

PLANNING ACT 2008
INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE)
RULES 2010

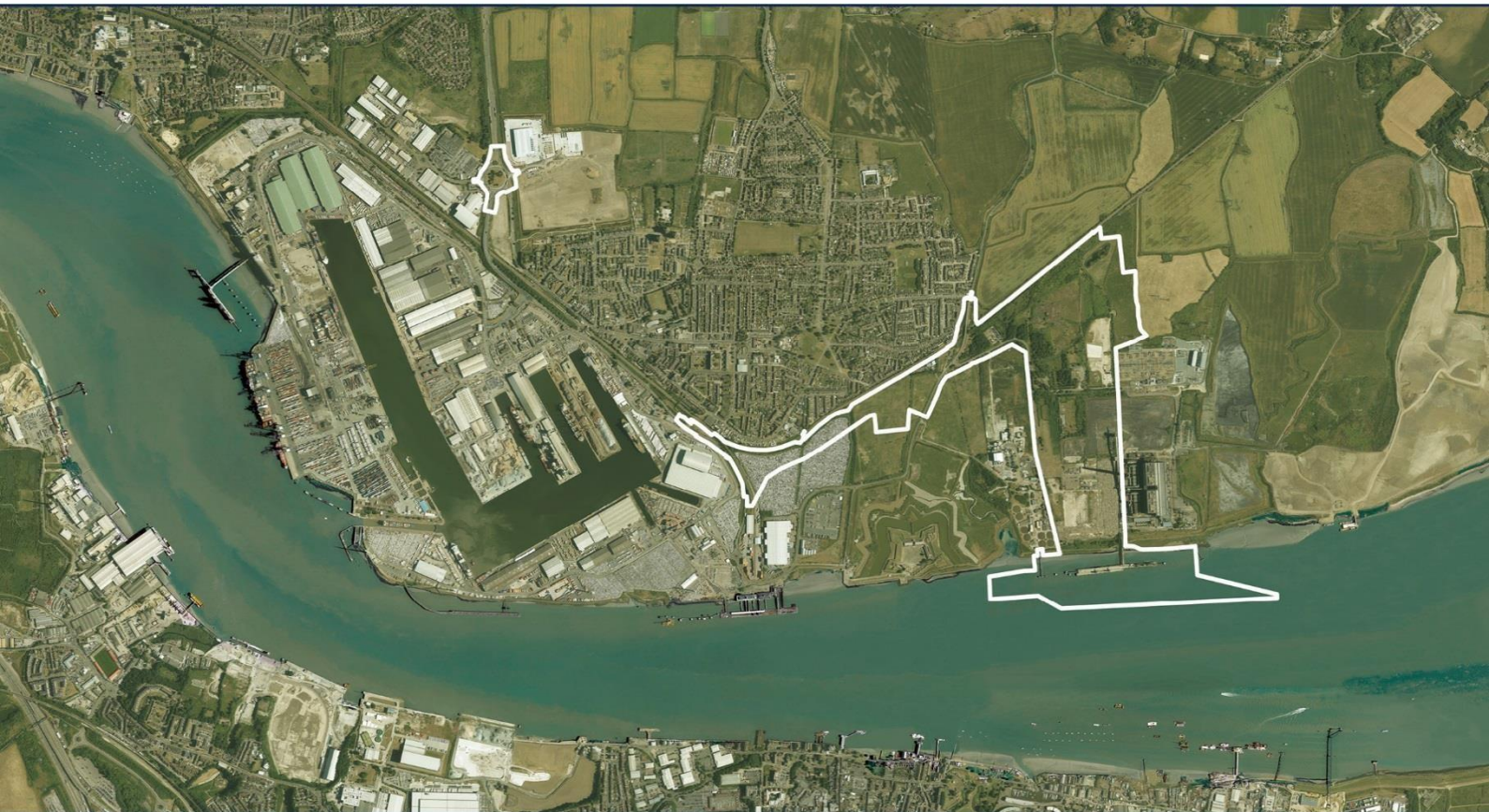
PROPOSED PORT TERMINAL AT FORMER TILBURY POWER STATION

TILBURY2

TR030003

NOTE ON PROTECTIVE PROVISIONS FOR THE BENEFIT OF HIGHWAYS ENGLAND

TILBURY2 DOCUMENT REF: PoTLL/T2/EX/87



PLANNING ACT 2008

INFRASTRUCTURE PLANNING
(APPLICATIONS: PRESCRIBED FORMS AND PROCEDURE) REGULATIONS 2009

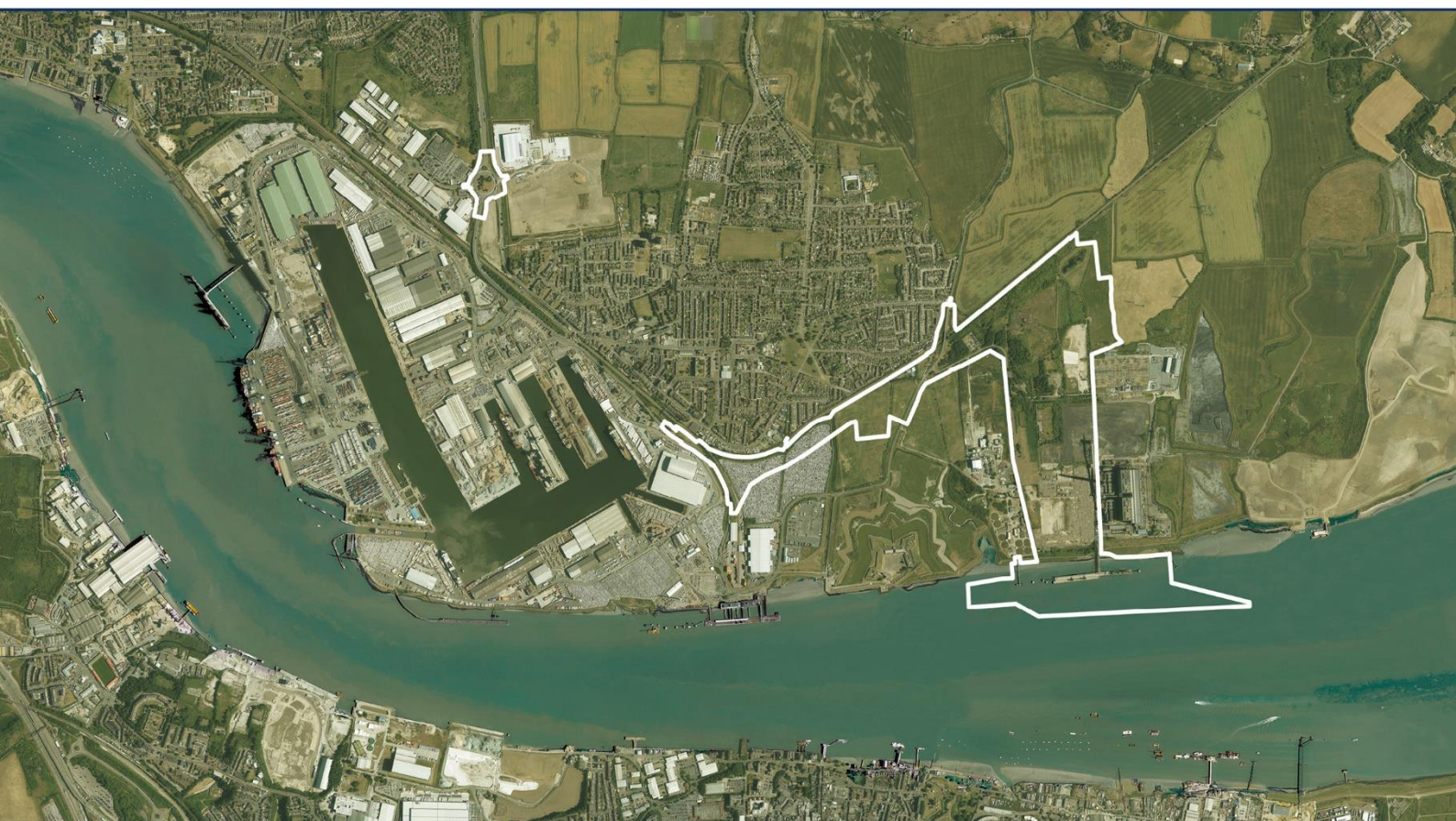
PROPOSED PORT TERMINAL AT FORMER TILBURY POWER STATION

TILBURY2

PoTLL DEADLINE 3 SUBMISSIONS

NOTE ON PROTECTIVE PROVISIONS FOR THE BENEFIT OF
HIGHWAYS ENGLAND

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PORT OF TILBURY

PLANNING ACT 2008

**PROPOSED PORT TERMINAL AT FORMER TILBURY POWER STATION
'TILBURY2'**

**NOTE ON PROTECTIVE PROVISIONS FOR THE BENEFIT OF HIGHWAYS
ENGLAND**

CONTENTS

1.0	INTRODUCTION.....	3
2.0	WORKS TO THE SRN IN OTHER DCOS WITH PROTECTIVE PROVISIONS FOR THE BENEFIT OF HIGHWAYS ENGLAND	4
3.0	COMPARISON OF PROTECTIVE PROVISIONS.....	6
4.0	NEXT STEPS.....	9
	APPENDIX 1: EMG ORDER HIGHWAYS ENGLAND PROTECTIVE PROVISIONS.....	10
	APPENDIX 2: M1 JUNCTION 10A HIGHWAYS ENGLAND PROTECTIVE PROVISIONS.....	18

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1.0 INTRODUCTION

- 1.1 The purpose of this document is to consider the suggestion by Highways England in its Written Representation (REP1-060) and in its oral representations at both sets of Tilbury2 hearings to date, that the protective provisions for its benefit within the Tilbury2 DCO should mirror those in the East Midlands Gateway Rail Freight Interchange and Highway Order 2016 ("the EMG Order"). These provisions are included at **Appendix 1** to this note.
- 1.2 The EMG Order is one of three DCOs made to date that have included protective provisions for Highways England (or the Highways Agency as its predecessor organisation). The other two such DCOs are the M1 Junction 10a (Grade Separation) Order 2013, promoted by Luton Borough Council, and the Able Marine Energy Park Development Consent Order 2014, promoted by Able Humber Ports Limited.
- 1.3 The Able Marine Energy Park DCO involved a simple provision requiring highways works to be undertaken, details of which were to be approved by the local planning authority in consultation with the Highways Agency (as it then was). As such, this DCO is not discussed further in this note.
- 1.4 The M1 Junction 10A DCO did include a proper set of protective provisions for the Highways Agency (included at **Appendix 2** to this note), and thus is relevant for the purposes of this note. These protective provisions are similar to those set out in the draft Tilbury2 DCO.
- 1.5 This note therefore begins with a comparison of the works to the strategic road network ('SRN') authorised by the EMG Order, the M1 Junction 10A DCO and Tilbury2.

2.0 WORKS TO THE SRN IN OTHER DCOS WITH PROTECTIVE PROVISIONS FOR THE BENEFIT OF HIGHWAYS ENGLAND

2.1 The EMG Order involved extensive highway works to alter the SRN and create new parts of it. This is best illustrated by extracts from the plans accompanying the application for that Order set out below.

2.2 On these plans:

- the area shaded yellow was authorised for the construction of interchange links and improvements to M1 southbound from junction 24A to junction 24, and alterations to J24 roundabouts east of the M1;
- the area shaded green was authorised for alternations to junction 24 roundabouts west of the M1, improvements to the A50 and A453 west of the M1, and alterations to the M1 northbound slip road; and
- the area shaded brown was authorised for the construction of an overbridge over the M1, for which Highways England is to take responsibility.



- 2.3 It can be immediately seen that the SRN works authorised within the EMG Order are of a substantial scale, and several times in magnitude larger than those proposed with the Tilbury2 DCO.
- 2.4 The M1 Junction 10A Order involved the reconfiguration of the link between Junction 10 and Junction 10A of the M1 south-west of Luton, including removing an existing roundabout and replacing it with a grade-separated junction.
- 2.5 It involved some spur roads and the widened realigned trunk road being passed to Highways England. This included provision for an underbridge for a local road to pass underneath the trunk road.
- 2.6 Again, these works were on a far larger scale than those proposed at the Asda roundabout as part of the Tilbury2 DCO.

3.0 COMPARISON OF PROTECTIVE PROVISIONS

Tilbury2 DCO and M1 Junction 10A DCO

- 3.1 In the context of the sizes of the schemes involved identified above, it should be noted that the M1 Junction 10A DCO protective provisions are extremely similar to those set out in the Tilbury2 DCO, in that they both:
- provide for approval of plans of the proposed works to the SRN, such approval to be in writing and subject to conditions as Highways England thinks fit;
 - provide for deemed approval of such plans if no response is received from Highways England after a certain period – 21 days for the M1, 28 days for Tilbury2; and for the same again if plans are required to be re-submitted;
 - provide that Highways England cannot give instructions to contractors, or servants or agents of the applicant without the applicant's prior written consent, except in cases of emergency or reasonably necessary to secure the safety of the public; and
 - provide for disputes to be settled by arbitration.
- 3.2 The M1 Junction 10A DCO provides for Highways England to supply a representative to meetings with the applicant if so arranged. This is not included in the Tilbury2 DCO which goes further than the above in providing additional protections for Highways England, namely:
- providing that PoTLL must indemnify Highways England against any claims which may arise as a result of any damage to the highway or related facilities which is the responsibility of PoTLL, its contractors, servants or agents; and
 - providing that, if requested by Highways England, PoTLL must provide and maintain temporary traffic regulation measures whilst the works are carried out.
- 3.3 The crucial element of the PPs within the Tilbury2 and M1 Junction 10A DCOs is that they provide for pre-approval of the detailed design of the works. As such, Highways England will have ultimate control of how they look and how they are carried out, and can therefore impose any reasonable condition it sees fit including, for example, the need to carry out Road Safety Audits, and the need for Highways England to inspect the works.
- 3.4 This approval process therefore completely avoids the need for the protective provisions to set out detailed requirements.
- 3.5 In the case of Tilbury2, this context must be seen in the light of Requirement 7, which provides that the proposed CMAT and RoRo terminals cannot open for use until the Asda Roundabout works are completed and open for public

use. As such, it is in PoTLL's interest to obtain these approvals from Highways England as soon as possible.

EMG Order

- 3.6 In comparison to these provisions, the EMG Order provisions are drafted in a way which essentially copies out what would be included in a section 278 agreement under the Highways Act 1980, and are prescriptive in terms of the conditions under which the proposed works could take place. It is PoTLL's position that the scale of works involved does not justify the bureaucracy that the arrangements would require. They are disproportionate to the impact of the project on the SRN.
- 3.7 As such, these prescriptions are likely to be unnecessary for Tilbury2 given the small scale of the works, but could be applied if felt necessary by Highways England at the detailed design stage. However, it is considered unnecessary for such prescriptions to be included on the face of the Tilbury2 DCO.
- 3.8 PoTLL would also note that some provisions are already included in the Tilbury2 DCO, such as pre-approval of plans and the imposition of traffic regulation measures.

Concerns with the EMG Order

- 3.9 Even if the Examining Authority and the Secretary of State were minded to disagree with the above conclusions, PoTLL is concerned about specific provisions of the EMG Order, which it believes should not form part of the Tilbury2 DCO in any scenario.
- 3.10 These provisions relate to the potential requirement for PoTLL to obtain public liability insurance for the works; the potential need for PoTLL to have to provide some form of security for the SRN works (such as a bond supplied by a surety); and the potential need for PoTLL to pay a commuted sum for on-going maintenance of the SRN works.
- 3.11 In respect of the first two points, PoTLL would note the following:
- Given Requirement 7 (as noted above), there is no doubt that PoTLL will complete the SRN works, as it is required to, to enable Tilbury2 to open. As such a bond arrangement, which is usually required to ensure that works can be completed if a development falls away, would not be necessary.
 - Should PoTLL be granted the powers sought in the dDCO, it will be a statutory undertaker exercising public statutory functions in relation to Tilbury 2 (as it already is for the existing Port) and will be regarded by the Secretary of State as a fit and proper person to exercise the powers it is seeking as such a body. In contrast, the promoter of the EMG Order was a private entity, and so concerns as to financial standing and security could perhaps be better understood.

- Through his consideration of the Funding Statement, the Secretary of State will have considered the ability of PoTLL to construct all necessary DCO works, and determined that it has the ability to do so. As such a bond would not be required.
 - The requirement for a promoter to have in place in the form of a bond and cash surety is a highly irregular provision for an order conferring statutory powers to construct works. PoTLL is in fact unaware of any other Order (DCO or otherwise) which provides for this.
- 3.12 As such, it is considered by PoTLL that these provisions within the EMG Order are both unsuitable and unnecessary for Tilbury2.
- 3.13 In respect of a potential requirement for a commuted sum in respect of maintenance, PoTLL notes that this is again a highly unprecedented provision to be put on the face of an Order, indeed the only other example it can find is the City of Edinburgh (Guided Busways) Confirmation Order 1998.
- 3.14 Furthermore, it considers that given the scale of the works, a commuted sum may not be necessary following the end of the 12 month maintenance period provided for by article 10 of the Tilbury2 DCO. As such, it is not justified for such a provision to be included.
- 3.15 However, it should be noted that a request for a commuted sum could be dealt with as part of the pre-approval process under the protective provisions, as part of discussions as to the detailed design of the SRN works.

4.0 NEXT STEPS

- 4.1 PoTLL continues to discuss the proposed protective provisions for Highways England's benefit with Highways England.
- 4.2 For all of the reasons noted above, it is considered that it would not be appropriate simply to replace the existing Tilbury2 proposed provisions with those of the EMG Order.
- 4.3 PoTLL has therefore asked Highways England to suggest proposed amendments to the Tilbury2 DCO which could deal with their concerns but which take account of the differing circumstances of the Tilbury2 development.
- 4.4 In particular, PoTLL has asked Highways England to consider which of its concerns do need to be on the face of the Order, and which would be able to be considered as part of the pre-approval process envisaged in the current draft of the Tilbury2 DCO.
- 4.5 These proposed amendments are expected to be received in the week commencing 30 April, with the hope that progress can be made prior to Deadline 4 and the proposed June hearings.

APPENDIX 1: EMG ORDER HIGHWAYS ENGLAND PROTECTIVE PROVISIONS

SCHEDULE 19

Article 38

FOR THE PROTECTION OF HIGHWAYS ENGLAND

Application

1. The provisions of this Schedule have effect.

Interpretation

2. In this Schedule—

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

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker;
- (b) list of supplies and materials, test results and CCTV drawings;
- (c) product data sheets, technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for works carried out;
- (f) in relation to road lighting, signs and traffic signals any information required by Series 1400 of the Specification for Highway Works;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records; and
- (j) other such information as may be reasonably required by Highways England to be used to update any relevant databases;

“the bond sum” means the sum equal to 110% of the cost of the carrying out of the phase of highway works concerned or such other sum agreed between the undertaker and Highways England;

“the cash surety” means the sum of £200,000.00 or such other sum agreed between the undertaker and Highways England;

“the commuted sums” means the commuted sums calculated in accordance with paragraph 10;

“contractor” means any contractor or sub-contractor appointed by the undertaker to carry out the highway works or any phase of the highway works and approved by Highways England under paragraph 3(2);

“detailed design information” means the following drawings, specifications and other information which must be in accordance with the general arrangements shown on the relevant regulation 6(2) plans—

- (a) site clearance details;
- (b) boundary environmental and mitigation fencing;
- (c) road restraint systems (vehicle and pedestrian);
- (d) drainage and ducting;
- (e) earthworks;
- (f) road pavements;
- (g) kerbs, footways and paved areas;
- (h) traffic signs, signals and road markings;
- (i) road lighting (including columns and brackets);
- (j) CCTV masts and cantilever masts;
- (k) electrical work for road lighting and traffic signs;
- (l) motorway communications;
- (m) highway structures;
- (n) landscaping; and
- (o) utilities diversions,

where relevant to the phase concerned;

“estimated costs” means the estimated costs in respect of each phase agreed under paragraph 5(1) and (5);

“the excess” means the amount by which Highways England estimates that the costs referred to in paragraph 5(1) will exceed the estimated costs under paragraph 5(5)(b);

“highway works” means that part of the authorised development to be carried out in the areas identified as i, ii, vi and ix on the highway works components plans the general arrangement of which is shown on the relevant regulation 6(2) plan and any works ancillary to that part of the authorised development;

“nominated persons” means the undertaker’s representatives or the contractors’ representatives on site during the carrying out of the highway works;

“phase” means that part of the highway works which is to be carried out in separate phases in the areas identified as i, ii, vi and ix on the highway works components plan except that components ii and ix is a single phase, or such other phasing arrangements as are agreed with Highways England;

“programme of works” means a document setting out the sequence and timetabling of works for the phase in question;

“relevant regulation 6(2) plans” means Documents 2.4A, 2.4B, 2.4E, 2.4H, 2.4J, 2.4M and 2.4N certified under article 39 (certification of plans etc.);

“Road Safety Audit Standard” means the Design Manual for Roads and Bridges Standard HD 19/15 or any replacement or modification of that part of the Manual; and

“utilities” means any pipes, wires, cables or equipment belonging to any person or body having power or consent to undertake street works under the 1991 Act.

Prior approvals and security

3.—(1) No work is to commence on any phase of the highway works until the detailed design information and a programme of works in respect of that phase has been submitted to and approved by Highways England and, in the case of phase ix identified on the highway works component plans, also submitted to and approved by Leicestershire County Council, such approvals not to be unreasonably withheld or delayed.

(2) No works are to commence on any phase of the highway works other than by a contractor employed by the undertaker but first approved by Highways England, such approval in respect of each phase not to be unreasonably withheld or delayed.

(3) No work is to commence on any phase of the highway works until the undertaker has provided security for the carrying out of those works as provided for in paragraph 8 or some other form of security acceptable to Highways England.

(4) No work is to commence on any phase of the highway works until Highways England have considered whether a temporary traffic regulation order is necessary for that phase and if necessary Highways England have approved and made the necessary temporary traffic regulation order.

(5) No work is to commence on any phase of the highway works until a Stage 2 Road Safety Audit has been carried out in respect of that phase in accordance with the Road Safety Audit Standard and if necessary all issues raised incorporated into an amended design approved by Highways England or any relevant exceptions approved by Highways England.

(6) No work is to commence on any phase of the highway works until traffic management provisions have been agreed with Highways England, such agreement not to be unreasonably withheld or delayed.

(7) No work is to commence on any phase of the highway works until stakeholder liaison has taken place in accordance with a scheme for such liaison agreed between the undertaker and Highways England.

Carrying out of works

4.—(1) If the undertaker commences the authorised development the undertaker must design construct, test and commission the highway works.

(2) The undertaker must prior to commencement of each phase of the highway works give Highways England 28 days’ notice in writing of the proposed date on which that phase will start.

(3) The undertaker must comply with Highways England’s usual road space booking procedures prior to and during the carrying out of each phase of the highway works and no highway works for which a road space booking is required can commence without a road space booking having first been secured.

(4) Each phase of the highways works must be carried out to the satisfaction of Highways England in accordance with—

- (a) the relevant detailed design information;
- (b) a programme of works approved under paragraph 3(1) or as subsequently varied by agreement between the undertaker and Highways England;
- (c) the Design Manual for Roads and Bridges, the Specification for Highway Works (contained within the Manual of Contract Documents for Highways Works) and any amendment to or replacement of those documents for the time being in force except to the extent that they are a departure from such standards and have been approved by Highways England and such approvals or requirements of Highways England in paragraph 3 that need to be in place prior to the works being undertaken; and

- (d) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker must ensure that all client duties (as defined in the said Regulations) are satisfied and must indemnify Highways England against all claims, damages, costs, losses, liabilities and actions arising out of a failure to do so.

(5) The undertaker must permit and require the contractor to permit at all reasonable times persons authorised by Highways England (whose identity must have been previously notified to the undertaker) to gain access to the highway works for the purposes of inspection and supervision and the undertaker must provide to Highways England contact details of the nominated persons with whom Highways England should liaise during the carrying out of the highway works.

(6) At any time during the carrying out of the highway works the nominated persons must act upon any request made by Highways England in relation to the carrying out of the highway works as soon as practicable following such request being made to the nominated persons except to the extent that the contents of such request are inconsistent with or fall outside the contractor's obligations under its contract with the undertaker or the undertakers obligations in this Order.

(7) If at any time the undertaker does not comply with any of the terms of this Schedule in respect of any phase of the highway works having been given notice of an alleged breach and an adequate opportunity to remedy it by Highways England then Highways England is on giving to the undertaker 14 days' notice in writing to that effect entitled to carry out and complete that phase of the highway works and any maintenance works which the undertaker would have been responsible for on the undertaker's behalf and the undertaker must within 28 days of receipt of the itemised costs pay to Highways England the costs so incurred by Highways England.

(8) Nothing in this Schedule prevents Highways England from carrying out any work or taking such action as deemed appropriate straight away without prior notice to the undertaker in the event of an emergency or danger to the public, the cost to Highways England of such work or action being chargeable to and recoverable from the undertaker if the need for such action arises from the carrying out of the highway works.

(9) For the avoidance of doubt it is confirmed that the undertaker in carrying out each phase of the highway works must at its own expense divert or protect all utilities as may be necessary to enable the highway works to be properly carried out and all agreed alterations to existing services must be carried out to the reasonable satisfaction of Highways England.

Payments

5.—(1) The undertaker must fund the whole of the highway works costs and all costs incidental to the highway works and must also pay to Highways England in respect of each phase of the highway works a sum equal to the whole of any costs and expenses which Highways England incur, (the estimated costs), including costs and expenses for using external staff and resources as well as costs and expenses of using in house staff and resources in relation to the highway works and arising out of it and its implementation including without limitation on the scope—

- (a) the checking and approval of all design work carried out by or on behalf of the undertaker for that phase;
- (b) costs in relation to agreeing the programme of works for that phase;
- (c) the carrying out of supervision of that phase of the highway works;
- (d) all legal and administrative costs in relation to paragraphs (a) and (b); and
- (e) all costs in relation to the transfer of any land required for the highway works.

(2) The sums referred to in subparagraph (1) do not include any sums payable from the undertaker to the contractor but do include any value added tax which is payable by Highways England in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs.

(3) The undertaker must pay to Highways England upon demand the total costs properly and reasonably incurred by Highways England 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 highways works and whether or not such procedure or order is or are experimental, temporary or permanent provided that this paragraph does not apply to the making of any orders which duplicate orders contained in this Order.

(4) The undertaker and Highways England must agree a schedule of the estimated costs to be incurred under sub-paragraph (1) in respect of each phase prior to the commencement of that phase.

(5) The undertaker must make the payments referred to in sub-paragraph (1) as follows—

- (a) the undertaker must pay a sum equal to the agreed estimated costs in respect of a phase prior to commencing that phase; and
- (b) if at any time or times after the payment in respect of a phase referred to in paragraph (5)(a) has become payable the Highways England estimates that the costs in respect of that phase referred to in sub-paragraph (1) will exceed the estimated costs for that phase it may give notice to the undertaker of the amount by which it then estimates those costs will exceed the estimated costs (“the excess”) and the undertaker must pay to Highways England within 28 days of the date of that notice a sum equal to the excess.

(6) If Highways England have received the as built information within 91 days of the issue of the final certificate for each phase of the highway works under paragraph 7, Highways England must give the undertaker a final account of the costs referred to in sub-paragraph (1) and within 28 days from the expiry of the 91 day period—

- (i) if the account shows a further sum as due to Highways England the undertaker must pay to Highways England the sum shown due to it in that final account; and
- (ii) if the account shows that the payment or payments previously made have exceeded those costs Highways England must refund the difference to the undertaker.

(7) If any payment due under any of the provisions 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 1% above the rate payable in respect of compensation under section 32 (rate of interest after entry on land) of the Land Compensation Act 1961(a) 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 and defects period

6.—(1) As soon as each phase of the highway works has been completed and a Stage 3 Road Safety Audit for that phase has been carried out in accordance with the Road Safety Audit Standard and any resulting recommendations complied with Highways England must issue a provisional certificate of completion in respect of that phase such certificate not to be unreasonably withheld or delayed.

(2) Highways England must also issue a defects list to the undertaker together with timescales within which defects are to be resolved. The undertaker must at its own expense remedy any defects in that phase of the highway works as reasonably required to be remedied by Highways England and identified by Highways England during a period of 12 months from the date of the provisional certificate in respect of that phase.

(3) The undertaker must submit Stage 4(a) and Stage 4(b) 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(a) and 4(b) Road Safety Audit reports inclusive of conducting any works that are required.

(4) Highways England must approve the audit brief and curriculum vitae for all Road Safety Audits and exceptions to items raised, if appropriate, in accordance with the Road Safety Standard.

Final certificate

7.—(1) The undertaker must apply to Highways England for the issue of the final certificate in respect of each phase at the expiration of the 12-month period in respect of that phase referred to in paragraph 6(2) or on a date on which any defects or damage arising from defects during that period has been made good to the reasonable satisfaction of Highways England (not to be unreasonably withheld or delayed) and when making such application the undertaker must—

- (a) submit to Highways England the health and safety file and as built information of the relevant phase; and
- (b) provide a plan clearly identifying the extent of any land which is to be highway maintainable at public expense by Highways England.

(2) If the provisions of sub-paragraph (1) are satisfied Highways England must as soon as reasonably practicable issue a final certificate for the phase concerned.

Surety

8.—(1) Subject to paragraph 3(3) the undertaker must provide security for the carrying out of the highway works as follows—

- (a) prior to the commencement of each phase the highway works within that phase must be secured by a bond first approved by Highways England, drafted substantially as detailed in Form 1 contained in paragraph 9 or in such other form that may be agreed between the undertaker and Highways England to indemnify Highways England 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 that phase under the provisions of this Schedule provided that the maximum liability of the bond must not exceed the bond sum relating to that Phase; and
- (b) prior to the commencement of the highway works the undertaker must provide the cash surety which may be utilised by Highways England in the event of the undertaker failing to meet its obligations to make payments under paragraph 5 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker (which must for the avoidance of doubt be a single cash surety for the entirety of the highway works).

(2) Each bond sum and the cash surety (the latter in respect of the final phase only) must be progressively reduced as follows—

- (a) on receipt of written confirmation (including receipt of receipted invoices evidencing payments made by the undertaker to the contractors) from the undertaker of the payments made from time to time to the contractor, Highways England must in writing authorise the reduction of the bond sum and (in respect of the final phase only) the cash surety by such proportion of the surety sum and cash deposit as amounts to 80% of those payments;
- (b) within 20 working days of completion of each phase of the highway works (as evidenced by the issuing of the provisional certificate in respect of that phase under paragraph 6(1)) Highways England must in writing release the bond provider from its obligations by 80% of the bond sum in respect of that phase except in so far as any claim or claims have been made against the bond or liability on its part has arisen prior to that date and (in respect of the final Phase only) return 80% of the cash surety to the undertaker; and
- (c) within 20 working days of the issue of the final certificate for each phase of the highway works referred to in paragraph 7 Highways England must in writing release the bond provider from all its obligations in respect of that phase subject to Highways England having received the documents referred to in paragraph 7(1)(a) and (b) and except in so far as any claim or claims have been made against the bond or liability on its part has arisen prior to that date and (in respect of the final phase only) must release the remainder of the cash surety to the undertaker.

9. Form 1 as referred to in paragraph 8(1)(a) is—

Form 1

Bond-Highways England

BY THIS BOND [] [(Company Regn No)] whose registered office is situate at [] ("**the undertaker**") and [] [(Company Regn No)] whose registered office is situate at [] ("**the Surety**") are jointly and severally bound to [] of [] ("**the []**") this [] day of [] 201[] in the sum of [] pounds (£[Surety Sum to the payment of which sum the undertaker and the Surety hereby jointly and severally bind themselves their successors and assigns

WHEREAS under a Development Consent Order known as The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 ("the DCO") the undertaker is empowered to commence execute perform and complete the highway works mentioned the DCO in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the DCO and also to pay to Highways England such sums as are provided in the DCO **NOW THE CONDITIONS** of this Bond are such that if the undertaker duly observes and performs all the terms provisions covenants conditions and stipulations of Schedule 19 to the DCO on the undertaker's part to be observed and performed according to the true purport intent and meaning thereof or if on default by the undertaker the Surety must satisfy and discharge the damages sustained by Highways England up to the amount of this Bond then this obligation is null and void but otherwise must be and remain in full force and effect in accordance with the provisions of the DCO (and including any reductions as provided for in the DCO) but no allowance of time by Highways England under the DCO nor any forbearance or forgiveness in or in respect of any matter or thing concerning the DCO on the part of Highways England must in any way release the Surety from any liability under this Bond
It is hereby agreed that this Bond is to be reduced and released in accordance with paragraph 8 of Schedule 19 to the DCO.

[Attestation]

Commuted sums

10.—(1) Prior to the commencement of each phase of the highway works the undertaker is to be provided with an estimate of the amount of the commuted sum in respect of the maintenance costs of that phase of the highway works to be incurred following the issue of the final certificate, if any and following completion of that phase of the highway works the undertaker must pay to Highways England the commuted sum within 28 days of the date of the final certificate. The commuted sum must be calculated in line with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18th January 2010, except that—

- (a) the agreed commuted sum in respect of the highway bridge structures within Phase ii identified on the highway works component plans is £931,197.57; and
- (b) the agreed commuted sum in respect of the highway bridge structure within Phase viii identified on the highway works component plans is £1,046,151.18.

(2) If the form of any structures referred to in sub-paragraph (1)(a) and (b) changes significantly from that contained in the approval in principle already submitted to and approved by Highways England then the calculation of the figure in sub-paragraph (1)(a) or (b) as the case may be must, if requested by either the undertaker or Highways England, be recalculated in accordance with the FS Guidance S278 Commuted Lump Sum Calculation Method dated 18th January 2010.

Insurance

11. The undertaker must, prior to commencement of the highway works, effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 against any legal liability for

damage loss or injury to any property or any person as a direct result of the execution of the Highway Works or any part of them by the undertaker.

Indemnification

12. The undertaker must, in relation to the carrying out of the highway works, take such precautions for the protection of public and private interests as would be incumbent upon it if it were the highway authority and must indemnify Highways England from and against all costs expenses, damages, losses and liabilities arising from or in connection with or ancillary to any claim, demand, action or proceedings resulting from the design, carrying out or maintenance of the highway works, including but without limitation on the scope of this paragraph any claim against Highways England under the Land Compensation Act 1973(a) or by virtue of the application of the provisions of the Noise Insulation Regulations 1975(b), including any liability falling upon Highways England by virtue of its exercising its discretionary powers under the said Regulations.

Warranties

13. The undertaker must procure warranties from the contractor and designer of each phase of the highway works to the effect that all reasonable skill care and due diligence must be exercised in designing and constructing that phase of the highway works including the selection of materials, goods, equipment and plant; such warranties to be provided to Highways England before that phase of the highway works commences.

APPENDIX 2: M1 JUNCTION 10A HIGHWAYS ENGLAND PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF HIGHWAY AUTHORITIES

1. Unless otherwise agreed in writing between the undertaker and the highway authority concerned, the following provisions of this Schedule have effect in relation to any highway for which the undertaker is not the highway authority.

2. In this Schedule—

“highway” means a street vested in or maintainable by the highway authority; and

“plans” includes sections, drawings, specifications and particulars (including descriptions of methods of construction).

3. Wherever in this Schedule provision is made with respect to the approval or consent of the highway authority, that approval or consent must be given in writing and may be given subject to such reasonable terms and conditions as the highway authority may impose but must not be unreasonably withheld.

4. Before commencing any part of the authorised development the undertaker must submit to the highway authority for its approval in writing proper and sufficient plans and must not commence that part of the authorised development until those plans have been approved or settled by arbitration in accordance with article 37 (arbitration).

5. If, within 21 days after any plans have been submitted to a highway authority under paragraph 4, it has not intimated its disapproval and the grounds of disapproval, it is to be deemed to have approved them except to the extent that the plans involve departures from Highways Agency standards.

6. In the event of any disapproval of plans by a highway authority under paragraph 4, the undertaker may re-submit the plans with modifications and, in that event, if the highway authority has not intimated its disapproval and the grounds of disapproval within 21 days of the plans being re-submitted, it is to be deemed to have approved them except to the extent that the plans involve departures from Highways Agency and local highway authority standards.

7. Except in an emergency or where reasonably necessary to secure the safety of the public, no direction or instruction is to be given by the highway authority to the contractors, servants or agents of the undertaker regarding construction of the authorised development without the prior consent in writing of the undertaker but the highway authority is not be liable for any additional costs which may be incurred as a result of the giving of instructions or directions under this paragraph.

8. To facilitate liaison with the undertaker, the highway authority concerned must provide so far as is reasonably practicable a representative to attend meetings arranged by the undertaker about the authorised development.

9. The authorised development must be completed in accordance with the reasonable requirements of the highway authority or, in case of difference between the undertaker and the highway authority as to whether those requirements have been complied with or as to their reasonableness, in accordance with such requirements as may be approved or settled by arbitration in accordance with article 37.