

# **Host Authorities' Response at Deadline 10 to DCO Matters**

## **1. INTRODUCTION**

- 1.1. This document has been prepared on behalf of the Central Bedfordshire Council, Dacorum Borough Council, Hertfordshire County Council, Luton Borough Council and North Hertfordshire Council (the '**Host Authorities**'). It responds to the submissions of the Applicant at Deadline 9 on matters pertaining to the Applicant's draft DCO [REP9-004] and incorporates comments on the Applicant's other DCO related submissions made at Deadline 9, including the following:
  - a) The Explanatory Memorandum ([REP9-005]);
  - b) The Applicant's Summary of Changes to the Draft Development Consent Order ([REP9-042]); and
  - c) The Applicant's Response to Deadline 8 Submissions [REP9-051] in relation to DCO matters.
- 1.2. The Host Authorities note that many of the amendments made to this revision of the draft DCO have been made by the Applicant in response to the comments of the Host Authorities and other Interested Parties.
- 1.3. Where matters contained in the above referenced documents are not expressly addressed in this document, their omission should not be taken to reflect agreement with, or acquiescence to, the Applicant's position or the Applicant's preferred drafting where it departs from that proposed by the Host Authorities.

## **2. ARTICLE 2 (INTERPRETATION)**

- 2.1. The Host Authorities note the inclusion in article 2 of new paragraphs (12) and (13) which together have the effect of requiring any application for a consent subject to a "deemed consent" provision to include a statement explaining the effect of that deemed consent provision. The Host Authorities have set out in detail their concerns with deemed consent provisions, see in particular its response to Action Point 14 arising from Issue Specific Hearing 10, which is recorded in its Post Hearing Submission (including written summary of oral submissions) [REP6-095].
- 2.2. The effect of this provision is to require the undertaker to include a "health warning" somewhere on an application for a deemed consent. It does not materially reduce the likelihood of the adverse effects of deemed consent provisions previously outlined by the Host Authorities.
- 2.3. As such, its inclusion ought to be given limited weight when weighed against the Host Authorities' previously articulated concerns in relation to deemed consents.
- 2.4. The Host Authorities are content with the movement of the definition of "highway works" to article 2(1) and the subsequent amendments article 8(4)(j).

## **3. ARTICLE 35 (SPECIAL CATEGORY LAND)**

- 3.1. The Host Authorities welcome the amendment to article 35 to make it clear that the relevant planning authority is required to certify receipt of a "satisfactory" scheme for the provision of the replacement land.

## **4. ARTICLE 43 (DISAPPLICATION OF LEGISLATIVE PROVISIONS)**

- 4.1. The Host Authorities welcome the deletion of the disapplication of provisions of the Land Drainage Act 1991 and the subsequent removal of the drainage authority protective provisions.

## **5. ARTICLE 45 (APPLICATION OF THE 1990 ACT)**

## Host Authorities' Response at Deadline 10 to DCO Matters

- 5.1. The Host Authorities remain of the view that there is merit in including within the DCO satisfactory provisions that seek to clarify how the development authorised by the DCO and other development that has the benefit of planning permission are to co-exist, where co-existence is acceptable in planning terms. In general terms the Host Authorities welcome the amendments to article 45 that clarify when an "inconsistency" has arisen and which confirm that the scope of the article is concerned only with inconsistencies as between planning permission and development consent and not other "powers or rights" under the Order.
- 5.2. The Host Authorities would suggest that the definition of "inconsistency" is amended as follows:

"inconsistency" and cognate expressions means a circumstance in which a physical conflict exists, or one in which development is no longer capable of being physically implemented ~~or otherwise operated~~ in accordance with the permission or consent granted; and"
- 5.3. The reference to "cognate expressions" ensures that the definition is applied to the use of the word "inconsistent" (see paragraph (2)). The reference to "operated" ought to be deleted to further narrow the circumstances in which an inconsistency may benefit from these provisions such that it remains clear the physical incompatibility of developments is the driver and so that other less certain aspects (such as how it is operated) are afforded less prominence.
- 5.4. The Applicant's amendments go a significant way to addressing the concerns raised by the Host Authorities in relation to this provision. There remain residual concerns in relation to how, in practical terms, an inconsistency between the authorised development and other development would be resolved where, for example, it later proves that important mitigation for another planning permission could not be delivered by reason of an inconsistency with the authorised development. In such circumstances it would seem that the effect of article 45 would be to allow that development to continue to operate without compliance with the condition that compels the mitigation to be carried out or maintained. In relation to the existing LLOAL planning permission the Applicant has addressed this concern via article 44(4).
- 5.5. The Host Authorities remain concerned with the potential scenario where inconsistent developments falls into the lacuna between article 45(2) or 45(3) and 45(4) which can be read as potentially allowing for such development to be immune from enforcement under either the Planning Act 2008 or the Town and Country Planning Act 1990. Consistent with its submissions at Issue Specific Hearing 10, the Host Authorities consider it is important that where there is an inconsistency there nonetheless remains clarity as to which of the consenting regimes is being relied upon in relation to which aspects of the two conflicting developments. It cannot be right that development which is consistent with neither the planning permission nor development consent order becomes immune from enforcement.
- 5.6. There are numerous ways in which these issue could be tackled. One way would be by amending article 45(5) to require the undertaker to submit for the approval of the relevant planning authority a notification specifying which aspects of the conflicting development are proceeding under the Order and which are proceeding under the planning permission and thereafter for that determination to apply paragraphs (2) to (4) as required. Paragraph (5) currently stops short of this. If there are concerns in relation to the timescales and processes for determination or appeal then such a provision could readily be included in a requirement to which paragraphs (2) to (4) are made subject.
- 5.7. The Host Authorities note the Applicant frequently refers in its responses to the provisions of articles 44 and 45 being well precedented. While it is true that many development consent orders contain provisions that seek to reconcile other development consents or planning permission the value that should be afforded to such precedents in the circumstances of this proposed development is limited. This is because the majority of those precedents do not seek to convert an existing development permitted under the Town and Country Planning Act 1990 to be expanded and converted into a DCO; they tend to be for new linear infrastructure where different considerations apply. Secondly, many of those precedents pre-date *Hillside* and subsequent cases that follow it.

## **Host Authorities' Response at Deadline 10 to DCO Matters**

### **6. REQUIREMENT 6 (DETAILED DESIGN)**

- 6.1. At Deadline 9 the Host Authorities re-iterated their concerns in relation to the technical approvals required in relation to highway works under protective provisions being conflated with the "planning" approvals required under this requirement. The Host Authorities understand that the Applicant intends to restore the "dual approval" functions in the version of the DCO to be submitted at Deadline 10 such that the link between the technical approvals under the highway protective provisions and the "planning" approval under this requirement is removed. The Host Authorities look forward to reviewing the revised DCO.

### **7. REQUIREMENT 8 (CODE OF CONSTRUCTION PRACTICE)**

- 7.1. The Host Authorities welcome the amendments to this requirement that require a construction site lighting plan to be approved before the authorised development is commenced.

### **8. REQUIREMENT 10 (LANDSCAPE AND BIODIVERSITY MANAGEMENT PLAN)**

- 8.1. The Host Authorities welcome the addition of "maintain" to sub-paragraph (3) which makes it clear that the authorised development is to be carried out and maintained in accordance with the approved landscape and biodiversity management plan.

### **9. REQUIREMENT 20 (ENVIRONMENTAL SCRUTINY GROUP)**

- 9.1. The Host Authorities are content with the amendments to this requirement that require the local authority officers appointed as members of the ESG to be "competent" and for such competence to be defined by reference to training, knowledge or experience to consider technical reports and use them to support decision making functions related to a planning consent.
- 9.2. The Host Authorities remain concerned that the definition requires such persons to be "local authority officers" which could be construed as precluding the appointment of consultants or contractors or other such persons with sufficient knowledge, training, expertise and authority to act appropriately as a member of the ESG on behalf of the Host Authority concerned.
- 9.3. Consequently the Host Authorities consider the definition ought to be amended as follows:

""competent officer" means a ~~local authority officer~~ a person appointed by the local authority that has sufficient training and experience or knowledge to consider reports from technical specialists and use these to support a decision-making function linked to a planning consent;"

### **10. REQUIREMENT 30 (OFFSITE HIGHWAY WORKS)**

- 10.1. The Host Authorities note the Applicant's update to this requirement and further note that they were broadly content with its former form which made clear that where monitoring showed that interventions were required that a mitigation scheme was required to be submitted for approval and then implemented.

### **11. SCHEDULE 8 (PROTECTIVE PROVISIONS) – PART 6 (FOR THE PROTECTION OF LOCAL HIGHWAY AUTHORITIES)**

- 11.1. The Host Authorities that are also highway authorities welcome the Applicant providing more detailed protective provisions that go some way towards addressing the concerns articulated in their ISH 10 Post Hearing Submission (including written summary of oral submissions) [REP6-095].
- 11.2. As outlined in the Host Authorities Deadline 9 Response on DCO Matters [REP9-063] there remains areas of concern (for example, provisions relating to a security, the treatment of road safety audits and the interactions between technical highway approvals and the broader

## **Host Authorities' Response at Deadline 10 to DCO Matters**

"planning" approval needed under requirement 6) and as such the Host Authorities have provided the Applicant with a mark-up that would address those concerns.

- 11.3. The Host Authorities understand that the Applicant intends to incorporate some of those amendments in the version of the DCO submitted at Deadline 10. However, to ensure that the Examining Authority has sight of the Host Authorities' proposed drafting it is appended to this submission. The Host Authorities have received early sight of the Applicant's proposed amendments to the local highway authority protective provisions proposed to be submitted at Deadline 10 but require further time to consider them. It remains the Host Authorities hope that agreement can be reached on the protective provisions in time for Deadline 11.

**Host Authorities' Response at Deadline 10 to DCO Matters**

**APPENDIX**

**HOST AUTHORITIES' PREFERRED FORM  
OF LOCAL HIGHWAY AUTHORITY PROTECTIVE PROVISIONS**

## PART 6

### FOR THE PROTECTION OF LOCAL HIGHWAY AUTHORITIES

*Application, etc.*

**53.**—(1) The provisions of this Part of this Schedule apply for the protection of local highway authorities unless otherwise agreed in writing between the undertaker and a relevant highway authority.

(2) An agreement for the purpose of sub-paragraph (1) includes, but is not limited to, an agreement made under article 17 of this Order, or under the 1980 Act.

**54.** In this Part of this Schedule—

“bond sum” means the sum equal to 150% of the costs of carrying out the relevant works (to include all the costs plus the commuted sum) or such other sum agreed between the undertaker and the relevant highway authority;

“the cash surety” means the sum agreed between the undertaker and the relevant highway;

“commuted sum” means such sum calculated as provided for in paragraph 66 of this Part of this Schedule to be used to fund the future cost of maintaining the relevant works;

“detailed design information” means such drawings, specifications and other information relating to a local ~~road~~highway, as are relevant to any relevant works, to comprise the following—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) road restraint systems (vehicle and pedestrian);
- (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 as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways;
- (f) ~~road~~highway pavements, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) electrical work for ~~road~~highway lighting and traffic signs;
- (k) highway structures;
- (l) landscaping, planting and any boundary features which will form part of the local ~~road~~highway;
- (m) utility diversions insofar as in the existing or proposed local ~~road~~highway;
- (n) a schedule of timings for the works, including dates and durations for any closures of any part of the local ~~road~~highway;
- (o) stage 1 and stage 2 road safety audits prepared in accordance with paragraph 56;
- (p) ~~(o)~~ traffic management proposals including any diversionary routes;
- (q) ~~(p)~~ a schedule of the existing local ~~road~~highway condition prior to commencement of construction related activities;
- (r) ~~(q)~~ a specification of the condition in which it is proposed that the local ~~road~~highway will be returned once the relevant works have been completed;
- (s) tracking plans, including a version of such plans in AutoCAD format or such other software format as the relevant highway authority may reasonably request;

(t) highway alignment drawings;

(u) drainage contour plan and drainage calculations;

(v) visibility splay plans; and

(w) ~~(+)~~any temporary works structures which are to be erected or retained under the Order or otherwise;

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

“final certificate” means the final certificate issued by a relevant highway authority under paragraph 63 of this Part of this Schedule;

“local ~~road~~highway” means any public, ~~vehicular~~ highway (excluding any highway forming part of the strategic road network) maintainable by a local highway authority;

“maintenance period” means 12 months from the date of the provisional certificate being served under paragraph 61 of this Part of this Schedule unless otherwise agreed in writing between the undertaker and the relevant highway authority;

“provisional certificate” means the certificate served under paragraph 61 of this Part of this Schedule;

“relevant works” means any authorised development that involves the construction, alteration or improvement of a local ~~road~~highway; and

“specification for ~~Highways Works~~highways works” means the specification for highways works ~~forming part of the manual of contract documents for highway works published by National Highways and published from time to time by the relevant highway authority~~ setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the ~~strategic road~~local highway network.

*Detailed design information and ~~commencement~~beginning relevant works*

55.—(1) Before beginning any relevant works—

(a) ~~55.—55. Before commencing any relevant works,~~ the undertaker must provide to the relevant highway authority the detailed design information relating to those relevant works and obtain the relevant highway authority’s written approval for those works ~~in accordance with paragraph 6 of Schedule 2;~~ and

(b) booked road space for those relevant works to be carried out.

(2) The undertaker must not apply for the approvals required under sub-paragraphs 6(3)(b) or 6(3)(c) of Schedule 2 in relation to any relevant works until it has received the approval of the relevant highway authority under sub-paragraph (1) for those relevant works.

(3) ~~(+)~~Paragraph 6 of Schedule 2 does not apply to the relevant works to the extent the undertaker and the relevant highway authority agree (acting reasonably) that a permit issued under a permit scheme applies to the works.

### Security

#### *Road safety audits*

56.—~~56.~~ The relevant works must not ~~commence~~begin until—

~~the undertaker has procured an appropriately qualified road safety audit team (as defined in DMRB standard GG 119) to undertake a stage 1 and 2 road safety audit in respect of all relevant works in accordance with DMRB standard GG 119 and (a)the undertaker has provided copies of the reports of such audits to the relevant highway authority; and~~

(a) the undertaker procures that the relevant works are secured by a bond from a bondsman first approved by the relevant highway authority, in a form agreed between the undertaker and the relevant highway authority, to indemnify the relevant highway authority 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 relevant 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 the the relevant highway authority in the event of the undertaker failing to make payments under paragraph 61 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.

#### Road safety audits

57.—(1) Road safety audits required to be carried out by the undertaker under the provisions of this Part of this Schedule must be carried out in accordance with the Design Manual for Roads and Bridges standard GG119 or any replacement or modification of it.

(2) No stage of any road safety audit that is required to be carried out by the undertaker under this Part of this Schedule in relation to any relevant works is to begin until the relevant highway authority has approved (b) ~~the in writing for that stage of road safety audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard of those relevant works—~~

- (a) the curriculum vitae of the persons carrying out the road safety audit; and  
(b) the road safety audit brief.

(3) The relevant works must not begin until—

- (a) any recommendations of the stage 1 and stage 2 road safety audits for those works approved by the relevant highway authority under paragraph 55—  
(i) have been carried out; or  
(ii) any exceptions have been approved in writing by the relevant highway authority.

(4) (2) Where the report of the stage 3 and 4 road safety audit identifies any recommended measures in respect of a local road, the undertaker must carry out, at its own expense and to the reasonable satisfaction of the relevant highway authority, those measures identified as part of the stage 3 and 4 road safety audit provided that—

- (a) the undertaker has the powers to deliver the measures under this Order; and  
(b) the measures do not give rise to any new or materially different environmental effects in comparison with those identified in the environmental statement.

(5) If by the operation of sub-paragraphs (4)(a) or (4)(b) the undertaker is not required to carry out the recommendations of a stage 3 or stage 4 road safety audit the relevant highway authority may instead carry out those recommendations and recover the costs of so doing from the undertaker.

#### *Construction of the relevant works*

58.57. The relevant works must be carried out by the undertaker to the reasonable satisfaction of the relevant highway authority in accordance with—

- (a) the relevant detailed design information approved by the relevant highway authority under paragraph ~~6 of Schedule 2 55~~ or as subsequently varied by agreement between the undertaker and the relevant highway authority;  
(b) the DMRB, the ~~Specification for Highway Works (contained within and including the Manual of Contract Documents for Highway Works)~~ specification for highways works, together with all other relevant standards as required by the relevant highway authority to include, inter alia, all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016(a) save to the extent that exceptions from those standards apply which have been approved by the relevant highway authority; and

---

(a) S.I. 2016/362.



- (c) all ~~aspect~~ aspects of the Construction (Design and Management) Regulations 2015(a) 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 reasonable satisfaction of the relevant highway authority.

*Inspections and testing of materials*

~~59.58.~~—(1) The undertaker must allow and facilitate an appropriately qualified officer or officers of a relevant highway authority that have been nominated by that relevant highway authority (each being a “nominated officer”) to access and inspect at all reasonable times any part of the relevant works during their construction and before a final certificate has been issued in respect of the relevant works as is reasonably necessary to ensure that the works have been or are being carried out to the appropriate standard.

(2) Any testing reasonably requested by the relevant highway authority of materials used in any relevant works must be carried out at the undertaker’s expense and in accordance with the DMRB (or any other testing specification agreed by the undertaker and the relevant highway authority acting reasonably).

(3) A relevant highway authority (or its agent) may test all or any materials used or proposed to be used in any relevant works and the undertaker must provide such information—access and materials as is reasonably ~~necessary~~ required to facilitate such testing.

(4) The undertaker must, as soon as is reasonably practicable, provide the relevant highway authority with a copy of all test certificates and results relevant to the relevant works that the relevant highway authority has requested in writing.

(5) The relevant highway authority must as soon as is reasonably practicable provide the undertaker with a copy of all test results and certificates relevant to the works that the undertaker has requested in writing.

~~(5) — In circumstances where any relevant work carried out by the undertaker is tested by the relevant highway authority pursuant to the provisions of this Part and that test resulted in works being undone at the undertaker’s expense (acting reasonably) and found to be satisfactory then that expense must forthwith be reimbursed by the relevant highway authority provided that the relevant highway authority was given a reasonable opportunity by the undertaker to inspect the works at a time when the works could have been inspected without the need to incur the expense.~~

~~(6)~~ (6) If any part of the relevant 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 the relevant highway authority,

the relevant highway authority 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 reasonable satisfaction of the relevant highway authority.

~~(7)~~ (7) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the local ~~road~~ highway then the relevant highway authority may by notice in writing require the undertaker, at its own expense, to remedy the damage.

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

---

(a) S.I. 2015.51.

*Defects in local ~~roads~~ highways constructed by the undertaker*

~~60.59.~~—(1) Until such time as a final certificate has been issued in respect of any relevant works, the undertaker must make good any defects in the relevant works constructed by the undertaker to the reasonable satisfaction of the relevant highway authority.

(2) The undertaker must submit to the relevant highway authority ~~and the undertaker agree~~ for its approval, such details and information relating to making good any defects under sub-paragraph (1) as the relevant highway authority ~~and the undertaker agree~~ considers is reasonable in the circumstances.

*Payments*

~~61.60.~~—(1) The undertaker must pay to the relevant highway authority a sum equal to the whole of any costs and expenses which the relevant highway authority reasonably incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes abortive) in relation to the relevant works and in relation to any approvals sought under this Order, or otherwise incurred under this Part of this Schedule, including—

- (a) the checking and approval of the information and any advice given to the undertaker relating to the design, specification and programme of the relevant works generally;
- (b) the supervision of the relevant works;
- (c) the checking and approval of the information required to determine approvals under this Order;
- (d) all reasonable legal, technical and administrative costs and disbursements incurred by the relevant highway authority in connection with sub-paragraphs (a)-(c); and
- (e) any value added tax which is payable by the relevant highway authority in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the costs”.

(2) The undertaker must pay to the relevant highway authority upon demand and prior to such costs being incurred the total costs that the relevant highway authority reasonably believe will be properly and necessarily incurred by the relevant highway authority 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) The relevant highway authority must provide the undertaker with a fully itemised schedule showing its estimate of the relevant highway authority costs prior to the commencement of the relevant works and the undertaker must pay to the relevant highway authority the estimate of the costs attributable to the relevant works prior to commencing the relevant works and in any event prior to the relevant highway authority incurring any cost.

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

(5) The relevant highway authority must give the undertaker a final account of the costs referred to in sub-paragraph (1) to (4) above within 30 days of the issue of the provisional certificate issued pursuant to paragraph 61.

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

- (a) if the final account shows a further sum as due to the relevant highway authority the undertaker must pay to the relevant highway authority the sum shown due to it; and
- (b) if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by the relevant highway authority, the relevant highway authority 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 payment from whom it was due must at the same time as

making the payment pay to the other party interest at 1% 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*

~~62.61.~~—(1) Subject to sub-paragraph (2), when the undertaker considers that the relevant works have reached completion so that they are available for use by the public it must apply to the relevant highway authority for a provisional certificate and must allow the relevant highway authority the opportunity to inspect the relevant works to identify any defects or incomplete works (and the undertaker must make good such defects pursuant to paragraph ~~59~~60).

(2) Following an application for a provisional certificate, the relevant highway authority must as soon as reasonably practicable—

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

(3) When—

- (a) a stage 3 road safety audit has been carried out in respect of the relevant works in question ~~in accordance with GG 119 of DMRB~~ and any recommended measures identified in the audit have been completed and approved by the relevant highway authority; ~~or~~
- (b) the relevant highway authority has been provided an opportunity to inspect the relevant works and the undertaker has completed any further works or measures required to address any safety deficiencies or defects identified as a result of the inspection ~~to~~ the reasonable satisfaction of the relevant highway authority; and
- (c) the undertaker has paid the commuted sum to the relevant highway authority,

the relevant highway authority must promptly issue the provisional certificate.

(4) The undertaker must submit a stage 4 road safety audit as required by and in line with the timescales stipulated in the road safety audit standard.

(5) The undertaker must comply with the findings of the stage 4 road safety standard and must pay all reasonable costs of and incidental to such an provide updated as-built information to the relevant highway authority.

#### *Maintenance*

~~63.62.~~—(1) ~~Subject Notwithstanding article 12 of this Order but subject~~ to paragraph (2), the undertaker must maintain the relevant works ~~throughout the maintenance period~~ to a standard appropriate to their use by the public until the final certificate is issued in accordance with paragraph 64.

(2) Nothing in paragraph (1) makes the undertaker responsible for the maintenance of any street works or maintenance works undertaken by any person other than the undertaker or which do not form part of the relevant works during the maintenance period.

#### *Final certificate*

~~64.63.~~—(1) ~~A No sooner than 12 months from the date of issue of the provisional certificate the undertaker may apply in writing to the~~ relevant highway authority ~~must promptly issue for~~ a final certificate in respect of ~~any the~~ relevant works ~~where—~~;

~~(a) the maintenance period has passed;~~

~~(2) (b) all identified defects requiring remediation under sub-paragraph 59(1) have been remedied to~~ Following receipt of the application for a final certificate, the relevant highway authority's reasonable satisfaction; must as soon as is reasonably practicable—

- (a) inspect the relevant works;
  - (b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the local highway 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 (2).
- (4) The relevant highway authority must issue the final certificate to the undertaker once the relevant highway authority is reasonably satisfied in relation to the relevant works that—
- (a) any defects or damage arising from defects during the maintenance period and any defects notified to the undertaker pursuant to sub-paragraph (2) and any remedial works required as a result of the stage 4 road safety audit have been made good to the reasonable satisfaction of the relevant highway authority; and
  - (b) ~~(e)the undertaker has given the relevant highway authority a reasonable opportunity to inspect the relevant works in readiness for the issue of a final certificate and has given due consideration and acted accordingly in respect of any representations made by the costs have been paid to~~ the relevant highway authority in respect of the relevant works;full,
  - (c) ~~(d)~~the undertaker has provided the relevant highway authority with a health and safety file in respect of the relevant works to the relevant highway authority’s reasonable satisfaction;
  - (d) ~~(e)~~the undertaker has provided the relevant highway authority with such detailed design information as the relevant highway authority has requested (acting reasonably) in relation to the relevant works as built.
- (5) ~~(2)~~The issue of a final certificate by a relevant highway authority amounts to an acknowledgment by the relevant highway authority that the construction alteration or diversion (as the case may be) of a highway has been completed to its reasonable satisfaction for the purposes of article 12 of this Order.
- (6) On the issue of the final certificate to the undertaker the bond is to be released in full.

*Emergency work*

~~65.64.~~ Nothing in this Part of this Schedule prevents a relevant highway authority from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public.

*Land interests*

~~66.65.~~ Following the issuing of the final certificate under paragraph 63 in respect of any part of a local ~~road~~highway, the undertaker must, if requested by the relevant highway authority, in respect of a local ~~road~~highway which is to be maintainable by the relevant highway authority following, and as a result of, the completion of those works either—

- (a) execute and complete a transfer to the relevant highway authority at nil consideration of any land and rights which have been compulsorily acquired under this Order and which are necessary for the maintenance and operation of a local ~~road~~highway; or
- (b) exercise article 24 (compulsory acquisition of land) and article 27 (compulsory acquisition of rights and imposition of restrictive covenants) of this Order to directly vest in the relevant highway authority land or s which are necessary for the maintenance and operation of a local ~~road~~highway,

unless otherwise agreed between the undertaker and the relevant highway authority.

*Commuted sums*

~~67.66.~~—(1) The relevant highway authority 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~~ [the relevant highway authority's published guidance](#) or any successor guidance, prior to the commencement of the relevant works.

(2) The undertaker must pay to the relevant highway authority the commuted sum prior to the issue of the provisional certificate.

#### *Insurance*

~~68.67.~~ Prior to the commencement of relevant works the undertaker must ensure that such public liability insurance [in the minimum sum of £10,000,000](#) as the local highway authority may reasonably require for the relevant works in question is in place with an insurer against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of relevant works.

#### *Indemnity*

~~69.68.~~—(1) Subject to sub-paragraphs (2) and (3) the undertaker fully indemnifies the relevant highway authority from and against all costs, claims, expenses, damages, losses and liabilities suffered by the relevant highway authority arising from the construction, maintenance or use of the relevant works or exercise of or failure to exercise any power under this Order within 14 days of demand.

(2) Sub-paragraph (1) does not apply to costs, claims, expenses, damages, losses and liabilities which were caused by or arose out of the negligence or default of the relevant highway authority or its officers, servants, agents or contractors or any person or body for whom it is responsible.

(3) If any person makes a claim or notifies an intention to make a claim against the relevant highway authority which may reasonably be considered likely to give rise to a liability under this paragraph then the relevant highway authority must—

- (a) as soon as reasonably practicable give the undertaker reasonable notice of any such third party claim or demand, specifying the nature of the indemnity liability in reasonable detail; and
- (b) not make any admission of liability, agreement or compromise in relation to the indemnity liability without first consulting the undertaker and considering their representations.

(4) The relevant highway authority must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph applies where it is within the relevant highway authority's reasonable gift and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of the relevant highway authority's control. The relevant highway authority must provide an explanation of how any claim has been mitigated or minimised or where mitigation or minimisation is not possible an explanation as to why, if reasonably requested to do so by the undertaker and only in relation to costs that are incurred which are within the relevant highway authority's direct control.