

Extract	Warwickshire County Council Comment
<p>Part 3 – Streets Traffic regulation</p> <p>(2) The undertaker shall not exercise the powers in paragraph (1) unless it has—</p> <ul style="list-style-type: none"> (a) given not less than 4 weeks’ notice in writing of its intention so to do to the chief officer of police and to the relevant traffic authority; and (b) advertised its intention in such manner as the relevant traffic authority may specify in writing within 7 days of the relevant traffic authority’s receipt of notice of the undertaker’s intention under sub-paragraph (a). <p>(6) If the relevant traffic authority fails to notify the undertaker of its decision within 42 days of receiving an application for consent under paragraph (3) that is accompanied by all relevant information the relevant traffic authority shall be deemed to have given consent.</p>	<p>7 days is considered to be too short a timescale for officers to respond within, 14 days suggested</p> <p>The conventional Traffic Regulation Order process makes provision for objections to be received, considered and the TRO to be determined or a modification to be considered. The draft DCO does not appear to allow for this, and the details of any future TROs associated with the proposal are unspecified – this could lead to residents/businesses being impacted.</p>

<p>SCHEDULE 2</p> <p>REQUIREMENTS</p> <p>PART 1</p> <p>REQUIREMENTS</p> <p>Design and phasing of highway works</p> <p>5.—(1) The undertaker must complete the highway works identified in columns (1) and (2) of the following table by no later stage than the stage of the authorised development as set out in column (3) of that table below or such alternative later stage as agreed by the relevant body or bodies identified in column (4).</p>	<p>In the table, Work No. 16, the Relevant Body in column 4 needs to add National Highways and Warwickshire County Council</p>
<p>PART 2</p> <p>PROCEDURE FOR APPROVALS ETC UNDER REQUIREMENTS</p> <p>Further information</p> <p>1.—(1) In relation to any application to which this Schedule applies, the discharging authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.</p> <p>(2) If the discharging authority considers such further information to be necessary it must, within 10 working days of receipt of the application, notify the undertaker in writing specifying the further information required.</p> <p>(3) If the discharging authority does not give such notification as specified in subparagraph (2) it is to be deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.</p>	<p>10 working days is not considered sufficient time if the applicant has submitted an application for discharge to the Local Planning Authority, and they in turn have to consult with another authority eg. Highway or Flood Authorities. LPA's usually give a minimum of 21 days.</p>
<p>PART 3</p> <p>FOR THE PROTECTION OF THE LOCAL HIGHWAY AUTHORITY</p> <p>Interpretation</p> <p>2.—(1) The terms used in this Part of this Schedule are as defined in article 2</p>	

<p>(interpretation) of this Order save where inconsistent with sub-paragraph (2) which shall prevail; and</p> <p>(2) In this Part of this Schedule— “as built information” means one digital copy of the following information where applicable to the phase in question—</p> <p>(e) method statements for works carried out;</p> <p>“the bond sum” means the sum equal to []% of all the costs of the carrying out of the phase of the county highway works concerned</p> <p>“detailed design information” means drawings, specifications and other information which must be in accordance with the....</p> <p>(q) pre- construction health and safety information where relevant to the phase concerned</p> <p>Prior approvals and security</p> <p>3.—(1) No work must commence on any phase of the county highway works until the detailed design information and a programme of works in respect of that phase has been submitted to and approved by the local highway authority.</p> <p>(5) No work must commence on any phase of the county highway works until a scheme of traffic management provisions have been agreed with the local highway authority.</p>	<p>Should be expanded to include details of how dust, noise, mud/debris and other nuisance will be managed during highway works.</p> <p>WCC require 200% of Estimated Costs of the Works</p> <p>In addition WCC require applications for street works permits, construction contract and collateral warranty (completed), and certificate of insurance before commencement</p> <p>To be added to the definitions: “desirable changes” means such changes to the county highway works as considered desirable (as opposed to necessary) by the county highway authority for the satisfactory completion and functioning of the county highway works</p> <p>“necessary changes” means such changes to the county highway works as considered necessary by the local highway authority by law, by virtue of government advice or guidance, for the satisfactory completion and functioning of the county highway works, as required by any Road Safety Audit or to remedy any breach by the undertaker.</p> <p>WCC do not think that there will be a need for a TRO but without the design and Traffic Management details this is not certain at this stage. WCC standard s278 requires developers to give 12 weeks notice of any TTRO requirement and to pay all fees in connection with it.</p> <p>Alternative wording: (5) No work must commence on any phase of the county highway works until a scheme of traffic management has been submitted by the undertaker and approved by the local highway authority for that phase.</p>
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(8) No works must commence on any phase of the county highway works until the undertaker has provided confirmation of ownership to the local highway authority for any land which is to be dedicated as highway following completion of the county highway works.

(8) No works must commence on any phase of the county highway works until the undertaker has provided confirmation of ownership to the local highway authority and to the local highway authority's satisfaction for any land which is to be dedicated as highway following completion of the county highway works.

(9) No works must commence on any phase of the county highway works until the undertaker has obtained all necessary consents and approvals

(10) No works must commence on any phase of the county highway works until the undertaker has provided a completed collateral warranty to the local highway authority in accordance with paragraph 12 of this Part of this Schedule

(11) No works must commence on any phase of the county highway works until the undertaker has provided a completed construction contract for that phase of the highway works to the local highway authority.

(12) No works must commence on any phase of the county highway works until the undertaker has provided a copy of the certificate of insurance to the local highway authority obtained in accordance with paragraph 10 of this Part of this Schedule.

Carrying out of works

4.—(1) The undertaker must prior to commencement of each phase of the county highway works give the local highway authority 14 days' notice in writing of the date on which that phase will start unless otherwise agreed with the local highway authority.

(2) The undertaker must give the local highway authority 14 days' notice of the road space booking required for the carrying out of each phase of the county highway works.

14 days notice is not considered sufficient notice, suggest 28 days WCC's usual process would be to certify that the

- A) programme
- B) the street works permit number
- C) the completed construction contracts and completed collateral warranty
- D) Stage 2 RSA
- E) H & S plan
- F) certificate of insurance cover
- G) any other information our authorised officer may require

Alternative wording:

The undertaker must comply with the local highway authority's usual road space booking procedures prior to and during the carrying out of out of each phase of the county highway works and no county highway works for which a road space booking is required shall commence without a road space booking first having been secured such road space booking not to be unreasonably withheld or delayed.

(3) Each phase of the county highway works must be carried out to the satisfaction of the local highway authority in accordance with—.....

(c) such approvals or requirements of the local authority that are required by the provisions of paragraph 3 of this Part of this Schedule to be in place prior to the relevant phase of the county highway works being undertaken; and

(4) The undertaker must permit and require the contractor to permit at all reasonable times persons authorised by the local highway authority (whose identity must have been previously notified to the undertaker by the local highway authority) to gain access to the land upon which the county highway works are being carried out for the purposes of inspection and supervision and the undertaker must provide to the local highway authority contact details of the nominated persons with whom the local highway authority should liaise during the carrying out of the county highway works.

(5) At any time during the carrying out of the county highway works the nominated persons must act upon any reasonable request made by the local highway authority in relation to the carrying out of the county highway works as soon as practicable following such request being made to the nominated persons or the undertakers obligations in this Order.

At (c) suggest insert local 'highway' authority

WCC's standard inspection clauses requires the developer to allow free access to any part of the highway works for purposes of inspecting works and all materials used (including provision for testing of materials) during the works and the maintenance period. Also includes requirement not to cover up or put out of view works without approval of LHA Authorised Officer and give 5 days written notice when foundations or works are ready for examination and allow Authorised Officer to require developer to open up or uncover works at their cost. These provisions need to be included.

WCC need to be able to require necessary changes (at undertakers expense) where required by law, guidance or necessary for the safe operation of the highway. Also need power to make desirable changes by agreement with the undertaker.

Alternative wording:

(5) The local highway authority may from time to time order such changes to the County Highway Works as it considers necessary. Any such changes to the county highways works are hereinafter called "necessary changes" and the undertaker shall ensure that such necessary changes are implemented by the nominated person via the construction contract.

Additional:

(6) The local highway authority may from time to time request such changes to the county highway works as it considers desirable (as opposed to necessary) for the satisfactory completion and functioning of the county highway works in consultation and agreement with the undertaker provided always that the local highway authority's decision as to whether changes are necessary or desirable shall be final.

Payments

5.—(1) The undertaker must fund the whole of the cost of the county highway works and all costs incidental to the county highway works and must also pay to the local highway authority in respect of each phase of the county highway works a sum equal to the whole of any costs and expenses which the local highway authority incur 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 county highway works and arising out of them and their implementation including—

(5) Within 91 days of the issue of the final certificate for each phase of the county highway works pursuant to paragraph 7 of this Part of this Schedule the local highway authority 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—

(6) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the party to whom it was due interest at 1% above the rate payable in respect of compensation under **Section 32 (rate of interest after entry on land)** of the 1961 Act 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 and maintenance period

6.—(1) As soon as each phase of the county highway works has been completed and—.....

Alternative wording:

5.—(1) The undertaker must fund the whole of the cost of the county highway works and all costs incidental to the county highway works including any necessary or desirable changes and must also pay to the local highway authority in respect of each phase of the county highway works a sum equal to the whole of any costs and expenses which the local highway authority incur 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 county highway works and arising out of them and their implementation including—

(d) all legal and administrative costs in relation to (a) and (b) and (c) above, together comprising “the estimated costs”.

WCC would not issue a final certificate until all fees have been paid, alternative wording:

(5) Prior to the issue of the final certificate for each phase of the county highway works pursuant to paragraph 7 of this Part of this Schedule the local highway authority must give the undertaker a final account of the costs referred to in sub-paragraph (1) and within 28 days from the issue of the final account –

Clarification on this rate is required, WCC ask for 4% above Bank of England base rate

Alternative wording:

6.—(1) As soon as each phase of the county highway works has been completed and inspected by the county highways authority—

the local highway authority must immediately issue a provisional certificate of completion in respect of that phase of the county highway works.

Final certificate

(2) If the provisions of sub-paragraph (1) are satisfied the local highway authority must issue a final certificate for the phase of the county highway works concerned, such certificate not to be unreasonably withheld or delayed

Security

(2) Each bond sum shall 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 the local highway authority must in writing authorise the reduction of the bond sum by such proportion of the bond sum as amounts to 80% of those payments provided that an evaluation of the county highway works completed and remaining has been carried out by the undertaker and audited and agreed by the local highway authority to ensure that the stage of completion of the works is relative to the payments made by the undertaker to the contractors. The local highway authority will only be required to provide the said authorisation should it be satisfied that the monies remaining secured by the bond sum will be sufficient to cover all remaining costs and liabilities anticipated to be incurred

Immediately is impractical, alternative wording:

the local highway authority must issue a provisional certificate of completion in respect of that phase of the county highway works within 10 working days of receipt of a written application

Add additional clause:

The undertaker must maintain the county highway works at its own cost and to the satisfaction of the local highway authority during a period of 12 months from the date of the provisional certificate in respect of that phase or the completion of any defects arising during that period.

Alternative wording:

(2) If the provisions of sub-paragraph (1) are satisfied and all fees due to the local highway authority under paragraph 5 of this Part of this Schedule the local highway authority must issue a final certificate for the phase of the county highway works concerned, such certificate not to be unreasonably withheld or delayed.

WCC reduce to 50% initially

<p>in completing the county highway works plus an additional 10%;</p> <p>(b) within 20 working days of completion of each phase of the county highway works (as evidenced by the issuing of the provisional certificate in respect of that phase pursuant to paragraph 6(1) of this Part of this Schedule) the local highway authority must in writing release the bond provider from its obligations in respect of 80% of the bond sum relating to that phase save insofar as any claim or claims have been made against the bond and/or liability on its part has arisen prior to that date; and</p> <p>(c) within 20 working days of the issue of the final certificate for each phase of the county highway works referred to in paragraph 7 of this Part of this Schedule the local highway authority must in writing release the bond provider from all its obligations in respect of the bond relating to that phase save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date.</p> <p>Commuted sums</p> <p>(2) The rates to be applied in calculating the commuted sums payable must be calculated in accordance with Leicestershire County Council's commuted sum calculator or as otherwise agreed between the undertaker and the local highway authority prior to commencement of work on any phase.</p> <p>Indemnification</p> <p>11. —(1) The undertaker must in relation to the carrying out of the county highway works take such precautions for the protection of the public and private interest as would be incumbent upon it if it were the highway authority and must indemnify the local highway authority 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 and carrying out of the county highway works; provided that—</p> <p>(a) the foregoing indemnity shall not extend to any costs expenses liabilities and damages caused by or arising out of the neglect or default of the local highway authority or its officers servants agents or</p>	<p>Alternative wording:</p> <p>(b) Following completion of each phase of the county highway works (as evidenced by the issuing of the provisional certificate in respect of that phase pursuant to paragraph 6(1) of this Part of this Schedule) the local highway authority shall on written request from the undertaker release the bond provider from its obligations in respect of 50% of the bond sum relating to that phase save insofar as any claim or claims have been made against the bond and/or liability on its part has arisen prior to that date; and</p> <p>(c) Following the issue of the final certificate for each phase of the county highway works referred to in paragraph 7 of this Part of this Schedule the local highway authority shall on written request release the bond provider from all its obligations in respect of the bond relating to that phase save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date.</p> <p>Insert 'relevant' before local highway authority</p> <p>This section should specifically include Land Compensation Act 1973 claims</p>
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<p>contractors or any person or body for whom it is responsible;</p> <p>(b) the local highway authority must notify the undertaker upon receipt of any claim; and</p> <p>(c) the local highway authority must following the acceptance of any claim notify the quantum thereof to the undertaker in writing and the undertaker must within 14 days of the receipt of such notification pay to the local highway authority the amount specified as the quantum of such claim.</p> <p>Warranties</p> <p>12. The undertaker must procure warranties from the contractor and designer of each phase to the effect that all reasonable skill care and due diligence will be exercised in designing and constructing that phase including the selection of materials, goods, equipment and plant such warranties to be provided to the local highway authority before that phase commences</p> <p>Approvals</p> <p>13. —(1) Any approvals, certificates, consents or agreements required or sought from or with the local highway authority pursuant to the provisions of this Part of this Schedule must not be unreasonably withheld or delayed and must be given in writing save that any such approvals, certificates, consents or agreements shall be deemed to have been given if it is neither given nor refused within 42 days of the specified day.</p> <p>(2) In this paragraph “specified day” means—</p> <p>(a) the day on which particulars of the matter are submitted to the local highway authority under the provisions of this Schedule; or</p> <p>(b) the day on which the undertaker provides the local highway authority with any further particulars of the matter that have been reasonably requested by the local highway authority or within 28 days of the date in sub-paragraph (a),</p>	<p>Alternative wording:</p> <p>12. The undertaker must procure warranties from the contractor and designer of each phase to the effect that all reasonable skill care and due diligence will be exercised in designing and constructing that phase including the selection of materials, goods, equipment and plant and that any patent or latent damage or defect in the county highway works shall be remedied and made good for a period of 12 years from the issue of the final certificate such warranties to be provided to the local highway authority before that phase commences.</p> <p>Alternative wording:</p> <p>13.—(1) Any approvals, certificates, consents or agreements required or sought from or with the local highway authority pursuant to the provisions of this Part of this Schedule must not be unreasonably withheld or delayed and must be given in writing</p>
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whichever is the later.	
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In addition it is noted that Schedule 2 – Requirements, Part 1 Requirements refers to various documents that are still being commented on and updated and as such are not yet finalised.

Warwickshire County Council made comments at Deadline 2 in respect of Schedule 14 Miscellaneous Controls to which the Applicant is to respond.