

National Highways Submission at Deadline 8 - Comments on the dDCO and Protected Provisions submitted at Deadline 7 and update on lands position

Title:	National Highways Submission – Deadline 8 (dDCO)
Reference:	TR050007
Applicant:	Tritax Symmetry
Proposal:	Application by Tritax Symmetry (Hinckley) Limited for an Order Granting Development Consent for the Hinckley National Rail Freight Interchange
Author:	National Highways (20040073)
Date:	8 March 2024

National Highways (“we”) has been appointed by the Secretary of State for Transport as strategic highway company under the provisions of the Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the Strategic Road Network (SRN). The SRN is a critical national asset and as such we work to ensure that it operates and is managed in the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and integrity.

This submission forms National Highways’ comments on the dDCO which was submitted by the Applicant at Deadline 7.

The Authorised Development will have an impact on the SRN and as such it is critical to the operation of the SRN, the safety of the travelling public and to ensure the proper and efficient use of public resources that the Authorised Development proceeds in consultation and agreement with National Highways and with appropriate protections in place.

National Highways identified a number of concerns regarding the draft DCO within its Deadline 3 submission [REP3 – 137] and now as presented by the Applicant as part of its Deadline 7 submission.

There is a general theme of concern that National Highways has, and this all relates to safety issues. There are a number of articles in the draft DCO that give power to the Applicant to enter, carry out works or otherwise interfere with the SRN.

There are different levels of ‘protection’ afforded to National Highways under each article. This ranges from consent being required in some instances (albeit qualified), to only notification being provided in others.

Where National Highways’ consent is required under an article, a deemed consent provision is imposed if a decision is not made within 42 days. Given the associated safety concerns, National Highways does not consider this to be a reasonable imposition. It is noted that the Applicant, when responding to DCO applications that effect its undertaking, does not agree to deemed consent being imposed on itself due to its own safety concerns.

National Highways requests that any interference with the SRN should be subject to its explicit consent with the ability to attach any necessary conditions. National Highways does appreciate the Applicant will not want undue delay in the delivery of a nationally significant infrastructure project but it is National Highways’ position that this shouldn’t override National Highways safety concerns, particularly when those concerns relate to the safety of the travelling public (and so 1,000s of people potentially being put at risk). National Highways has approval processes in place for instances where third parties are looking to work on, or in the vicinity, of the SRN and do not consider it reasonable that this application should be able to bypass those approvals which have been put in place for very strong safety reasons.

It should be noted that National Highways has statutory responsibilities to support economic growth (Paragraphs 4.2h, 4.3 and 5.25a National Highways: Licence April 2015) i.e. to support developments such as this one) and as a public body must act reasonably. It should not therefore be necessary for National Highways to be made subject to deemed consent provisions to ensure its engagement and a public body should not be forced into a position where public safety is potentially compromised. This could place National Highways in breach of its own statutory duties and Licence obligations.

Given its concerns are safety related, it is imperative that due process is followed and time is taken to ensure that anything being signed off is adequately assessed. National Highways would find it very difficult to fully consider, determine and respond to such

applications within 42 days. A number of National Highways' functions are outsourced to consultants who operate under service level agreements, some of which require turnarounds in excess of 42 days. There is therefore a significant risk that the 42 day period will not be met and a refusal issued for no other reason than it has not been possible to adequately assess the application in time. This is unlikely to give the Applicant the certainty or speed of decision making that it is seeking.

The following table sets out all Articles and Requirements within the draft DCO which National Highways objects to in its current form and summary reasons for its objections. These reasons, include those reasons previously set out in our Deadline 3 submission where the Article is still being objected to. National Highways is disappointed by the Applicant's comments in its Deadline 5 [REP5 – 038] submission stating that there has been a lack of engagement in the DCO drafting. National Highways has been clear in its position that unless its protective provisions are agreed and accepted on the face of the Order, objections to the article of the DCO will be made. Our objections were previously set out in our Deadline 3 submission.

To assist the Examining Authority and the Secretary State, National Highways' proposed amendments are shown in red:

Article No and heading Provisions of concern	Article No and heading Provisions of concern Reasons	Article No and heading Provisions of concern Reasons
Article 6 – Maintenance of authorised development	(1) With the exception of the strategic road network in respect of which the prior consent of National Highways is needed, which consent may be subject to such conditions as required by National Highways, the undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.	Please see comments made at Article 15.



	<p>(2) Paragraph (1) does not apply to the highway works the maintenance of which is governed by article 15 (maintenance of highway works) and Parts 2, 3 and 4 of Schedule 13 (protective provisions).</p>	
<p>Article 9- Street Works</p>	<p>With the exception of the strategic road network in respect of which the prior consent of National Highways is needed, which consent may be subject to such conditions as required by National Highways, the undertaker may, for the purposes of the carrying out of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) as are within the Order limits and may –</p> <ul style="list-style-type: none"> (a) break up or open the street, or any sewer, drain or tunnel under it; (b) tunnel or bore under the street; (c) place apparatus under the street; (d) maintain apparatus in the street or change its position; (e) construct bridges and tunnels; and (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e). <p>(2) The authority given by paragraph (1) is a statutory</p>	<p>The current drafting keeps open the possibility for the undertaker to undertake works to the SRN without the oversight, approval and control of National Highways as the relevant highway authority in the event that deemed consent is granted under the protective provisions. This is not acceptable to National Highways due to significant safety concerns.</p>

	<p>right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act and is subject to the provisions of Part 2, 3 and 4 of Schedule 13 (Protective Provisions).</p>	
<p>Article 10 Power to alter layout, etc. of street</p>	<p>(1) Subject to paragraph (2), the undertaker may for the purposes of constructing and maintaining the authorised development, alter the layout of any street within any main site and the layout of any street in at its junction with such a street; and without limitation on the scope of this paragraph the undertaker may...</p> <p>(2) Subject to paragraph (3), the powers conferred by paragraph (1) must not be exercised without the consent of the relevant street authority and such consent may be subject to conditions as required by the street authority, but such consent must not be unreasonably withheld and if the relevant street authority has received an application for consent to exercise powers under paragraph (1) accompanied by all relevant information and fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application is submitted with all relevant</p>	<p>This drafting is not acceptable as there is a connection from Works No.7 directly onto the M69 which if altered could affect the operation of the motorway junction.</p> <p>This Article allows for significant works to streets within the main site, such works may include, for example, increasing carriageway widths, decreasing carriageway widths and altering levels and has the ability to affect the SRN. National Highways has significant concerns over any third party having such wide powers to carry out works affecting the SRN without the appropriate approvals, processes and safeguards being in place.</p> <p>This Article 10 gives a very wide power. It is not acceptable to National Highways that such a power could be permitted which could bypass the explicit consent of National Highways.</p> <p>Whilst Article 10(2) provides that in those cases where the power under Article 10(1) is being exercised the undertaker would need to seek consent, this is subject to a 42 day deemed</p>

	<p>information, it is deemed to have granted consent.</p> <p>(3) Deemed consent conferred by paragraph (2) shall not apply where the street authority is National Highways and/or where works are undertaken to or affecting the strategic road network.</p>	<p>consent provision. For the reasons already stated, this is wholly unacceptable to National Highways & could have unacceptable highway safety & operational impacts to the SRN.</p>
<p>Article 12 – Temporary closure of streets</p>	<p>(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily close, alter, divert or restrict the use of any street and may for any reasonable time...</p> <p>(2) without limitation on the scope of paragraph (1), the undertaker may use any street temporarily closed, altered, diverted or restricted under the powers conferred by this article, and which is within the Order limits, as a temporary working site....</p> <p>(4) Save as to streets in respect of which the undertaker is the street authority, the undertaker must not temporarily close, alter or divert any street without the consent of the relevant street authority, which may subject to paragraph (5) attach reasonable conditions to any consent but such consent is not to be unreasonably withheld or delayed.</p>	<p>This would allow with the consent of the street authority any street within the Order limits if required in carrying out the authorised development to be temporarily stopped up, altered or diverted in addition to those streets set out in Schedule 3 and 4. This is unnecessarily wide. National Highways would reasonably require input and the necessary safeguards to protect its position.</p> <p>If temporarily stopped up streets can be used as a temporary working site, then consideration must be given to the duration and any impacts on National Highways duty regarding the SRN in the event access is required. Whilst consent is required, deemed consent applies and this is not acceptable to National Highways for the reasons set out in this response.</p>

	<p>(5) Where the undertaker provides a temporary diversion under paragraph (4), the new or temporary alternative route is not required to be of a higher standard than the temporarily closed street and such standard must be agreed in advance with the relevant street authority.</p> <p>(7) Subject to paragraph (8) if a street authority which receives an application for consent under paragraph (4) accompanied with all relevant information fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was submitted with all relevant information, it is deemed to have granted consent.</p> <p>(8) Deemed consent conferred by paragraph (7) shall not apply where the street authority is National Highways and/or where works are undertaken to or affecting the strategic road network.</p>	
<p>Article 14 - Accesses</p>	<p>The undertaker may, for the purposes of the authorised development and subject to paragraph (2), with the consent of the relevant highway authority or the relevant street authority as appropriate (such consent not to be unreasonably withheld and may be subject to such conditions as required by</p>	<p>Any new access off the SRN poses safety concerns and under the Highways Act 1980, National Highways' approval is required to ensure that only safe and appropriate accesses are introduced (s175B). Whilst s175B does not apply if development consent is required under the Planning Act 2008 this</p>



	<p>the relevant highway authority or the relevant street authority as appropriate form and lay out such means of access (permanent or temporary), or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.</p> <p>(2) With the exception of the strategic road network in respect of which the prior consent of National Highways is needed, which consent may be subject to such conditions as required by National Highways, the agreement of the relevant highway authority or the relevant street authority as appropriate is not required for the formation, layout or improvement of a new or existing means of access described in Schedule 1 (authorised development) and carried out in accordance with the relevant provisions of Parts 2 and 3 of Schedule 13 (protective provisions).</p> <p>(3) Subject to paragraph 3A, if a highway authority or street authority which has received an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 42 days beginning with the date on which the application was</p>	<p>is not, in National Highways' view, because highway authority consent is not required but rather that is expected to be appropriately covered under the DCO and the DCO would provide for such consent to be given, if appropriate.</p> <p>The draft DCO has deemed consent should National Highways not respond within the period stated, increasing the risk that National Highways may have no say, and no control, over the imposition of new SRN accesses which is considered to be totally unacceptable.</p>
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	<p>made, it is deemed to have granted consent.</p> <p>(3A) Deemed consent conferred by paragraph (3) shall not apply where the relevant highway authority or street authority is National Highways and/or where works are undertaken to or affecting the strategic road network.</p>	
<p>Article 15 – maintenance of highway works</p>	<p>1) With the exception of the strategic road network in respect of which the prior consent of National Highways is needed, which consent may be subject to such conditions as required by National Highways, the highway works must be completed in accordance with the provisions of Parts 2, 3 and 34 of Schedule 13 (protective provisions).</p> <p>(2) With effect from the date of the final certificate referred to in paragraph 714 of Part 2 of Schedule 13 the highway works to which that certificate relates will be maintained by and at the expense of National Highways.</p> <p>(5) Where new land not previously part of the public highway is the subject of a provisional certificate under paragraph 10 of Part 2 of Schedule 13 then it shall be deemed to be dedicated as part of the public highway on the issue of that certificate.</p>	<p>This Article seeks to ensure that highway works are carried out in accordance with the Applicant’s Protective Provision. On the basis that the Applicant’s Protective Provisions include deemed consent provisions, this Article is wholly unacceptable to National Highways. Any maintenance taken on the strategic road network poses safety concerns which must be properly managed and controlled. National Highways has significant concerns over any third party having such wide powers to carry out maintenance works affecting the SRN without the appropriate approvals, processes and safeguards being in place.</p>

<p>Article 18 – Traffic regulation</p>	<p>1) Subject to the provisions of this article and the consent (such consent not to be unreasonably withheld) of the relevant traffic authority, which consent may be subject to reasonable conditions, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction, operation or maintenance of the authorised development...</p> <p>6) Subject to paragraph (7), 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) Deemed consent conferred by paragraph (6) shall not apply where the relevant traffic authority is National Highways and/or where works are undertaken to or affecting the strategic road network.</p>	<p>This Article gives the undertaker very wide traffic regulation powers. Whilst Articles 18(1) and 18(2) provide that the consent of the traffic authority is required, this is qualified and Article 18(6) makes this subject to a 42 day deemed consent provision. For the reasons already stated, this is not acceptable to National Highways. National Highways, as the strategic highway company appointed by the Secretary of State for Transport, should be the only body permitted to have such powers in respect of the SRN.</p>
<p>Article 21 Discharge of Water</p>	<p>(1) Subject to paragraphs (3), (4), (5) and (6) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and</p>	<p>Article 21(1) would permit the undertaker to discharge water into the highway drainage system of the SRN. Whilst Article 21(4) provides for the undertaker to obtain consent, such consent is qualified in that it must not be unreasonably withheld or delayed.</p>



	<p>may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.</p> <p>(4) No water may be discharged into a watercourse that flows into the highway drainage system without the consent of the relevant highway authority and such consent may be given subject to such terms and conditions as the relevant highway authority consider appropriate such consent not to be unreasonably withheld or delayed.</p> <p>(10) Subject to paragraph (11), if a person who has received an application for consent under paragraphs (3) or (4) or approval under paragraph (5)(a) fails to notify the undertaker of its decision within 42 days of receiving the application submitted with all relevant information, that person is deemed to have granted consent or given approval as the case may be.</p> <p>(11) Deemed consent conferred by paragraph (10) shall not apply where the relevant highway authority is National Highways and/or where works are undertaken to or affecting the strategic road network.</p>	<p>National Highways would refuse any such request given the policy of the Secretary of State for Transport set out in the <i>Strategic Road Network and the delivery of sustainable development</i> [Dec 2022] states at paragraph 59:</p> <p><i>To ensure the integrity of the highway drainage systems, no new connections into those systems from third party development and proposed drainage schemes will be accepted.</i></p> <p>Article 21(10) is also a concern to National Highways as it imposes a 42 day deemed consent provision on any request for consent. For the reasons already stated, this is not acceptable to National Highways.</p>
<p>Article 22 - Protective works to</p>	<p>(1) Subject to the provisions of this article, the undertaker may at its own expense carry out the</p>	<p>This Article would allow the undertaker to enter onto any land for the purposes set out in</p>

<p>buildings and structures</p>	<p>protective works to any building or structure which may be affected by the authorised development as the undertaker considers necessary or expedient.</p> <p>(2) Protective works may be carried out—</p> <p>(a) at any time before or during the carrying out in the vicinity of the building or structure of any part of the authorised development; or</p> <p>(b) after the completion of that part of the authorised development in the vicinity of the building or structure at any time up to the end of the period of five years beginning with the day on which that part of the authorised development first comes into use or becomes operational</p> <p>(3) For the purpose of determining how the powers under this article are to be exercised, the undertaker may enter and survey any building or structure to which the power applies and any land within its curtilage and place on, leave on, and remove from the building any apparatus and equipment for use in connection with the survey.</p> <p>(4) For the purpose of carrying out the protective works under this article to a building or structure the undertaker may (subject to paragraphs (5) and (6))—</p>	<p>this Article. Prior consent is not required, instead the undertaker is required to serve notice of its intention to undertake the works. A counter notice is capable of being served on the undertaker but its contents are restricted and this must be served within 10 days, a very limited timescale.</p> <p>National Highways requests that the period is extended and that there is the opportunity to attach conditions to the works being undertaken.</p>
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	<p>(a) enter the building and any land within its curtilage; and</p> <p>(b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building or structure but outside its curtilage, enter the adjacent land (but not any building erected on it).</p> <p>(5) Before exercising—</p> <p>(a) a power under paragraph (1) to carry out protective works to a building or structure;</p> <p>(b) a power under paragraph (3) to enter a building and land within its curtilage;</p> <p>(c) a power under paragraph (4)(a) to enter a building and land within its curtilage; or</p> <p>(d) a power under paragraph (4)(b) to enter land,</p> <p>the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or structure or land not less than 14 28 days' notice of its intention to exercise that power and, in a case falling within sub-paragraph (a) or (c) specifying the planned protective works proposed to be carried out.</p> <p>(6) Where a notice is served under paragraph (5) (a), (c) or (d), the owner and or occupier of the building or land concerned may:</p>	
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	<p>(a) by serving a counter-notice within the period of 10 21 days beginning with the day on which the notice was served, require the question as to whether the protective works proposed by the undertaker are necessary or expedient to be referred to arbitration under article 52 (arbitration); and</p> <p>(b) require conditions be attached to any protective works to be undertaken by the undertaker under paragraph (1).</p> <p>(7) The undertaker must compensate the owners and occupiers of any building, structure or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.</p>	
<p>Article 23 - Authority to survey and investigate the land –</p>	<p>(1) Subject to obtaining the prior written consent of the relevant highway authority or the relevant street authority, which consent may be subject to any such conditions as required, the undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—</p> <p>(a) survey or investigate the land;</p> <p>(b) without limitation on the scope of sub-paragraph (a), make trial holes or pits in such</p>	<p>This Article would allow the undertaker to enter onto any land for the purposes set out in this Article which would include land owned by National Highways, including parts of the SRN.</p> <p>Whilst consent of the Highways Authority is required this is limited to trial holes and the consent of the Highway Authority is qualified. National Highways consent should not be limited this way and should apply to any activity on National Highways’ land. Further, National Highways requests that deemed consent provisions are not</p>

	<p>positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;</p> <p>(c) without limitation on the scope of sub-paragraph (a), carry out environmental, utility or archaeological investigations on such land; and</p> <p>(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.</p> <p>(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 28 days' notice has been served on every owner, who is not the undertaker, and occupier of the land.</p> <p>(4) No trial holes may be made under this article—</p> <p>(a) in land located within the highway boundary without the consent of the relevant highway authority; or</p> <p>(b) in a private street without the consent of the relevant street authority;</p> <p>but such consent must not be unreasonably withheld.</p> <p>(6) Subject to paragraph (7), if either a highway authority or a street authority which has received an application for</p>	<p>included for the reasons already set out. National Highways also requests that there is the opportunity to attach conditions to any consent granted and that such consent should not be restricted to simply borehole activities as currently set out in sub paragraph (4).</p>
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	<p>consent that includes all relevant information fails to notify the undertaker of its decision within 42 days of receiving the application the authority is deemed to have granted the consent.</p> <p>(7) Deemed consent conferred by paragraph (6) shall not apply where the relevant highway authority or street authority is National Highways and/or where works are undertaken to or affecting the strategic road network.</p>	
Article 25 - Compulsory acquisition of land	<p>(1) Subject to paragraph (4), the undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or is incidental to it.</p> <p>(4) The prior written consent of National Highways is required for the acquisition of any land within its ownership, and any such consent may be subject to such conditions as required by National Highways.</p>	National Highways does not agree to the compulsory acquisition of its land for reasons summarised in its Deadline 7 submission.
Article 27 - Compulsory acquisition of rights	<p>(1) Subject to paragraphs (2) and (7), the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 25 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.</p> <p>(7) The prior written consent of National Highways is required</p>	National Highways does not agree to the compulsory acquisition of its rights for reasons summarised in this Deadline 8 submission and previously set out in its Deadline 7 submission.

	<p>for the acquisition of any National Highways' rights sought to be acquired pursuant to paragraph (1), and any such consent may be subject to such conditions as required by National Highways.</p>	
<p>Article 28 – Power to override easement and other rights</p>	<p>(1) Subject to paragraph 11, any authorised activity undertaken by the undertaker which takes place within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title under it or by any contractors, servants or agents of the Undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, regardless of whether it involves— (a) an interference with an interest or right to which this article applies; or (b) a breach of a restriction as to the use of the land arising by virtue of a contract.</p> <p>(11) The prior written consent of National Highways is required for any National Highways' rights, interests or contracts interfered with pursuant to paragraph (1) and any such consent may be subject to such conditions as required by National Highways.</p>	<p>This is a very widely drafted Article which allows the Applicant or third party to undertake any activity within the Order Limits irrespective of its interference with any rights, interests or contracts which may exist. As currently drafted there is no requirement to obtain consent before undertaking activities which may cause such interference. This is wholly unacceptable to National Highways for reasons already set out.</p>
<p>Article 30 - Private Rights</p>	<p>(1) Subject to the provisions of this article, all private rights and restrictions, save for those rights and restrictions of National Highways, over land subject to compulsory</p>	<p>Private rights are suspended and unenforceable which may have an impact on day-to-day operations if access is required as any rights will be suspended</p>



	<p>acquisition under this Order are extinguished— (a) as from the date of the acquisition of the land by the undertaker, whether compulsorily or by agreement; or...</p> <p>(2) Subject to the provisions of this article, all private rights and restrictions, save for those rights of National Highways, over land subject to the compulsory acquisition of rights under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right— (a) as from the date of the acquisition of the right by the undertaker, whether compulsorily or by agreement or through the grant of a lease of the land by agreement; or (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right, whichever is the earlier.</p> <p>(4) Subject to the provisions of this article, all private rights, save for those rights of National Highways, over land which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.</p> <p>(5) Any person who suffers loss by the extinguishment or suspension of any private right or restriction under this article is</p>	<p>for as long as the undertaker remains in lawful possession.</p> <p>Given National Highways role as the strategic highways company responsible for the SRN in England, it is not acceptable for its interests to be extinguished in such manner which could make it impossible for National Highways to fulfil its statutory and Licence obligations. The compensation provisions are not sufficient from National Highways' perspective as we have a duty to safeguard the SRN.</p>
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	<p>entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, as if it were a dispute, under Part 1 of the 1961 Act.</p> <p>(10) No private rights and restrictions affecting National Highways are to be extinguished or suspended without the prior written consent of National Highways, and any such consent may be subject to such conditions as required by National Highways.</p>	
<p>Article 34 – Temporary use of land for carrying out the authorised development</p>	<p>(1) With the exception of the strategic road network in respect of which the prior written consent of National Highways is required, and any such consent may be subject to such conditions as required by National Highways, the undertaker may, in connection with the carrying out of the authorised development—</p> <p>(a) enter on and take temporary possession of—</p> <p>(i) the land specified in column (2) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and</p>	<p>The undertaker can temporarily use any other Order land in connection with the authorised development subject to the time limit in Article 34. There is an obligation on the undertaker to serve a notice not less than 14 days before doing so. This might include the SRN which would allow the provision of means of access from the SRN. This also gives a power to construct new accesses. Such a wide power has the potential to cause National Highways significant concerns and could make it impossible for National Highways to fulfil its statutory and Licence obligations.</p>

	<p>(ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights or restrictive covenants only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;</p> <p>(c) construct any permanent or temporary works (including the provision of means of access), haul roads, fencing and other means of enclosure, bridges, structures and buildings on that land;</p> <p>(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.</p> <p>5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act of otherwise acquired the land or rights over land subject to temporary possession, before giving up possession of the land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the condition it was in on the date on which</p>	
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	<p>possession of the land was first taken by the undertaker or such other condition as may be agreed with the owners of the land; with the exception of the strategic road network and land within the ownership of National Highways, but the undertaker is not required to—</p> <p>replace a building or structure removed under this article; remove any new road surface or other improvements carried out under this article to any street specified in Schedule 3 (streets subject to street works); remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; remove or reposition any apparatus belonging to statutory undertakers or any necessary mitigation works; or restore the land on which any permanent works have been constructed under paragraph (1)</p>	
<p>Article 35 – Temporary use of land for maintaining the authorised development</p>	<p>1) Subject to paragraphs (2) and (13) and Parts 2, 3 and 4 of Schedule 13 (protective provisions), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—</p> <p>(a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of</p>	<p>As above, this Article gives the ability to take possession of any land within the Order limits which would include the SRN. Apart from the undertaker having to provide not less than 28 days' notice to the owners and occupiers of the land there is no requirement to obtain consent or the ability for the owner/occupiers to impose any conditions. This period is too short.</p>



	<p>maintaining the authorised development; and</p> <p>(b) enter on any of the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development;</p> <p>(c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.</p> <p>(3) Not less than 42 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.</p> <p>(12) In this article “the maintenance period”, in relation to any part of the authorised development means the period of 5 years beginning with the date on which that part of the authorised development is first occupied for commercial use or becomes operational.</p> <p>(13) The prior written consent of National Highways is required to enter on any land pursuant to paragraph (1) which is part of the strategic road network or within the ownership of National Highways, and any such consent may be subject to such</p>	<p>Such a wide power has the potential to cause National Highways significant concerns and could make it impossible for National Highways to fulfil its statutory and Licence obligations.</p>
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	<p>conditions as required by National Highways.</p>	
<p>Article 36 – Statutory undertakers</p>	<p>(1) Subject to paragraph (2), Schedule 13 (protective provisions), paragraph 2 and article 27 (compulsory acquisition of rights), the undertaker may—</p> <p>(a) acquire compulsorily, or acquire new rights over, any Order land belonging to statutory undertakers;</p> <p>(b) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers within the Order land; and</p> <p>(c) extinguish the rights of, remove, relocate or reposition the apparatus belonging to statutory undertakers over or within the Order land.</p> <p>(2) The prior written consent of National Highways is required before acting pursuant to paragraph (1) in respect of any land forming part of the strategic road network and/or in which National Highways has an interest, and any such consent may be subject to such conditions as required by National Highways.</p>	<p>This Article gives very wide powers which would include land in the ownership of National Highway and there is no requirement to obtain consent or the ability for the statutory undertaker to impose any conditions.</p> <p>Such a power has the potential to cause National Highways significant concerns and the need for prior consent is therefore sought.</p>
<p>Article 40 - Guarantees in respect of payment of compensation</p>	<p>(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place a guarantee or alternative form of security approved by</p>	<p>This Article restricts approval to relevant planning authorities only. Instead, it is National Highways' position that this should extend to the highway authority also.</p>



	<p>the relevant planning authority and the relevant highway authority in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the relevant power in relation to that land.</p>	
<p>Article 46 – Felling or lopping of trees and removal of hedgerows</p>	<p>(1) Subject to paragraphs (4), (5) and (6) the undertaker may fell or lop any tree, shrub or hedgerow within 15 metres of any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree, shrub or hedgerow—</p> <p>(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or</p> <p>(b) from constituting a danger to persons using the authorised development.</p> <p>(2) In carrying out any activity authorised by paragraph (1), the undertaker must not cause unnecessary damage to any tree, shrub or hedgerow and must pay compensation to any person who suffers any loss or damage arising from such activity.</p> <p>(5) The provisions of paragraph (1) do not apply without the agreement of the relevant highway authority to any tree,</p>	<p>This Article ensures that the consent of the highway authority is sought for the felling or lopping of any tree or hedgerow within a highway; Article 46(5) doesn't extend to shrubs. Any works to trees, shrubs and hedgerows which has the ability to affect the SRN requires consent.</p>



	<p>shrub or hedgerow within 10 meters of a highway.</p>	
<p>Requirement 5(3)</p>	<p>The undertaker is not obliged to undertake highway works under Work No.16 any individual work specified in sub-paragraph (1) where—</p> <p>(a) the undertaker has agreed with the relevant planning authority and the relevant highway authority that an alternative to that work has been proposed which will mitigate the effect of the authorised development at the location of that work; and</p> <p>(b) the relevant planning authority and the relevant highway authority agree that such alternative work should be carried out in lieu of the individual work specified in sub-paragraph (1), and either—</p> <p>(i) an agreement for carrying out that alternative work has been entered into between the relevant highway authority and a third party; or</p> <p>(ii) the undertaker has entered into an agreement with the relevant highway authority in relation to the carrying out of that alternative work.</p>	<p>Requirement 5 allows the Applicant to provide and agree alternative works to any of those detailed at paragraph 5(1), where agreed with the relevant planning authority and the relevant highway authority. This current wording is exceptionally wide and has the possibility of circumventing the DCO process. Flexibility in the delivery of Work No.16 is required for reasons set out in our Deadline 8 representation titled Position Statement. We therefore propose the amendments here so that the flexibility to provide an alternative scheme is restricted to Work No.16 only. For the avoidance of doubt, this amended wording does not remove the concern we have to the current mitigation works proposed by the Applicant at Work No.16 and that if agreement is not reached at the A5 Cross in Hand junction, insufficient mitigation in Works No. 16 would be carried out with resulting adverse impacts on the strategic road network.</p>

Protective Provisions

As at the date of this submission, the parties have not agreed protective provisions for the benefit of National Highways as a statutory undertaker. The DCO does not include a version of the protective provisions agreed by National Highways and a number of

key provisions which are required by National Highways to satisfy itself that the SRN is protected have been omitted.

National Highways are in discussions with the Applicant over the inclusion of protective provisions into Schedule 13 of the DCO and have been fully engaging in such discussions. To date the protective provisions are yet to be agreed by National Highways and the Applicant, and National Highways shall continue its discussions with the Applicant post examination. The table below details those provisions in disagreement between National Highways and the Applicant. To assist the Examining Authority and the Secretary State, National Highways' proposed amendments are shown in red

As has been National Highways position throughout this Examination, the absence of adequate protective provisions is a significant concern for National Highways. National Highways' Licence provides a duty on National Highways to "*have due regard to the need to protect and improve the safety of the network as a whole for all road users*". The DCO in its current form provides the Applicant with very wide powers that could be used to carry out works to the SRN. It is therefore of utmost importance to National Highways that adequate protections are secured to ensure that National Highways can comply with its statutory and Licence obligations. The draft DCO as currently before the Examination would not do that. If the protective provisions sought by National Highways and shown at Appendix 1 of this submission are not secured on the face of the Order then National Highways strongly requests that the amendments to the current DCO as detailed within the table above are accepted in full.

Paragraph of Protective Provision	Provision	Reason for disagreement
4	Notwithstanding the limits of deviation permitted pursuant to article 4 (parameters of authorised development) of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under the strategic road unless such works are	National Highways is not of the view that "reasonable" is considered appropriate here. National Highways' duty is set out in its Licence from the DfT which it must act in accordance with. Paragraph 5.4 of the Licence states that



	<p>agreed in writing with National Highways at the absolute reasonable discretion of National Highways.</p>	<p>"...the Licence holder should take all reasonable steps to ensure the continued availability and resilience of the network as a strategic artery for national traffic, and as an effective part of the wider road and transport system." National Highways must act reasonably in any event but must retain absolute discretion over works which may impact the SRN.</p>
<p>7(2)</p>	<p>The undertaker must not exercise— <i>article 6 (maintenance of authorised development);</i> <i>article 9 (street works);</i> <i>article 10 (power to alter layout etc. of streets);</i> <i>article 12 (temporary closure of streets);</i> <i>article 14 (accesses);</i> <i>article 15 (maintenance of highway works);</i> <i>article 18 (traffic regulation);</i> <i>article 21 (discharge of water);</i> <i>article 23 (authority to survey and investigate the land);</i> <i>article 25 (compulsory acquisition of land);</i> <i>article 27 (compulsory acquisition of rights);</i> <i>article 28 (power to override easements and other rights);</i> <i>article 30 (private rights)</i> <i>article 34 (temporary use of land for carrying out the authorised development);</i> <i>article 35 temporary use of land for maintaining the authorised development);</i></p>	<p>The Applicant seeks to remove this paragraph in its entirety which National Highways cannot accept.</p> <p>Its inclusion is required in order to ensure open dialogue between the parties so that National Highways has control over the operations being carried out on its network. This is critical from a safety perspective and to maintain the integrity of the asset. As a public body, National Highways is under a duty to act reasonably and this is expressly provided in sub-paragraph 4 below. National Highways are under a duty to act reasonably and would not withhold its consent unless necessary which does provide the level of certainty required to deliver the project.</p> <p>Although some Articles of the current DCO require the consent of National Highways before</p>

	<p>article 36 (statutory undertakers); or article 46 (felling or lopping trees or removal of hedgerows) of this Order, over any part of the strategic road network or land in which National Highways has an interest without the consent of National Highways, and National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and submit a scheme of traffic management as required for National Highways' approval.</p>	<p>undertaking consent, as stated in this submission these consents are either qualified or subject to deemed approval provisions which is not acceptable to National Highways. This paragraph ensures that all necessary consents and approvals are sought by the Applicant to ensure the safe running of the SRN.</p>
7(3)	<p>National Highways must prior to the commencement of the specified works or the exercise of any power referenced in sub-paragraph (2) or the exercise of any power referenced in sub-paragraph (2) inform the undertaker of the identity of the person who will act as a point of contact on behalf of National Highways for consideration of the information required under sub-paragraph (1) or (2).</p>	<p>On the basis that the above paragraph 7(2) remains, the drafting removed by the Applicant is to be reinstated.</p>
7(4)	<p>Any approval of National Highways required under this paragraph- must not be unreasonably withheld; must be given in writing; shall be deemed to have been refused given if neither given nor refused within 2 months 42 days of the receipt of the information for approval or, where further particulars are requested by National Highways within 2 months 42 days of receipt of the information to which the request for further particulars relates; and</p>	<p>National Highways' position remains that deemed approval is not acceptable for reasons previously provided. Deemed approval is not considered sufficient in ensuring appropriate safeguards and processes are in place to ensure public safety on the SRN.</p> <p>National Highways also requires the timeframe for responding be increased from 42 days to 2 months. As stated earlier in this submission, there is a</p>



	<p>may be subject to any conditions as National Highways acting reasonably considers necessary.</p>	<p>significant risk that the 42 day period will not be met and a refusal issued for no other reason than it has not been possible to adequately assess the application in time. This is unlikely to give the Applicant the certainty or speed of decision making that it is seeking.</p>
<p>9(4)</p>	<p>If at any time after the payment referred to in sub-paragraph (3) has become payable, National Highways reasonably believes that the NH costs will exceed the estimated NH costs notified pursuant to sub-paragraph (2) it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate (the excess) and, if the excess is considered by the undertaker to be reasonable and proper, the undertaker must pay to National Highways within 28 days of the date of the notice a sum equal to the excess.</p>	<p>The Applicant seeks to qualify payment of the estimated cost detailed in paragraph 3 of the protective provisions. This is not considered necessary by National Highways. National Highways has a duty to manage public money as set out in government guidance and in line with its licence obligations which includes being unable to undertake works for profit. The specified works are a third party project interfacing with the SRN. It is the responsibility of the undertaker to pay the reasonable costs of landowners and/or statutorily protected persons who are affected by the specified works. It is not for the public purse to absorb this cost. In any effect, sub para 5 and 6 deals with those circumstances where previous payment's exceed final costs. Further, paragraph 9 sets out the costs and expenses the undertaker is expected to pay are "reasonably and properly incurred" therefore the addition here is not</p>

		<p>required. If it was disputed by the Applicant that costs had not being reasonably and properly incurred expert determination provisions would already apply without the reference here. Paragraph 21 is clear it applies to any dispute under this part of the schedule.</p>
9(6)	<p>Within 28 days of the issue of the final account: if the final account shows a further sum is due to National Highways, subject to such sum being considered to be reasonable and proper by the undertaker the undertaker must pay to National Highways the sum shown due to it; and if the account shows that the payment or payments previously made by the undertaker have exceeded the costs incurred by National Highways, National Highways must refund the difference to the undertaker.</p>	<p>National Highways does not accept the qualification inserted by the Applicant concerning further sums due to National Highways for the reasons set out previously.</p>
20(3)	<p>The undertaker must not under the powers of this Order:</p> <p>(a) acquire or use land forming part of;</p> <p>(b) acquire new or existing rights over; or</p> <p>(c) seek to impose or extinguish any restrictive covenants over;</p> <p>any of the strategic road network or land owned by National Highways, or extinguish any existing rights or interfere with apparatus of National Highways in respect of any third party property, except with the consent of National Highways by written request to legalservicesinbox@nationalhighways.co.uk.</p>	<p>The Applicant has sought removal of this paragraph in its entirety which is not accepted by National Highways.</p> <p>This provision is to ensure compliance with National Highways' role as a strategic highway authority, its licence requirements and other regulatory obligations. Paragraph 5.37 of the Licence states "The Licence holder must hold and manage land and property in line with, and as a function of, the Licence holder's legal duties as a highway authority, and solely for the</p>



		<p>purposes of operating, managing and improving the highway, unless otherwise approved by the Secretary of State". As a regulated entity, National Highways is charged with ensuring the integrity of this undertaking and fragmentation of ownership would lead to an inability to carry out its statutory functions and regulatory requirements.</p> <p>Discussions concerning land parcels have taken place between parties and National Highways' position has remained consistent throughout. National Highways has been willing to enter into suitable agreements with the Applicant and this has formed part of our previous submissions.</p> <p>National Highways' position concerning compulsory acquisition of its land and rights is detailed within its Deadline 8 submission</p>
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National Highways submits that the SRN may suffer serious detriment, for the reasons set out within the above table, if its protective provisions detailed at Appendix 1 are not accepted. In such circumstances, to avoid the potential for serious detriment, the Examining Authority and the Secretary of State are respectfully requested to substitute the version of the protective provisions for NH's benefit found at Schedule 13 Part 2 of the DCO for the protective provisions found at Appendix 1 of this document, which are considered proportionate and reasonable by National Highways in order to balance the need to protect the SRN and facilitate the delivery of the proposed Scheme.

Compulsory Acquisition of land and rights

National Highways' Deadline 7 submission details its position on the compulsory acquisition of its land and rights. In summary National Highways objects to the extinguishment of any of its interests which has the potential to cause National Highways significant problems and could make it impossible for National Highways to fulfil its statutory and Licence obligations.

National Highways' safety concerns are linked to the comments already made with regards to the DCO Articles. National Highways' concern is that should uncontrolled rights be granted or the compulsory acquisition of its land be authorised, safety concerns for the SRN will be created.

National Highways accepts that such rights are needed for the authorised development and does not object in principle, but its concern relates to the usual approval processes being bypassed resulting in concern that access and maintenance may be carried out in a manner that puts public safety at risk. With that in mind, National Highways' view is that rather than compulsory rights being granted in respect of such, necessary private agreements in the form of a licence and/or easement for plots 65, 66, 68 and 69 which all include National Highways drainage assets over them are entered into. This would mean that compulsory powers are unnecessary. Paragraph 7(2) of National Highways' protective provisions requires the Applicant to obtain various necessary consents from National Highways before undertaking various activities. As part of this consenting process the necessary licence and/or easement will need to be entered into by National Highways and the Applicant unless already separately entered into. Should National Highways protective provisions not be secured on the face of the Order then we seek that the DCO Articles be amended as set out in this submission so that the necessary consents are obtained from National Highways. Such consents will include the need to enter into necessary licence agreements and or easements before seeking to undertaking the activities sought on plots 65, 66, 68 and 69, unless already separately entered into.

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Application by Tritax Symmetry (Hinckley) Limited for an Order Granting Development Consent for the Hinckley National Rail Freight Interchange



National Highways notes the additional paragraph 20(4) inserted by the Applicant within the protective provisions secured on the DCO submitted as part of its Deadline 7 submission. This inclusion is agreed by National Highways.

National Highways notes that plot 54 and 67 is not detailed within paragraph 20(4) of the Applicant's protective provisions. National Highways therefore maintains its objection to the compulsory acquisition of its rights to its drainage assets over these plots.