

PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

**APPLICATION BY RWE RENEWABLES UK SOLAR AND STORAGE LIMITED FOR THE TWEEN BRIDGE
SOLAR FARM DEVELOPMENT CONSENT ORDER 202X**

DEADLINE 4 SUBMISSION

ON BEHALF OF

NATIONAL HIGHWAYS LIMITED

Interested Party Reference: FC3E3E146

APPLICATION BY RWE RENEWABLES UK SOLAR AND STORAGE LIMITED FOR THE TWEEN BRIDGE SOLAR FARM DEVELOPMENT CONSENT ORDER 202X

1. Introduction

- 1.1 This is the Deadline 4 submission of National Highways Limited ("NH") provided in respect of the application by RWE Renewables UK Solar and Storage Limited ("Applicant") for a Development Consent Order ("DCO") for the Tween Bridge Solar Farm ("Proposed Development").
- 1.2 Terms used in this submission have the same definition as set out in NH's **Written Representation [REP1-067]** unless otherwise defined.
- 1.3 This submission has been prepared to respond to requests made by the Examining Authority ("ExA") at the recent Issue Specific Hearing 2 ("ISH2") and Compulsory Acquisition Hearing ("CAH") held on 23 and 24 June 2026 and to assist the ExA in understanding the current status of NH's objection and the outstanding matters between the parties.
- 1.4 In view of the brevity of this document, a summary has not been provided.

2. Protective Provisions

- 2.1 During the CAH, the ExA asked NH to submit its preferred form of protective provisions into the Examination at Deadline 4.
- 2.2 Whilst the Applicant and NH remain in active discussion regarding the form of the NH protective provisions, agreement has not yet been reached between the parties.
- 2.3 In this context, NH considers that the form of protective provisions which best protects its interests remains the template version previously submitted into the Examination as an appendix to NH's **Relevant Representation [RR-022]**, also appended to this submission for ease of reference.
- 2.4 NH is aware that the Applicant has prepared a Deadline 4 submission covering its justification for its preferred form of protective provisions. NH awaits sight of this document and will provide its response at Deadline 5, as agreed during the CAH.

3. Compulsory Acquisition

- 3.1 As set out in its **Written Representation [REP1-067]**, NH has been approached by the Applicant regarding the possibility of a voluntary agreement to acquire the necessary land rights from NH, and discussions are continuing in this regard. However, it appears unlikely that any such agreement will be concluded by the close of Examination.
- 3.2 In this context, NH remains of the view that powers of compulsory acquisition over the NH plots is acceptable only where the DCO contains appropriate NH protective provisions, in the form appended to this submission, in order to ensure that exercise of such powers over NH's undertaking is appropriately controlled.
- 3.3 For ease of reference NH has provided below a high-level summary of the latest position with respect to the NH plots:

Plot(s)	Nature of NH interest	NH position
9/24	Category 1	The Applicant proposes to undertake cabling works beneath the SRN within this plot. Any works within and/or

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		exercise of compulsory acquisition powers over this plot will need to be controlled by the NH PPs.
10/21, 11/25	Category 1	Following discussions between NH and the Applicant, the Applicant has amended the application (in particular the Land Plans [REP3-002] , the Works Plans [REP3-003] and the Street Works Access and Public Rights of Way Plans [REP3-004]) to clarify that no compulsory acquisition powers or works are proposed within these plots. This is welcomed by NH.
10/12, 10/15	Category 1	These parts of the highway have been de-trunked, meaning they have been vested in and are the responsibility of the local highway authority pursuant to section 265 of the Highways Act 1980.
10/33, 10/35, 10/36, 10/39	Category 1	Whilst these plots constitute local highway, the subsoil remains in NH's ownership. Any rights required from NH will need to be negotiated privately and form part of the terms being agreed between the parties.
10/26	TBC	Following further investigation by NH, and although not reflected in the application documents, it appears that this plot (like 10/21) comprises an embankment supporting a bridge on which the local highway network overpasses the SRN. NH is investigating the nature of its interest in this plot and has asked the Applicant to confirm the nature of the works proposed in this area. This information is awaited.
7/7, 7/13, 7/14, 7/17, 11/22, 11/24, 11/26, 12/6, 12/8, 12/9, 12/10, 12/11, 12/12, 12/13, 12/14, 12/15	Category 2	NH benefits from rights over these plots which are required for the purposes of its undertaking. Any interference with these rights must be subject to NH's consent in accordance with the NH PPs.

4. M180 Renewal Works

- 4.1 During ISH2, the ExA asked the Applicant and NH to provide greater clarity on the parties' positions regarding the potential interaction between the Proposed Development and the M180 renewal works at Deadline 4. The Applicant subsequently updated the **Outline CTMP [REP3-037 – REP3-042]** at Deadline 3 to address the potential need to enter into an interface agreement in relation to these works.
- 4.2 NH agrees that the **Outline CTMP [REP3-037 – REP3-042]** is an appropriate document to deal with any arrangements required in respect of the M180 renewal works. However, NH has reviewed the updated **Outline CTMP [REP3-037 – REP3-042]** and notes that the commitment made by the Applicant (at 6.11.3) states: *"The Applicant is willing to discuss entering into an interface agreement to the extent it proves necessary to do so."*
- 4.3 NH considers that this is insufficient (amounting only to a commitment to "discuss" with NH), and suggests that the **Outline CTMP [REP3-037 – REP3-042]** should instead provide a firmer commitment as follows: *"The Applicant will enter into an interface agreement with National Highways*

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prior to undertaking any part of the Proposed Development that could interact with the M180 renewal works, should this be considered necessary by National Highways (acting reasonably)."

5. Approval of Requirements

5.1 During ISH2, NH provided comments on the drafting of Requirement 22, which the Applicant agreed to address. NH has reviewed the updates made to Requirement 22 by the Applicant in the **Draft DCO [REP3-007]** submitted at Deadline 3, and is comfortable that these amendments address the specific comments raised at ISH2.

5.2 Notwithstanding this, NH wishes to reiterate its position set out in its **Written Representation [REP1-067]** that it is entirely appropriate for NH to have approval rights in respect of the discharge of Requirements 5 (approved details and amendments to them), 8 (landscape and ecology management plan), 9 (fencing and other means of enclosure), 11 (surface and foul water drainage), 16 (construction traffic management plan) and 19 (decommissioning and restoration), to the extent that the phase or the relevant details which are the subject of the relevant discharge application affects the SRN.

5.3 Full details of NH's justification for this position are set out in its **Written Representation [REP1-067]** (at section 9) and the **NH Statement of Common Ground [REP3-057]** (items 7 and 10) and proposed drafting that NH would accept is set out in section 9 of **[REP1-067]**. For completeness in presenting the full picture of NH's current objection as at Deadline 4, we reiterate those points in summary form here:

5.3.1 Article 2 (Interpretation) – NH has requested that a definition of "National Highways" is inserted at Article 2. This matter has now been satisfactorily addressed by the Applicant.

5.3.2 Requirement 5 (Approved details and amendments to them):

(a) NH Position:

- (i) NH considers that, where it is consulted on or approves details in respect of any Requirement (for example, the CTMP under Requirement 16), it is entirely reasonable that it should be given the opportunity to approve any details or amendments to the approved details which NH originally approved.
- (ii) Where detail submitted to NH for approval under Requirement 16 was later amended (e.g. matters specific to the SRN in the CTMP), it is not clear why those amendments should be subject to the approval of the Local Planning Authority. The original approver was NH and NH has the knowledge and interest in the subject matter. The Local Planning Authority would have no interest in the amendments as it would not have had a role in the original approval.
- (iii) Accordingly, NH requests that the drafting in Requirement 5 is amended as set out in section 9 of **[REP1-067]**.

(b) Applicant's Position:

- (i) The Applicant does not consider that it is necessary to make express provision for consultation with NH in respect of matters within the scope of Requirement 5. The Applicant considers that, in the exercise of its discharge functions under Requirement 5 and acting as a responsible public authority, the relevant planning authority can be relied upon to undertake consultation with such bodies as it deems appropriate in

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relation to the particular amended document or plan for which approval is sought. It would not be appropriate to circumscribe the consultation required to be undertaken by the relevant planning authority, in this regard, given the range of matters which may fall to it to consider as discharging authority under Requirement 5.

5.3.3 Requirement 8 (Landscape and ecology management plan):

(a) NH Position:

- (i) The Proposed Development will result in a moderate impact on separate 0.2km and 1.6km sections of the M180 and a 0.1km section of the A18 under baseline conditions [REP1-025, page 4]. Planting, *once matured*, is expected to mitigate that impact.
- (ii) If that planting does not reach maturity or the planting which is approved by the Local Planning Authority under the Landscape and Ecology Management Plan is not of a suitable quality or type to provide adequate mitigation, then the direct impact on NH's asset and the public who use it has not been mitigated.
- (iii) It is entirely reasonable and proportionate that NH have the requisite say on the planting which is adjacent to its network, rather than this decision being left in the hands of a third party with no interest in the SRN. NH requests an approval right on the detail to be submitted under Requirement 8 to ensure that the appropriate oversight is given over matters which directly affect the SRN and its users.
- (iv) NH is currently listed as a consultee on Requirement 8. Whilst Requirement 22 now ensures that NH's consultation response on Requirement 8 reaches the Local Planning Authority as the discharging body, the Local Planning Authority is still subject to deemed consent provision in the DCO. Meaning, notwithstanding the fact it will now receive NH's comments, there is still a material risk that the Local Planning Authority does not action those comments in time to meet the deemed consent provisions. In which case, the Applicant can deem the requirement discharged, without NH's concerns suitably addressed. Accordingly, it is reasonable and proportionate that NH be granted an approval right over Requirement 8.

(b) Applicant's Position:

- (i) NH understands the Applicant's position on Requirement 8 to be that NH is listed as a consultation body, with whom the Local Planning Authority must consult as part of its function as the approving body. The amendments made to Requirement 22 ensure that NH's consultation response is appended to the summary report which is submitted to the Local Planning Authority by the Applicant.
- (ii) As per the NH Statement of Common Ground, the Applicant states that *"this approach is sufficient and appropriate in the circumstances and it would not be proportionate to include National Highways as an approving authority"*.

5.3.4 Requirement 9 (Fencing and other means of enclosure):

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(a) NH Position:

- (i) The Proposed Development immediately abuts the SRN in several locations (see for example, plots 5/17, 5/18, 7/1, 7/7, 7/8, 7/13, 7/17, 7/20, 7/21, 8/1, 8/2, 8/4, 9/2, 9/19, 9/20, 9/23, 10/3, 10/26, 10/28, 10/29, 11/24 of the Land Plans [REP3-002]).
- (ii) The Work Plans [REP3-003] show each of these plots as including Work No. 2 of Schedule 1 of the Applicant's draft DCO, which includes "(b) fencing, gates, boundary treatment and other means of enclosure" and "(e) works for the provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, weather stations, communication infrastructure and perimeter fencing".
- (iii) Fencing adjacent to the SRN is a safety hazard that has to be managed in accordance with strict standards. Inclement weather conditions can result in fencing being displaced if not built to the correct standards, which could result in catastrophic safety implications for road users.
- (iv) It is entirely proportionate and reasonable that NH have a requisite approval right in respect of details of boundary treatment adjacent to its operational land, to ensure the design and construction of the fencing is in accordance with appropriate technical standards. This should not be controversial.
- (v) NH is currently listed as a consultee on Requirement 9. Whilst Requirement 22 now ensures that NH's consultation response reaches the Local Planning Authority as the discharging body, the Local Planning Authority is still subject to deemed consent provision in the DCO. Meaning, notwithstanding the fact it will now receive NH's comments, there is still a material risk that the Local Planning Authority does not action those comments in time to meet the deemed consent provisions. In which case, the Applicant can deem the requirement discharged, without NH's concerns suitably addressed. Accordingly, it is reasonable and proportionate that NH be granted an approval right over Requirement 9.

(b) Applicant's Position:

- (i) NH understands the Applicant's position on Requirement 9 to be that NH is listed as a consultation body, with whom the Local Planning Authority must consult as part of its function as the approving body. The amendments made to Requirement 22 ensure that NH's consultation response is appended to the summary report which is submitted to the Local Planning Authority by the Applicant.
- (ii) As per the NH Statement of Common Ground, the Applicant states that "*this approach is sufficient and appropriate in the circumstances and it would not be proportionate to include National Highways as an approving authority*".

5.3.5 Requirement 11 (Surface and Foul Water Drainage):

(a) NH Position:

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- (i) The NH Statement of Common Ground states at Row 8 that the Applicant does not propose any outfall of surface water runoff into highway drainage apparatus. It also states that the exact surface water outfall locations are to be confirmed at a later stage of design. At this stage however, the Outline Surface Water Drainage Strategy is based on surface water discharging into the numerous watercourses located within the Order Limits.
 - (ii) In the absence of an express and legally enforceable commitment not to discharge into NH's surface water drainage system, that could include NH's drainage apparatus.
 - (iii) Government policy on this matter is clear. Paragraph 59 of the Government's SRN and the delivery of sustainable development policy mandates that no new connections into highway drainage systems from third party development and proposed drainage schemes will be accepted.¹
 - (iv) Additional run off into NH's surface water drainage system could lead to increased instances of pooling on the SRN, which can lead to serious adverse safety implications for road users.
 - (v) Accordingly, NH requires an approval right over Requirement 11, to ensure that no proposed surface and foul water drainage connections are made to NH drainage infrastructure.
 - (vi) NH is currently listed as a consultee on Requirement 11. Whilst Requirement 22 now ensures that NH's consultation response reaches the Local Planning Authority as the discharging body, the Local Planning Authority is still subject to deemed consent provision in the DCO. Meaning, notwithstanding the fact it will now receive NH's comments, there is still a material risk that the Local Planning Authority does not action those comments in time to meet the deemed consent provisions. In which case, the Applicant can deem the requirement discharged, without NH's concerns suitably addressed. Accordingly, it is reasonable and proportionate that NH be granted an approval right over Requirement 11.
- (b) Applicant's Position:
- (i) NH understands the Applicant's position on Requirement 11 to be that NH is listed as a consultation body, with whom the Local Planning Authority must consult as part of its function as the approving body. The amendments made to Requirement 22 ensure that NH's consultation response is appended to the summary report which is submitted to the Local Planning Authority by the Applicant.
 - (ii) As per the NH Statement of Common Ground, the Applicant states that "this approach is sufficient and appropriate in the circumstances and it would not be proportionate to include National Highways as an approving authority".

¹ <https://www.gov.uk/government/publications/strategic-road-network-and-the-delivery-of-sustainable-development/strategic-road-network-and-the-delivery-of-sustainable-development>

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- 5.3.6 Requirement 16 (Construction Traffic Management Plan) – The Applicant has now included NH as an approving body in respect of Requirement 16 and so, except for the M180 renewal work drafting (see above), this matter is agreed.
- 5.3.7 Requirement 19 (Decommissioning and Restoration Plan):
- (a) NH Position:
- (i) The future baseline of the traffic and transport assessment at the point of decommissioning is not known. What is clear is that the SRN will be relied upon by the Applicant or some future owner of the Proposed Development as part of the eventual decommissioning works.
 - (ii) It is important that NH is put into a position where it has sufficient oversight and control over the measures to form part of any decommissioning and restoration plan, insofar as that plan assumes usage of the SRN. It is not appropriate for these responsibilities to be left to a third party who has no interest in the SRN.
 - (iii) NH is currently listed as a consultee on Requirement 19. Whilst Requirement 22 now ensures that NH's consultation response reaches the Local Planning Authority as the discharging body, the Local Planning Authority is still subject to deemed consent provision in the DCO. Meaning, notwithstanding the fact it will now receive NH's comments, there is still a material risk that the Local Planning Authority does not action those comments in time to meet the deemed consent provisions. In which case, the Applicant can deem the requirement discharged, without NH's concerns suitably addressed. Accordingly, it is reasonable and proportionate that NH be granted an approval right over Requirement 19.
- (b) Applicant's Position:
- (i) NH understands the Applicant's position on Requirement 19 to be that NH is listed as a consultation body, with whom the Local Planning Authority must consult as part of its function as the approving body. The amendments made to Requirement 22 ensure that NH's consultation response is appended to the summary report which is submitted to the Local Planning Authority by the Applicant.
 - (ii) As per the NH Statement of Common Ground, the Applicant states that *"this approach is sufficient and appropriate in the circumstances and it would not be proportionate to include National Highways as an approving authority"*.

21 July 2026

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Appendix – NH Protective Provisions

PART 7

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 the 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 the Town and Country Planning (General Permitted Development) (England) Order 2015 shall continue to apply in respect of the exercise of all National Highways' statutory functions.

Interpretation

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

(2) In this Part of this Schedule—

“as built information” means one electronic copy of the following information where National Highways deems necessary—

- (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, including CCTV surveys, 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 or any successor of it.

“bond” means a bond in a form duly executed by the undertaker and reputable UK surety company or other UK financial institution to be approved in writing by National Highways (such approval not to be unreasonably withheld or delayed);

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

- a) a bond; or

b) a cash surety; or

c) where agreed by National Highways a combination of a bond and cash surety;

“cash surety” means a cash deposit to be paid by the undertaker into an account specified by National Highways;

“commuted sum” means such sum calculated as provided for in paragraph 16 of this Part of this Schedule to be used to fund the future cost of maintaining any new National Highways assets, structures or apparatus provided under the Order;

“condition survey” means a survey of the condition of National Highways structures and assets that in the reasonable opinion of National Highways may be affected by the specified works and further to include a CCTV survey of specified drains that National Highways reasonably considers may be materially and adversely affected by a specified work;

“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) 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 design build finance operate 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 14;

“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 10 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 and “road safety audits shall be construed accordingly”;

“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 and “road space bookings shall be construed accordingly”;

“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 or any successor of it;

“specified works” means so much of any work, including highway works, street works, surveys and signalisation, authorised by this Order including any maintenance of that work, as is undertaken on the strategic road network or land in which National Highways has an interest and “specified work” shall be construed accordingly;

“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 structures, drainage infrastructure, street furniture, verges and vegetation and all other highways assets together with all 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 (or such updated or revised legislation as may come into force from time to time); and

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

General

3.—In respect of any part of the strategic road network that is managed under a DBFO contract both National Highways and the highway operations and maintenance contractor shall have the benefit of this Part of Schedule 13 but for the purposes of any approvals required under this Part of Schedule 13 the undertaker shall liaise directly with National Highways.

4.—Notwithstanding the design parameters assessed and secured under Requirement 6 of Schedule 2 of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out in under or over the strategic road network unless such works are agreed in writing with National Highways at the absolute discretion of National Highways.

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 and at the same time as submitting the relevant details the undertaker shall be entitled to submit its application for road space bookings to National Highways;
 - (iii) the identity and qualifications 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 or any successor document;
- (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;
- (j) any further information that National Highways may reasonably request within 14 days of the submission of the detailed design of a specified works has been supplied to National Highways; and
- (k) a condition survey and regime of monitoring has been agreed in writing by National Highways.

(2) The undertaker must not exercise—

- (a) article 5 (*power to maintain the authorised development*);
- (b) article 11 (*street works*)
- (c) article 13 (*power to alter layout, etc. of streets*);
- (d) article 15 (*temporary closure or restriction of streets and public rights of way*);
- (e) article 16 (*access to works*)
- (f) article 19 (*traffic regulation measures*);
- (g) article 20 (*discharge of water*);
- (h) article 21 (*protective works to buildings*);
- (i) article 22 (*authority to survey and investigate the land*);
- (j) article 23 (*compulsory acquisition of land*);
- (k) article 26 (*compulsory acquisition of rights and imposition of restrictive covenants*);
- (l) article 27 (*Private Rights*)
- (m) article 32 (*rights under or over streets*);
- (n) article 33 (*temporary use of land for constructing the authorised development*);
- (o) article 34 (*temporary use of land for maintaining the authorised development*); or
- (p) article 41 (*felling or lopping of trees and removal of hedgerows*) of this Order,

over any part of the strategic road network or land in which National Highways has an interest without the consent of National Highways, and National Highways may in connection with any such exercise require the undertaker to provide details of any proposed road space bookings and submit a scheme of traffic management 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-paragraphs (1) or (2).

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

- (a) must not be unreasonably withheld;
- (b) must be given in writing; and
- (c) 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.

(7) Article 49 (*requirements, appeals, etc.*) does not apply to any application for consent, agreement or approval required or contemplated by any of the provisions to this Part of the Schedule

Construction of the specified works

8.—(1) The undertaker must give National Highways 3 months' 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 when booking road space on the strategic road network prior to and during the carrying out of 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. For the avoidance of doubt no approval or consent issued by National Highways shall be taken to be a consent or approval pursuant to the Construction (Design and Management) Regulations 2015.

(4) The undertaker must ensure that (where possible) without entering the highway the highway is kept free from mud, soil and litter as a result of carrying out a Specified Works.

(5) 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 pursuant to the Order including all land in which National Highways has an interest for the purposes of inspection and supervision of the specified works.

(6) 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.

(7) 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.

(8) If within 28 days on which a notice under sub-paragraph (6) or sub-paragraph (7) 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 28 days of demand.

(9) 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.

(10) 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.

(11) Until such time that National Highways issues the provisional certificate 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.

(12) 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 costs and expenses which National Highways reasonably and properly 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) contractual costs properly payable to the highway operations and maintenance contractor as a consequence of any specified works, including costs incurred by the highway operations and maintenance contractor in carrying out the tasks referred to in sub-paragraphs (a) and (b) of this paragraph, in which case National Highways will be responsible for the payment of any sums received from the undertaker under this paragraph to the highway operations and maintenance contractor;
- (d) the checking and approval of the information required to determine approvals under this Order;
- (e) all costs in relation to the transfer of any land required for the specified works;
- (f) all legal and administrative costs and disbursements incurred by National Highways in connection with the Order and sub-paragraphs (a)-(d); and
- (g) any value added tax which is payable by National Highways in respect of such costs and expenses arising under this paragraph 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 (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 the completion of any specified works or prior to reopening any part of the strategic road network following any closure or partial closure, whichever shall be sooner, the undertaker shall notify National Highways who 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 following the site inspection.

(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 (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) Following the issue of the provisional certificate, National Highways shall reduce the bond sum in writing to 20% provided that in the event any claim or claims have been made against the undertaker or liability on its part has arisen under the bond sum (which here shall also include any claim or claims to which National Highways are joined howsoever they arise) before that date National Highways will be at liberty to retain a sufficient sum in addition to the 20% to ensure it

does not have to meet any costs for and/or arising from and/or in connection with 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 pay all costs of and incidental to such and provide updated as-built information to National Highways.

Opening

11.— Unless otherwise agreed in writing by National Highways 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 and must not open the strategic road network to the public prior to the expiration of the requisite notice period.

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 and such programme as National Highways may require..

(3) If the undertaker fails to carry out the remedial work in accordance with the approved scheme and programme pursuant to paragraph 12(2) or fails to submit a scheme for remedial works to National Highways, National Highways may carry out the steps required of the undertaker and may recover on demand any expenditure from the undertaker 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 on demand any expenditure from the undertaker 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 issuing of the provisional certificate 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 and upon the issue of the final certificate reduce the bond sum in full provided that in the event any claim or claims have been made against the undertaker or liability on its part has arisen under the bond sum (which here shall also include any claim or claims to which National Highways are joined howsoever they arise) National Highways will be at liberty to retain a sufficient sum to ensure it does not have to meet any costs for and/or arising from and/or in connection with the specified works.

(5) The undertaker must pay to National Highways within 28 days of demand the costs 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 this paragraph 14.

Security

15—(1) The specified works must not commence until the undertaker procures that the specified works are secured by the bond sum 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.

(2) If at any time the undertaker is in breach of these provisions of this Part of this Schedule or becomes insolvent without prejudice to any other remedy National Highways is entitled upon giving notice to the undertaker to use such parts of the bond sum as National Highways considers necessary. For the avoidance of doubt should National Highways have to carry out works pursuant to this Part of this Schedule it may, at its sole discretion, use the bond sum to forward fund such works.

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 £50,000,000.00 (fifty 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 or in connection to the construction, maintenance or use of the specified works or exercise of or failure to exercise any power under this Order and any such costs shall be paid to National Highways 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) During any maintenance works, 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 exercise 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 part of the strategic road network or land owned by National Highways, or extinguish any existing rights of or interfere with apparatus of National Highways in respect of any third party property, except with the consent of National Highways by written request to legalservicesinbox@nationalhighways.co.uk

(4) Where any land or interest is proposed to be acquired pursuant to this Order for the benefit of National Highways, the undertaker must, unless otherwise agreed by National Highways, exercise article 23 (*compulsory acquisition of land*) and article 26 (*compulsory acquisition of rights and imposition of restrictive covenants*) as applied by articles 12 (*application of the 1981 Act*) and

article 9 (*application and modification of statutory provisions*) of this Order to directly vest in National Highways any such land or interest.

Expert Determination

21.—(1) Article 44 (*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 7 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 7 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 44 (*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.