

Our ref: SM25744
Your ref:

Emily Davies
Casework Manager
National Infrastructure
The Planning Inspectorate
Temple Quay House
2 The Square
Bristol
BS1 6PN

National Highways
Bridge House
1 Walnut Tree Close
Guildford
Surrey
GU1 4LZ

Tel:
Date 19 February 2024

Dear Ms Davies,

**RE: Planning Act 2008 – Application for an Order granting Development Consent
Cambridge Waste Water Treatment Plant Relocation Project
Deadline 5 Submission – National Highways**

Please find submitted the following documents;

1. National Highways Deadline 5 Response to the ExAQ2
2. National Highways Standard Protective Provisions (correct version).

If you have questions or require further clarification, please contact Sarah Marshall
[REDACTED] [@nationalhighways.co.uk](mailto:[REDACTED]@nationalhighways.co.uk)).

Yours sincerely

[REDACTED]
Sarah Marshall
Head of Highways and Planning (South)
Senior Planning Lawyer

Email: [REDACTED] [@nationalhighways.co.uk](mailto:[REDACTED]@nationalhighways.co.uk)

ExQ2: 31 January 2024

Responses due by Deadline 5: Monday 19th February 2024

ExQ2	Question to:	Question:	
8.5	National Highways	<p>Powers sought</p> <p>Please comment on the Applicant's response to CAH1 Action Points 16 and 17 [REP4-087] relating to CA powers sought and clarify why you consider that the powers sought would cause serious detriment to your undertaking, as mentioned in your D4 submission [REP4-096] (noting that you highlight that negotiations are progressing regarding protective provisions / side agreements and noting that that the Applicant has highlighted examples of made DCOs which it states include powers similar to that sought in this instance).</p>	<p>The Applicant has referred to a number of historical DCOs. between 2014 and 2020 however following changes within the organisation since the making of all those DCOs there has been a change in National Highway's approach to ensure our asset is subject to far better protection and it would therefore not be appropriate for National Highways to be bound by past DCOs.</p> <p>There is now no access to the Books of Reference in respect of the DCOs or Orders referred to by the Applicant 2014 to 2020.</p> <p>In respect of the Thames Tideway Tunnel and Silvertown Tunnel Order, it should be noted that Transport for London is a public statutory body under the Greater London Authority Act 1999.</p> <p>The Southampton to London Pipeline DCO authorises acquisition of permanent rights but not the acquisition of freehold</p>

ExQ2: 31 January 2024

Responses due by Deadline 5: Monday 19th February 2024

			<p>rights of National Highways Land and although the book of reference is no longer accessible having reviewed the Secretary of State's decision letter, the DCO and responses it is expected Highways England retained the freehold of that land.</p> <p>The promotor for the HyNet Carbon Dioxide Pipeline DCO has sought acquisition of the freehold of the subsoil of National Highways Land which is objected to by National Highways. No decision has yet been made by the Secretary of State for this scheme.</p> <p>The Secretary of State has not made a decision on the proposed Yorkshire Green Energy Enablement DCO.</p> <p>The Viking CCS Pipeline is Pre-examination. National Highways will object to proposals to compulsorily acquire the subsoil of its undertaking.</p> <p>Reference is made by the Applicant to compulsory</p>
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ExQ2: 31 January 2024

Responses due by Deadline 5: Monday 19th February 2024

			<p>acquisition powers authorised in the Crossrail Act 2008 and High Speed Rail Acts 2017 and 2021 however it should be noted these powers were authorised in primary legislation concerned with tunnels for the rail network which concerns land area smaller than the strategic road network.</p> <p>National Highways do not accept the Applicant's statement that the 'waste transfer tunnel is a significant permanent structure which will remain underground in perpetuity'. The Applicant cannot be certain that the tunnel will remain in place as may be subject to changing factors that may affect the land for example weather or climate. The asset may be subject to deterioration or if the Applicant has a change of ownership in future where for example corporate priorities may change which may affect the maintenance or need for the tunnel. Any deterioration would potentially adversely affect a public asset being the strategic road network. There</p>
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ExQ2: 31 January 2024

Responses due by Deadline 5: Monday 19th February 2024

			<p>National Highways do not consider that CA powers are required for the subsoil interest through which the tunnel would run under the A14. National Highways now have a system where DCOs impact the strategic road network and a decision is required to be taken on whether or not or NRSWA applies to ensure consistency with decisions (due to the number of projects and schemes potentially impacting the strategic road network). An alternative would be for an easement where 'lift and shift' provisions apply to lift and shift the structure and requirement the movement at the Applicant's cost if National Highways need to re-develop the strategic road network. If a decision is taken that NRSWA does apply due to ability of the tunnel to adversely affect the stability of the road network.</p> <p>If the subsoil is owned by a third party (which is not a public authority), that third party could prevent or obstruct redevelopment or improvement</p>
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ExQ2: 31 January 2024

Responses due by Deadline 5: Monday 19th February 2024

			<p>of the strategic road network in future. If emergency access to the subsoil is required by National Highways, there will be potential delays and costs to the public purse if the subsoil is owned by a third party and a risk of disputes if access to the subsoil is refused by the Applicant or their successors in title.</p> <p>National Highways consider there is a serious detriment to their undertaking under s.127 of the Planning Act 2008 and the detriment cannot be made good by the Applicant. The serious detriments which would potentially impact the road and safety of road users are subsidence, landslip, failure of parts of the tunnel under the road leading which may not be clear on inspection of the road until there is a failure which would lead to danger to users of the road. It is not considered that these detriments could be addressed by the protective provisions (which are not yet agreed by the Applicant).</p>
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ExQ2: 31 January 2024

Responses due by Deadline 5: Monday 19th February 2024

			<p>If an easement is put in place or NH take a decision that NRSWA applies, the Applicant as a statutory undertaker would be able to protect its operational asset.</p> <p>The A303 Stonehenge DCO is not an appropriate comparison as for that scheme the owner of the subsoil is a statutory heritage body who hold their land inalienably. Land held inalienably can only be sold if Parliament authorises its compulsory acquisition.</p> <p>Finally the land owned by National Highways and formerly Highways England was considered 'crown land' up to the formation of Highways England in 2013 and could not generally be compulsorily acquired, however this position could alter in future if it is considered appropriate by Parliament to protect land owned by National Highways from being compulsorily acquired.</p>
8.8	National Highways, Conservators of the	Statutory Undertakers	Please find attached National Highways standard protective

ExQ2: 31 January 2024

Responses due by Deadline 5: Monday 19th February 2024

	<p>River Cam, Network Rail Infrastructure Limited, EA, CCoC, Arqiva Limited, Sky Telecommunications Services Limited, City Fibre Limited, Vodafone, Eastern Power Networks PLC/UK Power Networks, any other relevant statutory undertakers</p>	<p>Please review the Applicant's D4 submissions and identify any outstanding key concerns or impediments with regard to reaching agreement with the Applicant on CA / TP matters and protective provisions, if necessary. Please also clarify whether you are confident of reaching agreement with the Applicant before the close of the Examination, and if not, any implications for this?</p>	<p>provisions (an incorrect version was submitted in error at D4) which National Highways require to sit on the face of the DCO. A copy of National Highways standard protective provisions has been forwarded to the Applicant. They are not agreed as there is no agreement with the Applicant on the provisions concerning the bond.</p> <p>National Highways are undertaking meetings with the Applicant to negotiate project specific protective provisions to sit under a Side Agreement to the DCO. Potentially agreement on the project specific protective provisions and side agreement could be reached before close of examination but if not, before the ExA recommendations are submitted to the Secretary of State.</p> <p>No agreement has been reached with the Applicant on the CA of the subsoil of the SRN. National Highways position remains that the Applicant has not met the</p>
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ExQ2: 31 January 2024

Responses due by Deadline 5: Monday 19th February 2024

			<p>tests in s.127 of the Planning Act 2008.</p> <p>National Highways notes that regarding land rights, Examining Authorities now expect Applicants to not rely on the Planning Act 2008 Compulsory acquisition provisions as the Secretary of State will expect on all or the vast majority agreement on plots of land and may not grant compulsory acquisition powers if not considered necessary.</p>
20.6	Applicant, National Highways	<p>Evidence supporting National Highways decision relating to permanent access options</p> <p>In [REP1-078; page 138] the Applicant states that During the consultation process to identify a suitable access for the proposed WWTP the Applicant proposed Option 3 which consisted of an access directly off the A14. This option was not acceptable to National Highways due to safety concerns and non-policy compliance (DfT Circular 01/2022, paragraph 20) so this option was not pursued. a) Please explain the evidence that was presented to National Highways to inform this conclusion; and b) In the absence of modelling based on up-to-date traffic information, how could a conclusion on the most appropriate access solution be reached with any certainty?</p>	<p><i>National Highways attended a series of Technical Working Groups, led by the Applicant. During these meetings, several accesses, including the proposal for a new junction on the A14 were presented. From the information provided, National Highways advised Access Option 3 would be contrary to policy and therefore National Highways would object to this proposal as set out in an email to the Applicant on 12th August 2021. Please note, at the time of the discussions, the Department for Transport (DfT) circular 02/2013</i></p>

ExQ2: 31 January 2024

Responses due by Deadline 5: Monday 19th February 2024

			<i>'The strategic road network and the delivery of sustainable development') was the in-date policy.</i>
20.15	National Highways	Exclusion zone for SRN Are your concerns relating to potential crane falls on the SRN, as mentioned during ISH3, addressed by the drawing at Appendix J of [REP4-087]?	<i>Following the submission of the 'potential Crane Fall / Collapse zones' plan within document REP4-087, National Highways are satisfied the A14 would be unlikely to be impacted in the event of a crane fall and it would remain within the site boundary.</i>
1.2	Applicant, Ips	Policy The National Planning Policy Framework was revised on 19 December 2023. Do you consider this to have any implications for the application?	<i>National Highways' have no comment regarding the revised National Planning Policy Framework, published on 19 December 2023.</i>
9.1	CCoC, SCDC, CCC, any other IPs	Design Code Please confirm whether you are satisfied with the submitted Design Code [REP4-085], and if not, set out the reasons for this.	<i>National Highways' have no comment regarding the Design Code submitted at Deadline 4.</i>

PART []
FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Application etc.,

1. —(1) The provisions of this Part of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(2) Nothing in this Order affects or prejudices the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or Town and Country Planning (General Permitted Development) (England) Order 2015 which shall continue to apply in respect of the exercise of all National Highways' statutory functions.

Interpretation

2.—(1) Where the terms defined in article 2 (*interpretation*) of this Order are inconsistent with subparagraph (2) the latter prevail.

(2) In this Part of this Schedule—

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

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker; in compliance with Interim Advice Note 184 or any successor document;
- (b) list of suppliers and materials used, as well as any relevant test results and CCTV surveys (if required to comply with DMRB standards);
- (c) product data sheets and technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for the works carried out;
- (f) in relation to road lighting, signs, and traffic signals any information required by Series 1300 and 1400 of the Specification for Highway Works or any replacement or modification of it;
- (g) organisation and methods manuals for all products used;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during construction phase of the project;
- (j) a stage 3 road safety audit subject to any exceptions to the road safety audit standard as agreed by the undertaker and National Highways;
- (k) the health and safety file; and
- (l) such other information as is required by National Highways to be used to update all relevant databases and to ensure compliance with National Highway's *Asset Data Management Manual* as is in operation at the relevant time.

“the bond sum” means the sum equal to 200% of the cost of the carrying out the specified works (to include all costs plus any commuted sum) or such other sum agreed between the undertaker and National Highways;

“the cash surety” means the sum agreed between the undertaker and National Highways;

“commuted sum” means such sum calculated as provided for in paragraph 9 of this Part of this Schedule to be used to fund the future cost of maintaining the specified works;

“condition survey” means a survey of the condition of National Highways structures and assets within the Order limits that may be affected by the specified works;

“contractor” means any contractor or subcontractor appointed by the undertaker to carry out the specified works;

“defects period” means the period from the date of the provisional certificate to the date of the final certificate which shall be no less than 12 months from the date of the provisional certificate;

“detailed design information” means such of the following drawings specifications and calculations as are relevant to the development—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) road restraints systems and supporting road restraint risk appraisal process assessment;
- (d) drainage and ducting as required by DMRB CD 535 Drainage asset data and risk management and DMRB CS551 Drainage surveys – standards for Highways
- (e) earthworks including supporting geotechnical assessments required by DMRB CD622 Managing geotechnical risk and any required strengthened earthworks appraisal form certification;
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) regime of California Bearing Ratio testing;
- (k) electrical work for road lighting, traffic signs and signals;
- (l) motorway communications as required by DMRB;
- (m) highway structures and any required structural approval in principle;
- (n) landscaping;
- (o) proposed departures from DMRB standards;
- (p) walking, cycling and horse riding assessment and review report;
- (q) stage 1 and stage 2 road safety audits and exceptions agreed;
- (r) utilities diversions;
- (s) topographical survey;
- (t) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
- (u) health and safety information including any asbestos survey required by GG105 or any successor document; and
- (v) other such information that may be required by National Highways to be used to inform the detailed design of the specified works;

“DBFO contract” means the contract between National Highways and the highway operations and maintenance contractor for the maintenance and operation of parts of the strategic road network which are within the Order Limits or any successor or replacement contract that may be current at the relevant time;

“DMRB” means the Design Manual for Roads and Bridges or any replacement or modification of it;

“final certificate” means the certificate relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways pursuant to paragraph 9;

“the health and safety file” means the file or other permanent record containing the relevant health and safety information for the authorised development required by the Construction Design and Management Regulations 2015 (or such updated or revised regulations as may come into force from time to time);

“highway operations and maintenance contractor” means the contractor appointed by National Highways under the DBFO contract;

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of the specified works as notified to National Highways from time to time;

“programme of works” means a document setting out the sequence and timetabling of the specified works;

“provisional certificate” means the certificate of provisional completion relating to those aspects of the specified works that have resulted in any alteration to the strategic road network to be issued by National Highways in accordance with paragraph 7 when it considers the specified works are substantially complete and may be opened for traffic;

“road safety audit” means an audit carried out in accordance with the road safety audit standard;

“road safety audit standard” means DMRB Standard HD GG119 or any replacement or modification of it;

“road space booking” means road space bookings in accordance with National Highways’ Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy;

“Specification for Highways Works” means the specification for highways works forming part of the manual of contract documents for highway works published by National Highways and setting out the requirements and approvals procedures for work, goods or materials used in the construction, improvement or maintenance of the strategic road network;

“specified works” means so much of any work, including highway works and signalisation, authorised by this Order including any maintenance of that work, as is on, in, under or over the strategic road network for which National Highways is the highway authority;

“strategic road network” means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including drainage infrastructure, street furniture, verges and vegetation and all other land, apparatus and rights located in, on, over or under the highway;

“utilities” means any pipes wires cables or equipment belonging to any person or body having power or consent to undertake street works under the New Roads and Street Works Act 1991; and

“winter maintenance” means maintenance of the road surface to deal with snow and ice.

(3) References to any standards, manuals, contracts, Regulations and Directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

General

3.The undertaker acknowledges that parts of the works authorised by this Order affect or may affect parts of the strategic road network in respect of which National Highways have appointed the highway operations and maintenance contractor.

4.Notwithstanding the limits of deviation permitted pursuant to article [] of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out under the strategic road network at a distance within 4 metres of the lowest point of the ground.

5.References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

Works outside the Order limits

6.—If the undertaker proposes to carry out works to the strategic road network that are outside of the Order Limits in connection with the authorised development, the undertaker must enter into an agreement with National Highways in respect of the carrying out of those works prior to the commencement of those works.

Prior approvals and security

7.—(1) The specified works must not commence until—

- (a) a stage 1 and stage 2 road safety audit has been carried out and all recommendations raised by them or any exceptions are approved by National Highways;
- (b) the programme of works has been approved by National Highways;
- (c) the detailed design of the specified works comprising of the following details, insofar as considered relevant by National Highways, has been submitted to and approved by National Highways—
 - (i) the detailed design information, incorporating all recommendations and any exceptions approved by National Highways under sub-paragraph (a)
 - (ii) details of the proposed road space bookings;
 - (iii) the identity and suitability of the contractor and nominated persons;
 - (iv) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;
 - (v) information demonstrating that the walking, cycling and horse riding assessment and review process undertaken by the undertaker in relation to the specified works has been adhered to in accordance with DMRB GG142 – Designing for walking, cycling and horse riding; and
- (d) a scheme of traffic management has been submitted by the undertaker and approved by National Highways such scheme to be capable of amendment by agreement between the undertaker and National Highways from time to time;
- (e) stakeholder liaison has taken place in accordance with the process for such liaison agreed between the undertaker and National Highways under sub-paragraph (c)(v) above;
- (f) National Highways has approved the audit brief and CVs for all road safety audits and exceptions to items raised in accordance with the road safety audit standard;
- (g) the undertaker has agreed the estimate of the commuted sum with National Highways;
- (h) the scope of all maintenance operations (routine inspections, incident management, reactive and third party damage) to be carried out by the undertaker during the construction of the specified works (which must include winter maintenance) has been agreed in writing by National Highways;
- (i) the undertaker has procured to National Highways collateral warranties in a form approved by National Highways from the contractor and designer of the specified works in favour of National Highways to include covenants requiring the contractor and designer to exercise all reasonable skill care and diligence in designing and constructing the specified works, including in the selection of materials, goods, equipment and plant; and
- (j) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways considers will be affected by the specified works, has been agreed in writing by National Highways.

(2) The undertaker must not exercise—

- (a) article [] (*maintenance of authorised development*);
- (b) article [] (*street works*);
- (c) article [] (*permanent stopping up of streets, rights of way and rights of access*);

- (d) article [] (*temporary stopping up of streets, rights of way and rights of access*);
- (e) article [] (*traffic regulation*);
- (f) article [] (*discharge of water*);
- (g) article [] (*protective works to buildings*);
- (h) article [] (*authority to survey and investigate the land*);
- (i) article [] (*compulsory acquisition of land*);
- (j) article [] (*compulsory acquisition of rights*);
- (k) article [] (*temporary use of land for carrying out the authorised development*);
- (l) article [] (*temporary use of land for maintaining the authorised development*); or
- (m) article [] (*felling or lopping trees*) of this Order,

over any part of the strategic road network 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/or submit a scheme of traffic management for National Highways' approval.

(3) National Highways must prior to the commencement of the specified works 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).

(4) Any approval of National Highways required under this paragraph-

- (a) must not be unreasonably withheld;
- (b) must be given in writing;
- (c) shall be deemed to have been refused if neither given nor refused within 2 months of the receipt of the information for approval or, where further particulars are requested by National Highways within 2 months of receipt of the information to which the request for further particulars relates; and
- (d) may be subject to any conditions as National Highways considers necessary.

(5) Any change to the identity of the contractor and/or designer of the specified works will be notified to National Highways immediately and details of their suitability to deliver the specified works will be provided on request along with collateral warranties in a form agreed by National Highways.

(6) Any change to the detailed design of the specified works must be approved by National Highways in accordance with paragraph 7(1) of this Part.

Construction of the specified works

8.—(1) The undertaker must give National Highways 28 days' notice in writing of the date on which the specified works will start unless otherwise agreed by National Highways.

(2) The undertaker must comply with National Highways' road space booking procedures prior to and during the carrying out the specified works and no specified works for which a road space booking is required shall commence without a road space booking having first been secured from National Highways.

(3) The specified works must be carried out by the undertaker to the satisfaction of National Highways in accordance with—

- (a) the relevant detailed design information and programme of works approved pursuant to paragraph 7(1) above or as subsequently varied by agreement between the undertaker and National Highways;
- (b) the DMRB, the Manual of Contract Documents for Highway Works, including the Specification for Highway Works, together with all other relevant standards as required by National Highways to include, inter alia; all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016 save to the extent

that exceptions from those standards apply which have been approved by National Highways; and

- (c) all aspects of the Construction (Design and Management) Regulations 2015 or any statutory amendment or variation of the same and in particular the undertaker, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of National Highways.

(4) The undertaker must permit and must require the contractor to permit at all reasonable times persons authorised by National Highways (whose identity must have been previously notified to the undertaker by National Highways) to gain access to the specified works for the purposes of inspection and supervision of the specified works.

(5) If any part of the specified works is constructed-

- (a) other than in accordance with the requirements of this Part of this Schedule; or
- (b) in a way that causes damage to the highway, highway structure or asset or any other land of National Highways,

National Highways may by notice in writing require the undertaker, at the undertaker's own expense, to comply promptly with the requirements of this Part of this Schedule or remedy any damage notified to the undertaker under this Part of this Schedule, to the satisfaction of National Highways.

(6) If during the carrying out of the authorised development the undertaker or its appointed contractors or agents causes damage to the strategic road network then National Highways may by notice in writing require the undertaker, at its own expense, to remedy the damage.

(7) If within 28 days on which a notice under sub-paragraph (5) or sub-paragraph (6) is served on the undertaker (or in the event of there being, in the opinion of National Highways, a danger to road users, within such lesser period as National Highways may stipulate), the undertaker has failed to take the steps required by that notice, National Highways may carry out the steps required of the undertaker and may recover any expenditure incurred by National Highways in so doing, such sum to be payable within 30 days of demand.

(8) Nothing in this Part of this Schedule prevents National Highways from carrying out any work or taking any such action as it reasonably believes to be necessary as a result of or in connection with the carrying out or maintenance of the authorised development without prior notice to the undertaker in the event of an emergency or to prevent the occurrence of danger to the public and National Highways may recover any expenditure it reasonably incurs in so doing.

(9) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities and all agreed alterations and reinstatement of highway over existing utilities must be constructed to the satisfaction of National Highways.

(10) During the construction of the specified works the undertaker must carry out all maintenance (including winter maintenance) in accordance with the scope of maintenance operations agreed by National Highways pursuant to paragraph 7(1)(h) and the undertaker must carry out such maintenance at its own cost.

(11) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme pursuant to paragraph 7(1)(b) of this Part or suspends the carrying out of any specified work beyond a reasonable period of time and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

Payments

9.—(1) The undertaker must pay to National Highways a sum equal to the whole of any costs and expenses which National Highways incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes abortive) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

- (a) the checking and approval of the information required under paragraph 7(1);
- (b) the supervision of the specified works;
- (c) the checking and approval of the information required to determine approvals under this Order;
- (d) all costs in relation to the transfer of any land required for the specified works; and
- (e) all legal and administrative costs and disbursements incurred by National Highways in connection with the Order and sub-paragraphs (a)-(d); and
- (f) any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs,

together comprising “the NH costs”.

(2) The undertaker must pay to National Highways upon demand and prior to such costs being incurred the total costs that National Highways believe will be properly and necessarily incurred by National Highways 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 authorised development.

(3) National Highways must provide the undertaker with a schedule showing its estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the estimate of the NH costs prior to commencing the specified works and in any event prior to National Highways incurring any cost.

(4) 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 it may give notice to the undertaker of the amount that it believes the NH costs will exceed the estimate of the NH costs (the excess) and the undertaker must pay to National Highways within 28 days of the date of the notice a sum equal to the excess.

(5) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above within 91 days of the issue of the provisional certificate issued pursuant to paragraph 10(4).

(6) Within 28 days of the issue of the final account:

- (a) if the final account shows a further sum as due to National Highways the undertaker must pay to National Highways the sum shown due to it;
- (b) 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.

(7) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 3% above the Bank of England base lending rate from time to time being in force for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Provisional Certificate

10.—(1) Following any closure or partial closure of any of the strategic road network for the purposes of carrying out the specified works, National Highways will carry out a site inspection to satisfy itself that the strategic road network is, in its opinion, safe for traffic and the undertaker must comply with any requirements of National Highways prior to reopening the strategic road network.

(2) As soon as the undertaker considers that the provisional certificate may be properly issued it must apply to National Highways for the provisional certificate.

(3) Following an application for a provisional certificate, National Highways must as soon as reasonably practicable:

- (a) inspect the specified works; and

- (b) provide the undertaker with a written list of works that are required for the provisional certificate to be issued or confirmation that no further works are required for this purpose.

(4) When—

(a) a stage 3 road safety audit for the specified works has been carried out and all recommendations raised including remedial works have (subject to any exceptions agreed) been approved by National Highways;

(b) the specified works incorporating the approved remedial works under sub-paragraph (4)(a) and any further works notified to the undertaker pursuant to sub-paragraph 10(3)(b) have been completed to the satisfaction of National Highways;

(c) the as built information has been provided to National Highways; and

(d) the undertaker has paid the commuted sum to National Highways,

National Highways must issue the provisional certificate.

(5) The undertaker must submit a stage 4 road safety audits as required by and in line with the timescales stipulated in the road safety audit standard. The undertaker must comply with the findings of the stage 4 road safety audit and must pay all costs of and incidental to such and provide updated as-built information to National Highways.

Opening

11. The undertaker must notify National Highways not less than 56 days in advance of the intended date of opening to the public of the strategic road network and the undertaker must notify National Highways of the actual date the strategic road network will be opened to the public within 14 days of that date.

Final condition survey

12.—(1) The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 10(2), arrange for the highways structures and assets that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval. The re-survey will include a renewed geotechnical assessment required by DMRB CD622 if the specified works include any works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to paragraph 12(1) indicates that any damage has been caused to a structure or asset, the undertaker must submit a scheme for remedial works in writing to National Highways for its approval in writing and the undertaker must carry out the remedial works at its own cost and in accordance with the scheme submitted.

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme, National Highways may carry out the steps required of the undertaker and may recover any expenditure it reasonably incurs in so doing.

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to paragraph 12(1) give notice in writing that National Highways will remedy any damage identified in the re-surveys and National Highways may recover any expenditure it reasonably incurs in so doing.

(5) The undertaker must make available to National Highways upon request copies of any survey or inspection reports produced pursuant to any inspection or survey of any specified work following its completion that the undertaker may from time to time carry out.

Defects Period

13. —(1) The undertaker must at its own expense remedy any defects in the strategic road network as are reasonably required by National Highways to be remedied during the defects period. All identified defects must be remedied in accordance with the following timescales—

- (a) in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of National Highways);
- (b) in respect of matters which National Highways considers to be serious defects or faults, within 14 days of receiving notification of the same; and
- (c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.

(2) Following the expiry of the defects period National Highways has responsibility for routine maintenance of the strategic road network save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 3 years by and at the expense of the undertaker.

Final Certificate

14.—(1) The undertaker must apply to National Highways for the final certificate no sooner than 12 months from the date of the provisional certificate.

(2) Following receipt of the application for the final certificate, National Highways must as soon as reasonably practicable:

- (a) inspect the strategic road network; and
- (b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage in the strategic road network or confirmation that no such works are required for this purpose.

(3) The undertaker must carry out such works notified to it pursuant to sub-paragraph 14(2).

(4) When National Highways is satisfied that:

- (a) any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph 14(2) and any remedial works required as a result of the stage 4 road safety audit have been made good to the satisfaction of National Highways; and
- (b) the NH costs have been paid to National Highways in full;

National Highways must issue the final certificate after which the bond shall be released in full.

(5) The undertaker must pay to National Highways within 28 days of demand the costs reasonably incurred by National Highways in identifying the defects and supervising and inspecting the undertaker's work to remedy the defects that it is required to remedy pursuant to these provisions.

Security

15.—(1) The specified works must not commence until—

- (a) the undertaker procures that the specified works are secured by a bond from a bondsman first approved by National Highways in the agreed form between the undertaker and National Highways to indemnify National Highways against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of the exercise of the powers under this Order and the specified works under the provisions of this Part of this Schedule provided that the maximum liability of the bond must not exceed the bond sum; and
- (b) the undertaker has provided the cash surety which may be utilised by National Highways in the event of the undertaker failing to meet its obligations to make payments under paragraph 6 or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker under the provisions of this Part of this Schedule.

Commuted sums

16.—(1) National Highways must provide to the undertaker an estimate of the commuted sum, calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18 January 2010 or any successor guidance, prior to the commencement of the specified works.

(2) The undertaker must pay to National Highways the commuted sum prior to the issue of the provisional certificate.

Insurance

17. Prior to the commencement of the specified works the undertaker must effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (ten million pounds) in respect of any one claim against any legal liability for damage loss or injury to any property or any person as a direct result of the execution of specified works or use of the strategic road network by the undertaker.

Indemnity

18.—(1) The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses and liabilities suffered by National Highways arising from the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order within 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

Maintenance of the specified works

19.—(1) The undertaker must, prior to the commencement of any works of maintenance to the specified works, give National Highways 28 days' notice in writing of the date on which those works will start unless otherwise agreed by National Highways, acting reasonably.

(2) If, for the purposes of maintaining the specified works, the undertaker needs to occupy any road space, the undertaker must comply with National Highways' road space booking requirements and no maintenance of the specified works for which a road space booking is required shall commence without a road space booking having first been secured.

(3) The undertaker must comply with any requirements that National Highways may notify to the undertaker, such requirements to be notified to the undertaker not less than 7 days' in advance of the planned commencement date of the maintenance works.

(4) The provisions of paragraph 11 shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

Land

20.—(1) Following the issue of the final certificate pursuant to paragraph 14(4) National Highways may serve notice on the undertaker that it wishes to take a freehold transfer of land within the extent of strategic road network boundary which is not in the ownership of National Highways but has been acquired by the undertaker for the purposes of carrying out the specified works.

(2) If the undertaker receives notice under sub-paragraph (1) then the undertaker must effect a freehold transfer of the land which is the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to National Highways.

(3) The undertaker must not under the powers of this Order:

- (a) acquire or use land forming part of;
- (b) acquire new or existing rights over; or
- (c) seek to impose or extinguish any restrictive covenants over;

any of the strategic road network, or extinguish any existing rights 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.

(4) Where any land or interest is proposed to be acquired for the benefit of National Highways, the undertaker must, unless otherwise agreed by National Highways, exercise article [] (*compulsory acquisition of land*) and article [] (*compulsory acquisition of rights and imposition of restrictive covenants*) as applied by articles [] (*application of the 1981 Act*) and article [] (*modification of the 2017 Regulations*) of this Order to directly vest in National Highways any such land or interest.

Expert Determination

21.—(1) Article [] (*arbitration*) of the Order does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article [] (*arbitration*).

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.