

National Highways Limited Relevant Representation: TR010063

Relevant Representation submitted by National Highways Limited

**Application by Gloucestershire County Council for an Order granting Development
Consent for the M5 Junction 10 Improvement Scheme**

Planning Inspectorate Reference Number: TR010063

1 Introduction

- 1.1 This is the relevant representation of National Highways; its formal written response to the application by Gloucestershire County Council (“**Applicant**”) for the Development Consent Order (“**DCO**”) granting development consent for the M5 Junction 10 Improvement Scheme Project. The Applicant seeks development consent for proposed authorised development described in Schedule 1 of the draft DCO (“**Authorised Development**”).
- 1.2 National Highways supports the principle of a scheme of improvement works at Junction 10 of the M5. However, the DCO application contains insufficient information for National Highways to support the current application and therefore National Highways objects to the DCO and the Authorised Development in its submitted form on a protective basis.
- 1.3 National Highways cannot assess the impact of the scheme on the safe and efficient operation of the Strategic Road Network (“**SRN**”) based on the information that has been provided to support the application. Traffic modelling information as referenced in the proposed application has not been received and therefore the design of the scheme and everything that follows from it cannot be supported until the modelling is supplied and fully reviewed by National Highways. National Highways requested the full modelling package in its targeted consultation response in June 2023 and again in response to Developer Contributions Engagement in December 2023, alongside direct requests to the Applicant, including in February 2024, January 2024, September 2023 and August 2023. The information was also referenced as being inadequate and out of date in the section 51 letter issued by the Planning Inspectorate (“**PINS**”) on 23 November 2023. To date, National Highways has only received the SATURN traffic model (on 13 March 2024) and therefore still requires the other modelling packages to complete a full review of the proposal. Upon receipt of the full and updated traffic modelling information, alongside the updated Transport Assessment, National Highways will require sufficient time (estimate 6 - 8 weeks, should everything be received to the required standard), to review and comment to ensure that the impact of the scheme on the SRN is adequately understood and to inform the approach to Examination.
- 1.4 Other principal areas of concern in the application, as submitted, are:
 - (a) The Transport Assessment is lacking critical information in relation to M5 slip road design and modelling:
 - (i) National Highways requests that the Applicant provides further details regarding the construction phasing of the scheme to ensure that any potential impacts to the SRN are communicated and agreed with National Highways in advance of Notice to Proceed, to guarantee that works will not impact the safe operation and capacity of the SRN.
 - (ii) National Highways requests further information or confirmation from the Applicant in relation to a range of topics arising from the application documents, which are summarised in Appendix B.

- (b) National Highways has concerns regarding the funding of the scheme. The Applicant has placed significant reliance on unsecured developer planning contributions. National Highways has concerns that there is no guarantee that any of the identified residential developments that necessitate the need for the scheme will come forward within the construction period, and with the necessary level of financial contributions secured and due. There is also concern regarding the adequacy of the estimate produced for the scheme. It is not clear that the Applicant's cost estimate is reflective of the current construction trading market and that it sufficiently accounts for any delays of unforeseen risks which may occur throughout detailed design, construction and handover periods. National Highways requires funding security in advance of Notice to Proceed before the start of construction, due to the risk of construction beginning without the full funding package in place and should the Applicant experience issues with finances. There must not be interference with the SRN without confidence that the works will be completed to a sufficient standard and in an appropriate timeframe to allow for National Highways adoption of the SRN elements for operation and maintenance.
- (c) The Land Plans, Book of Reference, Statement of Reasons, Works Plans, General Arrangement Plans and descriptions of works in Schedule 1 of the DCO are inconsistent or simply incorrect in multiple places. As such, the documentation as referenced in the application is illegible for the purposes of National Highways carrying out a meaningful review of the Authorised Development and compulsory acquisition proposals to determine their effects on the SRN. Examples of inaccuracies and discrepancies are given below in section 4. The section 51 letter issued by PINS in November 2023 asked for the plans to be reviewed and revised for consistency and accuracy and National Highways question whether this has been carried out.
- (d) To the extent that National Highways has been able to review the Land Plans and the Book of Reference as submitted by the Applicant, it has identified a significant number of plots of land owned or occupied by National Highways for the purposes of its undertaking ("**Plots**") in respect of which compulsory acquisition powers are sought. The compulsory acquisition powers sought are described in the DCO and the Book of Reference as permanent acquisition of land, temporary possession of land, extinguishment of rights, and creation of new rights ("**Compulsory Powers**"). To safeguard National Highways' interests and the safety and integrity of the SRN, National Highways objects to the Plots in the DCO. The Plots constitute land acquired or held by National Highways for the purpose of its statutory undertaking and, accordingly, this representation is made under section 56 and sections 127 and 138 of the Planning Act 2008. National Highways considers that there is no compelling case in the public interest for the Compulsory Powers over the Plots without the inclusion of National Highways' protective provisions and additional safeguarding, either in the DCO or in ancillary agreements. This is necessary in the public interest to ensure any existing National Highways rights extinguished as a result of temporary land acquisition are reinstated upon completion of the scheme, and that land and/or rights over land are transferred back (or to) National Highways to ensure the safe

operation and maintenance of the SRN is maintained post completion. All SRN assets transferred to National Highways must be confirmed as having appropriate access rights where access is gained over third party land. The grant of the DCO without such provisions would result in serious detriment to the SRN.

- (e) The DCO includes a number of provisions that authorise the interference with statutory powers belonging to National Highways and/or grant the Applicant powers over the SRN which would have significant safety implications if not properly and proportionately controlled through National Highways' protective provisions. The protective provisions for the benefit of National Highways included in the DCO as currently drafted are insufficient to protect the SRN and National Highways assets and to enable it to perform its statutory duties. Discussions with the Applicant are ongoing to agree a form of protective provisions acceptable to both parties but in any event, the provisions included at Appendix A are National Highways standard corporate provisions and should be substituted in the DCO for the current provisions.
- (f) The DCO includes requirements to be discharged to, inter alia, determine detailed landscaping design, fencing details, flood storage, drainage, lighting and detailed technical design. It is proposed that the Applicant is both the applicant for the discharge and the determining body. The requirement to consult National Highways on discharge of relevant requirements is not sufficient to ensure that any approval is made in accordance with National Highways comments, by virtue of paragraph 4(3) of Part 1 of Schedule 2 of the DCO, to safeguard the SRN. National Highways believes that the Secretary of State for Transport ("**SoS**") ought to be the decision maker for discharge of requirements that impact the SRN; this provision would be consistent with the regime applying to National Highways' own schemes.
- (g) National Highways considers that if the DCO is granted it must be secured in the consent and approved documentation that the ownership and maintenance of the Flood Storage Area (Work 7) and the M5 southbound on-slip embankment lies with the Applicant. National Highways' preference would be that the M5 southbound on-slip embankment does not form part of the Flood Storage Area, i.e. a separate bund/boundary should be provided for this purpose. If this is not possible, as the M5 southbound on-slip embankment would form part of the Flood Storage Area, the responsibility for both the construction and the maintenance of the M5 southbound on-slip embankment, up to the formation level, will remain with the Applicant in accordance with the requirements of The Reservoirs Act 1975 for above ground reservoirs. National Highways does not have the operational capacity to maintain any aspect of the Flood Storage Area. National Highways requires that ownership and maintenance of the M5 southbound on-slip drainage become the responsibility of National Highways post-construction and National Highways require provision for the drainage asset to be included in the commuted sum, required under the protective provisions.
- (h) National Highways has a Biodiversity Net Gain ("**BNG**") Key Performance Indicator to achieve no net loss to the SRN by 2025 and to have a net positive impact on nature in Roads Period 3 (2025-2030) and beyond. National Highways considers that land forming part of the SRN can be used and could deliver a

route for providing enhancement, which National Highways understand the Applicant has sought to do. The BNG assessment should be updated throughout detailed design to ensure the scheme remains in a gain position which should then be secured. National Highways further requests that the Applicant promotes lower whole life carbon choices throughout the detailed design and construction of the scheme and is willing to support the Applicant throughout the project design and construction phases to ensure this outcome is delivered.

- (i) National Highways requests the establishment of a Traffic Management Forum, with the inclusion of all the relevant Local Authorities and other appropriate stakeholders, to provide an integrated transport plan during the construction phase of the project to ensure that the SRN or local road network (“**LRN**”) is not adversely impacted, to co-ordinate other planned works in the area, and to ensure that traffic management embargos requirements are considered.
- (j) National Highways requires provision to be made for its oversight of the landscaping contract to be entered into between the principal contractor and the Applicant to ensure that landscaping on the SRN accords with National Highways operational requirements.
- (k) National Highways requires provision to be made on the face of the DCO to make it expressly clear that the undertaker is the appropriate highway authority for the purposes of Part 1 of the Land Compensation Act 1973, and that claims for compensation pursuant to that legislation (and any other claims arising from the works, whether under compulsory acquisition powers or otherwise) are not payable by National Highways.

1.5 National Highways is prepared to withdraw this objection, either in full or in part, subject to the Applicant supplying full and updated traffic modelling data which demonstrates safe and efficient operation of the SRN and satisfactorily addressing the points raised throughout this representation.

1.6 National Highways reserves the right to expand, amend or clarify any of the issues in this relevant representation, and to produce additional grounds of objection to the Examining Authority as the examination progresses. This is particularly pertinent given the Examining Authority’s letter of 9 February 2024 to the Applicant and the additional information expected from the Applicant before the examination begins.

2. National Highways

2.1 National Highways (formerly Highways England and being the statutory successor to the Highways Agency) is an arms-length government owned company responsible for the ownership, management and improvement of England’s motorways and major A-roads referred to as the SRN. The SRN comprises over 4,500 miles of road sitting at the core of the national transport system, connecting all major economic and resource centres with key markets and conurbations. The SRN is the most heavily used part of the national road network, carrying a third of all traffic and two-thirds of all freight totalling approximately 4 million journeys a day. It provides businesses with the means to get products and services to their customers, gives access to labour markets and suppliers, and encourages trade and new investment. It is also a complex network of highway structures, drainage and attenuation apparatus and telemetry and electronic

communication assets. In short, the SRN is a critical piece of economic infrastructure, vital to the nation's connectivity and the means for generating economic growth.

- 2.2 National Highways is appointed pursuant to section 1 of the Infrastructure Act 2015 to act as the highway authority, traffic authority and street authority for the SRN. The effect of this appointment is to make National Highways the statutory custodian (and a statutory undertaker) of this national asset, conferring on it the status and legislative functions of a strategic highways company.
- 2.3 As a strategic highways company, National Highways must comply with a number of general and specific statutory duties¹, including to:
- (a) *co-operate in so far as reasonably practicable with other persons exercising functions which relate to highways or planning;*
 - (b) *have regard to the effect of the exercise of its functions on the environment;*
 - (c) *have regard to the effect of the exercise of its functions on the safety of users of highways.*
- 2.4 The SoS may from time to time give a strategic highways company directions or guidance as to the manner in which it is to exercise its statutory duties and functions. For the purposes of directing the functions as regards the SRN, these directions are contained within the 2015 Licence.² The directions contained in the 2015 Licence are mandatory³ and are regulated by the Office of Rail and Road. They include:
- (a) *Paragraph 4.1 - The network for which the Licence holder is responsible is a critical national asset, which the Licence holder must operate and manage in the public interest, in respect of both current activities and needs and in providing effective stewardship of its long-term operation and integrity;*
 - (b) *Paragraph 4.2 – Without prejudice to the general duties on the Licence holder under section 5 of the Infrastructure Act 2015, the Licence holder must, in exercising its functions and complying with its legal duties and other obligations, act in a manner which it considers best calculated to:*
 - (i) *ensure the effective operation of the network;*
 - (ii) *ensure the maintenance, resilience, renewal and replacement of the network;*
 - (iii) *ensure the improvement, enhancement and long-term development of the network;*
 - (iv) *ensure efficiency and value for money;*
 - (v) *protect and improve the safety of the network;*
 - (vi) *co-operate with other persons or organisations for the purposes of co-ordinating day-to-day operations and long-term planning;*

¹ Infrastructure Act 2015, s.5

² [Highways England: licence \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/428422/highways-england-licence-2015.pdf)

³ Infrastructure Act 2015, s.6(3)

- (vii) minimise the environmental impacts of operating, maintaining and improving its network and seek to protect and enhance the quality of the surrounding environment;*
- (viii) conform to the principles of sustainable development.*

(c) Paragraph 5.37 – The Licence holder must hold and manage land and property in line with, and as a function of, the Licence holder's legal duties as a highway authority, and solely for the purposes of operating, managing and improving the highway, unless otherwise approved by the Secretary of State for Transport.

- 2.5 Additionally, sections 41 and 130 of the Highways Act 1980 contain respectively a statutory duty for National Highways to ensure it maintains the SRN to the appropriate/sufficient standard, free from any hazards so it is safe to use, and a statutory duty to assert and protect the rights of the public in use and enjoyment of the SRN.
- 2.6 Section 16 of the Traffic Management Act 2004 contains a statutory Network Management Duty for National Highways to manage the SRN with a view to achieving, so far as may be reasonably practicable having regard to National Highways' other obligations, policies and objectives, securing the expeditious movement of traffic on the SRN and facilitating the same on roads where another authority is the traffic authority.
- 2.7 In order to achieve this, the action National Highways may take in performing that duty includes that which National Highways considers will contribute to securing the more efficient use of the SRN or avoidance, elimination or reduction of disruption to the above relevant roads and may involve the exercise of any power to regulate or co-ordinate the uses made of any road (or part of a road) in the road network (whether or not the power was conferred on them in their capacity as a traffic authority). Section 17 of the Traffic Management Act 2004 requires that National Highways shall make such arrangements as they consider appropriate for planning and carrying out the action to be taken in performing its Network Management Duty and has to establish processes to, as far as reasonably practicable, identify things (including future occurrences) which are causing, or have potential to cause SRN congestion or other disruption to the movement of traffic on it and consider any possible action that could be taken in response to (or anticipation of) anything so identified, e.g. in the event National Highways considers this particular statutory duty may not be met.
- 2.8 Supplementary to this, paragraph 4.2 of National Highways' statutory licence requires National Highways to act in a manner which it considers best calculated to ensure the effective operation of the SRN. To comply with this, paragraph 5.1 states that National Highways should seek to minimise disruption to road users that might reasonably be expected to occur as a result of planned or unplanned disruption to the network, as well as proactively and reactively provide relevant, accurate and timely information about traffic and conditions on the SRN to road users, including when there is disruption.
- 2.9 This range of duties demonstrates that National Highways must always protect road users/the SRN and ensure the SRN retains its integrity, is free from hazard/safe to use

and is available for continual uncongested use all year round subject to precise terms of its Network Management Duty which means National Highways is duty bound to consider carefully any activity that has the potential to impact on any of National Highways' statutory duties.

3. Protecting the SRN

- 3.1 Unlike other statutory consultees involved in the consenting of nationally significant infrastructure projects, National Highways is an active promoter of development consent orders and keenly understands the pressures and requirements placed on applicants to balance the delivery of the scheme with the protections afforded to statutory consultees. National Highways has been at the forefront of DCO-consented development since the Planning Act 2008 was introduced and has offered many commitments for the protection of electricity and gas apparatus, water and drainage infrastructure, railway undertakings and other infrastructure owned by statutory consultees as a consequence of its own development consent orders. The SRN deserves the same measure of protection, proportionate to the extent of interference caused by the Authorised Development.
- 3.2 National Highways understands the need for proportionality in the context of such protections and considers that a proportionate level of protection in all cases and as a minimum standard where there is the potential for impact to the SRN should be the following:
- (a) that National Highways be held harmless from the impact of third party development;
 - (b) that National Highways procedures put in place for the protection of property and persons are adhered to in accordance with National Highways' strict requirements on network occupancy;
 - (c) that any works carried out to the highway, on National Highways land, underneath the highway, above the highway and to apparatus forming part of the highway estate should be certified by National Highways and approved by National Highways on completion of the works;
 - (d) that financial provision should be put in place to ensure that in the event of the Applicant commencing works which may impact the SRN (including for example, underground works beneath the SRN or oversailing above it) 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 works;
 - (e) that National Highways be indemnified for any loss or damage to the SRN or the highway estate as a result of the works;
 - (f) that the Applicant requests approval from National Highways before exercising any powers under the DCO in relation to the SRN or the highway estate (such approval not to be unreasonably withheld) to enable proportionate rights and reservations to be secured for the protection of the SRN through private treaty;

- (g) that any consent required by National Highways is deemed refused if not approved within a reasonable period of time to prevent the potential for catastrophic damage or injury through non-compliance with safety critical procedures;
 - (h) that emergency procedures be agreed for National Highways to access the SRN to carry out works or remove dangerous obstacles resulting from the Authorised Development which pose a risk to life.
- 3.3 These provisions are included in the National Highways protective provisions at Appendix A.
- 3.4 National Highways considers that without the National Highways protective provisions, there is a considerable risk of serious detriment to the SRN, as any damage or injury to the SRN or wider highway estate would require funding to rectify that is not within National Highways' budget. There is no recourse to public funding for emergency works of this nature and a reserve of funding is not available. Without prejudice to whether the Authorised Development would cause a serious detriment to the SRN, it remains the case that the public purse should not be left to meet or subsidise costs of impacts caused by third party development to the SRN.
- 3.5 Further, National Highways' estate comprises more than just the corpus of the highway (the "zone of ordinary use"). Unlike local roads, where the local highway authority typically controls only the highway strata and sufficient vertical limits above and beneath the highway to maintain necessary apparatus and street furniture, in most cases National Highways controls the freehold of the land beneath the highway to the centre of the earth and to the heavens above. This estate is held inalienably for the benefit of the statutory undertaking, to ensure that the SRN is not compromised and that maintenance work at any required depth can take place free from risk of trespass or ransom. Where apparatus is co-located in the highway (which is commonplace), that apparatus has been authorised by National Highways or has been installed through industry standard processes (such as under the New Roads and Street Works Act 1991), where statutory protection is afforded to National Highways as the highway or street authority. Whilst National Highways is prepared to approve the acquisition of sub surface interest and grant rights to co-locate apparatus in the highway, where it is geotechnically possible and respecting other apparatus that is in, on, under or over the highway – the land take must be proportionate and necessary and cannot be to the detriment of National Highways, the SRN or other undertakers. It cannot be acceptable that apparatus is placed in, on, under or over the SRN through a DCO by disapplying statutory protections that National Highways has and not accepting to acquiesce to the terms which are required by National Highways to manage its network in accordance with regulatory requirements.
- 3.6 For the sake of clarity and transparency, National Highways does not support imposing requirements on the Applicant which are disproportionate to the potential harm that could be caused to the SRN. National Highways is legally obliged to co-operate with third parties exercising planning or highway functions, which includes the Applicant in this statutory process. National Highways is prepared to engage fully and assist in

whatever way is reasonable to ensure that the Authorised Development proceeds as quickly and efficiently as possible.

4. The Proposed Works

4.1 The Authorised Development includes the following works in Schedule 1 of the DCO which will interface with the SRN:

- Work No. 1 – the construction of a new Junction 10 on the M5 Motorway made up of four new slip roads, at the location shown on sheets 1 to 10, 12 and 15 of the works plans, to include:
 - (a) the construction of motorway signage and associated cabling and ducting works;
 - (b) the construction of a new northbound exit slip from the M5 to the A4019;
 - (c) the construction of a new southbound exit slip from the M5 to the A4019;
 - (d) the construction of a new southbound entry slip from the A4019 to the M5;
 - (e) the construction of a new northbound entry slip from the A4019 to the M5;
 - (f) the demolition of the existing M5 northbound entry slip;
 - (g) the demolition of the existing M5 southbound exit slip;
 - (h) the construction of drainage attenuation basin (3) with associated drainage facilities, access and landscaping southwest of Junction 10 at the location shown on sheet 6 of the works plans;
 - (i) construction compound no. 1 of approximately 37,300 square metres southwest of Junction 10 at the location shown on sheets 5 and 6 of the works plans;
 - (j) construction compound no. 2 of approximately 47,500 square metres northwest of Junction 10 at the location shown on sheets 4 and 5 of the works plans;
 - (k) construction compound no. 3 of approximately 53,800 square metres northeast of Junction 10 at the location shown on sheets 5 and 12 of the works plans;
 - (l) the construction of drainage attenuation basin (2) with associated drainage facilities, access and landscaping northwest of Junction 10 at the location shown on sheets 4 and 5 of the works plans;
 - (m) the extension of the Leigh Brook culvert (also known as the Barn Farm culvert);
 - (n) the construction of an environmental barrier adjacent to Barn Farm north of Junction 10 and west of the M5 at the location shown on sheet 4 of the works plans;
 - (o) the construction of an environmental barrier adjacent to land housing a traveller site north of Junction 10 and east of the M5 at the location shown on sheets 4 and 5 of the works plans;
 - (p) The construction compound no. 9 of approximately 48,300 square metres south of Junction 10 at the location shown on sheets 6 and 15 of the works plans.

- Work No. 2 – the construction of a new grade separated roundabout junction and maintenance bays at the location shown on sheets 4 and 5 of the works plans, to include:
 - (a) the construction of a new roundabout over the M5 comprising a circulatory carriageway and the Piffs Elm interchange bridges (north and south);
 - (b) landscaping northwest of Junction 10;
 - (c) the extension of the Piffs Elm culvert;
 - (d) the demolition of the existing A4019 bridge over the M5;
 - (e) the demolition of 14 properties at Withybridge Gardens southeast of Junction 10;
 - (f) the demolition of Sheldon Nurseries northwest of Junction 10;

- (g) the demolition of Barn Farm Cottage north of Junction 10;
 - (h) the demolition of Wayside northwest of Junction 10;
 - (i) the demolition of Bridge House northwest of Junction 10.
- Work No. 3 – the realignment and widening of the A4019 (Tewkesbury Road) northwest of Junction 10 for approximately 550 metres with associated footway; cycle track; shared use path; private access points; and signage and ducting at the location shown on sheets 5, 6 and 11 of the works plans, to include:
 - (a) the realignment of the unclassified road known as Stanboro Lane / Piffs Elm Lane;
 - (b) the construction of drainage attenuation basin (1) with associated drainage facilities, access and landscaping north of the A4019 (Tewkesbury Road);
 - (c) the diversion of a public right of way (FP ABO14) to the south side of the A4019 (Tewkesbury Road);
 - (d) the construction of new or altered private means of access;
 - (e) the provision of a flood compensation area at the location shown on sheets 5 and 11 of the works plans.
 - Work No. 7 – the construction of a flood storage area of approximately 119,600 square metres and associated works to the east of the M5 and south of the A4019 at the location shown on sheets 5, 6 and 12 of the works plans.
 - Work No. 10 - the diversion of 1585 metres of telecommunication cable and associated apparatus and equipment at the location shown on sheets 5, 11 and 12 of the works plans.
 - Work No. 15 - the diversion of 7090 metres of water pipeline at the location shown on sheets 5, 12, 13 and 14 of the works plans.
 - Work No. 16 - diversion of 1622 metres of gas main at the location shown on sheets 5, 12 and 13 of the works plans.
 - Work No. 20 – the diversion of 444 metres of electric cable and associated apparatus and equipment at the location shown on sheets 4 and 5 of the works plans.
 - Work No. 27 – the diversion of 3815 metres of telecommunication cable and associated apparatus and equipment at the location shown on sheets 5, 12, 13 and 14 of the works plans.
- 4.2 There are works which National Highways considers are ambiguous and do not give National Highways the assurance and confidence that the Authorised Development will be completed to the satisfaction of National Highways as highway authority for the SRN. For example, the existing northbound entry slip road in the south western quadrant of Junction 10 of the M5 (Land Plans, sheet 5, plot 5/2n) will be stopped up and dismantled (Works Plans Part 1, sheet 5, Work No 1(f)) and replaced by a new slip road, in a new location, as part of the Authorised Development. However, the area of former carriageway is shown as white on sheet 5 of the General Arrangement Plans (as well as white in the Environmental Master Plan) and appears to show the redundant carriageway being left in situ. Even if the existing carriageway is removed, it is not clear what is intended for this piece of land. This is unacceptable to National Highways and removal of the former carriageway must be secured, along with appropriate landscaping to the area.

- 4.3 Furthermore, the proposed land take as per the Land Plans is more extensive than what is required for the Authorised Development and National Highways will be left with maintenance responsibility for land it does not require for the operation of the SRN. Using the same example referred to in paragraph 4.2 above, the new access track in this area is identified on the General Arrangement Plans as being to the west of the redundant slip road, rather than adjacent to the new carriageway, looping behind a large area of landscaping (which encloses the white area referred to above) and resulting in a need to take plots 5/10a and 5/10b. In addition, National Highways is unclear from the plans how the width of the newly created SRN is to be determined to understand what assets will be handed over to National Highways upon scheme completion for operation and maintenance. National Highways is also unclear on whether, for example, drainage assets will be within the SRN or the LRN where the two interface; and where environmental barriers are proposed at the edge of the carriageway of the M5, who will be expected to take future responsibility for them.
- 4.4 At this time National Highways has undertaken a review of the first four sheets of the Land Plans only, for reasons referred to in section 1.4 (c) and section 1.4 (d). From that limited review, the following issues relating to Plots included within Compulsory Powers were identified:

Plot	Owner	Acquisition Category	Works Proposed	Detriment to National Highways
1/1a 1/1a(i) 1/1a(ii) 1A/1a 1A/1a(i) 1A/1a(ii) 1A/1b 1/1b 2/1a 2/1a(i) 2/1b 2/1c 2/1d 3/1a 3/1b 3/1c 3/1d 3/1e	National Highways	Temporary Acquisition of land (surface/sub-soil)	Motorway signage and associated cabling and ducting works and associated works. DCO Work Number 1a	The temporary possession of the entire carriageway exceeds what is necessary for the works proposed. National Highways considers that the carriageway should be excluded from the plots.

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3/1f 4/1a 4/1b				
3/2c	National Highways	Temporary possession of land and permanent rights to be acquired	Motorway signage and associated cabling and ducting works and associated works. DCO Work Number 1a	It is unclear why this plot has been treated differently to those listed above and why rights over this plot are required permanently, based on the description of the rights in Schedule 5. Installation of motorway signage and ducting can be undertaken within the limits of the current SRN at this plot.
4/1c(i)	National Highways	Permanent acquisition of land	Motorway signage and associated cabling and ducting works and associated works. DCO Work Number 1a	There is no justification for permanent acquisition of this land to undertake the works proposed. Temporary possession for the works period is sufficient. There is no justification to take the entire carriageway, even on a temporary basis, for the works proposed.
4/1c	National Highways	Permanent acquisition of land	Motorway signage and associated cabling and ducting works and associated works. DCO Works Number 1a Construction of new southbound exit slip from M5 to A4019 DCO Work Number 1c Construction of new northbound entry slip from A4019 to M5 DCO Work Number 1e	There is no justification for permanent acquisition of this plot to undertake the works proposed. Temporary possession for the works period is sufficient.

			Construction of environmental barrier, north of J10 and west of M5 DCO Work Number 1n	
4/1d	National Highways	Temporary possession of land and permanent rights to be acquired.	DCO Work Numbers 1c, 1e, 1m, 1o, 1n and 20	Majority of rights listed in the schedule are for finite construction period and are not to be acquired permanently. The right to be granted for the benefit of National Grid Electricity Transmission should be created over a defined area, and not over an extended linear length of the motorway, forming the whole plot.

4.5 Arising from the review undertaken to inform the table above, the following table includes some examples of the additional issues identified. These issues are not necessarily relevant to the Compulsory Powers in respect of National Highways interests, but they are relevant to the ability of National Highways to comprehensively review the plans and comment on the impacts of the Compulsory Powers on the Plots and on the deliverability of the DCO and Authorised Development as it relates to the SRN.

Plot	Acquisition Category	Works Proposed	Comments
2/1a(i)	Temporary acquisition	Signage, ducting and cabling DCO Work No 1a	Requires an inset panel. Drawing is too small to understand the extent of the plot, even at large scale. There is a risk in relation to the works proposed, that the plot is not accurate and therefore works may not be authorised by the DCO.

3/2a and 3/1a	Temporary acquisition	DCO Work No 1a	Inset panel suggests 3/2a continues to the East at least to the end of the panel but the main sheet does not show this. Plot 3/2a stops before the edge of the inset square on the main sheet.
3/1c and 3/1d	Temporary acquisition	DCO Work No 1a	Access rights for individuals listed in Book of Reference in respect of plot 3/1d but not plot 3/1c. The corresponding land plan suggests that the access track (potentially an underbridge) starts in plot 3/1c.

4.6 The Applicant’s draft DCO includes the following provisions which are of specific concern to National Highways:

Article/Schedule	Summary of the Applicant’s drafting	Suggested amendments
Art 2	“Commence” includes “pre-construction ecological mitigation works”	National Highways requires more clarity as to what these works could involve as they are not defined but could impact on the SRN.
Art 8	Limits of deviation	At this stage, amendments are not suggested but National Highways has concerns that the implications of implementing, for example, a full 2 metre downward LoD in respect of National Highways assets and adjacent to them has not been assessed. Further clarity is also sought in relation to the assessment of horizontal LoD within the Order limits. It would be prudent to limit the powers of deviation insofar as

		they relate to works and activities in, on or adjacent to the SRN
[Art 10	The transfer of benefit of the Order may be made to specified bodies without SoS consent. The following works impact on the SRN: Works Nos 10, 15, 16, 20 and 27 and therefore SoS consent should be obtained before transfer of benefit of powers relating to these works.	The following sub paragraphs are amended to delete the Works Nos affecting the SRN. Article 10 (5) (b) in relation to Works No 10 Article 10 (5) (c) in relation to Works No 27 Article 10 (5) (d) in relation to Works No 14 Article 10 (5) (e) in relation to Works No 16 Article (5) (f) in relation to Works No 20
Art 11	Street works. The undertaker may enter into any street within the Order limits to carry out works.	Drafting to be amended to exclude any part of the SRN without the express consent of National Highways.
Art 13	The transfer on completion of construction of maintenance responsibility for SRN works and new assets, eg bridges, that span the SRN.	National Highways wishes further clarification from the Applicant in respect of assets to be handed over, so that an agreement can be reached as to which will form part of National Highways' ownership and future maintenance responsibility. Sub paragraph (7) should also apply to National Highways in respect of roads and assets that it takes responsibility for.
Art 14	The classification of roads from the date upon which the undertaker notifies the SoS that they are complete and open	No amendment required if National Highways protective provisions included in the DCO.
Art 17	The undertaker may lay or improve means of access for the carrying out of works within the Order limits.	"The undertaker may, for the purposes of the authorised development, form and lay out means of access, or improve existing means of access, at such locations within the Order limits with the exception of motorway slip roads and the carriageway of the M5 motorway as the undertaker reasonably requires for the purposes of the authorised development."

Art 30	Entry into subsoil or airspace of streets and appropriation	Sub paragraph (1) to be amended to exclude airspace and subsoil of the SRN.
Schedule 2	Requirements	The Applicant should not be the applicant for discharge of requirements and the determining body. The requirements should be amended to make the Secretary of State the arbiter.
Sch 2, Part 1 Requirement 3	Sub paragraph 2 (e) details working hours Sub paragraph 4 deals with the submission and approval of Environmental Management Plan ("EMP") 3 rd iteration.	The drafting is silent on the matter of Sunday working hours and should set out explicitly if Sunday working is not permitted. National Highways should be consulted on the 3 rd iteration EMP.
Sch 2, Part 1 Requirement 6	Maintenance of landscaping	Sub paragraph (3) to be amended to state that any replacement planting within 5 years of completion to be at the expense of the undertaker.
Various articles including 11, 15, 18 and 20	Deemed consent provisions	All articles containing a deemed consent provision should be amended to remove it where it relates to the SRN, and a provision should be included to require the undertaker to follow the Road Space Booking process.

4.7 National Highways has met regularly with the Applicant during the pre-application period to begin to understand the impact of the proposed development on the SRN. A Statement of Common Ground ("**SoCG**") has been drafted by the Applicant and is currently under review. However, at this stage, National Highways has not formally agreed to any matter being resolved and does not believe that the range of issues set out in the current draft SoCG by the Applicant fully reflects the concerns previously communicated, and therefore does not accurately reflect National Highways' position. National Highways has shared a list of matters with the Applicant for inclusion and will continue to collaborate with the Applicant through the examination to ensure that an updated and agreed version of the SoCG is submitted to the Examining Authority to provide a complete and accurate representation of National Highways' position.

4.8 National Highways confirms that its role prior to the acceptance of the DCO was to provide support to the Applicant to ensure that the application documentation met the requirements of governance for projects on the SRN at the Preliminary Design at

Project Control Framework Stage 3 (PCF 3). National Highways did not review any products that have been de-scoped from the PCF 3 process or any documents that were sent for National Highways information only at PCF 3 stage. National Highways reviews and advice at PCF 3 are intended to ensure that documents are in accordance with governance requirements and include the chapters, headings and topics that should be covered. The PCF 3 review does not provide any level of technical assurance or endorsement of the scheme’s viability or design, nor comment on the accuracy or acceptability of any substantive consent, simply that content is there. The PCF 3 process is to ensure that documents meet governance standards only. If it assists the examination process, a full list of which documents that National Highways reviewed at PCF 3 stage can be provided to the Examining Authority, as well as a list of documents that were de-scoped. National Highways confirms that despite reviewing a selection of documentation for PCF 3 stage, there are a number of matters which were not resolved by the Applicant and National Highways can provide the Examining Authority with further information should this be required.

5. Protective Provisions

5.1 The DCO includes a number of provisions that authorise the interference with statutory powers belonging to National Highways and/or grant the Applicant powers over the SRN which would have significant safety implications. National Highways requests that the Applicant includes the National Highways protective provisions at Appendix A of this representation to the DCO at the next deadline. A full justification for each of the key provisions and definitions is set out below:

Paragraph	Heading	Justification
1	Application	This provision has effect to preserve the statutory powers and duties of National Highways except where expressly amended by the Order.
2	Interpretation	Key provisions: “as built information” – contains the relevant information required by National Highways in order to issue the provisional certificate, certifying that works in, on under or over the SRN are satisfactorily complete and safe from National Highways’ perspective. “bond sum” – this provides that a bond sum required is 200% of the cost of the specified works in, on under or over the SRN. The bond required is not the total cost of the works but rather the section of works specifically impacting the SRN. Much in the same way as a section 278 agreement, bonding is required to protect National Highways from financial liability in the event that the Applicant defaulted on the works which impact the SRN. “commuted sum” – provision of financial security to National Highways for any assets which require ongoing maintenance. Where the authorised development includes works which will require ongoing maintenance, this should be funded by the Applicant and not become a burden on the public purse.

		<p>“detailed design information” – contains the relevant information required by National Highways in order to approve the commencement of the specified works affecting the SRN. In the experience of National Highways’ highway engineers, this definition includes all necessary drawings, specifications and calculations required for signing off works in, on, under or over the SRN but may need to be supplemented depending on the nature of the project.</p> <p>“road space booking” – National Highways has a strict procedure for managing network occupancy to ensure that they are aware of who is working on the SRN at any given point. It also ensures that sections of the SRN are not subject to conflicting or multiple sets of maintenance work.</p> <p>“specified works” – any work authorised by the order (including maintenance) which is on, in, under or over the strategic road network. Importantly, this covers the highway estate as well as the operational highway land to ensure that works beneath the highway or above it are subject to the same requirements as work to the highway stratum itself. Critically, works which occur under or over the SRN can still have a detrimental operational impact to the functioning of the undertaking and can result in significant safety impacts.</p> <p>“strategic road network” includes all operational land of National Highways within the order limits and also the highway estate itself to protect the safe functioning of the SRN.</p>
3	General	<p>Parts of the SRN are routinely managed by design build finance and operate (DBFO) contractors, who have primary responsibility for managing the asset. The purpose of these provisions is to ensure that, where the road subject to the specified works is managed under a DBFO contract, the highway operations and maintenance contractor can take the benefit of the protective provisions. Otherwise, any claim that the highway operations and maintenance contractor had against the Applicant by virtue of its stewardship of the asset would need to be through a claim made by National Highways and sub-recovered by the DBFO contractor. This is unnecessary, inefficient and creates a contractual risk to National Highways, as the DBFO contract does not cater for risks occasioned by third party development.</p>
4	General	<p>To create a “corridor” between the lowest point of the highway and any apparatus, to ensure that routine maintenance work to the highway does not compromise the integrity of any assets co-located in the subsoil.</p>
7	Prior approvals and security	<p>To ensure that the specification of the specified works and all associated processes inc. traffic management,</p>

		<p>financial provision for ongoing maintenance liabilities, scope of maintenance, condition surveys and road safety audits are addressed prior to commencement of works affecting the SRN. All of this information is required whether the specified works comprise of works to the highway or not. For example, scaffolding erected either side of the highway to install overhead lines would require a scheme of traffic management, as it would not be safe to carry out such dangerous works over an online part of the SRN. Likewise, undergrounding a pipeline or cable via horizontal directional drilling could not take place without condition surveys of the SRN taking place prior to commencement of works, as without this it would be impossible to know whether the specified works had caused subsidence or displacement in the carriageway. National Highways also requires collateral warranties from any contractor and designer of the specified works affecting the SRN, to ensure appropriate contractual liabilities are recoverable.</p> <p>No exercise of any article set out in 7(2) should take place without the express consent of National Highways, to ensure that National Highways is aware of the progress of the specified works affecting the SRN, the scope of those operations, the potential impact to road users and to ensure that compulsory acquisition is managed appropriately and proportionately. Note, that any approval required of National Highways must not be unreasonably withheld or delayed but will be deemed refused if not given within 2 months. It is very likely that a response will have been received from National Highways within that period, however in some instances this may not be possible due to the technical information submitted and the service level agreements that National Highways has with external consultants. In such circumstances, it would be disproportionate to deem the request approved, which could have potentially catastrophic consequences where procedures had not been followed or there was a concern that was being investigated.</p>
8	Construction of the specified works	The construction of the specified works must be carried out in accordance with National Highways' road space booking procedures to ensure the safety of road users and other contractors on the network. They must also be carried out in accordance with the relevant technical standards where relevant to the works, to ensure consistency with the SRN. Emergency access is to be granted to National Highways in the event of or to prevent the occurrence of danger to the public.
9	Payments	The reasonable costs incurred by National Highways in the administration of the design approval process, the

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		transfer of land, supervision of works, legal costs and VAT should be payable by the Applicant. But for the Applicant's scheme, National Highways would not have to expend resources on the specified works.
10	Provisional Certificate	Where any specified work is proposed to the SRN, on, over or under the highway, the requirements of National Highways' design checking and approval process is required to be discharged. Works underneath the highway or oversailing it have significant potential to cause damage both to the highway itself and to road users and it is critical to the safe and efficient operation of the SRN that works are signed off by National Highways engineers as safe, where there is an interface with the SRN. This provision is also required for the purposes of the Applicant as it has the effect of reducing the bond sum to 20% on the issue of the provisional certificate.
11	Opening	This is relevant only where the SRN has been subject to traffic management orders or temporary closure as a result of the Authorised Development.
12	Final Condition Survey	<p>Where specified works include horizontal directional drilling, as part of the approval of works and prior to commencement, a condition survey of the highway is required. A final condition survey is required on completion of the horizontal directional drilling works, to identify any settlement of the carriageway in accordance with the threshold levels set out in technical standard DMRB CD622. If any settlement beyond tolerance is identified, this would pose a safety risk to road users, as part of the carriageway would have collapsed to unsafe levels. National Highways would require this defect to be remedied.</p> <p>This provision also applies to works to the SRN itself as any final condition survey would inform the decision on issue of the final certificate.</p>
13	Defects Period	On the issue of the provisional certificate, the Applicant will be required to remedy any defect in the SRN caused by the specified works for a period of 12 months. Where National Highways' network is damaged by works carried out pursuant to the DCO, it is for the Applicant to remedy that damage.
14	Final Certificate	This provision is required in order to release the bond in full, to ensure that the National Highways costs are paid by the Applicant and to ensure that National Highways is given a final opportunity to inspect the SRN and be satisfied that the specified works have not resulted in damage to the statutory undertaking.
15	Security	The Applicant is proposing to carry out works to the highway, above the highway and beneath the highway in

		<p>land owned by National Highways. These works may be commenced and not completed, may be constructed contrary to the approved design or may be suspended due to the dissolution of the Applicant. In such cases, National Highways is exposed to a potentially significant financial burden in removing the works from the highway estate.</p> <p>Outside the Planning Act 2008, payment for any works which an authority are authorised to execute (i.e. not just works to the highway itself) may be secured under a section 278 agreement, with such a payment being secured through a bond or cash deposit. In the absence of any commitment by the Applicant to enter into a section 278 agreement containing provisions to put security in place for the benefit of National Highways, the National Highways protective provisions require security in a manner which is consistent with the measures applying to developments carried out under the Town and Country Planning Act 1990, applying the provisions of the 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.</p>
16	Commuted Sum	Where the Applicant proposes to install apparatus on the highway, a commuted sum is required to contribute to the maintenance of the apparatus. It is not for the public purse to pay for maintenance of apparatus that is added to the highway estate as a consequence of third party development without contribution.
17	Insurance	Insurance is required of all contractors working on the SRN and this should extend to operations carried on over and under the highway due to the potential for damage to infrastructure, highway assets and road users.
18	Indemnity	National Highways must be held harmless for the construction, maintenance and operation of the Authorised Development and any resultant impacts and it is common practice for statutory undertakers to be indemnified in such circumstances. It should not be for the public purse to cover instances of loss or damage occasioned by third party works.
19	Maintenance of the specified works	To ensure that where maintenance to a specified work is required, the relevant road space booking procedures are complied with to ensure the safety of contractors and road users.
20	Land	To ensure that matters of compulsory acquisition are directed to the legal team at National Highways and to ensure that powers are not exercised by way of General

		Vesting Declaration (GVD) circumventing National Highways's ability to impose restrictions and controls on the use of the land in a way which would impact on the SRN or be detrimental to safety.
21	Expert Determination	Expert determination is preferred due to the speed of the process and the often technical nature of the points in dispute being more suited to determination by an Engineer or other highway professional.

5.2 National Highways confirms that ongoing discussions regarding protective provisions are taking place with the Applicant and these conversations will continue throughout the examination process until a resolution satisfactory to both parties can be reached. In the absence of agreement, however, National Highways' Protective Provisions must be included in the DCO.

6. Summary

6.1 For the reasons given above, National Highways objects to the DCO and the Authorised Development in its submitted form and requests that the National Highways Protective Provisions at Appendix A are included on the face of the Order.

6.2 National Highways would like to reconfirm support for the proposed principle of the scheme due to the significant growth planned in the area, which requires an improved motorway junction, and commits to continued engagement with the Applicant. However, before National Highways can support the detail of the scheme, it requires resolution of outstanding matters listed above, and further matters of detail which can be found in Appendix B, and in the Principal Areas of Disagreement documentation to be submitted in due course.

6.3 Should it assist the Examining Authority, National Highways will respond to any written questions that the panel may have and can attend appropriate hearings to detail the impacts of the Authorised Development to National Highways.

Yours sincerely



Andrew Alcorn

M5 Junction 10 Programme Manager

National Highways Limited

22 March 2024

APPENDIX A

PART []

FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Application etc.,

1.—(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

2.—(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—

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

- (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) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during construction phase of the project;
- (j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;
- (k) the health and safety file; and
- (l) such other information as is required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway's *Asset Data Management Manual* as is in operation at the relevant time.

“the bond sum” means the sum equal to 200% of the cost of the carrying out the specified works (to include all costs plus any commuted sum) or such other sum agreed between the undertaker and National Highways;

“the cash surety” means the sum agreed between the undertaker and National Highways;

“commuted sum” means such sum calculated as provided for in paragraph 16 of this Part of this Schedule to be used to fund the future cost of maintaining National Highways assets or structures authorised under the Order;

“condition survey” means a survey of the condition of National Highways structures and assets within the Order limits that may be affected by the specified works;

“contractor” means any contractor or subcontractor appointed by the undertaker to carry out the specified works;

“defects period” means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;

“detailed design information” means such of the following drawings specifications and calculations as are relevant to the development—

- (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) 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) regime of California Bearing Ratio testing;
- (k) electrical work for road lighting, traffic signs and signals;
- (l) motorway communications as required by DMRB;
- (m) highway structures and any required structural approval in principle;
- (n) landscaping;
- (o) proposed departures from DMRB standards;
- (p) walking, cycling and horse riding assessment and review report;
- (q) stage 1 and stage 2 road safety audits and exceptions agreed;
- (r) utilities diversions;
- (s) topographical survey;
- (t) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;

- (u) health and safety information including any asbestos survey required by GG105 or any successor document; and
- (v) other such information that may be required by National Highways to be used to inform the detailed design of the specified works;

“DBFO contract” means the contract between National Highways and the highway operations and maintenance contractor for the maintenance and operation of parts of the strategic road network which are within the Order Limits or any successor or replacement contract that may be current at the relevant time;

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

“final certificate” means the certificate relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 14;

“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);

“highway operations and maintenance contractor” means the contractor appointed by National Highways under the DBFO contract;

“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;

“provisional certificate” means the certificate of provisional completion relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 7 when it considers the specified works are substantially complete and may be opened for traffic;

“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;

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

“specified works” means so much of any work, including highway works, street works and signalisation, 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;

“strategic road network” means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including drainage infrastructure, street furniture, verges and vegetation and all other land, apparatus and rights located in, on, over or under the highway;

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991; and

“winter maintenance” means maintenance of the road surface to deal with snow and ice.

General

3. In respect of any part of the strategic road network that is managed under a DBFO contract both National Highways and the highway operations and maintenance contractor shall have the benefit of this Part of this Schedule but for the purposes of any approvals required under this Part of this Schedule the undertaker shall liaise directly with National Highways.

4. Notwithstanding the limits of deviation permitted pursuant to article [] of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under the strategic road network at a depth of less than 4 metres of the surface at any point unless agreed with National Highways in its absolute discretion.

5. References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

Works outside the Order limits

6.—If the undertaker proposes to carry out works to the strategic road network that are outside of the Order Limits in connection with the authorised development, the undertaker must enter into an agreement with National Highways in respect of the carrying out of those works prior to the commencement of those works.

Prior approvals and security

7.—(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 and at the same time as submitting the relevant details the undertaker shall be entitled to submit its application for road space bookings to National Highways;
 - (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;
 - (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; and
- (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)(v) above;
 - (f) National Highways has approved the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;
 - (g) the undertaker has agreed the estimate of the commuted sum with National Highways;
 - (h) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the specified works (which must include winter maintenance) has been agreed in writing by National Highways;
 - (i) the undertaker has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the specified works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the specified works, including in the selection of materials, goods, equipment and plant; and
 - (j) 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) The undertaker must not exercise—
- (a) article [] (*maintenance of authorised development*);
 - (b) article [] (*street works*);
 - (c) article [] (*power to alter layout, etc. of streets*);
 - (d) article [] (*permanent stopping up of streets, rights of way and rights of access*);
 - (e) article [] (*temporary stopping up of streets, rights of way and rights of access*);
 - (f) article [] (*access to Works*);
 - (g) article [] (*traffic regulation*);
 - (h) article [] (*discharge of water*);
 - (i) article [] (*protective works to buildings*);
 - (j) article [] (*authority to survey and investigate the land*);
 - (k) article [] (*compulsory acquisition of land*);
 - (l) article [] (*compulsory acquisition of rights*);
 - (m) article [] (*extinguishment and suspension of private rights*);
 - (n) article [] (*use of subsoil under or airspace over streets*);

- (o) article [] (*temporary use of land*);
- (p) article [] (*temporary use of land for carrying out the authorised development*);
- (q) article [] (*temporary use of land for maintaining the authorised development*); or
- (r) article [] (*felling or lopping trees*) of this Order,

over any part of the strategic road network or land in which National Highways has an interest without the consent of National Highways, and National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and/or submit a scheme of traffic management for National Highways' approval.

(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-paragraph (1) or (2).

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

- (a) must not be unreasonably withheld;
- (b) must be given in writing;
- (c) shall be deemed to have been refused if neither given nor refused within 2 months of the receipt of the information for approval or, where further particulars are requested by National Highways within 2 months of receipt of the information to which the request for further particulars relates; and
- (d) may be subject to any conditions as National Highways considers necessary.

(5) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways immediately and details of their suitability to deliver the specified works will be provided on request along with collateral warranties in a form agreed by National Highways.

(6) Any change to the detailed design of the specified works must be approved by National Highways in accordance with paragraph 7(1) of this Part.

Construction of the specified works

8.—(1) The undertaker must give National Highways 3 months' 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—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 7(1) above or as subsequently varied by agreement between the undertaker and National Highways;
- (b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as 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 ensure that (where possible without entering the highway) the highway is kept free from mud, soil and litter as a result of carrying out a work or operation pursuant to the Order.

(5) 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.

(6) 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.

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

(8) If within 28 days on which a notice under sub-paragraph (6) or sub-paragraph (7) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure incurred by National Highways in so doing, such sum to be payable within 30 days of demand.

(9) 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.

(10) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the satisfaction of National Highways.

(11) Until National Highways issues the provisional certificate the undertaker must carry out all maintenance (including winter maintenance) in accordance with the scope of maintenance operations agreed by National Highways pursuant to paragraph 7(1)(h) and the undertaker must carry out such maintenance at its own cost.

(12) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme pursuant to paragraph 7(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.

Payments

9.—(1) The undertaker must pay to National Highways a sum equal to the costs and expenses which National Highways reasonably and properly incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes abortive) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

- (a) the checking and approval of the information required under paragraph 7(1);
- (b) the supervision of the specified works;
- (c) the checking and approval of the information required to determine approvals under this Order;
- (d) all costs in relation to the transfer of any land required for the specified works; and
- (e) all legal and administrative costs and disbursements incurred by National Highways in connection with the Order and sub-paragraphs (a)-(d); and
- (f) 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 National Highways costs”.

(2) The undertaker must pay to National Highways upon demand 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 authorised development.

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

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

(5) National Highways must give the undertaker a final account of the National Highways costs referred to in sub-paragraph (1) above within 91 days of the issue of the provisional certificate issued pursuant to paragraph 10(4).

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

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

(7) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional Certificate

10.—(1) Following any closure or partial closure of any of the strategic road network for the purposes of carrying out the specified works, National Highways will carry out a site inspection to satisfy itself that the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of National Highways prior to reopening the strategic road network.

(2) As soon as the undertaker considers that the provisional certificate may be properly issued it must apply to National Highways for the provisional certificate.

(3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable:

(a) inspect the specified works; and

(b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(4) When—

(a) a stage 3 road safety audit for the specified works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways;

(b) the specified works incorporating the approved remedial works under sub-paragraph (4)(a) and any further works notified to the undertaker pursuant to sub-paragraph 10(3)(b) have been completed to the satisfaction of National Highways;

(c) the as built information has been provided to National Highways; and

(d) the undertaker has paid the commuted sum to National Highways,

National Highways must issue the provisional certificate.

(5) On the issue of the provisional certificate the bond sum shall be reduced to 20% of the total bond sum save insofar as any claim or claims have been made against the bond before that date in which case National Highways will retain a sufficient sum to ensure it does not have to meet any costs for or arising from the specified works.

(6) The undertaker must submit a stage 4 road safety audits as required by and in line with the timescales stipulated in the road safety audit standard. The undertaker must comply with the findings of the stage 4 road safety audit and must pay all costs of and incidental to such and provide updated as-built information to National Highways.

Opening

11. The undertaker must notify National Highways not less than 56 days in advance of the intended date of opening to the public of the strategic road network and the undertaker must notify National Highways of the actual date the strategic road network will be opened to the public within 14 days of that date.

Final condition survey

12. - (1) The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 10(2), arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 if the specified works include any works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to paragraph 12(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 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 paragraph 12(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.

Defects Period

13. —(1) The undertaker must at its own expense remedy any defects in the strategic road network as are reasonably required by National Highways to be remedied during the defects period. 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.

(2) Following the expiry of the defects period National Highways has responsibility for routine maintenance of the strategic road network save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 5 years by and at the expense of the undertaker.

Final Certificate

14. —(1) The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate.

(2) Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable:

- (a) inspect the strategic road network; and

- (b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the strategic road network or confirmation that no such works are required for this purpose.
- (3) The undertaker must carry out such works notified to it pursuant to sub-paragraph 14(2).
- (4) When National Highways is satisfied that:
 - (a) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph 14(2) and any remedial works required as a result of the stage 4 road safety audit have been made good to the satisfaction of National Highways; and
 - (b) the National Highways costs have been paid to National Highways in full;
National Highways must issue the final certificate after which the bond shall be released in full.
- (5) The undertaker must pay to National Highways within 28 days of demand the costs reasonably incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to these provisions.

Security

15.—(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 9 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.

Commuted sums

16. —(1) National Highways must provide to the undertaker an estimate of the commuted sum, calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 or any successor guidance, prior to the commencement of the specified works.

(2) The undertaker must pay to National Highways the commuted sum prior to the issue of the provisional certificate.

Insurance

17. Prior to the commencement of the specified works the undertaker must effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (ten million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property

or any person as a direct result of the execution of specified works or use of the strategic road network by the undertaker.

Indemnity

18.—(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 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

Maintenance of the specified works

19.—(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.

(3) The undertaker must comply with any 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.

(4) The provisions of paragraph 11 shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

Land

20.—(1) Following the issue of the final certificate pursuant to paragraph 14(4) National Highways may serve notice on the undertaker that it wishes to take a freehold transfer of land within the extent of strategic road network boundary which is not in the ownership of National Highways but has been acquired by the undertaker for the purposes of carrying out the specified works.

(2) If the undertaker receives notice under sub-paragraph (1) then the undertaker must effect a freehold transfer of the land which is the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to National Highways.

(3) 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 land owned by National Highways, or extinguish any existing rights of, or interfere with apparatus of, National Highways in respect of any third party property, except with the consent of National Highways by written request to legalservicesinbox@nationalhighways.co.uk

(4) Where any land or interest is proposed to be acquired for the benefit of National Highways, the undertaker must, unless otherwise agreed by National Highways, exercise article [] (*compulsory acquisition of land*) and article [] (*compulsory acquisition of rights and imposition of restrictive covenants*) as applied by articles [] (*application of the 1981 Act*)

and article [] (*modification of the 2017 Regulations*) of this Order to directly vest in National Highways any such land or interest.

Expert Determination

- 21.—(1) Article [] (*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 [] (*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.

APPENDIX B

TOPIC/DOCUMENT	National Highways COMMENTS
Public Rights of Way DCO Article 25	Once the land plans are confirmed, National Highways require a review of the interaction with National Highways lands to confirm re-rerouting of Public Rights of Way in both the temporary and permanent case with the Applicant.
Work Packages/Nos Statement of Reasons	National Highways request further details of the breakdown of work numbers as they do not follow the structure of Schedule 1 of the DCO and therefore are inconsistent between the two documents.
Environment Carbon Reporting Carbon Management Plan	National Highways request visibility and agreement of the carbon management reporting for the scheme to ensure the promotion of lower whole life carbon choices, including visibility and agreement of construction carbon datasets, operation and maintenance datasets and road user emissions. National Highways requires the Applicant to be responsible for carbon reporting during the construction period.
Environmental Statement (“ES”) Land Management	National Highways require confirmation of the land management and/or the short list of development included in the cumulative assessments. National Highways also requests further information in relation to the justification of the approach to the assessment and why this hasn't been updated reporting to reference a more up to date baseline.
ES Mitigation	National Highways requires further information in relation to references in the ES where other schemes provide mitigation to the expected impacts of the Authorised Development (e.g., noise impacts and air quality) and request that these associated developments are referenced in the do-minimum scenario for the Environmental Impact Assessment, if they are works to be carried out in advance.
ES Flood Assessment	National Highways requires information regarding any agreements within the EIA on the approach to modelling the Flood Risk Assessment. In particular, further evidence is requested in relation to advice given by the Environmental Agency and Lead Local Flood Authorities on the climate change allowances used and whether these represent a precautionary position (the FRA seems to suggest the EA advised they could use a lower % for climate change allowance for the link road compared to the upper central allowance used (53%)).
ES Noise	National Highways requires details of any night closures that are planned.
ES Noise Barriers	National Highways request confirmation from the Applicant that M5 J10 has been represented in the baseline scenario in relation the Noise Policy Statement for England with specific reference to noise barriers. It appears that the compliance has been modelled

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	<p>upon a separate scheme completed in advance of the proposed development.</p> <p>National Highways also require confirmation of compliance with the three aims of the National Policy Statement for England.</p>
ES Slip road closure Disruption During Construction	<p>National Highways requires the Applicant to confirm the slip road closure strategy. The summary indicates a closure of the slip roads onto the M5 for a period of 19 months. National Highways needs to be assured that any impacts to the SRN and LRN are fully assessed and mitigated as far as reasonably practicable.</p>
ES BNG	<p>Throughout the detailed design process National Highways request that the split of biodiversity net gain unit loss/gain related to the SRN and LRN is clarified by the Applicant, including what metric the assessment has used to quantify the unit. National Highways also require the Applicant to confirm and agree any maintenance obligations which are reliant on National Highways, due to it being the highway authority for the SRN, and which may support a scheme wide BNG position.</p>
Construction Collateral Warranties	<p>National Highways require that a full, finalised version of the agreed Professional Services Contract (“PSC”) is provided and confirmation of when an agreed form Engineering and Construction Contract will be available to append to the PSC contract to allow for the review of the proposed collateral warranties in favour of National Highways, noting the current version issued for National Highways review is that of draft status.</p> <p>National Highways also require copies of the professional appointments in place with consultants engaged in relation to the works, confirmation of the levels of professional indemnity insurance each warrantor will be obliged to maintain and evidence from their broker of said insurance and any technical appendices are provided to be able to agree and approve any collateral warranty agreements.</p>
Construction Handover	<p>National Highways require the Applicant to adhere to National Highways handover process as described in the Project Control Framework and by the National Highways Handover Lead, alongside any commitments or clauses as outlined by the granted Development Consent Order, to allow for the scheme to be operated and maintained by National Highways.</p> <p>National Highways will require documentation including but not limited to as-built drawings, completed PCF product documentation, assets data and quality records.</p>
Construction Traffic Management	<p>National Highways require further information regarding traffic management throughout construction, including but not limited to</p>

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	<p>assessments capturing haulage routes, work access locations and diversion impacts.</p> <p>National Highways require that all construction phase traffic management which impacts the SRN is subject to National Highways prior approval.</p>
Construction and Detailed Design Assurance Role	<p>During Detailed Design, National Highways will employ an assurance partner/role to work in an asset and standards approval role with fees to be recuperated from the Applicant.</p> <p>During Construction National Highways will employ an assurance partner/role to work on site in a Quality Assurance role with fees to be recuperated from the Applicant. Throughout the construction regular asset inspections will be undertaken with defects logged and tracked. This will ensure project integration and a smoother handover into maintenance and ensure a joint working approach throughout the project.</p>
Construction Technical Assurance	<p>National Highways require that the independent and suitably qualified Works Examiner/NEC Supervisor employed by the Applicant shall work alongside National Highways' appointed assurance partner/role to ensure cohesion and project integration in the delivery of the scheme for elements that impact and/or will become part of the SRN.</p>
Construction Value Engineering	<p>National Highways require that any value engineered solutions on the SRN in relation to the detailed design during construction are agreed with National Highways, to ensure that proposed solutions are maintainable. Any changes to the approved design during construction must adhere to the requirements in the Design Manual for Roads and Bridges and the Manual of Contract Documents for Highway Works or be approved through the Departure for Standards process.</p>
Construction Programme	<p>National Highways require that a construction programme is provided on a monthly basis to align with Principal Contractor CI32 submissions to the Applicant, to provide oversight of construction activities on the SRN.</p> <p>National Highways require that a cost loaded construction programme is regularly provided to National Highways for oversight of scheme performance (i.e., CPI/SPI/LEI/BEI).</p>
Construction Commuted Sum	<p>National Highways require a milestone schedule to provide visibility of when the commuted sum figure will be updated and how this aligns to the detailed design programme.</p>
Winter maintenance	<p>National Highways require that winter maintenance in respect to construction and operation are agreed with National Highways before works to the SRN commence, in the Detailed Local Operating Agreement or alike document.</p>

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<p>Detailed Design Land Access</p>	<p>National Highways require easements over the private land side of any fencing for future maintenance/ replacement with a minimum of 5m width.</p> <p>National Highways require easements over the private land for any outfalls, ditches and/or buried pipelines that are part of the SRN for future maintenance/ replacement with a minimum of 5m widths each side of the apparatus.</p> <p>National Highways require easements over private land to any land locked plots for future maintenance with a minimum of 10m width.</p> <p>National Highways require easements over private land to any culverts not deemed structures for future maintenance with a minimum of 10m width.</p> <p>National Highways require easements over private land to any structures for future maintenance with a minimum of 10m width.</p> <p>National Highways require easements for access and the rights for future maintenance in relation to all assets to be adopted by National Highways for operation and maintenance.</p>
<p>Detailed Design Overarching</p>	<p>National Highways require the proposed development on the SRN will need to be designed as per Safety, Engineering and Standards and National Highways requirements to allow for safe and efficient maintenance upon scheme completion.</p> <p>In particular, National Highways requires to be consulted about the detailed design of the reservoir and surrounding assets.</p>
<p>Operation and Maintenance Operations and Technical Leadership Group</p>	<p>National Highways require confirmation from the Applicant that the scheme will attend the Operations Technical Leadership Group (Ops TLG) as required to ensure that best practice is applied throughout scheme design.</p> <p>National Highways require confirmation from the Applicant that the actions arising from Stage 3 Ops TLG from February 2022 have been fully addressed and the design submitted for the DCO does not amend any of these findings.</p>
<p>Transport Assessment Overarching</p>	<p>National Highways are unable to support the scheme without full visibility of the full transport modelling in order to confirm the findings of the transport assessment. National Highways require the full modelling package including but not limited to future year modelling, slip road design, travel time variances, capacity, modelled queues, model calibration, construction scenarios, signal</p>

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	modelling, local road/SRN interactions, model validation, development assumptions.
Transport Assessment Overarching	National Highways notes that the Transport Assessment indicates that increased traffic levels and V/C ratios predicted along the M5 mainline imply that the motorway will be operating above capacity between Junctions 10-11.
Transport Assessment Overarching	National Highways require that that current flows for M5 J10 (using Webtris) are provided for a comparison for J10 forecast flows since traffic survey data provided in the TA is dated 2017 and then augmented to 2023 levels (using the industry standard TEMPRO).
Transport Assessment Overarching	National Highways have concerns that there is no construction traffic or construction related employee traffic included in the traffic assessments as this could be a significant addition to the traffic patterns and flows.
Transport Assessment Chapter 1 Paragraph 1.1	National Highways request that the study area of impact at the SRN and rationale of J9 and J11 current conditions or impact the proposals have to the junction are provided.
Transport Assessment Chapter 1 Paragraph 1.2.4	<p>National Highways require that the Applicant provide further information regarding the dependencies between the developments at Coombe Hill and Arle Court Park and Ride development in respect to M5 Junction 10.</p> <p>National Highways have concerns regarding the Coombe Hill development should this not occur and the impacts of this on the cumulative assessments as submitted in the DCO.</p>
Transport Assessment Chapter 2	National Highways require the Applicant to confirm how the scheme of works are compliant with 01/22 circular and Planning for the Future (2023) documentation.
Transport Assessment Chapter 3	National Highways require the Applicant update the Personal Injury Analysis in relation to the nature of serious and fatal accidents on the SRN. This will allow National Highways to understand what current major PIAs are known and understand if further analysis is required to mitigate issues for any areas of concern in relation to the proposed design for the SRN.
Transport Assessment Chapter 4	<p>National Highways require the Applicant to provide full scheme designs in relation to the length and type of slip roads, as this is not presented in the TA.</p> <p>National Highways require that the Applicant provides a GG104 risk assessment in relation to the design of slip roads and associated traffic modelling analysis specific to the slip roads, to outline the proposals potential impact to road user and operational safety.</p>

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<p>Transport Assessment Chapter 4 Paragraph 4.2.4</p>	<p>National Highways requires clarification of the location of farmland access track as referenced in 4.2.4 of the Transport Assessment and clarification of how this is accessible from the SRN.</p>
<p>Transport Assessment Chapter 5 Paragraph 5.11</p>	<p>National Highways require the Applicant to confirm the difference between the strategic and operational model to understand the differences and potential impacts between Saturn and Paramics matrices to ensure where there are alternative routes to the M5, that traffic assignment is similar in both models.</p>
<p>Transport Assessment Chapter 6 Paragraph 6.4.1</p>	<p>National Highways require that the Applicant confirms the sample size of seeded runs is appropriate to the variability of the future year model and if any of the model runs appear to be a significant outlier from the others.</p>
<p>Transport Assessment Chapter 7 Paragraph 7.2</p>	<p>National Highways require that the Applicant confirms the interpretation of the traffic flow differences identified for the SRN.</p>
<p>Transport Assessment Chapter 7 Tables 9 and 10</p>	<p>National Highways require that the Applicant provide further information about the location(s) that are causing the travel time increase on Route 3 WB (A4019 E to M5 N) for the 'with scheme' scenario 2027 AM peak. National Highways require that the Applicant provide further information about the location(s) that are causing the travel time increase on Route 3 WB (A4019 E to M5 N) for the 'with scheme' scenario 2027 PM peak as there is insufficient information to ascertain if this impact relates to the A4019 or the M5.</p>
<p>Transport Assessment Chapter 8 Table 15 and Figure 20</p>	<p>National Highways require that the Applicant provide further information about the 33% increase in total network travel time (hours) and a 7% increase in the average journey time for the 2024 AM peak as this suggests the scheme has a detrimental impact in some locations. National Highways require that the assessment of the where the predicted journey time increase of up to 10 minutes may occur along the M5 NB route is provided.</p>
<p>Transport Assessment Chapter 10</p>	<p>National Highways require zoomed in V/C plots of M5 J9 and M5 J11 as it is currently impossible to ascertain the predicted impacts at the current scale of the plans. National Highways require that information is provided in relation to scenario assessment for potential lane closures on the M5 so that the impacts on traffic flows on the motorway and in the local area can be ascertained.</p>
<p>Transport Assessment</p>	<p>National Highways requires confirmation from the Applicant to confirm the suitability of flows used in the model validated for a 2017</p>

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Chapter 18	base year and any comparisons between the 2017-present day (including the impact of COVID flows).
Transport Assessment Chapter 18 Paragraph 18.3	National Highways require evidence of the calibration of M5 flows as this currently does not appear to show any calibration of flows on the M5 mainline.
Transport Assessment Chapter 18 Paragraph 18.6	<p>National Highways require evidence of the queue length calibration of the comparison of modelled and observed queue lengths and confirmation of if this assessment has been undertaken during calibration.</p> <p>National Highways require further information in relation to the quote "with more notable queuing intermittently present at the signalised junctions and the M5 J10 southbound on slip" as this appears to contradict the validation of journey times on the M5 south bound if sufficient delay is present in this part of the model.</p>
Transport Assessment Appendix J Overarching	<p>National Highways require that the Applicant provide confirmation of how the impacts at the adjacent junctions on the M5, practically Junction 11, is assessed to demonstrate that the scheme is not having a severe impact at these junctions.</p> <p>National Highways require full details of what is included/excluded for Appendix J.</p>
Transport Assessment Appendix J Table 14.2	National Highways require further information related to modelled journey times validated on 60s TAG criteria is provided to identify how significant the difference between modelled and observed journey times is to demonstrate the model is within a reasonable range of the observed.
Transport Assessment Appendix J Section 16.5	National Highways requires confirmation in relation to the statement of amendments made to the average signal timings during calibration and if these amendments were also made to factors affecting saturation flows before changing the signal timings.
Transport Assessment Appendix K	National Highways requires that the Applicant provide the comparison information of 2015 and 2017 base years against the present-day data for both GCTM and Paramics models.
Transport Assessment Appendix K Figure 2.2	National Highways require that the Applicant provide further information relating to the validation of journey times on the route through Staverton and Boddington. Journey time data does not provide data for validation of the journey times through these locations. Whilst not being a major road, this information is required as could be a key route choice in the Paramics model and should be included in the journey time validation.
Transport Assessment Appendix L	National Highways requires that the Applicant provide further information regarding the assignment of traffic in Saturn and

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	<p>Paramics to understand any differences or potential impacts on the proposed scheme.</p>
<p>Traffic Modelling GC3M Model</p>	<p>National Highways require the review and endorsement of the GC3M model, including any amendments to the model baseline and scenarios, as this has not been undertaken by National Highways to date and, as such, are unable to confirm that the model is acceptable.</p>
<p>Traffic Modelling Merge/Weave/Diverge assessments</p>	<p>National Highways require further information including traffic flows and modelling to understand if the weaving/merge/diverge provision proposed (as required by CD 122), offer sufficient capacity for the predicted increase in traffic levels. Any assessment also needs to include the impact and safety implications of the new junction proposed between 9 and 10.</p>
<p>Traffic Modelling Overarching</p>	<p>National Highways require the full traffic modelling package to ensure that the proposal does not impact adversely on the safe operation of the SRN, including raw data, base model and future models used for GCTM and Paramic modelling assessments, operational modelling, queuing and delay data (including maximum of the mean maximum time queues, such as the range of queue lengths used to derive the average) for SRN M5 J10 and J11, current driver behaviour impacts and that J11 and the proposed new junction between 9 and 10 is scoped into the modelling assessment.</p>
<p>Funding Homes England grant</p>	<p>National Highways require that the Homes England grant for the scheme is provided for information, to confirm any caveats to funding, noting this funding represents some, but not all, of the funding streams and may provide a cash surety mechanism noting the shortfall in committed funds.</p>
<p>Funding Programme</p>	<p>National Highways require confirmation from the Applicant in regard to the alignment of the programme noting the Housing Infrastructure Funding timeframe, committed until 2027, does not currently appear to align with the suggested programme duration and any risk of unforeseen events or delays.</p>