

Deadline 7 Submissions of National Highways Limited

**Application by Anglian Water Services Limited for an Order granting Development Consent for the Cambridge Waste
Water Treatment Plant Relocation Project**

Planning Inspectorate Reference Number: WW010003

Summaries of Submissions made by National Highways at Issue Specific Hearing 4 on 13 and 14 March 2024

1. Sarah Marshall of National Highways

- Para 4 article 16 in the latest draft DCO is where National Highways do not agree with the Applicant's wording. There is a paragraph 'Land' that was included in the Medworth Order which was accepted by the Secretary of State. This is the only paragraph that is in dispute and National Highways do not expect the parties to be able to reach agreement on this. National Highways take the view that the Applicant has rights as a statutory undertaker under the New Roads and Streetworks Act 1991
- There was an incident where tunnelling under a railway line caused heave and derailment. There is a potential risk to the strategic road network due to the tunnelling. National Highways are willing to submit the report on this incident if requested to do so by the ExA.
- If there were improvements or works done to the A14 National Highways would not necessarily know what works would be required. If National Highways do not own the subsoil, it may be restricted in the works they can complete. Most of the subsoil for the strategic road network was crown land when National Highways were a government department – the Highways Agency.

2. Andrew Rosamond of National Highways

- Concerning the Service Tunnel, there will need to be a Geotechnical check by When it comes to the service tunnel there will have to be a Geotechnical check by the National Highways Geotechnical team. There will have to be checks before during after the tunnel. If there is settlement of the land it will have a negative effect on the road.

3. Alice Lawman of National Highways

- National Highways apologises for the typos, ExQ1 20.82 related to the modelling for J35. It is National Highway's understanding that the traffic is unlikely to route through this junction and it is unlikely that this junction will be impacted so no assessment will be required. National Highways will amend the typo for the next deadline.

Summaries of Submissions made by National Highways at Issue Specific Hearing 5 on 9 April 2024

1. Alice Lawman of National Highways

- Rep6-126 'Written Statement for Action Points arising from ISH4' related to the request for additional assessment and modelling of A14 Junction 35. The corrected statement to ExAQ1 20.82 should read '*National Highways agree with the statement provided by the applicant that the request for a junction assessment of J35 during the preapplication scoping phase pre-dates the formal adoption of option 1b, therefore no additional assessment of the **J35** is required as construction traffic is not routing via this junction.*'
- National Highways are content that the amended Transport Assessment has not materially impacted their previous conclusions.
- National Highways are satisfied that the modelling provided can be relied on as a typical day. It was noted that National Highways interest at the junction in relation to driver delay and queuing at Junction 34 relate to the A14 E/B on to the mainline. It was stated that the signals are controlled by Cambridgeshire County Council and should the queuing regularly tail back to the mainline, a consultation between NH and CCC Signals teams would take place.

2. Sarah Marshall of National Highways.

- The Applicant has referred to the Hynet Carbon Dioxide Pipeline Order and National Highways submits the difference in this case is that the Applicant is a statutory undertaker with statutory rights to place their apparatus under the New Roads and Streetworks Act 1991 and the Water Industry Act 1991. National Highways submit there is no compelling case in the public interest for the subsoil of the strategic road network to be compulsorily acquired.
- National Highways are seeking Kings Counsel's opinion on the Applicant's submissions concerning the proposed compulsory acquisition of National Highways land.
- National Highways will provide to the Examining Authority a Technical Note (which will be provided to the Applicant on 9 April), the Legal Opinion on New Roads and Streetworks Act 1991 by Ruth Stockley provided to the Examination for the Hynet Carbon Dioxide Pipeline Order (which has already been provided to the Applicant and will respond to the Applicant's comments on National Highways Deadline 5 Submissions [REP-115] at 3.5 National Highways [REP 126].

National Highways Comments on the Applicant's Comments on National Highways Deadline 5 Submissions [REP6-115] at 3.5 [REP-126]

1. The Applicant is a statutory undertaker and National Highways submits that there is no justification for compulsory acquisition of National Highways land as the Applicant has statutory rights to put in apparatus under the New Roads and Streetworks Act 1991 and Water Industry Act 1991. Please find attached a copy of the Legal Opinion of Ruth Stockley KC provided for the Hynet Carbon Dioxide Pipeline Examination and endorsed by Ruth Stockley KC on 12 April 2024.
2. If the Examining Authority is not minded to agree to National Highways submission regarding the Applicant's rights to undertake work under the New Roads and Streetworks Act 1991 and Water Industry Act 1991 National Highways would ask that the Development Consent Order is made with the Provisions for the Protection of National Highways attached to this submission (National Highways will seek to submit both a PDF and tracked changes copy) to ensure the protection of the strategic road network and land in the ownership of National Highways.
3. National Highways confirms to the Examining Authority that it sought the Opinion of Reuben Taylor KC who confirms this submission reflects the opinion given orally to National Highways on 12 April 2024 and it is his view there is no requirement for a written legal opinion on compulsory acquisition to be submitted to the Examination.
4. National Highways provided a copy of the Technical Note to the Applicant on 9 April and which is attached to this submission.
5. National Highways briefly informed the Applicant's solicitors of the substance of this submission late today and it was agreed that the Applicant and National Highways will now look to work together urgently on the amended Protective Provisions submitted today in order to seek to provide agreed Protective Provisions to the Examining Authority as a matter of urgency.
6. National Highways wish to take this opportunity to thank the Examining Authority on their understanding of the points National Highways have made throughout the examination period and trust this will assist as the examination period draws to a close.

APPENDIX 1

National Highways Standard Protective Provisions

Technical Paper

Compulsory Purchase of Subsoil below the SRN – Implications for Highway Structures

Date:	3 April 2024	Lead Author:	Colin George / Peter Hill
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Status:	Final		
Sensitivity:	None		

Background

Historically, the Strategic Road Network (SRN), including the subsoil beneath the land within the highway boundary, has been Crown Land and was therefore exempt from compulsory purchase orders. Since the formation of Highways England in 2015, the Government remains responsible for the SRN and the Secretary of State continues to be accountable for making sure that the network is managed responsibly, in a way that safeguards value for public investment, meeting the needs of road users.

It has been suggested that, at the formation of Highways England in 2015, the company has the status of a private landowner and as such can be subject to compulsory purchase orders from third parties. This paper briefly considers the potential implication of such a position on the future operation and management of the SRN.

Implications for the SRN from a Structures Perspective

National Highways currently has over 23,000 structures (bridges, gantries, retaining walls etc.) on the Strategic Road Network and this figure is increasing significantly as a result of major network enhancements, new junctions etc. Many of these bridge and gantry structures have deep piled foundations, where reinforced concrete or solid steel elements extend deep into the ground.

Allowing a third party to compulsory purchase subsoil to construct a tunnel beneath the SRN has the potential to cause damage to existing infrastructure and restrict essential future construction including the renewal of existing assets. It should be noted that many deep piled foundations are 'end bearing' meaning they derive resistance from the ground below them. Therefore, the load carrying capacity of piles could be compromised even if a tunnel does not physically conflict with the piles.

Any changes in ground water as an outcome of tunnelling, may create voids over time which has the potential to introduce settlement within the adjacent subsoil supporting the SRN. Similarly, over-charging during Drill and Blast tunnelling through rock has the potential to affect assets at the surface during, and for a period after, construction. Relatively modest settlement, particularly differential settlement between adjacent supports, has the potential



to result in overstress within a structure. Other possible implications of settlement include ponding of surface water on the carriageway presenting a hazard to road users. The subsequent failure of any below ground structure, also has the potential to introduce settlement and again poses a risk to the SRN which may result in damage to the highway, necessitating sometimes urgent remedial treatment.

Such remedial treatment may require works within the depth of the highway construction, and potentially within the subsoil. Our ability to respond appropriately, and to maintain the safety and functionality of the Strategic Road Network, in such circumstances would be compromised if ownership of the subsoil were with a third party and National Highways were required to seek their approval or to reacquire the land from the third party.

Implications for the A14

Turning to the specific case of the proposed compulsory purchase of subsoil to facilitate the construction of a tunnel under the A14. Horizontal Directional Drilling (HDD) is usually used to install pipes, cables, and ducts for tunnels up to around 1.2 m diameter and National Highways would normally expect micro-tunnelling, or in other specific circumstances pipe-jacking and other hand-excavation techniques, to be used for a tunnel of this size.

It is noteworthy that ground conditions in this area have historically proven susceptible to significant settlement and structure foundations in this area are likely to require reinforced concrete piles penetrating deep into the subsoil below the SRN. This makes this area particularly susceptible to the risks as outlined above. For context, piles for structures on the recent constructed A14 Cambridge to Huntingdon scheme were generally 15m – 30m long, but some piles were up to 40m long.

In order to safeguard the integrity of the SRN, the design and construction of highways structures follow long established Technical Approval procedures (see DMRB document CG 300). These procedures were first developed by the Ministry of Transport in the 1970s and are used by all major highway authorities in the UK to provide assurance that proposals for construction, assessment, refurbishment, modification, and removal of structures are safe to implement, serviceable, economic to maintain and that they will satisfactorily / safely perform their intended purpose for our road users for generations to come. It should be noted that any bridge, buried structure, subway, underpass, culvert, and any other structure over the highway or supporting the highway with a clear span or internal diameter greater than 0.9 m is defined as a highway structure in CG300.

Technical Approval procedures are a mandatory requirement for highway structures constructed within the highway boundary and therefore shall apply to a tunnel constructed below the SRN.

It is uncertain as to whether these procedures could be mandated in the case of a structure wholly within subsoil that has been subject to compulsory purchase by a third party. As such, allowing the subsoil to the Strategic Road Network to be compulsory purchased by a third party could limit our ability to control risks to our structures and the network generally (e.g. potential surface water flooding) and therefore represents a risk to the Strategic Road Network, highway users etc.



Summary

National Highways is appointed by the Secretary of State to manage the SRN on behalf of the Government, who remain responsible for the strategic roads in England and the Minister will continue to be accountable for making sure that the network is managed responsibly, in a way that safeguards value for public investment, meeting the needs of road users.

Any proposal to allow third parties to compulsory purchase the subsoil beneath the SRN for the purpose of constructing a tunnel has the potential to impose risk from settlement of the subsoil beneath the highway during construction and its future operation, as well as introducing a potential restriction to any future development of the highway in the area above.

Peter Hill (Head of Structures)

Asset Management
Safety, Engineering and Standards
National Highways

Colin George (Deputy Head of Structures)

Asset Management
Safety, Engineering and Standards
National Highways

I confirm that my views and advice expressed in my Opinion below remain as stated therein.

Ruth A. Stockley KC
12th April 2024

RE: REGULATION OF STREET WORKS IN STRATEGIC ROAD NETWORK

OPINION

Introduction

1. I am asked to advise National Highways Limited (“NH”) upon issues arising over the application of the statutory provisions regulating street works contained in Part III of the New Roads and Street Works Act 1991 (“NRSWA”) to developments involving infrastructure being placed in or under the Strategic Road Network (“SRN”) in the context of applications for a Development Consent Order (“DCO”).

NRSWA 1991

2. Part III of NRSWA reformed previous legislation contained in the Public Utilities Street Works Act 1950 which governed the exercise of the various public utilities’ powers to undertake street works. It sought to simplify and reform procedures governing matters such as the notification of street works, their supervision and reinstatement, and to appropriately balance the interests of the rights of highway users, the interests of the highway authority with responsibility to maintain the highway and the free flow of traffic over it, the rights of consumers of services supplied under or over the highway, and the interests of undertakers with apparatus in the highway. It is the regulation of the relations between those various persons and bodies which NRSWA seeks to achieve by conferring controls on the street authority in respect of all street works.

3. That fundamental purpose of NRSWA is important to recognise. It is not concerned with granting rights or interests in land to enable the placing of apparatus in the highway; such rights are conferred by other legislation or by agreement or otherwise. Instead, it is concerned with regulating the execution of physical works in the highway.

It brings all street works, other than roadworks carried out by or on behalf of the highway authority, under the same area of control. Thus, persons or bodies who may be granted licenses by the street authority to undertake such street works are required to follow the same procedures as undertakers acting under statutory powers.

Street Works

4. Section 48 of NRSWA provides the definition of a “street”, “street works” and “undertaker” for the purposes of Part III. It states as follows:

“(1) In this Part a “street” means the whole or any part of any of the following, irrespective of whether it is a thoroughfare—

(a) any highway, road, lane, footway, alley or passage,

(b) any square or court, and

(c)) any land laid out as a way whether it is for the time being formed as a way or not.

Where a street passes over a bridge or through a tunnel, references in this Part to the street include that bridge or tunnel.

...

(3) In this Part “street works” means works of any of the following kinds (other than works for road purposes) executed in a street in pursuance of a statutory right or a street works licence—

(a) placing apparatus, or

(b) inspecting, maintaining, adjusting, repairing, altering or renewing apparatus, changing the position of apparatus or removing it,

or works required for or incidental to any such works (including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street).

...

(4) In this Part “undertaker” in relation to street works means the person by whom the relevant statutory right is exercisable (in the capacity in which it is exercisable by him) or the licensee under the relevant street works licence, as the case may be.

(5) References in this Part to the undertaker in relation to apparatus in a street are to the person entitled, by virtue of a statutory right or a street works licence, to carry out in relation to the apparatus such works as are mentioned in subsection

(3); and references to an undertaker having apparatus in the street, or to the undertaker to whom apparatus belongs, shall be construed accordingly.”

5. Thus, a “street” is very widely defined and includes “any highway”.
6. The definition of “street works” is then of particular note. It includes any works executed in any highway pursuant to a statutory right or street works licence involving placing apparatus in the highway and any incidental works. Significantly, the reference to works “*executed in a street*” must be interpreted in accordance with the definitions provision for the purposes of Part III, namely s.105(1), which provides as follows:

*““in,” in a context referring to works, apparatus or other property in a street or other place includes a reference to works, apparatus or other property **under**, over, across, along or upon it”* (Emphasis added).

That is consistent with the definition of “street works” including “*tunnelling or boring under the street*”. Hence, it matters not whether the works in question are physically in, over, on or under the highway; they are still “street works” governed by Part III of NRSWA.
7. It therefore follows, for example, that works involving trenchless technology which would not involve the actual breaking up of the surface of a highway in order to place infrastructure under the highway would still amount to “street works” within the meaning of s.48(3) and would be governed by and regulated by NRSWA.

Statutory right or street works licence

8. The next point of significance is that street works can only be undertaken by an “undertaker”, namely a person or body which has the requisite statutory right or street works licence to carry out those works. If and when that statutory right exists or licence has been granted, the street works can then be undertaken in principle, BUT they still remain subject to the regulation contained in NRSWA by the street authority.
9. Hence, statutory undertakers have such express statutory rights contained in legislation applicable to their undertaking. By way of example, there are powers for undertakers to lay their apparatus in, under or over a highway contained in s.158 of the Water Industry Act 1991, Schedule 4 to the Electricity Act 1989, Schedule 4 to the Gas Act

1986, and Schedule 3A to the Communications Act 2003. Nonetheless, although statutory undertakers have such statutory rights, **the physical works involved in exercising those powers are then regulated by the street authority pursuant to NRSWA**. That “statutory right” means that no acquisition of the land in which such apparatus is to be laid is required by those undertakers. It also means that they do not require a street works licence. However, it does not result in the regulation set out in NRSWA not applying. On the contrary, NRSWA’s very objective is to enable the street authority to properly control and regulate all such street works.

10. If no such statutory right exists, an application may be made to the street authority for the requisite street works licence. Section 50(1) of NRSWA provides:

“The street authority may grant a licence (a “street works licence”) permitting a person—

(a) to place, or to retain, apparatus in the street, and

(b) thereafter to inspect, maintain, adjust, repair, alter or renew the apparatus, change its position or remove it,

and to execute for those purposes any works required for or incidental to such works (including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street).”

The same s.105(1) definition must be applied in respect of such a licence permitting a person to place apparatus “in” the street, namely it includes the placing of apparatus “under” the street.

11. Again, that provision merely enables the street authority to grant a licence to a person to execute the works required so that they are then an “undertaker” within the meaning of s.48 of NRSWA. Thereafter, the carrying out of such works will be subject to the control of the street authority applying the provisions contained in NRSWA.

12. Thus, if a statutory right to place infrastructure in, on, above or below a highway is conferred by a DCO, the subsequent execution of that right, namely the carrying out of the requisite physical “street works”, remains subject to the regulatory provisions of NRSWA to be applied by the street authority. It is therefore important that such is reflected in the terms of the DCO and all requisite street works are recorded as such.

Nature of regulation

13. As to such regulation, Part III of NRSWA, together with the regulations and codes of practice made thereunder, then provides detailed provisions to be complied with when any street works are being executed, whether pursuant to a statutory right or a street works licence. They also impose duties on the street authority to co-ordinate the execution of such works. Such regulation on undertakers promotes safety, and further, for example, avoids unnecessary delays or obstructions, protects other apparatus in or below the street, and ensures adequate reinstatements, with penalties imposed for non-compliance. NRSWA also designates certain streets as being subject to special controls. Hence, special roads, such as the SRN, are “protected streets” under s.61. The supervisory control over that statutory regulation is conferred on the street authority and NRSWA must be complied with by any undertaker undertaking “street works”, irrespective of that undertaker’s proprietary or statutory rights to lay apparatus in, above or under a highway.

Depth of highway

14. Finally, given that the regulation imposed by NRSWA applies to the execution of all “street works”, and as street works are defined as including the placing of apparatus “*under, over, across, along or upon*” the street (see s.105(1) definition), it is immaterial to the application of NRSWA whether the apparatus is placed within the surface of the highway or in the subsoil below. Similarly, it is immaterial whether the undertaker has a proprietary interest in the land in which the apparatus is to be installed, a statutory right to install it or the landowner’s consent to do so. Provided the apparatus is to be installed in, under, above or on a highway, the physical works required to so place the apparatus comprise “street works” to which the NRSWA controls remain applicable in any event.

15. Subject to the above, in considering the depth of a highway for which NH is the highway authority, that crucially depends upon the context in which the issue is being raised. Lord Briggs pointed out in *Southwark LBC v Transport for London*,¹ which was concerned with the construction of a property transfer order between two highway authorities:

¹ [2018] UKSC 63 at [32].

“There is in my view no single meaning of highway at common law. The word is sometimes used as a reference to its physical elements. Sometimes it is used as a label for the incorporeal rights of the public in relation to the locus in quo. Sometimes, as here, it is used as the label for a species of real property. When used within a statutory formula, as here, the word necessarily takes its meaning from the context in which it is used.”

The depth of a highway is therefore dependent upon the context in which the word “highway” is being used.

16. Further, linked to the above, it is of note that the vesting of the surface of a highway maintainable at the public expense in the highway authority arises from the statutory vesting contained in s.263(1) of the Highways Act 1980. Yet, by virtue of s.263(2), that provision does not apply to the vesting of a trunk road in circumstances where the provisions of ss.265-267 instead apply. In respect of a transfer of the highway under s.265, it was emphasised by the Supreme Court in *Southwark* that the word “highway” for the purposes of a s.263(1) vesting had a different meaning to the word “highway” for the purposes of s.265. Hence, the “highway” transferred under s.265 would include land acquired for highway purposes in the vertical plane, such as by conveyance on compulsory acquisition for highway purposes, even if it extends beyond the zone of ordinary use. Section 265 is likely to apply to many highways which comprise the SRN in which case there would be no separate subsoil owner.

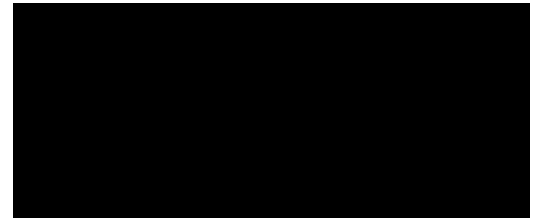
17. Even in the s.263 sense, the zone of ordinary use which is vested in the highway authority will necessarily vary on a case by case basis. Lord Briggs stated in *Southwark* at [10]:

“It is common ground that the zone of ordinary use is a flexible concept, the application of which may lead to different depths of subsoil and heights of airspace being vested in a highway authority, both as between different highways and even, over time, as affects a particular highway, according to differences or changes in the nature and intensity of its public use.”

18. It follows that the depth of a highway in any particular case is fundamentally dependent upon the context in which the word “highway” is being used and the purpose in which the issue is raised. However, in terms of the application of the NRSWA, it has no

particular relevance. Instead, irrespective of the depth at which apparatus is laid under a highway, and whether it is within the zone of ordinary use or within the subsoil below, the works involved in placing such apparatus under the highway amount to “street works” within the meaning of s.48(3) of NRSWA and are therefore subject to the control and regulation of the provisions of NRSWA by the street authority at the time those works are carried out. That is also the position irrespective of whether the works involve breaking open the surface of the highway, as that is not a pre-condition to the works being “street works” within the meaning of s.48(3).

19. I advise accordingly, and if I can be of any further assistance, please do not hesitate to contact me.



RUTH A. STOCKLEY

04 July 2023

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**RE: REGULATION OF STREET
WORKS IN STRATEGIC ROAD
NETWORK**

OPINION

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National Highways
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Our Ref: RS 506959

PART 5

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 the Town and Country Planning (General Permitted Development) (England) Order 2015.

Interpretation

2.—(1) Where the terms defined in article 2 (Interpretation) of this Order are inconsistent with sub-paragraph (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 method 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 Highways’ Asset Data Management Manual as is in operation at the relevant time.

“condition survey” means a survey of the condition of National Highways structures, assets (including, but not limited to, drainage and cabling) and pavements within the Order limits that in the reasonable opinion of National Highways may be affected by a specified work and further to include, where the undertaker, following due diligence and assessment, identifies a specified part of the highways drainage system maintained by National Highways that National Highways reasonably considers may be materially and adversely affected by a specified work, a CCTV survey of specified drains;

“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) 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 diversion;
- (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.

“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 11;

“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);

“initial deposit” means the sum calculated by National Highways (acting reasonably) payable to National Highways to cover all initial stages of work until such time as the cost of the specified work and the NH costs payable under paragraph 6 of this Part can be estimated;

“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 GG19 or any replacement or modification of it;

“road space booking” means road space bookings in accordance with National Highways’ Asset Management Operation 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 requirement 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, signalisation and any other works under this Order on that part of the strategic road network within the area shown edged blue (being Work No. 1) on sheet 6 of the highways plans including any maintenance of such works and including the exercise of any powers within Part 3 of this Order over the strategic road network; or

(b) the installation and maintenance of such parts of the authorised development under or over the strategic road network (including any structure), 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;

“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.

Works outside the Order limits

3. In the event that the undertaker proposes the carrying out of 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.

Part (a) of the specified works

Prior approvals and security

.4—(1) Any specified works which involve tunnelling, boring or otherwise installing the pipeline under the strategic road network without trenching from the surface, must be designed by the undertaker in accordance with DMRB CD622 unless otherwise agreed in writing by National Highways.

(2) The specified works must not commence until—

(a) the programme of works has been approved by National Highways;

(b) 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;

(ii) the identity and suitability of the contractor and nominated persons; and

(iii) a process for stakeholder liaison, with key stakeholders to be identified and agreed

between National Highways and the undertaker;
(c) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways reasonably considers will be affected by the specified works, has been agreed in writing by National Highways; and
(d) an acceptable security in favour of National Highways for the indemnity set out in paragraph 14 below has been put in place, which security must be maintained in place until the expiry of 12 months following the completion of all of the specified works.

4(34) Part (a) of the specified works must not commence until in respect of that part of the specified works—

- (a) A stage one and stage two 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 provided 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; 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 paid to National Highways the estimate of the NH costs notified to it pursuant to paragraph 6 of this Part of this Schedule;
- (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 part (a) 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 part (a) of the specified works, including in the selection of materials, goods, equipment and plant; and
- (j) the condition survey and a reasonable regime of monitoring the structures, assets and pavements that are the subject of the condition survey has been submitted to and approved by National Highways.

~~(2)~~ (4) Except where an approval has been provided under paragraph (1), 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);
- (f) article 21 (authority to survey and investigate the land);
- (g) article 23 (felling or lopping of trees and removal of hedgerows);
- (h) article 35 (temporary use of land for carrying out the authorised development); or
- (i) article 36 (temporary use of land for maintaining the authorised development) 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)~~ (5) National Highways must prior to the commencement of part (a) of the specified works or the exercise of any power referenced in sub-paragraph ~~(42)~~, 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 ~~(24)~~ or ~~(32)~~.

~~(4)~~ (6) Any approval required or sought from National Highways required under this paragraph must not be unreasonably withheld or delayed, must be given in writing and may be subject to any reasonable conditions as National Highways considers necessary.

~~(5)~~ (7) If National Highways fails to notify the undertaker of its decision in respect of any approval under this paragraph within 28 days of the specified day, the undertaker may serve upon National Highways written notice requiring National Highways to give its decision within a further 28 days beginning on the date upon which National Highways received written notice from the undertaker. Subject to sub-paragraph (6), if by expiry of the further 28 days National Highways has failed to notify the undertaker of its decision, National Highways is deemed to have given the relevant approval.

~~(6)~~ (8) Any further notice given by the undertaker to National Highways under sub-paragraph (5) must include a written statement that the provisions of sub-paragraph ~~(7)~~ (5) apply to the relevant approval.

~~(7)~~ (9) In this paragraph, “specified day” means—

- ~~(a)~~ (a) the day on which particulars of the matter are received by National Highways under the provisions of this Part of this Schedule; or
- ~~(b)~~ (b) the day on which the undertaker provides National Highways with any further particular of the matter that have been reasonably requested by National Highways within 28 days of the date in sub-paragraph ~~(7)~~ (5),

whichever is the later.

~~(8)~~ (10) 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)(f) of this Part before the first condition survey is conducted and the reasonable regime of monitoring is implemented.

Construction of part (a) of the specified works

5.—(1) The undertaker must give National Highways 28 days’ notice in writing of the date on which part (a) of the specified works will start unless otherwise agreed by National Highways. The undertaker must comply with National Highways’ road space booking procedures prior to and during the carrying out of part (a) 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, save that consent to a request for road booking space shall be deemed to have been given if neither given nor refused within 28 days of the request.

(2) Part (a) of 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 4~~(2)~~ 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, 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.

(3) 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 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, acting reasonably.

(4) 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.

(5) If within 28 days on which a notice under sub-paragraph (4) or 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 reasonably incurred by National Highways in so doing.

(6) 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.

(7) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities.

(8) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme of works pursuant to paragraph 4 of this Part, or suspends the carrying out of any specified work beyond 14 days, and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

~~(2)~~ (9) 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 part (a) of the specified works for the purposes of inspection and supervision of the specified works.

~~(3)~~ (10) If any part of part (a) of the specified works is constructed—

(a) other than in accordance with the requirement 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.

~~(4)~~ (11) If within 28 days on which a notice under sub-paragraph ~~(11)~~ 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 it in so doing, such sum to be payable within 30 days of a written demand, including itemised costs.

~~(5)~~ (12) Nothing in this Part of this Schedule prevents National Highways from carrying out any work or taking 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.

~~(6)~~ (13) 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.

~~(7)~~ (14) During the construction of part (a) 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 4~~(2)~~(h) and the undertaker must carry out such maintenance at its own cost.

Payments

6.—(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 part (a) of 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 4~~(2)~~;
- (b) the supervision of the specified works including supervision required in respect of any remedial or other works needed for the issue of the provisional certificate and/or the final certificate;
- (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 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 and which are not already contained within this Order.

(3) National Highways must provide to the undertaker written notification of the amount required as the initial deposit in respect of the NH costs as soon as reasonably practicable and the undertaker must pay an amount equal to the sum within 28 days of receipt of the notification.

(4) 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 part (a) of the specified works and the undertaker must pay to National highways an amount equal to the estimated sum within 28 days of receipt of the notification and in any event prior to National Highways incurring any cost and prior to commencing part (a) of the specified works.

(5) If at any time the payments referred to in sub-paragraph (3) or (4) has become payable, National highways reasonably believes that the NH costs will exceed the relevant estimate it may give written notice to the undertaker of the amount that it believes its costs will exceed the relevant estimate (the excess) and the undertaker must pay to National Highways within 28 days of the date of the written notice a sum equal to the excess.

(6) National Highways must give the undertaker an itemised final account of the costs referred to in sub-paragraph (1) above within 91 days of the issue of the provisional certificate issued pursuant to paragraph 7(4).

(7) 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 within 28 days.

(8) 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 1% above the rate payable in respect of compensation under section 32 (rate of interest after entry on land) of the 1961 Act 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 for part (a) of the specified works

7.—(1) Following any closure or partial closure of any part of the strategic road network for the purposes of carrying out part (a) of 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 the 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)—

- (a) inspect part (a) of 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 part (a) of 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) part (a) of 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; and
- (c) the as built information has been provided to National Highways

National Highways must issue the provisional certificate (not to be unreasonably withheld or delayed).

(5) The undertaker must submit a stage 4 road safety audit 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

8. 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

9.—(1) The undertaker must, within 28 days of making its application for a provisional certificate pursuant to paragraph 7(2), arrange for the structures, assets and pavements that were the subject of the condition survey to be re-surveyed and must submit the re-survey to National Highways for its approval.

(2) If the re-survey carried out pursuant to paragraph 9(1) of this Part indicates 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 sum to be paid within 30 days of receipt of the demand.

(4) National Highways may, at its discretion, at the same time as giving its approval to the re-survey pursuant to paragraph 9(1) of this Part give notice in writing that National Highways will remedy any damage identified in the re-survey 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 part (a) of the specified works following its completion that the undertaker may from time to time carry out.

Defects Period

10.—(1) The undertaker must at its own expense remedy any defects in the part (a) 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 other such time period as is agreed.

(2) Following the issue of provisional certificate National Highways has responsibility for maintenance of the highway save for any soft landscaping works which must be established and which must thereafter be maintained for a period of 12 months by and at the expense of the undertaker.

Final Certificate

11.—(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 this paragraph—

- (a) inspect part (a) if 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 in part (a) of the specified works 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.

Part (b) of the specified works

12.—(1) Any specified works which involve tunnelling, boring or otherwise installing the pipeline under the strategic road network without trenching from the surface, must be designed by the undertaker in accordance with DMRB CD622 unless otherwise agreed in writing by National Highways.

(2) The specified works must not commence until—

(a) the programme of works has been approved by National Highways;

(b) 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;

(ii) the identity and suitability of the contractor and nominated persons; and

(iii) a process for stakeholder liaison, with key stakeholders to be identified and agreed between National Highways and the undertaker;

(c) a condition survey and regime of monitoring of any National Highways assets or structures that National Highways reasonably considers will be affected by the specified works, has been agreed in writing by National Highways; and

(d) an acceptable security in favour of National Highways for the indemnity set out in paragraph 14 below has been put in place, which security must be maintained in place until the expiry of 12 months following the completion of all of the specified works.

~~12~~ **~~(3)~~** Not less than 56 days before the commencement of part (b) of the specified works the undertaker must submit to National Highways a plan.

~~(2)~~ **~~(4)~~** The plan to be submitted to National Highways under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning, etc.;
- (d) any intended maintenance regimes; and
- (e) a ground monitoring scheme.

~~(3)~~ **~~(5)~~** The undertaker must not commence any works to which sub-paragraph **~~(3)~~** applies until National Highways has given written approval of the plan so submitted.

~~(4)~~ **~~(6)~~** Any approval of National Highways required under sub-paragraph **~~(5)~~**—

- ~~(a)~~** **~~(a)~~** may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs **~~(7)~~** or **~~(9)~~**;

~~(b)~~ (b) must not be unreasonably withheld or delayed; and

if National Highways fails to respond to a plan submitted under sub-paragraph (1) within 42 days of its submission, the undertaker may send a written reminder to National Highways, and if National Highways has neither given nor refused its approval within 14 days of the issue of such reminder, such approval shall be deemed to have been given.

~~(5)~~ (7) In relation to any work to which sub-paragraph (1) applies, National Highways may require such modifications to be made to the plans as may be necessary for the purpose of securing the strategic road network against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

~~(6)~~ (8) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Highways and in accordance with such requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Highways for the protection of the strategic road network, or for securing access to it, and National Highways will be entitled to watch and inspect the execution of those works.

~~(7)~~ (9) Where National Highways requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any

measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Highways' satisfaction prior to the commencement of part (b) of the specified works (or any relevant part thereof) for which protective works are required and the undertaker must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

~~(8)~~ (10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of part (b) of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

~~(9)~~ (11) The undertaker will not be required to comply with sub-paragraph ~~(34)~~ where it needs to carry out emergency works but in that case it must give to National Highways notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs ~~(65)~~, ~~(76)~~ and

~~(12)~~ insofar as is reasonably practicable in the circumstances.

13. Construction of part (b) of the specified works

(1) The undertaker must give National Highways 28 days' notice in writing of the date on which part (a) of the specified works will start unless otherwise agreed by National Highways. The undertaker must comply with National Highways' road space booking procedures prior to and during the carrying out of part (a) 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, save that consent to a request for road booking space shall be deemed to have been given if neither given nor refused within 28 days of the request.

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

(d) the relevant detailed design information and programme of works approved pursuant to paragraph 13(1) above or as subsequently varied by agreement between the undertaker and National Highways;

(e) 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, 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

(f) 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.

(3) 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 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, acting reasonably.

(4) 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.

(5) If within 28 days on which a notice under sub-paragraph (4) or 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 reasonably incurred by National Highways in so doing.

(6) 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.
(7) In constructing the specified works, the undertaker must at its own expense divert or protect all utilities.

(8) The undertaker must notify National Highways if it fails to complete the specified works in accordance with the agreed programme of works pursuant to paragraph 4 of this Part, or suspends the carrying out of any specified work beyond 14 days, and National Highways reserves the right to withdraw any road space booking granted to the undertaker to ensure compliance with its network occupancy requirements.

(9) 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 part (a) of the specified works for the purposes of inspection and supervision of the specified works.

(10) If any part of part (a) of the specified works is constructed—

(c) other than in accordance with the requirement of this Part of this Schedule; or

(d) 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.

(11) If within 28 days on which a notice under sub-paragraph (4) 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 it in so doing, such sum to be payable within 30 days of a written demand, including itemised costs.

(12) Nothing in this Part of this Schedule prevents National Highways from carrying out any work or taking 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.

(13) 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.

(14) During the construction of part (a) 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 4(1)(h) and the undertaker must carry out such maintenance at its own cost.

(7)

Condition survey and as built details

14.—(1) The undertaker must, as soon as reasonably practicable after completing the specified work, arrange for any highways structures and assets that were the subject of the condition survey under paragraph 227(2)(c) 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 sub-paragraph 230(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. National Highways must remedy any damage identified in the resurveys and National Highways may recover any expenditure it reasonably incurs in so doing from the undertaker.

(3) 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.

(4) Within 30 days of completion of the specified works, the as built details must be provided by the undertaker to National Highways.

Insurance

1315. 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 (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 or use of the specified works by the undertaker.

Indemnity

1416.—(1) The undertaker must indemnify National Highways from and against all costs, expenses, damages, losses and liabilities suffered by National Highways arising from or in connection with any claim, demand, action or proceedings (including but not limited to statutory claims) resulting from the construction, maintenance or use of the specified works or exercise of any power under

this Order 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) Within 14 days of the receipt of the notification referred to in sub-paragraph (1)(b) the undertaker must pay to National Highways the amount specified as the quantum of such claim.

(3) 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

15.17.—(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 7 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

16-18. 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

1719.—(1) Save as set out in sub-paragraph (5) of this paragraph, article 52 (arbitration) of the Order does not apply.

(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 submissions 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 52 (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.