

Cambridge Waste Water Treatment Plant Relocation Project  
Anglian Water Services Limited

# Statement of Common Ground: National Highways

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## Document Control

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## Version History

<b>Version</b>	<b>Date</b>	<b>Author</b>	<b>Description of change</b>
01	25 October 2023	KT	First Draft following the submission of the DCO Application and to update the position established in the Relevant Representations
02	19 January 2024	-	Updated to reflect actions from ISH3 and meeting of 16.01.2024 for submission by both parties at Deadline 4.
03	5 April 2024		Update to reflect final agreed position at Deadline 7.

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# 1 Introduction

## 1.1 Purpose of this Document

- 1.1.1 This Statement of Common Ground (“SoCG”) is submitted as part of an application by Anglian Water Services Limited (“the Applicant”) for a Development Consent Order (DCO) under the Planning Act 2008 (‘the Application’).
- 1.1.2 The Application is for the provision of a new modern, low carbon waste water treatment plant for Greater Cambridge. The project is an enabler of sustainable growth. The relocation of the existing works, from its current site, will unlock the last large brown field site in Greater Cambridge and allow the creation of a new city district and provide much needed housing and commercial space in a sustainable location, with access to transport, jobs and recreational opportunities.
- 1.1.3 This SoCG has been prepared by the Applicant and agreed with National Highways. National Highways is the government company charged with operating, maintaining and improving England’s motorways and major A roads. It is responsible for managing the strategic road network (SRN) and ensuring it can operate in accordance with the Highways Act. It is a statutory consultee for the project and is interested in the Applicants proposals and any impact on the SRN.
- 1.1.4 The Applicant has engaged with National Highways to ensure any access proposals for the project are in accordance with policy and can be managed effectively, along with traffic management and traffic plan proposals during the construction and operational phases of the development.
- 1.1.5 To date, National Highways has provided views on draft proposals at various stages of the design development.
- 1.1.6 This SoCG has been prepared by the Applicant and agreed with National Highways. Any reference to ‘the parties’ means the Applicant and National Highways.
- 1.1.7 This SoCG has been prepared to identify matters agreed, not agreed and matters currently outstanding between the Applicant and National Highways.

## 1.2 Approach to the SoCG

- 1.2.1 The SoCG will evolve as the DCO application progresses to submission and through examination. It is structured as follows.
- Section 2 confirms the pre-application consultation undertaken to date between Anglian Water and National Highways;
  - Section 3 identifies the relevant documents on which the agreements recorded in this SoCG were reached;
  - Section 4 provides a summary of matters that have been agreed, are still under discussion and which are not agreed at the point of examination;

<b>Agreed</b>	indicates where the issue has been resolved and is recorded in <b>Green</b> and marked “ <b>Low</b> ”
<b>Under Discussion</b>	indicates where these issues or points will be the subject of on-going discussion whenever possible to resolve or refine the extent of disagreement between the parties and is recorded in <b>Amber</b> and marked “ <b>medium</b> ”
<b>Not Agreed</b>	indicates a final position and is recorded in <b>Red</b> and marked <b>high</b>

- Section 5 includes the signatures of all parties to confirm their agreement that this SoCG is an accurate record of key meetings and consultations undertaken and issues and discussions as at the date of this SoCG.

### 1.3 Status of the SoCG

1.3.1 This version 3 of the SoCG represents the position between the Applicant and National Highways at 5 April 2024 covering the pre-application and pre examination and examination stages of the process. The SoCG has progressed through out the examination and is now a record of the final position for Deadline 7.

A Principal Areas of Disagreement (PAD) document identifying the specific points still not agreed will be updated and submitted to the Examining Panel during the examination.

## 2 Consultations and engagement

- 2.1 The Applicant has engaged with National Highways in a series of meeting within a Technical Working Group (TWG) forum and in one to one meetings on specific issues.
- 2.2 A full table recording the engagement that have taken place to date between the parties to this SoCG in connection with the proposed development and initial agreements reached are set out in full in Appendix 1.

### 3 Documents Considered in this SOCG

3.1.1 In reaching common ground on the matters covered in this SoCG, the parties referred to the following documents:

- Transport Assessment Scoping Note April 2021 – Mott MacDonald Draft Development Consent Order [REP5-003]
- Works Plans (App Doc Ref 4.3.0 - 4.3.11)[ REP5-017]
- Traffic and Access Chapter 19 (App Doc Ref 5.2.19) and Chapter 19 Appendices (Baseline Traffic surveys, Traffic surveys, Transport Assessment, Pedestrian Counts, Traffic flow diagrams, Junction capacity reports [REP5-078]
- Construction Traffic Management Plan, Workers Travel Plan, Construction Workers Travel Plan – (App Doc Ref 5.4.19.1 – 5.4.19.9) [REP5-077]
- Code of Construction Plans (CoCP) Parts A and B (App Doc Ref 5.4.2.1 and App Doc Ref 5.4.2.2). [REP5-050 and REP5-052]
- Book of Figures – Traffic and Access (App Doc Ref 5.3.19).[ REP3-023]
- Design Plans – Highway (App Doc Ref 4.11.1 - 4.11.6).[ REP5-022]
- Access and Traffic Regulation Order Plans (App Doc Ref 4.7.0 – 4.7.10).[ APP-021]
- Road Safety Audit Version 1 [AS-112]
- Operational Logistics Management Plan (Ap Doc Ref 5.4.19.10).[ REP5-081]

## 4 Summary of and status of agreement

### 4.1 General matters

Table 4.1 Details the summary and status of general matters

Topic and Document Reference	Comments	Status	Summary of Position
Area of responsibility App Doc Ref 4.11.6	Area of responsibility between relevant traffic authorities.	Low	The parties have agreed that App Doc Ref 4.11.6 sets out an accurate representation of the boundaries between National Highways area of responsibility and the area of responsibility for Cambridgeshire County Council.
Traffic Displacement	Junction Assessment	Low	The parties have agreed in principle that the traffic numbers for the existing facility at junction 33 of the A14 are a direct displacement in numbers to the new access proposed at junction 34.
Choice of Access to proposed development	Use of Junction 34 of the A14 of the Strategic Road Network as the appropriate access for CWWTPR.	Low	The parties have agreed that the appropriate access for the new development is via junction 34 of the A14 Strategic Road Network. A new junction on the A14 to serve the proposed development was not acceptable principally on DfT policy grounds [ <i>DfT Circular 01/2022 'Strategic Road network and the delivery of sustainable development'</i> ] and safety concerns.
Assessment Approach	Assessment presented in ES Traffic and Access Chapter 19 (App Doc Ref 5.2.19) and Chapter 19 Appendices (Baseline Traffic surveys, Traffic surveys, Transport Assessment, Pedestrian Counts, Traffic flow diagrams, Junction capacity reports.	Low	The assessment approach is agreed including the data gathering methodology, baseline data, scope of the assessment, the approach to the modelling and optioneering and presentation of results, the embedded environmental measures and that the assessment methodology set out is appropriate.

Public Rights of Way	National Highways will defer to the Local Authorities for approval and the appropriateness of Walking, cycling and horse riding assessments including temporary diversions and the creation of the new Public Rights of Way. National Highways would expect to see compliance with DMRB-GG142.	<b>Low</b>	Agreed
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## 4.2 Design Plans

**Table 4-2 Details the summary and status of Design Plans**

Topic and document reference	Comments	Status	Summary of position
Effect on surrounding road networks	Effects identified on surrounding road networks, including B1047 Horningsea Road and junctions with the A14 during construction and operation phases.	<b>Low</b>	<p>The parties have agreed that there are no necessary modifications or mitigation measures on the Strategic Road Network (SRN) save for the following to the existing Local Highway Authority infrastructure;</p> <p>Replacement of the existing parapet on the A14 Horningsea Road overbridge with a higher “cycleway compliant parapet” adjacent cycle way on the bridge. It is agreed (meeting 16.01.2024) that this parapet height should be 1.8m compliant with both cyclist <b>and</b> equestrian use. This modification is made following stakeholder feedback.</p> <p>Realignment of the carriageway on the A14 Horningsea Road overbridge (and associated structural assessment of bridge).</p> <p>Changes to the northern signalised junction to provide a 4<sup>th</sup> arm (to access the CWWTW site).</p>



			Minor changes to the southern signalised junction (due to the realignment of the carriageway on the Horningsea Road overbridge.
Transfer tunnel Protection of Geotechnical assets		<b>Low</b>	Geotechnical Borehole Data is sought by National Highways if this is available. Geotechnical Approval for tunnel under A14 would be required. It is agreed (meeting 4 January 2024) that the Applicant will submit by Deadline 5 Statements of Intent in accordance with CD622 setting out the protection for geotechnical assets to include the Waterbeach crossings and the A14 transfer tunnel crossing.
Road Safety Audit Version 1	This is appropriate and accepted.	<b>Low</b>	Agreed
Road layout and design	Construction Routes and Access Points and Outline CMCP: Still to be formally agreed following review of final documents. Under review following meeting of 16.01.2024	<b>Low</b>	National Highways agree with the proposed construction routes. National Highways in principle agree with the suggested mitigation measures outlined. Any signage required on the SRN would require to be placed on passively safe posts and an approved Road Safety Audit

### 4.3 Management Plans

**Table 4.3 – Details the summary and status of Management Plans**

Topic and Document Reference	Comments	Status	Summary of Position	National Highways comments
CoCP Part A and B App Doc Ref 5.4.2.1 and 5.4.2.2	The purpose of the CoCP is to monitor, control and manage construction impacts throughout the construction period to manage the potential environmental impacts of construction works.	<b>Low</b>	Agreed in principle provided it follows DMRB guidance throughout.	National Highways agree in principle with the Code of Construction Practice documents. It is acknowledged that all works under and in close proximity to the A14 will be covered by the Protective Provisions (currently in draft) including protection measures required to ensure safety for all affected parties whilst working on the SRN.
Construction Traffic Management Plan App Doc Ref	The CTMP aims to ensure satisfactory temporary signage, traffic marshalling in conflict zones during peak hour Most traffic is via Junction 34 Temporary signage on A14 Construction Routes and Access Points and CMCP	<b>Low</b>	National Highways to review with particular reference to section 6.8, 6.9 and 6.10 and confirm the proposals for planned and emergency road closures are appropriate.	Following a meeting on 16 January 2024, the use of traffic marshalling is better understood and will not be positioned on the SRN. National Highways agree with the proposed measures in the event of planned and emergency road closures.
Construction Workers Travel Plan	The Construction Workers Travel Plan aims to encourage construction workers to travel to and from the site via sustainable modes, minimise environmental impact and consider the safety and travel patterns of site workers.	<b>Low</b>	The parties have agreed to this document in principle, subject to further discussions as the examination	National Highways are content with the measures set out within the outline Construction Workers Travel Plan. It is understood a detailed Travel Plan will be submitted post consent to secure the appropriate measures and monitoring mechanism.

Operational Workers Travel Plan	The operation workers travel plan seeks to reduce overall need to travel to the site, use sustainable modes of transport or reduce carbon emissions or single occupancy car travel.	<b>Low</b>	The principles identified within the Travel plan are agreeable to National Highways with regular monitoring	National Highways are content with the measures set out within the outline Operation Workers Travel Plan. It is understood a detailed Travel Plan will be submitted post consent to secure the appropriate measures and monitoring mechanism.
Operational Logistics Management Plan (App Doc Ref 5.4.19.10)	The implementation of a OLTP is to minimise impacts that the delivery and servicing of the Proposed Development will have on the surrounding transport network. This includes a reducing operational vehicle movements at peak times on the local road network, reducing emissions from vehicles, and operating in a way that maintains good relations with neighbours of the proposed WWTP	<b>Low</b>	For review from National Highways and agreement following meeting on 16.01.24	National Highways are content with the objectives of the Operational Logistics Traffic Plan and the proposed measures, including restriction of operational vehicles accessing and egressing the proposed site to reduce the impact on Junction 34 of the A14. It is understood a detailed OLTP will be submitted post consent to secure the appropriate measures and monitoring mechanism. National Highways are content with the proposed trigger points to update and refine the plan, where required.

## 4.4 Protective Provisions

Table 4.4 Details the summary and status of Protective Provisions

Topic and Document Reference	Comments	Status	Summary of Position
dDCO Schedule	Proposed Protective Provisions incorporated within the dDCO for the Protection of National Highways.	High	The Applicant and National Highways have not been able to agree protective provisions in full. The protective provisions which the Applicant has included in the DCO are at Appendix 2 These are agreed with National Highways, save for paragraph 19. National Highways Standard Protective Provisions are at Appendix 3. Paragraph 20 of the National Highways standard protective provisions show at paragraph 20 the standard wording which National Highways seeks in place of the Applicant’s paragraph 19.

## 5 Matters for ISH 5

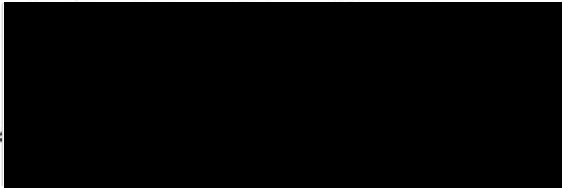
Table 5.1 Details the summary and status of matters still for examination at ISH 5.

Topic and Document Reference	Comments	National Highway's Response
<b>Corrected Traffic and Access documentation as a result of ISH4</b>	Further assessment and correction will be submitted for Deadline 7 and is for examination at ISH 5.	National Highways agree that any comments and further submissions to be made in response to this corrected material will be submitted in separate documentation.

## 6 Agreement on the SoCG

This Statement of Common Ground has been jointly agreed by:

**Name:** Mark Malcolm


**Signature:** 

**Position:** Programme Director Major Infrastructure

**On behalf of:** Anglian Water Services Limited

**Date:** \_\_\_\_\_

**Name:** Alice Lawman

**Signature:** 

**Position:** Spatial Planner – Operations East Region

**On behalf of:** National Highways

**Date:** 08/04/2024

# Appendix 1

**Table 1.1 Engagement between the parties in connection with the Development**

Date	Form of contact	Main topic/issues
Jan 21	Meeting	Project Overview and background
4 March 21	TWG	Pre-Application engagement
26 April 2021	TWG	Access options to be assessed on selected site
28 May 21	TWG	Site Access Optioneering – general arrangement plans and site options
17 September 2021	TWG	Site Access Optioneering design and modelling update
6 October 2021	TWG	Presenting results of initial transport assessment work
12 October 2021	Workshop	Agreement on single site option
4 November 2021	TWG	Presenting results of Optioneering Assessment
21 January 2022	TWG	Site access junction design update, junction capacity assessment
1 April 2022	Meeting	Update on survey work, response to Con 3, powers for junction works
28 April	TWG	<ul style="list-style-type: none"> <li>• Update on close of Consultation Phase 3.</li> <li>• Feedback on CTMP and CoCP.</li> <li>• Update on surveys (to include update following meeting with CCC on 12 April 2022).</li> <li>• Query regrading powers needed for delivery of DCO and stakeholders view on any changes to the road highway network (Licensing/legal points).</li> <li>• Review of any approvals required for Junction before construction begins and timing of applications.</li> <li>• Draft Travel Plans (to include Construction workers travel Plan) – update and discussion on what should be included</li> </ul>
23 May 2022	Meeting	<ul style="list-style-type: none"> <li>• Review of powers needed for delivery of DCO and stakeholders view on any changes to the road highway network (Licensing/legal points).</li> <li>• Order limits for Junction parapet works</li> </ul>
7 December 2022	Meeting	<ul style="list-style-type: none"> <li>• Review of documents shared for Environmental Statement.</li> </ul>

Date	Form of contact	Main topic/issues
		<ul style="list-style-type: none"> <li>• Time scales for comments discussed.</li> <li>• Status and next steps required for RSA Stage 1.</li> </ul>
4 July 2023	Meeting	Legal catch-up meeting on proposed development programme and Protective Provisions
6 July	Meeting	<ul style="list-style-type: none"> <li>• Technical Specialist catch up meeting on proposed development programme</li> <li>• Review of documents and technical chapters of submitted DCO Application.</li> </ul>
21 August	Meeting	Review of all land plans and CPO requirements as submitted in DCO Application
29 August	Meeting	Review of current position and proposed Protective provisions
7 September	Meeting	Review of current position and proposed Protective provisions



## Appendix 2

### Protected provisions which the Applicant has included in the DCO application

#### PART 1

#### 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) Except where expressly amended by this Order 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—

“administration fee” means the fee payable pursuant to the provisions of this Part of this Schedule that represent the general internal costs of National Highways in administering the implementation of the specified work and the requirements of this Part of this Schedule and charged as a flat fee based on the final cost of the specified works;

“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 where such works have resulted in new network equipment or improvements to the SRN which require future maintenance;

“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 specified works—

- (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) electrical work for road lighting, traffic signs and signals;
- (k) motorway communications as required by DMRB;
- (l) highway structures and any required structural approval in principle;
- (m) landscaping;
- (n) proposed departures from DMRB standards;
- (o) walking, cycling and horse riding assessment and review report;
- (p) stage 1 and stage 2 road safety audits and exceptions agreed;
- (q) utilities diversions;
- (r) topographical survey;
- (s) maintenance and repair strategy in accordance with DMRB GD304 Designing health and safety into maintenance or any replacement or modification of it;
- (t) health and safety information including any asbestos survey required by GG105 or any successor document;
- (u) other such information that may be required by National Highways to be used to inform the detailed design of the specified works; and
- (v) regime of California Bearing Ratio testing.

“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 13;

“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 8 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—

- (a) highway works and signalisation on the strategic road network for which National Highways is the highway authority including any maintenance of such works including the works listed at articles 10 and 11 of this Order and includes Work No 1; or
- (b) the installation and maintenance of such parts of the authorised development under or over the strategic road network (including any structure) for which National Highways is the highway authority, authorised by this Order;

“strategic road network” means any part of the road network including trunk roads, special roads or streets and including any structure on such 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.

## **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.** 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**

**5.** 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. For the avoidance of doubt, the reference to works in this paragraph 3 does not include traffic regulation orders identified on the access and traffic regulation order plans.

## **Prior approvals and security**

**6.—(1)** The specified works must not commence until in respect of that part of the specified work, save where an item in (a) to (k) is agreed by National Highways and the undertaker as not being relevant to that part of the specified works—

- (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 qualification 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; and
  - (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.
- (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)(iv) 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 warranties 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) the condition survey and a reasonable regime of monitoring of any National Highways assets or structures that are the subject of the condition survey has been agreed in writing by National Highways.
- (2) The undertaker must not exercise—
- (a) article 5 (*maintenance of authorised development*);
  - (b) article 12 (*temporary closure of streets*);
  - (c) article 17 (*traffic regulation*);
  - (d) article 19 (*discharge of water*);
  - (e) article 20 (*protective works to buildings and structures*);
  - (f) article 21 (*authority to survey and investigate the land*);
  - (g) article 35 (*temporary use of land for carrying out the authorised development*);
  - (h) article 36 (*temporary use of land for maintaining the authorised development*); or
  - (i) article 23 (*felling or lopping trees and removal of hedgerows*) 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) National Highways must provide the undertaker with a list, which is to be agreed between the parties acting reasonably, of all the structures, assets and pavements to be subject to both a condition survey and reasonable regime of monitoring pursuant to sub-paragraph (1)(k) of this Part before the first condition survey is conducted and the reasonable regime of monitoring is implemented.

### **Construction of the specified works**

7.—(1) The undertaker must give National Highways 28 days' notice in writing of the date on which part of 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 of the specified works and no such 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 6(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 and upon reasonable notice 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 within 28 days on which a notice under sub-paragraph (5) 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 a written demand, including itemised costs.

(7) 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 or 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.

(8) 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.

(9) 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 6(1)(i) and the undertaker must carry out such maintenance at its own cost.

(10) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme pursuant to paragraph 6(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

8.—(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) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part of this Schedule, including—

- (a) the checking and approval of the information required under paragraph 6(1);
- (b) the supervision of the specified works;
- (c) the checking and approval of the information required to determine approvals under this Order which are not covered by the administration fee;
- (d) all costs in relation to the transfer of any land or grant of rights which may be required for the specified works;
- (e) the administration fee;
- (f) all legal costs incurred which are not already covered by (a) to (e) above; and
- (g) any value added tax which is payable by National Highways in respect of such costs and expenses in (a) to (f) 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 within 30 days of receipt 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 specified works.

(3) National Highways must provide the undertaker with an itemised schedule showing its estimate of the NH costs, including its estimate of the administration fee, prior to the commencement of the specified works and the undertaker must pay to National Highways an amount equal to the estimated sum prior to National Highways incurring any cost and prior to commencing the specified works.

(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 notified pursuant to sub-paragraph (3) it may give written notice to the undertaker of the amount that it believes the NH costs will exceed the estimate (“the excess”) and the undertaker must pay to National Highways within 30 days of the date of the notice a sum equal to the excess.

(5) National Highways must give the undertaker an itemised final account of NH costs referred to in sub-paragraph (1) above within 91 days of the issue of the provisional certificate issued pursuant to paragraph 9(4).

(6) Within 30 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.

## Provisional Certificate

9.—(1) Following any closure or partial closure of any part 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 part of 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 of that part of 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 and within 28 days of receipt of the application under sub-paragraph (2) or such other period agreed between the parties, National Highways must—

- (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 (where relevant) 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 (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 (not to be unreasonably withheld or delayed).

(5) On the issue of the provisional certificate the bond sum shall be reduced to 20% of the total bond sum save insofar as any claim or claims have been made against the bond before that date in which case National Highways will retain a sufficient sum to ensure it does not have to meet any costs for or arising from the specified works.

(6) 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 provide updated as-built information to National Highways.

### **Opening**

**10.** The undertaker must notify National Highways not less than 14 days in advance of the intended date of opening to the public of part (a) of the specified works and the undertaker must notify National Highways of the actual date part (a) of the specified works will be opened to the public within 14 days of that date.

### **Final condition survey**

**11.—(1)** The undertaker must, as soon as reasonably practicable after making its application for a provisional certificate pursuant to paragraph 9(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 or its equivalent if the specified works include any works beneath the strategic road network.

(2) If the re-surveys carried out pursuant to sub-paragraph (1) indicate that any damage has been caused to a structure, asset or pavement, 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, such agreed sum to be paid within 30 days of receipt of a written and itemised demand.

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-surveys pursuant to sub-paragraph (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 of the specified work following its completion that the undertaker may from time to time carry out.

### **Defects Period**

**12.—(1)** The undertaker must at its own expense remedy any defects in the specified works 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 or such other time period as is agreed.

(2) On the issue of the provisional certificate National Highways has responsibility for 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**

**13.**—(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 and within 28 days of receipt of the application under sub-paragraph (1) National Highways must—

- (a) inspect the specified works; and
- (b) provide the undertaker with a written list of any further works required to remedy or make good any defect or damage to 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 (2).

(4) When National Highways is satisfied that any defects or damage arising from defects during the defects period and any defects notified to the undertaker pursuant to sub-paragraph (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, National Highways must issue the final certificate, such certificate not to be unreasonably withheld or delayed, after which the bond shall be released in full.

### **Security**

**14.** 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 8 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.

### **Committed sums**

**15.**—(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**

**16.** 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 the specified works or use of the strategic road network by the undertaker.

### **Indemnity**

**17.**—(1) The undertaker must indemnify National Highways from and against all costs, claims, expenses, damages, losses and liabilities directly 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 30 days of demand PROVIDED THAT—

- (a) National Highways notifies the undertaker upon receipt of any claim; and



(b) National Highways notifies the quantum of the claim to the undertaker in writing.

(2) The indemnity provided by this clause shall not apply in respect of any cost, expense, damage, loss and/or liability which may arise out of or be incidental to any negligent or defective act, default or omission on the part of National Highways, its agents, workmen or employees.

### **Maintenance of the specified works**

**18.**—(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 10 shall apply to the opening of any part of the strategic road network following occupation of any road space under this paragraph.

### **Land or rights**

**19.** If the transfer of any land from or to National Highways or the grant of rights in, on, over or under land for the benefit of the undertaker is required in respect of the specified works, National Highways and the undertaker hereby agree to cooperate in the execution of any transfer or deed of grant or easement as may be necessary. National Highways further agrees that the undertaker may exercise any powers under Part 5 of this Order as may be necessary for the acquisition of such rights.

### **Expert Determination**

**20.**—(1) Save as set out in paragraph (5) of this article, article 52 (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) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date that an expert is appointed.

(5) 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.

(6) 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 52 (arbitration).

(7) 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.

# Appendix 3

## National Highways standard protective provisions

### 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](mailto: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.

## Get in touch

You can contact us by:



Emailing at [info@cwwtpr.com](mailto:info@cwwtpr.com)



Calling our Freephone information line on **0808 196 1661**



Writing to us at **Freepost: CWWTPR**



Visiting our website at [www.cwwtpr.com](http://www.cwwtpr.com)

You can view all our DCO application documents and updates on the application on The Planning Inspectorate website:

<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/cambridge-waste-water-treatment-plant-relocation/>