information submitted to the local highway authority or as otherwise agreed between the undertaker and the local highway authority.

(2) Any agreement completed under sub-paragraph (1) must continue in force until the completion of the Works or the removal of the undertaker from all local highways, whichever is the earlier.

(3) Any approval of the local highway authority required under sub-paragraph (1) must not be unreasonably withheld or delayed.

5. —(1) Before commencing any part of the Works, the undertaker must submit to the local highway authority, and the local highway authority must approve, a Detailed Local Operating Agreement for that part of the Works which must deal with the following—

(a) communications and customer care: communication with stakeholders and identification of which party is responsible for each activity;

(b) operational areas – scheme operational areas: definitions and scheme extents for the works areas, zone of influence and the establishment and extent of free recovery area;

(c) asset handover: describing the existing assets and new assets and activities to be undertaken to enable commencement and completion of Works, and the party responsible for each;

(d) asset inspection;

(e) routine maintenance and repair;

(f) winter maintenance and severe weather;

(g) continuity of technology;

(h) occupancy management;

(i) incidents;

(j) traffic management: providing the key activities to be undertaken with regard to the design, installation, maintenance and removal of traffic management; and

(k) the sharing of information relating to claims made by and against the undertaker and confirmation that the undertaker will be responsible for such claims.

(2) Any agreement completed under sub-paragraph (1) must continue in force until the completion of that part of the Works the Works or the removal of the undertaker from all local highways, whichever is the earlier.

(3) Any approval of the local highway authority required under sub-paragraph (1) must not be unreasonably withheld or delayed.

(4) Where agreement cannot be reached under sub-paragraph (1), the terms of the Detailed Local Operating Agreement will be resolved by arbitration under article 53 (arbitration).

6.—(1) Before commencing any part of the Works the undertaker must provide to the local highway authority the Design Detailing and the Other Detailed Information relating to that part of the Works.

(2) The undertaker must not commence that part of the Works in question until approval has been given by the local highway authority to the Other Detailed Information or the Other Detailed Information has otherwise been agreed in writing between the undertaker and the local highway authority.

(3) The Works must not be constructed except in accordance with the Other Detailed Information as may be approved or agreed in accordance with sub-paragraph (2).

(4) When signifying approval of the Other Detailed Information, the local highway authority may specify any protective works (whether temporary or permanent) which in its opinion must be carried out before the commencement of construction of any Works to ensure the safety or stability of the highway and such protective works must be carried out at the expense of the undertaker.

(5) If within 28 days after the Other Detailed Information has been submitted the local highway authority has not approved or disapproved it or it has not been otherwise agreed, the local highway authority is deemed to have approved it as submitted.

7.—(1) The undertaker will allow and facilitate an appropriately qualified officer of the local highway authority to participate in the design process for the detailed design of the Works, and will have reasonable regard to any views of that officer in finalising the detailed design prior to any element reaching design fix or freeze; provided always that it will be the decision of the undertaker whether it implements such views and for the avoidance of doubt any such view shared by the officer will not be an instruction, requirement or authorisation under this Order.

(2) Participation under sub-paragraph (1) will be in the form of invitations to attend design meetings not less than once per calendar month and the provision to the local highway authority of such drawings, cross sections and design proposals as are required to allow the local highway authority to provide views on detailed design proposals to the undertaker.

(3) Any participation by the local highway authority (or its appropriately qualified officer) in accordance with this paragraph will be at the cost of the undertaker.

8.—(1) Any officer of the local highway authority duly appointed for the purpose may at all reasonable times, subject to any necessary and reasonable health and safety restrictions imposed by the undertaker, enter upon and inspect any part of the authorised development which—

(a) is in, over, under or adjacent to any local highway or the NWL Stub, or

(b) may affect any local highway or any property of the local highway authority, during the carrying out of the Works, and the undertaker must give to such officer all reasonable facilities for such inspection.

(2) The testing of materials used in any Works affecting local highways must be carried out at the expense of the undertaker in accordance with the Manual of Contract Documents for Highway Works Appendix 1/5 (Specification for Highway Works). The local highway authority must receive copies of all test certificates and results which have been requested by it in writing as soon as reasonably practicable following a request being made. Notwithstanding the foregoing, the local highway authority has full power to test all or any materials used or proposed to be used in any work to the local highway at its own expense and the undertaker must provide such information and materials as is reasonably necessary to facilitate such testing.

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

9—(1) The undertaker must procure that an appropriately qualified safety auditor undertakes road safety audit stages 3 and 4 on the Works in accordance with the Design Manual for Roads and Bridges (“DMRB”) Volume 5 Section 2 Part 2 (GG 119) or any replacement or modification of that standard and must provide copies of the reports of such audits to the local highway authority.

(2) The local highway authority must be invited to participate in the stage 2, 3 and 4 road safety audits conducted under sub-paragraph (1).

(3) Where the report of the stage 3 road safety audit identifies any recommended works to the local highway or to the NWL Stub, the undertaker must agree with the local highway authority which works or alternative proposals require to be implemented, provided that no works may be implemented which would give rise to any new or materially different environmental effects in comparison with those identified in the Environmental Statement.

(4) Where the report of the stage 4 road safety audit identifies any recommended works to the local highway or the NWL Stub, the undertaker must agree with the local highway authority which works or alternative proposals require to be implemented.

(5) Any works which the undertaker considers are required to be carried out to the local highway or the NWL Stub in accordance with the report of the stage 3 or stage 4 road safety audit, which works may not give rise to any new or materially different environmental effects in comparison with those identified in the Environmental Statement, must be undertaken by and at the expense of the undertaker to the reasonable satisfaction of the local highway authority.

(6) The undertaker must agree with the local highway authority a programme for any works to be carried out under sub-paragraph (5), which programme must include timing of any closures of any part of the highway, traffic management arrangements, signage and diversion routes where required.

(7) Where agreement cannot be reached under this paragraph, the terms of the Detailed Local Operating Agreement will be resolved by arbitration under article 53 (arbitration).

10. Provision must be made in accordance with the local highway authority’s reasonable requirements at the site of the Works to prevent mud and other materials from being carried on to the adjacent highway by vehicles and plant. The operational highway in the vicinity of the site of the Works is to be swept as required to ensure its safe use as a public highway.

11. The undertaker must not, except with the consent of the local highway authority, deposit any soil, subsoil or materials or stand any vehicle, scaffolding or plant on any highway, or the NWL Stub once it is complete, (except on so much of it as is for the time being temporarily stopped up or occupied under the powers conferred by this Order) so as to obstruct the use of the highway by any person or, except with the same consent, deposit any soil, subsoil or materials on any highway except within a hoarding.

12. At any time during the carrying out of the Works the undertaker’s representatives or contractors’ must act upon any reasonable request made by the local highway authority in relation to the carrying out of the Works as soon as practicable following such request being made to the undertakers’ representatives or contractors

save to the extent that the contents of such request are inconsistent with or fall outside the contractor's obligations under its contract with the undertaker or the undertaker's obligations in this Order.

13. In exercising the powers conferred by the Order in relation to any local highway or the NWL Stub the undertaker must have regard to the potential disruption of traffic which may be caused, seek to minimise such disruption and must at no time prevent or unreasonably impede access by emergency service vehicles to any property.

14. The undertaker must, if reasonably required by the local highway authority, provide and maintain during such time as the undertaker may occupy any part of a local highway or the NWL Stub for the purpose of the construction of any part of the authorised development, temporary ramps for vehicular or pedestrian traffic, or both, and any other traffic measures required to protect the safety of road traffic.

15.—(1) If requested by the local highway authority, the undertaker must execute and complete a transfer to the local highway authority of any land and rights within the local highway or the NWL Stub compulsorily acquired by the undertaker pursuant to articles 24 (compulsory acquisition of land) and 27 (compulsory acquisition of rights) for the construction, operation and maintenance of the local highway or the NWL Stub or to facilitate it, or as is incidental to it, at nil consideration provided that the undertaker has completed all necessary works within the local highway for which that land and those rights were compulsorily acquired.

(2) Sub-paragraph (1) above does not apply in relation to any land within the local highway compulsorily acquired by the undertaker that has been or is proposed to be permanently stopped up and rights extinguished pursuant to article 17 (permanent stopping up and restriction of use of highways, streets and private means of access).

16. The undertaker will hold the local highway authority harmless and indemnified from and against any liability, loss, cost or claim arising out of or incidental to the carrying out of the Works (other than those arising out of or in consequence of any negligent act, default or omission of the local highway authority).

17.—(1) Prior to completion of any part of the Works, the undertaker must notify the local highway authority that it considers that that part of the Works are complete and must allow the local highway authority the opportunity to inspect the Works to identify any defects or incomplete works.

(2) Any defects notified by the local highways authority to the undertaker must be rectified and any incomplete works carried out by the undertaker to the satisfaction of the local highways authority.

(3) Upon completion of remedial works under paragraph (2) the undertaker may issue a notice of completion of that part of the Works to the local highways authority.

(3) The undertaker may not notify the local highway authority under sub-paragraph (1) until either—

(a) a stage 3 safety audit has been carried out in respect of the Works in question in accordance with GG19 of DMRB and in the opinion of the undertaker any recommended works identified in the audit have been completed; or

(b) if the Works in question were not subject to a safety audit, the local highway authority has been provided an opportunity to inspect the works and the undertaker has in its opinion completed any further works required to address any safety deficiencies or defects identified as a result of the inspection.

18. Notwithstanding article 12, the undertaker must make good any defects in those Works notified to it by the local highway authority within the period of 52 weeks from the date of the service of the notice of completion under paragraph 17(3).

(2) The carrying out of any remedial works required under sub-paragraph (1) or paragraph 17(2) requires beforehand the submission of such items of Detailed Information to the local highway authority as the undertaker deems to be reasonable in the circumstances but always including a description of the 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, and approval of that Detailed Information by the local highways authority.

(3) If the undertaker fails to take steps to remedy the defects in the Works notified to it by the local highway authority under sub-paragraph (1) or paragraph 17(2) and has not subsequently made reasonably expeditious progress towards the implementation of those remedial works within 28 days beginning with the day after the date on which the notice served under sub-paragraph (1) or paragraph 17(2) is served, the local highway authority may undertake the remedial works required and any expenditure reasonably incurred by the local highway authority in doing so is to be recoverable from the undertaker.

19. The local highway authority must, if requested to do so by the undertaker, issue to the undertaker a Provisional Certificate in relation to any part of the Works, after a notice of completion has been served on the local highways authority under paragraph 16(3).

20. No earlier than 52 weeks from the date of issue of the Provisional Certificate, the local highway authority must issue a Final Certificate, certifying that all outstanding defects relating to the part of the Works in question and which required remediation have been so remedied, provided that—

(a) all identified defects requiring remediation have been so remedied such that the local highway authority consider the Final Certificate may be issued;

(b) a stage 4 safety audit has been carried out (if a stage 4 safety audit is required in accordance with GG19 of DMRB in connection with the Works), and following proper consideration of the representations of the local highway authority, any additional works, alterations or amendments to the Works as a result of the stage 4 safety audit have been completed to the reasonable satisfaction of the local highway authority;

(c) the undertaker has given the local highway authority an opportunity to inspect the Works and has given proper consideration to any representations made by the local highway authority;

(d) the undertaker has paid to the local highway authority any Commuted Sum due in relation to the part of the local highway to which the Provisional Certificate relates;

(e) the undertaker has provided the local highway authority with such detailed information as the local highway authority may reasonably require in relation to the Works as built; and

(f) all costs charges, expenses payable to the local highway authority pursuant to this Part have been paid.

21. The undertaker must pay to the local highway authority in respect of the Works a sum equal to the whole of any costs and expenses which the local highway authority reasonably incur—

(a) in the examination or approval of the Detailed Information and the Other Detailed Information under this Part;

(b) in inspecting the construction of the Works including any works required by the local highway authority under this Part;

(c) in carrying out any surveys which are reasonably required in connection with the construction of the Works; and

(d) in the transfer pursuant to paragraph 14 to the local highway authority of the land and rights acquired by the undertaker.

22.—(1) The undertaker must, within 3 months of the date of approval of the EMP (Third Iteration) under requirement 4(4), which must show the limits of responsibility for the operational maintenance of the Works, prepare a list of assets not previously forming part of the local highway for which the local highway authority will be responsible for maintenance following completion of the Works.

(2) The undertaker must agree a schedule of items on the list agreed under sub-paragraph (1) which are Non-standard Highway Assets and those which should be considered as standard highway assets, having regard to the following criteria—

(a) standard highway assets include—

(i) carriageways surfaced in concrete asphaltic materials (non-pigmented binder and non-coloured aggregates);

(ii) carriageways in shared surface roads, courtyards and housing squares surfaced in 200mm x 100mm x 80mm rectangular concrete block paving (optional);

(iii) footway surfaced in concrete asphaltic materials (non-pigmented binder or coloured aggregates);

(iv) footways adjacent to block paved carriageways also surfaced in 200mm x 100mm x 65mm thick concrete block paving (optional);

(v) cycleways surfaced in concrete asphaltic materials (red pigmented binders and/or aggregates);

(vi) pre-cast concrete kerbing;

(vii) gully drainage, connection pipes and gravity draining highway carrier drains;

(viii) galvanised pedestrian guard railing;

(ix) standard highway lighting layouts, columns and lanterns;

(x) standard illuminated and non-illuminated highway signs;

(xi) passively safe sign posts where required for road safety;

(xii) bollards and markers posts manufactured from plastic derivatives or recycled plastic/rubber;

(xiii) road markings;

(xiv) grass verges;

(b) Non-Standard Highway Assets include—

(i) any culvert, bridge, retaining wall or other structure

(ii) special features such as noise fencing, vehicle restraint barriers, pedestrian guard railing, knee rails and fences, gates

(iii) landscaping features such as planting, trees, hedging

(iv) sustainable drainage systems (“SuDS”) or non-standard highway drainage features such as—

(aa) flow control devices and attenuation storage;

(bb) SuDS including maintenance of any landscaping;

(cc) oil or petrol interceptors including the disposal of contaminated waste;

(dd) pumping stations and their energy charges; and

(ee) watercourses and swales.

(3) Where the schedule prepared under paragraph (2) cannot be agreed, the determination of the schedule will be referred to arbitration under article 53 (arbitration).

(4) Following agreement of the schedule under sub-paragraph (2) or determination under subparagraph (3), the local highway authority must prepare a calculation of the Commuted Sum based on the maintenance the local highway authority considers to be required for the schedule of Non-Standard Highway Assets agreed under sub-paragraph (2) or determined under sub-paragraph (3) and must use reasonable endeavours to agree it with the undertaker.

(5) The undertaker must be provided with a complete breakdown of the calculation of the Commuted Sum by the local highway authority under sub-paragraph (4) including any assumptions used.

(6) Where the calculation prepared under sub-paragraph (4) cannot be agreed, the determination of the Commuted Sum will be referred to arbitration under article 53 (arbitration)

(7) The undertaker must pay the Commuted Sum to the local highway authority in one instalment within 10 working days of the later of—

(a) the date of completion of the authorised development; or

(b) the date of agreement of the value of the Commuted Sum under sub-paragraph (4) or determination under sub-paragraph (6).

23. (1) The undertaker must not utilise the power granted by article 13(8) in respect of Works Local Highways until a Final Certificate has been issued in respect of the Works to those local highways and the schedule referred to by paragraph 22 is agreed between the undertaker and the local highways authority or pursuant to arbitration under article 53.

(2) The undertaker must notify the local highway authority within 5 days of utilising the power under article 13(8) in respect of Works Local Highways.

24. (1) The undertaker must not utilise the power granted by article 13(8) in respect of Non-Works Local Highways until:

(a) a joint inspection of the Non-Works Local Highways has been undertaken by the undertaker and the local highways authority; and

(b) the local highways authority notifies the undertaker either:

(i) that it considers that no defects are present within the Non-Works Local Highways; or

(ii) that it considers that defects are present within the Non-Works Local Highways which it requires to be remediated; and

(iii) those defects are remediated to the satisfaction of the local highways authority;

(2) The undertaker must notify the local highway authority within 5 days of utilising the power under article 13(8) in respect of Non-Works Local Highways.

(3) Within 28 days of the undertaker utilising its power under article 13(8) in respect of Non-Works Local Highways, the undertaker will deliver to the local highway authority all information relevant to the the safe use, maintenance, asset management, and operation of the local road including:

(a) handover notes;

(b) as constructed details;

(c) health and safety information;

(d) all certificates and warranties in respect of the works;

(e) copies of statutory approvals, waivers, consents and conditions; and

(f) equipment test certificates.

(4) Within 28 days of the undertaker utilising its power under article 13(8) in respect of Non-Works Local Highways. the process set out in paragraph 22 must be carried out in respect of the Non-Works Local Highways.

25. The undertaker in carrying out any Works must, at its own expense (save for the NWL Stub Works), divert or protect all utilities as may be necessary to enable the Works to be properly carried out and all agreed alterations to existing services must be carried out to the satisfaction of the local highway authority.

26. The undertaker must procure warranties from the contractor and designer of the Works to the effect that all reasonable skill, care and due diligence will be exercised in designing and constructing that phase including the selection of materials, goods, equipment and plant, such warranties to be provided to the local highway authority before that phase commences.

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

28. If any part of the Works comprising a structure in, over or under any existing or intended highway is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the local highway authority may by notice require the undertaker at its own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the local highway authority in writing consents, such consent not to be unreasonably withheld) at the undertaker's expense to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the local highway authority reasonably requires.

29. The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to have been approved by the local highway authority, or to its satisfaction, does not (in the absence of negligence on the part of the local highway authority, its officers, contractors or agents) relieve the undertaker from any liability under the provisions of this Part of this Schedule.

30. Any difference arising between the undertaker and the local highway authority under this Part of this Schedule (other than in difference as to the meaning or construction of this Part of this Schedule) will be resolved by arbitration under article 53 (arbitration).