

TC

PART 1

FOR THE PROTECTION OF THURROCK COUNCIL (AS HIGHWAY AUTHORITY)

81. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the Company and Thurrock Council.

82. In this Part of this Schedule—

“highway” means a street vested in or maintainable by Thurrock Council as highway authority under the 1980 Act;

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

“specified work” means so much of any of the authorised development as forms part of or is intended to become a highway, or part of any such highway.

83. Without affecting the application of sections 59 (general duty of street authority to co-ordinate works) and 60 (general duty of undertakers to co-operate) of the 1991 Act, before commencing the construction of any specified work, the Company must submit to Thurrock Council for its approval proper and sufficient plans and must not commence the construction of a specified work until those such plans have been approved or settled by arbitration.

84. When signifying approval of plans submitted under paragraph 83, Thurrock Council may specify any protective works (whether temporary or permanent) which in its opinion must be carried out before the commencement of the construction of a specified work to ensure the safety or stability of the highway and such protective works must be carried out at the expense of the Company.

85. If, within 28 days after any plans have been submitted to Thurrock Council under paragraph 83, it has not intimated its disapproval and the grounds of disapproval, Thurrock Council is deemed to have approved them.

86. In the event of any disapproval of plans by Thurrock Council under paragraph 83, the Company may re-submit the plans with modifications and, in that event, if Thurrock Council has not intimated its disapproval and the grounds of disapproval within 28 days of the plans being re-submitted, it is deemed to have approved them.

87. On submission of the plans for a specified work, the Company must pay Thurrock Council 2% of the anticipated cost of constructing the specified work to cover Thurrock Council’s reasonable fees, costs, charges and expenses in approving the plans for and in supervising construction of the specified work.

88. Thurrock Council may apply to the Company for up to two further ~~payment or~~ payments (limited in each case to a maximum of 2% of the anticipated cost of constructing the specified work) if it reasonably considers that its fees, costs, charges and expenses in approving plans for and supervising construction of the specified work will exceed the amount the Company must pay under paragraph 87. ~~Thurrock Council must submit such evidence as the Company may reasonably require in support of its application for any further payment.~~

89. The Company must use reasonable endeavours to agree to pay any amount sought by Thurrock Council under paragraph 88 (having regard to the extent of the outstanding work in respect of which Thurrock Council is likely to incur fees, costs, charges and expenses) and following agreement must pay any such amount ~~that is agreed~~.

90. The Company must repay to Thurrock Council all reasonable fees, costs, charges and expenses reasonably incurred by it (in approving the plans for and supervising construction of a specified work) which have not otherwise been covered by a payment made under paragraphs 87 to 89.

Comment [RC1]: This helps your clients because it limits the number of times that the Council can ask for monies for this purpose

Comment [RC2]: Council’s requests are already subject to reasonableness test. It is unlikely to be reasonable for the Council to ask for 2% and then (as example given in con-call) a week later is seeks a further 2%

Please note the Council normally requires 6% as standard to other developers, to be paid all in one go, without the need to provide evidence to justify why it needs the payment.

The Council has given your clients a concession, which requires a pragmatic approach to it application. The Council will only ask for what is required in each case.

Your clients have the comfort in knowing that any unspent monies will be repaid, together with, if required, a spend summary (see paragraph 91)

91. Thurrock Council must repay to the Company (or, with the Company's agreement, offset against any amounts for which the Company is otherwise liable to Thurrock Council) any payment or part of a payment made under paragraphs 87 to 90~~and 89~~ which exceeds the fees, costs, charges and expenses it has incurred in approving plans for and in supervising the construction of ~~a~~ specified work and in response to a reasonable written request from the Company (served no earlier than after the at the end of final adoption of all of the specified works under article 10(1) to (4)) Thurrock Council must provide to the Company a financial summary containing detailed ~~eigent~~ evidence of how the payments received by Thurrock Council under paragraphs 87 to -90 have been spent.

92. The Company must not, except with the consent of Thurrock Council, deposit any soil, subsoil or materials or stand any vehicle or plant on any highway (except on so much of it as is for the time being temporarily stopped up or occupied under the powers conferred by this Order) so as to obstruct the use of the highway by any person or, except with the same consent, deposit any soil, subsoil or materials on any highway except within a hoarding.

93. Except in an emergency or where reasonably necessary to secure the safety of the public no direction or instruction may be given by Thurrock Council to the contractors, servants or agents of the Company regarding the construction of any specified work without the prior consent in writing of the Company; but Thurrock Council is not liable for any additional costs which may be incurred as a result of the giving of instructions or directions under this paragraph.

94. The Company must, if reasonably so required by Thurrock Council, provide and maintain during such time as the Company may occupy any part of a highway for any purpose connected to the construction of any part of the authorised development, temporary ramps for vehicular traffic or pedestrian traffic, or both, and any other traffic measures required to protect the safety of road users in accordance with the standard recommended in Chapter 8 of the Traffic Signs Manual issued for the purposes of the Traffic Signs Regulations and General Directions 1994 in such position as may be necessary to prevent undue interference with the flow of traffic in any highway.

95. Any specified work, and all protective works required by Thurrock Council under paragraph 84 must be constructed in accordance with approved plans and to the reasonable satisfaction of Thurrock Council and an officer of Thurrock Council is entitled on giving such notice as may be reasonable in the circumstances, to inspect and watch the construction of such works (such inspection and supervision being at the Company's expense).

96. The Company must give to Thurrock Council not less than three months' ~~[28] [90] days'~~ notice of its intention to commence construction of any specified work and the Company must give to Thurrock Council notice of completion of a specified work not later than 7 days after the date on which it is brought into operational use.

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

98. Subject to paragraph 99, if the Company has failed to begin taking steps to comply with the reasonable requirements of the notice under paragraph 96 and has not subsequently made reasonably expeditious progress towards their implementation within 28 days beginning with the day after the date on which the period specified in the notice given under paragraph 96 ends, Thurrock Council may construct the works specified in the notice and any expenditure reasonably incurred by it in so doing is to be recoverable from the Company.

99. In the event of any dispute as to whether paragraph 97 is properly applicable to any work in respect of which notice has been served under that paragraph, or as to the reasonableness of any requirement of such a notice, Thurrock Council must not, except in an emergency, exercise the powers conferred by paragraph 97 until the dispute has been finally determined.

Comment [PM3]: We accept that the 2017 permitting scheme applies to the works but please see new para 108 below.

Comment [RC4]: I refer you to the order which is made under the TMA, so there is no conflict with any part of the Order

100. If any specified work is not maintained by the Company in accordance with article 10 (construction and maintenance of new, altered or diverted streets) ~~(at the Company's expense)~~ to the reasonable satisfaction of Thurrock Council, it may by notice require the Company to maintain the work or any part of it in accordance with article 10 ~~(at the Company's expense)~~, to such extent as Thurrock Council reasonably requires for as long as the obligation to maintain the specified work under article 10 applies.

Comment [PM5]: Referring to article 10 here means that this rather awkward reference to 'at the Company's expense' can go

101. If the Company has failed to begin taking steps to comply with the reasonable requirements of any notice issued under paragraph 100 and has not subsequently made reasonably expeditious progress towards their implementation within 28 days beginning with the date on which a notice in respect of any work is served on the Company, Thurrock Council may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Company.

Comment [RC6]: Moved these words, which has become positioned by another set of bracketed words. Please feel free to move again if it would read better

102. In the event of any dispute as to the reasonableness of any requirement of a notice served under paragraph 100, Thurrock Council must not except in a case of emergency exercise the powers of paragraph 101 until the dispute has been finally determined.

103. Regardless of the other provisions of this Part of this Schedule, ~~the Company must (but~~ subject to paragraph 104) the Company must, within in the 28 days of receiving written notification from Thurrock Council, indemnify Thurrock Council from all losses, expenses, actions, charges, cost, liabilities, claims, demands, proceedings or damages, which may be incurred, made or taken against, or recovered from Thurrock Council by, in connection with or incidental to a specified work including by reason of—

- (a) the construction or maintenance of a specified work or the failure of the specified work; ~~or~~
- (b) any subsidence of, or damage to, any highway or any retained sanitary convenience, refuse, sewer, drain, pipe, cable, wire, lamp column, traffic sign, bollard, bin for refuse or road materials or associated apparatus or any other property or work belonging to, or under the jurisdiction or control of, or maintainable by Thurrock Council or a statutory undertaker;
- (c) any act or omission of the Company or of its agents, contractors, employees or servants whilst engaged upon a specified work;
- (d) a claim in respect of noise nuisance or pollution under the Control of Pollution Act 1974 Act;
- (e) damage to property including property owned by third parties; or
- (f) injury or death of any person.

Comment [PM7]: Will now be defined in article 2

104. Thurrock Council must give to the Company reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand is to be made without the consent of the Company which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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

106. Wherever in this Part of this Schedule provision is made with respect to the approval or consent of Thurrock Council, that approval or consent must be in writing and may be given subject to such reasonable terms and conditions as Thurrock Council may require in the interests of safety or to ensure highway construction standards are met and in order to minimise inconvenience to persons using the highway, but must not be unreasonably withheld.

~~**107.** In respect of a bridge structure, drainage structure or apparatus, retaining wall or traffic signals to pay to Thurrock Council (at the time the relevant structure or apparatus has become maintainable by Thurrock Council) a commuted sum for maintenance of the structure or apparatus over an appropriate timeframe the cost of which shall be determined by the detailed design of the structure or apparatus. In respect of a bridge structure, a highway drainage structure or apparatus, any retaining wall or traffic signals installed or altered as part of the authorised development, the Company must pay to Thurrock Council (at the time when the relevant structure or apparatus is, in accordance with this Order, to become maintainable by Thurrock Council) a commuted sum to reflect any additional cost that may be incurred by Thurrock Council over an appropriate timeframe in maintaining that structure or apparatus, the~~

amount of which is to be determined with reference to the detailed design of the structure or apparatus and agreed between the Company and Thurrock Council, both acting reasonably.

~~106.~~

108. Any provision contained in this Part of this Schedule has no effect to the extent that it is the same as, or conflicts with, a provision contained in The Traffic Management (Thurrock Council) Permit Scheme Order 2017, or any other permit scheme made by Thurrock Council under section 33A of the 2004 Act.

~~107-109.~~ Unless otherwise agreed between the parties any difference arising between the Company and Thurrock Council under this Part of this Schedule (other than a difference as to its meaning or construction) must be determined by arbitration in accordance with article 60 (arbitration).

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