

Tritax Symmetry (Hinckley) Limited
**HINCKLEY NATIONAL
RAIL FREIGHT INTERCHANGE**

**The Hinckley National Rail Freight
Interchange Development Consent Order**
Project reference TR050007

**Appendix A: Potential amendments to
Protective Provisions (Parts 1 and 3 of Schedule
13)**

Document reference: 23.1.2

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8 March 2024

Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations
2009 Regulation 5(2)(q)

APPENDIX B

POTENTIAL AMENDMENTS TO PROTECTIVE PROVISIONS (PARTS 1 AND 3 OF SCHEDULE 13 TO THE DCO)

(NETWORK RAIL AND LCC)

PART 1

FOR THE PROTECTION OF RAILWAY INTERESTS

1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15 of this Part of this Schedule, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Part of this Schedule—

“asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

“bridge” means the new bridge to be constructed as part of the A47 link road over the Leicester to Hinckley railway line which, for the purposes of this Part of this Schedule, is to include the superstructure of the new bridge including deck, piers, footings, abutments and wingwalls to be provided as part of Work No. 7 but does not include the highway, approach embankments, road approaches/embankments, footpaths, street lighting and all necessary highway related structures and apparatus (which are to be maintained by the local highway authority);

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993^(a);

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London, NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006^(b)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited’s railway undertaking;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;

(a) 1993 c. 43. Section 8 was amended by section 216 of, and paragraphs 1 and 4 of Schedule 17 and Part 4 of Schedule 31 to, the Transport Act 2000 (c. 38), paragraphs 1 and 4 of Schedule 2 to the Railways and Transport Safety Act 2003 (c. 20), paragraph 3 of Schedule 1, and Part 1 of Schedule 13, to the Railways Act 2005 (c. 14) and S.I. 2015/1682.

(b) 2006 c. 46.

“regulatory consents” means any consent or approval required under—

- (a) the Railways Act 1993;
- (b) the network licence; and/or
- (c) any other relevant statutory or regulatory provisions,

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approval of any access or beneficiary that may be required in relation to the authorised development;

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 6 (maintenance of authorised development) in respect of such works.

3.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

4.—(1) The undertaker must not exercise the powers conferred by—

- (a) article 3 (development consent granted by the Order);
- (b) article 6 (maintenance of authorised development);
- (c) article 12 (public rights of way – creation, substitution, stopping up and closure of level crossings);
- (d) article 14 (accesses);
- (e) article 21 (discharge of water);
- (f) article 23 (authority to survey and investigate the land);
- (g) article 25 (compulsory acquisition of land);
- (h) article 27 (compulsory acquisition of rights);
- (i) article 28 (power to override easements and other rights);
- (j) article 30 (private rights);
- (k) article 34 (temporary use of land for carrying out the authorised development);
- (l) article 35 (temporary use of land for maintaining the authorised development);
- (m) article 36 (statutory undertakers);
- (n) article 42 (operation and use of railways);
- (o) article 46 (felling or lopping of trees and removal of hedgerows);
- (p) the powers conferred by section 11(3) (powers of entry) of the 1965 Act;
- (q) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- (r) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;
- (s) any powers in respect of the temporary possession of land under the Neighbourhood Planning Act 2017,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(4) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 28 (power to override easements and other rights), or article 33 (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(6) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(7) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(8) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

5.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be

reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and
- (d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 52(1)(c) (arbitration) to the institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it

has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

15.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 39 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction, maintenance or operation of a specified work or the failure thereof;
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;
- (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;
- (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

- (a) give the undertaker reasonable notice of any such claims or demands;
- (b) must not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) take such steps as are within its control and are reasonable in the circumstance to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to restriction of the use of Network Rail's railway network as a result of the construction,

maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

16. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Network Rail and the undertaker agree that, following the construction and completion of the bridge and payment of an appropriate commuted sum to Network Rail, Network Rail will take transfer of the bridge and maintain the bridge from the date of such transfer.

~~19-20.~~ Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

~~20-21.~~ The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State’s consent, under article 7 (benefit of Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

~~21-22.~~ The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 50 (certification of plans and documents) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

PART 3
FOR THE PROTECTION OF LEICESTERSHIRE COUNTY COUNCIL AS
HIGHWAY AUTHORITY

Application

1.—(1) The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Leicestershire County Council.

(2) The undertaker and Leicestershire County Council and National Highways and Warwickshire County Council or their successors in function as highway authorities for their respective road networks may in respect of Work No. 16 in its entirety agree with each other that any one of the highway authorities may assume responsibility for that work pursuant to section 4 or 6 or 8 (as relevant) of the 1980 Act or by agreement.

Interpretation

2. In this Part of this Schedule—

“as built information” means the following information—

- (a) drawings showing the highway works as constructed;
- (b) list of supplies and materials, test results and CCTV drainage;
- (c) product data sheets, technical specifications for all materials to be used;
- (d) as built information for any utilities discovered or moved during the highway works;
- (e) method statements for highway works to be carried out;
- (f) road lighting, signs and traffic signals;
- (g) organisation and methods manuals for all products used;
- (h) as built programme;
- (i) drawings referred to in paragraphs (a), (k) and (l) in Auto CAD;
- (j) test results and records;
- (k) landscape drawings;
- (l) highway drainage drawings;
- (m) plans identifying land which is highway maintainable at public expense; and
- (n) RSA3 and exceptions agreed;

“bridge” means the new bridge to be constructed as part of the A47 link road over the Leicester to Hinckley railway line which, for the purposes of this Part of this Schedule, is to include the highway, approach embankments, road approaches/embankments, footpaths, street lighting and all necessary highway related structures and apparatus but does not include the ~~and all necessary~~ superstructures of the new bridge including deck, piers, footings, abutments and wingwalls to be provided as part of Work No. 7, and forming part of the highway works ~~for the purpose of this Schedule 13 Part 3;~~

“detailed design information” means the drawings, specifications and other information which must be in accordance with the general arrangements of the highway works shown on the highway plans unless otherwise agreed between the local highway authority and the undertaker which show the following—

- (a) site clearance details;
- (b) boundary environmental and mitigation fencing;
- (c) road restraint systems (vehicle and pedestrian);
- (d) drainage and ducting;
- (e) earthworks;

- (f) road pavements;
- (g) kerbs, footways and paved areas;
- (h) traffic signs, signals and road markings;
- (i) road lighting (including columns and brackets);
- (j) CCTV masts and cantilever masts;
- (k) electrical work for road lighting and traffic signs;
- (l) motorway communications;
- (m) highway structures;
- (n) landscaping;
- (o) utility diversions; and
- (p) identification of any land to be dedicated as highway;

“development inspector” means the officer of the highway authority appointed by it to inspect the highway works on its behalf;

“director” means the director of Environment and Transport of the highway authority or any successor post responsible for the highway authority function of Leicestershire County Council;

“final certificate” means the final certificate issued by the director for each phase of the highway works in accordance with paragraph 5;

“highway authority” means Leicestershire County Council;

“highway plans” means Highway Works Plans 2.4A, 2.4B, 2.4C, 2.4E, 2.4F, 2.4H, 2.4K relating to the highway works;

“highway related structures fees” means the total costs properly and reasonably incurred in undertaking the technical approval, design checking and inspection of any highway related structure;

“highway works” means those parts of the authorised development to be carried out in the areas identified as Work Nos. 7 to 17 (inclusive) on the highway plans the general arrangement of which is shown on the highway plans and any ancillary works thereto, except in those circumstances where the undertaker, National Highways, Warwickshire County Council and Leicestershire County Council have in respect of Work No. 16, agreed that any one of those relevant highway authorities is to assume responsibility for that work as highway authority in which case the relevant Part of Schedule 13 shall apply in respect of that work;

“maintenance period”, in relation to each phase of the highway works, means 12 months from the date of issue of the provisional certificate for that phase;

“phase” means those parts of the highway works to be carried out as separate packages of works in the areas identified as Work Nos. 7 to 17 (inclusive) on the highway plans or such other arrangement as must be agreed in writing by the highway authority in advance of commencement of that package of works;

“provisional certificate” means the provisional certificate of completion issued by the director for each phase of the highway works in accordance with paragraph 4;

“specification” means—

- (a) in relation to design—
 - (i) Leicestershire Highway Design Guide; and
 - (ii) Design Manual for Roads and Bridges;
- (b) in relation to specification—
 - (i) Leicestershire County Council’s Specification for highway works for new developments; and
 - (ii) Leicestershire County Council’s Standard drawings;
- (c) in relation to street lighting—
 - (i) design in accordance with BS5489; and

- (ii) Leicestershire County Council’s Street Lighting Specification; and
 - (d) in relation to traffic signs—
 - (i) the Traffic Signs Regulations and General Directions 2016 and any modifications of them;
 - (ii) the Traffic Signs Manual (DfT); and
 - (iii) Leicestershire County Council’s Traffic Signs and Road Markings Specification;
- “works fees” means the actual costs of the carrying out of the highway works in relation to—
- (a) considering and approving the detailed design information;
 - (b) the work carried out by the development inspector including travel expenses to and from the highway works and all other expenses properly incurred by the development inspector in connection with his duties;
 - (c) administration in relation to paragraphs (a) and (b) above; and
 - (d) highway related structures fees.

Highway works

- 3.—(1) The undertaker must carry out and complete the highway works in accordance with—
- (a) the detailed design information approved under paragraph 13; and
 - (b) the programme of works approved under paragraph 23 or as subsequently varied by agreement between the undertaker and the highway authority.
- (2) The undertaker must carry out and complete the highway works in accordance with the stipulations, requirements and conditions laid down in this Schedule.
- (3) Before commencement of the highway works and at no expense to the highway authority the undertaker shall obtain such consents, licences or permissions as may be required for the purposes of carrying out the highway works (including all requirements under the Traffic Management Act 2004), save where the need for such consents, licences or permissions is disappplied by this Order, and shall comply with the highway authority’s requirements for booking the necessary time and permits to carry out the highway works and to indemnify and keep the highway authority indemnified from and against all liabilities, costs, claims, actions, demands or expenses which may arise from the undertaker’s failure to obtain or to comply with such consents, licences or permissions.
- (4) The undertaker shall, once having commenced the highway works, proceed with them conscientiously and expeditiously and with all due diligence.
- (5) Subject to the provisions of this Schedule and immediately on the issuing of the provisional certificate for each phase of the highway works the undertaker shall dedicate as public highway (and the highway authority shall forthwith accept) all such land as is within its ownership and is required for the construction of that phase of the highway works which does not already form part of the public highway or is already maintained as if it were a public highway.

Provisional certificate and maintenance period

4. When and so soon as each phase of the highway works (including the bridge) has been completed including such road safety audits as required in accordance with paragraph 28 to the reasonable satisfaction of the director. the director must issue a provisional certificate for each phase of the highway works (including a phase containing the bridge), and the undertaker at its own expense must maintain that phase of the highway works (including a phase containing the bridge) in a good state of repair and to the satisfaction of the director for the duration of the maintenance period and must carry out such routine maintenance as may be necessary or required by the director to facilitate use by the public; and for the avoidance of doubt the undertaker must undertake all other work and maintenance in respect of that work, including but not limited to any defect or damage until issue of the final certificate in respect of that phase under paragraph 5, and that phase of the

highway works (including a phase containing the bridge) becomes highways maintainable at the public expense.

Final certificate

5.—(1) The undertaker must apply to the director for issue of the final certificate in respect of each phase at the expiration of the maintenance period in respect of that phase or on a date (whichever is the later) on which any defect or damage arising during the maintenance period is made good to the reasonable satisfaction of the director or completion of all or any works identified by any road safety audit required in accordance with paragraph 26.

(2) Upon receipt of the as built information in respect of a phase and approval of the same, the director must issue a final certificate in respect of that phase (including a phase containing the bridge) and as from the date of such final certificate the highway works (including the bridge) become highways maintainable at the public expense.

(3) If the undertaker does not apply for a final certificate for a phase within two years of the issue of the provisional certificate in respect of that phase the undertaker must pay to the highway authority a further administration charge of five hundred pounds (£500.00).

Indemnity

6. The undertaker must indemnify the highway authority from and against all costs, expenses and liabilities arising from or in connection with or ancillary to any claim, demand, action or proceedings resulting from the design, carrying out and maintenance of the highway works including but without limitation on the scope of this paragraph any claim against the highway authority under the Land Compensation Act 1973(a) or by virtue of the application of the provisions of the Noise Insulation Regulations Act 1975(b), including any liability falling upon the highway authority by virtue of its exercising its discretionary powers under the said Regulations, provided that—

- (a) the foregoing indemnity must not extend to any costs, expenses, liabilities and damages caused by or arising out of the neglect or default of the highway authority or its officers, servants, agents or contractors or any person or body for whom the highway authority is responsible;
- (b) the highway authority must notify the undertaker straight away upon receipt of any claim;
- (c) the highway authority must not accept any such claim without first having given the undertaker details of such claim and having given the undertaker the opportunity to make representations to the highway authority as to the validity and quantum of such claim;
- (d) the highway authority must, in settling any such claim, give full and due regard to any representations made by the undertaker in respect of the claim;
- (e) the highway authority must, following the acceptance of any claim, notify the quantum of the claim to the undertaker in writing and the undertaker must within 14 days of the receipt of such notification pay to the highway authority the amount specified as the quantum of such claim;
- (f) the undertaker must notify the highway authority of the intended date of the opening of each phase of the highway works to public traffic not less than 14 days in advance of the intended date; and
- (g) the undertaker must notify the highway authority of the actual date that each phase of the highway works are open to public traffic on each occasion within 14 days of that occurrence.

(a) 1973 c. 26.

(b) S.I. 1975/1763, amended by S.I. 1988/2000.

Construction (Design and Management) Regulations 2015

7. The undertaker must comply with all aspects of the Construction (Design and Management) Regulations 2015(a) and in particular must ensure that all obligations imposed on the client (as defined in those Regulations) are satisfied and must indemnify the highway authority against all claims, liabilities and actions arising out of a failure to so do.

Security

8. Prior to the commencement of each phase of the highway works the undertaker must secure the cost of it by the deposit with the highway authority of a bond, drafted substantially as detailed in Form 2 contained in paragraph 9, in a sum equal to 100% of all the costs of the carrying out of the phase of the highway works (including any statutory undertakers works) together with any commuted sum payable to the highway authority or such other sum agreed between the undertaker and the highway authority, or must provide some alternative form of security acceptable to the highway authority. Upon issue of the provisional certificate the highway authority shall refund to the undertaker 90% of the deposit remaining, 10% being refunded after the issue of the final certificate.

9. Form 2 as referred to in paragraph 8 of this Part of this Schedule—

Form 2

Bond – Leicestershire County Council

BY THIS BOND WE [the undertaker] whose registered office is situated at [] (hereinafter called “the Undertaker”) and [the Surety] (Company Registration No []) whose registered office is situated at [] (hereinafter called “the Surety”) are held and firmly bound unto **LEICESTERSHIRE COUNTY COUNCIL** (hereinafter called “the Authority”) in the sum of (£[]) (“the Surety Sum”) the payment of which sum the Undertaker and the Surety bind themselves their successors and assigns jointly and severally by the presents

WHEREAS the Developer intends to carry out Phase [] of the highway works referred to in Schedule 13 in the Hinckley National Rail Freight Development Consent Order [] (“the DCO”) **NOW THE CONDITIONS** of the above written bond is such that if the undertaker well and truly performs and fulfils its obligations in Schedule 13 to the DCO or if on failure by the Undertaker so to do the Surety must pay to the Authority the Surety Sum then the above written Bond is null and void but otherwise it must be and remain in full force and the giving by the Authority of any extension of time for the performing of the obligations in Schedule 13 Part 3 to the DCO on behalf of the Undertaker to be performed or fulfilled or any forbearance or forgiveness on the part of the Authority to the Undertaker in respect of any matter referred to in or concerning provisions of Schedule 13 Part 3 to the DCO must not in any way release the Surety from the Surety’s liability under the above written Bond provided that upon the issue of the provisional certificate under Schedule 13 Part 3 to the DCO the liability of the Undertaker and the Surety under this Bond is to be reduced to a sum equivalent to ten per cent of the cost of the phase of the highway works together with the value of the commuted sum of one thousand pounds (£1,000) whichever is the greater and upon the issue of the final certificate in respect of that phase the liability of the Undertaker and the Surety under this Bond must absolutely cease.

[Attestation]

Notices etc.

10. Where under the provisions of this Schedule the highway authority or the director is required to agree, to approve, to express satisfaction with or to give notice of any matter such agreement, approval, satisfaction or notice must not be unreasonably withheld or delayed and is to be deemed

(a) S.I. 2015/51.

to have been given or expressed if not given or refused (along with reasons for such refusal) within 42 working days.

Dispute resolution

11. Regardless of article 52 (arbitration) any dispute under or arising out of the operation of this Schedule may be referred to a single arbitrator if all parties to the dispute agree such arbitrator or in default of agreement to be nominated (upon the application of any party to the dispute) by the President for the time being of the Law Society in accordance with and subject to the provisions of the Arbitration Act 1996(a) or any statutory modification or re-enactment thereof for the time being in force.

Privately and publicly owned apparatus

12. For the avoidance of doubt it is expressly declared that the undertaker in carrying out the highway works must at its own expense divert or protect all or any pipes, wires, cables or equipment belonging to any person having power or consent to undertake street works under the 1991 Act as may be necessary to enable such works to be properly carried out or may be reasonably directed by the director and all alterations to existing services must be carried out to the reasonable satisfaction of the appropriate persons, authorities and statutory undertakers.

Detailed design approval

13.—(1) The undertaker must take the specifications into account in preparing the detailed design information for submission to the highway authority.

(2) No phase of the highway works is to commence until the detailed design information (including traffic signal equipment) has been submitted to and approved by the director.

Workmanship

14. All the highway work is to be carried out to the reasonable satisfaction of the director.

Traffic and safety control

15. In carrying out work in or adjoining the public highway the undertaker must comply in all respects with chapter 8 of the Traffic Signs Manual 2009.

Site safety

16. The undertaker must in respect of each phase of the highway works keep that phase safe and in a good state of efficiency and repair including the fencing and lighting of all open trenches and must keep all building materials and plant clear of the carriageway and footways.

Approval of persons undertaking the highway works

17. The undertaker must not engage or permit the engagement of any person to carry out the highway works (or any part thereof including their design) unless that person has first been approved in writing by the highway authority as suitable to carry out such works.

Inspection of the highway works

18. The undertaker must permit and must require any contractor or sub-contractor engaged on the highway works to permit at all reasonable times persons authorised by the highway authority whose identity has been previously notified to the undertaker to gain access to the site of the highway works

(a) 1996 c. 23.

for the purpose of inspection to verify compliance with the provisions of this Schedule in accordance with the highway authority's inspection policy.

Design and inspection payment

19.—(1) The undertaker must pay the works fees to the highway authority within 30 working days following receipt of an invoice issued by the highway authority to the undertaker following the first submission of detailed design information for approval.

(2) The undertaker must provide the following for the development inspector—

- (a) workplace on the site of the highway works including welfare facilities;
- (b) safe route for transportation around the highways works; and
- (c) parking provisions.

Commuted sum

20.—(1) Immediately prior to the issue of the final certificate in respect of any phase, the undertaker must pay to the highway authority any commuted sum payable in respect of that phase calculated as provided for in sub-paragraph (3).

(2) Upon completion of works relating to a public right of way within the Order limits as part of a phase of the authorised development pursuant to requirement 3 (Part 1 of Schedule 2) the undertaker must pay to the highway authority a commuted sum (if necessary) towards the maintenance of such public right of way (including the surfacing of the new footbridge at the Outwoods railway crossing) calculated as provided for in sub-paragraph (3).

(3) The rates to be applied in calculating the commuted sums payable must be based on those contained with the Leicestershire Highway Design Guide (or any replacement of it) or in the absence of relevant rates within that Guide must be agreed between the undertaker and the highway authority at the date of calculation.

Programme of works

21. The undertaker must, prior to the commencement of each phase of the highway works, submit to the director for their approval a programme of works setting out the undertaker's proposed timetables for executing those works and following such approval (which may be given with or without modification) the undertaker must use all reasonable endeavours to ensure that the programme of works is complied with.

Power to execute works in default or emergency

22.—(1) If at any time the undertaker does not comply with any of the terms of this Schedule in respect of any phase of the highway works, having been given notice of an alleged breach and opportunity to remedy it by the director, the highway authority must, on giving to the undertaker 14 days' notice in writing to that effect, be entitled to carry out and complete that phase of the highway works and any maintenance works on the undertaker's behalf and the undertaker must within 28 days pay to the highway authority the cost so incurred by the highway authority.

(2) Nothing in this Schedule prevents the highway authority from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public, the cost to the highway authority of such work or action being chargeable to and recoverable from the undertaker.

Insurance

23. The undertaker must, prior to commencement of the highway works, effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 for any one claim against any legal liability for damage, loss or injury to any property or any persons as a direct result of the execution and maintenance of the highway works or any part of them by the undertaker.

Notice of commencement of highway works

24. The undertaker must, prior to the commencement of each phase of the highway works, give the highway authority at least five weeks' notice (or such shorter period to be agreed between the undertaker and the highway authority) in writing of the proposed date on which each phase of the highway works will start and such date must be subject to the agreement of the director.

Approval of team undertaking Road Safety Audits

25. The undertaker must not engage or permit the engagement of any audit team unless that audit team has first been approved by the highway authority as suitable to undertake Road Safety Audits in accordance with the Design Manual for Roads and Bridges GG119 Road Safety Audit (formerly HD19/15) or any replacement or modification of that design manual.

Road Safety Audits

26.—(1) At any time during the detailed design stages the director may require that an interim Road Safety Audit be carried out in accordance with the Design Manual for Roads and Bridges GG119 Road Safety Audit and be submitted to the director and if so required by the director any recommendations in such interim report must be implemented to the director's satisfaction.

(2) Prior to the approval of the detailed design information for a phase, a Stage 2 Road Safety Audit must be carried out in respect of that phase in accordance with the Design Manual for Roads and Bridges GG119 Road Safety Audit or any replacement or modification of that design manual and must be submitted to the director and if so required by the director any recommendations made in the Stage 2 report must be implemented to the director's satisfaction.

(3) Prior to the issue of the provisional certificate in respect of a phase, a Stage 3 Road Safety Audit must be carried out for that phase in accordance with the Design Manual for Roads and Bridges GG119 Road Safety Audit and must be submitted to the director and if so required by the director any recommendations made in the Stage 3 report must be implemented to the director's satisfaction.

(4) A Stage 4 12-month monitoring Report ("the 12-month report") carried out in accordance with the Design Manual for Roads and Bridges GG119 Road Safety Audit in respect of each phase of the highway works must be submitted to the director no sooner than 8 weeks and no later than 12 weeks following the first anniversary of the opening of that phase for public use and if so required by the director any recommendations made in the 12-month report must be implemented to the director's satisfaction AND the undertaker will secure by the deposit of a bond with the highway authority a sum equivalent to the director's reasonable estimate of the cost of the potential liability of the developer in respect of works arising from the Stage 4 12-month report prior to the issue of the final certificate.

(5) In the event that the director does not require a 12-month report to be submitted following receipt of the Stage 3 Road Safety Audit then the final certificate shall be issued following the implementation of any recommendations made in that report to the director's satisfaction.

Traffic signal equipment

27. The undertaker must permit the highway authority access at all reasonable times to any part of the site upon which the highway works are being carried out and in which cables, pipes, ducts or other apparatus associated with the traffic signal equipment is to be or are located to enable the highway authority to undertake works reasonably required for the maintenance of the said cables, pipes, ducts or other apparatus including any works which are undertaken to improve the performance of the traffic signals.

Use of sums paid

28. The highway authority must use such sums as are payable in accordance with the terms of this Schedule together with any interest which may accrue only for the purposes for which they are expressed to be paid.

Statutory procedures and orders

29. The undertaker must pay to the highway authority upon demand the total costs properly and reasonably incurred by the highway authority in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the highway works and whether or not such procedure or order is or are experimental, temporary or permanent provided that this paragraph does not apply to the making of any orders which duplicate the orders contained in this Order.

Consultation

30. The undertaker shall pay to the highway authority upon demand the total costs properly and reasonably incurred by the highway authority in undertaking any public consultation in respect of the highway works, be the consultation a statutory requirement or any other form of consultation that the highway authority would normally carry out if it were undertaking the highway works.